

In the Matter of PHILLIPS PACKING COMPANY, INCORPORATED, and PHILLIPS CAN COMPANY, A CORPORATION, and UNITED CANNERY, AGRICULTURAL, PACKING AND ALLIED WORKERS OF AMERICA

In the Matter of PHILLIPS PACKING COMPANY, INCORPORATED, and PHILLIPS CAN COMPANY, A CORPORATION, and TIN CAN MAKERS LOCAL UNION, 20919, and PACKING HOUSE WORKERS LOCAL UNION, 20918

Cases Nos. C-289 and C-290.—Decided February 12, 1938

Packing and Canning Industry—Interference, Restraint, and Coercion: threats to compel employees to join company-dominated union; attempt to oust active union member from town—*Discrimination:* discharges and refusals to reinstate—*Company-Dominated Union:* domination and interference with formation and administration of; active solicitation by supervisory employees; disestablished as agency for collective bargaining—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Jacob Blum, for the Board.

Weinberg and Sweeten, by *Mr. Leonard Weinberg* and *Mr. Harry J. Green,* of Baltimore, Md., and *Mr. LeRoy Wallace* and *Mr. James McCallister,* of Cambridge, Md., for the respondent.

Mr. H. Albert Young, of Wilmington, Del., for the Association.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges having been filed by United Cannery, Agricultural, Packing and Allied Workers of America, herein called the United, and Tin Can Makers Local Union, 20919, and Packing House Workers Local Union, 20918, both herein called the A. F. of L., the National Labor Relations Board, herein called the Board, by Bennet F. Schaufler, Regional Director for the Fifth Region (Baltimore, Maryland), issued and duly served its complaint dated July 30, 1937, against Phillips Packing Company, Incorporated,¹ Cambridge, Maryland, the respondent herein, alleging that the respondent had engaged

¹ The record discloses that Phillips Can Company, a corporation, mentioned in the complaint as a respondent, is non-existent.

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. Thereafter the respondent filed its answer to the complaint denying that it had engaged in the unfair labor practices alleged therein. On August 7, 1937, Cambridge Workers' Association, Inc., herein called the Association, alleged in the complaint to have been sponsored and dominated by the respondent, filed a motion to intervene.

Pursuant to notice, a hearing was held in Cambridge, Maryland, commencing on August 20, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Association were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing, the Trial Examiner granted the motions of counsel for the Board to dismiss the complaint in so far as it alleged that the respondent discriminatorily discharged or refused to reinstate Howard Bloom, Robert Bloom, James J. Jordon, Carroll Jackson, Columbus Cephas, John Coleman, Everett Payne, Russell Wing, Fred Waters, Robert McLennan, Andrew Johnson, and W. E. Stewart, all employees of the respondent.

On November 10, 1937, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in the unfair practices alleged in the complaint. He accordingly recommended that the respondent reinstate five employees found to have been subject to discrimination by the respondent, and that it disestablish the Association as a collective bargaining agency for its employees. On November 27 and November 29, 1937, the respondent and the Association, respectively, filed their exceptions to the Intermediate Report. In its exceptions, the respondent requested an opportunity for oral argument before the Board. It also requested that the hearing be reopened for the purpose of taking additional testimony to controvert several findings of the Trial Examiner.

On January 22, 1938, pursuant to its request, the respondent presented oral argument before the Board in support of its exceptions to the Intermediate Report and to the various rulings of the Trial Examiner.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the exceptions of both the

respondent and the Association to the Intermediate Report and, except as hereinafter indicated, finds them to be without merit.

In its petition to reopen the hearing or to be permitted to submit additional evidence, the respondent indicates that it desires to offer proof that no business relationship existed between Enos Valliant, a promoter of the Association, and the respondent, and that Frederic Lee Jones, an employee, was not refused reinstatement, as found by the Trial Examiner. Since the Board does not follow either of these findings in this decision, further testimony to controvert such findings would be cumulative and unnecessary. The respondent further desires to introduce additional evidence to controvert the Trial Examiner's finding that William A. Downs and Samuel Harris Le Compte were subject to discrimination because of their union activity. The respondent had ample opportunity at the hearing to introduce evidence controverting the testimony upon which the Trial Examiner based these findings. Nothing in the respondent's petition indicates that the evidence it now seeks to introduce was not available to it at the time of the hearing. Accordingly, the respondent's petition will be dismissed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a corporation organized under the laws of Maryland, maintains its principal offices and plants in Cambridge, Maryland, where, in conjunction with its subsidiaries, it engages in the preparation, packing, distribution, and sale of canned foods, including a wide variety of soups, vegetables and other food products. The respondent's wholly owned subsidiaries include Phillips Sales Company, Inc.; Phillips Commission Company of Maryland, Inc.; Phillips Transport Company, Inc.; Vimpep Foods, Incorporated; Merit Advertising Agency, Inc.; and P. D. Q., Incorporated.

The respondent sells a portion of its products to and through Phillips Sales Company, Inc. and Phillips Commission Company of Maryland, Inc., both of which own warehouse stocks of the respondent's products in many cities throughout the United States from which their deliveries are made. These two subsidiaries also conduct a limited amount of commission and brokerage business in canned foods produced by other packers.

Other subsidiaries of the respondent likewise constitute integral parts of the respondent's business. Phillips Transport Company, Inc., is engaged in supplying long-distance truck transportation services to the respondent, to Phillips Sales Company, Inc., and to Phillips Commission Company of Maryland, Inc. Vimpep Foods, In-

corporated, manufactures dog foods; Merit Advertising Agency, Inc., conducts an advertising agency; and P. D. Q., Incorporated, is engaged in the printing and publishing business.²

With the exception of tin plate procured from Pennsylvania, the great majority of the respondent's purchases consist of vegetables produced both locally and in other States. Vegetables purchased outside Maryland include dry beans shipped from Michigan and New York; assorted vegetables shipped from Delaware, New Jersey, Virginia, New York, Pennsylvania, Maine and Idaho; and dry peas shipped from Washington, Idaho, and Montana.

In 1936 the respondent produced 7,086,802 cases of packing foods valued at \$10,466,544.59.³ Approximately 95 per cent of the respondent's products are distributed outside Maryland, sales being made to wholesalers, jobbers, and distributors who retail the products to independent and chain stores throughout the United States, in the territorial possessions of the United States, and in several foreign countries.

The operation of the respondent's plant in Maryland is dependent upon the seasonal production of vegetables and the number of its employees therefore varies. At the time of the strike in June 1937, approximately 2,250 employees were working in the can factory, the preparation and packing units, and the warehouses, in Cambridge, Maryland.

II. THE ORGANIZATIONS INVOLVED

United Cannery, Agricultural, Packing and Allied Workers of America is a labor organization affiliated with the Committee for Industrial Organization. The extent of its jurisdiction is not disclosed in the record although it admits to membership the employees of the respondent.

Tin Can Workers Local Union, 20919, and Packing House Workers Local Union, 20918, are both labor organizations affiliated with the American Federation of Labor. Although the record does not expressly indicate, it would appear that Local 20919 admits to membership the employees of the respondent's can plant and that Local 20918 admits to membership the employees engaged in packing operations. The record does not show whether or not membership in these locals is limited to the employees of the respondent.

Cambridge Workers' Association, Inc., is a labor organization incorporated in Maryland and not affiliated with any other organization. It admits to membership all employees of any industry in Maryland, except supervisory employees. At the time of the hearing its membership consisted for the most part of employees of the respondent.

² The respondent also manufactures tin cans, 85 per cent of which it utilizes in its own business and 15 per cent of which are sold to other packers.

³ Board's Exhibit No. 3.

III. THE UNFAIR LABOR PRACTICES

A. *The strike of June 22, 1937*

The activities of the respondent which constituted the unfair labor practices in this case were primarily inspired by a spontaneous strike which spread throughout the respondent's plants on June 22 and June 23, 1937. As evidenced by an incipient strike which was smothered on April 28, 1937, and by the strike of June 22, 1937, it is apparent that considerable dissatisfaction with the respondent's labor policies prevailed among the employees.

On the morning of June 22 a number of men in the can plant stopped work in protest against the long working hours. Four delegates were chosen and dispatched to present their grievance to Theodore Phillips, vice president of the respondent. Receiving no definite assurances that any effort would be exerted to remedy working conditions, the delegates returned and effected a complete stoppage of operations in the can plant by calling out all of the employees. On June 23, the strike spread throughout the other plants of the respondent. Considerable disorder prevailed, and during the day the respondent ceased its efforts to continue operations. On the same day a committee of striking employees visited the American Federation of Labor offices in Baltimore in order to secure assistance in organizing. On the following day, Anna L. Neary, an American Federation of Labor organizer, called a meeting in a field adjoining the respondent's plants. Approximately 1,800 employees attended, chose Miss Neary as their representative, and appointed a committee to negotiate with the respondent. Thereafter Locals 20918 and 20919 were chartered, temporary officers were elected, and the solicitation of employees for membership in these locals proceeded.

Meanwhile, the committee appointed to negotiate with the respondent met with Theodore Phillips on several occasions. According to the respondent's witnesses, the respondent agreed to grant a ten per cent wage increase and reopen all of its plants with the exception of the can plant. The testimony with regard to this offer, however, is contradictory. It appears that either the respondent withdrew its offer until the alleged violence of the strikers should cease, or the offer was not acceptable to the employees, or negotiations did not proceed as smoothly as the respondent described them. In any event, these efforts to settle the strike were unavailing.

B. *The formation of the Association*

It is admitted by Enos Valliant, a Cambridge businessman and its chief promoter, that the idea of the Association arose from the desire of the business and farm groups of Cambridge to settle the strike and to keep any "outside" labor organization away from the

town. During the week following June 22, Valliant held numerous meetings with the businessmen and merchants of Cambridge at which they agreed to finance a "home" union. On June 29, Valliant approached W. Laird Henry, Jr., an attorney, requested that he undertake the legal work in connection with the organization of the Association, and agreed to pay for Henry's services if the Association failed to reimburse him. "Motivated by public interest and spirit", Henry accepted the assignment.

On the same day, Valliant met Arland Smith, an employee of the respondent, on the street. He invited Smith to his office where Smith, in discussing the strike, stated that he had thought of organizing a "home" union but that the men were unable to finance such organization. Whether Smith already had conceived the idea of a union, as he testified, or whether Valliant first broached the subject, is immaterial. It is undenied that Valliant was prepared to offer the necessary financial assistance. Smith agreed to organize the employees and Valliant advised him to confer with Henry.

Smith had been employed by the respondent for a period of three years, and prior to this employment had worked for Phillips Hardware Company, Inc. for seven years.⁴ At the time of the strike, Smith was employed in the offices of the respondent, receiving \$20.00 a week for his services. He characterized himself as an "office boy", although the evidence unquestionably indicates that he was a paymaster. Being temporarily laid off because of the strike, Smith enthusiastically entered into the organization activity. At the time of the hearing he was a permanent employee of the Association, receiving a salary of ten dollars per week.

On the evening of June 29, Smith called and presided over a meeting of some 35 employees. The meeting was held in a room over the garage of Phillips Hardware Company, Inc., and although permission for the use of the room had neither been sought nor granted, the men were not questioned nor was their meeting disturbed. Among those who attended were Ollie Lord, a warehouse boss, Dan Seward, a factory manager, Earl Hoge, an acting factory boss, and Moore and Willey, two other supervisory employees. Temporary officers were elected and an organizing committee appointed to confer with Henry on the following day. That same evening Smith gave Henry the names of those chosen for the committee, and on June 30 when the committee appeared at Henry's office, he already had available printed authorization cards listing the members as organizers and providing spaces for employees to join the Association they would form.⁵ It was then discovered that Moore was a supervisory employee, and new

⁴ Though not a subsidiary of the respondent, the respondent's officers and directors are also, with few exceptions, the officers and directors of Phillips Hardware Company, Inc.

⁵ Board's Exhibit No. 5A.

cards were later printed from which his name was omitted. The presumption arises that Willey's name was omitted for the same reason.⁶

Meanwhile Henry had prepared articles of association and bylaws from forms submitted to him by Valliant. He was later introduced to V. L. Edmunds, an inhabitant of the county, who was reputed to have had a good deal of experience in "strike work", and who was brought into the Association by Matthews, a Cambridge businessman, for the purpose of guiding the organization activity and negotiations of the Association. On July 1, 1937, the first meeting of the Association was called and the constitution and bylaws adopted. Thereafter, Henry's services on behalf of the Association were terminated.

Although Henry was never paid for his time or services, funds raised by subscription among Cambridge businessmen were available for other Association expenses. From these funds payments were made to both Smith and Edmunds, as well as for rent for Association headquarters and gasoline used by organizers and received on vouchers from Phillips Hardware Company, Inc.

Although it does not show that the initiation of the Association was directly instigated by the respondent, the evidence plainly reveals that the respondent's supervisory employees entered into its organization activities and, as indicated below, played an important role in its campaign to solicit members. After several conferences, an agreement between the Association and the respondent was concluded on July 23, and on July 24, the can plant reopened.⁷ By the agreement the Association was recognized as the exclusive bargaining agency for all of the respondent's employees. The Association agreed not to call or participate in a strike during the term of the agreement, N. R. A. minimum wage rates were to prevail, and provision was made for the check-off of Association dues, it being agreed "that the Employer shall turn over to said Union all such monies collected by it, less the actual cost to the Employer of making such deductions."⁸

On July 23 an automobile equipped with a loudspeaker toured the town announcing the opening of the can plant and urging employees to join the Association. Seated in the car was William Bloodsworth, superintendent of transportation of Phillips Transport Company, Inc.

C. Interference, restraint and coercion

Not satisfied with playing a prominent part in the organization of the Association through the participation of its supervisory employees, the respondent employed the same tactics to discourage

⁶ Board's Exhibit No. 5B.

⁷ The other plants had reopened on July 9 when the respondent had announced a 10-per cent wage increase to employees.

⁸ Intervenor's Exhibit No. 1.

membership in the A. F. of L. and in the United, which also had appeared on the scene, and to encourage membership in the Association. Several instances in which the respondent's supervisory employees interfered with the activities of its employees clearly reflect its hostile attitude toward the A. F. of L. and the United.

Edward Hicks was an employee of the respondent at the time the strike was called. Thereafter Hicks took an active part in the strike and organization activities of the A. F. of L. among the employees. One morning, after the strike had been in progress a short time, a group of men, including several employees of the respondent, came to the home of Mrs. Mattie B. Massey with whom Hicks and his wife lived. Two of the men forced their way into the house and demanded to see Hicks, saying that they were going to "run him out of town." The timely arrival of a group of strikers prevented further demonstration and the group disbanded.

Mrs. Massey testified that she recognized two of the respondent's supervisory employees, Lloyd James, a foreman, and William F. Winterling, manager of the can plant, among the men who had come for Hicks. James was not called to deny his participation in this attempt to oust Hicks, and although Winterling, who was also one of the respondent's directors, admitted that he was present, he denied that he participated. Winterling testified that he had used a round-about way to drive to the plant that morning, and seeing three or four men in front of Mrs. Massey's house, he had stopped to investigate. Upon cross-examination, Winterling testified that he saw nothing unusual occurring; that he first saw only two men talking to Mrs. Hicks; nevertheless he stopped because he was "just curious." Shortly thereafter Winterling resigned as a director of the respondent. Although he denied that his resignation was in any way connected with the Hicks episode or that he had been asked to resign because of this incident, he could only explain that he resigned "because he wanted to." In view of all the circumstances, we are not impressed with Winterling's explanation and conclude that both his and James' presence was motivated by a desire to run an active striking employee out of Cambridge.

We have described above the presence of Bloodsworth in an automobile from which was being broadcast a solicitation of members for the Association. Other supervisory employees participated in the Association's membership campaign and were instrumental in spreading the rumor that membership in the Association was a prerequisite for employment. On the morning of July 24 or 25, following the agreement between the respondent and the Association, and the day that the can plant reopened, the Association placed a table on the property of the respondent, 15 or 20 yards from the entrance to this plant, and openly solicited the returning employees, asking them to show their

cards before they entered and advising them that they had to join the Association. This solicitation was admittedly observed by Winterling who made no effort to stop it, although on the following day the Association was advised that it could not continue its activities on company property.

The testimony of several witnesses called by the intervenor is particularly eloquent in describing the attitude of the respondent's supervisory employees. Clifford Murphy, upon examination by the respondent's attorney, testified:

Q. Mr. Murphy, at any time has any official of the Phillips Packing Company or the Phillips Can Company or any of the companies connected with the Phillips Packing Company, or any officer of the Company, or any boss or foreman, or anyone in authority over you or over anyone else, attempted to persuade or coerce or intimidate you either into joining or not joining any labor organization?

A. I was asked to, that is all.

Q. By a boss or anyone in authority or anyone of the officials?

A. It was Lee Brown.

Q. Who is he?

A. Warehouse manager.

Q. Was that while you were at work or on the street, or where?

A. At work.

Q. While you were at work?

A. Yes, sir.

Murphy further testified that Lee Brown also solicited two of Murphy's fellow employees to join the Association. Henry Conaway, another witness called by the intervenor, testified in similar vein on direct examination:

Q. Did you go back to work in July after the plant reopened?

A. Yes.

Q. You say you were not a member of the Cambridge Workers' Association when you went back to work?

A. Not when I went back to work, I wasn't.

Q. Did you later become a member of the Cambridge Workers' Association?

A. Yes.

Q. Did anybody force you to become a member of the Cambridge Workers' Association?

A. Well, they said if I didn't join, I couldn't work, so I went on and joined.

Mr. YOUNG (intervenor's attorney). I plead surprise.

Q. Didn't you tell me a little while ago, when I interviewed you, that you were not a member of the Cambridge Workers' Association when you got back to work and that no one compelled you or forced you to become a member?

A. Not when I went back, I wasn't a member; but a few days after they called me to sign.

Q. Who asked you to sign?

A. Well, Lee Brown asked me had I signed.

Similarly, Harold Webster Tyler, another witness for the intervenor, testified that he had been called to the door of the plant during working hours by Turk Marshall, a paymaster, in order to get a membership card of the Association on the day the can plant reopened.

We find that the respondent has dominated and interfered with the formation and administration of the Association, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The discharges and refusals to reinstate

1. *William A. Downs*⁹ had been employed by the respondent since 1932, and at the time of the strike was earning between \$20.00 and \$25.00 a week. Downs' duties had consisted in seeing that the factory was in proper operating condition in the morning before other employees came to work. In the course of his employment he had also trained Irvin Phillips, assistant plant manager, and Neal Jenkins, a warehouse boss, his supervisors, when they were first employed.

Downs struck with the other employees on June 23. He joined the A. F. of L. and as a member of its negotiating committee met with the respondent during the strike. Downs later joined the United, and at the time of the hearing was temporarily employed as an organizer for this union. Shortly after the commencement of the strike, Downs had been solicited on two occasions by Irvin Phillips and Jenkins to engage in the organization activity of the Association. On both occasions, Downs refused to have anything to do with the Association.

Downs applied for reinstatement on July 13 and was permitted to work that day and the following day. On July 15, Jenkins, the warehouse boss, told him to "punch in." Not finding his time card, Downs sought Irvin Phillips and asked him for one. According to Downs,

⁹ Referred to in the complaint as William Downes.

Phillips responded, "Well, I don't think we need your services any longer." When Downs asked him the reason for his dismissal, Phillips laughed.

It is clear from the record that Downs was a trusted employee, and there is nothing to indicate that his services were not satisfactory to the respondent. It is equally clear that his activities on behalf of the A. F. of L. and the United, and his refusal to assist the Association did not meet with the approval of the respondent.

Downs' testimony was not contradicted, and we find that he was discharged by the respondent because he joined and assisted the A. F. of L. and the United.

Between July 15, 1937, and the time of the hearing, Downs had earned \$72.50 as a temporary organizer for the United. He desires reinstatement.

2. *Frederic Lee Jones*¹⁰ had been employed by the respondent for four years, and at the time of the strike, was working in the can plant. Jones was a member of the committee that met with Theodore Phillips on the morning of June 22, and also a member of the committee that solicited the assistance of the A. F. of L. He had joined the A. F. of L. and later the United. He testified that he also joined the Association, believing it was a prerequisite for reinstatement.

Late in July Jones applied to Winterling, manager of the can plant, for reinstatement. Winterling told him that there was no work available for him then, but suggested that he return later. Jones admitted that he never returned thereafter to secure reinstatement.

The evidence shows that when the can plant reopened on July 24, it did not operate at full capacity. It does not therefore appear that the respondent's refusal to reinstate Jones when he applied constituted discrimination, within the meaning of the Act. His unexplained failure to return thereafter precludes any finding that the respondent refused to reinstate him. Only in those cases where circumstances show that a request for reinstatement would be futile, have we held, in the absence of such a request, that a failure to reinstate constitutes an unfair labor practice. No such showing has been made here.

3. *Richard O. Phillips*¹¹ had been employed in the can plant of the respondent since March or April 1937. Phillips was one of the four employees who, as we have noted above, stopped work on April 28 in order to request a wage increase. When Winterling at that time asked them why they had stopped, Phillips, acting as spokesman, said, "It is supposed to be a strike, Mr. Winterling." According to Phillips, Winterling thereupon retorted, "The Hell with you

¹⁰ Referred to in the complaint as Fred Jones.

¹¹ Referred to in the complaint as Richard Phillips.

and your kind. We can get more men for less money." All four were immediately discharged.

Three days after this occurrence, all except Phillips were reinstated. During the strike, Phillips joined the A. F. of L. and later the United. He also became a member of the Association. Phillips testified that early in May, and again on numerous occasions after the can plant reopened, he applied for reinstatement; that on at least two occasions, August 16 and 17, Winterling refused to reinstate him although other workers were being hired. Phillips has not found substantially equivalent employment, and still desires to be reinstated.

Winterling admitted that he had discharged the four employees, including Phillips, on April 28. He denied, however, that he had refused to reinstate him, claiming that Phillips had never applied for reinstatement.

From all the evidence this denial is not convincing. As we have stated above, Phillips had acted as the leader of the incipient strike of April 28. It is significant that the three other employees were restored to their positions whereas Phillips was refused reinstatement. The inference is inescapable that Phillips was obnoxious to the respondent because he had led the disturbance of April 28. This disturbance was a manifestation of the unrest prevailing in the plant and evidently a prelude to the strike of July 22. We can only conclude that thereafter, Phillips' presence in the plant would have been even more distasteful to the respondent. We find that the respondent discharged Phillips on April 28, 1937, and thereafter refused to reinstate him because of his attempts to engage in concerted activities with other employees of the respondent.

4. *Samuel Harris Le Compte*¹² had been employed as a truck driver by the respondent since 1931 or 1932. He struck on June 23, joined the A. F. of L., and later, the United. On July 29, after the plant reopened, Le Compte returned to work and along with the other employees received a 10-percent raise which brought his hourly rate to 27½ cents.

Le Compte testified that, after he had been working three days, Lee Brown solicited him to join the Association. At the close of the same day, Lord, the warehouse boss, asked him if he had joined. When he answered that he had not, Lord discharged him.

Lord testified that he had laid off Le Compte in July or August, along with some 25 or 30 other employees because of the slack season, and that all had returned to work except Le Compte who had not applied for work although notice had been sent to him. Lord's testimony in the record in connection with Le Compte, the Hicks episode,

¹² Referred to in the complaint as Samuel Le Compte.

and his presence at the first organization meeting of the Association was extremely evasive. From the nature of his answers to the questions asked him during the hearing, his testimony is entitled to but little credence. We are satisfied that Le Compte was discharged by the respondent because he joined the unions, and refused to become a member of the Association.

5. *William Sessoms*¹³ had been employed as a day janitor and night watchman by the respondent for about ten years. In exchange for his night duties, Sessoms was permitted to occupy a house on the respondent's property, rent free. Sessoms joined the strikers on June 23 or June 24, became a member of the A. F. of L., and later of the United.

Early in July Sessoms was told by another employee that Levi Phillips, an official of the respondent, had ordered that Sessoms vacate the respondent's house. Sessoms thereupon saw Phillips and asked him whether he had been ordered to move because he had joined the A. F. of L. According to Sessoms, Phillips answered, "Well, yes. That is one reason."

Thereafter, Sessoms, who is colored, was urged by Edmunds and Smith to join the Association and solicit members upon Edmunds' and Smith's promise to secure his reinstatement. Sessoms later applied to Phillips for reinstatement and showed him his Association membership card. Phillips told him that his position had been filled by another person but advised him to return. Sessoms again applied on several occasions, but each time he was told that no work was available for him.

Levi Phillips denied that he had ordered Sessoms to vacate the respondent's property because Sessoms had joined the A. F. of L. He testified that he issued the order to protect Sessoms from the acts of violence which he alleged the strikers were committing. Assuming that the violence was attributable to the strikers, it is highly incredible that Sessoms required protection since he, too, participated in the strike and had joined the A. F. of L. Phillips further testified that he had not refused to reinstate Sessoms, but that he was willing to take him back as soon as work which Sessoms was capable of performing became available. Upon cross-examination, Phillips admitted that such work had become available, that others had been hired, and that Sessoms had not been called. We can only conclude that Sessoms was ousted from his living quarters and refused reinstatement because he joined the unions.

Sessoms has not secured regular employment, has earned only five dollars since the strike, and desires to be reinstated.¹⁴

¹³ Referred to in the complaint as William Slsson.

¹⁴ On the day Sessoms testified at the hearing, Edmunds gave him a check for five dollars "for work done soliciting membership. In full."

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent 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 and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since we have found that William A. Downs, Richard O. Phillips, and Samuel Harris Le Compte were discharged, and William Sessoms was refused reinstatement because of the respondent's unfair labor practices, we shall order the respondent to offer them reinstatement, and we shall award them back pay in the amount which they would normally have earned from the dates of their discharges, or, in the case of Sessoms, from the date of the respondent's refusal to reinstate him, to the dates of such offers of reinstatement, less any amounts earned by them in the meantime.

We have found that the respondent interfered with the formation and administration of the Association and compelled many of its employees to become members. In order to remedy its unlawful conduct, we shall order the respondent to cease requiring, urging, or intimidating its employees to join or remain members of the Association; to cease interfering with the administration of the Association and contributing support to it; and to withdraw all recognition from the Association as the representative of the respondent's employees for the purposes of collective bargaining. The respondent must also cease giving effect to its contract with the Association, since it was made with an organization not a bona fide representative of its employees. It is thus immaterial that a majority of the employees were members of the Association when the contract was signed.

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

CONCLUSIONS OF LAW

1. United Cannery, Agricultural, Packing and Allied Workers of America, Tin Can Makers Local Union, 20919, Packing House Workers Local Union, 20918, and Cambridge Workers' Association, Inc., are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of William A. Downs, Richard O. Phillips, Samuel Harris Le Compte, and William Sessoms, and thereby discouraging membership

in labor organizations of its employees, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By its domination and interference with the formation and administration of Cambridge Workers' Association, Inc., and by its contribution of support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

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

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

ORDER

Upon the basis of the 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, Phillips Packing Company, Incorporated, Cambridge, Maryland, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner discouraging membership in United Cannery, Agricultural, Packing and Allied Workers of America, Tin Can Makers Local Union, 20919, Packing House Workers Local Union, 20918, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment;

(b) From in any manner dominating or interfering with the administration of Cambridge Workers' Association, Inc., or any other labor organization of its employees, and from contributing support to Cambridge Workers' Association, Inc., or to any other labor organization of its employees;

(c) From giving effect to its contract with Cambridge Workers' Association, Inc.;

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

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

(a) Offer to William A. Downs, Richard O. Phillips, Samuel Harris Le Compte, and William Sessoms, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole said William A. Downs, Richard O. Phillips, and Samuel Harris Le Compte for any losses of pay they have suffered by reason of their discharge, and William Sessoms for any loss of pay he has suffered by reason of the respondent's refusal to reinstate him, by payment, to each, respectively, of a sum of money equal to that which he would normally have earned as wages during the period from the date of his discharge, and with respect to William Sessoms, from the date of the refusal to reinstate him, to the date of such offer of reinstatement, less the amount which each has earned during that period;

(c) Withdraw all recognition from Cambridge Workers' Association, Inc., as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Cambridge Workers' Association, Inc., as such representative;

(d) Immediately post notices in conspicuous places throughout its plant and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist as aforesaid, and (2) that the respondent will withdraw all recognition from Cambridge Workers' Association, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that Cambridge Workers' Association, Inc., is disestablished as such representative;

(e) Notify the Regional Director for the Fifth Region in writing 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:

1. The complaint, in so far as it alleges that the respondent refused to reinstate Frederic Lee Jones because of his activities on behalf of the unions be, and it hereby is, dismissed; and

2. The respondent's petition to reopen the hearing or to be permitted to submit additional evidence be, and it hereby is, dismissed.