

In the Matter of MANSFIELD MILLS, INC. and TEXTILE WORKERS
ORGANIZING COMMITTEE

Case No. C-193.—Decided October 27, 1937

Cotton Textile Industry—Interference, Restraint, or Coercion: intimidation of union leaders and organizer; attempts by terrorism to force union organizer to leave town; by public officials; surveillance of union meetings and activities; expressed opposition to labor organization, threats of retaliatory action; distributing anti-union literature among employees; misrepresenting terms and purposes of the Act to employees; questioning employees regarding union affiliation and activities—*Discrimination:* discharge; demotion; charges of, as to certain employees, not sustained—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Jacob Blum and Mr. Allen Heald, for the Board.

Mr. Dickson McLean and Mr. H. E. Stacy, of Lumberton, N. C., for the respondent.

Mr. Richard J. Hickey and Mr. Henry W. Lehmann, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Textile Workers Organizing Committee, herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schauffler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated May 29, 1937, against Mansfield Mills, Inc., Lumberton, North Carolina, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On June 7, 1937, the respondent filed its answer¹ to the complaint denying that its operations affect interstate commerce within the

¹ On June 17, 1937, the respondent filed an amendment to its answer. The amendment is hereby made a part of the pleadings.

meaning of the Act and that it had engaged in or was engaged in the alleged unfair labor practices. In addition, the respondent filed a motion to dismiss the complaint for the reasons that the Act is unconstitutional and that the Board has no jurisdiction over the respondent.

Pursuant to notice, a hearing was held in Lumberton, North Carolina, on June 10, 11, 12, and 14, 1937, before Henry T. Hunt, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. Both, at the opening and close of the hearing, the respondent renewed its motion to dismiss, decision thereon being reserved by the Trial Examiner.

On July 10, 1937, the Board, acting pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered this proceeding to be transferred to and continued before it. On July 28, 1937, the Gold Star Textile Organization of East Lumberton, Incorporated, claiming as its membership a majority of the respondent's employees, filed a petition to be made a party to the proceedings. Inasmuch as the Gold Star Textile Organization of East Lumberton, Incorporated, in its petition shows no sufficient interest in this proceeding and such petition was not filed until after the hearing, the motion is hereby denied.

The Board has also considered all of the motions made during the course of the hearing on which the Trial Examiner reserved ruling. The respondent's motions to dismiss the complaint are hereby denied. In as much as charges concerning Daniel Davis and Anna Sutton had not been filed pursuant to Section 10 (b) of the Act, the motion of counsel for the Board to amend the complaint to include their names among those alleged to have been discriminatorily discharged is hereby denied without prejudice to their right to file such charges. The motions of counsel for the Board to amend the complaint by changing the name of Frank Lamb to George Lamb, and to dismiss the complaint with reference to Ernest Mishoe, Earleen Mishoe, Bobby Carter, Margaret Pitts and Cathleen Abernathy are hereby granted. Counsel for the Board also moved that the pleadings be conformed to the evidence. This motion is hereby granted. During the course of the hearing objections to the introduction of evidence were made by counsel for the respondent and counsel for the Board. The Board has reviewed such rulings as were made by the Trial Examiner and finds no prejudicial error. Those rulings are hereby affirmed. Other objections made to the introduction of evidence with respect to which the Trial Examiner reserved ruling are hereby overruled.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

Mansfield Mills, Incorporated, is a North Carolina corporation incorporated in 1922. Its principal office and place of business is in East Lumberton, North Carolina, where it is engaged in the manufacture and sale of print cloth and yarns. The respondent owns and operates three mills situated in East Lumberton. Its property includes the village of East Lumberton with all of its dwellings and in these dwellings it houses a majority of its mill employees. It also maintains an office in the adjacent town of Lumberton, North Carolina, which is occupied by its bookkeeping and selling departments.

The volume of respondent's products is about 90,000 pounds per week and the value thereof varies from \$150,000 to \$160,000 per month. The respondent employs from 600 to 650 employees, and its weekly pay roll is between \$9,000 and \$10,000.

The respondent purchases 90 to 95 per cent of the cotton which it uses in the manufacture of print cloth and yarns from dealers in North Carolina. Some of the other supplies used by the respondent come from outside of North Carolina. Thus it obtains machinery and parts from Massachusetts and New England points; starch used in the mills from Columbus, Ohio; coal used for heating purposes from West Virginia and Virginia. In connection with its mills, the respondent maintains and operates a store on its property. A portion of the supplies for the store are purchased from states other than the State of North Carolina.²

It was testified by A. M. Hartley, the secretary and assistant treasurer of the respondent, that during April 1937, approximately 66 per cent of its products were shipped in interstate commerce. Some of the yarn manufactured by the respondent is used by it in the manufacture of cloth. The surplus yarn is sold through a commission house located in Philadelphia, Pennsylvania.³ The respondent ships this surplus f. o. b. Lumberton, North Carolina, in accordance with instructions from the customers. Thus it has shipped yarn to the States of Pennsylvania, Massachusetts and New York. The cloth which it manufactures is sold through commission houses located in

² Bd. Exh. No. 4. List of creditors to whom the respondent mailed checks on May 13, 1937, for merchandise which it purchased during April 1937, for the store. Total payments amounted to \$9,415.87. Of this amount, \$1,786.29 was sent to creditors outside of North Carolina.

³ Another statement by A. M. Hartley permits the inference that the yarn, like the cloth, is all sold through commission merchants located in New York City. In either case, the commission houses selling respondent's yarn are located outside the State of North Carolina.

New York City. The greater portion of its waste material is shipped to states other than the State of North Carolina.

II. THE UNION

Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization, is a labor organization which admits to membership employees working in the textile industry.

III. THE RESPONDENT AND ITS ATTITUDE TOWARD THE UNION

The alleged discriminatory discharges involved in this case must be viewed in the light of certain circumstances which reflect the attitude of the respondent toward the organization of its employees.

Manning, one of the respondent's employees named in the complaint whose discharge will be considered hereinafter, continued, after his discharge, to live in one of the respondent's houses. He was active in organizing on behalf of the Union in East Lumberton. On May 6, 1937, just prior to the changing of shifts which took place at the respondent's mills at 6 p. m., supervisors notified employees of the respondent there in the mill of a meeting about to take place outside of the mill on mill property.⁴ Vera Lamb, Mayor of East Lumberton, and also a textile worker in the respondent's mills,⁵ addressed the crowd which gathered on mill property urging those who were loyal to the community to follow him, and to rid the village of the union organizer. The crowd, which was estimated to consist of approximately 200 people, then followed the Mayor to Manning's house. In the crowd were some of respondent's supervisors and a number of mill hands employed in one of the respondent's mills⁶ on the night shift, which had already started. A company truck filled with people followed the crowd, at least part way, to Manning's house. The Mayor, when he reached the house, accused Manning of forcing people into the Union against their will and of starting trouble. He told Manning that many wanted their own union cards back and he warned him that there would be violence. Grover Branch, one of the three councilmen of East Lumberton and also an employee of the respondent, participated in the altercation with Manning and threatened him for his union activity. After further discussion the crowd finally dispersed.

⁴ John E. Part and Willie Lamb, employees of the respondent who testified at the hearings in this proceeding, both stated that Bob Collins, a section hand and oiler employed by the respondent, told them to go to the meeting outside the mill. Archie L. Baugh, another witness employed by the respondent, was informed of the meeting by Waldrop, overseer of weaving for the respondent, and told that "they were planning to go down to Ches Manning's house after they knocked off".

⁵ The Mayor receives no salary for his duties as a public official. The Chief of Police, although appointed by the Mayor, is paid by the respondent for his services in policing East Lumberton.

⁶ The particular mill referred to is known as the Dresden Plant.

Other manifestations of hostility to the Union and to Manning as organizer for the Union also took place. Archie L. Baugh, an employee of the respondent, testified that on May 6, Waldrop, an overseer, offered to buy him a gallon of whiskey if he would "stamp hell out of Ches Manning": During Manning's absence from East Lumberton on the night of May 17 and early morning of May 18, the window-panes of his house were broken and three union cards which he had left in the house were not to be found when he returned. Late that same day, unidentified men threw rocks at his house and shot at it. Ferris Branch, a brother of Grover Branch, testified that on the night when Manning's house was fired upon and the window-glass broken, he saw his brother's car near Manning's house and heard a gunshot coming from the car, followed by the sound of shattered glass. He recognized his brother at the wheel of the car when it sped by. When Ferris Branch told his brother what he had seen, he was warned to keep silent regarding the incident if he wanted to continue working for the respondent. Both Grover Branch and Vera Lamb tried to dissuade Ferris Branch from giving testimony with respect to this occurrence at the hearing before the Trial Examiner. Although testifying, Vera Lamb did not deny the statement made by Ferris Branch at the hearing that, at the beginning of the previous week, Lamb had threatened to put Ferris Branch under a peace warrant if he gave this testimony. Grover Branch did not testify at the hearing. The testimony of Ferris Branch regarding the occurrence is unrefuted. Sutton, an employee of the respondent named in the complaint and active in the Union, was also subjected to intimidation of a similar kind. He testified that on May 19 about 3 a. m. stones were thrown through the windows of his house. The perpetrators of this lawless act were not identified.

The record contains evidence of surveillance of union meetings by Vera Lamb and supervisory employees of the respondent. George Lamb, brother of Vera Lamb and one of the respondent's employees named in the complaint, testified that on the night of May 18, when he came from a union meeting held in a hotel at Lumberton, he was accosted in the street by his brother who demanded to know what he was doing at the meeting and added that "you are taking bread out of my children's mouth". Some supervisory employees of the respondent were present. Other testimony indicates that Grover Branch, Vera Lamb, and the superintendent of one of respondent's mills were watching the meeting in the hotel from the yard of the court house. It was also testified that Henry Davis and McDuffy, both overseers, and Jim Davis, a section hand, stood in the road watching a union meeting held at some time in the latter part of April in front of Sutton's house.

The respondent disclaims all responsibility for the acts of the village officials. However, the respondent cannot disassociate itself from the events which occurred on May 6. At least two of its own supervisors approached employees with respect to the meeting at which Vera Lamb spoke. Employees whose shift had started work, as well as supervisors, were identified as participating in the meeting and the subsequent march to Manning's house. Moreover, in considering the respondent's responsibility for the occurrence, its complete ownership of East Lumberton and its necessary moral control of the Mayor and the Chief of Police flowing from the fact that both were on its pay roll, as textile worker and public official, respectively, must be recognized. The respondent's professions at the hearing that it was concerned in maintaining disinterested aloofness towards the organization of its employees and that it confined its expressions with respect to union organization to answering questions of its employees and to statements that they might join the Union if they so desired but were not compelled to do so, cannot be reconciled with the fact that it permitted a person on its pay roll to lead a mob consisting, in part at least, of its own employees on its property to intimidate a union organizer because of his union activity.

The least that can be said is that the respondent countenanced the occurrence of disorderly acts aimed at the intimidation of a union organizer and apparently made no effort to exercise its control for the purpose of protecting Manning from these disorderly acts or from the recurrence of such acts of intimidation. In this manner the respondent clearly disclosed an anti-union bias in the light of which Manning's discharge and that of other union members must be considered.

Also significant with respect to the discharges hereinafter to be described, are two leaflets which were submitted in evidence as exhibits. The first leaflet,⁷ about 400 copies of which were bought by Morehead, the general superintendent,⁸ and distributed among the employees, is entitled "The Truth about the Wagner Labor Law". It purports to set forth certain rights and obligations arising under the Act which, it claims, through misleading statements and propaganda, have been the source of misunderstanding. Coupled with this is an outright attack on the Textile Workers Organizing Committee on the ground that an acceptance of membership in this organization constitutes an unlimited "power of attorney" so that "the man who signs has no right to act for himself or his family", and further, on the

⁷ Bd. Exh. No. 10. The leaflet has printed on it the date May 27, 1937. Morehead's testimony indicates that copies thereof were distributed sometime in the last two weeks in May.

⁸ Morehead testified that the Clark Textile Bulletin of Charlotte, North Carolina, sent him these leaflets by mail. The organization publishes a magazine for the textile industry in which the respondent has advertised on one or two occasions.

grounds that union dues are excessive and that "the check-off is the CIO objective." A second leaflet entitled "A Message to Employees; Facts about the Wagner Act"⁹ is confined to a description of the rights and obligations arising under the Act very similar to the explanation contained in the leaflet above described. Morehead testified that he received about 55 copies of this leaflet from Mr. Gray, a vice president and treasurer of the respondent, which he had posted in the mill where the employees could read them.

Neither leaflet can be deemed an unbiased explanation of the Act. Both alike neglect to set forth in clear terms the fundamental purpose of the Act to eliminate certain sources of industrial conflict "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."¹⁰ In both alike, the emphasis upon what the provisions of the Act do not purport to do, rather than upon the positive principles and the rights which the Act establishes, serves to distort its true significance and to mislead readers of the leaflets with respect to employees' rights under the Act, in contradiction of their avowed intent "to prevent misunderstanding." The distribution by an employer of such leaflets among his employees constitutes an attempt to circumvent the Act by interfering with his employees' right, unprejudiced by the employer, to make up their own minds regarding self-organization.

We likewise consider the outright hostility to the Union displayed in the leaflet entitled "The Truth about the Wagner Labor Law." By distributing this leaflet among its employees, the respondent clearly manifested to them its own hostility to the Union and its disapproval of those who might become members. In view of the distribution of this leaflet among the respondent's employees under the admitted authorization of its superintendent, we can give little weight to testimony by supervisory employees asserting their disinterest in the organization of respondent's employees and their denial that they made statements to the employees reflecting disapproval of the Union is correspondingly weakened.

IV. THE DISCHARGES

The complaint, as amended at the hearing, alleges the discriminatory discharges of 17 employees. At the hearing the respondent contended that it had discharged only three of the 17, namely: Chester Manning, Frank Sutton, and C. L. Anderson; that the remaining 14

⁹ Bd. Exh. No. 11.

¹⁰ 49 Stat. 449, Sec. 1.

employees were merely laid off on account of the lack of business, and that it intended to reemploy them as soon as business conditions warrant. The respondent admits that most of the employees involved were efficient and otherwise satisfactory.

We turn to a consideration of the circumstances surrounding the alleged discharge of each of the employees involved.

Mr. and Mrs. Chester Manning. Manning and his wife both joined the Union at the inception of its activities on April 20, 1937. It seems to have become known almost immediately, at least to one of the supervisors, that both Manning and Sutton, another employee named in the complaint, had joined the Union.

Manning and his wife were discharged on April 23, 1937. Both had been employed by the respondent since July or August, 1936. About a month prior to his discharge, Manning was transferred from his job of oiling and banding in the spinning room to running frames or speeders. On April 22, after leave of one day, which he had been granted to attend a funeral, he was shifted to the card room. On April 23 he was ordered to sweep in the spinning room. During the morning McDuffy, the overseer, discharged him, giving as a reason that he had been "getting kicks at the office." He then told Manning that the latter had been warned with respect to the Union and he clearly manifested his hostility toward any organization of the respondent's employees. Manning immediately received both his own time ticket and that of his wife. About ten minutes later, the Chief of Police of East Lumberton, who is paid directly by the respondent for the performance of his public duties, met Manning and handed him a notification, signed by G. W. Pruette, assistant superintendent of the mills, to vacate the mill house in which he lived.

No one told Mrs. Manning that she was discharged and she was unaware of her dismissal until she was given her pay ticket by Manning. McDuffy, her overseer, testified that Mrs. Manning was a satisfactory employee.

McDuffy, and other supervisors of Manning, stated that he was discharged because he had performed his work unsatisfactorily on different jobs to which he had been assigned, and that his wife had been discharged in accordance with the respondent's policy of discharging all members of the family where the head of the family is discharged, in order to make available the company house for occupancy by some other family employed by the respondent.

In significant contrast to the statements of the witnesses testifying on behalf of the respondent with respect to Manning's inefficiency as an employee, is a letter, dated May 4, written to Manning by Reinhart, who, as overseer of carding and spinning for the respondent until two or three weeks prior to Manning's discharge, had been Manning's su-

pervisor. In the letter, Reinhart offered Manning a position at Reidsville in another mill where Reinhart was then employed. This offer would seem to indicate that he was considered by Reinhart a satisfactory and efficient textile worker.

Upon the basis of all the evidence we find that Manning and his wife were discharged because of their membership in the Union.

Manning's salary at the time of his discharge varied from \$12 to \$16 per week. Mrs. Manning earned between \$11 and \$12 per week. Neither one has earned any money since the time of his and her discharges.

Mr. and Mrs. Frank Sutton. Sutton and his wife joined the Union on April 20, 1937. Both were discharged on the following day.

Sutton had worked for the respondent for approximately 25 years. During that period he was laid off once for about a week because of intoxication. Otherwise nothing appears to have marred his employment record during his long period of service with the respondent. About four weeks prior to his discharge he had been transferred, at his request, from a night job in another of the respondent's mills to the daytime job which he held under McDuffy in the spinning and carding room of the Dresden Mill at the time of his dismissal. Mrs. Sutton had worked for the respondent somewhat longer than one year. Willoughby, her overseer, testified that her work had been satisfactory.

On April 21, 1937, when Sutton came to work, the section hand informed him that he was not to work any longer and told him: "If they ask you anything about it, tell them it was kicks from the office." When Sutton asked McDuffy, the overseer, for an explanation, he was also told by him that there "is a kick from the office that you are not giving satisfaction." When McDuffy was further pressed by Sutton, he admitted to him that his work was satisfactory, and added that he would ask at the respondent's office whether he could restore him to his job.

Sutton then went to another of the respondent's mills, where his wife worked, to inform her of what had happened. Sutton testified that Willoughby threatened him with jail for "running around here in the mill soliciting for the union." Witnesses for the respondent testified that Sutton spoke to his wife in disobedience of a rule against speaking in the mill during working hours and created some disturbance when ordered out of the mill by Willoughby. However, a determination as to this is immaterial since the respondent takes the position that it discharged Sutton prior to the time that he came to the mill to speak to his wife, for the reason that he did not tend to his work despite repeated warnings. The possibility that some altercation between Willoughby and Sutton took place

does not preclude a finding that Sutton's prior discharge was the result of his membership in the Union. Nor do we find that the altercation, as described, is of sufficient moment to prevent an order requiring Sutton's reinstatement.

On the same day, shortly after this incident occurred, Luther Ward, a section man supervising Mrs. Sutton's work, dismissed her. This took place at approximately 6:40 a. m. after she had worked only 40 minutes that day. We do not find in the altercation between Sutton and Willoughby a sufficient or plausible reason for the dismissal of Mrs. Sutton, whose services were admittedly satisfactory. It was also claimed by the respondent that the rule, requiring the dismissal of all members of the family when the head of the family is discharged, is applicable to her. Assuming this as the reason for Mrs. Sutton's discharge, we would necessarily find that she was the victim of discrimination in violation of the Act, if we determined that Sutton was discharged as the result of his union affiliation.

In view of Sutton's long employment in the respondent's mills, credence cannot be given to McDuffy's uncorroborated statement that Sutton did not tend to his work and that he had repeatedly received warnings with respect to this. Upon all the evidence we find that Sutton and his wife were discharged because of their membership in the Union.

Sutton received a wage of from \$14 to \$15 per week. Mrs. Sutton earned about \$12 per week. Neither one has obtained any regular or substantially equivalent employment since the time of his and her discharge.

C. L. Anderson. Anderson became a union member on April 20, 1937. He was discharged on May 20, after having been employed by the respondent for three years. Anderson's supervisors, McDuffy and R. C. Collins, testified that he was discharged because he had cut waste from the bobbins in violation of a rule forbidding this. Anderson admitted that he had been told not to cut off the waste but added that subsequent to this order he was told he might do so, provided that he exercised care. The evidence is conflicting as to whether such a rule of general application existed and whether Anderson had been granted some leeway with respect to its observance. Nevertheless, there is insufficient evidence to show that the respondent discharged Anderson for union activity.

W. C. Ward. Ward worked for the respondent for 11 years beginning in 1913. He then left and did not return until one year prior to his discharge. When last working for the respondent, he was employed as a sweeper in the spinning room. On April 28, 1937, he joined the Union and on May 2 he attended a Union meeting at Sutton's house. The following day his section man, Dewey Barnes,

informed him that he was laid off. Stallings, his overseer, when questioned, told Ward that he had orders to lay him off. Although he applied for reinstatement several times, he was not given an opportunity to work until June 9, the day before the hearings in this proceeding began, when Willoughby offered him work. Stallings testified that Ward was laid off because of lack of work. The respondent stated that it would reemploy Ward when it again had work for him.

The record affords insufficient basis upon which to sustain a charge that Ward was discharged because of his membership in the Union.

Mrs. Esther Howard. Mrs. Howard worked for the respondent for seven years and at the time when her employment was terminated, she was employed as a spinner. She lived in one of the mill houses. Her husband was not employed by the respondent. Some three weeks after Mrs. Howard joined the Union, her daughter, who also worked for the respondent, felt ill and quit work. The following day when Mrs. Howard reported for work, the section hand dismissed her and told her that she would be required to move from the respondent's house. Mrs. Howard testified that new hands were being hired at this time. McDuffy, her overseer, stated that he laid her off to obtain the house in which she lived, inasmuch as she was the only one in her family working for the respondent after her daughter quit and that she was a part time hand whose services were not then needed.

The evidence does not permit a finding that Mrs. Howard was discharged because of her membership in the Union.

H. E. Lawson. Lawson had been in the respondent's employment about five months at the time when the alleged discrimination against him took place. He had also worked for the respondent prior to 1919. On April 21, 1937, he joined the Union. He testified that about two weeks subsequent to this, John Phillips, his overseer, called him into his office. There he accused Lawson of spying upon him and told him that the respondent would never recognize the Union. When questioned by John Phillips, Lawson told him that he had joined the Union. On May 18, John Phillips shifted Lawson and his own brother to a ten loom set. Previously Lawson had run a 16 or 20 loom set and he testified that the change would have cut down his weekly wages of approximately \$14 by about one-third. That same evening he informed Caulder, the chief loom fixer, that he was going to quit and then he left work. When he subsequently asked to be given back a set of looms similar to that upon which he originally worked, he was told that the mill had sufficient help. John Phillips testified that shifts to different looms occurred depending on the kind of material ordered.

We cannot, upon the evidence in the record, sustain the allegation that Lawson's transfer from a 16 loom set to a ten loom set was the result of bias against him for his membership in the Union.

Thomas R. Boney, Sr., T. R. Boney, Jr., and Floyd Boney. The record does not disclose the dates upon which these employees of the respondent joined the Union, but it was testified that all joined at the same time and that their discharges took place after they became Union members. The discharge of Thomas R. Boney, Sr., occurred on May 17, 1937.¹¹ His two sons, T. R. Boney, Jr., and Floyd Boney, were both discharged on the day following their father's discharge. T. R. Boney, Jr., testified that his dismissal took place about two weeks after he had joined the Union.

The father, Thomas R. Boney, Sr., had worked for the respondent for three years and for the last two years of that period was employed as a painter. Although the number of painters employed varied, the respondent appears to have had five painters, at the time the elder Boney's services were terminated, who were engaged in painting the houses in the mill village and repairing windows under the direction of Calton Flowers, a supervisor in charge of the painters and carpenters. Thomas R. Boney, Sr., was the oldest in length of service among the five painters and was considered a leader of them. At some time before he joined the Union, he was questioned by Flowers as to whether he had heard anything about the Union. Flowers also told him that this influence counted among the men and that he would appreciate it if the elder Boney "would cater in that way toward the Company".

It appears that a short time prior to the date of the elder Boney's discharge, he and all the other painters were laid off. He testified that at the time he was first laid off, together with the other painters, "They marked on my time, pay sheet, 'leaving'. And I corrected that, told them 'no', that I wasn't leaving, that I wasn't going anywhere. And Mr. Flowers spoke and said, 'Well, that would sound better than being discharged'". After a day's absence from work the painters were recalled, and worked until May 17. On that date Boney was paid off in full. He has not been called back to work since that time. The record discloses that at least three of the five painters discharged at this time, were Union members. The fourth, Ernest Baxley, who was not a Union member, was taken back to work after the general lay-off. No evidence appears as to whether the fifth painter belonged to the Union.

¹¹ Thomas R. Boney, Sr., testified that he was discharged on May 7, 1937. But it was testified by him and by two other painters, John McCormick and George Lamb, also named in the complaint, that the work of all three was terminated at the same time. McCormick and George Lamb further testified that this occurred on May 17. We therefore find that the correct date of the elder Boney's discharge is May 17, 1937.

Witnesses for the respondent testified that economy required the lay-off of the painters. Pruette, the assistant superintendent, said that he was willing to restore all the painters to their jobs as soon as the management would permit this. It was admitted that the elder Boney performed his work satisfactorily. We do not attach any weight to Flowers' uncorroborated statement that Baxley was retained in preference to the elder Boney because Boney had been in poor health and could not do all the climbing required in repairing windows which constituted the greater part of the work after the lay-offs. The elder Boney explained that in his work he had been engaged in putting in window-glass as well as in painting.

T. R. Boney, Jr. had been employed for two and a half years. At the time of his discharge he was employed hauling filling. Prior to his discharge, he was questioned by Alvin Bane, a second hand in the weave room, about the Union and warned against joining it. The day after his discharge, Bane told him that he had been dismissed because of his membership in the Union.

The respondent offered no evidence specifically directed to explaining the discharge of Floyd Boney. He had been employed by the respondent for six years and was discharged the same day as his brother, T. R. Boney, Jr. His overseer, McDuffy, discharged him referring to the fact that his father had been laid off and stating that there was no work for him. Waldrop, overseer of weaving, under whose supervision T. R. Boney, Jr. worked, stated that this son was discharged under the rule, already referred to, that when the head of the family is discharged, other members are likewise dismissed in order that the respondent may repossess itself of the house. As indicated above, it was stated on behalf of the respondent that the painters, including the elder Boney, were not discharged but laid off pending the resumption of work. That the respondent enforces a policy requiring the discharge of all members of a family when its head is dismissed in order to repossess the mill house may well be true, but it is hardly credible that this same policy is pursued in the case of employees merely laid off, and not permanently discharged, and who are expected to return to work upon the resumption of activity in the mills. Although we do not agree that these men were only laid off, the respondent's claim to that effect appears to contradict the explanation offered by it.

We find that Thomas R. Boney, Sr., T. R. Boney, Jr., and Floyd Boney were all discharged because of their membership in the Union.

Thomas R. Boney, Sr., earned \$15 per week at the time of his discharge. Since then he has earned a total of between \$12 and \$15. T. R. Boney, Jr. received a wage of about \$12 per week. He has earned nothing since his dismissal from the respondent's employ.

Floyd Boney was earning eight dollars per week when discharged. He has had no work since that time. None of these three men had obtained any other regular or substantially equivalent employment at the time of the hearing.

George Lamb. Lamb had worked as a painter for the respondent for about three and one-half months. He was in the same group of painters as the elder Boney. About May 1, 1937, he was laid off. He testified that when he pressed Flowers for an explanation concerning his lay-off he was given to understand that the Union had been the cause thereof. Lamb then told him that he did not belong to the Union, and on the following day he was permitted to return to work. On about May 4 or 5, he joined the Union. As in the case of the other painters, his employment was terminated on May 17. Subsequently Flowers told him that if he left the Union and surrendered his Union card, he would, after reporting back to the office, be foreman of the painters within two weeks. Witnesses for the respondent testified that Lamb's lay-off was occasioned by the decline in the respondent's business which took place in April and May 1937. In view of the testimony showing that the respondent was employing only one painter and that this painter, Baxley, was second in seniority among the painters, surpassed only by the elder Boney in the length of time employed by the respondent, we do not find that Lamb's employment was terminated as a result of his membership in the Union.

*Mrs. John B. McCormick and Mrs. Betty McCormick.*¹² McCormick was one of the group of painters working under the direction of Flowers. He had been employed by the respondent since March 1937. On April 20 he joined the Union. His employment, as that of the elder Boney and George Lamb, was terminated on May 17. Our reasons for finding that George Lamb was not discharged for his union affiliation are likewise applicable to McCormick.

Mrs. McCormick had been employed by the respondent since February 26, 1937. She joined the Union on April 20, 1937. In her testimony she stated that she was discharged on April 3, 1937. Johnny Barnes, her section man, stated that she was a good worker and that it was necessary to lay her off because he had no work to give her. The evidence does not warrant a finding that Mrs. McCormick's employment was terminated as a result of her membership in the Union.

Mrs. Hattie Beasley Brown. Mrs. Brown began working for the respondent in 1930 and has been in its employ since that time with the exception of one year. She joined the Union on April 20, 1937. When she came to work on the following day, she was discharged

¹² In the complaint the name Mrs. Betty McCormick is given. However, in the record Mrs. McCormick is referred to as Mrs. Beadie McCormick.

by Jimmie Edwards, the section man. She was told by McDuffy, to whom she went, that her work was satisfactory but that he had received orders from the main office to let her go since she was "trying to cause a disturbance for the mill company". She further testified that, "He said 'I haven't a soul to put on your job, on your work. I have always found your work satisfactory. I would like to keep you. They won't let me.' He said the complaint come from the office." At some later time, Morehead, the general superintendent, notified her that she could return to work. When she reported for work on May 17, she was told by McDuffy that he would not reemploy her because she had taken Manning and Sutton to Fayetteville to see the Union organizer Strickland.¹⁸ Mrs. Brown also stated that the respondent needed help at the time and that McDuffy's wife, who had been ill, had been hired to fill her place.

Morehead testified that Mrs. Brown had been discharged by McDuffy for failing to come to work at noontime and remaining outside of the mill after she was to have started working, either one or two days prior to her discharge. However, he later asked McDuffy to reemploy her since her work had been satisfactory, and notified her of this. When after the lapse of some time she reported for work on May 17, her job had been filled by someone who lived in the village. Morehead stated that those living in the mill village are given preference in employment over those who, like Mrs. Brown, do not live in the village of East Lumberton.

It is difficult to believe that Mrs. Brown's discharge was solely motivated by the infraction of discipline offered by the respondent as the cause of her discharge, particularly in view of her admitted competence as an employee and her long service with the respondent since 1930. We find that Mrs. Brown was discharged because of her membership in the Union, and that the subsequent failure to reemploy her was occasioned by her driving Manning and Sutton, both active in the Union, to Fayetteville.

Mrs. Brown earned \$12 per week prior to her discharge. Since that time she has earned a total of \$8.90. She had not obtained any other regular or substantially equivalent employment at the time of the hearing.

Mr. Gregory Phillips and *Mrs. Mary Phillips*. Phillips and his wife both joined the Union on April 26, 1937. He had been working for the respondent since 1918, with the exception of two years which were probably 1924 and 1925. For the three months prior to his discharge, he had been driving one of the respondent's three trucks on the night shift. Mrs. Phillips had worked for about 20 years for the respondent and was employed as a winder at the time of her discharge.

¹⁸ Other testimony indicates that this trip was also taken to file charges against the respondent with an agent of the National Labor Relations Board.

On May 2, 1937, Mrs. Phillips attended a Union meeting at Sutton's house. The following day she was discharged by Edgar Baxley, her section boss. Stallings, the overseer of the night shift upon which Mrs. Phillips worked, told her that inasmuch as her husband was working, she did not need a job. She testified that at this time new hands were being hired by the respondent. On May 4, 1937, the day following his wife's discharge, Phillips returned to work after an absence caused by his illness. Capers Clewis, the yard foreman and Phillips' supervisor, notified him that he would not be continued on his job.

Phillips testified that about two weeks prior to the time when he joined the Union, he had been questioned by Clewis as to whether he had seen any organizer. A few days thereafter, Clewis asked Phillips what kind of car the organizer drove, and where he was organizing. Moreover, Willoughby, one of the respondent's overseers, took occasion to tell Phillips that the respondent would cease to operate rather than have a union in its mills. Phillips also stated that Willoughby told him that "The union activity would go into a place to organize and sign them up and go to the main office and draw a check for every employee for the amount, a dollar or so, or two dollars for the employees up to the office and then their Union organizers were gone."

It was testified on behalf of the respondent that lack of business required it to minimize expenses and that Phillips was laid off because he was an extra man and because he and his wife did not live in the mill village in a company house but had their own home outside of East Lumberton. Of significance is the testimony of Capers Clewis that after Phillips was laid off two of the three truck drivers employed had their hours of duty extended to 16 hours on some nights and to 17 hours on other nights. Prior to the termination of Phillips' employment they were on duty 11 or 12 hours per day. The work, which so excessively lengthened the hours of duty of the two drivers, might well have been given to Phillips as part time work. It is a warranted and normal assumption that an employer would prefer to utilize the services of an employee who worked for him for a long period of time rather than increase the hours of duty previously required of other employees. We find that Phillips and his wife were both discharged as a result of their membership in the Union.

At the time of his discharge Phillips was earning \$13 per week. Since then he has obtained other work which pays him \$15 per week. He testified that he wished to return to his employment with the respondent, since his present work as a carpenter is not steady work. Mrs. Phillips has not been employed since the time of her discharge.

In view of the hostility and intimidation which was directed against Manning, and the respondent's expressed bias against the Union, and in view of the circumstances surrounding the discharges hereinbefore described, we find that by discharging Chester Manning and Mrs. Chester Manning, on April 23, 1937; by discharging Frank Sutton and Mrs. Frank Sutton, and Hattie Beasley Brown on April 21, 1937; by discharging Thomas R. Boney, Sr. on May 17, 1937; by discharging T. R. Boney, Jr. and Floyd Boney on May 18, 1937; by discharging Mrs. Mary Phillips on May 3, 1937; and by discharging Gregory Phillips on May 4, 1937, the respondent has discriminated against its employees with respect to hire and tenure of employment for the purpose of discouraging membership in a labor organization, and that by such acts the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act. Their work having ceased as a result of unfair labor practices, Chester Manning, Mrs. Chester Manning, Frank Sutton, Mrs. Frank Sutton, Hattie Beasley Brown, Thomas R. Boney, Sr., T. R. Boney, Jr., Floyd Boney, Gregory Phillips, and Mrs. Mary Phillips at all times thereafter retained their status as employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.

The evidence concerning C. L. Anderson, W. C. Ward, Esther Howard, H. E. Lawson, John B. McCormick and Mrs. Betty McCormick, and George Lamb does not establish discrimination in regard to hire and tenure of employment. The complaint with respect to these persons will therefore be dismissed.

V. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent 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.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Textile Workers Organizing Committee is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. Chester Manning, Mrs. Chester Manning, Frank Sutton, Mrs. Frank Sutton, Thomas R. Boney, Sr., T. R. Boney, Jr., Floyd Boney, Hattie Beasley Brown, Gregory Phillips, and Mrs. Mary Phillips were, at the time of their discharge and at all times thereafter, employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.

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

4. The respondent, by discriminating against Chester Manning, Mrs. Chester Manning, Frank Sutton, Mrs. Frank Sutton, Thomas R. Boney, Sr., T. R. Boney, Jr., Floyd Boney, Hattie Beasley Brown, Gregory Phillips, and Mrs. Mary Phillips in regard to hire and tenure of employment and terms and conditions of employment, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) 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.

6. The respondent in the discharge of C. L. Anderson, W. C. Ward, Esther Howard, John B. McCormick, Betty McCormick, and George Lamb, and in the reduction of the number of looms that H. E. Lawson operated, from 16 to ten, has not engaged in unfair labor practices, within the meaning of Section 8, subdivisions (1) and (3) of the Act.

ORDER

Upon 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 Mansfield Mills, Inc. and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discharging or refusing to reinstate any of its employees, or from in any other manner discriminating in regard to hire or tenure of employment of any of its employees, in order to discourage membership in Textile Workers Organizing Committee or any other labor organization of its employees;

2. 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

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

(a) Offer to Chester Manning, Mrs. Chester Manning, Frank Sutton, Mrs. Frank Sutton, Hattie Beasley Brown, Thomas R. Boney, Sr., T. R. Boney, Jr., Floyd Boney, Gregory Phillips, and Mrs. Mary

Phillips immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph (a) above for any loss of pay they have suffered by reason of the respondent's discrimination in regard to their hire, by payment, respectively, of a sum of money equal to that which each would have earned as wages during the period from the date of such discrimination to the date of such offer of reinstatement, less the amount each has earned during that period;

(c) Post immediately notices to its employees in conspicuous places in each department of its cotton mills stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Fifth Region within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and is hereby, dismissed in so far as it alleges discrimination against C. L. Anderson, W. C. Ward, Esther Howard, H. E. Lawson, John B. McCormick, Mrs. Betty McCormick, and George Lamb.