

In the Matter of OREGON WORSTED COMPANY and UNITED TEXTILE  
WORKERS OF AMERICA, LOCAL 2435

Case No. C-167.—Decided July 16, 1937

*Wool Yarn Industry—Strike:* provoked by employer's refusal to meet and negotiate with union—*Employee Status:* during strike—*Interference, Restraint or Coercion:* wilful interference with and obstruction of an election ordered by the Board by threats to close and liquidate plant and business; attempts to influence employees to vote against union; influencing state conciliation board to serve interests of employer to detriment of union; attempts to discredit union and union leaders; "planting" bombs in "loyal" workers cars for purpose of publicity against union; soliciting individual strikers to return to work; interference with strikers and picketing activities by police, violence against pickets; strike-breaking employers' association—*Reinstatement Ordered, Strikers:* upon application for reinstatement; displacement of employees hired at or after date of interference with election; preference list ordered—*Back Pay:* awarded from date of denial of application for reinstatement.

*Mr. E. J. Eagen* for the Board.

*Mr. Abe Eugene Rosenberg*, of Portland, Ore., for the respondent.

*Mr. K. C. Tanner*, of Portland, Ore., for the Union.

*Mr. Allan R. Rosenberg*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On January 15, 1937, United Textile Workers of America, Local 2435, hereinafter called the Union, filed with the Regional Director for the Nineteenth Region (Seattle, Washington), a charge that the Oregon Worsted Company of Portland, Oregon, respondent herein, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. On January 22, the National Labor Relations Board, hereinafter called the Board, issued a complaint signed by said Regional Director, alleging that respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint as amended<sup>1</sup> alleged in substance:

<sup>1</sup> On February 17, 1936, during the hearing, a motion to amend the complaint was granted.

1. That following a strike on November 5, 1936, at respondent's plant, an election was scheduled to be held on December 21, 1936, among respondent's employees, pursuant to a direction of the Board, in case numbered R-111; and that respondent, through its officers and agents, made and caused to be circulated false statements with the purpose of intimidating its employees to vote against the Union as their representative for purposes of collective bargaining at said election;

2. That respondent, through its officers and agents, has made and caused to be circulated false and derogatory statements about the Union, its officers, and active members, in a campaign to discredit the Union and discourage membership therein;

3. That by these and other enumerated acts, threats, and statements, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The complaint and accompanying notice of hearing were duly served on the parties. On January 26, 1937, respondent filed a motion to dismiss, and an answer to the complaint; on March 12, 1937, it filed an answer to the motion to amend the complaint. In its answer to the amended complaint, respondent denied that it had engaged in or was engaging in the unfair labor practices therein alleged, admitted that an election had been scheduled, pursuant to a direction of the Board, for December 21, 1936, and alleged, among other affirmative defenses, that on petition of the Union, the direction of election had been vacated. It claimed that the Act is unconstitutional and in any case inapplicable to it because neither its business nor labor relations is in or affects interstate commerce. On February 25, 1937, the Board filed its reply to the affirmative defenses set forth in respondent's answer.

Pursuant to notices duly served, a hearing was held in Portland, Oregon, on February 8, 9, 10, 11, 12, 15, 16, 17, and again on March 25, 1937, by Towne J. Nylander, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issue was afforded all parties.

Counsel for respondent moved to strike paragraphs 6, 7, 8, 9, 10, 11, and 12, of the complaint as failing to allege violations of the Act, and paragraph 13 of the complaint as alleging conclusions of law supported by no allegations of fact. These motions the Trial Examiner denied. Much testimony and several exhibits were introduced in evidence over the objections of counsel for respondent. At the conclusion of the testimony in support of the complaint, counsel for respondent renewed his motion to dismiss the complaint upon the

grounds set forth in his original motion to dismiss, and upon the further ground that the evidence failed to sustain the allegations of the complaint. This motion the Trial Examiner denied. As evidence in behalf of respondent, counsel for respondent offered to prove the comparative wage rates in the wool textile industry. This offer was rejected by the Trial Examiner, whereupon respondent rested and offered no further testimony in support of its case.

Upon the record thus made, the Trial Examiner, on March 26, 1937, filed an Intermediate Report finding and concluding that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the Act, and recommending that respondent cease and desist from interfering with, restraining, or coercing its employees, including those on strike, in the exercise of the rights guaranteed in Section 7 of the Act; that respondent distribute to its striking employees, issue to the press, and post in its plant notices stating that it would cease and desist from such interference, restraint, and coercion; and that respondent file with the Regional Director for the Nineteenth Region a report, within a stated time, showing the manner and form of its compliance with the foregoing recommendations. No exceptions were filed to the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the introduction of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. As set forth below, we also find that the evidence supports the findings and conclusions made by the Trial Examiner in his Intermediate Report that respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1), and Section 2, subdivisions (6) and (7) of the Act.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. RESPONDENT AND ITS BUSINESS <sup>2</sup>

The Company is a corporation organized and existing under the laws of the State of Oregon. Its principal office and place of business is in Portland, Oregon, where it is engaged in the business of

<sup>2</sup> This finding is taken verbatim from a decision of the Board, dated December 9, 1936, (Case No. R-111, 2 N. L. R. B. 417), which in turn was taken with some modifications from a decision of the Board, dated June 11, 1936, (Case No. C-65, 1 N. L. R. B. 915), the parties in both proceedings being the same as in the instant matter. A certified copy of the testimony given by Roy T. Bishop, president and manager of the Company, at the hearing which resulted in the decision of the Board in Case No. C-65, describing the business of the Company, was admitted in evidence in the instant case, together with a certified copy of the testimony of other witnesses, substantially paralleling Bishop's testimony, at the hearing which resulted in the decision of the Board in Case No. R-111.

converting wool into yarn, and selling and distributing the yarn. It is the only mill of its kind west of the Mississippi River. There are approximately 100 such mills in the United States, most of them located along the Atlantic Coast. Its mill, which is valued at approximately \$200,000, normally employs about 500 workers.

Wool, the principal raw material used in the manufacture of yarn, is purchased by the Company mainly from dealers in Portland, Oregon, although the points of origin of about 60 per cent of all the wool utilized by it are in States other than Oregon. Part of its wool purchases is made by a buyer who travels in and through the States of Oregon, Washington, and Idaho. On occasions, Roy T. Bishop, president of the Company and manager of its mill, purchases wool while in States other than Oregon. The demand for yarn, indicated through orders and anticipated orders, determine the amount and quality of wool purchased. The greater proportion of supplies, including dyes, emulsion of oil, salt, soap, cartons, and labels, are obtained by the Company in States other than Oregon, while boxes and motor oil are purchased locally. Railroads, trucks, and, infrequently, boats are the instrumentalities for delivery of wool and supplies to the mill. Fifteen per cent of the Company's wool purchases from States other than Oregon are consigned to the Company, the remainder to dealers, banks, and brokers.

Upon delivery to the receiving department of the mill, the raw wool is sorted and cleaned by a series of processes; the fibres are combed, straightened and sorted, and then rolled into balls or tops, some of which are dyed. The tops are stored for use in the manufacture of yarn as needed. Depending on the desired yarn, tops are blended, the fibres are further refined, wound on spools, doubled and redoubled, depending on the desired consistency, drawn fine, and spun into yarn. The single fibres of yarn are twisted and made into two, three, and four "ply", heeled into skeins, inspected, bundled, and placed in a stockroom preparatory to shipment or dyeing and shipment. The three general types of yarn so produced are hand yarn for sale to retailers, and machine and weaving yarn for the manufacture of fabrics. The total annual production of the mill is valued at about \$1,500,000. There are two shipping departments in the mill, one for general shipments and another for hand-yarn shipments, the latter being in the hand-yarn department. A total of 10 to 13 employees is engaged in the two shipping departments, where the yarn is balled, bundled, labeled, and prepared for shipment.

The destination of a portion of the finished yarn is known to the Company in some instances throughout and in others during only a part of the above-described process. The dyeing of wool tops and yarn in colors other than standard is done only upon order.

Yarn destined for shipment to the Jantzen Knitting Mills<sup>3</sup> is marked "Jantzen" "New York." Ninety-three per cent of the Company's sales are made through its sales agencies operating on a commission or salary basis in New York City and Los Angeles and San Francisco, California. In San Francisco its sales agency is the Maypole Dye Works, a corporation of which Bishop is president and whose stock is substantially owned by the Company. In the conveyance of yarn to the three sales agencies, and to others, all forms of transportation are used. The Company owns and operates a truck, and also engages an independent trucking agency, to deliver the finished goods to railroad freight sheds, shipping docks, and other means of transportation. The Company is consignee on 75 per cent of all such shipments, and pays the freight charges. About 98 per cent of the hand yarn, constituting 20 per cent of the Company's total production, is sold to large merchandising concerns such as Woolworth's, Kresge's, and Penney's. Its machine and weaving yarn is sold principally to weaving mills and knitting mills in the North Atlantic States.

In the purchase of wool, the conversion of wool into yarn, and the sale and distribution of yarn, the Company's operations thus extend across the country from coast to coast in a closely integrated economic enterprise for the purposes of trade. The Company is vitally dependent upon interstate transportation facilities and the continuous flow of commerce among the states. In turn, the weaving and knitting industries are in part dependent upon it, approximately 80 per cent of its finished products being utilized by those industries. Certain of the Company's employees are directly engaged in the receipt, preparation for shipment, and transportation of wool, supplies, and yarn.

## II. THE UNION

United Textile Workers of America, affiliated with the Committee for Industrial Organization, is a nation-wide labor organization which admits to membership employees working in the textile industry. In the spring of 1934, organization was begun among respondent's employees. On March 18, 1935, the Union, which had been formed during this period, received from the parent organization a separate charter as Local 2435 with jurisdiction over all the employees in respondent's plant.

<sup>3</sup>The Application for Permanent Registration under Section 12 (b) of the Securities Exchange Act of 1934 of Securities Temporarily Registered, filed with the Securities Exchange Commission by Jantzen Knitting Mills on March 30, 1935, although not introduced in evidence, is a public document, and we take notice of the following facts stated therein: that Jantzen Knitting Mills and its French subsidiary, Societe Anonyme "Jantzen", manufacture and sell to retailers swimming suits; that a subsidiary of Jantzen Knitting Mills, Jantzen (Australia) Limited, manufactures and sells swimming suits and sports wear; and that Jantzen Knitting Mills and its subsidiaries sell their products in the principal countries of the world, either directly or through licenses.

## III. PAST RELATIONS BETWEEN RESPONDENT AND THE UNION

The history of respondent's relations with the Union has been marked by constant strife and an unwavering determination to defeat the self-organization of its employees. In Case No. C-65, decided June 11, 1936 (*supra*), we reviewed this history up to November, 1935, and ordered the reinstatement with back pay of Sidney Girard, president of the Union, discharged for union activities, and the disestablishment of the Employees Council, as the creature of respondent's determination never to recognize the Union. Respondent has not complied with this order of the Board. In Case No. R-111, decided December 9, 1936 (*supra*), we reviewed the history of respondent's labor relations during September and November of 1936, found that respondent's persistent refusal to deal with the Union had resulted in a strike of respondent's employees which affected commerce, and directed an election to be held among the production, maintenance, and shipping department employees at respondent's plant. The complaint in the case before us now arises from respondent's interference with this election and with its striking employees.

## IV. THE UNFAIR LABOR PRACTICES

*A. Interference with the election*

On November 3, 1936, the Union sent Roy T. Bishop, president and manager of the respondent, a registered letter stating that if the respondent continued to refuse to meet with the Union to bargain collectively with reference to the wages, hours, and working conditions of the production, maintenance, and shipping department employees at respondent's plant, the Union would call a strike to enforce its demands. This letter was received but not answered. On November 5, 1936, the strike began and the plant closed down.

Immediately, respondent, through its president, embarked on a campaign to break the strike. Bishop testified that on November 5, 1936, immediately after the employees went on strike, he made a public announcement that he would shut down the mill before he would bargain with the Union. On November 9, 1936, at the hearing on the petition of the Union for an election and certification of representatives, Abe Eugene Rosenberg, counsel for respondent in that as well as in this proceeding, stated that since November 5th, respondent's operations had been definitely terminated, and arrangements were then being made to liquidate its accounts receivable, inventory, and equipment. Contending that as a result of this situation the issues in the proceeding had become moot, counsel for the respondent withdrew from further participation in the hearing. On November 29, a front page article in the *Sunday Oregonian*,

describing developments in the strike situation at the plant of the Oregon Worsted Company, quoted Bishop as having announced that he would close the plant and liquidate the assets.<sup>4</sup> Bishop testified that when the *Morning Oregonian* of November 30 quoted him as having said, "We do not care to be guinea pigs for social security laboratory experiments," he had made the statement in connection with his purpose to liquidate or to continue to liquidate.

On December 9, 1936, the Board issued its decision directing an election by secret ballot to be held among the production, shipping, and maintenance department employees who were on respondent's pay roll next preceding the date of the strike of November 5, 1936, to determine whether or not they desired to be represented by the Union. Of respondent's contention that the issues had become moot because the mill was closed down and respondent intended to liquidate its assets, we said "(It) does not rise to the dignity of an argument. The operations at the mill ceased as the result of the strike, and intentions in such industrial situations are notoriously mercurial." The Regional Director for the Nineteenth Region scheduled the election for December 21, 1936.

Immediately upon receipt of the decision, Bishop directed his attack against the Union's chances of victory at the election. The *Oregonian* of December 14, 1936, carried the following story: "Mr. Bishop said that he did not see how an election among the employees could affect the present situation since the plant is closed and its officers proceeding toward liquidation. 'The employees walked out or were forced out by intimidation', said Mr. Bishop. 'We were advised by the Union substantially that the only way we could start up again would be by a recognition of the Union for collective bargaining. We don't care to operate under those conditions.'" As the day for the election drew nearer, Bishop increased the intensity of his campaign. Between December 17 and 21, some of the girls who were out on strike were sought out and told that unless they voted against the Union, the plant would liquidate and they would not go back to work.<sup>5</sup> On December 19, Bishop played his trump card.

The State Conciliation Board had been requested by Mayor Joseph K. Carson of Portland, Oregon, on November 28, 1936, to entertain the controversy between the Union and respondent. Dr. W. G. Everson, chairman of the Board, communicated with the labor and employer representatives of the Board, and on December 17th, went into the merits of the controversy. At that time, he requested Bishop to issue a so-called "statement of opposition" with reference to the controversy. On December 19th, the State Conciliation Board notified the press and interested parties to appear. At this meeting, counsel for

<sup>4</sup> Board Exhibit No 19

<sup>5</sup> By whom the girls were solicited is not clear from the record.

respondent read and distributed to the press a prepared statement, reading in part:

The Oregon Worsted Company has decided that it cannot recognize Local 2435 of the United Textile Workers of America as the representative of its employees for the purpose of collective bargaining and operate its plant at the same time \* \* \*. The strike was \* \* \* declared and the Company, due to the inconsistent policy of the Union, its lack of stability and lack of purpose was forced to decide to liquidate. Since said date (November 5) liquidation has been going on and is now in process. \* \* \* Accordingly there will be no further operation of the Oregon Worsted Company if such operation depends upon recognition of Local No. 2435 of the United Textile Workers of America as the representative of the employees for the purpose of collective bargaining.<sup>6</sup>

Present before the State Conciliation Board when this statement was read were two representatives from the Union, two from the non-union employees, two members who claimed to be dissatisfied with the Union, and representatives of two newspapers. On the next morning, December 20, the *Sunday Oregonian* carried on its front page a story quoting Bishop's decision that the Oregon Worsted Company would remain closed rather than recognize the Union. On page 8 of the same issue it carried a full column story, referring to the election which was to be conducted on the following day by the National Labor Relations Board, describing the meeting with the State Conciliation Board, and ending with the quotation given above, from the prepared statement read by counsel for respondent.<sup>7</sup>

The effect on the striking members of the Union was all that respondent could have desired. What Bishop's public announcements, his statements to the newspapers, and the solicitation of girl strikers were unable to accomplish in the earlier days of the strike, this deliberately prepared statement of Bishop's attorney, made to the State Board of Conciliation, on the eve of the election, succeeded in accomplishing. Dorothy Vallereux, a striker, testified that she thought "it was an idle rumor until the statement came out in the paper and I saw the statement there". On December 20, the Union petitioned the Regional office of the National Labor Relations Board to call off the election, and on December 21, the day of the election, the Board vacated its direction.

"It was cancelled at the request of the Union", announced Bishop, through the columns of the *Oregonian* of the next morning. "It was instituted through the Union itself, which is run by a small group

<sup>6</sup> Board Exhibit No. 8

<sup>7</sup> Union Exhibit No. 17.

of racketeers. When these racketeers realized that our employees would vote against the Union, they hastily called the election off."<sup>8</sup>

Were Bishop's statements and the statements of counsel for the respondent with regard to liquidation made in good faith, or were they made, as alleged in the complaint, falsely with the purpose of intimidating its employees and causing them to vote against the Union in the scheduled election? The proceedings before the State Board of Conciliation on December 19, and the opening of respondent's plant following the State Board's recommendation on December 22, 1936, help to supply the answer.

On the afternoon of Tuesday, December 22, after a day and a half of conference, the State Conciliation Board issued the following recommendations for settling the controversy:

THE OREGON WORSTED COMPANY,  
Portland, Oregon.

Dear Sirs: The State Board of Conciliation makes the request of the Oregon Worsted Company to reopen its plant at the earliest possible date. The following terms and conditions are recommended:

1. There shall be no restriction nor discrimination.
2. Local No. 2435 United Textile Workers will withdraw pickets, also drop charges brought against the Oregon Worsted Company before the National Labor Relations Board or any other body or court.
3. That the State Board of Conciliation will be consulted before serious difficulty arises in the future and before any open break.
4. Local No. 2435 United Textile Workers to present to this Board any charges that it may have in the future against the Oregon Worsted Company in the event such charges could be brought before any other body or tribunal.
5. The Oregon Worsted Company will reopen its employment opportunities without prejudice to union or non-union members.
6. We are presenting this recommendation to Local No. 2435 United Textile Workers and sincerely trust that this mill will be opened immediately and with everybody happy.

Thanking you for your help and consideration and with sincere wishes that a return to normal employment may be your Happy Christmas for 1936.

Cordially yours,

WM. G. EVERSON, *Chairman*,  
JOHN O'NEILL, *Sec.*,  
CHAS. N. RYAN,

*Members Oregon State Board of Conciliation.*<sup>9</sup>

<sup>8</sup> Union Exhibit No. 18.

<sup>9</sup> Board Exhibit No. 9.

Dr. Everson testified that the considerations which prompted the State Board to issue these recommendations were a study of the facts and a desire to get the strikers back to work by Christmas. Upon the whole record, however, and especially from the testimony of Dr. Everson, it is clear that the State Board of Conciliation was little more than the willing servant of Bishop and his determination to break the Union and the strike. Dr. Everson admitted, and the record completely bears him out, that the State Board did not go thoroughly into the merits of the controversy. It did, however, take information from the management with reference to the wage scale and other points in dispute without obtaining similar information from the Union. At the time its recommendations were being typed, Mr. Rosenberg, respondent's attorney, and Mr. Bishop, its president, were in an adjoining room, and immediately upon being handed the recommendations delivered in return a letter of acceptance conditioned only on the State Board's retaining jurisdiction to carry out its recommendations. Dr. Everson testified that paragraph two of the recommendations—that the Union drop charges brought against respondent before the National Labor Relations Board or any other body or court—"may have been suggested" by Mr. Rosenberg, and in reference to that paragraph testified that Union officials had furnished him copies of three decisions going to the merits of the controversy between the Union and respondent: a decision of the Textile Labor Relations Board, ordering respondent to rehire certain named employees; a decision of the National Labor Relations Board, ordering the disestablishment of the Employees Council, as a company union, and the reinstatement with back pay of Sidney Girard, discharged because of union activities (Case No. C-65, *supra*); and a decision of the National Labor Relations Board finding that because of respondent's refusal to bargain collectively with the Union, a question of representation affecting commerce had arisen, and directing an election among respondent's employees (Case No. R-111, *supra*). Dr. Everson testified that he had read and knew the nature of these decisions, but that he had made no inquiry as to whether these decisions had been complied with. Dr. Everson also testified that the State Board did not know and was not concerned with the fact that there were pending in the Circuit Court of Multnomah County damage suits filed by certain aggrieved union members against the respondent for alleged breach of contract.<sup>10</sup> As to the decisions of the Textile Board and the National Labor Relations Board, Dr. Everson testified that he had reason to believe that respondent had not complied with the orders therein, but had never suggested to Bishop that he should comply.

<sup>10</sup> In view of the State Board's ignorance of such court actions brought by union members, it appears reasonably certain that at least the provision in paragraph 2 referring to the dropping of charges before any court was suggested by counsel for respondent.

The attitude of the State Board toward these charges and the decisions rendered by the Textile Labor Relations Board and the National Labor Relations Board, was succinctly expressed by Dr. Everson: “\* \* \* we felt that if these people went back to work, instead of going to work with a chip on their shoulder, we felt that they should go back to work in good faith, instead of trumping up something else and rehashing it. We tried to eliminate all the obstructions that we could. We wanted them to go back to work in the right spirit and do so without having in their mind the trumping up of something else. \* \* \*”

From the hostility thus exhibited by Dr. Everson toward the contentions of the Union, the close cooperation between the State Board and respondent, the failure of the State Board sufficiently to hear the merits of the controversy, and its deliberate disregard of the findings, orders, and decisions of two Federal agencies with reference to past and current anti-union activities of respondent, we cannot fail to conclude that the State Board exhibited a flagrant bias toward respondent which utterly belied its position as an impartial agency for conciliation. From the whole record, including the manner in which the hearing before the State Board was conducted, the participation of counsel for respondent in the formulation of at least part of the State Board's recommendations, and the immediate acceptance of these recommendations by respondent, we find that respondent caused the State Board to serve and further the interests of respondent to the detriment of the Union. Thus, the State Board became merely another weapon in respondent's war against the Union—a weapon of strategic importance because ostensibly two-edged and professedly wielded by an impartial hand.

Following the State Board's recommendations, on the night of December 22, 1936, at 10 P. M., Bishop came to the conclusion that he would reopen his plant. At eight o'clock the next morning the mill began operations, and several hundred postcards were mailed to employees asking them to return to work. Behind the Union's picket line the machinery was running; smoke was coming out of the flue; there was “a look of prosperity down there”, Bishop admitted, such as to make his employees think the strike was broken. Had they returned that morning, he testified, they could have gone to work.

It is plain from this circumstance alone that respondent's numerous statements to the press, and the prepared statement of December 19, read to the State Board of Conciliation and distributed to the press, to the effect that respondent was liquidating, were not made in good faith, but were, on the contrary, completely false and made for the purpose of intimidating its employees, discouraging membership in the Union, and breaking the strike. Despite statements made

as early in the controversy as November 9 and frequently repeated to the very eve of the election a month and one half later, that the Company was in the process of liquidating its accounts receivable, assets, and equipment, that its operations were definitely terminated, that liquidation has been going on since the beginning of the strike, nevertheless the plant was ready to operate with a full crew only a few hours after the State Board had made its recommendations. From this alone, it is clear that none of the concomitants of liquidation had occurred. In addition, Bishop testified that between November 5 and December 22, no equipment had been permanently dismantled. Bands were taken off the machines to ease the tension of the leather when not in use, and rolls were loosened so that work standing idle would not deteriorate, but the footings had not been taken up, nor had the bolts been removed from the concrete, and the plant was ready at all times during this period to operate on a few hours notice. On its pay roll during this entire period, respondent had 31 men, including officers, bookkeepers, shippers, caretakers, and at least three of its foremen or overseers, none of whom were at any time engaged in permanently dismantling the plant or liquidating respondent's inventory, accounts receivable, or equipment. From the date of the hearing on November 9, when counsel for respondent stated that operations had definitely terminated, respondent was continually engaged in purchasing and taking options on wool. On December 18, the day before it presented a prepared statement to the State Board, declaring that it had been forced to liquidate, respondent was in attendance at an auction sale where large quantities of wool were being sold. Although Bishop denied that he had refused to sell a large quantity of wool on hand to a prospective customer, who came to buy and left without buying, his denial is not convincing, especially in view of the reluctant, contradictory, and evasive testimony of the witness on almost every major point in dispute. It is plain from the record, and we so find, that at no time did respondent intend to liquidate its property and that its widely publicized threats were intended as a means of interfering with, coercing, and restraining its employees in the exercise of the rights guaranteed in Section 7 of the Act, and of wilfully impeding and interfering with the election which had been directed by this Board.

*B. Attempts to discredit the Union*

Between December 31, 1936 and January 2, 1937, during the course of the strike, four "loyal" employees working at respondent's plant discovered crudely fashioned dynamite bombs attached to the engines of their automobiles. The bombs were all of similar manufacture, and similarly attached. They were unquestionably placed according to a single plan.

Clarence Hopp, foreman and overseer in respondent's plant, testified that he found such a bomb in his car shortly after noon on December 31, 1936. He testified that when he drove his car to work that morning, the car was functioning normally; that he parked his car in a shed located on the grounds of respondent's plant; that shortly after noon he drove the car from the plant to downtown Portland, a distance of approximately five miles; and that he then turned the car over to his wife, who remarked to him that the engine was not "hitting right." He testified that on his way back to the plant, as he passed the Francis Motor Company, it occurred to him to drive in and ascertain the trouble. He was alone. He stated that immediately after driving in to the garage, without waiting for an attendant, he lifted the hood of the car and found a stick of dynamite, five inches long and two inches in diameter, set below the fan belt, between the cylinder block and the radiator, and attached to the motor by two wires, one running to a spark plug, the other to a cylinder block nut. He testified that he pulled the stick of dynamite out by the wires, threw it in the back of the car, and drove back to the plant. No one at the Francis Motor Company, he testified, had worked on the car or seen him enter or leave. On his return to respondent's plant, Hopp testified that he showed the bomb to Arthur Sirianni, plant electrician. Sirianni pulled the wires out of the dynamite, took the dynamite cap into his shop, and while exploding it, injured himself slightly.

Immediately after it became known that a bomb had been found in Clarence Hopp's car, Carl Johnson, another "loyal" worker, employed in the maintenance department in respondent's plant, ran out to the shed where he had parked his car beside that of Clarence Hopp and found attached to the engine of his car a similar bomb, similarly wired. Captain William C. Epps of the Portland Police Department, who had been called to respondent's plant by Bishop, testified that in the presence of Johnson and others he had ordered the police officers in charge not to remove the dynamite before the motor had been examined for fingerprints and the bomb had been photographed. Despite these orders, Sergeant Dodele of the State Police and Johnson detached the bomb, without objection from the other officers, and delivered it to the officers of the city police.

Later that day, according to the testimony of Detective O. A. Powell of the Portland Police Department, Walter Koenig, another "loyal" employee, who had been working at respondent's plant during the strike, noticed that the hood of his car, which had been parked for two days in the garage at his home, had been disturbed, and upon examining the engine discovered a similar bomb, similarly wired to the motor. Detective Powell, who began his investigation for the Police Department on the next day, after uniformed police

had been there, saw neither the automobile nor the bomb, because Koenig had moved the car to the home of a relative and had thrown the dynamite into the river.

On the morning of January 1, 1937, according to the testimony of Detective Powell, A. J. Hoenish, also a "loyal" worker, employed as a night watchman at respondent's plant and a cousin of Clarence Hopp, was pushing his car out of the garage at his home when he found, attached to its motor, a similar bomb, wired in the same manner as the other three bombs. Detectives Powell and W. E. Williams testified that Glen Harms, Bertillon expert for the Portland Police Department, had removed the bomb, and thrown the dynamite stick, cap, and wiring into the river. The officers made no investigation beyond asking Hoenish when and how he found the bomb.

On January 2, 1937, Bishop issued the following statement which appeared in an article on the front page of the *Oregon Journal* of that date: "Whoever is placing the bombs in our workers autos is prompted by a small group of racketeers who have instigated the whole controversy. They are now using the same kind of tactics employed to get company employees to join the Union. And now they are trying to scare company officials the same way. I have no idea who the individuals are. I understand the police have taken fingerprints off several bombs and are working from that angle. Our employees, those working and those on the outside are homemakers. They have no part in such terroristic activities. It is the work of racketeers."<sup>11</sup> From the context of this statement and from Bishop's testimony, it is clear that in referring to "a small group of racketeers" Bishop was accusing the leaders of the Union, and his purpose, as he himself testified, was to put union activities generally and a "group of Union racketeers" into disrepute.

The record abundantly proves that the bombs were placed in the automobiles, not by union members or sympathizers, but by those working in respondent's mill, and that Bishop not only knew that there were no circumstances tending to link the Union or any of its members with those acts, but had admitted to the detectives of the Portland Department that those working in the mill were probably the ones responsible.

Both Clarence Hopp and Carl Johnson, whose cars had been parked in a shed located on the grounds of respondent's plant on December 31, testified that their cars were functioning normally on the way to work that morning. The circumstances plainly indicate that the dynamite bombs had been placed in the cars after they arrived on company property and were parked in the shed. Several police officers, stationed at various points at or near the plant, to keep

<sup>11</sup> Union Exhibit No. 14.

watch on the pickets, testified that they patrolled the premises throughout the morning, from before the time Hopp and Johnson drove their cars into the plant until after the bombs were discovered, that they had a clear view of the shed from where they were patrolling, that there was also a clear view of the shed from the platform or floor of the mill, and that during this time they saw no stranger or picket from outside enter the plant. Officer Michael E. Lillis of the Portland Police Department, who had patrolled the premises all morning with Officer Burmeister, stated that he did not think it would have been possible for any outsider to come in and place a bomb in the car, that he was familiar with the faces of the employees working in the plant and that he would have recognized and halted any stranger who appeared on the premises. Detectives Strong and Westcott of the Portland Police Department reported that they were unable to find anyone that saw any outsider or ex-employee around the yard.<sup>12</sup>

On the other hand, Arthur Sirianni, plant electrician, whose duties gave him the freedom of the plant, had been engaged, from ten o'clock of that morning until after the bombs were discovered, in installing a heater in a police car, in close proximity to the shed where Johnson's and Hopp's cars had been parked. Sirianni admitted that with the exception of the officers he was the only person in the vicinity of the cars that morning. He also testified that he had never seen a stick of dynamite before, and if there had been any dynamite used at the plant in the past, he never had had any dealings with it. This testimony was flatly contradicted by a witness who testified that in the spring of 1935, when an old boiler factory at respondent's plant was being razed, he had seen Sirianni using dynamite. Sirianni further denied any knowledge of or complicity in the placing of the dynamite bombs. In view, however, of the evasive, almost hysterical, and decidedly untrustworthy nature of his testimony, we are satisfied that, at the very least, Sirianni knew more about the placing of the bombs than he was willing to reveal, and that his inadvertent injury when he exploded the dynamite cap found in Hopp's car arose from his haste to destroy valuable evidence which might have assisted in leading to the apprehension of the person responsible for placing the bombs in the other cars.

Of the four "loyal" employees, Clarence Hopp was the only one to start his motor or drive his car after the dynamite had been placed in it. From the description given of the bomb, its size and dimensions, and from the description of the front part of the motor from which it was supposed to have been taken, we are convinced

---

<sup>12</sup> Respondent's Exhibit No 1, Ancillary Proceeding.

that the testimony of the witness Hopp is not to be credited. There is sufficient evidence in the record of experiments made by an expert for the Union with dummy bombs of the same size and dimensions, attached in the same way, to the same model of motor, to indicate beyond a reasonable doubt that such an object could not have been placed where the witness testified that he found it without having made its presence known and without having been torn to bits by the revolving fan.

On the day the bombs were found, the detectives who interviewed Bishop reported that he was unable to give them any information or suspicion as to who had placed the bombs. Later, however, when they advised Bishop that they suspected the employees who had returned to work, he stated that he knew all these employees, knew something about their background either through church or family affiliations, and trusted every one of them. At the time Bishop made this statement, however, he admitted to the detectives that "it looks like the work of someone from inside" and discounted the possibility of someone coming in from outside the plant to do it.<sup>13</sup>

From the whole record we find that Bishop's statement, appearing in the *Oregon Journal* of January 2, 1937, placing the blame for the dynamite incidents upon the Union, and accusing the Union leaders of being racketeers responsible for terroristic activities, was utterly without foundation, contrary to the available information, and unscrupulously issued for the purpose of bringing the Union into disrepute, discouraging membership in the Union, and interfering with, restraining, and coercing respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 31, 1936, before the police investigation, respondent made a gift of an automobile heater to Lieutenant Benjamin F. Wade of the Portland Police Department, one of the officers in charge of the police detail at respondent's plant. This heater was installed by Arthur Sirianni on the morning when the bombs were found. No charges of any kind were made to Lieutenant Wade or to the Police Department for either the heater or its installation. Following the discovery of the bombs, the Portland Police Department sent three groups of investigators to respondent's plant and to the homes of A. J. Hoenish and Walter Koenig, where for several days they purported to conduct an investigation. Despite the admission of Bishop that it looked like the work of some one from the inside, no attempt was made to find out whether any of respondent's "loyal" employees had access to any dynamite stored in respondent's plant. Despite the fact that "loyal" employees told stories which were inherently improbable, removed three of the bombs before they were seen by

<sup>13</sup> Respondent's Exhibit No. 1, Ancillary Proceeding

the detective or police, threw one bomb in the river, and destroyed the cap of another, no satisfactory investigation was made of their motives or movements prior to the discovery of the bombs. In the case of the bomb found in Carl Johnson's car, Sergeant Dodele testified that he did not compare it with the bomb found in the adjacent car belonging to Clarence Hopp, because he did not want to interfere with the Portland Police; but he pulled out the bomb from Johnson's car, despite the orders of Captain Epps of the Portland Police not to remove it before it had been photographed and fingerprinted. The bomb found in the car belonging to A. J. Hoenish was thrown into the river, cap, wiring, and all, by detectives from the Portland Police Department. The record plainly discloses that the police and detectives made superficial examinations, evasive reports, destroyed the evidence, and in general acted in such a manner as to cast grave doubt on the good faith and motive behind the purported investigation.

### *C. Use of violence*

On the afternoon of February 2, 1937, pickets threw snowballs and cried "scab" at "loyal" workers as they left the plant. No arrests were made and no one was seriously injured. Seven police officers and approximately 60 pickets were on duty. On the next afternoon Bishop went to the Police Department and asked for additional protection. The number of police officers was increased to 35. The number of pickets remained the same. At 4:30 p. m. on February 3, as the "loyal" workers left the plant, some in a high-boarded truck, others walking, Claude Stennet, a union employee of respondent and one of the pickets, shook his overcoat and cried "Boo, Jakie!" at one of the "loyal" employees. Seven eye witnesses testified that immediately following this, as Stennet turned away, a policeman identified as Officer Cambas of the Portland Police Department struck him repeatedly on the head with his club from behind and beat him down into the snow until he was unconscious. "Chuck" Reimer was standing nearby. "For God's sake", he said, "Don't hit that man any more." Reimer, a former president of the Union, was employed at a brewery nearby and had not been an employee of respondent's since 1934, when respondent refused to comply with a decision of the Textile Labor Relations Board ordering his reinstatement.<sup>14</sup> Another policeman, identified as Officer Officer (sic), who stood near Officer Cambas, shoved Reimer away and told him to "go on up the line." Reimer answered "O. K." and moved off. He had gone only a short distance when Officer Cambas said, "Let's get him." The two officers ran after

<sup>14</sup> *In the Matter of Oregon Worsted Co.*, Textile Labor Relations Board, Case No. 58, Final Decision, dated April 23, 1935.

Reimer, overtook him, and beat him with their clubs on the head from behind, until his face, head, and shoulders were covered with blood, and the snow where he fell was blotched with blood stains.

The testimony of seven eye witnesses, testimony unrefuted although ample opportunity was given for possible refutation, conclusively demonstrates that these beatings by the police were without cause or justification, that they were planned and encouraged by Bishop, and that they were executed by the Police Department in cooperation with Bishop for the purpose of terrorizing union members and breaking the strike.

The activities of the pickets on February 3, 1937, were in no way different from the activities of the pickets on previous days; in fact several witnesses testified that the pickets were unusually quiet that day. Alvin Rea, special agent for the Industrial Relations Association of Portland, an employers' organization, testified that he had been at respondent's plant at least three times a week since the strike started and that he had seen no violence for which he would have made an arrest. Rea has full police powers.

Immediately prior to the police brutalities of February 3, Captain Epps, the police officer from whom Bishop had sought additional protection a few hours before, advised 14-year-old "Bob" Gilbert and several other boys, who were throwing snowballs near the picket line, "You had better go home, this is no place for kids. We are not going to monkey around. We mean business." After Claude Stennet was beaten, a police officer told Mrs. Erna Erickson, a striker, who went to Stennet's assistance, "You strikers must be taught a lesson."

Bishop watched the activities of the police from his office window. As Reimer and Stennet were being placed in the patrol wagon in front of respondent's plant, later to be locked up on charges of disorderly conduct, Bishop approached the police, said something to Lieutenant Wade about "getting results" and added, referring to Reimer, "You made a mistake, you've got the wrong man." Bishop denied having made this statement, but three witnesses, two of them disinterested, testified that they heard him say it. Bishop testified that he had known Reimer and his family for a number of years, that he always considered Reimer with a kindly attitude and bore him no ill will, but that even after he had seen Reimer covered with blood and badly injured by police clubs, he had approved of what had occurred.

The testimony relating to the beating of Reimer and Stennet was admitted by the Trial Examiner over the objection of counsel for respondent that it occurred after the charge was filed and the complaint issued. The testimony was properly admitted to corroborate by subsequent acts the testimony supporting the specific allegations of

the complaint. Thus, the cooperation of the Portland Police Department with respondent on February 3, 1937, throws additional light on the activities of the Police Department and its purported investigation of the dynamite bomb incidents in January 1937.

*D. Membership in the Industrial Relations Association*

In September 1935, when the Industrial Relations Association of Portland was formed, respondent became one of the original members at an annual fee of \$250. Later, respondent cancelled its direct membership in the Association and became a member through the Pacific Coast Wool Manufacturer's Association, receiving the same services as before. It is still a member, and still receives the services of the Industrial Relations Association.

The business of the Association is labor relations. It discourages the making of contracts with unions, is opposed to the majority rule in collective bargaining, believes in the open shop, and pledges itself to the "protection of every man in the exercise of his right to work." It provides labor spies to employers engaged in thwarting union activities and furnishes financial aid, private guards, and police protection to employers engaged in breaking strikes.

During the strike at respondent's plant the Association furnished to respondent the services of Alvin Rea, special agent of the Association, deputized since April 1936, as a special police officer by the Portland Police Department and by the State of Oregon. Rea's duties were to confer with Bishop, the police, and Mr. F. Van Landingham, respondent's personnel manager, and to report these conferences to the Chief of the Portland Police Department and to Edwin C. Pape, manager of the Association. In the performance of these duties, Rea appeared at respondent's plant at least three times a week. Several times, he escorted "loyal" workers through the picket line.

As one of its services to employers, the Association keeps on file a list of the names of union members, acquired by means of corrupting union members to act as labor spies. On occasion, Rea has furnished these names to Detective Walter O'Dale, in charge of the investigation of radical activities for the Portland Police Department, who keeps a file of the names of communists and radicals. O'Dale's list of names is also acquired in part by means of spies, some of whom, he testified, "may or may not be" members of unions. These spies are paid by O'Dale from funds supplied by the Chief of Police. The reports of police spies are confidential and not available, except to employers and to the Industrial Relations Association. At the hearing, the City Attorney refused, in response to a subpoena *duces tecum* issued by the

Board, to produce reports of espionage, in the possession of Detective O'Dale, carried on among respondent's employees.

During the course of the strike, Bishop frequently consulted Pape and Horace B. Mecklem, president of the Association. He consulted Pape when he closed down the plant on November 5, 1936, and again before deciding to open the plant on December 23, 1936. He consulted Pape with regard to suggestions that had been made to him, his policy on various phases of the strike, and principally, on the question of wages, hours, and working conditions.

The testimony of Mecklem, Pape, and Bishop as to the relations between respondent and the Association was evasive, inherently improbable, and inconsistent with the testimony of other witnesses, including that of the Association's paid agent, Alvin Rea. The evidence on this point satisfies us that the Association had more to do with the respondent's policy toward the strike and its conduct than either Bishop or the officers of the Association were willing to reveal. The evidence, however, is so incomplete that we are unable to find, on this record, that respondent's membership in or relations with the Association constituted a violation of any of the rights guaranteed in Section 7 of the Act.

#### V. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The strike of respondent's employees which occurred on November 5, 1936, resulted in a complete shut-down of the mill. Pickets were placed around the grounds of the Company and all movements of goods to and from the mill ceased. Approximately 40,000 to 50,000 pounds of finished yarn, 5,000 to 10,000 pounds of which were boxed, labelled, and ready to be shipped, and which otherwise would have been transported to various parts of the United States, remained in the mill. On January 2, 1937, a week after the mill had reopened, 350 remained on strike and the mill operated with a crew of only 50. Once before in September and October 1934, a strike led by the Union seriously affected the stream of goods flowing to and from the mill.<sup>15</sup>

Upon the whole record, we find that the activities of respondent set forth in Section IV above, occurring in connection with the operations of respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

---

<sup>15</sup> This paragraph is taken from the decision of the Board in Case No R-111 (*supra*).

## THE REMEDY

We have found that respondent impeded and interfered with the election which the Board by its decision in case numbered R-111 (*supra*) directed to be held among respondent's employees on December 21, 1936. In the light of the purposes of the Act and the experience upon which it is based, we are justified in assuming that had the election been held when scheduled, respondent's striking employees would thereafter have returned to work. It does not lie in the mouth of respondent, whose conduct precluded that possibility, to assert the contrary. In *Matter of Columbia Enamelling and Stamping Company*,<sup>16</sup> we ordered the reinstatement of striking employees as of the day when the employer frustrated attempts at conciliation, on the ground that by so acting the employer interfered with a possible settlement of the strike which would have put the men back to work. In the case before us now, relief is predicated on similar but even stronger grounds, since respondent's acts of intimidation, coercion, and restraint occurred in the light of the Board's direction of an election.

We shall, therefore, order respondent to offer reinstatement to those of its employees who were on strike on December 21, 1936, the day on which the election would have been held, dismissing if necessary all employees hired after that date. Our order will also provide that employees whose application for reinstatement is refused by respondent in violation of the order herein shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.

## CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. United Textile Workers of America, Local 2435, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The strike of the employees of respondent is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

3. The employees of respondent who are on strike are employees of respondent, within the meaning of Section 2, subdivision (3) of the Act.

4. Respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of

<sup>16</sup> I N. L. R. B. 81.

the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

### ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Oregon Worsted Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights 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. Upon application, offer to those employees who were on the pay roll on November 5, 1936, and on strike on December 21, 1936, and who have not obtained regular and substantially equivalent employment elsewhere, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired for the first time since December 21, 1936, to perform the work of such employees; and place those for whom employment is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired;

b. Make whole all employees who were on the pay roll on November 5, 1936, and on strike on December 21, 1936, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2a herein, by payment to each of them, respectively, a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of reinstatement, less the amount, if any, which each, respectively, earned during said period;

c. Post in conspicuous places throughout the Oregon Worsted Company's Portland plant a notice stating (1) that the Oregon Worsted Company will cease and desist in the manner aforesaid and stating (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Prepare on the stationery of the Oregon Worsted Company a statement for the press that the Oregon Worsted Company will not in any way interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and distribute such statements by registered mail to the three Portland, Oregon, daily papers, namely the *Oregonian*, the *Journal*, and the *News Telegram*;

e. Prepare and distribute to all striking employees a statement that the Oregon Worsted Company will not in any manner interfere with, restrain, or coerce its employees, in the exercise of the rights of 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 National Labor Relations Act;

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