

operator, janitor, janitress, watchmen, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Local No. 948, International Union of Operating Engineers, was on June 1, 1950, and at all times since then has been the exclusive representative of all employees in said unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of 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 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]

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FARBER BROTHERS, INC. *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO. *Case No. 32-CA-120. May 21, 1951*

### Decision and Order

On January 17, 1951, Trial Examiner Louis Plost 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 forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. In addition, the Respondent requested oral argument. However, because the record and brief, in our opinion, adequately present the issues and positions of the parties, the request for oral argument is hereby denied.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The

rulings are hereby affirmed.<sup>1</sup> The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and finds merit in the Respondent's exceptions for the reasons hereinafter set forth.<sup>2</sup>

The Trial Examiner found that the Respondent unlawfully discharged Betty Bilderback, Ledell Haney, and Irene Alsup, and thereby violated Section 8 (a) (1) and 8 (a) (3) of the Act. For the reasons set forth below, we find that the preponderance of the evidence does not support the Trial Examiner's conclusion.

Early in 1950, the Respondent considered the advisability of discarding the individual bonus system which had been in effect since 1949, and returning to an earlier bonus system. Under the projected change, all employees, supervisors and maintenance employees included, were to share a bonus given when production was in excess of a fixed quota. The Respondent first discussed this idea with individual employees. Thereafter, on March 6, it called its employees together and asked them to express their preference in the matter. Except for Bilderback and Haney, all the 65 of 70 employees present on this occasion voted in favor of reestablishing the plant-wide bonus system.

It is apparent that both Ruby Creel, the complainants' supervisor, and Maurice Melvin, the Respondent's machinist,<sup>3</sup> were to participate in the plant-wide bonus system, and that they recognized that it would be advantageous to them to have the Respondent fix a minimum production quota under the proposed new plan which the employees could easily exceed. Toward that end, about a week before March 6, Creel and Melvin urged Bilderback and Haney to produce no more than their individual minimum quota which was then operative.<sup>4</sup> At about the same time, Creel also asked Alsup to slacken her production efforts. Thereupon, Bilderback and Haney, who, up to that time, had consistently exceeded their quotas, and Alsup, who had "quite often" exceeded her quota, deliberately slowed up their work.

On March 7, Maurice Farber, the Respondent's general manager, met with Bilderback and Haney in his office.<sup>5</sup> On this occasion Farber

<sup>1</sup> At the close of the hearing, the General Counsel requested the Trial Examiner to "make oral findings and recommendations here on the record and issue his report later." The Trial Examiner denied this request on ground that he had no authority to act in the manner suggested. As such a motion is addressed to the Trial Examiner's discretion, we shall affirm his denial without adopting the reasoning on which he based his ruling.

<sup>2</sup> Unless otherwise indicated, we do not adopt any of the conclusions of the Trial Examiner.

We have carefully examined the record and find nothing therein to support the Respondent's charge that the Trial Examiner was biased against it. Accordingly, we overrule the exception taken on that ground.

<sup>3</sup> We agree with the Trial Examiner's finding, to which no exception has been taken, that Melvin was not a supervisor within the meaning of the Act.

<sup>4</sup> It is not contended, nor does it appear, that in this action Creel or Melvin acted pursuant to any instructions by the Respondent.

<sup>5</sup> Although there is some testimony which indicates that this meeting was held on March 8 or 9, we find, on the basis of all the evidence in the record, that it took place on March 7.

accused the complainants of talking too much and of staying in the rest room too long, and expressed concern about the effect of their conduct on other employees.<sup>6</sup> In addition, having noted that their "operation was exactly on a 100 percent or just a little below,"<sup>7</sup> Farber also charged them with failing on production. Bilderback and Haney then admitted to Farber that they had been deliberately holding back production.<sup>7</sup> Farber testified that he decided to discharge both of them at that time.

On March 8, Farber met with the complainant Alsup and the other finishers to discuss the fixing of their new production quotas. In the course of this meeting Farber called Alsup's attention to the fact that her work output had dropped considerably. Alsup's reply was, "Yes, I know, Mr. Maurice. I was asked to hold it back." When asked by Farber to name the person who made this request, Alsup declined to do so.<sup>8</sup> Farber testified that he then and there decided to discharge Alsup.<sup>9</sup>

On March 8, too, agitation for the formation of a union began in Respondent's plant. Bilderback talked "with the whole bunch of the girls," telling them that with a union representing them the Respondent "couldn't cut out their individual bonuses and put it plant-wide." A meeting at Bilderback's home was scheduled for the following night. Five employees, including the three complainants, attended that meeting, and were there given cards by the Union's representative to distribute in the plant.

On March 9, Farber met with five or six of the two-needle operators, including Bilderback and Haney, for the purpose of fixing their production quotas under the new bonus plan. During the discussion on this subject, Farber called on each of the employees present to state what she thought her quota should be. Bilderback and Haney expressed satisfaction with their quota then in effect.

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<sup>6</sup> The record contains uncontradicted testimony by Farber that he had received "quite a number of complaints from different people saying 'How do they [Bilderback and Haney] get by and do those kind of things' "

<sup>7</sup> Bilderback admitted telling Farber that she "would not make over the minimum until [she] got an individual bonus" Farber testified that Haney made virtually the same admission. Haney, however, testified that she told Farber that "I didn't want to work that hard and make a bonus and not get it at all" According to Haney, she was referring to a bonus she earned in *December 1949* which had not been paid to her in full The Trial Examiner did not resolve this conflict in the testimony On the basis of all the evidence in the record, including the fact that Haney did not begin to hold back on production until the period under discussion, we credit Farber's testimony in this connection

<sup>8</sup> Alsup testified that she refused to name Creel "because it was my floorlady and she told me she would get fired and I thought it would be far better if I got fired than to do that "

<sup>9</sup> In addition to his testimony that he decided to discharge the complainants on the occasions described above, Farber also testified that on March 8 or 9 he communicated his decision regarding the complainants to other management officials. His testimony in this connection received substantial corroboration from those officials

On Friday morning, March 10, Farber gave orders for the preparation of the complainants' separation slips.<sup>10</sup> During this same morning, the complainants showed, for the first time in the plant, their interest in the charging Union. Thus, Bilderback passed out several cards in the rest room and in the production area. Haney passed out some cards in the rest room, and talked "quite a bit" about the Union. And Alsop told two employees that she had signed a card for the Union. The record does not disclose whether the afore-mentioned activity of the complainants took place before, or after, the issuance of instructions for the preparation of their separation slips. Later the same day, the complainants received their final pay checks and separation notices. The reasons assigned for the discharge of Bilderback and Haney in their separation notice were "talking too much and creating a hazard and disturbing other operators."<sup>11</sup> Alsop's termination notice read, "holding back work."

On the basis of the facts outlined above, which we consider the operative facts in this case, we are not convinced that the complainants were discharged "because of their membership in, and activities on behalf of, the Union," as the Trial Examiner found. The Bilderback and Haney cases are, of course, not entirely free from doubt. Thus, the reasons for their discharge contained in their termination notices are rendered suspect because, except for their slowdown, Bilderback's and Haney's work habits, at the time of the Respondent's decision to discharge them, were in no way different from what they had been during their entire period of employment with the Respondent. And the additional reason advanced by Farber at the hearing, namely, that Bilderback and Haney had been holding back on production, is rendered suspect by the fact that it was not assigned at the time of the terminations. Notwithstanding these circumstances, however, we are unable to infer, as the Trial Examiner has done, that the real reason for the discharges in question was the complainants' membership in, or activity on behalf of, the Union. For the record is singularly lacking in evidence that the Respondent was hostile to the Union or to the organizational efforts of its employees.<sup>12</sup> Moreover, assuming, but not deciding, that the evidence warrants an inference that the Respondent was aware of the union activities of Haney and

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<sup>10</sup> Farber testified without contradiction that it is the Respondent's policy to issue separation notices on Fridays. According to his testimony, "If we decide to discharge somebody even on a Monday we still wait until Friday before we discharge."

<sup>11</sup> At the hearing, Farber also gave as a reason for their termination the fact that they had failed to produce all that they could.

<sup>12</sup> Like the Trial Examiner, we cannot charge the Respondent with the interrogation and threats by Melvin on March 10, as Melvin was a rank-and-file employee not authorized by the Respondent to engage in such activity.

Bilderback,<sup>13</sup> we perceive no basis for inferring further, on this record, that awareness of such union activity is tantamount to antiunion hostility. We therefore conclude, and find, that the preponderance of the evidence fails to establish that Bilderback and Haney were discriminatorily discharged.

As to Alsup, we are satisfied that she was discharged for cause. In our opinion, Alsup was discharged, as Alsup herself expected she would be, for admittedly "holding back work." However, even were we to agree with the Trial Examiner that Alsup was not discharged for "holding back work," substantially the same considerations which we deemed controlling in the Bilderback and Haney cases impel us to disagree with his ultimate conclusion that the motivating reason for her discharge was a discriminatory one.

On the basis of the foregoing, and the entire record, we shall accordingly dismiss the complaint as to Bilderback, Haney, and Alsup.

### Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Farber Brothers, Inc., be, and it hereby is, dismissed.

### Intermediate Report

*Andrew P. Carter, Esq.*, for the General Counsel.

*Snowden, Davis, McCloy, Donelson & Myar*, by *W. Stuart McCloy, Esq.*, of Memphis, Tenn., for the Respondent.

*Mr. Garvin Crawford*, of Memphis, Tenn., for the Union.

### STATEMENT OF THE CASE

Upon a charge duly filed March 15, 1950, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO hereinafter called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), as agent for the Board, issued a complaint dated August 9, 1950, against Farber Brothers, Inc., Memphis, Tennessee, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and the charge

<sup>13</sup> Because of the small size of the Respondent's plant, and the fact that the sewing room where Bilderback and Haney were employed was visible from General Manager Farber's office and was "at all times" presided over by Supervisor Creel, a permissible inference is that Bilderback's agitation for a union on March 8 and Haney's and her prouion manifestation at the plant on March 10, came to the attention of the Respondent. *Quest-Shon Mark Brassiere Co, Inc.*, 80 NLRB 1149. However, we are unable to agree with the Trial Examiner that the record warrants the inference that any knowledge Melvin may have acquired of the complainants' union activity was "carried to the Respondent"

together with a notice of hearing were duly served on the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that (a) from and after March 8, 1950, the Respondent engaged in conduct violative of the Act by inquiring, questioning, and interrogating its employees with respect to their union membership and activities, and threatening employees with discharge if they joined the Union; (b) discharging certain named employees because they joined the Union and engaged in concerted activities on its behalf; (c) that the above-named conduct is in violation of Section 8 (a) (1) and (3) of the Act.

On August 14, 1950, the Respondent filed an answer and on October 6, an amended answer, in which it denied that it had engaged in any of the unfair labor practices alleged and further averred that the employees alleged to have been discriminatorily discharged were in fact discharged for cause.

Pursuant to notice a hearing was held before Louis Plost, the undersigned Trial Examiner, at Memphis, Tennessee, on October 10 to 13, inclusive. The General Counsel and the Respondent were represented by counsel, the Union by a lay representative, all being hereinafter referred to in the names of their principals. The parties participated in the hearing, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue orally on the record, and to file briefs, proposed findings of fact, and conclusions of law with the undersigned.

At the conclusion of the evidence in the General Counsel's case-in-chief and again at the close of the hearing the Respondent moved to dismiss the complaint. The undersigned denied the motions.

Likewise at the close of the hearing the General Counsel moved that the undersigned "make oral findings and recommendations on the record in the nature of a directed verdict." The motion was denied. In ruling the undersigned stated that his powers and duties were defined and controlled by the Administrative Procedure Act, the Rules and Regulations of the National Labor Relations Board, and the Act, none of which in the opinion of the undersigned grant such authority to a Trial Examiner.

The undersigned granted an unopposed motion by the General Counsel to conform the pleadings to the proof with respect to spellings, names, dates, and similar matters.

The parties waived oral argument. Permission was granted to file briefs, findings of fact, and/or conclusions of law, with the undersigned. A brief has been received from the Respondent.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent, Farber Brothers, Inc., is a Tennessee corporation having its principal office and plant in Memphis, Tennessee, where it is engaged in the manufacture and sale of automobile seat covers. During the year immediately preceding this hearing the Respondent in the course and conduct of its business used raw materials valued in excess of \$500,000, consisting principally of cotton, rayon, plastic, and vinyl coated cloth. Ninety-five percent of these raw materials was purchased outside the State of Tennessee and was shipped to the Respondent in interstate commerce. During the same period the Respondent

sold finished products valued in excess of \$700,000. Seventy-five percent of these materials so sold by the Respondent were distributed outside the State of Tennessee.

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is a labor organization affiliated with the Congress of Industrial Organizations, which admits employees of the Respondent to membership.

## III. THE UNFAIR LABOR PRACTICES

### A. *The discriminatory discharges of Betty Bilderback, Ledell Haney, and Irene Alsup*

The Respondent manufactures automobile seat covers, its manufacturing process being an integrated operation in which the work passes from one machine to another. The work is seasonal with some fluctuation in employment. At all times material herein some 40 to 45 employees were engaged in production. Maurice Farber is general manager of the plant, Jack O'Keefe is assistant general manager, and Ruby Creel is in charge of the sewing room operators.

There is no dispute as to the above-recited facts.

The General Counsel contends that Maurice Melvin is a supervisor, however the record does not conclusively prove him to have supervisory authority although at times he pretended to such status. Melvin is employed as a mechanic and maintenance man, is undoubtedly a highly trusted employee, draws higher pay than Supervisor Creel but inasmuch as the contention that he is a supervisor was not clearly proven the undersigned finds on all the evidence that Maurice Melvin was not at the time material herein a supervisor in the Respondent's plant.

The record shows that the Respondent's plant was not operated according to any rigid rules of discipline. Employees sang while at work, engaged in conversation, and indulged in "horseplay."

Plant Manager Maurice Farber testified that he joked and "kidded" with employees while they were at work.

The Respondent while permitting informalities maintained a set standard of production for the various operations and paid a bonus for production above the standard. Prior to 1949 bonus payments were made on a plant-wide basis, meaning that the entire plant participated in the bonus as a unit. In 1949 the bonus plan was changed and a bonus was paid directly to individual operators who exceeded the set quota. In March 1950, the bonus was again changed to group participation.

Beginning Monday, March 6, 1950, the Respondent held a series of meetings with various groups of employees and discussed the contemplated change in the bonus payments, from individual to group participation, together with the work quotas to be set under the new system. Farber testified, with corroboration of Betty Bilderback and others, that all the employees except two voted to change to the group plan. The two in opposition being Bilderback and Ledell Haney. Farber testified that the quotas to be set were determined by asking the employees, "just to set a quota for themselves," and that "we set the quotas after this discussion."

There is no dispute as to the above facts which the undersigned finds on mutually corroborative testimony.

Mrs. Betty Bilderback testified that she was employed by the Respondent in 1946 and discharged March 10, 1950. Bilderback operated a "two needle" sewing machine, but was skilled in operating every type of sewing machine in the plant. Apparently her skill was valued by the Respondent. Bilderback testified without contradiction:

. . . I was off sick and I was in the hospital for about a month and they kept on calling and calling and wanting me to come back, and they told me if I would just come back, I wouldn't have to work hard, and I told them I wasn't able, and they says just to come on back. . . .

She also testified, credibly, that at another time she was off work because of her husband's illness, for "maybe two months or two and a half" and upon her return found another operator assigned to the machine she had used. The forelady refused to return her to this machine but after Bilderback spoke to Boris Farber, one of the Respondent's officials, he ordered that the machine be made available for her.

Apparently there was ample reason for valuing Bilderback's services. The Respondent admitted that Bilderback not only customarily made her quota but that at times she could and did exceed it by as much as 50 percent. Farber testified that only three operators consistently earned individual bonuses: Bilderback, Haney, and Betty Bates

Bilderback further testified that she was accustomed to sing at her work, that she talked to Haney who worked beside her, and, that she, as well as others, "cut up" during the working day. She testified that this conduct was known to the management, and that "Mr. Boris and Mr. Abe Farber would come to my machine and stop me from work and they talked to me as much as about 15 or 20 minutes." She testified that she was never reprimanded but on the contrary, "If I wasn't singing, Mr. Maurice [Farber] would say 'What's wrong Betty? You are not singing today.'"

Farber testified "If they want to sing that is perfectly all right. We don't encourage or ask them to sing."

It is clear from the record that Bilderback's known talking, singing, and lively disposition did not interfere with her work. The undersigned on all the evidence considered as a whole credits her following, undenied, testimony:

I never sat down to my machine a day as long as I worked at Farber Brothers that I didn't give them production, if they had work for me, and it was very seldom they didn't have work.

There was no denial that in all her employment with the Respondent Bilderback had no accidents, having suffered only two minor scissor cuts during the entire period.

With respect to the change in the quotas, Bilderback testified:

Q Betty, did you hear anything about a new rate being put into effect in the plant sometime in the spring of 1950, around the early part of March?

A No, sir, I didn't hear anything about it, except until about three days before we were discharged. Mr. Maurice asked me, he told us we could come in by the office to talk to him about some figures. So when Mrs. Haney and I went in, he told us that we talked too much, and that was the first time he had ever said a word to us about talking too much, and we told him, "Mr. Maurice, we could give you production regardless of how much we talk. Everybody talks like that"

And he says, "No, you haven't been giving me production."

I said, "Mr Maurice, every day I gave you production since I came back. I gave you 230 a day"

Q. Is that your production quota?

A. That was my production quota. And he said, "Yes but it is 250."

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A. And I says, "Well, Mr Maurice, we sure didn't know anything about it."

And he says, "Well, you should have known it."

And I says, "If we had known it, we sure would have given you production."

And he says, "Boris should have told you about it."

And I says, "We didn't know anything about it at all." And I told him that we could have given him even 150 per cent, because we had.

And so then we went back the next day and we gave him 250, and that was the new production.

She also testified that during this conversation Farber remarked that he knew that Bilderback and Haney "could make 120 or 130 or even 150 per cent production" and that she replied, "Mr Maurice, we don't mind giving you over production, if we get it, but we don't feel it is fair for us to sit back there and work ourselves to death and give you 120 or 150 per cent and then just get \$35 a week." She further testified:

Q. Now, when the question came up about talking and carrying on in the plant, do you recall any comment that Mr. Maurice Farber made to you comparing you and Mrs. Haney to the other girls?

A. Yes, sir, I do.

Q. Will you tell us about that?

A. He said that he knew—we told him we knew we talked and cut up, laughed, and so on, but we could give him production and talk all we wanted to.

He said, "I know you can. You can give me production and talk and get up and leave your machines and go to the rest room and stay but," he says, "It makes a bad impression on the other girls that can't make production. It makes them think they should do the same thing you are doing."

Farber gave substantially the same account of the meeting above referred to.

The undersigned therefore finds that Bilderback's account of the meeting between herself, Haney, and Farber as above described in Bilderback's testimony represents the accurate version thereof.

Farber admitted that both Bilderback and Haney while on the individual bonus exceeded 250 pieces (the new rate) "three weeks out of every month" by "an average of 20 to 25 percent," however Farber further testified that the 250 pieces production quota set for Bilderback and Haney represented a standard thought to be fair and designed to keep production flowing through the plant and could not be increased by as much as 10 percent because;

Because they just couldn't—first of all, no individual would have a chance on the bonus, no individual or group would have a chance

Bilderback testified that also on Thursday, the day preceding her discharge, she attend.d a meeting of all the "two needle machine" operators in Maurice Farber's office, and at this meeting the quotas for the other operators was cut but hers was left at 250 pieces daily.

Bilderback testified that she changed her demeanor in the plant following the first meeting with Farber, she testified:

Well the last three days . . . that was the only three days I was quiet at Farber Brothers for three and a half years, off and on, that I worked for them.

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because we knew . . . they would fire us, anything; we was trying to give them no ground whatsoever to fire us.

According to Bilderback's testimony another element, calculated to change the informal relationship between the employees and the management, came into the picture on March 8, for on that day the Respondent's employees began actively to agitate the formation of a union. Bilderback testified:

I discussed it with the whole bunch of the girls and told them if we could get a union in there, that they couldn't cut out their individual bonus and put it plant-wide where we wouldn't anybody make anything, and we sort of discussed it and decided to have a meeting at my house, I believe it was Thursday night. And then we had this meeting and the next morning there were about four of us, I believe, brought union cards back in there and gave them out to several of the girls

On Thursday night, March 9, a meeting was held at Bilderback's home; attended by employees Haney, Irene Alsup, Josephine McNemar, Bessie Bates, and Bilderback, as well as Charles Garvin Crawford, a representative of the Union. Cards for distribution to fellow employees were taken by those attending. Bilderback's testimony with respect to the meeting was corroborated by all those named as being in attendance.

Bilderback testified that on the day following the meeting she passed out union application cards to "six or seven" fellow employees.

Josephine McNemar testified that she heard "a lot" of employees discussing "a union" during the week of Bilderback's discharge.

Employee Bessie Bates testified as follows:

Q. Before these girls were discharged, had you ever made any statements about the union, before Irene Alsup and Betty Bilderback and Ledell Haney were discharged?

A. We all did, at the time that day when Mr Maurice got up and raised our production so high, everybody, and I would say there wasn't 10 who wasn't involved in it, everybody was doing this union talk at that time and then the Snuff Company was on strike. Everybody was mad and in an uproar. Everybody talked union when these girls were discharged and it was hushed up after that right like that.

Q. When was that?

A. It was—he raised our production on Wednesday, I believe, and Thursday the union—Wednesday the union talk started. Thursday morning the first thing he began to call us in the office and to let us set our quotas as we wanted to set them and he raised it just the day before and the next day he lowered it. And the next day the girls were discharged.

Bates also testified that a group of the employees met in the rest room after the quotas had been set, she testified "there weren't 10 that wasn't in on that." She testified:

. . . There were so many in there that I can't personally say just who it was and who said that, you know, but somebody said what we needed down there was a union and Betty Bilderback turned and said to Irene Alsup, "Bring out the union cards." And somebody said, "We have got to have a leader," and so one of the girls spoke up, I just can't say which one it was, and she said, "Nobody could make a better one than Betty Bilderback."

The undersigned, on the entire record, credits the above-recited testimony of McNemar and Bates.

Bilderback further testified that about 11 a. m. on Friday, March 10, the day she was discharged, Maurice Melvin came to her machine and asked of her and

Mrs. Haney, who worked at a machine beside her if they had heard anything about a union being organized Bilderback told Melvin "It's our business if we do," whereupon he remarked "Well, that is all right. I just want to tell you the ones that is starting it, when I find out who it is, is sure going out of here."

Haney corroborated Bilderback.

Apparently Melvin did not confine his curiosity to this single inquiry; employee Lucille Henley testified that "pretty close" to the time that Bilderback was discharged Melvin asked her if she knew anything about the Union. Henley replied that she "just heard rumors" and was then asked by Melvin how she "would like to go to Farber Brothers and tell them what I knew." Henley then replied that she "knew nothing" and Melvin then said to her that "if he found anybody in there with union cards, that they would be dismissed."

Melvin did not deny the above-recited testimony. The undersigned on the entire record credits the testimony of Bilderback, Haney, and Henley and finds that shortly before Bilderback's discharge Maurice Melvin inquired into the union membership of the Respondent's employees.

The undersigned has found that Melvin was not a supervisor.

Farber testified that at sometime prior to March 1950, after the Respondent had decided to change its bonus payments from individual to group participation he arranged with Melvin that the latter obtain certain bonus and production figures from a competitor where Melvin had once been employed and that Melvin obtained this information for the Respondent

Melvin flatly denied that Maurice Farber or any one else had asked him to obtain the figures above referred to and further testified that he obtained the information "a month or so" before the new bonus plan was established.

Melvin testified as a witness for the Respondent.

The witnesses had been separated.

The undersigned was not favorably impressed by Melvin's testimony or his demeanor on the stand. On cross-examination Melvin evaded answering directly, pretended not to understand the clear meaning of questions, made flippant replies, denied that he recognized his own handwriting, and gave the undersigned the impression that any truthful statement he made on cross-examination, if not wrung from him, was accidental. The undersigned does not consider Melvin a credible witness and therefore finds that he obtained certain operating statistics from a competitor of the Respondent's at the Respondent's request.

Melvin further testified that Maurice Farber did not say anything to him about the Union and further that he had no conversation with Farber about the Union until the Monday following Bilderback's discharge at which time he was shown a letter received by the Respondent from the Union in which the Union complained of Melvin's alleged activities in questioning employees with respect to their union activities.

Farber testified that the Respondent had no knowledge of any union activity among its employees until after the discharges and the Union's complaint regarding them.

Melvin's inquiries regarding the Union cannot be charged to the Respondent as an unfair labor practice unless it is inferred that such inquiries were made on the Respondent's orders. This was not shown. However, considering the manner in which the Respondent trusted Melvin as shown by his assignment to gather information from a competitor, the salary paid him, and his assumption of authority, the undersigned believes that it is a fair inference that any knowledge Melvin may have acquired of the union activity of the employees, or any suspicion he may have had regarding such activity would undoubtedly be carried to the Respondent. The undersigned makes such inference. This,

coupled with the undenied and credited testimony that practically all the employees were "talking union" together with the meeting in the rest room as described in the testimony of Bessie Bates, persuades the undersigned that the Respondent had knowledge of the union activities of its employees and the leading personalities involved therein prior to the time Bilderback was discharged. The undersigned therefore does not credit the testimony of Maurice Melvin to the effect that he had no conversation with the Respondent's officials prior to Monday, March 13, 1950, regarding the Union and does not credit the testimony of Maurice Farber to the effect that the Respondent had no knowledge of the union activities of its employees until sometime after Bilderback's discharge.

Bilderback testified that Friday, March 10, was payday but that when the employees were paid that day she did not receive her check and found her time card removed from the rack. She was called to the office by O'Keefe who told her "Betty, I am going to have to let you go" Bilderback asked the reason for her discharge and was told "Look on your separation slip and you will find out." The slip read "Talking too much and creating a hazard and disturbing other operators." Bilderback then accused O'Keefe of discharging her for no reason "except you knew we was putting out these union cards down here trying to get a union"

Abe Farber, one of the Respondent's officials who was present then said "No, that wasn't it," upon which Bilderback replied "We can work somewhere else" and according to her was told by Abe Farber, "What is on that release might change your mind for you."

Ledell Haney and Irene Alsup were discharged together with Bilderback.

#### Respondent's Contention With Respect to the Discharge of Mrs. Betty Bilderback

In its brief the Respondent repeats the language of its answer in giving its reasons for Bilderback's discharge, namely she "talked too much and distracted other employees creating hazards in working operations in disregard of the welfare of fellow employees and adversely affecting production."

Farber testified that he decided to discharge Bilderback on the day that Bilderback told him she objected to a plant-wide bonus and did not think it fair that she produce more than the quota without individual compensation, and further that she had no intention of doing so, he testified:

Q. What were the reasons you discharged Irene Alsup, what was the reason?

A. For holding back production through her own admission.

Q. And what was the reason for the discharge of Betty Bilderback and Ledell Haney?

A. Failing to produce all their quotas, which they could, and spending all their time in which they could be producing talking and going to the rest room and creating a disturbance around the plant.

Q. Had you ever cautioned those two women about that?

A. I certainly had. When I saw them carrying on conversations, going to the rest room—we don't have any written rules about going to the rest room. I don't know how anybody could have a written rule on that, but we just more or less depend on the people's own discretion and good sense not going in there for 20 minutes or 30 minutes at a time, spending most of their time in the rest room and sitting around talking, their talk disturbs other people, and I stopped by that week and several times I was right by there listening when perhaps they didn't see me, they were leaning over from one to the other and continually talking, so I would come up and say, "Girls, you will have to cut it out."

"Aren't we producing quotas?" That is the answer that I got.

I said, "You are producing, but you can do a lot better. You are disturbing other people. They are watching you. And somebody will sew through a finger. Somebody will get hurt."

In analyzing Farber's above-quoted testimony the undersigned is persuaded that it does not represent fact but is no more than an ingenious self-serving statement.

Farber speaks of "going there [the rest room] for 20 or 30 minutes at a time," but he does not testify that Bilderback did so, he also testifies that he "stopped by" and listened to Bilderback and Haney talking "several times . . . when perhaps they didn't see me," and that he expressed his concern that "somebody will sew through a finger."

Farber testified, (a) that "sewing through a finger" was "a common industrial accident," (b) that during the past year there were "around 10 or 15" such accidents, (c) that the Respondent's plant had a "good record" on such accidents because the girls were warned and "on account of keeping an eye on the production and on the work."

The Respondent under date of May 2, 1950, furnished the General Counsel with a list of accidents occurring in its plant during the preceding 6 months. The document was introduced in evidence, and lists nine accidents.

The first under date of September 15, 1949. The last two dated March 14, 1950, and April 22, 1950. As these occurred *after* Bilderback's discharge they clearly have no bearing on the issues herein.

The remaining seven are:

- September 15, 1949—stuck nail in left leg
- October 7, 1949—cut left hand
- November 23, 1949—stuck nail in left finger.
- December 12, 1949—stuck needle in right hand
- February 7, 1950—injured right hand
- February 11, 1950—lacerated left hand
- February 16, 1950—lacerated right hand

The only accident which resembles the Respondent's description is that of December 12. "Stuck needle in right hand." This accident was to Ruby Creel, a forelady, not a sewing machine operator. The other injuries to hands were obviously injuries to men, not sewing machine girls.

However, as it is not contended that any complaint whatever was made on any score regarding Bilderback prior to the workweek of March 6, and moreover as the record discloses *no* injuries during that week the undersigned is persuaded that the Respondent's fears were groundless.

In this respect the undersigned notes the following in the Respondent's brief,

It is also undenied and undisputed on the record that a painful industrial injury described as "sewing a finger" may result from careless operation of high speed machines in the plant.

The undersigned quite agrees with the statement but he cannot stop with the statement alone as does the Respondent's brief, he must and does find that such plant accidents did not occur in the Respondent's plant during the week of March 6, and that the record does not disclose that any of Bilderback's acts or conduct ever caused any such accident in the Respondent's plant.

Mrs. Jewel Streebeck, employed as a finisher, whose work on the seat covers followed that done by Bilderback and operators like her, called by the Respondent, testified, that she had been without work during "several days" because of

Bilderback's failure to produce her quota. She further testified that Bilderback and Haney were "frequently" gone from their machines for periods of "45 minutes to an hour," that they were "in the rest room smoking"; and that when she had no work during these periods, which Streebeck testified "happened quite a long time before the discharge, happened all along," she complained to Supervisor Creel.

Streebeck further testified that Bilderback disturbed other employees by singing and talking, but did not identify such employees nor was she asked to give the source of her knowledge.

On cross-examination Streebeck testified that she never complained about the alleged disturbing conduct because "they didn't bother me, I enjoyed it, and I thought if the company didn't care, I didn't."

The undersigned is mindful that the Respondent in large part examined Streebeck by the use of leading questions, however without objection by the General Counsel.

Inasmuch as the Respondent did not contend that Bilderback failed to make the established quota, it is hard to understand how she could have held up the work of others inasmuch as it is admitted that the quotas were set for an integrated operation. Bilderback was admittedly one of the fastest operators. Streebeck admitted that she had never made an individual bonus as a sewer.

Streebeck also testified that she did not join the Union and asked Bilderback and others for union cards "just in fun"

Upon the entire record considered as a whole including Streebeck's demeanor on the witness stand the undersigned does not credit her testimony.

Mrs. Willie Nicastro, testified that she was working as a finisher during the period material herein. She testified that her machine was in the line in front of Bilderback and *on the opposite side of the room*. Nicastro testified that during March 1950 she was without work for "15 or 20 minutes, maybe, at a time" because Bilderback was away from her machine.

On cross-examination Nicastro admitted that she received work at the time from other operators:

... because at that time I was on the production line and they made only what was called the jump seat, and there were only two pieces in a set and usually we made from four to five pieces in a set.

As the record reveals that in the Respondent's manufacturing process work was passed from one operator to the one directly in front of her for completion of the next step, it is not clear how Nicastro could depend on Bilderback for work considering the location of their respective machines.

Considering the location of the machines and the testimony that Nicastro received work from others beside Bilderback (and Haney) the undersigned is not persuaded that Nicastro was idle for periods of time because Bilderback (and Haney) were absent from their machines.

Maurice Farber testified that on either Wednesday or Thursday he told his brothers and Assistant Manager O'Keefe that Bilderback together with Haney and Irene Alsop should be discharged, telling them:

It looks like these operators will not be able to stay with us because they refuse to cooperate. Irene says she is holding back production and somebody else tells her to, and Betty Bilderback and Ledell Haney say they refuse to meet all the quotas, they don't want to make over the quotas, and if everybody stays right on the quota there won't be any bonus.

Farber did not notify the affected employees and testified that the reason that the employees were not discharged immediately was because it was customary to permit an employee being discharged to work until payday, which

was Friday, although the pay period ended on Wednesday. The discharges in fact received no notice of their impending discharges until a few minutes before being paid off.

O'Keefe testified that on Wednesday Maurice Farber told him that "There are three we are going to have to let go" and then gave the reasons, "Two of them have failed on refusing to cooperate, and the third one is holding back her work."

Apparently Farber did not name the employees at this time.

On Friday O'Keefe was instructed to have the separation slips and checks ready.

*Conclusions on Discharge of Betty Bilderback*

The Respondent conceded that Bilderback was among its best operators, being one of three in all its force who "consistently" made individual bonuses.

Until the week that the bonus system was changed from individual to group participation no complaint was ever made because she talked, sang at her work, and generally showed a lively disposition, however when the change in the bonus was made and the new quotas set she was no longer a valued, even favored employee but one whom it was determined to discharge the first time that Maurice Farber noted that "her operation was exactly on 100 percent."

It was admitted by the Respondent that the quotas were set for an integrated operation and could not have been set higher, and keep the plant operating efficiently. Human nature being what it is Maurice Farber's testimony with respect to the size of the quotas set serves only to confirm common understanding.

O'Keefe testified that it took from 6 to 10 weeks to train an operator. The Respondent in March was at the beginning of its season. Few employees were ever discharged and the labor turnover was not excessive.

Again, human nature being what it is, the undersigned understands that an employee accustomed to excelling under one system to her financial benefit would resent a change whereby she would be, according to her thinking, sharing the fruits of her labor with others less capable.

The Respondent having set or agreed on the quotas of production, could reasonably expect that its employees would strive to earn all they could in bonuses but could not reasonably require them to produce more than the quota, on pain of discharge.

If Bilderback did not find it necessary to work every minute of the day in order to meet her quota the Respondent could either raise the quotas for the entire plant, or even for Bilderback alone, or must remain silent, unless, if as contended, Bilderback's acts caused accidents or tended to do so. It is clear that this was not the case.

Had the Respondent honestly been of the opinion that Bilderback's newly assumed attitude would disrupt the plant, he could at least, considering her service and her record, have waited a reasonable time to ascertain if her attitude would continue or would change. It is incredible to believe that under these circumstances alone, a valued and valuable employee should be discharged out of hand. The undersigned is therefore persuaded that the Respondent did not discharge Betty Bilderback on March 10, 1950, because she talked too much, distracted other employees creating hazards in working operations in disregard of the welfare of fellow employees and adversely effecting production.

The undersigned finds that the Respondent discharged Betty Bilderback for reasons other than those advanced by the Respondent.

*Mrs. Ledell Haney* was first employed by the Respondent in 1947 and was discharged March 10, 1950.

Haney and Bilderback worked side by side and timed their work so that both turned in equal production each day. Haney testified that while at her work she talked to Bilderback; maintained that she could "sew and talk"; but admitted that sometimes she would stop her machine. After the new quotas were set, Haney according to her testimony, did not attempt to exceed the quota although she never actually shut down her machine to retard her production.

Farber admitted that Haney was one of the three employees in the plant who consistently made a bonus "three weeks out of every month" and was "always making some 40 to 50 percent above quota," under the individual system.

Haney together with Bilderback met with Maurice Farber, when the new bonus system and quotas were discussed, she corroborated Bilderback's testimony with respect to this meeting.

Haney attended the union organization meeting in Bilderback's home and on the following day distributed application cards for the Union, in the plant. Likewise she was interrogated with respect to the Union by Melvin together with Bilderback. Haney testified that she never had an accident while in the Respondent's employ.

Haney was discharged together with Bilderback and corroborated Bilderback's testimony with respect to the incidents immediately surrounding their discharges.

The Respondent advances the same reasons for Haney's discharge as given for the discharge for Bilderback.

#### *Conclusions as to the Discharge of Ledell Haney*

It is clear that Haney's case is exactly as that of Bilderback, they worked together and kept their production equal by their own arrangement, their activities and action in the plant were the same, no complaint was ever made regarding Haney's work or conduct prior to the week of March 6, 1950, and likewise the Respondent's contentions as to Haney are exactly as, and coupled to, its contentions with respect to Bilderback.

The undersigned has found that the Respondent did not discharge Bilderback for the reasons it advanced on all the evidence considered as a whole and on all the circumstances in the case the undersigned is not persuaded that the Respondent discharged Haney on March 10, 1950, because she "talked too much and distracted other employees creating hazards in working operations in disregard of the welfare of fellow workers and adversely affecting production."

The undersigned finds that the Respondent did not discharge Ledell Haney for the reasons advanced by the Respondent but for other and different reasons not stated by the Respondent.

Mrs. Irene Alsup testified without contradiction that she started to work for the Respondent in 1946, and was discharged together with Bilderback and Haney on March 10, 1950: that she was a "single needle machine" operator who finished work following the operation performed by the "two needle machine" operator; that none of the eight "single needle" finishers who did the same work as she produced as much work as Alsup; that only one of these operators had greater seniority in the Respondent's plant; that prior to the last week of her employment no complaint had ever been made regarding her work. The undersigned credits Alsup.

Farber testified that under the individual bonus system Alsup earned the bonus "quite often"

Alsup testified that on Wednesday, March 8, she attended a meeting of finishers in Maurice Farber's office at which the new bonus system and quotas were discussed. During the course of the meeting Farber told Alsup that whereas her

production had always been considerably higher than the set quota recently it had fallen. Alsup told Farber that she had been asked to "hold it back," but refused to tell who had asked her to do so. She testified that Ruby Creel, her forelady, had made the request.<sup>1</sup>

Alsup's testimony with respect to the above meeting was corroborated by Mable Bayne and is credited by the undersigned.

Alsup attended the Union's organization meeting in Bilderback's home and took cards to distribute in the plant the following day.

Farber testified that he determined to discharge Alsup at the time of the meeting in which she made the statement that she had curtailed her production because she had been asked to do so. Farber testified that he did not so inform Alsup, "because I never tell anybody I will discharge them in front of any one else," and further testified that employees were customarily permitted to finish the week to Friday although the pay period ended on Wednesday.

Alsup received no notice of her discharge until the afternoon of Friday, March 10.

She testified:

Q. And how were you paid off on Friday, March 10, 1950?

A. Well, we went into the office and saw our cards was pulled and they was paying off. Betty and Ledell, I saw them and I knew it had happened, and I thought my time would be next, and I looked for my card and I couldn't find it; my card wasn't there. When I got up to where it should be, it was gone. And after he got through paying them off, we got ours. Jack—is that it? He told us to go in Mr. Maurice's office and he would give us our checks, and he gave us our checks, two checks apiece.

Q. Who gave you your checks?

A. Jack O'Keefe.

Q. Jack O'Keefe?

A. Yes.

Q. All right. Do you know what was in your termination slip?

A. It said: "Holding back work."

*Concluding Findings on the Discharge of Irene Alsup*

Manager Farber admitted that Alsup "always produced that much" (the set quota) and according to Farber she often "went to 119 percent" of the set standard. Her testimony that she had the greatest production in her division, and with one exception was also the employee of greatest seniority, among the finishers, and that her work had never been criticized, was not denied.

Farber testified that under the individual payment system Alsup made the bonus "quite often."

It is clear that it takes from 6 to 8 weeks to train a finisher, who then would not be Alsup's equal yet. Farber contends that he determined to discharge Alsup at the time she admitted, during a discussion in his office, that she was "holding back production 'on orders.'"

At the time the Respondent was making a change in its operations, a change which clearly required cooperation and discipline, Farber's resolution to discharge Alsup could be based on either the fact that she was not producing her quota or that her attitude would destroy the plant discipline. The alleged drop in Alsup's production could only have occurred during the few preceding days, and could not have been considered serious in itself inasmuch as her superior record covered a matter of years; the matter of discipline and example was clearly more

<sup>1</sup> Ruby Creel's testimony is discussed later herein.

serious yet the Respondent contends that in the face of this critical offense it failed to discharge the employee disrupting its organization because of Farber's concern for employees' sensibilities as evidenced by his testimony, "I never tell anybody I will discharge them in front of anybody else," and also the Respondents alleged custom of permitting employees that were to be discharged to work through to Friday.

The respondent's consideration for its employees feelings is touching indeed but no realist can be persuaded that manufacturing plants are operated in this fashion.

The undersigned finds that the Respondent did not discharge Irene Alsup "because she publicly stated she was holding back production" but that she was discharged by the Respondent on March 10, 1950, for reasons not pleaded or offered by the Respondent.

*Concluding Findings on the Discharge of Bilderback, Haney, and Alsup*

The undersigned having found that the Respondent did not discharge Bilderback, Haney, and Alsup for the reasons it advanced it becomes necessary to examine the sole remaining cause advanced for the discharges by the General Counsel, to wit the union membership and activities of the discharges.

It has been found that activity in behalf of the Union began in Respondent's plant on or about Thursday, March 9, immediately preceding a meeting for the purpose of organization held in Bilderback's home. The meeting was attended by five employees, three of whom were the discharges.

It has been found that the Respondent had knowledge of the union activities of its employees. In the opinion of the undersigned the Respondent obtained knowledge through the activities of Maurice Melvin, as found herein. The undersigned is persuaded and finds that the Respondent also obtained knowledge of the union activity by reason of the "lot of union talk"; from the well attended meeting in the rest room; and from the very fact that such unusual activity could not be hidden in a plant as small and as closely supervised as is the Respondent's. The Respondent adduced testimony to the effect that all the three Farber brothers as well as Assistant Manager O'Keefe were often on the working floor.

The abrupt discharge of three operators, admittedly among the very best in the plant, immediately after the Respondent obtained knowledge of the union activities, as evidenced by Melvin's questions and statements, and immediately after a union organizational meeting in the home of one of the three, points to the real cause.

In response to questions by the Respondent's attorney, Farber testified as follows:

Q. I will ask you this question. What is your company policy with respect to union activities of the employees?

A. We have no objection to any union or any activities. We have had notices posted there that we were required on the previous case that came up, we had them posted, and they stayed on there thirty days, something like that, after the date of expiration, I think, before we took them down. We told all the girls at all times that it is their privilege, the law, they can do whatever they want about a union.

The posted notice reads:

NOTICE TO ALL EMPLOYEES

Pursuant to Settlement Agreement Approved by the Regional Director of the Fifteenth Region of the National Labor Relations Board, and in order

to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join or assist the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), or any other labor organization, 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.

WE HAVE OFFERED to Irene Jones immediate and full reinstatement to her former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and made her whole for any loss of pay suffered as a result of any discrimination.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership or activity on behalf of any such labor organization.

FARBER BROTHERS, INCORPORATED,

*Employer.*

Dated \_\_\_\_\_

By \_\_\_\_\_

(Representative)

(Title)

This notice must remain posted for 60 days from the date thereof, and must not be altered, defaced, or covered by any other material.

It is quite apparent that the posting of this notice was not entirely voluntary. The undersigned is convinced and finds on the entire record in the case, including the fact that the Respondent failed to establish its contentions with respect to the reasons for the discharge of Bilderback, Haney, and Alsop that the reasons advanced by the General Counsel for the discharges is well supported by the record in the case, and therefore finds on all the evidence considered as a whole that the Respondent discharged Betty Bilderback, Ledell Haney, and Irene Alsop on March 10, 1950. because of their membership in and activities on behalf of the Union and has thereby discriminated in regard to their hire and tenure of employment, discouraged membership in a labor organization, and has interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

#### *B. The testimony of Walter Thurmond*

On rebuttal the General Counsel called Walter Thurmond for the stated purpose of impeaching the testimony of Maurice Farber, and also "for the purpose" of showing that as Thurmond was a foreman in the Respondent's plant and was replaced by Melvin." The General Counsel stated on the record

this is purely an impeachment witness. I want to show through this witness that certain statements made by Mr. Maurice Farber are inaccurate, that is all. I make no recommendations and I urge nothing, and I contend nothing beyond the realm of the charge of the complaint in this case.

The General Counsel contended that from this fact it must be inferred that Melvin was also a foreman.<sup>1</sup>

Thurmond is Melvin's brother-in-law. It is admitted that he was a foreman, that he was discharged, that Melvin replaced him, however the record does not warrant any inference that Melvin became a foreman. The undersigned had found the contrary.

Considering Thurmond's status while in the Respondent's employ the Respondent would be well within its legal rights in discussing any union activity or any union organization of rank-and-file employees with Thurmond but Thurmond's testimony was of such nature, that in the opinion of the undersigned it should be discussed herein.

In his testimony Thurmond, both on direct and cross-examination, made few direct or unqualified statements. He attempted by innuendo and "double talk" to create one impression while at the same time leaving the way open to escape from any fact testified to by giving a different meaning to his words. It became perfectly clear that Thurmond's sole purpose on the stand was to attempt to create an unfavorable impression of the Respondent and not to shed any light on the issues by a plain statement of fact.

It also became quite apparent that Thurmond had evidently deceived the General Counsel with respect to any actual knowledge bearing on the issues which he might have had.

Thurmond testified that sometime in 1949 Maurice Farber ordered him to discharge two employees because of their union affiliations. He could name only one of these. With respect to the dischargee he named, Thurmond testified:

We had a couple of meetings, me and Mr. Maurice and the foreman in the cutting room, to be sure we got our stories right to this lawyer to make our affidavit, so he laid her off, and that was the story I was supposed to stick to when I made the affidavit.

The undersigned was of the impression that Thurmond was here seeking to create the impression that the Respondent was guilty of subornation of perjury.

On cross-examination the witness testified that he made such an affidavit but did not remember to whom he gave it, nor what he swore to, testified that "I didn't tell the lawyer, whoever he was, this is what we decided to tell him, no. I was talking to him and he was writing it down." He further qualified his testimony by stating "I imagine" Farber wanted the discharge because of the employees' union activity, and finally testified that all he remembered was "telling him I laid the girl off."

When cross-examined Thurmond also at first clearly sought to create the impression that the Respondent sought to influence his testimony in a discussion before the hearing, however his testimony when further developed was quite different.

Thurmond is also engaged in the manufacture of seat covers and buys his raw material from Farber.

Thurmond testified that sometime before the hearing O'Keefe called on him; that the subject of the coming hearing and Thurmond's being called to testify "for the Union" came up. He testified:

He (O'Keefe) connected it in with the Union on the price list if I would help them it would get our prices up.

The testimony not being clear to the undersigned he examined the witness as follows:

Trial Examiner PLOST. Is it your testimony Mr. O'Keefe intimated to you they would cut the prices of your materials they sold to you if you would testify in a certain way?

The WITNESS No, sir.

Trial Examiner PLOST. Then how did that come up?

The WITNESS Like I said, we were standing on the sidewalk there talking about the prices and things, that you could get one thing for one price and

the next time another price, and he, of course, didn't have any control over that, and the union was brought in, about this coming up October 10th, and he just somehow combined them together

Trial Examiner PLOST. How did he combine them?

The WITNESS. I don't know how he combined them. He said, "What good would it do if you went up and testified for the union?" He said, "How much closer would you get to the blue sheet?" That is the cheapest sheet, I realize.

O'Keefe and Farber were called to rebut Thurmond's testimony.

According to O'Keefe about 3 weeks before the hearing he passed Thurmond's place of business and Thurmond called him in. He testified:

So I waited and after that he and I engaged in a conversation of a general nature and then he brought up the matter of this case again. He said, "I have been asked,"—he didn't say by who—"to testify in the case." He said, "I don't much want to do it, though"

And I said, "Well, of course that is your own business. What do you want to do?"

And he said, "If I did testify that would kind of be blackmail"

And then he went on and he said, "I am trying to get a better price on my seat covers over there."

Those are the exact words of the conversation.

Maurice Farber, denied Thurmond's testimony with respect to the 1949 discharges and further testified that sometime in August 1950, Thurmond phoned him and requested that the Respondent grant him a cheaper price on material he bought from the Respondent; that Farber refused to do so, that Thurmond then said to him, "If I could get a little cooperation in getting my orders a little faster I might be able to help you when this trouble comes up for you"

The undersigned believes that Thurmond offered his testimony solely for the purpose of besmirching the Respondent, for reasons of his own, and did not testify in order to shed light upon the issues. If a witness imputes subornation of perjury to another the party calling him should be certain of the facts and prepared to follow through, however the undersigned believes that Thurmond mislead the General Counsel as to the nature of his offered testimony. The fact that the undersigned has found that the Respondent engaged in conduct constituting an unfair labor practice, and this largely on the conduct of Maurice Farber, does not mean that the undersigned considers Farber guilty of perjury or has any intention of casting any reflection on his honor. The undersigned strongly resents Thurmond's oblique and patently irresponsible testimony to the effect that Farber suborned perjury in another case. The undersigned's observation of Maurice Farber on the stand fully convinced him that he is not an individual capable of such conduct, likewise his observation of O'Keefe on the stand convinced the undersigned that O'Keefe was not such an individual as would seek to improperly influence a witness or suborn perjury, therefore, from his observation of the witnesses and on the entire record the undersigned credits the testimony of Maurice Farber and Jack O'Keefe with respect to their denials of the testimony of Walter Thurmond as hereinabove found and finds that the testimony of Farber and O'Keefe represent the accurate versions of the incidents and matters related in the testimony above referred to.

The undersigned does not credit the testimony of Walter Thurmond for the reason that from his observation of the witness Thurmond, and from the nature of his testimony, the undersigned is convinced that Thurmond's testimony is no more than whole cloth woven on a loom of malice.

*C. The testimony of Ruby Creel*

Ruby Creel, the Respondent's forelady in charge of the sewing room was called by the General Counsel. Creel admitted that she did not wish to testify but that she did so in fear of the subpoena. The undersigned permitted the General Counsel to treat her as a hostile witness. Creel's examination was largely with respect to a sworn statement she had previously given a field examiner for the Board. She identified the document. In the opinion of the undersigned her entire testimony was given under such emotional strain as to render it of little probative value. Creel was so nervous that some of her language was incoherent. The undersigned believes that her condition was due to lack of control and not conscious desire to deceive, however her condition destroyed her oral testimony and make her former statement valueless as evidence of a recorded past recollection as it was obviously impossible for her to adopt it, verify it, or to clearly assert that the statement was true at the time it was made. The undersigned therefore does not in any manner rely on the testimony of Ruby Creel in making any of the findings or conclusions in this report.

**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 its operations described 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 unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

It has been found that the Respondent has discriminated in regard to the hire and tenure of employment of Betty Bilderback, Ledell Haney, and Irene Alsup by discharging them on March 10, 1950, because of their membership in and activities on behalf of the Union it will be recommended that the Respondent offer each of them full reinstatement to her former or substantially equivalent position<sup>2</sup> and make each whole for any loss of pay she may have suffered by reason of Respondent's discrimination against her by payment to each of them a sum of money equal to that which she normally would have earned as wages from the date of her discharge to the date of Respondent's offer of reinstatement, less her net earnings during said period. Loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement. The quarterly periods, herein called quarters, shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which each employee would normally have earned for each such quarter or portion thereof, his net earnings, if any, in any other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. It will also be recommended that Respondent, upon reasonable request, make available to the Board and its agents all payroll and other records pertinent to an analysis of the amounts due as back pay.

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<sup>2</sup> *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827

The unfair labor practices found reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless the Respondent is required to take some affirmative action to dispel the threat. It will be recommended, therefore, that the Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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. The Respondent, Farber Brothers, Inc., Memphis, Tennessee, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Betty Bilderback, Ledell Haney, and Irene Alsup the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By such discrimination and by interfering with, restraining, and coercing 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 (a) (1) of the Act.

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

The record does not show that the Respondent has engaged in unfair labor practices by inquiring, questioning, and interrogating its employees with respect to their union activities, threatening its employees with discharge if they joined the Union, or made statements and held conversations interfering with its employees' union activities.

[Recommended Order omitted from publication in this volume.]

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SUNSHINE BISCUITS, INC. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 92, PETITIONER. *Cases Nos. 17-RC-917 and 17-RC-921. May 21, 1951*

### Decision and Order

Upon petitions duly filed, a consolidated hearing was held before William J. Scott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with

<sup>1</sup> After the close of the hearing, the Intervenor filed a motion to amend its name on the formal papers in this proceeding. The motion is granted. The Intervenor's name appears herein as amended.