

In the Matter of INGRAM MANUFACTURING COMPANY and TEXTILE
WORKERS ORGANIZING COMMITTEE

Cases Nos. C-335 and R-234.—Decided March 11, 1938

Textile Manufacturing Industry—Interference, Restraint, and Coercion: propaganda against union; propaganda discrediting union representatives; expressed opposition to outside labor organizations; threats to close plant rather than enter into contract with one organization; persuading employees to refrain from joining one organization—*Discrimination:* demotion—*Company-Dominated Union:* domination or interference with administration of; support, soliciting membership by supervisory employees; responsibility for allegedly unauthorized activities of supervisory employees in absence of public repudiation by management; despite absence of interference at the creation of and refusal to bargain with organization; disestablished as agency for collective bargaining—*Reinstatement Ordered:* of employee demoted for union activity—*Settlement:* agreement to cease prosecution; between union filing charge and respondent, without participation of Board representative; no bar under circumstances—*Investigation of Representatives:* controversy concerning representation of employees: substantial doubt as to majority status; refusal by employer to meet and negotiate with union representatives—*Unit Appropriate for Collective Bargaining:* production employees, no controversy as to—*Election Ordered:* ballot, company-dominated labor organization excluded from.

Mr. Maurice J. Nicoson, for the Board.

Bass, Berry & Sims, by Mr. Cecil Sims, of Nashville, Tenn., for the respondent.

Mr. Herbert G. B. King, of Chattanooga, Tenn., for the T. W. O. C.

Mr. Millard L. Midonick, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 8, 1937, Textile Workers Organizing Committee, herein called the T. W. O. C., filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Ingram Manufacturing Company, Nashville, Tennessee, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the

National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 20, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

The Regional Director issued a notice of hearing on July 21, 1937, an amended notice of hearing on July 26, 1937, and a second amended notice of hearing on July 31, 1937, copies of all of which were duly served upon the respondent and upon the T. W. O. C. Pursuant to the notice, the amended notice, and the second amended notice, a hearing was held on August 12, 1937, at Nashville, Tennessee, before William H. Griffin, the Trial Examiner duly designated by the Board. The Board, the respondent, and the T. W. O. C. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing no rulings were made on motions nor were objections interposed to the admission of evidence.

Upon charges duly filed by the T. W. O. C., the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued a complaint dated November 4, 1937, against 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 Act.

Copies of the complaint and accompanying notice of a hearing to be held upon the complaint in Nashville, Tennessee, on November 15, 1937, were duly served upon the respondent, the T. W. O. C., and Ingram's Employees Council, herein called the Council. At the request of the respondent and by agreement with the T. W. O. C., the hearing was advanced to November 10, 1937, and amended notice to that effect was dispatched by telegraph on November 8, 1937, and by registered mail on November 9, 1937, to the respondent, to the T. W. O. C., and to the Council.

Pursuant to the amended notice, a hearing was held in Nashville, Tennessee, on November 10 and 11, 1937, before Laurence J. Koters, the Trial Examiner duly designated by the Board. The Board, the respondent, and the T. W. O. C. were represented by counsel and participated in the hearing. The Council did not appear, nor did it seek to intervene or to participate in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to produce evidence bearing on the issues was afforded all parties.

At the hearing, upon motion of counsel for the Board, paragraphs 8 and 9 of the complaint, alleging violation of Section 8 (3) of the

Act by discrimination with regard to three persons named therein, were dismissed without prejudice.

At the hearing the respondent filed an answer denying most of the allegations of the complaint, admitting, however, those concerning its incorporation and business. As a further defense, the respondent alleged that with the exception of paragraph 7 of the complaint, all of the matters set out therein were embodied in a former complaint in Case No. X-C-160 involving the same parties; that after said former proceeding had been set for trial, the T. W. O. C. and the respondent compromised and settled by written document¹ dated July 1, 1937, all of the matters involved therein; that pursuant to the settlement, the T. W. O. C. made a written request² for permission to withdraw the charges; that the Regional Director for the Tenth Region granted consent on July 3, 1937, and ordered the proceeding to be dismissed; that by reason of the settlement and dismissal of the former matter, the Board is wholly without jurisdiction to hear or determine the issues there involved. Upon the same grounds as were advanced in the foregoing allegations, the respondent filed a motion³ at the opening of the hearing that all allegations in the complaint based upon matters alleged to have occurred prior to July 1, 1937, be dismissed. The Trial Examiner denied the motion, and the respondent excepted. The respondent is deemed to have duly excepted throughout the hearing to the admission of evidence as to conduct prior to July 1, 1937, relating to the allegations of the former complaint. The Intermediate Report of the Trial Examiner, filed on December 22, 1937, proceeded upon the theory that the aforesaid motions were properly denied and objections properly overruled. In its exceptions to the Intermediate Report, filed January 3, 1938, the respondent renewed its former contentions.

We affirm the rulings of the Trial Examiner in this regard. The respondent's contention that the Board is without authority cannot be sustained. The agreement of settlement, dated July 1, 1937, and signed by representatives of the T. W. O. C. and of the respondent, provided:

Following our discussion of tonight, this is to advise you that the Ingram strike has been called off with the understanding that all workers will be returned to work without discrimination because of union activities as rapidly as conditions will permit in the resumption of normal production.

It is also now understood that all charges now pending before the National Labor Relations Board will be dismissed. All future matters will be determined in accordance with the National Labor Relations Act.

¹ Respondent Exhibit No 1-a.

² Board Exhibit No 9

³ Respondent Exhibit No 1.

Pursuant to the settlement agreement, A. Steve Nance, a representative of the T. W. O. C., dispatched to the Regional Director for the Tenth Region the following communication:

I wish to request permission to withdraw the charge heretofore filed in the above named case⁴ under date of June 3, 1937, and amended on June 21, 1937.⁵

The Regional Director thereupon issued, on July 3, 1937, an order consenting to the withdrawal of the aforesaid charge and dismissing the case.⁶

Another charge was subsequently filed by the T. W. O. C. on September 28, 1937, and a new complaint based upon it was issued on November 4, 1937. Upon this charge and complaint the present case proceeds.

In its exceptions to the Intermediat  Report, the respondent contends that the Trial Examiner erred in denying its motion to dismiss because the "Trial Examiner and the Board are . . . without authority to reopen matters involved in a labor dispute which have been compromised and settled by the parties in interest." It is not claimed that any member or representative of the Board participated in the settlement agreement. The request to withdraw the charges carried no notice of the settlement or the circumstances for the ratification of the Regional Director. The Board itself, representing the United States, is a party in interest in proceedings relating to unfair labor practices under the Act. No private party can sanction an employer's interference, restraint, or coercion in the exercise of rights guaranteed by Section 7 of the Act, nor can such a party sanction unlawful domination, interference, or support of a labor organization by an employer, in contravention of the policy of the Act.

In a proper case, particularly if the agreement is concluded with the safeguard of the presence of a governmental representative, we may exercise our discretion and refuse to disturb the settlement. But we will closely scrutinize all agreements purporting to settle or compromise charges of unfair labor practices. Under the circumstances of the present case, we do not believe the agreement has effectuated the policies of the Act and cannot therefore withhold action on its account.

Moreover, upon a review of the record, it appears that the respondent has not fully carried out the conditions which by the agreement it undertook to perform in consideration for the settlement of the charges.

We are not bound in this case by the Regional Director's dismissal of the former case. No contention based upon the doctrine of *res*

⁴ Case No X-C-160

⁵ Board Exhibit No 9

⁶ Respondent Exhibit No 1-b

judicata can prevail since the former case was dismissed before hearing was reached and without opportunity for adjudication of the merits.

The respondent further asserts, basing its argument again upon the reasoning that the matters prior to July 1, 1937, had been settled by the parties, that the Trial Examiner erred in admitting and considering evidence relating to such matters and in basing his findings of fact and conclusions thereon. This contention is without merit for the reasons already advanced and for the further separate reason that evidence concerning unfair labor practices under the Act, even though there has been a settlement of such matters binding upon the Board, may, nevertheless, be relevant to the consideration of evidence of unfair labor practices alleged to have been committed subsequently. A course of conduct, although itself not within the operation of the Act, may throw light and color upon other activities, and evidence concerning such conduct may therefore be relevant to matters at issue and consequently admissible. It is upon this theory that we have often considered evidence of conduct which occurred prior to the effective date of the Act.

The respondent further argues that since the T. W. O. C. agreed that charges before the Board would be dismissed, the T. W. O. C. "could not thereafter make the charges upon which the complaint in the present case is based, and hence the charges upon which the present complaint was issued were altogether without legal effect and no complaint could lawfully be issued or based thereon." Without passing upon whether the terms of the agreement, properly construed, purported so to bind the T. W. O. C., we hold that an agreement by which a labor organization binds itself to refrain from filing charges under the Act on behalf of employees is contrary to the policy of the Act and therefore of no effect whatsoever upon the power so to initiate Board proceedings.⁷

At the commencement of the hearing, the respondent moved to require the Board to make its complaint more specific, particularly as to paragraphs 3, 4, 5, 6, 7, 10, 11, 12, 13, and 14, on the ground that the allegations were so general in their nature as not to apprise the respondent sufficiently of the nature thereof to enable it adequately to prepare its defense. Upon the denial of the motion, the respondent moved to dismiss the complaint for the reasons stated above and for the reason that to force the respondent to trial under the circumstances constituted a denial of due process of law. These motions were denied by the Trial Examiner, and exceptions were taken. Upon an inspection of the complaint, we find no merit in the respondent's position that it is defective in the respects contended.

⁷ Cf. *Matter of R C A Manufacturing Company, Inc. and United Electrical & Radio Workers of America*, 2 N. L. R. B., 159, 179.

At the conclusion of the Board's evidence, the respondent moved for a postponement of the hearing on the claim that it required time to prepare its defense to a case for the first time disclosed by the Board's evidence. The respondent excepted to the denial of this motion by the Trial Examiner. However, at the oral argument before the Board in Washington, D. C., granted at the respondent's request, though counsel for the respondent was asked several times what further evidence he had to offer, he made no offer of proof but merely expressed himself as satisfied that the respondent would prevail upon the basis of the record as it now stands. We find that the Trial Examiner did not by these rulings commit prejudicial error, and the rulings are hereby affirmed.

At the close of the Board's case before the Trial Examiner, counsel for the Board moved to conform the pleadings to the proof adduced at the hearing. This motion was granted by the Trial Examiner. During the course of the hearing, the Trial Examiner made several rulings, in addition to those mentioned above, on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 20, 1937, the Trial Examiner filed an Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. The Trial Examiner recommended, however, that so much of the complaint as related to the discharge of Herbert Tyner, Herman Louis Watson, and Boyd Harris be dismissed without prejudice in accordance with the ruling at the hearing granting the motion of counsel for the Board to dismiss the allegations in paragraphs 8 and 9 of the complaint. On January 3, 1938, the respondent filed exceptions to the Intermediate Report and requested an opportunity to argue the exceptions before the Board. Pursuant to notice, a hearing was held before the Board on January 13, 1938, for the purpose of such oral argument. Only counsel for the respondent participated.

On February 18, 1938, pursuant to Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board issued an order consolidating the cases for all purposes.

Upon the entire records in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Ingram Manufacturing Company, is a Tennessee corporation having its office, plant, and principal place of business in

Nashville, Tennessee. The respondent is engaged in the manufacture and production of yarn, both cotton and wool, and in the production of bath mats, rugs, and bed spreads. The principal raw materials used in the production of these products are wool and cotton. During 1936, purchases of wool by the respondent for its operation amounted to \$758,428.85 in value. All of the wool was shipped to the respondent's plant in Nashville, Tennessee, from Massachusetts and Pennsylvania. The cotton used by the respondent in the manufacture of its products during the same period of time amounted to \$244,934.19 in value. Eighty-five per cent of the cotton is purchased at and shipped from points without the State of Tennessee, principally from Mississippi and Arkansas.

During the year 1936 respondent produced in its Yarn Department both wool and cotton products valued at \$1,333,446.03, and in the manufacture and production of rugs, bath mats, and bed spreads, products valued at \$282,321.51. At least 75 per cent of these finished products, manufactured in the respondent's Nashville, Tennessee, plant, were sold and shipped to customers residing in States other than the State of Tennessee.

The corresponding amounts in 1937 were substantially the same as those set forth for 1936 above.

The respondent sells through commission men located at various places in the United States, principally Chicago, Illinois; Reading, Pennsylvania; Amsterdam, New York; Boston, Massachusetts; and New York City.

The respondent's plant in Nashville, Tennessee, occupies a ground area of approximately fourteen acres. It consists of one building in which all the manufacturing operations are carried on. The operations are divided into the Rug Department, with approximately 105 employees, and the Yarn Mill, with approximately 377 employees.

II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee, associated with the Committee for Industrial Organization, is a national labor organization which formed and chartered its local affiliate, Textile Workers Organizing Committee, Local Union No. 143, membership in which is confined to employees of the respondent's plant. The T. W. O. C. admits to its membership all employees in the textile industry with the exception of supervisory and clerical employees.

Ingram's Employees Council is likewise a labor organization, unaffiliated, however, with any other organization. It admits to membership non-supervisory employees of the respondent only.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1. By discrediting the T. W. O. C. and by threats

After a drive for organization during May 1937, by the T. W. O. C. and toward the end of the month by the Council as well, the respondent's employees went out on strike on June 1, 1937. The causes for the strike and its purpose are undisclosed by the record. The resulting shut-down lasted until approximately June 25, 1937. At that time, a "back-to-work" movement succeeded in restoring the plant to limited activity. On July 1, 1937, the respondent and the T. W. O. C. reached an agreement settling the strike and providing that all workers be returned to work without discrimination and as rapidly as conditions would permit in the resumption of normal production.⁸

It was testified that on July 6, 1937, while rehiring was being carried on, Ernest Jones, Sr., vice president and general manager of the plant, made certain statements to a number of employees on the respondent's property. There appears in the testimony of Violet Kail, one of the respondent's employees, the following:

Q. (By Mr. Nicoson.) What did Mr. Jones say there at that time?

A. Well, he said that the C. I. O. had sold out and Mr. Lambert had left town and Mr. Nixon⁹ was on his way out, and that they had give us a dirty deal, and there was not any agreement for us to go back to work between Mr. Sims¹⁰ and Mr. Nixon. The agreement was made before.

Q. How many people was there at that time?

A. My estimation, there was ten or fifteen standing around.

Q. You think they were within range of his voice?

A. Well, they were all huddled up around him. He could not hardly turn around.

Mrs. Berryl Hedgepath, another employee of the respondent, corroborated Violet Kail's testimony. Although it was stipulated by the respondent and the Board that Ernest Jones, Sr., if able to be present at the hearing, would take the stand and deny that he made the remarks here attributed to him, we are nevertheless impressed

⁸ This agreement has been set forth and discussed above under "Statement of the Case."

⁹ Lambert and Nixon were representatives of the T. W. O. C.

¹⁰ Mr. Cecil Sims was and is the respondent's counsel.

by the verity and mutual corroboration of the testimony of Kaiß and Hedgepath and find it worthy of credence.

If the aforesaid remarks of Ernest Jones, Sr., were accepted as true by employees, the T. W. O. C. would have suffered from the consequent discouragement and disaffection. And whether believed or disbelieved, the obvious indication of management animosity toward the T. W. O. C. would tend to accomplish the same result.

Annie Mae Neeley, one of the respondent's employees who went on strike, was returned to her job on July 7, 1937. She testified that during working hours on July 12, 1937, Jesse Shelton, her foreman, said in her presence that "the C. I. O. would be no account down there, that Ingram would never sign a contract and Worthen¹¹ got his hand in a mess by signing a C. I. O. contract, and said that the C. I. O. didn't even send after a charter for us, . . ."

The respondent did not stop at disparagement of the T. W. O. C. Coercion was exercised by threats to close the plant and to go out of business in the event that the T. W. O. C. should be in a position to demand a contract. Thus Annie Mae Neeley testified concerning Jesse Shelton, foreman, as follows:

. . . he came over there to fix my winder and then I said "Jesse, you reckon we are going to get a closed shop," and he said, "Why you are not even going to get no contract," and I said, "Why," and he said "Well, I have been talking to Mr. Ingram too many times" and he said Mr. Ingram would go out of business, and I said "What do you mean by that?" He said "Well, I mean they would shut the mill down before he signed a contract."

Similarly, Mrs. Stella Etheridge, an employee of the respondent, testified concerning Walling, a supervisory employee in charge of the night and the day shifts, as follows:

. . . and Mr. Walling came around and I asked him what did the card mean and what was there to the company union and asked him what was his advice on it, and he told me—asked me if I wanted to work, and I told him I certainly did, and he said well, he would advise me to sign the company union, because Mr. Ingram would never sign a C. I. O. contract—he would let the mill sit there and rot.

Q. Now, was there anything said about voting?

A. Well, he told me that they would not have any voting; that the C. I. O. had gone dead and that there was not anything else to it.

Neither Shelton nor Walling took the witness stand; this testimony stands uncontradicted.

¹¹ A competitor of the respondent.

2. By discrimination

Mrs. Rowie Robertson has been employed by the respondent in its rug department for approximately seven years. Her work is to run borders on rugs. There are only two bordering machines in the plant. One machine has customarily been operated to capacity while the excess work is accomplished by use of the second machine. Until May 1937, Mrs. Robertson operated the full-time machine. Mrs. Frances Hill operated the second machine. Mrs. Hill had worked quite regularly during the fall of 1936 and through the Christmas holidays. After that Mrs. Hill worked only a few days as an extra until May 1937. Mrs. Robertson testified that "sometime in May when I carried some T. W. O. C. cards down to the mill, . . . they found out I carried them and laid me off and put her on my machine, and she worked that week." Thereafter, Mrs. Robertson was demoted to the status of an extra on the second machine for approximately two weeks preceding the strike and shut-down on June 1, 1937.

For five or six days after the strike settlement on July 1, 1937, Mrs. Robertson was unsuccessful in her requests to be returned to work. Mrs. Hill was at work during that time. She had returned to work with the back-to-work movement a few days before the strike was settled. Mrs. Robertson requested one of the foreladies to divide Mrs. Hill's work between both of them. The forelady referred her to Mr. Moench, apparently a superior supervisory employee, but Moench declined her request on the ground, Mrs. Robertson testified, that "it would not be fair" to Mrs. Hill, since "she took all the risk and went back to work with them in the mill." Approximately a week after the strike settlement of July 1, 1937, Mrs. Robertson was again put to work. She was not returned to her first machine, however, but to the second one, and during the four months between the strike settlement and the hearing she received irregular part-time employment as an extra.

Mrs. Robertson testified on cross-examination that she did not know whether Mrs. Hill was receiving preferential treatment subsequent to Mrs. Robertson's reinstatement to irregular part-time employment after the strike. It is clear, however, that in the temporary lay-off and the demotion to an irregular part-time job immediately preceding the strike there was discrimination based upon membership and activity in the T. W. O. C. which constituted interference, restraint, and coercion within the meaning of Section 8 (1) of the Act.¹² We further infer from Moench's remark and the course of practice with respect to the first and second machines that Mrs.

¹² Cf. *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company Corporations and Local Division No 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N L R B 1, 36, 37

Hill has been permanently moved up to take Mrs. Robertson's place at her first machine and that Mrs. Robertson has been relegated to Mrs. Hill's place as the one who is called upon to perform only such work as exceeds the capacity of the first machine. It is not contended that the strike was caused or prolonged as a result of an unfair labor practice nor that Mrs. Robertson went out on strike in protest against her own discriminatory demotion. It is true that Mrs. Hill's application for reinstatement during the time of the strike when Mrs. Robertson was not available left the respondent no alternative but to put her in Mrs. Robertson's former position on the first machine. Approximately five days later, however, Mrs. Robertson applied for work. She had had approximately seven years of experience as a border runner. Mrs. Hill had been an irregular part-time employee for less than a year with the exception of the several weeks that she had been given preference. The respondent nevertheless preferred to continue Mrs. Hill in the full-time position, assigning as a reason merely her return to work five days before Mrs. Robertson. Taking all the events leading up to the respondent's action, we cannot believe that its motive for continuing Mrs. Hill in the superior position was her earlier application for reinstatement. The circumstances surrounding the reinstatements lose their importance when viewed in the light of the discrimination against Mrs. Robertson previous to the strike. The conclusion is inescapable that her reinstatement to the same inferior position to which she had been unfairly relegated prior to the strike was motivated merely by the continuation of the respondent's former animus toward her.

We find, therefore, that Mrs. Roxie Robertson has been discriminatorily demoted to her present position, and that the respondent has thereby interfered with, restrained, and coerced employees within the meaning of Section 8 (1) of the Act. We further find that Mrs. Robertson has been an employee of the respondent within the meaning of Section 2 (3) of the Act throughout the entire period during which we have found discrimination against her.

Berryl Hedgepath was employed by the respondent in November 1936. She was a member of the T. W. O. C. at the time of the strike. That her membership was active and known to the respondent is obvious from the fact that she is named among 13 individual parties defendant in a bill for an injunction to prohibit alleged unlawful picketing and related conduct filed on July 1, 1937, by the respondent against the T. W. O. C. in the Chancery Court of Davidson County, Tennessee.

Prior to the strike, Berryl Hedgepath worked on the day shift. Although she applied for work on July 6, 1937, she was not reinstated until July 12, 1937, and then she was placed on the night shift despite her expressed request for work during the day. Walling, the fore-

man, told her that others had been employed in her place on the day shift but that he would do all that he could to have her transferred. She was never transferred.

Bearing in mind that it was not shown that the strike was caused by unfair labor practices, nor that there was any discrimination as to Berryl Hedgepath up to this time, we believe that it is immaterial whether her place had been filled before or after the strike settlement. It was not shown that an opening on the day shift remained for Berryl Hedgepath at the time she applied for reinstatement. We cannot infer merely from the fact that she was named in the injunction complaint that her reinstatement was delayed until July 12, 1937, in order to fill her place with other employees. Assuming that her place was filled, we are not told by whom. We are convinced from the respondent's evidence that the reinstatements of groups of employees over a period of approximately two weeks were caused by the necessity of resuming operations gradually.

On July 30, 1937, Berryl Hedgepath voluntarily left the employ of the respondent because of the illness of one of her children. She was unable to apply for reemployment for five or six weeks. She has not been able to obtain reemployment on any shift since that time. The reason given then and now by the respondent for refusing to reemploy her is that new hands were employed during her voluntary absence on positions similar to the one she had held and that no place remains available. The respondent's records bear out its contention that these new hands were employed during the period of her voluntary absence and not subsequent to her application for reemployment.

We find that there was and is no interference with, restraint, or coercion of employees, in the exercise of the rights guaranteed in Section 7 of the Act, by reason of the respondent's reinstatement of Berryl Hedgepath to an undesirable shift or by reason of the subsequent refusal to reemploy her.

*B. Interference with, domination, and support of Ingram's
Employees Council*

We have reviewed some of the circumstances with respect to the disparagement of the T. W. O. C., the attempts to discredit its representatives, and the efforts made to impede its organizational activities. In sharp contrast, we find the record replete with evidence, largely uncontradicted, of the respondent's interference in support of the Council.

A. C. Carnes, an employee of the respondent, testified that approximately a week before the strike of June 1, 1937, Ed Ivey,¹³

¹³ Ed Ivey is referred to indiscriminately in the transcript as "Ivy" or "Ivey". It is clear that both names are meant to designate the same individual, and we will hereafter refer to him as "Ivey".

one of the respondent's foremen, approached him. "Mr. Ivey offered me a card and said, 'You better join the company union.'" Carnes understood him to refer to the Council. Carnes declined to join at that time. Shortly after the termination of the strike, Ivey approached Carnes again while at work and ordered Carnes to report to Mrs. Gordy's office. Mrs. Inez Gordy was employed as a time-keeper; her office was among the clerical offices at the respondent's plant. She was the wife of the superintendent of the plant. Carnes reported to Mrs. Gordy's office. While he was there, Ivey walked in. Carnes testified that Mrs. Gordy requested him to sign a card¹⁴ containing an authorization for the Council to act as the subscriber's collective bargaining agent in negotiations with the respondent. When Carnes indicated that he was reluctant to join the Council, Mrs. Gordy said: "Well, you know we all want to hold our jobs." Ivey offered the further inducement that a job would be obtained for Carnes' stepdaughter, and there was talk of a substantial general wage increase. This importuning had the desired effect. Carnes testified:

Well, I signed it to hold the job. I do not know but what it would keep me on the job or whether it would release me. I signed it for the overseer I work for more than anything else.

No evidence was introduced by the respondent to prove that Ivey and Mrs. Gordy did not behave in the manner described. Part of its defense to the incidents described was to point out on cross-examination that despite the fact that Carnes was persuaded by these unlawful means to join the Council, his stepdaughter was not employed by the respondent and that the general wage increase made effective soon after the strike was far below the amount held out as an inducement by Ivey and Mrs. Gordy. But the vice of solicitation of membership for a labor organization by a supervisory employee and by the wife of a member of the management is not cured by the respondent's failure to fulfill inducements held out by them. Such solicitation by those close to the employer is in itself enough to create the impression of employer support. The usual authority of such employees and, in this instance, the use of the respondent's time and the respondent's property indicated that the respondent itself was making its will known.

During the period immediately after the termination of the strike, a production employee named Hickerson was approached during working hours by another employee named Bates who informed him that those who desired to join the Council were reporting to the office of Mrs. Gordy. Hickerson testified that during this conversation with Bates, Ivey, his foreman, "came up and asked Bates if he was

¹⁴ Board Exhibit No. 11.

trying to get me to go up there and sign one of those cards, and Bates said he was." Ivey accompanied Hickerson to the door of Mrs. Gordy's office. Hickerson walked into the office and requested to see a Council card. Mrs. Gordy handed him a card similar to the one presented to Carnes. The card had been lying on her desk. Asked what further transpired between him and Mrs. Gordy at that time, the witness replied: "Well, she told me that it meant my job if I did not sign this, and then I looked at her and she explained to me she did not mean I would get fired, she meant if we went out on another strike she did not believe the mill would open up any more." Hickerson signed the card. That evening he asked Mrs. Gordy to withdraw his name. Before she had an opportunity to do so, he was persuaded by another employee to remain a member of the Council.

Mrs. Stella Etheridge, an employee of the respondent, testified that she too was approached during working hours, on the morning after the strike was settled, by another employee of the respondent. She "came around with a card¹⁵ and asked me if I wanted to sign it, and I told her no . . ."

These occurrences within the plant during working hours are to be contrasted with the discriminatory demotion of Mrs. Robertson for carrying T. W. O. C. cards into the plant.

Ivey figures also in the solicitation of three other employees. Shortly after McNeese's reinstatement following the strike, Ivey visited him at his home with a Council card. McNeese testified:

Well, he asked me to sign this card in order to be a member of their organization, and if I would sign this card I would hold my job and get a raise.

Mrs. Lucille Cristman and Thomas Taylor were reinstated to positions in the respondent's plant shortly after the strike. Soon after returning to work, they were together when met by Ivey in front of the plant. Taylor's testimony, corroborated by Mrs. Cristman, is as follows:

A. He just walked up to me and says, "You all want to join up with us." I said, "Well, I don't know; I will study about it." And he says, "Well," he says, "it is a mighty good thing." He says, "I don't believe there is anything to the other," and I said "I don't—"

Q. . . . what do you mean by the other?

A. C. I. O., I reckon is what he meant.

A. . . . and he walked up and says, "You are going home now," and I said "No, I don't know," I said, "I was thinking about

¹⁵ Board Exhibit No 11 (a Council card).

walking back up that way." And he said, "Get in the car and I will let you ride," and I got in the car and he says, "Well," he says, "You all decided to sign up with us," when we got up in front of the house, and I said "I don't know what to do." I said, "I am in a jam, and I don't know what to do. I will study it over," and he give us one of those cards.

In addition to the Council authorization card similar to that presented to Carnes and Hickerson, a Council circular¹⁶ was handed to Mrs. Cristman and Taylor by Ivey while in Ivey's automobile. The vice of this circular lies in the fact that it came from a foreman whose acts in this regard are to be regarded as those of the management.

The circular reads in part as follows:

These outside high-pressure organizers are not in town here because they love you. They are only interested in *one thing*. And that is their fees or salaries that will eventually come from the working man's pockets. They will eventually get **THEIR** pay-off, no matter how much it hurts the working man or makes him suffer.

BUT, the important thing is **THIS**: Do **YOU** think our employers will grant the demands of a high-pressure organizer anywhere as quick as he would grant the demands of an independent employee's organization that **HONESTLY** represents the workers demands? **YOU KNOW THE ANSWER!** The Employee's Council will get **MORE** things done, with more **PERMANENT AND LASTING** benefits than any outsiders group that is merely here to make its fees at working man's expense.

We are all grown-ups and know what we want without any racket of communistic organizers to tell us, and we **CAN GET IT**, because we are the employees that our boss expects to build his business with,

Later that day, Ivey met Mrs. Cristman and Taylor again, this time in a grocery store. Mrs. Cristman testified:

Mr. Ivey come up there and got after us again to sign, and me and Thomas both signed it . . .

We have already described the remarks of Shelton, a supervisory employee employed as a section man, calculated to discredit the T. W. O. C. These remarks, to the effect that the respondent would go out of business before signing a contract with the T. W. O. C., were made to Annie Mae Neeley. This witness also testified to a

¹⁶ Board Exhibit No. 12.

conversation with Walling, a supervisory employee in charge of both the night and the day shifts. This conversation took place shortly after the return to work following the strike. Neeley testified:

Well, I asked him how many members did he have in the Ingram Council, and how many was signed up, and he said he had a majority. Well, I never said nothing then, and he said, "Well, I tell you the CIO never will be no account down in Ingram's plant because Ingram would never sign a contract. He would shut it down before he would sign . . ."

Remarks of Walling to Mrs. Stella Etheridge were also directed to the support of the Council at the expense of the T. W. O. C.:

. . . Mr. Walling came around and I asked him what did the card¹⁷ mean and what was there to the company union and asked him what was his advice on it, and he told me—asked me if I wanted to work, and I told him I certainly did, and he said well, he would advise me to sign the company union, because Mr. Ingram would never sign a CIO contract—he would let the mill sit there and rot.

Such remarks as those of Walling and of Shelton are not to be deemed privileged, although the respondent contends otherwise, on the ground that they were made in reply to requests for information or advice made by non-supervisory employees. The duty to remain aloof and impartial under all circumstances is clear. Employees who request advice of supervisors are uncertain as to which course to pursue, and they may also be fearful that the employer may frown upon a contemplated step in the direction of engaging in concerted activities. Interference at this point necessarily restrains or coerces employees in the exercise of rights guaranteed by the Act.

Neither Ivey, Shelton, nor Walling was called to the witness stand by the respondent despite the nature of the evidence concerning them. In point of fact, it was admitted at the hearing by Ingram, the president of the respondent, and by Sims, counsel for the respondent, that Barber, a representative of the T. W. O. C., complained during the second week in July 1937 of Ivey's partisan activities. Ingram and Sims both testified that steps were taken to reprimand and to warn Ivey. It was pointed out, moreover, on behalf of the respondent, that rivalry and unrest between the two labor organizations during May 1937 prompted Ingram to request Sims to address a gathering of officers, supervisors, and foremen with respect to their duties under the Act. This meeting took place about the middle of

¹⁷ The witness referred here to the Council authorization card similar to Board Exhibit No. 11 which another employee had just asked her to sign.

May 1937. We are persuaded, however, from convincing and abundant evidence in this record and from the virtual absence of countervailing evidence, that Ivey, Shelton, and Walling were in fact responsible for the activities in support of the Council as herein described. To this the respondent replies, and this is its principal contention, that it sought to prevent such conduct on the part of its supervisory employees by instruction and by reprimanding Ivey, and that such interference and support as occurred were unauthorized and beyond its power to prevent, and that therefore it cannot be held responsible for engaging in unfair labor practices.

We cannot share the respondent's view that it is without fault. Neither Ivey, Shelton, nor Walling was called to corroborate the testimony concerning the alleged instructions and, in Ivey's case, the alleged reprimand. More important, Ingram and Sims knew of the interference by supervisory employees on behalf of the Council, and they testified that they communicated with Gordy, the superintendent, and with Ernest Jones, Sr., the general manager, with regard to the interference. Thus, by the testimony of Ingram and Sims themselves, although four men acting in the interests of the management knew of the support rendered the Council by one or more of the supervisory staff, there is not a trace of evidence to show that any effort was made openly to repudiate those activities as foreign to the policy and desires of the respondent. The management having made no move to disclaim the activities of its ostensible agents, it cannot with persuasiveness contend that by an attempt to bring a halt to further similar conduct it disassociated itself from the Council in the minds of its employees. Moreover, the fact that the management does not show that it conveyed notice of repudiation to its employees lends itself to the inference that it was content to allow the alleged misapprehension concerning the respondent's support of the Council, which must have gained wide credence, to continue to influence and interfere with employees in a manner tantamount to continued support by the respondent itself. No injustice is involved if responsibility for the effect of the support of the Council by supervisory employees is placed upon the respondent. The respondent is, therefore, estopped to disavow the activities of its supervisory employees in support of the Council.

One further instance of support for the Council must be attributed to the respondent. For several days before the strike a notice explaining the virtues of the Council was pasted to the glass on the inside of the door of a locked time clock within the respondent's plant. Approximately 350 to 400 employees in the Yarn Department of the respondent's plant must register on the time clock twice a day. Although counsel for the respondent brought out that it was common practice for an employee to affix any notice he wished to the outside

of the clock, this notice apparently occupied a unique and favored position inside the glass door. A key to the door of the clock can only have been in the possession of some supervisory employee. We are given no explanation by the respondent, and we can only infer that it was intended thus to favor the Council and, indeed, to suggest to employees that the Council had the sanction of the management.

We have duly noted and credited the evidence introduced into the record on behalf of the respondent to the effect that there was no employer interference with the formation of the Council at its inception. We note also that the respondent declined to bargain with the Council upon request on the ground that it was not satisfied that the Council represented a majority of employees. In view of the similar claims and demands which were being made concurrently by the T. W. O. C., and in view of the substantial doubt as to which organization, if either, had majority status, the respondent had no choice under the Act but to decline to recognize the Council as a bargaining agent until certification. In any event, where the Board finds interference, domination, and support of the character set forth above, the absence of employer influence at the creation of a labor organization and the refusal of an employer to bargain with that organization upon request cannot constitute a complete defense to an allegation under Section 8 (2) of the Act. Section 8 (2) provides that it shall be an unfair labor practice for an employer

To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . .

Upon the basis of the support and assistance rendered the Council in solicitation for its membership drive, and upon the basis of indirect aid afforded the Council by the means of disparaging and discrediting the T. W. O. C. in order to weaken it as an effective rival, we find that the respondent has dominated and interfered with the formation and administration of the Council and has contributed support to it, within the meaning of Section 8 (2) of the Act.

We further find that by reason of the conduct described above the respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend

to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent has dominated and interfered with the administration of the Council and has contributed support to it.

In order to effectuate the policies of the Act and free the employees of the respondent from the domination and interference of the respondent accomplished through its activities in connection with the functioning of the Council, we shall order the respondent to withdraw all recognition from the Council, and to disestablish it as a representative of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment.

VI. THE QUESTION CONCERNING REPRESENTATION

After a drive for organization by the T. W. O. C. during May 1937, and towards the end of the month by the Council as well, the respondent's employees went out on strike on June 1, 1937. Upon being presented with a proposed contract during the strike by the bargaining committee of the T. W. O. C., Sims, the respondent's counsel and bargaining representative, declined to read or consider it. The strike was settled by July 1, 1937, and the employees were returned to work, over a period of several days, with the understanding that the differences between the employees and the respondent concerning wages, hours, and other conditions of employment would be adjusted by bargaining. No agreement had been reached concerning these matters by November 10, 1937, the date of the hearing in the complaint case.

During the week between the date on which the strike was settled and the date on which petition was filed, the legal representative and the bargaining agent of the T. W. O. C. called upon Sims, the respondent's counsel and representative, and formally requested recognition, on the claim of representing a majority of the respondent's employees, as the exclusive bargaining agent of employees of the respondent. Sims rejected the request on the ground that the Council was making similar demands on him on the basis of signed cards of authorization. The Council was, as we have found in Section III B above, dominated, interfered with, and supported by the respondent's unfair labor practices, and the authorizations cannot be considered, therefore, as a free and unfettered designation of a representative under the Act. It was testified, without contradiction, that unless the question concerning the collective bargaining representative of the respondent's employees is resolved, there will be further labor difficulties.

We find that a question has arisen concerning the representation of employees of the respondent and that such question, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE APPROPRIATE UNIT

The petition for investigation and certification of representatives alleged that mill-production employees of the respondent, exclusive of supervisory and clerical employees, constitute an appropriate unit for the purposes of collective bargaining. All production employees of the respondent are eligible for membership in the T. W. O. C., but foremen and other supervisory employees and clerical employees are not admitted. No evidence was introduced nor objection made by the respondent to the unit contended by the T. W. O. C. to be appropriate.

We find that the production employees of the respondent, excluding foremen, supervisory employees, and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

VIII. THE DETERMINATION OF REPRESENTATIVES

We further find that in order to determine the question of representation which has arisen, it is necessary to conduct an election by secret ballot. Because the respondent has dominated and interfered with the formation and administration of the Council and has contributed support to it, we shall make no provision for the designation of the Council on the ballots.

Those eligible to vote shall be the production employees, excluding foremen, supervisory employees, and clerical employees, who were employed by the respondent during the pay-roll period next preceding the date of the Direction of Election in this case.

Upon the basis of the above findings of fact and upon the entire records in both cases, the Board makes the following:

CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee and Ingram's Employees Council are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the right to self-organization, to

form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Ingram's Employees Council, and by contributing support to it, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) 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. A question affecting commerce has arisen concerning the representation of employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

6. The production employees of the respondent, excluding foremen, supervisory employees, and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) 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, Ingram Manufacturing Company, and its 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 the right 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) In any manner dominating or interfering with the administration of Ingram's Employees Council, or with the formation or administration of any other labor organization of its employees, or contributing support to said organization 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) Withdraw all recognition from Ingram's Employees Council 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 other conditions of employ-

ment; and completely disestablish Ingram's Employees Council as such representative;

(b) Offer Mrs. Roxie Robertson immediate and full reinstatement to her former position without prejudice to any seniority rights or other rights and privileges previously enjoyed by her;

(c) Post immediately, and maintain for a period of at least thirty (30) days from the date of posting, notices to all its employees in conspicuous places throughout the Ingram Manufacturing Company plant stating (1) that Ingram Manufacturing Company will cease and desist as aforesaid; (2) that Ingram's Employees Council is disestablished as the representative of any of their employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that Ingram Manufacturing Company will refrain from any such recognition thereof;

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

It is further ordered that the allegations in the complaint that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, by discharging and refusing to reinstate Herbert Tyner, Herman Louis Watson, and Boyd Harris, be, and they hereby are, dismissed without prejudice.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Ingram Manufacturing Company, Nashville, Tennessee, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production employees of Ingram Manufacturing Company, excluding foremen, supervisory employees, and clerical employees who were employees of the respondent during the pay-roll period next preceding the date of this Direction, to determine whether or not they desire to be represented by Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining.