

In the Matter of INDIANAPOLIS GLOVE COMPANY and AMALGAMATED
CLOTHING WORKERS OF AMERICA, LOCAL NO. 145

Case No. C-251—Decided February 11, 1938

Glove Manufacturing Industry—Interference, Restraint, or Coercion: expressed opposition to labor organization, threats of retaliatory action; discrediting union and union leaders; engendering fear of loss of employment for union membership and activity; persuading employees to refrain from forming or joining or to resign from union, threat to close plant unless union organization and activity cease—*Company-Dominated Union:* domination or interference with formation or administration; support; active solicitation of members permitted during working hours; recognition as exclusive representative of employees; disestablished, as agency for collective bargaining—*Back-Pay:* awarded.

Mr. Herbert N. Shenkin, for the Board.

Mr. Frank C. Dailey, of Indianapolis, Ind., for the respondent.

Mr. Harvey A. Grabill, of Indianapolis, Ind., for the Alliance.

Miss Fannie M. Boyls, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Amalgamated Clothing Workers of America, Local No. 145, herein called the Amalgamated, the National Labor Relations Board, herein called the Board, by Robert H. Cowdrill, Regional Director for the Eleventh Region (Indianapolis, Indiana), issued its complaint dated July 26, 1937, against Indianapolis Glove Company, Indianapolis, Indiana, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint as amended alleged, in respect to unfair labor practices, that the respondent, on or about March 18, 1937, discharged three of its employees because they had engaged in concerted activities for the purposes of collective bargaining; that the respondent, on or about April 1, 1937, and thereafter, denounced the Amalga-

mated and threatened it would never recognize that union and would close its factory if the Amalgamated ever became organized therein; that the respondent, on or about April 26, 1937, instigated, fostered, dominated, and interfered with the formation and administration of, and contributed financial and other support to, a labor organization known as Indianapolis Glove Workers Alliance, herein called the Alliance; that the respondent, on or about May 31, 1937, in order to encourage membership in the Alliance and to discourage membership in the Amalgamated, entered into an agreement with the Alliance, recognizing it as the exclusive representative of all its employees for the purposes of collective bargaining; that the respondent, in June 1937, discharged one of its employees because he had joined the Amalgamated and in order to discourage membership in that organization; that the respondent, by these and other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.¹

A copy of the complaint and notice of a hearing thereon to be held at Indianapolis, Indiana, on August 5, 1937, were duly served upon the respondent and the Alliance. Upon motion made by the Alliance, an order was issued by the Regional Director on July 30, 1937, allowing the Alliance to intervene. On July 31, 1937, the respondent filed with the Regional Director a motion to make the complaint more specific and to extend the time for filing its answer. The Regional Director refused to extend the time for filing an answer and ruled that an answer should be filed prior to the issuance of a ruling on the motion to make the complaint more specific. To such action and ruling, the respondent filed a "protest." It thereafter, on July 31, 1937, filed an answer, and later an amended answer, in which it denied that it had engaged in any of the unfair labor practices with which it was charged and claimed that Violet Clements, Edith McCready, and Edna Wickham were not discharged, but that they voluntarily quit working; that they had, however, conducted themselves in such a manner as to justify the respondent in discharging them, in that they had refused to work and engaged in a sit-down strike within the respondent's plant; and that the discharge of James H. Smith was solely because of his inefficiency.

Pursuant to the notice duly served upon the respondent and the Alliance, a hearing was conducted at Indianapolis, Indiana, on August 5, 6, 7, and 9, 1937, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Alliance were represented by counsel, and full opportunity to be heard,

¹ The original complaint alleged the discharge only of Violet Clements. The complaint was amended at the hearing to include allegations that Edith McCready and Edna Wickham were discharged on or about March 18, 1937, because of their concerted activities for the purposes of collective bargaining, and that James H. Smith was discharged in June 1937 because he joined the Amalgamated.

to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing, the respondent renewed its motion to make certain allegations in the complaint more specific. This motion was denied. At the conclusion of the Board's evidence, the Board's attorney moved to conform the pleadings to the proof. The motion was granted. During the course of the hearing, the Trial Examiner made other rulings on various motions and objections to the admissibility of evidence. The Board has reviewed all rulings of the Trial Examiner and of the Regional Director and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On September 29, 1937, the Trial Examiner filed with the Regional Director his Intermediate Report, copies of which were duly served upon all the parties. He found that Violet Clements, Edith McCready, and Edna Wickham had been discharged by the respondent because of their concerted activities for the purposes of collective bargaining; that the respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; and that the respondent had encouraged membership in the Indianapolis Glove Workers Alliance, had dominated and interfered with the formation and administration of said Alliance and contributed financial and other support to it. He found, however, that the respondent had discharged James H. Smith for inefficiency and for cause, and not because he had joined the Amalgamated, as was alleged in the amended complaint. He recommended that the respondent cease and desist from engaging in the aforementioned unfair labor practices, that back pay be awarded the three employees unlawfully discharged and that the respondent disestablish Indianapolis Glove Workers Alliance as an agency for collective bargaining. Exceptions to the Intermediate Report were duly filed by the respondent and by the Alliance. The Board has considered these exceptions, and, save to the extent that the findings below depart from those of the Trial Examiner, finds that the exceptions are without merit.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

Indianapolis Glove Company is a corporation organized in 1904 under the laws of the State of Indiana. It operates eight plants at which it is engaged in the manufacture, sale, and distribution of jersey, canton flannel, and combination cloth and leather work gloves. Five of its plants are located in Indiana and three in Ohio. The respondent employs a total of approximately 2,100 employees, about

850 of whom are employed in its Indianapolis plant, the one with which we are here concerned. The respondent is the second largest manufacturer of gloves in the United States.

Most of the raw materials used by it are purchased in States other than Indiana. Cotton piece goods and cotton thread are purchased in Massachusetts, Connecticut, New York, New Hampshire, North Carolina, South Carolina, Georgia, Alabama, and Tennessee. Leather is purchased in the New England States, Illinois, Wisconsin, Minnesota, Michigan, and Maryland. Ordinarily these raw materials are shipped directly from the vendor to the plant which manufactures them into the finished product, but in emergencies raw materials may be shipped from an Indiana plant to an Ohio plant and vice versa.

The respondent's products are distributed exclusively by its own salesmen, who work out of its Indianapolis office. The principal purchasers of its gloves are wholesale distributors who are located in various parts of the country. A large percentage of the respondent's products are sold in States other than Indiana and some are sold in foreign countries. In 1936 the gross sales of the respondent amounted to \$4,540,360.65, of which sum approximately \$4,033,000, or 88.8 per cent, represents sales made outside the State of Indiana.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Clothing Workers of America, Local No. 145, is a labor organization affiliated with the Committee for Industrial Organization. It was organized among employees of the respondent at its Indianapolis plant during the latter part of March 1937, and admits to membership all of the employees except foremen, foreladies, and "other representatives" of the respondent. At the date of the hearing it claimed a membership of approximately 450 employees of the respondent.

Indianapolis Glove Workers Alliance is a labor organization formed among employees of the respondent during the latter part of April 1937. It admits to membership all persons employed at the respondent's plant or in connection with the operation thereof except those "occupying any major or minor positions giving them executive power in said plant."² On June 2, 1937, and at the date of the hearing, it claimed a membership of over 600 employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The discharges for concerted activities of March 18, 1937*

During the early part of 1937 several of the employees of the respondent who were employed at sewing the fingers of gloves, and who

² Articles of Association, Alliance Exhibit No. 3.

were called tippers, had from time to time asked their forelady, Martha Hartman, for an increase in rate of pay. Prior to March 18, 1937, such requests had been made by individual tippers, and with no success. On that date all of the tippers except Melba Gater, who was employed partly as a tipper and partly as a piecer, nine in number, approached their forelady in a group as they returned from their lunch hour at one o'clock and requested that they be given an increase in rate of pay on "regulars", a type of glove distinguished from "Big Bears" on which the tippers claimed they could make better wages. The conference with Mrs. Hartman lasted approximately a half hour and no satisfaction was obtained. The nine tippers, pursuant to a previous understanding reached during the noon hour, then returned to their machines and sat down but did no work except to make repairs, for which they received no compensation, for the remainder of the afternoon. The repair work took from 10 to 20 minutes for completion. The tippers were paid on a piece-work basis and consequently earned nothing that afternoon. At 5:30 p. m., closing time, they left the plant with the other employees. The officials of the respondent knew of this concerted action of the tippers early in the afternoon, but neither they nor any other supervisory employee approached the tippers or reprimanded them during the afternoon.

That evening their forelady, Martha Hartman, called at the homes of Violet Clements and Edna Wickham, handed them their pay checks and personal belongings, and told them not to return to work. On the following morning Edith McCready, who could not be located by the respondent on the previous night, was discharged when she reported for work. Later that morning these three employees approached Charles Zwick, president of the respondent, as he entered the plant, to discuss their discharges. He told them, "You girls know why you are fired," and refused to talk further with them.

The respondent does not deny that the three employees above-mentioned were considered by it to be leaders in the concerted activities just described and that for such reason they were not permitted to return to work on March 19. The claim of the respondent that the employees in question were not discharged but were refused reinstatement after they had voluntarily quit by engaging in a sit-down strike seems to us frivolous. Such was the position taken by the respondent in its answer and by Brodehurst Elsey, the respondent's secretary-treasurer, on the witness stand. It receded from this position in its brief, however, and more aptly stated its contention in the following language:

The undisputed evidence shows that the nine girls engaged in a sit-down strike. The company had the right to discharge all. It chose to discharge the three leaders and this does not constitute an unlawful discrimination or an unfair labor practice.

The brief adds "that all nine were legally subject to discharge for glaring misconduct."

Long prior to the time that the term "sit-down strike" became common parlance, stoppages such as that participated in by the nine tippers were frequent occurrences among unorganized laborers in the clothing and other industries. A stoppage was considered by the employees as the safest method of calling attention to their grievances without placing responsibility for leadership upon individuals. Without a labor organization or effective bargaining agency to represent them the fear of individual employees to assert leadership in the presentation of grievances for a group was usually well-founded. As in the case before us, the spokesman was frequently considered an agitator and discharged.³

The nine tippers were unorganized and could not be represented by a labor organization in the presentation of their grievances. The stoppage engaged in by them was a spontaneous expression of discontent staged for the purpose of bringing to the attention of the respondent the grievance concerning wages which repeated talks with their forelady had failed to remedy. The tippers testified that they had expected Mr. Zwick, president of the respondent, to come to them and talk to them during the afternoon; that when he did not come by closing time they determined to see him in a body on the following morning. If Mr. Zwick or any other official of the respondent who was authorized to hear and grant the requests of the tippers had interviewed them that afternoon, it is possible that the tippers might have resumed work.

The respondent does not contend that if the tippers had walked out of the plant on strike that afternoon, it would have been justified in discharging or refusing to reinstate them for such concerted activity. The fact that in this case the tippers remained at their machines during working hours instead of leaving the plant does not justify their discharge. They were not requested by the respondent to leave, nor did they remain in the plant after the hour at which they were supposed to leave. While the stoppage was going on they

³ With reference to the stoppage or shop strike practice, it is said by The Chicago Joint Board, Amalgamated Clothing Workers of America, 1922, *The Clothing Workers of Chicago*, p. 259: "This may be regarded as a survival of the time before collective bargaining and regular machinery for adjusting complaints had been established in the industry. Stoppages were then not only frequent occurrences, sometimes even taking on the dimensions and stubborn character of an actual strike, but they were unavoidable as a way for the workers to obtain attention for their grievances. They were explosions of rebellious feeling bound to result under a system of repressive shop government that refused to take the human instincts of the workers into account. Under that system there could be no parley between workers and management, for the workers' spokesman would be liable to prompt discharge for his pains, and certainly would be regarded as an undesirable agitator."

See also "Control of the Sit-Down Strikes," Editorial Research Reports, Vol. 1. (March 26) 1937, pp. 228-229.

did some work for the respondent's benefit, but for which they received no compensation. They all straightened and stacked tips which were on their machines, in order that they might work more quickly when they should resume their work. They committed no trespass, caused no harm to the respondent's property, and did not prevent other employees from working.⁴ The respondent has not demonstrated in what respect the conduct of the tippers was in any way unlawful or wherein it should be considered "glaring misconduct."

Violet Clements had been employed by the respondent intermittently over a period of approximately 16 years prior to her discharge on March 18. She was reinstated to her former position on July 8, 1937, two days after the filing by the Amalgamated of its second amended charge which alleged that she was discharged because of her participation in concerted activities for the purposes of collective bargaining. She had talked to her forelady concerning an increase in rate of pay on the morning of March 18, and had been one of the spokesmen for the tippers when they met their forelady in a group. Elsey testified that she was "the worst one" of the nine girls who had participated in the stoppage, that "she was a disturber before and had caused the factory a good deal of trouble," and that, "We have reason to believe that she was the one that we ought not to reemploy or ask to return to her work . . . because of her engaging in this sit-down strike." The respondent seeks to justify the discharge and refusal to reinstate Violet Clements by citing instances in which she had cursed or quarreled with various employees and had upon one occasion been disrespectful to Oscar Taber, its wage adjuster, by calling him "Os" instead of "Oscar" or "Mr. Taber." It is clear that the respondent did not discharge Mrs. Clements because of such acts. No complaint had ever been made by the respondent concerning her work.

Edna Wickham had been working for the respondent intermittently since 1925 and steadily since February 1936 until her discharge on March 18. She was offered reinstatement to her former position as a tipper on March 31, 1937. No complaint had ever been made concerning her work or her conduct at the plant prior to her discharge, which was apparently caused by the fact that she was the principal speaker for the group which interviewed Mrs. Hartman on the afternoon of March 18.

Edith McCready had worked for the respondent for approximately ten years prior to her discharge on March 18, during which

⁴There is testimony in the record to the effect that Melba Gater, the only girl who worked as a tipper on the afternoon of March 18, was asked by one tipper, Mary Sams, to quit working and threatened that she would get hurt if she did not quit. She continued to work, however, and was not further molested.

time no complaint had ever been made concerning either her work or her conduct at the plant. She was reinstated to her former position as a tipper on March 31, 1937, and thereafter worked for the respondent until June 4, 1937, at which time she voluntarily quit. Her discharge was apparently occasioned by the fact that she was overheard by her forelady on the morning of March 18 to have remarked, "We ought to go on a sit-down strike," after Violet Clements had unsuccessfully talked to such forelady about an increase in rate of pay on "regulars."

We find that Violet Clements, Edna Wickham, and Edith McCready were discharged by the respondent because they had engaged in concerted activities for the purposes of collective bargaining and other mutual aid or protection, and that the respondent in so discharging them has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

We also find that Edna Wickham and Edith McCready were each unemployed from March 19, 1937, to and including March 30, 1937, and that Violet Clements was unemployed from March 19, 1937, to and including July 8, 1937, because of said unfair labor practice of the respondent; and that none of said employees obtained any other or substantially equivalent employment during the periods above-mentioned.

B. Hostility expressed by the respondent toward the Amalgamated

It was shortly after the discharges above-mentioned and apparently as a result thereof that the Amalgamated Clothing Workers of America, Local No. 145, came into existence at the respondent's plant. On March 29, 1937, circulars were distributed in front of the plant announcing that a mass meeting would be held on the evening of March 30, 1937, at the Amalgamated Clothing Workers Hall on Ninth Street for the purpose of organizing the workers into a union. A copy of one of these circulars came into the hands of Brodelhurst Elsey, secretary-treasurer of the respondent. He went through the factory that day, cut off the power, and made a talk of about 30 minutes' duration in each department. He held in his hand, while talking, a copy of the Amalgamated circular, and read to the employees that part which stated:

Should any petty foreman or forelady interfere or threaten you in any manner for attending this meeting, report this matter immediately to Union Headquarters, . . . and this practice will be stopped.

Relative to the circular, Elsey himself testified that he told the employees, "What is printed on this card here is to tell you, the employees, to disregard the foreladies, who are your best friends, and to

start trouble in the factory." He informed them that no foreman or forelady would be permitted to tell employees whether or not they could attend any meeting. He bitterly denounced the Amalgamated; stated that they were only trying to stir up trouble and obtain some of the employees' money; that the workers had enough taken out of their checks for Social Security taxes and insurance premiums, without having outsiders come in and take more of their money; that he, Elsey, had been running the factory for 33 years and did not need any outsiders to help him run it. He further told them that the Company had a plant at Coshocton, Ohio, which had been closed down for 52 weeks because of union activities; that it had been closed by a strike called by about 15 per cent of the employees of the plant; that if the union became organized in the Indianapolis plant and the plant should be closed, it would be the employees who closed it.

In spite of the vigorous opposition expressed by Elsey, a number of the respondent's employees met at the Amalgamated headquarters on Ninth Street in Indianapolis on the night of March 30, 1937, and organized themselves into Local No. 145. Two days later Elsey called Nellie Restich, one of the employees who had attended the meeting, into his office, accused her of being an agitator, and told her she was jeopardizing her job. He pointed to some typed notes on union activities and stated, "And they tell me we cannot fire you." He again referred to the labor difficulties at Coshocton and asked her what any of the plants had accomplished by organizing. Elsey testified that he had intended to leave the impression with Mrs. Restich that she might lose her job if she annoyed the employees around her.

Several days later Elsey called Elbie Byassee, another employee who had attended the Amalgamated meeting and who was accused by his foreman of being an agitator, into his office and asked him about his union activities. Elsey told him, "They are after your money" and "They are running around over the country causing trouble," and that he didn't want Byassee misled by a "bunch of foreigners." Byassee had informed Elsey that one of the speakers at the first meeting could not speak good English.

On the morning of April 7, 1937, just after the second meeting of the Amalgamated, Elsey again went through the plant, turned off the power, and made a talk in each department. He told the employees that he could speak plainer than "the bunch of foreigners over on Ninth Street," that they had probably never worked a day in their lives, that they were probably chased out of their own country and had not even become naturalized in America. He held in his hand an Amalgamated membership card and informed the employees that he knew all of the girls who had attended the union meeting; that not over 30 girls had attended; and that "it was up to the rest of the

800 girls if they wanted to leave the shop opened or closed." He again referred to the Coshocton trouble and stated that "the disturbance that was going on in the factory was exactly like the disturbance that went on at our factory in Coshocton, Ohio."

A few days after the second Amalgamated meeting, Byassee was again called into Elsey's office. Elsey stated that he knew Byassee had attended the meeting, again sharply criticized the Amalgamated, told him of the three girls whom he had discharged for their agitation and that he did not intend to reemploy one of them. Byassee states that he was told: "You had better not go back over there any more. If you do, I will have to fire you." Elsey admits that he called Byassee into his office and talked to him upon both occasions after Byassee's foreman had reported that he was arguing with fellow employees; but Elsey denies that he threatened to discharge Byassee if he went to another Amalgamated meeting. Byassee continued to attend the Amalgamated meetings and became a member of that union at its third meeting. Regardless of whether Elsey actually threatened to discharge Byassee, it is apparent from other statements made to him, not denied, that Elsey did all within his power to discourage Byassee from joining the Amalgamated and attempted to intimidate him into remaining away from the meetings.

Elsey himself does not claim that the conduct of the respondent, as evidenced by the speeches made by himself throughout the plant, was strictly within the law. He admits that before April 12, 1937, when the constitutionality of the National Labor Relations Act was upheld by the United States Supreme Court, he did not take the Act so "seriously" as he did afterwards. He testified that after the Act was upheld and after he was counseled by his attorney and other persons, he reversed his policy, called in his foremen and foreladies, and instructed them to have nothing to do with union activities and to remain strictly neutral; that thereafter he made no more speeches to his employees and did not reprimand any more of them for union activities within the plant. He did not, however, inform his employees of this change in policy which he claims to have adopted.

The open hostility toward the Amalgamated which the respondent had manifested through its secretary-treasurer had, however, already achieved its effect in prejudicing large numbers of employees against the Amalgamated and in intimidating others. It had instilled into the minds of many of its employees the belief that the advent of the Amalgamated into the respondent's plant would result in its closing as the respondent stated had happened at its Coshocton plant. Membership in the Amalgamated was bitterly opposed by many employees; arguments and disputes became rampant; there was a decided decrease in production; a number of employees questioned their foreladies relative to the probability of a strike or shut-down; and

some of them left the respondent's employ for more secure and settled positions.

The seed of opposition to the Amalgamated planted by the respondent had become firmly rooted.

C. Domination and interference with Indianapolis Glove Workers Alliance

1. The loyalty pledge

As a result of the hostility displayed toward the Amalgamated by the respondent and the increase of membership in that organization, there sprang up a movement for organized resistance to the Amalgamated activities. This movement was first evidenced by a "Loyal Workers Pledge" which was circulated among the employees of the plant on or about April 26, 1937, and thereafter. Charles Willner, who worked as a truck driver for the respondent, testified that he and another employee, Larry Gray, who worked in the shipping department, prepared the pledge and started its circulation. The pledge read as follows:

We the undersigned employees of the Indianapolis Glove Co. believe that the Company is fair to us now, as it has been during the past many years, and, of our own free will we hereby pledge our loyalty and will continue to cooperate in every possible way that will enable us to continue at our work. We do not feel that any American worker should be compelled to pay tribute to outsiders for the privilege and right to work. We believe that loyalty will promote our best interests.

The respondent, through Oscar Taber, assisted in the circulation of this pledge by placing it upon the machine of one of its employees just as employees were arriving for work one morning. Taber, as hereinbefore stated, was the respondent's wage adjuster, and was consulted by the employees and foreladies concerning increases in wages. It was he who notified Edith McCready of her discharge and delivered her pay checks and personal effects on the morning of March 19, and it was he who first interviewed her when she applied for reinstatement. He was referred to by one of the employees as "a high official of the company." The pledge was circulated through the factory during working hours without objection from any of the foreladies or foremen. Further to facilitate and encourage its execution by all employees, a table was placed in the second-floor rest room of the plant and there several employees worked, soliciting and obtaining signatures on copies of the pledge. Other employees went through different departments of the factory and requested the workers to report at the rest room. All of these activities took place dur-

ing working hours, with the obvious knowledge of the foreladies and foremen, and without any objection on their part.

2. The mass meeting at the Athenaeum

About a half hour before closing time on April 27, 1937, the day following the circulation of the "Loyal Workers Pledge", Charles Willner passed through each department of the plant, had the power turned off, and announced that there would be a mass meeting held that night at the Athenaeum Hall for all employees of the respondent. He was accompanied on this excursion through the plant by three other employees who had been active in the circulation of the pledge. Just at closing time that afternoon another announcement of the meeting was made over the loudspeaker which was located in the respondent's personnel office and connected with each department of the plant. This announcement was made by E. W. Eastes, one of the respondent's salesmen.

It was announced at the meeting that night that such meeting had been called for the purpose of ascertaining the sentiment of the employees toward an employees' association. Speeches were made by Charles Willner and by E. W. Eastes and other salesmen. It was then decided that the employees should form an association or "Company Alliance" to which only employees of the respondent might belong.

3. The formation of the Alliance

On the following afternoon during working hours Charles Willner, E. W. Eastes, Lawrence Gray, and eight other employees who had been active in the circulation of the pledge, and who designated themselves as "the committee", called upon and employed Carl Wilde, an attorney recommended to them by the Industrial Department of the Chamber of Commerce, to assist them in the formation of Indianapolis Glove Workers Alliance.

On the following day, April 29, 1937, a second meeting of employees was held at the Athenaeum, at which time a constitution and by-laws prepared by Carl Wilde were adopted. There was testimony in the record to the effect that 483 employees became members of the Alliance at that time.

It is significant that at the interview with Carl Wilde on April 28, he told "the committee" that in view of the fact that the formation of the proposed organization had been discussed on the premises of the respondent and in view of the fact that the "Loyal Workers Pledge" had been circulated, "no preliminary work that had been done in respect to forming an organization would be used" and that they "would start afresh and form an organization without using the

employer's premises." ⁵ But the drastic remarks theretofore made by Elsey about the Amalgamated and the attacks made by him upon attempted interference from outsiders in the business with the inevitable instillation into the minds of many of the employees of danger to be feared from this outside union which had commenced organizing employees of the plant, the resulting circulation of the "Loyal Workers Pledge" and plans for the formation of an inside union, all sponsored and encouraged by the respondent in the manner hereinbefore set forth, cannot be divorced from the actual formation of the Alliance by the mere utterance by Mr. Wilde of the words, "We will start afresh." The preliminary activities of the respondent and the encouragement given by it to the movement for organizing an inside union were inseparable from the actual formation of the Alliance.

4. Encouragement and support by the respondent

However, even if it were granted that such separation were possible, subsequent occurrences at the respondent's plant clearly reveal encouragement and support given by the respondent to the Alliance. In spite of the admonition of Mr. Wilde against the use of the respondent's property for Alliance activities a notice of the second meeting at the Athenaeum was posted upon a bulletin board at the plant. Immediately after the formation of the Alliance, its leaders, most of whom had also been active in circulating the "Loyal Workers Pledge," began to solicit members for that organization during working hours inside the plant. There had been in existence at the plant for a number of years a rule forbidding employees to leave their own departments or the plant without the permission of their foreladies or foremen, and it was the custom of all employees, even though not all of them knew of the existence of an express rule, to ask permission from their foreladies or foremen to leave their departments for any purpose. In flagrant disregard of this rule and custom large numbers of Alliance members, in pursuit of Alliance activities, went from one department to another, and even left the plant for hours or days at a time without permission of the foreladies or foremen and without being reprimanded for so doing. Some of them punched their time cards upon leaving, and others did not.

An Alliance office or headquarters was established in a house across the street from the respondent's plant. There membership cards were typed and records of the association were kept. Employees went to and from this office throughout the day for a period of two or three weeks after the membership drive commenced. One employee, Eva

⁵ Affidavit of Carl Wilde, introduced into evidence as Alliance Exhibit No. 2.

French, a member of the committee which employed Carl Wilde and who worked for the Alliance as a typist, was absent from the plant for a period of ten days at one time, without having asked permission of her forelady and without being questioned concerning her absence when she returned. Charles Willner, president of the Alliance, testified that he worked day and night for about four months soliciting membership in the Alliance, and that during this period he was frequently absent from his department and the plant but informed his foreman only once of his intended absence.

One morning shortly after the Alliance was formed, Pauline Kranzer, an Alliance member, came through several departments of the plant and announced to the employees as she passed down each aisle that they could go across the street after 11:30 that morning and sign up as members of the Alliance. It was testified by one witness that in the leather department this announcement was made in the presence of the forelady, Alice Wilson. Another witness testified that Pauline Kranzer, upon entering the department, approached Alice Wilson and said, "Alice, I am supposed to go around and tell these girls to go down at eleven thirty," and that the forelady replied, "All right." Alice Wilson denies that she consented to the announcement being made by Pauline Kranzer or that she even knew that the announcement was being made, although she admitted seeing Pauline Kranzer in her department. The latter was not called by the respondent as a witness to refute the testimony of the two Board witnesses. We are convinced that Alice Wilson did know that the announcement was being made and that she gave her tacit, if not her express, approval of such action. A number of the employees left the plant during working hours, just after 11:30 a. m., and reported to the Alliance headquarters as they had been instructed to do. None of them asked permission from their foreladies to leave. One of the Amalgamated members also left the plant just after 11:30 that morning, but it is significant that she considered it necessary to, and did, ask permission from her forelady to leave, stating that she had some business to take care of.

All employees who were absent from their work while engaged in Alliance activities were paid by the Alliance a sum equivalent to the amount they would have earned had they been working for the respondent. Dues amounting to 25 cents a month were assessed against members, and the sum of \$850 was borrowed by five of the members from Security Trust Company of Indianapolis for the purpose of defraying expenses of the Alliance. The loan was evidenced by notes executed by Lawrence Gray and Charles Willner, previously referred to; Clarence E. Dickman, a leather cutter; George M. Furry, whose position with the respondent does not appear in the record; and E. W. Eastes. The latter, after actively participating in pre-

liminary organization activities of the Alliance by announcing the first meeting at the Athenaeum over the loudspeaker in the respondent's plant and attending and speaking at that meeting, and after signing the notes on behalf of the Alliance, learned that he was not qualified to be a member of that organization and took no further part in its activities.⁶ Whether or not Eastes' position with the respondent influenced the bank in making the loan referred to, we do not know. Willner, the only witness who testified concerning the obtaining of this loan, stated that he had walked away to a fountain while the others were negotiating for the loan. He testified that none of the signatories of the note held any kind of supervisory position at the plant.

Elbie Byassee, one of the employees who had been questioned and reprimanded by the respondent for his Amalgamated activities, testified that he heard a conversation which took place in the pool room of the plant on or about July 28, 1937, between Clarence Dickman, one of the Alliance members who had signed the notes mentioned above and who had been absent from the plant on Alliance activities upon a number of occasions, and a fellow employee, who questioned him concerning a report that he, Dickman, was seen drawing an Alliance check through the pay-roll department of the respondent. Byassee testified that Dickman replied, "Yes, I drew every one of my Alliance checks in the pay roll department downstairs," and that when further questioned concerning what his lawyer had instructed him, he, Dickman replied: "It wasn't our lawyer at all. The Alliance didn't have anything to do with hiring a lawyer. The company hired the lawyer." Neither Dickman nor Oscar Speaks, the employee with whom Dickman was alleged to have had the conversation, were called to the witness stand to refute this testimony. Charles Zwick, president of the respondent, and Brodehurst Eley, its secretary-treasurer, however, denied that the respondent had anything to do with the payment of employees for Alliance activities or with the employment or payment of Carl Wilde, the Alliance attorney. Eley testified that, although he knew one of the officers or directors of the Security Trust Company, neither he nor the respondent ever had any business dealings with that bank. All

⁶ Although E. W. Eastes was not placed upon the witness stand, a stipulation was entered upon the record at the hearing to the effect that if he were called as a witness, he would testify as stated above. It was also stipulated that Eastes made the announcement just mentioned without consulting anyone relative thereto, and that he was the person who usually made announcements over the loudspeaker concerning social activities. Why Eastes was not qualified to be a member of the Alliance was not explained. The articles of association of the Alliance provide that membership "shall be open to all employees of the Indianapolis Glove Company except employees occupying any major or minor positions giving them executive power in said plant, and shall be limited to persons employed at said plant or in connection with the operation thereof." The articles and also the bylaws provided that a director should be chosen from each of enumerated departments of the plant, one of which was the office and sales department.

Alliance witnesses who testified at the hearing stated that they received their Alliance pay checks outside the plant of the respondent.

There is also in the record testimony to the effect that two Alliance members, Ethel Coleman and Joannell Gibbs, came to the home of Edna Fairfield, one of the most active of the Amalgamated members, one Sunday afternoon, asked her to join the Alliance, and told her that they had borrowed money "for" the respondent and that "if we don't make a go of it, we are sunk." Both of the Alliance members who visited Edna Fairfield denied that either of them had made such a statement or that they had discussed the borrowing of any money.

The facts just stated make us look with suspicion upon the loan made by Security Trust Company to the Alliance members, but, in view of our other findings herein, we deem it unnecessary to, and do not, decide whether or not the respondent furnished financial support to the Alliance.

The recreation room of the plant, provided by the respondent for its employees, was used by the Alliance for its meetings. There is evidence that upon at least one occasion one of the respondent's bulletin boards was used to announce a meeting of the Alliance in the recreation room.

The respondent claimed as an excuse for permitting the various activities herein described to take place within its plant, that it had, after the Act was upheld by the Supreme Court, adopted a policy of noninterference with union activities of any kind and that discipline within the plant had become unenforcible. It should be noted that only after the respondent had already engendered in the minds of employees antagonism to and fear of all outside unions, and especially of the Amalgamated, and had set in motion a strong opposition to the Amalgamated, did it suddenly cease its policy of open interference, restraint, and coercion; and that after it ceased such policy, it took no steps to inform its employees of its change in policy or to in any way rectify the harm done by its unfair labor practices. No attempt, whatever, was made by the respondent to exercise its disciplinary powers after the movement for organized opposition to the Amalgamated commenced. The respondent encouraged, supported, and abetted the activities of the Alliance members both before and after the actual formation of the Alliance in the ways herein related.

That the respondent knew which of its employees were freely leaving their departments and the plant at all hours of the day, which were soliciting memberships during working hours, which were holding meetings in its rest rooms and its recreation room, which ones had circulated the "Loyal Workers Pledge," who had made the announcement over the loudspeaker, and who had caused the power to

be turned off and an announcement made concerning the first meeting at the Athenaeum, is obvious. The foreladies testified that they received reports and complaints from various members of both the Amalgamated and the Alliance and that they talked with Elsey from time to time concerning the complaints and how to handle the situation. Elsey testified that he kept notes on matters reported to him concerning the organization activities of his employees. Zwick, upon one occasion, stopped at the door of the recreation room to inquire about what was taking place when he saw a meeting of the Alliance being held there. One of the foreladies, Alice Wilson, testified that when she observed that a member of the Amalgamated nudged two or three other girls, as such Amalgamated member went to the washroom, and that they also soon went to the washroom, she followed them "to see if they all went in together," and found them huddled together, whispering and talking. She testified that this happened upon several occasions and that the girls remained away from their work for 10 or 20 minutes at a time. This incident is related as an example of the careful surveillance by the forelady of the activities of the girls within her department when such activities related to an outside union.

The respondent had in its possession the "Loyal Workers Pledge." It knew that the persons who committed the open violations of its rules which we have described were employees who had signed the "Loyal Workers Pledge." It consequently could not have believed that an attempt on its part to exercise discipline and enforce its rules would have met with failure or even difficulty. We are compelled to find that by failing to object to a violation of such rules and to the use of its bulletin boards, its rest rooms, and its recreation room for Alliance activities, the respondent consented to and encouraged such violations and the use of its property for Alliance activities.

It is true, as stated by the respondent, that after about the middle of April it no longer attempted to discipline the Amalgamated members, but there is little evidence that Amalgamated members violated the respondent's rules, and they did not use the plant or any of its facilities for announcing or holding meetings. There was evidence to the effect that both Amalgamated and Alliance members talked, while working, to employees sitting beside them about union activities, but such was not considered a violation of the respondent's rules; talking had always been permitted.

It is true also that the respondent on or about May 7, 1937, posted notices on its bulletin boards, forbidding the circulation within the factory of membership cards, petitions, pledges, or other literature requesting any employee to join or refrain from joining any organization or group of employees, and also forbidding employees to visit in departments other than their own except in the performance of

the respondent's duties. These notices were not posted, however, until after the "Loyal Workers Pledge" had already been circulated, until after the Alliance members had gone freely from one department to another and solicited memberships for more than a week, and until after a charge had already been filed with the Regional Director alleging that the respondent had allowed such activities to be conducted within its plant. Further, no attempt was made by the respondent to enforce its rules referred to above. It is significant also that the respondent in such notices did not forbid employees to leave the plant without permission.

By June 2, 1937, the Alliance claimed as members over 600 of the respondent's approximately 850 employees, and upon that date the respondent signed an agreement with the Alliance, recognizing it as the sole collective bargaining agency for all employees of the plant.

We find that the respondent, by committing the various acts of hostility toward the Amalgamated described in subsection B of this section, by participating in and encouraging the circulation within its plant of the "Loyal Workers Pledge," by permitting the power to be turned off and its loudspeaker to be used for the purpose of announcing the meeting at which employees decided to form the Alliance, by permitting the use of its bulletin boards, its rest rooms, and its recreation room for Alliance activities, and by allowing Alliance members to solicit new members within the plant during working hours and to leave their departments and the plant for hours and days at a time in pursuit of said Alliance activities, has dominated and interfered with the formation and administration of Indianapolis Glove Workers Alliance and has contributed support thereto; and that by these and other acts set forth in this section, it has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

IV. THE DISCHARGE OF JAMES H. SMITH

James H. Smith was employed by the respondent on June 15, 1936. During the middle or latter part of April 1937, while engaged in a conversation with his then foreman, John Lloyd, the latter told him that if he ever joined the Amalgamated, he would just be putting himself out of a job. Smith did join the Amalgamated on June 8, 1937, but there is no evidence that he ever took any active part in its affairs. On June 12, 1937, he was discharged. He claims that he was discharged because he joined the Amalgamated, but a consideration of all factors leads us to the conclusion that he was discharged for other reasons.

Smith was only 18 years old when he began working for the respondent. He was transferred from one department or one operation to another in an attempt to fit him into the work for which

he was most adept. He admitted that complaints were made about his work or that it was criticized to some extent on almost all operations in which he was engaged. About three weeks before his discharge, at his own request, he was transferred to the freight elevator. According to his own testimony, while operating the freight elevator, he was reprimanded almost daily for his failure to deliver and pick up goods quickly enough. On the day before his discharge he received an order to deliver materials to the third floor of the plant at about 10 a. m. He lost the order, then forgot about it, and did not deliver the goods until about 1:30 that afternoon. In the meantime employees on the third floor were without sufficient work to keep busy.

Roy Green, the foreman under whom Smith worked while operating the elevator and who discharged him, testified that he knew nothing about any union affiliation or activities of Smith, and that the sole reason for discharging him was his inefficiency. Smith, when discharged, was informed that the reason for his discharge was his inability to "get the work down . . . in time."

We find that James H. Smith was discharged for inefficiency and for cause, and not because he joined the Amalgamated.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

We find that the activities of the respondent hereinbefore set forth in Section III, occurring in connection with the operations of the respondent hereinbefore described in Section I, 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 thereof.

VI. THE REMEDY

The respondent, in order to effectuate the policies of the Act, must make whole the three tippers which it wrongfully and discriminatorily discharged, by paying to each of them the sum which each would normally have earned between the time of her discharge and her reinstatement, less the amounts, if any, earned by each of them during the interim.

At the time of their discharge the tippers were working 49 hours a week. Violet Clements was earning an average of about \$19 a week, Edna Wickham about \$22 a week, and Edith McCreedy about \$16 a week. On or about April 1, 1937, the working hours at the plant were reduced to 40 hours a week, and on May 24, 1937, a general increase in pay of ten per cent was granted to all employees of the plant. Violet Clements testified that after she returned to work on July 8, 1937, she earned an average wage of \$17 a week. In determining the amount of back pay to which she is entitled, the change

in hours and rate of pay and the dates of such change must be taken into consideration. Since both Edna Wickham and Edith McCready were offered reinstatement on March 31, 1937, the change in working hours and rate of pay does not affect the amount of back pay to which they are entitled.

The respondent having dominated and interfered with the formation and administration of the Alliance and contributed support thereto, that body cannot serve the employees as a bona fide labor organization and the respondent, in order to remedy its unlawful conduct, must withdraw all recognition from the Alliance and disestablish it as a collective bargaining agency.

Upon the basis of the foregoing findings of fact, and upon the entire record in this proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America, Local No. 145, and Indianapolis Glove Workers Alliance are each labor organizations, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of their right to self-organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and administration of Indianapolis Glove Workers Alliance, and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. The unfair labor practices referred to in paragraphs 2 and 3 above constitute unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

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

1. Cease and desist:

(a) 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;

(b) From in any manner dominating or interfering with the administration of Indianapolis Glove Workers Alliance or with the formation or administration of any other labor organization of its employees and from contributing support to Indianapolis Glove Workers Alliance or any other labor organization of its employees.

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

(a) Make whole Violet Clements, Edna Wickham, and Edith McCready for any losses of pay which they have suffered by reason of their discharges, by the payment to each of them the sum of money which each would normally have earned as wages during the period between the date of their discharge and the date each was offered reinstatement by the respondent, less the amounts, if any, which each of them earned during that period;

(b) Withdraw all recognition from Indianapolis Glove Workers Alliance as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish Indianapolis Glove Workers Alliance as such representative;

(c) Post notices in conspicuous places throughout its Indianapolis plant, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from Indianapolis Glove Workers Alliance as the representative of its employees for the purpose of dealing with grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has disestablished said organization as such representative; and keep such notices posted for a period of at least thirty (30) consecutive days from the date of posting;

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

And it is further ordered that the amended complaint, in so far as it alleges that the respondent engaged in an unfair labor practice in discharging James H. Smith be, and it hereby is, dismissed.