

IN the Matter of AMERICAN CLOAK COMPANY, LIBERTY CLOAK COMPANY, and ANNETTE SPORT COMPANY, BODIES CORPORATE, and INTERNATIONAL LADIES GARMENT WORKERS UNION OF AMERICA, BALTIMORE JOINT BOARD

Case No. C-343.—Decided March 5, 1938

Women's and Children's Coat Manufacturing Industry—Interference, Restraint, or Coercion: expressed opposition to labor organization; threats of retaliatory action; engendering fear of loss of employment for union membership and activity; formation of list of union members for purpose of discrimination; surveillance of union meetings—*Discrimination:* discharge of seven employees for union membership and activity—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Owsley Vose, for the Board.

Mr. Jacob Kartman and *Mr. Gersh I. Moss*, of Baltimore, Md., for the respondents.

Mr. Jacob E. Eddelman, of Baltimore, Md., for the Union.

Mr. Harry Cooper, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On July 27, 1937, Angela Bambace, representing the International Ladies Garment Workers Union of America, Baltimore Joint Board, herein called the Union, filed a charge with the Regional Director for the Fifth Region (Baltimore, Maryland), alleging that the American Cloak Company, Liberty Cloak Company, and Annette Sport Company, bodies corporate, Baltimore, Maryland, and Westminster, Maryland, herein called the respondents, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 17, 1937, the National Labor Relations Board, herein called the Board, issued its complaint against the respondents, signed by the Regional Director for the Fifth Region. The complaint in substance alleged that the respondents had interlocking directorates, that they were engaged in interstate commerce, and that the respondent

Annette Sport Company, between July 19, 1937, and July 22, 1937, discharged and refuses to reinstate nine named employees for the reason that they joined and assisted the Union. The complaint also alleged that the respondent Annette Sport Company threatened and intimidated its employees for the purpose of discouraging membership in the Union. The complaint and accompanying notice of hearing were duly served upon the respondents and the Union.

On August 23, 1937, the American Cloak Company, herein called the American, filed a special appearance for the purpose of questioning the jurisdiction of the Board, and an answer. In its answer it alleged that the complaint did not show that the employees therein named or the acts therein complained of were the employees or the acts of the American, and that the American was a corporate body whose officers, stockholders, and directors were not officers, stockholders, and directors of the Liberty Cloak Company, herein called the Liberty. The American admitted that in the course of its business it caused a substantial part of its raw materials used in manufacture to be purchased and transported in interstate commerce, and that it caused a substantial portion of its manufactured products to be sold and transported in interstate commerce.

Likewise on August 23, 1937, the Liberty filed a special appearance and answer to the complaint, denying that it was engaged in interstate commerce and alleging that it was a corporate body, that its stockholders had no financial interest in the American, and that its officers, directors, and stockholders were not officers, directors, or stockholders of the American. The Liberty admitted that it operated a plant at Westminster, Maryland, under the trade name, Annette Sport Company. In its answer the Liberty also admitted that it discharged the nine employees named in the complaint, but alleged that it had done so for cause.

Pursuant to notice a hearing was held at Westminster, Maryland, on August 30, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. The respondents, the Union, and the Board were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing counsel for the respondents moved several times that the complaint be dismissed with respect to the American on the ground that the American and the Liberty were separate and distinct corporations. The Trial Examiner reserved ruling on the motion at the hearing, but denied the motion in his Intermediate Report subsequently filed with the Board. At the end of the Board's case, counsel for the Board made a formal motion that the pleadings be conformed to the proof, which motion was later granted without objection by counsel for the respondents; the motion was specifically restricted,

however, to cover merely a variance between the complaint and the evidence adduced, with respect to names and dates. During the course of the hearing, exceptions were taken by the parties to various rulings of the Trial Examiner on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds no prejudicial errors were committed. The rulings are hereby affirmed.

On December 23, 1937, the Trial Examiner filed an Intermediate Report in which he found that the respondents by discharging the nine employees named in the complaint had discouraged membership in the Union and had thereby and by other acts committed unfair labor practices within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the Act. On January 12, 1938, the respondents filed exceptions to the Intermediate Report and requested an opportunity for oral argument before the Board. Pursuant to notice, a hearing was held before the Board on February 2, 1938, in Washington, District of Columbia, for the purpose of such oral argument. The respondents and the Union participated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The American Cloak Company is a Maryland corporation organized in 1932 with its office and place of business in Baltimore, Maryland. Its capitalization consists of 430 shares of preferred stock with a par value of \$100 per share and 100 shares of common stock with no par value. Leon Hirschman is president and treasurer of the corporation, and Nathan Wiener is secretary. The board of directors is composed of Hirschman, Wiener, and Jacob Kartman, who appeared as attorney for the respondents in this proceeding. The stockholders are Leon Hirschman, Nathan Wiener, and Anna Wiener. The American is a manufacturer of ladies' and children's coats. The principal manufacturing operation carried on by the American is the cutting of raw material. It has a cutting room and a stockroom at its plant in Baltimore. The material, upon being cut, is tied in bundles and sent by truck to the plants of the Liberty Cloak Company for further processing. At the time of the unfair labor practices complained of, all the labor for the American upon raw material after cutting was performed by the Liberty at its plants in Baltimore and Westminster, Maryland. Practically all the raw materials purchased by the American come from outside the State of Maryland. Garments manufactured and finished at the plants of the Liberty are sent back to the American for sale and shipment by the latter corporation. Merchandise in solid lots is shipped di-

rectly from the Liberty's plant at Westminster to customers of the American. The secretary of the American testified that about 5 per cent of its shipments were made direct from the Westminster plant. Ninety per cent of its manufactured product is shipped by the American out of Maryland. The American maintains an office in New York City and salesmen "on the road." The American admits in its answer that in the course of its business it causes a substantial part of its raw materials used in manufacture to be purchased and transported in interstate commerce, and that it causes a substantial portion of its manufactured products to be sold and transported in interstate commerce.

The Liberty Cloak Company is a Maryland corporation, organized in 1932, with plants at Baltimore and Westminster, Maryland. The Liberty maintains an office at 113 West Redwood Street, Baltimore. The office of the American is also at this address. The capitalization of the Liberty consists of 30 shares of common stock with a par value of \$100. Nathan Block is president, Samuel Cohen is vice president, and I. Greenfield is secretary and treasurer. The same individuals compose the board of directors and are the only stockholders in the corporation. The Liberty is a contractor for the manufacture of ladies' and children's garments. The operations at its plants in Baltimore and Westminster consist of machine-sewing and pressing. The Westminster plant is operated under the trade name, Annette Sport Company.¹ For some months prior to June 1937, the Liberty had operated a plant at Texas, Maryland. In June 1937, this plant was closed and the machinery moved to Westminster, where operations were resumed about June 22, 1937. Since the removal of its Texas plant to Westminster, and at the time of the unfair labor practices herein complained of, the Liberty has done work exclusively for the American. It is clear from the record that the work performed for the American at the Liberty's plant in Westminster is done under the detailed supervision of Pete Plaskovitz, a designer, in the employ of the American, and of Nathan Wiener, an officer of the American, as well as under the supervision of Mike Dubick, foreman at the Westminster plant, and officers of the Liberty.² At the time of the hearing, three cutters in the employ of the American were engaged in work at the Westminster plant of the Liberty. The Liberty purchases between \$6,000 and \$7,000 worth of seam bindings

¹ Although the answers of the respondents use the name as contained in the complaint, the record indicates that Nathan Block referred to this enterprise as the Annette Sport Wear Company.

² Plaskovitz has been at the Westminster plant continuously from July 6, 1937. He testified that he "showed" employees there how to perform operations on raw material. Upon discovering poor workmanship at the plant, he recommended to the foreman there that he "change" some employees at once. Wiener testified that one of his jobs was to "contact and supervise" the production of work for the American at the Westminster plant. He visited there "every couple of days."

and cotton thread annually, some of which comes from outside the State of Maryland. Materials, which are cut by the American, are received at the plants of the Liberty at Westminster and Baltimore, and sewed into garments by employees of the Liberty. These garments are pressed by other employees of the Liberty and then shipped to the American, whence they are shipped outside the State of Maryland. Some of the shipments are made direct from the Westminster plant, as above indicated.

II. THE UNION

International Ladies Garment Workers Union, Baltimore Joint Board, is a labor organization composed of the various locals of the International Ladies Garment Workers Union in the areas of Maryland and Pennsylvania.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Before the Liberty started its plant at Westminster, Maryland, the Union attempted to negotiate a collective bargaining agreement for the employees of the Liberty at its Baltimore plant. Negotiations were carried on by representatives of the Union with Nathan Wiener, officer of the American, although the proposed agreement concerned the employees of the Liberty only. Wiener admitted that he carried on such negotiations but testified that he told the representatives of the Union that the problem with regard to which he was negotiating was that of the Liberty. Before the plant at Westminster was opened, the Union contended that the proposed agreement would have to cover such a plant. When the plant at Westminster was opened, about June 21, 1937, negotiations between Wiener and Kartman, attorney and a director for the American, and the Union, with respect to the employees of the Liberty at its Baltimore plant, were pending. Kartman refused to include the employees at the Westminster plant in the agreement, in view of the fact that none of the employees at that plant were members of the Union. Thereupon the Union sent a representative, Kremer, to organize the employees at the Westminster plant. A number of employees at that plant became members of the Union during the middle of July 1937, including those named in the complaint. Thereafter an agreement covering both plants of the Liberty was presented to Wiener and Kartman. Wiener and Kartman indicated their willingness to negotiate a contract with respect to the employees of the Baltimore plant of the Liberty, but refused to include the employees in the Westminster plant in the agreement.

About three weeks before the hearing (two weeks after the discharges at Westminster herein complained of) the employees of the Liberty at its Baltimore plant went out on strike for the purpose of persuading Wiener, Kartman, and the Liberty to agree to an agreement covering the employees of the Liberty at both its plants. At all conferences negotiations were carried on solely with Wiener and Kartman. Miss Angela Bambace, local representative of the Union, testified that the first time she came to negotiate with Kartman he claimed that the American and the Liberty were distinct corporations but that he agreed to waive any such distinction for the purpose of the negotiations.

B. The discharges

Kremer, organizer of the Union, first came to Westminster for the purpose of organizing the employees of the Liberty at its Westminster plant about June 24, 1937. He approached Dubick, foreman at the Westminster plant, during the first week in July 1937, either on the street or in the City Restaurant in Westminster, the record not being clear on this point. Dubick at that time told Kremer that he was not against a union for the employees in the plant. It is apparent from the record that Dubick knew the purpose of Kremer's presence in Westminster.

Since the unfair labor practices of the Liberty appear most clearly from the circumstances surrounding the discharge of the individual employees with whom we are here concerned, we will first discuss such discharges individually. Between July 20, 1937, and July 22, 1937, Dubick discharged the following sewing-machine operators:

Nettie Stonesifer. The plant of the Liberty in Westminster is on the north side of Main Street near John Street, in the middle of the block. The home of Nettie Stonesifer is at 2 John Street on the east side of that street. From the first week in July 1937, Kremer frequented the home of Nettie Stonesifer every day for a period of several weeks for the purpose of meeting employees of the Westminster plant there, and soliciting members for the Union. Thus Mrs. Stonesifer's house was the center of union organization in the Westminster plant. Kremer testified that within a two-week period from July 5, 1937 to July 18, 1937, Dubick followed him four times to Mrs. Stonesifer's house, and that at other times he had frequently seen Dubick standing on the corner of John and Main Streets observing the employees, who entered Mrs. Stonesifer's house.

Mrs. Stonesifer was employed at the Annette shop as a sewing-machine operator on June 21, 1937, and worked there for one month. She did all kinds of work at the plant. She had previously been

employed at a men's garment factory and also in a shoe factory. She joined the Union on July 9, 1937, and thereafter openly invited employees to her house to meet Kremer. She testified that before she knew about Kremer's coming to Westminster, she talked to an employee in the plant concerning the need for organization there, and Dubick was standing behind her within hearing distance. The next day, about a week before her discharge, Dubick said to her "Anybody joins this outside union won't work in here. . . . I have got no good for it. We ain't running no union shop."

Mrs. Stonesifer testified that no criticism had ever been made of her work, with one exception. Once linings with which she was working would not fit, and Dubick came over and tried to make them fit but was unable to do so. Dubick did not deny this incident. She testified that Dubick had always praised her for her work. She was discharged on July 21, 1937. Dubick said that he could not use her any longer.

At the time of her discharge, Mrs. Stonesifer was earning \$7 per week. Since her discharge, she has not been employed, and at the hearing stated that she desired to be reinstated to her former position.

Mrs. Stonesifer is 51 years of age. Dubick testified that the reason for her discharge was that her eyesight was poor, and that she could not see to stitch. It is significant that this was not given as a reason for her discharge at the time the discharge occurred. It is also significant that Dubick did not deny that he had complimented Mrs. Stonesifer about her work. From the record as a whole, including the considerations set forth hereinafter, we are persuaded that the reason for her discharge was not the one given by Dubick but was due to her activity with the Union.

Marian Eckenrode. Marian Eckenrode was employed by the Liberty about June 21, 1937, as a tapesewer and worked for one month. She joined the Union on July 17, 1937, was active in soliciting members for the Union, and made no attempt to conceal her membership. She frequented Mrs. Stonesifer's house where she met Kremer. She testified that on July 21, 1937, the day before her discharge, she saw Wiener walking up and down John Street in front of Mrs. Stonesifer's house. She "bumped into" him at the foot of the steps of the house. Dubick discharged her the next day and gave as a reason that her work was unsatisfactory.

Prior to her employment by the Liberty, Mrs. Eckenrode had worked as a tapesewer on men's garments for a period of two years. She testified that Wiener had complimented her for her work, and Dubick had asked her to look over the work of other girls in the plant. Her work had never been criticized.

On July 15, 1937, Dubick asked her to stay after working hours to talk to Wiener about forming an "inside club" for the Company. He

told her she should not join an outside union, and that if employees in the factory did join, the plant would be moved out overnight. Dubick also stated that if he found out any of the employees who joined the "outside" union, he would fire them "without any reason." Dubick told her that the purpose of the "inside" union would be to keep the "outside" union out. He also told her "that if I would form a union, to tell the girls the Company would give us a picnic and we were to pay half of it and the Company would pay the other half."

Mrs. Eckenrode further testified that Lena Ruby, an office employee of the Liberty at its Westminster plant, told her two days before her discharge that she (Lena Ruby) had a list of all the union members in the plant, that Perry Kidd, a presser in the plant, had taken it from her and had torn it up, but that Dubick had a copy of the list.

Since her discharge, Mrs. Eckenrode had not found other employment. She stated that she desired to be reinstated. At the time of her discharge she earned \$8 per week.

Dubick testified that the reason for the discharge of Mrs. Eckenrode was that she mismatched shades of cloth. It is significant that this was not specified as the reason for her discharge at the time it occurred. Dubick denied having spoken to Mrs. Eckenrode about the "inside union," or having threatened her. However, Mrs. Eckenrode's testimony with respect to those conversations is most convincing. In view of Dubick's conduct as a whole, we can give little credence to his denials. Dubick did not deny that he had ordered Mrs. Eckenrode to supervise the work of other employees. Nor was it denied by the Liberty that Mrs. Eckenrode had been complimented on her work.

Plaskovitz, designer for the American at the plant of the Liberty, testified that he had seen Mrs. Eckenrode "pull tape bad." From the whole record, however, including the considerations set forth hereinafter, we are convinced that the faults advanced by Dubick and Plaskovitz as the reasons for her discharge were not the real reasons, and that she was discharged for union activity.

Lillian Mullinix. Lillian Mullinix was employed by the Liberty as a lining operator on June 22, 1937. She worked for approximately one month. Although she had had no previous experience in a factory, she was experienced as a sewing-machine operator at home. Within two weeks after she was employed by the Liberty she received a raise in salary. She testified that her work had been criticized the first two or three days of her employment, but never thereafter. She also testified that linings defectively made by other employees were brought to her to fix. The day before her discharge she talked to other employees during the noon hour about joining

the Union, which she had joined on July 12, 1937, at Mrs. Stonesifer's house. Dubick discharged her on July 20, 1937, telling her that her work was unsatisfactory. Miss Mullinix stated that she had not found other employment since her discharge, "and that she desired reinstatement to her former position.

Dubick admitted giving Miss Mullinix a raise in salary, but attributed her discharge to the fact that she was slow and also to the fact that she put pleats in the linings and the pressers complained. The latter reason appears hardly credible in view of Miss Mullinix's convincing testimony that defective linings were brought to her to fix. Dubick admitted that he thought well enough of Miss Mullinix to keep her a month. In view of the whole record, including the considerations set forth hereinafter, we find that Miss Mullinix was discharged because of her membership in the Union.

Fern Blizzard. Fern Blizzard was employed by the Liberty on June 21, 1937, as a sewing-machine operator and worked on belts, sleeves, and pockets. She worked for one month. She had had two months' previous experience in a men's garment factory. She joined the Union on July 19, 1937. She, however, did not visit Mrs. Stonesifer's house until after her discharge. She was laid off by Dubick a few days after she was hired because of a mistake she had made in a bundle, but was taken back the same day after intervention on her behalf with Dubick by her mother. Since that time her work had not been criticized. On July 21, 1937, she was told her work was unsatisfactory and was discharged by Dubick. At the time of her discharge she earned \$6 per week. At the time of the hearing she had found no other employment.

Dubick testified that when she was first employed he "showed her how" and that when he came back, everything was "upside down" and he had to "rip the whole business." He discharged her soon after. Upon reemploying her, he further testified her work did not improve. It is significant, however, that her employment continued for a three-week period, despite her alleged failure to improve. In view of the whole record, including the considerations set forth hereinafter, we find that Fern Blizzard was discharged because of her membership in the Union.

Doris Sentz. Doris Sentz was employed by the Liberty on July 16, 1937. Her work consisted of "sewing backs." She worked for five days, during which she earned \$5.39. She joined the Union on July 19, 1937, and attended meetings at Mrs. Stonesifer's house. It does not appear that she had previous experience in the work in which she was engaged. She testified that on the fourth day of her employment Dubick gave her "four bundles and he said I should sew the seam straight down, and he didn't tell me . . . I didn't hear him say I was only supposed to sew one bundle and started to sew the

other again, and he told me that was wrong; and, of course, I didn't know, because I was just a beginner." She was discharged the next day upon being told she had made bad mistakes.

Dubick testified that he left Miss Sentz with a bundle and "it was fixed up so bad it couldn't even be fixed, and she knows herself, she wouldn't say she fixed up any bundle I give her." Upon the basis of the foregoing facts, and for the reasons hereafter set forth, we do not believe that Miss Sentz was discharged for union activity.

On July 21, 1937, and July 22, 1937, Dubick discharged the following pressers:

Donald Eckenrode. Donald Eckenrode, husband of Marian Eckenrode, was employed at the Westminster plant as a presser about June 28, 1937, and worked approximately 22 days. He was the first presser hired at the Westminster plant. Before his employment with the company he had worked elsewhere as a presser for a "couple of years." At the Westminster plant he instructed other pressers. He received \$10 per week to start and later received a raise of one dollar, and was promised more money. He joined the Union on July 17, 1937, and thereafter solicited employees to become members during the lunch hour. Dubick discharged him on July 21, 1937, and told him at that time that "we haven't got a whole lot of work." He asked Dubick whether there was anything the matter with his work and Dubick said "No." Eckenrode told him that it was unusual that the first presser hired should be the first one to be laid off. He also testified that the "place was piled with work." Eckenrode has not been able to find other employment since his discharge. Mrs. Eckenrode testified that Dubick had told her that her husband was a "very good presser."

Dubick did not deny that Eckenrode had received a raise, nor did he deny that he had been promised still more money. Dubick testified on direct examination that Eckenrode pressed sleeves unevenly and that his work when completed was wet. On cross-examination another reason for his discharge was that he did not produce enough work. Cohen, an officer of the Liberty, had also observed Eckenrode's work and according to him, Eckenrode did not even know "how to light the iron." Cohen admitted that "there was plenty of work to press." In view of the whole record, we are convinced that the causes for his discharge set forth by Cohen and Dubick are not honest answers to the charge of discrimination.

Charles Yeager. Charles Yeager was employed by the Liberty on July 1, 1937, as a presser and worked there for approximately 20 days. He had two years' previous experience as a presser. On the day of his discharge, Plaskovitz, the designer, told him and a few other pressers that their work was good. He joined the Union on

July 15, 1937, and thereafter visited at Mrs. Stonesifer's house. On the day of his discharge, during the noon hour, he distributed application cards for membership in the Union among some employees in the plant. He testified that Cohen "was standing right behind him." Dubick discharged him that night, July 21, 1937. Dubick told him his work was all right but that he "got orders from the boss." He also testified that on July 17, 1937, Dubick had asked him not to join an "outside" union, since "they would have a nice one of their own later on; and he said they moved from Texas on account of the union, and they could move from Westminster." Yeager earned \$14 per week at the time of his discharge, and has earned nothing since. He stated that he desired to be reinstated to his former position.

Dubick admitted that Yeager's work was "all right." He testified, however, that Yeager talked while working, drank beer and did not produce enough work. It does not appear that either Dubick or Cohen, who was directly in charge of the pressing, ever told Yeager not to bring beer into the plant. Cohen would not admit that Yeager's work was "all right," but insisted it was merely "passable," and testified that Yeager and Perry Kidd always talked and did not "produce." In view of the circumstances of his discharge as convincingly testified to by him, and in view of the whole record, including the considerations hereinafter set forth, we are of the opinion that Yeager was discharged because of his membership in the Union.

Perry Kidd. Perry Kidd was employed as a presser at the Annette shop about June 30, 1937, and worked there about 22 days. He had worked in a men's garment factory for two years, several years before his employment in Westminster. He testified that Plaskovitz always told him that his work was satisfactory. He joined the Union on July 15, 1937, and thereafter solicited members and visited at Mrs. Stonesifer's house. Kidd also observed Dubick and Cohen standing around outside the plant at the corner of John and Main Streets and elsewhere in clear view of Mrs. Stonesifer's house. He was discharged by Dubick on July 22, 1937; and told at that time that his work was satisfactory but that "we can't have no union help work here."

Kidd was a friend of Lena Ruby who worked in the office of the plant. He testified that she showed him a list of all union members, which another employee in the plant had turned in to the office. Kidd's name headed the list. Lena Ruby told him that Dubick and Cohen had asked her to find out all about the union members. Kidd testified that he tore up the list. Kidd's testimony with respect to the "union list" is substantially confirmed by the testimony of Mrs. Eckenrode.

Kidd also testified that after his discharge he met Cohen on the street and Cohen offered to take him back if he "forgot the union." At that time Cohen is reported to have said, "This shop will never go union . . . There is plenty of other small towns we can move to." Kidd and Yeager went back to the plant shortly after their discharge and were met by Dubick who said he "wouldn't need them." Kidd earned \$15 at the time of his discharge and at the time of the hearing had not found other employment. He stated that he desired to be reinstated to his former position.

Dubick admitted that both Yeager's and Kidd's work was satisfactory, but alleged that they talked too much, drank beer, and did not produce enough work. Our conclusion with respect to his discharge is similar to that in the case of Yeager.

Benson Warner. Benson Warner was hired as a presser about July 12, 1937. He had had no previous experience as a presser and worked only eight or nine days. He joined the Union on July 12 and afterwards solicited members. He received no complaints about his work, according to his testimony. He was discharged by Dubick on July 22, 1937. He was paid at the rate of \$6 per week for the first few days of work but on the day of his discharge was paid \$8 for the previous week.

Dubick testified that Warner knew nothing about pressing when he started, that he complained about the wage of \$6 per week, and that he therefore paid him \$8 for his last week's work and discharged him, since "they could not pay him any more than \$6." Cohen testified that Warner couldn't "even hold an iron." Upon these facts, and in view of the considerations hereafter discussed, we do not believe Warner was discharged for union activity.

C. Conclusions with respect to the unfair labor practices

From the facts set forth above, it is plain that the respondent, the Liberty Cloak Company, was antagonistic toward the self-organization of its employees at its Westminster plant. We are also persuaded from the testimony that this respondent, through its foreman Dubick and its vice president Cohen, attempted to intimidate and did intimidate its employees in regard to their membership in the Union, by threatening them with discharge if they joined. It is also clear that this respondent caused to be drawn up a list of its employees at its Westminster plant who were members of the Union for the purpose of intimidation and discharge of such members.* Furthermore, the Liberty attempted to persuade some of its employees to form a company-dominated union.

* It is significant that Lena Ruby, who participated in the formation of the above list did not testify for the Liberty at the hearing.

It is contended that the presence of Dubick and Wiener in the vicinity of Mrs. Stonesifer's house at times when employees at the plant met there for purposes of self-organization and other concerted action was due merely to the proximity of the house to the plant and to the small size of the town of Westminster. It may be true that the presence of Dubick and Wiener at some of the times testified to was merely accidental. We are convinced, however, from the record as a whole, that Wiener and Dubick were certainly in a position at times to observe who entered and who did not enter Mrs. Stonesifer's house, and did deliberately so observe. It is clear that all the activities enumerated above discouraged membership in the Union.

The Liberty contends that from the time it opened its plant at Westminster, through the week ending August 4, 1937, there was a large labor turn-over at the plant due to the incompetence and inexperience of many employees hired at that time. The Liberty claims that between 38 and 45 of its employees were discharged at its Westminster plant during that period, including those named in the complaint. In support of this contention, it introduced in evidence the names of employees other than those named in the complaint, who, it is contended, were discharged at that time. An analysis of the list of these employees reveals that the following numbers are claimed to have been discharged during the weeks ending on the following dates:

June	30—2
July	7—2
July	14—6
July	21—7
July	28—6
August	4—6

The list also reveals that out of these 29 employees, 18 were discharged after working from a few hours up to five days. Five others were discharged within ten days from the date they were hired. One was discharged after working 11 days; one after 11½; two after 12; one after 17. Only two worked for 20 days or more before their discharge.

Of those employees named in the complaint, however, Lillian Mullinix, Nettie Stonesifer, Fern Blizzard, and Marian Eckenrode worked one month before they were discharged. Donald Eckenrode, Charles Yeager, and Perry Kidd worked 20 days or more before their discharge. It is thus apparent that seven of the nine named in the complaint were employed for a comparatively longer period than other employees claimed to have been discharged during that period.

Further, Lillian Mullinix, Nettie Stonesifer, Marian Eckenrode, Donald Eckenrode, Charles Yeager, and Perry Kidd, all frequented

Mrs. Stonesifer's house before their discharge, and all were active members in the Union. All were discharged within a three-day period between July 20, 1937, and July 22, 1937, without being apprised in any manner beforehand of the reasons attributed by the Liberty for their discharge.

Again, at the time of their employment at the Westminster plant, Nettie Stonesifer, Fern Blizzard, and Marian Eckenrode were experienced sewing-machine operators, having sewed as such in a men's garment factory. Lillian Mullinix was an experienced operator, although she had never worked in a factory before. Donald Eckenrode, Charles Yeager, and Perry Kidd were experienced garment pressers. Lillian Mullinix was given defective linings to fix and received a raise during her employment. Nettie Stonesifer, Marian Eckenrode, Donald Eckenrode, Charles Yeager, and Perry Kidd were complimented on their work. Marian Eckenrode and Donald Eckenrode were told to instruct others in their line of work. The latter received a raise in pay.

We find that Lillian Mullinix, Nettie Stonesifer, Fern Blizzard, Marian Eckenrode, Donald Eckenrode, Charles Yeager, and Perry Kidd were discharged by the Liberty because of their membership in and activity for the Union. We find that by all of the acts enumerated above, the Liberty interfered with, restrained, and coerced its employees at its Westminster plant in the exercise of their rights guaranteed by Section 7 of the Act.

In view of the shortness of the tenure of their employment, their inexperience, and other circumstances surrounding their discharge, we do not find from the record that Doris Sentz and Benson Warner were discharged because of membership in the Union.

We are also unable to find from the record that the American engaged in unfair labor practices within the meaning of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Liberty set forth in Section III above, occurring in connection with the operations of the American and the Liberty described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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

CONCLUSIONS OF LAW

1. International Ladies Garment Workers Union, Baltimore Joint Board, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, the Liberty Cloak Company, by discriminating against Lillian Mullinix, Nettie Stonesifer, Marian Eckenrode, Fern Blizzard, Donald Eckenrode, Charles Yeager, and Perry Kidd, in regard to hire and tenure of employment, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

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

5. The respondent, the American Cloak Company, has not engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

6. The respondent, the Liberty Cloak Company, by discharging Doris Sentz and Benson Warner has not thereby discriminated in regard to hire and tenure of employment to discourage membership in a labor organization within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the above 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, Liberty Cloak Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) 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, or 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;

(b) In any manner discouraging membership in the International Ladies Garment Workers Union, or in any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

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

(a) Offer Lillian Mullinix, Nettie Stonesifer, Fern Blizzard, Marian Eckenrode, Donald Eckenrode, Charles Yeager, and Perry

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

(b) Make whole Lillian Mullinix, Nettie Stonesifer, Fern Blizzard, Marian Eckenrode, Donald Eckenrode, Charles Yeager, and Perry Kidd, for any loss of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of such discrimination to the date of the offer of reinstatement, less the amount earned by each of them, respectively, during such period;

(c) Post immediately in a conspicuous place at its Westminster, Maryland, plant, notices stating that the Liberty Cloak Company will cease and desist in the manner aforesaid, and maintain said notices for a period of thirty (30) consecutive days from the date of posting;

(d) 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.

It is further ordered that the allegations of the complaint that the Liberty Cloak Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act by discharging Doris Sentz, and Benson Warner be, and they hereby are, dismissed; and that the allegations of the complaint, in so far as they allege that the American Cloak Company is engaging in and has engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act be, and they hereby are, dismissed.