

In the Matter of MELLIN-QUINCY MFG. Co., INC. and UNITED CONSTRUCTION WORKERS, AFFILIATED WITH THE UNITED MINE WORKERS OF AMERICA

Case No. 1-C-2219.—Decided November 4, 1943

DECISION
AND
ORDER

On September 6, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations made by the Trial Examiner, with the exceptions and qualifications noted below:

1. On or about April 1, 1943, the respondent authorized the granting of a bonus to its employees. In a notice to the employees posted at the plant on that date, the respondent stated that a bonus of 7 percent would be paid to employees who worked a full 48-hour week, in order to prevent loss of production caused by absenteeism. Evidence was adduced by the respondent at the hearing to the effect that the absentee problem became acute during the preceding year and that the granting of the bonus was under consideration by the management for several months. No explanation, however, was offered by the respondent as to the particular timing of the bonus. In addition to the bonus granted on April 1, the respondent in March of the same year granted wage increases to 101 employees out of the total of about 130 employees engaged at the plant, which it termed individual or merit wage increases. The statement of wage increases by months prepared by the

respondent shows that, while 101 wage increases were granted in the single month of March, only 42 wage increases were given during the 4-month period immediately preceding March and only 40 wage increases were given during the 3-month period immediately following March. The respondent admitted that some of the March wage increases were given on March 29; it did not, however, produce the records which would disclose the dates on which the wage increases in March were granted, or the number granted on any given date. Moreover, the respondent offered no explanation for granting abnormally large number of wage increases in March coincident with the commencement of union activities in the plant. The Trial Examiner found that Union Organizer Crawford arrived at the town of Whitefield "on or about the last week in March," but we find from the record that his arrival actually was about the middle of March. Shortly thereafter, Crawford visited Pilotte at her home and, in the interval between this visit and the meeting of April 1, they together visited a number of the respondent's employees and discussed with them the advantages of organization, activities which would not go unnoticed in a town of 1,850 inhabitants in which respondent's plant is the principal industry. On March 29, 30, and 31, Crawford and others distributed papers and handbills at the entrance to the plant, the distribution of this union literature being admittedly observed by some of the respondent's foremen and other representatives of the management. In view of the foregoing and upon the entire record, we concur in the Trial Examiner's findings that, on and for several days prior to March 29, the respondent had knowledge of the beginning of organizational activities among its employees and that the timing of the wage increase and bonus was intended to and had the effect of discouraging such organizational activities.

2. On May 13, 1943, the respondent posted a notice at the plant advising its employees of the withdrawal by the Union of its petition for certification as bargaining representative. Trial Examiner, although entertaining some doubts as to the propriety of the respondent's action, nevertheless concluded that the posting of the notice was not violative of the act. We do not agree with this conclusion. Whether employees select a bargaining representative, or what bargaining representative they select, is the exclusive concern of the employees and is not a matter with respect to which an employer is legally permitted to interfere under the Act. The posting of the notice was an unlawful intrusion into the self-organizational activities of the employees. The accuracy of the statements made in the notice is immaterial, since it was clearly calculated to imply and did carry the implication that the Union had failed to attempt to organize the plant and that continued affiliation with the Union was therefore useless. The fact that the respondent deemed it necessary to advise its employees of

the withdrawal of the petition by the Union, although it had not similarly advised them of the filing of the petition, is not without significance. Viewed against the respondent's entire course of conduct, including anti-union utterances by its supervisory employees, the timing of the wage increase and bonus to counteract organizational activities of the Union, and the discriminatory discharge of an employee because of union activity, we are satisfied and find that the posting of the notice was an integral element in a coercive course of conduct pursued by respondent, and therefore constituted interference, restraint, and coercion in violation of Section 8 (1) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Mellin-Quincy Mfg. Co., Inc., Whitefield, New Hampshire, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Construction Workers, affiliated with the United Mine Workers of America, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Laura Pilotte immediate and full reinstatement to her former or substantially equivalent employment, without prejudice to her seniority and other rights and privileges;

(b) Make whole Laura Pilotte for any loss of pay she has suffered by reason of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages from April 30, 1943, the date of her discriminatory discharge, to the date of the respondent's offer of reinstatement, less her net earnings during said period;

(c) Post immediately in conspicuous places in its Whitefield, New Hampshire, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that it will not engage in the conduct from which it is

ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that it will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that its employees are free to become and remain members of United Construction Workers, affiliated with the United Mine Workers of America, and that it will not discriminate against any of its employees because of membership in or activities on behalf of that organization; and

(d) Notify the Regional Director for the First Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

. IT IS FURTHER ORDERED that the allegation in the complaint, that the respondent engaged in surveillance of union meetings in violation of Section 8 (1) of the Act, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Thomas H. Ramsey, for the Board.

Messrs. Grant & Angoff, by *Mr. Samuel E. Angoff*, of Boston, Mass., for the Union.

Messrs. Gilhooly & Yauch, by *Mr. John H. Yauch*, of Newark, N. J., and *Mr. Edgar M. Bowker*, of Whitefield, N. H., for the respondent.

STATEMENT OF THE CASE

Upon a charge duly filed by United Construction Workers, affiliated with the United Mine Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated July 8, 1943, against Mellin-Quincy Mfg. Co., Inc., Whitefield, New Hampshire, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (a) interfered with, coerced, and restrained its employees by (1) maintaining surveillance over union meetings; (2) interrogating employees regarding their union membership; (3) forcibly removing union buttons from the persons of employees; (4) making derogatory remarks concerning the Union and employees who had joined the Union; (5) ridiculing employees because of their union membership; (6) granting a bonus and wage increases to employees in order to discourage union affiliation; (b) discharged Laura Pilotte on or about April 30, 1943, because of her membership in and activities in behalf of the Union; and (c) by the foregoing conduct violated Section 8 (1) and (3) of the Act.

On July 21, 1943, the respondent filed its answer to the complaint denying that it discharged Laura Pilotte for her union activities, and asserting that she resigned from her employment after refusing a departmental transfer, and

denying that it had engaged in any of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on July 22 and 23, 1943, at Littleton, New Hampshire, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case, the respondent moved to dismiss the complaint and the undersigned reserved ruling on the said motion. The respondent renewed its motion at the close of the hearing, and each of the parties presented oral argument before the Trial Examiner thereon. The undersigned reserved ruling on the motion and it is hereby denied, except as is otherwise indicated in the body of this Report. At the close of the hearing, the undersigned granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof in respect to formal matters. At the close of the hearing, all parties were advised that they might file briefs with the undersigned. Pursuant thereto the respondent filed a brief.

Upon the record thus made and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Mellin-Quincy Mfg. Co., Inc., is a New Hampshire corporation having its principal office and place of business in Whitefield, New Hampshire, and is engaged in the manufacture and sale of furniture. The principal raw materials used by the respondent at its Whitefield plant are lumber, hardware and finishing materials, 80 percent of which are shipped to the plant from States other than New Hampshire. The raw materials used by the respondent during the course of a year amount in value to approximately \$275,000. Approximately 95 percent of the finished products manufactured by the respondent are delivered to points outside the State of New Hampshire. The finished products annually amount in value to approximately \$699,000.

The respondent employs approximately 130 people, of whom 120 are engaged in production and maintenance work.

The respondent admits that it is engaged in interstate commerce within the meaning of the Act.¹

II. THE ORGANIZATION INVOLVED

United Construction Workers, affiliated with the United Mine Workers of America, is a labor organization, and admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Whitefield, site of the respondent's plant, is a town of some 1850 inhabitants situated in the midst of a predominantly rural community. The respondent's plant appears to be the principal and perhaps sole industrial establishment in the town. The respondent employs a total of some 130 persons.

Prior to March 1943, there had been no organizational activity among the respondent's employees or in the community of Whitefield. On or about the

¹ The findings in this section of the Report are based on a stipulation entered into between the Board and the respondent.

last week in March Cecil V. Crawford, Sub-Regional Director of the Union, drove to Whitefield in his car which bore a Vermont license plate, and conferred with Laura Pilotte, an employee, at the latter's home regarding organization of respondent's employees. Crawford and other representatives of the Union called frequently at Pilotte's home throughout the organizational campaign which followed, relative to union matters. The house in which Pilotte lived was situated about a block from the plant and near the summit of a hill at the edge of the business district, and on the main thoroughfare leading from the plant to the center of the town.

Following the first conference with Pilotte, on March 29, Crawford and other union representatives distributed to employees outside the plant, union circulars addressed to the employees. On March 30, a union paper was distributed at the same place. On March 31, there was distributed a handbill announcing an open meeting for the evening of April 1.

The April 1 meeting was scheduled to be held in the local Odd Fellows Hall. Prior to the meeting Crawford had arranged and paid for the rental of the hall and had received a receipt for the said payment. However, when he came to open the meeting he found the hall locked. He then addressed those who had gathered in front of the hall from the steps of the building. After some 30 minutes, the janitor unlocked the hall and Crawford thereupon invited those outside to attend the meeting inside the hall. Estimates of the number attending the meeting varied, but it would appear from all the testimony that at least some 40 to 50 persons were in attendance. Among these, aside from employees, were some townspeople and two of the respondent's foremen; Charles A. Carver and Harold Haynes.

Carver and Haynes each testified that Crawford announced outside the hall that foremen were invited to attend the meeting. Stanley V. Howland, a non-supervisory employee, testified similarly. Crawford denied this, testifying that he "invited the people in to hear what I had to tell them about Union organization." Crawford also testified, "It was an open meeting. There were no exclusions noted in the circular [advertising the meeting]." According to Crawford, he did not know that foremen were present at the meeting, though he "expected there were representatives of the Company present," and he announced at the meeting that anything he said "they" could take back to management.

Carver denied that he was instructed by management to attend the meeting or that he made a report on the meeting to management, and testified, "I went there just with (sic) my own pleasure, to see and hear what I could." Haynes stated that he was the Grand Noble of the local Odd Fellows Lodge; that there was some objection raised by certain of the "brothers" to the use of the hall by the Union, but that he personally did not oppose it; and that when he learned that Crawford had paid the rental, he instructed the janitor to open the hall. He stated that he was not interested in the meeting, but attended because he was responsible for the hall.

While the undersigned believes it unlikely that Crawford would specifically invite foremen to attend an organizational meeting of the Union, since the meeting was ostensibly open to the public, was advertised as an open meeting, and no announcement was made which could be construed as excluding representatives of management, the undersigned finds that the attendance of Carver and Haynes did not constitute surveillance of the meeting.

Certain other incidents were relied on by the Board to substantiate the allegation of surveillance set forth in the Board's complaint. Certain foremen of the company observed distribution of union pamphlets outside the plant, and admittedly received certain of the circulars. The distribution of the circulars was open, was made directly in front of respondent's plant, and the undersigned

sees nothing improper in respondent's foremen observing the said distribution of union literature and in receiving it when it was handed to them by union representatives. The further fact relied upon by the Board, was Foreman Carver's alleged surveillance of a gathering of employees who had assembled on a downtown street for the purpose of attending the second meeting of the Union, which was held on April 18. Unable to obtain a local hall for the meeting, the Union had arranged to hold the meeting in a nearby town, and employees gathered on the main street of Whitefield preparatory to being transported in cars to the meeting. Carver admittedly was on the street at the time the employees thus gathered, and observed them getting into the cars, but there is no evidence that he was there for the purpose of spying on union activities, nor is the undersigned able to see anything suspicious in the fact that he was on the main street of the town on this particular Sunday afternoon. The undersigned is convinced and finds that there is no substantial evidence to support the Board's allegation of surveillance, and will recommend that the said allegation be dismissed.

On March 31 or April 1, Simon T. Shifman, respondent's vice president and non-resident director of respondent's operations in Whitefield, arrived at Whitefield from his home in New Jersey. He testified that he normally visited the Whitefield plant about once a month and that the visit on or about April 1 was made in the regular course of his visits. He remained in Whitefield for only some 2 to 3 days. Upon his arrival at the Whitefield plant, he was advised by his plant manager of organizational activity among the employees, and thereupon prepared a statement which on April 3 was posted in the plant. The text of the statement follows:

NOTICE

The management of this company recognizes the fact that any employee may or may not join a union as he sees fit. In order to clarify the situation, we wish to advise all employees that no employee will be prejudiced against or lose his job because he *does* join a union or *does not* join a union. The matter of joining or not joining a union is strictly up to the individual as he sees fit.

Publication of the above notice, while not violative of the Act, indicates respondent's awareness of and interest in organizational activities.

According to Shifman, on learning of organizational activity among the employees, he directed the respondent's plant manager and the plant superintendent to advise all foremen that they were to maintain a "hands off" attitude toward union activities. Manager George J. Bateman testified that he conferred with Superintendent Earl W. McElrath and it was agreed that McElrath would call Leon F. LaBrack, assistant superintendent, to his office, and direct LaBrack to inform all foremen to maintain a neutral or hands off attitude toward union matters. McElrath testified that he gave LaBrack the aforesaid instructions, but was unable to recall the date on which he thus directed LaBrack. He first testified that he issued instructions following an incident which involved the removal of a union button from the person of one of the employees.² He testified

² The following is an excerpt from McElrath's testimony on cross-examination:

Q. Can you tell us what you did have to say to him [LaBrack]?

A. I told him to go tell the foremen to keep their hands off the buttons, that we didn't approve of that, that we was after production, we didn't want any foolishness going on in the plant, and he went to all the foremen and told them all this or least he said he did, and I never heard any more about buttons.

Q. You are quite sure that the first time you talked to LaBrack about advising the foremen to keep their hands off, was when you told him about the buttons?

A. That is right.

as follows on direct examination: "I told him [LaBrack] to go around to all the foremen and tell them to keep their hands off, not bother any buttons or anything to do with the union, in any way . . ." He later, on redirect examination, stated that he thought it was prior to April 3 that he issued the instructions, and still later in his examination testified that he thought it was after that date. LaBrack testified that he received the aforesaid instructions from McElrath near the date of the second meeting of the Union which occurred on April 18, but later changed his testimony and stated that he meant to refer to the April 1 meeting of the Union. He testified that pursuant to McElrath's instructions, he advised all foremen that they were not to interfere with employees' organizational activity. The uncertainty and confusion of respondent's witnesses as to the date on which McElrath issued his instructions is apparent, but it is clear that McElrath associated his issuance of the said instructions with the button incident, and union buttons were first worn by employees in the respondent's plant on April 19. In any event, the employees were at no time notified that foremen had been instructed to observe a hands off policy with reference to union activities.

In addition to the matters set forth above, Shifman, during his visit to the Whitefield plant, authorized the granting of a bonus and dictated the following notice which was posted in the plant on April 1:

SPECIAL NOTICE

Absenteeism has caused more loss of production in this country than any other factor, particularly on Government orders. This is true in this plant as in others.

In an attempt to correct this, as far as our plant is concerned, we are offering our employees who work a full week of 48 hours a bonus of 7% on their weekly wage.

All witnesses for the respondent who testified on the point, admitted that absenteeism had been a matter of concern for many months prior to April. Shifman testified that the matter of bonus had been under discussion between himself and his associates for several months, and that he had discussed it with the local supervisory personnel "Many times before." McElrath testified that the absentee problem had been "pretty severe, pretty bad," for the last year. The respondent offered no explanation for the particular timing of the bonus grant. It was withdrawn shortly prior to the hearing in this proceeding, at the direction of the War Labor Board and pursuant to its wage policy announced in the fall of 1942.

In addition to the bonus thus granted on April 1, the respondent in March granted 101 wage increases which it termed individual or merit increases. Manager Bateman testified that all of these increases were between the minimum and maximum wage levels and were accorded on the basis of individual merit. The following is a statement of wage increases granted throughout the period in question:

November 1942	11	March 1943	101
December 1942	1	April 1943	9
January 1943	9	May 1943	22
February 1943	21	June 1943	9

Bateman, when questioned, "Do you know when these wage increases were given in March 1943?" answered, "They were given out on the 29th of March." On further questioning, he qualified this testimony by stating that the March increases were given throughout that month, and that he used the date March

29 because it was the last week in the monthly pay-roll period. He admitted that some of the wage increases were given on March 29. Questioned, "Have you anything before you which would show what day in the month of March you gave those 101 increases?" Bateman answered, "No, I don't believe I have." It is obvious, however, that in the normal course of bookkeeping the respondent had records which would disclose the exact date or dates on which the wage increases were granted. The respondent offered no explanation for the granting of what was clearly an abnormally large number of wage increases in March. The undersigned believes and finds that on and for several days prior to March 29, the respondent, through the activities of union representatives in the community of Whitefield and through the distribution of union circulars, had knowledge of the beginning of organizational activities among its employees.

Upon the basis of the entire situation and particularly in view of respondent's failure to offer any explanation for the timing of its April bonus and an abnormally large number of wage increases to coincide with starting union activities, the undersigned is convinced that the timing of the wage increases and the bonus was calculated to, and had the effect of discouraging organizational activities among the respondent's employees.

Laura Pilotte, whom Union Representative Crawford referred to as the "spearhead" of the Union's organizational drive, testified concerning certain alleged anti-union statements and conduct of Foreman Carver. According to Pilotte, at the union meeting of April 1, she signed a union card in Carver's presence. She testified that Carver at this meeting, referring to the union representatives who addressed the meeting, said that "They were a bunch of wise-crackers and they didn't mean anything they were saying." She further testified that following the April 1 meeting, Carver made a statement in the respondent's plant that "it was foolish to try to form a Union;" and that if the employees were successful in organizing, the mill would close. According to Pilotte, she responded to Carver's statement that she still "believed" in the Union and thought the employees had a right to "form one."

Carver admitted that he sat a few rows behind Pilotte at the April 1 meeting, that union cards were distributed at the meeting and that some of the employees signed cards, but denied the statement attributed to him by Pilotte, or that he observed her sign a union card. Carver also admitted that he had several discussions with Pilotte concerning the Union, but denied that he made the statement attributed to him by Pilotte. The following is an excerpt from his testimony:

Q. . . . Do you recall anything that was said at those conversations?

A. No, not that I can remember.

Q. Do you remember what was said?

A. It wasn't anything in particular that I remember of.

Later, he testified concerning the aforesaid conversations, "Lots of times it was all foolishness, kidding each other about something."

Following the second meeting of the Union on April 18, Pilotte and certain others among the respondent's employees wore for the first time in respondent's plant, buttons bearing the name of the Union. Pilotte testified that Carver, on observing the buttons, asked "if we were not ashamed to wear those buttons." She further testified and Carver admitted, that Carver removed one of these buttons from her person. According to her, he thereafter refused to return the button. Carver testified concerning the incident: "Well, I did remove it but I did it only as playing a prank or whatever you might call it, just through fun." He testified that Pilotte laughed about the incident and that he returned

the button to her. Pilotte denied that there was any levity in the matter, although she admitted that she and Carver were on friendly terms, both during her employment by the respondent and subsequent to the termination of her employment on April 30.

Following the button incident, on complaint of union representatives, Carver was questioned by his superiors concerning the removal of the union button from Pilotte's person, and was instructed not to again engage in such conduct, but he was not penalized. Assistant Superintendent LaBrack testified that after hearing Carver's explanation of the incident, "We didn't consider it a very serious matter . . ."

In view of the total situation and after consideration of the credibility of both Pilotte and Carver, the undersigned is convinced and finds that Carver engaged in the conduct and made the statements substantially as attributed to him by Pilotte.³ The undersigned is unable to believe that the aforesaid conduct and statements occurred in a context of friendly, social interchange between Carver and Pilotte and, in any event, such statements and conduct are properly evaluated in the light of their probable and reasonable effect upon the minds of the employees. It is clear that Carver's conduct marked a departure from any tenable position of neutrality and had the effect of discouraging organizational activities among the respondent's employees.

Louise Nason, a Board witness and former employee of the respondent, signed a union card at the April 1 meeting and attended the second meeting on April 18. On the day following this second meeting she wore a number of union buttons pinned to her coat. According to her testimony, her foreman, Esimaire Thibeault, approached her during working hours and asked, "What are you wearing this pin for?" Nason replied, "For the Union." Thibeault then told her, "I don't see where you want to cut your throat for something that isn't benefiting you." According to Nason, she replied, "That's all right. I am wearing the pin. You are not joining the Union. I am." Thibeault denied the statements thus attributed to him, though he admitted having observed the button on Nason's coat. He testified on cross-examination:

Q. You took a good look at it, did you?

A. Yes, I did.

Q. Did you walk up close to her and look at it?

A. Yes.

Thibeault also admitted that he received union pamphlets that were distributed outside the respondent's plant and took them home, and that he observed union stickers in the windows of Laura Pilotte's home.

³Pilotte denied on cross-examination that subsequent to the termination of her employment with the respondent, she was employed for a time in a laundry at Littleton, a nearby town. That she was thus employed for some 5 days, the respondent established through the testimony of the bookkeeper of the laundry in question. On redirect examination, Pilotte admitted that she had been thus employed, but testified that the said employment was for such a brief time that it just "slipped" her mind when the question was first asked on cross-examination. With this exception, her testimony was on the whole convincing. Carver, on the other hand, was frequently evasive. Thus, he testified in response to questioning by respondent's counsel:

Q. You knew that Miss Pilotte was a union member?

A. No, sir, I did not.

Q. When she wore the button and all that?

A. I didn't know she was a member.

Questioned further on the same topic by the Trial Examiner, "Did you or did you not know that she was active in behalf of the Union?" Carver answered, "Well, I figured that she was wanting to be a union member, but I could never figure that there was a union member until there was an organization established."

Nason, whose employment with the respondent was voluntarily severed prior to her appearance as a Board witness, was a convincing witness, and the undersigned credits her testimony and finds that Thibeault made the statements thus attributed to him.

On April 26, the Union addressed a letter to the respondent stating that it had been designated bargaining agent by a majority of respondent's employees, and requesting recognition as said bargaining representative. The respondent acknowledged the letter on May 1, and on May 7 addressed a letter to the Union in which it stated, *inter alia* :

. . . We would like proof to be shown to us that you represent the majority of our employees. If this can be proved to our entire satisfaction, we will be willing to confer with you on any problem which might arise.

Following the termination of Pilotte's employment on April 30, discussed hereinafter, the Union on May 11, withdrew its petition for certification which it had filed with the Board on May 5. On May 13, the respondent posted in its plant a notice headed *UNION WITHDRAWS PETITION*, in which it advised its employees of the withdrawal by the Union of the latter's petition for certification as bargaining representative of the employees. Attached to the notice was a copy of the Board's letter to the respondent notifying it of the withdrawal of the Union's petition. Questioned why the said notice was posted, Manager Bateman testified, "Well, we felt that the employees should know about it." Admittedly, management posted no notice advising employees of the Union's request for bargaining rights, or the filing of its petition for certification. Bateman testified that this was because the employees had been informed by the Union of the said action. Just why he would assume that they would not be advised by the Union of the withdrawal of the petition, is not clear, or why he considered it the part of management to advise the employees at all concerning matters pertaining to their self-organization. While thus entertaining some doubts as to the propriety of the respondent action in posting the aforesaid notice, the undersigned is not persuaded that the said action amounted to a violation of the Act.

Conclusions

In view of the entire situation as disclosed by the record, the undersigned is convinced and finds that the totality of respondent's conduct, including its timing of wage increases and a bonus to coincide with starting organizational activities, and the statements and conduct of its foremen, Carver and Thibeault, constituted interference, restraint, and coercion in violation of Section 8 (1) of the Act.

B. *The discharge of Laura Pilotte*

Pilotte was employed by the respondent on August 24, 1942, and remained continuously in the respondent's employ thereafter until April 30, 1943, when her employment was terminated upon her refusal to accept a departmental transfer.

As has been indicated in a previous section of this Report, Pilotte was a leader in the Union's organizational drive among respondent's employees. She was visited by the Union's representative on or about March 25 and conferred with him on numerous occasions thereafter relative to the Union's campaign for membership; attended all meetings of the Union, including the first meeting on April 1, when she signed in the presence of her foreman, Carver, a membership or authorization card; distributed union cards inside respondent's plant and solicited union memberships; displayed on the windows of her house union

stickers which admittedly were observed by certain foremen of the respondent; and, after a second meeting of the Union on April 18, wore a union button inside the respondent's plant during her working hours. As previously stated, her foreman, Carver, removed one of these buttons from her person. In view of the foregoing, and when it is considered that the respondent's plant was a relatively small one, employing only some 130 persons, and was situated in a rural section where there had never been any union activity prior to the advent of the Union, the undersigned believes that it is clear, and finds, that Pilotte's union affiliation and leadership in the Union's organizational campaign was well known, both to her fellow employees⁴ and to the respondent's supervisors and resident officers.

Pilotte was employed as an operator of a sanding machine in the sanding department which was located on the second floor of respondent's plant, and continued uninterruptedly on this operation, without transfer, until April 20, the day following her first wearing of the union button, when she was transferred to the mill room on the first floor of the plant to substitute as a tender or helper on a sticker machine, in place of the regular employee on that operation. This employee, Mrs. Florence Ricker, returned to work on April 30. Pilotte thereupon returned to the sanding machine on the second floor where she had worked prior to her transfer. She had worked only a short time when Leon F. LaBrack, assistant superintendent, asked her to return to the mill room on an operation known as "tailing the rip saw." Pilotte told LaBrack that she would not accept the transfer. The following is an excerpt from her testimony:

I told him it was not a woman's job and I refused to go down there because my health was not good and I told him if there was anything else in the mill that I could do I would be willing to do it, but I would not go and take away from the rip saw.

LaBrack said that he would report to Superintendent McElrath. LaBrack also suggested to Pilotte that she give the work on the rip saw a trial, but Pilotte refused. LaBrack reported her refusal to McElrath, superintendent. Her employment was thereupon terminated.⁵

A brief statement of the respondent's operations will aid in arriving at a proper evaluation of Pilotte's refusal to accept a transfer to the rip saw operation, as it is related to the issue in this proceeding.

⁴ Mrs. Laura Pinkham, an employee and witness for the respondent, testified as follows:

Q. All of the workers around the plant, to your knowledge, knew that Miss Pilotte was the leader of the Union?

A. You couldn't help it.

Q. Why couldn't you help it?

A. That is all you heard was Union talk.

Q. From her; is that right?

A. Yes.

⁵ It is the respondent's position that Pilotte was not discharged, but quit. LaBrack testified that she asked for her two pay checks, one of which represented her first week's wages, retained by the respondent and issued to the employee only upon termination of employment. Pilotte denied that she asked for her two checks or that she otherwise indicated that she was quitting. It is clear that she was willing to continue on the sanding operation at which she had been engaged from the date of her employment to the date of her temporary transfer to the sticker, or to undertake any other job in the plant except tailing the rip saw. It further appears that she was given the alternative of accepting the transfer to the rip saw or of having her employment terminated. In view of the foregoing, the undersigned is convinced and finds that Pilotte was discharged. However, the terminology used for the termination of her employment is immaterial, since her refusal to accept a discriminatory transfer and the resultant termination of her employment would, in any event, constitute a constructive discharge. See *Matter of Walter Walker d/b/a Accurate Tool Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO)*, 51 N. L. R. B. 753.

The respondent is engaged chiefly in the manufacture of chairs and tables. Rough lumber received from dealers is stacked on kiln trucks where its moisture is reduced to the required percentage. It is then removed to a tempering shed and stored to allow for cooling from the heat of the kiln. Thereafter, it is put through a rough or surface planer and the boards are then loaded on trucks and taken to the swing saw, where they are cut into different lengths needed for the particular product of manufacture for which they are intended. From the swing saw the boards thus cut to specifications are taken to the rip saw, where they are sawed into various widths, knots and similar defects being removed in the operation. Only the two flat sides of the boards are planed at the time they are put through the rip saw. The serviceable pieces of lumber issuing from the rip saw are assorted and placed on hand trucks, while the waste is thrown into a receptacle supplied for that purpose.

The respondent employs a total of four persons on rip saw operations. Two of these are operators, men who feed the lumber into the rip saw. The saw itself is partially enclosed and is some 15 inches in diameter. The lumber is conveyed on a belt or chain and issues from the saw onto the metal platform of the machine. The other two persons employed on the rip saw operations were, at the time of the hearing, women. It is their function to remove the pieces of lumber from the metal platform after they have issued from the saw, and place them on hand trucks, according to the specifications of the different pieces, and to discard the waste. This operation is called, variously, "tailing the rip saw" and "taking away" from the rip saw. The employees thus engaged are removed some 3 or 4 feet from the saw itself. George Lang, foreman of the mill room, characterized the rip saw operation as "just the rough sawing."

Certain of the stock from the rip saw is taken thenceforth to the sticker machine. Both the rip saw and the sticker machines are located in the mill room under the supervision of Lang. The sticker, according to Lang, is a type of planing operation which shapes and finishes the four surfaces of the board. Carver testified concerning this operation, "It does the planing and takes the saw marks off the edge." It is clear therefrom that stock issuing from the sticker is smoother and less likely to have splinters than stock issuing from the rip saw, which has been planed on the flat surfaces only. The boards issue from the sticker, as from the rip saw, on a table and the sticker tender removes the boards from the table and places them on trucks. As in the case of the rip saw, there is an operator on each sticker machine, and a second employee who "takes away" from the machine.

It is only after the boards have passed through the sticker and have thus been shaped and given completely planed surfaces, that they reach the sanding department. The operator of the sander, an electrically driven machine, holds the boards against a revolving roll or disk which is covered with sandpaper, for the purpose of removing saw marks and otherwise finishing the piece of lumber.

It is clear from the foregoing, as testified to by LaBrack, that "The operation of the rip saw is a preliminary operation to that on the sticker and also the operation in the sand room." It is also clear, as asserted by the respondent, that the closing down of the rip saw operation would bring about a bottleneck which would eventually slow down overall production.

As to the relative skill required of one operating a sanding machine and of one who "takes away" from a sticker or rip saw, the testimony is conclusive that the sanding operation requires a higher level of skill. Respondent's witness, Lang, supervisor of both sticker and rip saw operations, who has himself operated sanding machines, testified on this topic:

Q. What is your opinion as to the relative skill required on the sanding operation and on the rip saw?

A. I should say it requires more skill to handle the sander than it does to take away from the rip saw.

Q. A little more or a great deal more?

A. Quite a little more.

Q. Explain "a little more," will you? What does the skill consist of?

A. It is more of a finishing job and it requires a little more practice and there is quite a little more to it.

Lang and other witnesses for the respondent testified that taking away from the sticker or rip saw was a common labor job, such as could be filled by employees with no prior experience.⁶

It further appears that the operator of a sanding machine, within the limits of supervision, controls the speed of her own production, whereas the production of one who tails the rip saw is controlled by the operator of the rip saw; i. e., the one who takes away from the rip saw must remove the boards as fast as they are sent through the machine by the operator. Such an employee stands in relation to the operator as a helper or assistant, whereas a sander has more of the status of operator. Olive Beaton, a Board witness who was transferred from sanding to tailing the rip saw, remained on the latter operation only 5 hours, after which, at her request, she was given other work. She testified that the boards came through the rip saw fast and her hands were quick enough but her eyes were not. Having worked on both operations, she characterized the work on the rip saw as "mentally" harder, but admitted that except for her defective eyesight she had no objection to the work.⁷

On the basis of the foregoing, the undersigned finds that taking away from the sticker and the rip saw are similar and equivalent operations, except that the lumber handled on the latter operation is somewhat rougher and is more likely to contain splinters. The undersigned is further convinced and finds that normally tailing the rip saw or the sticker, common labor jobs, would be considered less desirable than operating a sanding machine, a job requiring a relatively high degree of skill, and therefore, although there is no difference in the wage scale of these operations, a permanent transfer from sanding operator to tailing the rip saw or the sticker would be in the nature of a demotion and would be so regarded by the employees generally.⁸

⁶ Lang gave the following description of the work of tailing the rip saw: "On the rip saw she merely takes away whatever stock is put through, different sizes, and puts them on different trucks." Questioned if the work required skill, he answered, "No. It is just a matter of handling the stuff as it comes through."

⁷ The respondent in its brief filed with the undersigned, comments on the fact that Beaton, an active union member who also wore a union button in the plant after April 18, was transferred from the sanding room to tailing the rip saw, and she did not refuse the transfer. The undersigned is unable to see any support of the respondent's position in this incident, but to the contrary, considers it significant that Beaton, an active union member, was transferred from the sanding department subsequent to her wearing of a union button and, while she was relieved of the rip saw assignment upon her complaint, it appears that she was not thereafter returned to her regular job in the sanding department, as would have been the normal practice according to the testimony of Foreman Carver. There is, however, no evidence that in transferring her to the rip saw, the respondent intended to make the said transfer to that operation permanent, and therefore her case is distinguishable from Pilotte's.

⁸ There was a good deal of testimony as to the relative hazards of tailing the rip saw and operating a sanding machine, witnesses for the respondent testifying that tailing the rip saw was the less hazardous of the two operations. It appears, however, that the only injury that might reasonably result from the sanding operation would be an abrasion or bruise of the operators' fingers if they were held so low on the stock that they were brought into contact with the sandpaper. Carver, foreman of the sanding room, testified, "I have somebody with cut fingers every day. It doesn't amount to anything. It just skins the finger . . ." He further testified that no time had been lost in the past 5 years on sanding

The next focus of inquiry is whether the Pilotte transfers arose in the ordinary course of the respondent's business and according to its normal practices.

It appears that temporary transfers from one department to another were frequent, due to absenteeism, and occurred in the normal course of the respondent's business. Such departmental transfers were normally effected, not on a basis of seniority, but expediency. When a vacancy arose, it was filled by the transfer from another machine or department of an employee who could be "spared" for the transfer. Such transfers appear to have been of a temporary character, the transferee being returned to his or her regular job when the absentee reported back to work.

As previously stated, Pilotte, from the time of her employment in August 1942 until April 20, 1943, the day following her first wearing of a union button in the respondent's plant, had never been transferred, even temporarily, from the sanding room where she had worked continuously from the time she was first employed. There were at least 2 of the some 16 persons normally employed in the sanding room who were junior to her in seniority. On April 20, a vacancy arose in the mill room on the operation known as taking away from the sticker, caused by the absenteeism of Mrs. Florence Ricker, the regular employee on that operation. LaBrack, who personally designated Pilotte for the April 20 transfer, testified that he chose her because she was doing a good job in the sanding room and was quick and active. He also testified that the April 20 transfer was of a temporary character. It does not appear that Pilotte protested this transfer or that she regarded it as discriminatory, but it is clear that she understood at that time that she was merely to "fill in" during the temporary absence of the regular employee on that job.

On the morning of April 30, Ricker returned to her regular job on the sticker, and Pilotte thereupon went to the sanding room on the second floor where she at once returned to work on her old machine, pursuant to instructions of her foreman, Carver.⁹ She had worked only a short time when LaBrack came into the department and directed her to return to the mill room for tailing the rip saw. As previously stated, she refused this transfer. According to Pilotte, LaBrack advised her upon her refusal that he would report to Superintendent McElrath "and he thought it would be just too bad." This testimony, denied by LaBrack, is credited.¹⁰

machines because of such accidents. On the other hand, there was evidence that two or more persons employed to take away from the rip saw suffered injuries which necessitated temporary absence from work. The undersigned is convinced that little or no hazard is attached to operating a sanding machine and that tailing the rip saw is a somewhat more hazardous operation. However, it does not appear that Pilotte's refusal to accept a transfer to the rip saw was predicated upon the increased hazards of the said operation.

⁹ This finding is based on Carver's testimony that when Pilotte returned to the sanding department on the morning of April 30, he "told her to go to work." Respondent in its brief contends: "To judge the attitude of L. P. [Pilotte], it is proper to consider that without being told she left her job of tailing the sticker when Mrs. Ricker returned and went up to the sand department. It indicates her independent, trouble-looking attitude." The undersigned is unable to agree. It would appear that if her assignment to the sticker was merely to fill in during the absence of the employee regularly assigned to that operation, when that employee returned to her job, it was both natural and proper that Pilotte should thereupon report back to the foreman of the department in which she was regularly employed prior to her temporary transfer.

¹⁰ The following is an excerpt from Pilotte's testimony:

Q. Why did you refuse?

A. Because I did not consider it a woman's job.

Q. Tell me why you did not consider it a woman's job?

A. Because it is handling rough lumber and the men have no mercy. They just shove it right through, they don't care for the woman that is on the other end. An-

Counsel for the respondent, on cross-examination of Pilotte, sought to obtain from her an admission that the April 30 transfer, like the transfer of April 20, was also of a temporary character. The following excerpt is illustrative:

Q. Isn't it a fact that you were asked by Mr. LaBrack, at the time he wanted you to go down tailing the rip saw, to go down there temporarily?

A. No.

Q. You knew, as a matter of fact, didn't you, that you were just to go down there until the regular operator or someone else could be obtained to take that job as a regular job?

A. No. It was not told me that way.

Pilotte's denial that she was advised that her transfer to the rip saw would be temporary was substantially corroborated by the respondent's witness and assistant superintendent, LaBrack. LaBrack, when questioned by the undersigned, "Was it your intention to put Miss Pilotte down there [on the rip saw] on a permanent job?" answered, "If she had proved good as a tender, eventually she would become an operator." This answer, though evasive, indicates as does the entire tenor of LaBrack's testimony, including his testimony that in requiring the transfer he was seeking Pilotte's "advancement," that he intended that the transfer from the sanding department should be permanent. It appears from the testimony of Foreman Carver, that such a permanent transfer was not according to the respondent's normal procedure in the matter of transfers. Carver testified that he could recall no employee who had been permanently transferred from a sanding machine to tailing the rip saw or sticker, and that normally a transfer would be "just for relief for somebody else who might be out." In answer to the question, "Normally they would come back to their regular job in the sanding department? Is that correct?" he answered, "That is right." Carver while stating that work in the sanding room fluctuated in volume, further testified concerning the stability of jobs in that department:

Q. Do you have a regular sanding crew?

A. Yes, sir.

Q. That is, you have a crew of employees who regularly work on the sanding machines?

A. Well, sometimes I have a full crew and sometimes I haven't.

Q. Whether a full crew or a part of a crew, they are working regularly on sanding machines?

A. Yes.¹¹

Starting on or about July 1942 and until on or about April 20, 1943, two women, Bernadette Rooner and Marie Bordeau, had been regularly employed to take away from the rip saw. On or about this latter date they had terminated their employment with the respondent. Both LaBrack and Lang testified that following their

other thing, my health was not right. I was under doctor's care and I was not going on that nerve-racking job and make my health any worse. My health came before that.

Pilotte testified somewhat belligerently on cross-examination that she was not "interested" in the operation of the rip saw and "never went to look at the operation." It is apparent, however, from her entire testimony and from the fact that she worked some 10 days on the sticker which is in the same room with the rip saw and is a similar operation, insofar as it involves the handling of lumber, that at the time she refused the transfer, she was thoroughly familiar with what would be required of her in tailing the rip saw. In fact her familiarity with the operation was one of the reasons LaBrack gave for permanently transferring her to the rip saw.

¹¹ Arthur Bourasse, a non-supervisory employee and witness for the respondent, testified that during 4 years of operating sanding machines he had "left" his job only once when he thought he "was going to do something better."

resignations, up to and including April 30, their places had been filled only temporarily. They also testified that a vacancy in one of these operations arose on the morning of April 30 and that it was therefore necessary to transfer an employee from another machine or department to fill the vacancy. Neither Lang nor LaBrack was able to give the name of the employee whose absence caused the vacancy, or could state whether the vacancy was caused by absenteeism or termination of employment. The respondent, although requested to do so, was unable to supply the name of the individual who was transferred to fill the vacancy following Pilotte's refusal of the transfer on April 30. Carver testified that no employee was transferred on that day from the sanding department. The respondent produced records which revealed that certain employees were transferred to the mill room from other departments during the week including April 30, but produced no record which would show that any employee was transferred to the mill room on April 30.¹² Considering the comparatively brief time which had elapsed between April 30 and the date of the hearing in this proceeding, it is difficult to believe that the respondent had no knowledge of what person, if any, was actually assigned to the rip saw operation on the occasion of Pilotte's refusal to accept the transfer. The undersigned is convinced that no departmental transfer was made to the rip saw on April 30. The situation regarding the April 30 transfer is rendered even more obscure by the unsatisfactory character of LaBrack's testimony.¹³

LaBrack advanced several reasons for having selected Pilotte for a permanent transfer on that date. He stated that since she had been on the sticker for 10 days and the sticker and rip saw operations were similar, he thought she would be qualified to tail the rip saw. The respondent's witnesses, however, agreed that tailing the rip saw was a common labor job, requiring no skill,¹⁴ and in view of this admission, and since Pilotte's work as operator of a sanding machine was ad-

¹² Manager Bateman testified that while the respondent's records would not disclose the transfer of an employee from one machine to another within a department, they would show the transfer of an employee from one department to another.

¹³ LaBrack testified as follows on direct examination:

Q. When you requested Miss Pilotte to go to work tailing the rip saw, did you know whether or not she was a Union member?

A. I did not.

Q. At that time did she have a Union button on, as far as you can recall?

A. I didn't notice.

Later, on direct examination, LaBrack gave the following testimony:

Q. Did you know that Miss Pilotte was the most active worker in the Union?

A. I did not. I had no means of knowing.

Q. You knew that she was a Union member or you assumed she might be a Union member?

A. I assumed so because of the fact that she had stickers in her house windows and she wore a button.

¹⁴ The following is an excerpt from Superintendent McElrath's testimony:

Q. Could any girl in the sand room, in your opinion, do that work on the rip saw?

A. Yes.

Q. As a matter of fact, any new girl could do that kind of work on the rip saw?

A. Yes, I think so. In fact, they have.

Q. The work on the rip saw is just common, ordinary, laboring work?

A. Common labor.

Q. The work on the sanding machine, however, requires some skill?

A. In some things, some different operations, yes.

On direct examination in answer to the question, ". . . Would there be any reason for being at all selective in the matter of picking out the operator to go on tailing the rip saw?" McElrath answered, "Yes. Length of reach has a lot to do with it, how tall they are and the length of their arms." However, Ellen Goulette, hired to tail the rip saw subsequent to Pilotte's discharge, was less than average height and size and weighed only 103½ pounds.

mittedly satisfactory, it does not appear that normally she would have been removed permanently from a job requiring skill and placed on a job requiring no skill. Nor did the respondent offer an explanation why Pilotte should have been chosen for a permanent transfer to the ripsaw operation when there were already two employees temporarily engaged on that operation who were, therefore, on the date that the respondent attempted to transfer Pilotte, experienced in tailing the ripsaw.

LaBrack also testified that in offering Pilotte the transfer he was interested in her advancement. When questioned further on this topic, he stated that in tailing the ripsaw she would be in line for promotion to ripsaw operator, which would pay a substantially higher wage than the maximum paid on the sanding operation. He admitted that no woman had ever operated a ripsaw, but stated that due to the manpower shortage, it might reasonably be expected that women would ultimately be employed on this operation.²⁵ The undersigned believes this entire testimony to have been an afterthought. LaBrack admitted that he said nothing to Pilotte about advancement, and normally he would have, if that was what he had in mind in making the transfer; nor is it likely that he would have been insistent in advancing her contrary to her own inclinations in the matter. Clearly, the transfer did not on its face represent promotion, but did represent demotion.

Still another reason advanced by LaBrack for having selected Pilotte for the April 30 transfer, was that she was "extra" in the sanding room and therefore could be spared for the transfer. As has been previously stated, there were at least two other employees in the sanding department junior to Pilotte in seniority. Answering the question, "When did you begin to consider her an extra one in the sand room?" LaBrack replied, "Well, I tried to explain that too. She had already been down stairs ten days." If the transfer to the sticker on April 20 was of a temporary character, as LaBrack testified it was, it is difficult to understand why, when that temporary assignment was completed, Pilotte should have been considered extra in the department where she had been regularly employed prior to the transfer.

As a matter of fact, the record discloses that during the 10 days that Pilotte worked on the sticker machine, a new employee, Irene Maker, had been employed in the sanding department. If, when Pilotte returned to her old job in the sanding room on April 30, there was no vacancy in that department, it would appear that that was because her place had been filled during her temporary absence by the hiring of a new employee. The respondent offered no explanation for the hiring of this new employee while Pilotte was engaged on a temporary assignment, and the said action was inconsistent with LaBrack's testimony that work in the sanding room was slack. Foreman Carver, when questioned if there was

²⁵ Manager Bateman testified on the same topic:

Q. You never have made a female operator on the ripsaw?

A. Not that I know of.

Q. Or trained one?

A. Not that I know of.

Q. You do not have any female operators now, do you?

A. No.

Q. You have never had any female operators on the ripsaw?

A. No; we haven't.

Bateman also gave the following testimony on the subject of promotions:

Q. Do you have any system in connection with promotions which takes into consideration length of service?

A. Generally I would say that it had some bearing on it, but it is not so much the length of time employed. As far as promotions, they are wage increases. There are no promotions—there are no real promotions.

work for Pilotte in the sanding room on April 30, testified, "Well, I could use her or I could do without her." He admitted that he had already assigned her to work at the time LaBrack came into the department and demanded her transfer. Furthermore, on May 3, 3 days following Pilotte's discharge, Mrs. Laura Pinkham, a former employee of the respondent, was employed in the sanding room. Ruth Haynes was employed in that department on May 17, and Lionel Crepeau on May 24.

In the light of these circumstances, it is clear that LaBrack's action in seeking permanently to transfer Pilotte from her regular job in the sanding room was not required because of slack work in that department or a need to reduce its personnel. Furthermore, the hiring of a new employee in the department while she was on a temporary assignment is indicative of management's intention from the time of her April 20 transfer, to deprive her of her regular job in the sanding department.

LaBrack testified that, having reported Pilotte's refusal of the April 30 transfer to Superintendent McElrath, he visited certain departments to see if there was a vacancy other than on the rip saw to which she might be transferred, and there was none. He reported back to McElrath, who told him, "There isn't anything else you can do. Give her her two checks." Such action, as has been stated, was tantamount to discharge, and it is clear that respondent had at that time determined to require Pilotte to transfer to the rip saw operation or, if she persisted in her refusal of the transfer, to discharge her.

According to LaBrack, when an employee was dissatisfied with or unsuitable for a certain operation, every reasonable effort was made to effect a change satisfactory to the employee. He testified, "If they do not arbitrarily refuse a transfer and they give a good and sufficient reason, I think perhaps we would consider a transfer to some other place." In the light of the entire testimony, it does not appear that there was anything particularly arbitrary in the manner of Pilotte's refusal of the transfer. She told LaBrack that she would not undertake the assignment to the rip saw because of her health, and offered to undertake any other job in the mill. Furthermore, LaBrack must not have considered the manner of her refusal so arbitrary as to justify a discharge, since after having received her refusal, according to his testimony, he attempted to find another vacancy to which she might be transferred.

On the day of Pilotte's discharge, or the following day, representatives of the Union requested the respondent to reinstate Pilotte and pay her for the time she had lost from her job. This request was refused on the ground that, since she had refused a transfer, to reinstate her would set a precedent injurious to the operation of the respondent's business. Also, subsequent to her discharge, Pilotte asked Foreman Carver if she could return to her old job. He replied, "I would like to have you." Carver testified, "I told her if the company put her on I would give her a job."

Subsequent to Pilotte's discharge, two women were given the regular jobs of tailing the rip saw. One of these, Mrs. Florence Ricker, was transferred to that job from an equivalent job on the sticker; the other, Ellen Goulette, was a new employee with no prior experience.

Conclusions

The respondent's position is that Pilotte's employment was terminated upon her refusal to accept a departmental transfer. An employee, however, is not

required to accept a discriminatory transfer which is occasioned by his or her union activities.¹⁰

With a full appreciation of the necessity for departmental transfers arising from absenteeism and other causes in the respondent's plant, the undersigned is convinced that the treatment accorded Pilotte in the matter of transfers was discriminatory, and was motivated by her union activities. The undersigned has found that on April 30, the respondent required of Pilotte a permanent transfer from a job requiring a relatively high level of skill, to a common labor job, and that the said transfer represented, in effect, a demotion. It is understandable that to fill a temporary vacancy on a job requiring no skill, the respondent might be required by circumstances to transfer a skilled operator from another department where work was slack. It is not understandable that the respondent would normally effect a permanent transfer of an operator from a job requiring skill to a job requiring no skill, where the operator was admittedly efficient and satisfactory, unless work was so slack in the operator's regular department that a reduction of personnel in that department was required and contemplated. It is clear that no such reduction of personnel in the respondent's sanding department was required or contemplated at the time the respondent sought to transfer Pilotte, since during the same week a new employee had been hired in the department, and only three days after Pilotte's discharge, another employee was hired in that department, and shortly thereafter, still other employees were hired in the same department. Furthermore, the respondent did not fill the vacancy on the rip saw to which it sought to transfer Pilotte, by the transfer of skilled or semiskilled workers, but by the hiring of a new employee with no prior experience and the transfer of a second employee from another common labor job.

In view of the hiring of an employee in the sanding department while Pilotte was engaged on her temporary transfer to the sticker, the refusal of LaBrack to permit her to return to the sanding department after she had completed her temporary assignment in the mill room, and the hiring of another employee in the sanding department within three days of Pilotte's discharge, the undersigned is convinced that from the date of her first transfer on April 20, the respondent had determined to deprive her of her regular job as sanding operator and to require of her that she accept a permanent transfer to a less desirable job or forego further employment. There is no explanation for the punitive treatment thus accorded Pilotte except that she was the most active among the respondent's employees in behalf of the Union. As found in a prior section of this Report, the respondent opposed organization of its employees by the Union and sought to discourage union affiliation.

On the day prior to Pilotte's April 20 transfer, her foreman, Carver, had removed a union button from her person. On April 25, the Union had notified the respondent of its majority representation among respondent's employees and had requested bargaining rights. The respondent may reasonably have assumed that the permanent transfer of Pilotte from a department where she had worked from the time when she was first employed, to a less desirable job in another department, would undermine her influence as a union leader, and

¹⁰ See *Matter of Walter Walker, d/b/a Accurate Tool Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO)*, 51 N. L. R. B. 753; 12 L. R. R. 922. See also *Matter of Waples-Platter Company and Warehouse and Distribution Workers Union, Local No. 220 (CIO) et al.*, 49 N. L. R. B. 1156; 12 L. R. R. 606.

that her demotion and consequent humiliation would not go unmarked by the employees generally.

On the basis of the foregoing findings of fact and upon the entire record, the undersigned is convinced and finds that the respondent on April 30 discharged Laura Pilotte, not because of her refusal to accept a departmental transfer, but because of her union activity, and in violation of the Act. By the aforesaid discriminatory discharge, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of Laura Pilotte. The undersigned will therefore recommend that the respondent offer immediate and full reinstatement to Laura Pilotte to her former or substantially equivalent position, without prejudice to her seniority and other rights and privileges, and that the respondent make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned as wages from April 30, 1943, the date of her discriminatory discharge, to the date of the offer of reinstatement, less her net earnings²⁷ during said period. Nothing in the above recommendations should be construed as prohibiting or restraining the respondent from effecting such non-discriminatory transfers as are required in the normal course and conduct of the respondent's business.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Construction Workers, affiliated with the United Mine Workers of America, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Laura Pilotte, and thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

²⁷ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in surveillance of union meetings in violation of Section 8 (1) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, Mellin-Quincy Mfg. Co., Inc., Whitefield, New Hampshire, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Construction Workers, affiliated with the United Mine Workers of America, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act;

(a) Offer to Laura Pilotte immediate and full reinstatement to her former or substantially equivalent employment, without prejudice to her seniority and other rights and privileges;

(b) Make whole Laura Pilotte for any loss of pay she may have suffered by reason of the respondent's discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned as wages from April 30, 1943, the date of her discriminatory discharge, to the date of the respondent's offer of reinstatement, less her net earnings¹⁸ during said period;

(c) Post immediately in conspicuous places in its Whitefield, New Hampshire, plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that it will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations; (2) that it will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that its employees are free to become or remain members of the United Construction Workers, affiliated with the United Mine Workers of America, and that it will not discriminate against any of its employees because of membership in or activities on behalf of that organization;

(d) File with the Regional Director for the First Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

¹⁸ See footnote 17, *supra*.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the allegation in the Board's complaint that the respondent engaged in surveillance of union meetings in violation of Section 8 (1) of the Act, be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM E. SPENCER,
Trial Examiner.

Dated September 6, 1943.