

In the Matter of WILLIAMS MANUFACTURING COMPANY, PORTSMOUTH,
OHIO and UNITED SHOE WORKERS OF AMERICA, PORTSMOUTH, OHIO

Cases Nos. C-288, and R-334.—Decided March 24, 1938

Shoe Manufacturing—Interference, Restraint, and Coercion: anti-union statements, surveillance of union meetings and organizers; questioning and threatening individual employees; anti-union addresses at plant mass meetings; discrediting union and union leaders; execution of individual contracts of employment, with no prior opportunity for alterations or suggestions by employees; strike and injunction prohibiting inducement of breach of individual contracts—*Discrimination:* discharges; refusal to grant back pay to one employee reinstated after discharge—*Reinstatement Ordered:* as to all but one employee; latter refused respondent's offer of reinstatement—*Back Pay:* awarded to all discharged employees and to employee reinstated without back pay; awarded to employee who refused offer of reinstatement to date of such offer—*Collective Bargaining:* charges of failure, dismissed for lack of evidence of majority at time of alleged failure—*Investigation of Representatives:* controversy concerning representation of employees: unavailability of employer; refusal to meet with union representatives—*Unit Appropriate for Collective Bargaining:* production employees; no controversy as to—*Election Ordered*

Mr. Oscar Grossman, for the Board.

Miller, Searl & Fitch, by Mr. Chester Fitch, of Portsmouth, Ohio, and Peck, Shaffer & Williams, by Mr. Floyd C. Williams and Mr. A. J. Conroy, Jr., of Cincinnati, Ohio, for the respondent.

Mr. Alexander Shaw, of Pittsburgh, Pa., for the Union.

Miss Ida Klaus, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges duly filed by United Shoe Workers of America, Local 119,¹ herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint, dated September 8, 1937, against the Williams Manufacturing Company, Portsmouth, Ohio,

¹ Referred to in the charge as Williams Local, United Shoe Workers of America, Portsmouth, Ohio

herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. In respect to the unfair labor practices, the complaint charged, in substance, (1) that the respondent had, through threats, intimidation, and discharges, discouraged membership in the Union, and (2) that the respondent had coerced its employees into signing individual contracts of employment, with the purpose of interfering with its employees in the exercise of their right to self-organization and collective bargaining.

On September 8, 1937, the Union filed a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 10, 1937, 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. On the same day the Board, acting pursuant to Article III, Section 10 (c) (2), of its Rules and Regulations, ordered a consolidation of the two cases.

The complaint and notice of hearing on the complaint and the petition were duly served upon the respondent and the Union. On September 23, 1937, the respondent filed an answer to the complaint, admitting that it was engaged in interstate commerce but denying that it had engaged in or was engaging in the alleged unfair labor practices and requesting that the complaint be dismissed.

Pursuant to notice, a hearing on the complaint and the petition was held on September 23, 24, 27, and 28, 1937, at Portsmouth, Ohio, before Alvin M. Douglas, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union 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. At the conclusion of the Board's case, counsel for the Board moved to amend the pleadings to conform to the proof and, before the conclusion of the hearing, counsel for the respondent presented a petition of intervention in the proceeding, signed by 750 of the respondent's employees, and moved for intervention on their behalf. The Trial Examiner granted both motions. Other rulings were made by the Trial Examiner on motions and on objections to the admission of evidence, during the course of the hearing. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 18, 1937, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act and recommending that the Board issue a cease and desist order in pursuance of these findings and require the respondent to take certain specified affirmative action. The Trial Examiner failed to find that the respondent had, by reason of the execution of the individual contracts, engaged in any unfair labor practice; concluded that the evidence did not sustain the charge of an unfair labor practice within the meaning of Section 8 (5) of the Act; and recommended that the complaint be dismissed as to such charge. Exceptions to the Intermediate Report were thereafter filed by the respondent and the Union. Oral argument was held thereon before the Board on January 24, 1938. As set forth below, we find that the evidence supports the findings and conclusions of the Trial Examiner with regard to the allegations of the complaint as to the discharges and the refusal to bargain, but that his failure to find any unfair labor practice with respect to the individual contracts is unjustified by the weight of the evidence.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

By stipulation between the respondent, counsel for the Board, and counsel for the Union, the following facts with respect to the respondent's business were agreed upon for the purposes of this proceeding:

The respondent, employing an average of 1,000 persons, is an Ohio corporation engaged in the sale and manufacture of ladies' shoes, with its factory and principal place of business at Portsmouth, Ohio. Ninety per cent of the leather, the principal raw material used in the manufacture of shoes at the respondent's plant, is derived from sources outside the State of Ohio. All other raw materials, including iron and shell wire, lacquer dyes, solvents, pyrolin, plastic sheets, surface coated paper, and shoe buckles, are purchased by the respondent in New York, New Jersey, Pennsylvania, Massachusetts, New Hampshire, and West Virginia. Approximately 95 per cent of its finished products are shipped by the respondent by interstate railroad and motor truck carriers to points outside the State of Ohio. Graves Williams, president of the respondent, testified that the respondent's total production for 1936 was in excess of 1,000,000 pairs of shoes.

The respondent admits that it is engaged in interstate commerce.

II. THE UNION

United Shoe Workers of America, Local 119, affiliated with the Committee for Industrial Organization, is a labor organization admitting to membership all production employees of the respondent, excluding clerical and maintenance employees and supervisory employees not actually engaged in production work or having the power to hire or fire.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

During the first week of March 1937, the Union started to organize the respondent's employees. Within a few days an organization committee, composed of about 20 employees and pledged to organize the respondent's factory, was formed. Union meetings were thereafter held at frequent intervals and membership was actively solicited. Some of the employees who attended the union meetings during this period testified that, on various occasions, they had seen the foreman of the finishing department, the assistant superintendent, the superintendent, and Graves Williams, the respondent's president, driving slowly around the vicinity of the meeting hall. On one occasion, a witness had observed Henry Bowman, the respondent's superintendent, standing directly across the street from the meeting hall, while the foreman of the finishing department had been seen standing at a lunch counter about 25 feet from the entrance to the meeting hall. There is also evidence of spying on individuals who solicited members outside the plant. This testimony was not denied by the respondent.

On March 10, Grant Miller, Russell Hutchinson and his wife, Florence Hutchinson, were discharged. Grant Miller had been signed up by Hutchinson outside the plant about 10 minutes before his discharge. Russell Hutchinson had been elected temporary chairman at the union meeting of March 2 and had thereafter actively and openly solicited members, at times directly in front of the respondent's plant and within view of the foremen who stood watch at the windows. His wife had aided in soliciting members and had attended union meetings. No explanation for their discharge was given to Hutchinson or his wife. The following day, Virgil Duncan, a member of the organizing committee, was notified of his discharge. On March 12, Irma Shaw, another active member of the organizing committee, broke some tubes in a machine. A factory rule, rarely observed, was invoked against her and she was laid off. By the end of March, 14 members of the Union, 13 of whom had diligently solicited in its behalf, had been discharged.

These efforts of the respondent to discourage membership in the Union were supplemented by talks to individual employees and by plant mass meetings. Numerous witnesses testified that Graves Williams, president of the respondent, had summoned them to his office individually, at different times during March, and had questioned them about their membership in the Union; had disparaged unions and union officials; had demanded their "little blue cards" (referring to the Union's membership cards); had threatened to close down the plant and "go fishing" indefinitely; had appealed to their "loyalty"; had exacted promises not to join the Union, or to withdraw from it; and had urged spying on the other employees. In some cases employees who had denied membership in the Union were told by Williams that they had been seen at union meetings, or that they had been observed soliciting in behalf of the Union, or that they had been noticed in the company of active members.

Williams testified, in his defense, that he had never talked with any of his employees about the Union in a specific way, but that in the course of conversations with them he had adverted to the subject of unions. He stated that people would come down to seek his advice in the matter and he would say: "Here all around the United States today there are strikes, trouble, discord. There is unrest. Our work is steady. We have a nice place to work in. We have every modern convenience and here we see nothing but trouble all around us. Now my suggestion is let's take our time. Let's see where this movement goes and if in time it proves itself, then you and I want to link hands and walk in together, because if it is good for you, it's good for me and if it's bad for you, it's bad for me." This testimony can hardly be regarded as a defense to the charges made against Williams, and we find nothing anywhere in the record to cast doubt on the truth of the testimony in this respect of the numerous witnesses called by the Board.

On or about March 15, two mass meetings were called by Williams at the plant. Each was attended by about 550 people, the total number of employees in each shift. Several employees testified that this had been the first occasion on which they had been paid for time spent at a factory meeting. Williams' testimony is that he assumed the employees were paid for this meeting but that he could not recall whether they had ever been paid before. There is agreement among the witnesses that Williams delivered an address at each mass meeting in which he reviewed the history of the plant's growth; forecast the extent of its future operations; and characterized the plant personnel as a "happy family." He then expressed the fear that a "dark cloud," a "third party," a "stranger," who would take the money out of their pockets without rendering any service in return, was coming between them to destroy their relationship. The assemblage was asked to

choose between the "stranger" and work at the respondent's plant. The meetings ended with a plea to think things over and make no hasty decisions. Two employees testified that they dropped their membership in the Union after these meetings because they no longer wanted the Union to represent them. Williams admitted, on cross-examination, that he had used the term "stranger," but not with specific reference to the Union, explaining that he had had "general unrest" in mind, a condition to which, in his opinion, the activities of the Union and the C. I. O. had contributed. The events which led up to these meetings and the testimony of employees who attended them leave no doubt that the "stranger" was the Union and that the employees so understood the term.

Two days after these mass meetings, according to Charles Bricker, then assistant chairman of the Union, an unofficial meeting was held in the plant on company time, and an address was made against the Union by one of the employees, who admitted that he had come directly from Williams' office. Shortly after the address, Williams appeared and asked the men whether they wanted to go along as they had been going or whether they wanted "a third party in the picture." He then turned to Bricker and said: "Isn't that right, Bricker? I know you are the assistant to the assistant to something down there and I have not got to you yet."²

On or about March 30, Williams summoned the employees who had worked for the respondent for at least a year to a small room in the plant in groups of from 5 to 30, grouping having been based on length of service. Supervisory officials were present with each group and Williams opened each meeting with the statement that orders were coming in; that there would be plenty of work; and that the assembled employees would be in a better position to make plans for the future if they had security of employment. He then announced that the company had found a contract which would give the employees the security they needed and explained that the contracts gave them the right to work; that they had been upheld by law; and that no third party could break them. Whereupon Williams handed each employee a printed contract, asked him to read it, and told him he was at liberty to sign if he wished. Few questions were asked by the employees and no opportunity was given them to offer suggestions or make alterations. These contracts, varying only as to the name of the employee and the period of employment, are otherwise uniform. They provide, in each case, for employment for a stated period at the same basic rate in effect at the time of their execution, unless modified by agreement of the parties, except that, should the employer, "because of insufficiency or stoppage of work, dullness of

² Bricker was among the 14 who were discharged during the month of March.

trade, or other circumstances beyond its control," be unable to furnish employment for the period specified, payment shall be made for only such time as the employee is actually employed or for such work as he actually performs. Termination or cancelation may be effected by either party upon 15 days' notice in writing. After the contracts had been perused by the employees, they filed up to the desk at which Williams sat and signed in the appropriate place. About 800 contracts were executed in this manner.

There is no dispute in the testimony that this was the first time contracts had been presented to the employees; that none of the employees had ever requested contracts; and that there had been no discussion of terms and no attempt at bargaining prior to the group meetings at which the contracts were first offered. Williams admitted that the first time the employees had heard about the contracts or seen them was at these meetings. He also testified that this new method of dealing with the employees arose out of a continuing desire on the part of the company to improve employee relationships and to conform with current business practice. He had heard of people "being contracted—all your movie stars have contracts"—and he consulted the company's lawyers, who drew up the contracts and suggested them for use by the respondent. However, the respondent's real purpose in resorting to this new method of dealing with its employees is to be gleaned from Williams' admissions that his use of the contracts at about the time the Union was organizing was not a coincidence; that he had heard that this type of contract had been used in other industries; and that he had been advised by his lawyers that he might succeed in obtaining an injunction on the basis of the contracts. We interpret the admissions in this respect as a clear revelation of Williams' plan to deprive his employees of their right to self-organization and collective bargaining by means of the contracts and to arm himself against the possible exercise of their right to strike. Floyd C. Williams, a member of the Ohio bar, testified that he was the author of the contracts and that he had prepared similar contracts for use in a great many industries. During the oral argument, Floyd C. Williams repeated this statement and added that the contracts he had thus prepared were "working beautifully."

A large number of employees testified that they had signed these contracts because they were afraid they might lose their jobs if they failed to sign. One man stated that he felt that way "because of the way things happened up there; everybody stool pigeoned." Another explained that he was induced to sign because of the conversation he had had with Williams about the Union and because of Williams' assertion at the mass meeting that he did not think the employees needed a "third party." A number of witnesses

attributed their fear to the fact that they had never had to sign "anything like that" before, and to the numerous discharges at the plant during the three weeks immediately preceding the presentation of the contracts. A great many witnesses, called on behalf of the respondent, testified that they had signed through choice; that they were satisfied with their contracts; and that they wanted to continue to work under them. A petition containing statements substantially similar to those made by the respondent's witnesses was signed by 750 employees and was offered on their behalf by counsel for the respondent as further evidence of the absence of coercion in the execution of the contracts. The record shows that the petition was prepared by the respondent's lawyers at the request of the respondent and that it was presented to the employees, called together at the plant during working hours in groups of from 5 to 75, by an employee representing the management. We can give little weight to evidence so acquired.

On April 16, four days after the decisions of the United States Supreme Court with respect to the Act, a notice, signed by Williams, appeared on the plant bulletin board, informing the employees that, since his reference at the March mass meeting to the "entry of a third party into the picture," the Supreme Court of the United States had spoken, and the Wagner Act had become the law of the land. After announcing that the employees were now free to determine whether or not to join a union and that the company would continue to pay the highest possible wages and "to work and scheme and plan to provide at least fifty full weeks per year for everyone," the notice concluded with the following exhortation: "There is no need for hasty decisions. The great majority of employees have individual contracts of employment running for many months. We will fulfill these contracts to the letter. Membership in any organization can not be required to work here, so long as these contracts are in effect." On April 23, another notice, signed by Williams, was posted in the plant. It reviewed the statements made in the notice of April 16 and ended with the following advice: "People that have worked here for a full year or more, and are considered permanent employees, have Contracts of Employment. Honest people live up to their contracts and we will live up to ours. So long as you have a contract no third party can force you to join anything in order to work here. No one can properly interfere with either of us in carrying our honest written agreements. Again I say 'THERE IS NO NEED FOR HASTY DECISIONS.' Take your time and think things through." We consider these statements as significant evidence of Williams' purpose in proffering the contracts to his employees and of his efforts at all necessary times to keep that purpose unequivocally before them. We find further evidence of

this purpose in an uncontroverted statement of an employee, who wore her union button in the plant after the posting of the notices, that the superintendent had upbraided her for signing an agreement with the respondent and then signing one with the Union.

On August 16 the Union called a strike at the respondent's plant. Two days later, the respondent and several hundred employees, at the instance of the respondent, filed a petition in the Common Pleas Court of Scioto County, Ohio, asking that the Union and six individuals, joined as defendants, be restrained from interfering with the execution of the contracts. On August 30 the Court, relying on a case in which the Supreme Court of Ohio had refused to review a finding of the Court of Appeals of Hamilton County, Ohio, that similar contracts were not lacking in mutuality and were therefore subject to protection, and stating that the National Labor Relations Act did not prohibit the execution of individual contracts, granted a temporary restraining order in accordance with the petition. The order was subsequently supplemented upon further petition to circumscribe more specifically the activities of the defendants. The president of the Union testified that the injunction slowed up the progress of the strike considerably because "it even prohibited strikers from talking to anyone."

We find, in the light of the events preceding the presentation of the contracts and in the light of the circumstances under which they were presented and executed, that the contracts were not intended by the respondent and were not regarded by its employees as a genuine and voluntary exchange of promises mutually induced. The respondent's sole purpose in procuring and presenting the contracts was, through the guise of spurious individual bargaining, to foreclose its employees from exercising the right to self-organization and collective bargaining guaranteed to them under the Act and to impede the right to strike expressly preserved by the Act. The presentation of the contracts was regarded by the respondent's employees as a challenge to abandon the rights guaranteed to them under the Act, and the execution of the contracts was intended by them to signify to the respondent their submission to that challenge. We conclude, therefore, that the contracts as executed did not represent the real or free choice of the employees who signed them.

The respondent contends that the Board's jurisdiction with regard to the contracts would, in the absence of the Court decision, be limited to a determination of the validity of their terms, but that the Board must, in this instance, be bound by the decree of the Court of Common Pleas. We cannot agree with any part of this contention. The Common Pleas action was a proceeding between private parties and the decision of the Court was limited to the issues of whether

individual employment contracts as such are lawful and whether the individual contracts in question were valid according to their terms. There is a wholly different question at issue in the instant proceeding. The Act empowers the Board to prevent any unfair labor practice affecting commerce and expressly provides, in Section 10 (a), that "this power shall be exclusive . . ." The United States Supreme Court, in the case of *A. Howard Meyers et al. v. Bethlehem Shipbuilding Corporation*, decided January 31, 1938, upheld the grant of exclusive initial power to the Board to prevent unfair labor practices. The respondent has, in the instant proceeding, been charged with committing an unfair labor practice within the meaning of the Act, by coercing its employees into executing the contracts in question, and we hold that the Court decision, regardless of its intent, cannot foreclose the Board from determining whether the charge has been substantiated by the evidence, from making appropriate findings of fact and conclusions of law, and from issuing such cease and desist order, and requiring such affirmative action with respect to the contracts as will effectuate the policies of the Act. The respondent cannot, by reliance on the Court decision, seek to immunize itself from liability under the Act and to disable its employees from enforcing the rights guaranteed to them.

We find that the respondent, by questioning, advising, urging, warning, threatening, and intimidating its employees with regard to membership in the Union, by exercising surveillance over the meeting places and organizers of the Union, and by coercing its employees into entering into individual contracts of employment, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discharges

The complaint charged the respondent with having discriminatorily discharged 18 employees and with having reinstated eight of them without back pay. At the commencement of the hearing, the respondent pointed out that nine employees had been thus reinstated and offered to make whole eight of them for any loss they might have suffered by reason of their discharge from the date of their discharge to the date of their subsequent reinstatement. This offer was accepted on behalf of the Board and the Union. The Board withdrew its charges as to three of the employees who had been discharged, and the complaint was dismissed as to them without prejudice. There remain six discharges without reinstatement and one discharge with subsequent reinstatement but without restitution for loss suffered. We shall consider the circumstances surrounding the dismissal of each of the seven individuals.

Grant Miller. Grant Miller had been employed by the respondent for over three years at the time of his discharge on March 10, 1937. During the entire period of his employment, no complaints had ever been made about his work or his conduct. He testified that on March 10 he left the conveyor during a recess period and went out to sign up with the Union through Russell Hutchinson, who was stationed in a car directly in front of the respondent's plant. After joining the Union, he took some application cards from Hutchinson and went back into the plant to resume his work. He was stopped on the stairs by Bowman, the superintendent, who told him he could not go back to work. Bowman asked him to wait in one of the rooms while he went to get Williams. When Bowman and Williams returned, Williams asked Miller: "Where are they—those cards?" Whereupon Miller handed the application cards to Williams, who said: "I don't want nothing like that here." Williams sent Bowman to get Miller's jacket and cap and prohibited Miller from going back to get his tools, with the warning that if he ever caught Miller in the plant again he would "kick him clear out."

The respondent's defense is that Miller walked off the job without permission. There is such marked disagreement among the respondent's witnesses as to the exact time at which the recess period occurred and as to the exact time at which Miller left his work that we cannot regard the respondent's testimony as substantiating its defense in this respect. Bowman admitted that he had seen Miller leave Hutchinson's car; that he had heard Williams ask Miller for "that literature;" and that he had seen Miller hand the cards over to Williams. Bowman testified further that he did not know whether he had told Williams anything about the literature when he went out to call Williams and that he did not know why Williams had asked for the literature. We find that Miller was discharged because he had joined the Union.

On March 17, Miller obtained employment at a steel mill at an average monthly wage of \$85-\$95, and had been working there continuously as of the date of the hearing. On May 10, Williams offered to reinstate him to his old job, but Miller declined because of slackness of work at the respondent's plant. We shall not order the reinstatement of Miller because we hold that on May 10 he exercised a choice of remaining at the employment he had obtained after his discharge.

Ruth Henderson. Ruth Henderson had been employed by the respondent for over three years at the time of her discharge on March 23, 1937. She joined the Union on March 11, 1937, and solicited members between that date and the date of her discharge. On March 23, she attended a union meeting and turned in some signed application cards. On the same day she was notified by her forelady of her discharge. The superintendent, called by the forelady to explain the discharge, stated that it was due to a shortage in the number of heels

she had been assigned to cover during the three preceding days. There is considerable disagreement among the respondent's witnesses as to the actual extent of the shortage and there is an admission by them that, although shortages had been discovered and reported in Ruth Henderson's department during the year preceding her discharge, no discharges had resulted from such shortages. The respondent's witnesses also admitted that, while there was usually a laxity about checking on the number of heels covered, an extremely diligent count had been made by both foreladies and the inventory man on the three days immediately preceding Ruth Henderson's discharge. The inventory man testified that this was the first time he had been assigned to count heels outside the regular inventory period.

Upon the receipt of notice of her discharge, Ruth Henderson went to see Williams, who denied any knowledge of the discharge but promised to investigate. When she again saw Williams two weeks later about her discharge, he told her she had been "mixing up" with the union people when she left the shop on March 22. When she denied membership in the Union, Williams informed her that her name was on the "little blue cards" (referring to the Union's membership cards) and that he had no job for any name on the "little blue cards." Williams did not take the stand to deny this conversation.

We find that Ruth Henderson was discharged because of her membership in the Union and her activities in its behalf. There is no evidence in the record that she obtained other employment between the date of her discharge and the date of the hearing.

Clarence Hager. Clarence Hager had been employed by the respondent for about two years at the time of his discharge. He joined the Union on March 7, 1937, and had actively solicited members among the respondent's employees up to the time of his discharge. The respondent's alleged reason for his discharge is that he was absent from work without notifying the respondent. While there is no dispute that Hager had been absent without notice, one of the supervisors under whom Hager had worked admitted that there had been no discharges of other employees who had previously failed to report their absences.

Hager testified that Williams had had several conversations with him during the month of March 1937, in which Williams had forced him to admit his union membership and had informed him that "the whole Hager generation was practically all union." In the course of the last conversation, occurring a few days prior to the discharge, Williams had asked him to tear up his union card and had stated, upon Hager's refusal to comply: "You've not only got it in your hip pocket but you've got it in your heart too." Whereupon Williams gave him 48 hours to find another job. It was on the day of

this conversation that Hager left town and was told by the superintendent, on his return, that Williams wanted to see him with regard to the ultimatum to find another job. Hager went to see Williams the following night to ask whether he had been discharged. Williams replied in the affirmative and added: "Remember the little argument we had the other day." It is significant to note that the reason relied on by the respondent at the hearing was not mentioned to Hager at the time of his discharge.

We find that Hager was discharged because of his membership in the Union and his activities in its behalf. The record does not show clearly the exact date on which Hager was discharged. This will have to be determined when the respondent takes the affirmative action which we shall hereinafter order. Hager earned \$15 from the date of his discharge to the date of the hearing.

Geneva Cremeans. Geneva Cremeans had been employed by the respondent for over three years at the time of her discharge on April 29, 1937. She joined the Union during the first part of March and was, up to the time of her discharge, the only member of the Union in her group. Shortly after the posting of the notices with respect to the Supreme Court decisions on the Act, she wore her union button in the plant. The respondent's alleged reason for her discharge is defective work after a warning, issued three days prior to her discharge, that defective work on the part of any of the four people in Geneva Cremeans' group would be punishable by discharge. The forelady and supervisor under whom Geneva Cremeans had worked admitted that there had been no discharges during the year preceding her discharge for work that had been performed defectively. Both of these supervisors denied knowledge of Geneva Cremeans' membership in the Union. We believe, however, in view of the undisputed testimony of several witnesses who stated that Williams and the superintendent questioned them about their union affiliation after they had worn their union buttons in the plant and in view of the discharge of two other employees who had similarly displayed their union buttons, that the warning was given to Geneva Cremeans' group in anticipation of her discharge.

We find that Geneva Cremeans was discharged because of her membership in the Union. She earned \$20 between the date of her discharge and the date of the hearing.

Ernest Stevenson. Ernest Stevenson was first employed by the respondent some time during 1936. He joined the Union early in March 1937, attended all meetings, and solicited members. He wore his union button shortly after the Supreme Court decisions on the Act. As he was leaving the plant on June 5, 1937, his foreman notified him that he had been instructed to inform Stevenson that his services would no longer be needed. The respondent's alleged reasons for his discharge

are slackness of work and drinking on the job. When Stevenson asked Williams to explain the reasons for his discharge, Williams replied that it "seemed" he had taken a drink on the job about a month prior to his discharge. The testimony does not clearly establish the respondent's defense that Stevenson had in fact taken a drink on the job. The supervisor under whom Stevenson had worked admitted that Stevenson had been a good worker and that, while the respondent usually followed a strict seniority and ability rule in laying off men for slackness of work, he had not investigated Stevenson's seniority record before discharging him. He also admitted that the man who replaced Stevenson had had less experience than Stevenson.

Stevenson testified that, shortly after he had joined the Union, he was summoned to Williams' office and was questioned about his membership in the Union. Stevenson admitted membership but refused to relinquish his union card to Williams. Later that day Stevenson surrendered his union card to his foreman after a warning that, if he failed to do so, he would not be permitted to return to work. He did not, however, withdraw from the Union. Williams and the foreman failed to controvert this testimony.

We find that Stevenson was discharged because of his membership in the Union and his activities in its behalf. There is no evidence in the record that Stevenson obtained other employment between the date of his discharge and the date of the hearing.

William Minix. William Minix had been employed by the respondent continuously from early in 1934 until May 1936 and, thereafter, from March 1, 1937, until the date of his discharge, May 29, 1937. He joined the Union on March 3 and was elected its vice chairman on March 23. He actively solicited members in its behalf. The reason given him by his foreman for the discharge was slackness of work. The foreman under whom Minix had worked admitted that he had not investigated the length of his service before discharging him and that, of the 10 people laid off with Minix, Minix alone had not immediately been placed elsewhere in the plant.

Minix testified that Williams had asked him, on about April 5, to turn over his union card and that, upon his refusal to comply, Williams had urged him to "drop the matter for a while." Williams failed to deny this testimony. After the Supreme Court decisions on the Act, Minix testified, he wore his union button and saw Williams walking along the aisles in the plant counting the union buttons.

We find that William Minix was discharged because of his membership in the Union and his activities in its behalf. He earned about \$150 between the date of his discharge and the date of the hearing.

George Wilson. George Wilson was discharged on April 26, 1937, and was subsequently reinstated without back pay on May 11, 1937.

The respondent contends that Wilson was discharged for walking off the job and that, therefore, it should not be required to reimburse him for the time lost between the date of his discharge and the date of his subsequent reinstatement. Wilson testified that he left the plant at about 9:30 on the evening of April 26, a half hour before the end of the shift, because he had completed the last job assigned to him. He testified further that it was customary in the cutting room to leave after 9 o'clock upon the completion of an assignment, and that he had left with impunity on other evenings after 9 o'clock. There is considerable disagreement among the respondent's witnesses as to the exact time of Wilson's departure and there is an admission by two of these witnesses that they had on occasions left with impunity before the end of the shift upon completing a specific cutting assignment. The respondent failed to produce Wilson's time card.

Wilson joined the Union on March 11. Two days later, according to his testimony, Williams called him to the office; questioned him about his union membership; and informed him that he had been seen talking to one of the organizers for the Union. After the Supreme Court decisions on the Act, he wore his union button in the plant. Wilson's testimony is that Williams looked at his button; accused him of betraying a trust by joining the Union; and issued a warning that he would be fired for the first thing found wrong. Williams did not deny this testimony. Wilson's subsequent reinstatement, together with eight other active union members, is another factor evidencing the non-meritoriousness of the respondent's defense in this connection.

We find that Wilson was discharged because of his membership in the Union. There is no evidence that he earned any money between the date of his discharge and the date of his reinstatement.

C. Refusal to bargain

The complaint alleged that the respondent, by coercing its employees into entering into the individual contracts, had engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act. Section 8 (5) of the Act provides that it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a) of the Act. We have held that an unfair labor practice has been committed, within the meaning of Section 8 (5), when the evidence has shown a refusal on the part of the employer to treat with representatives of a majority of his employees in an appropriate unit. The evidence fails to establish that the Union represented a majority of the employees in the unit hereinafter found appropriate at the time it requested the respondent to bargain collectively with it. The

acts particularized in the complaint as the basis for an unfair labor practice within the meaning of Section 8 (5) of the Act do not constitute such unfair practice. We find that there is no evidence to sustain the charge of the complaint in this respect.

IV. THE QUESTION CONCERNING REPRESENTATION

The testimony shows that the field manager of United Shoe Workers of America, believing the Union represented a majority of the production workers at the respondent's plant, attempted unsuccessfully on several occasions, prior to the strike of August 16, to contact Williams for the purpose of discussing collective bargaining arrangements. After the injunction order of the Common Pleas Court had been issued against the Union, the field manager asked Williams to arrange for collective bargaining negotiations with the Union but was referred to the respondent's vice president, who in turn referred him to the respondent's lawyer. The lawyer disposed of the matter by saying that it would have to be settled by the National Labor Relations Board.

We find that a question has arisen concerning representation of employees of the respondent.

V. THE APPROPRIATE UNIT

In its petition, the Union stated that the appropriate bargaining unit is the "production employees." At the hearing, the Union made no specific contention with respect to the appropriate unit, but merely clarified the question of eligibility for membership by stating that it did not admit clerical and maintenance employees and supervisory employees not actually engaged in production work or having the power to hire or fire. No other labor organization is represented in the present investigation. The record shows that the respondent's employees are shifted among the various departments in the plant as the level of production varies and that the hazard of lay-off for slackness of work is fairly uniform. The respondent did not offer testimony to show any dissimilarity of interests among the workers in its various production departments with respect to conditions of employment.

We find that the production employees of the respondent, excluding clerical and maintenance employees and supervisory employees not actually engaged in production work or having the power to hire or fire, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing, the field manager of United Shoe Workers of America testified that he had examined the index cards of the Union, compiled on the basis of the original application cards, and had thereby ascertained that approximately 740 of the employees in the unit which we have found appropriate were members of the Union. The original application cards were not produced at the hearing and no check of the Union's alleged membership was made against the respondent's pay roll. The Union has thus failed to establish its claim of majority representation and we therefore find that an election by secret ballot is necessary to resolve the question concerning representation.

In view of the strike at the respondent's plant at the time of the filing of the petition for investigation, we will direct that all production employees who were employed by the respondent on August 15, 1937, the last regular employment date prior to the strike, shall be eligible to vote, with the exceptions hereinafter designated. Ruth Henderson, Clarence Hager, Geneva Cremeans, Ernest Stevenson, and William Minix, whose reinstatement we shall hereinafter order with back pay, were production employees employed by the respondent on August 15, 1937, and are therefore eligible to vote, unless they refuse the respondent's offer of reinstatement in accordance with our order.

VII. THE EFFECT OF THE UNFAIR LABOR PRACTICES AND THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

The activities of the respondent set forth in Section III above, and the question concerning representation which has arisen, 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.

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. United Shoe Workers of America, Local 119, affiliated with the Committee for Industrial Organization, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Grant Miller, Ruth Henderson, Clarence Hager, Geneva Cremeans, Ernest Stevenson, William Minix, and

George Wilson, thereby discouraging membership in the Union, has engaged in and is engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

3. The respondent, by questioning, advising, urging, warning, threatening, and intimidating its employees with regard to membership in the Union, by exercising surveillance over the meeting places and organizers of the Union, by coercing its employees into entering into individual contracts of employment, and by the discriminatory discharges set forth in paragraph 2 above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and 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 has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. A question affecting commerce has arisen concerning the representation of employees of Williams Manufacturing Company, Portsmouth, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

7. The production employees of the respondent, excluding clerical and maintenance employees and supervisory employees not actually engaged in production work or having the power to hire or fire, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations 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, Williams Manufacturing Company, Portsmouth, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner discouraging membership in the United Shoe Workers of America, Local 119, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment because of their membership in, or activity in behalf of, any such labor organization;

(b) In any manner continuing, enforcing, or attempting to enforce the individual contracts of employment hereinbefore found to have been executed;

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

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

(a) Offer to Ruth Henderson, Clarence Hager, Geneva Cremeans, Ernest Stevenson, and William Minix immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the persons named in paragraph 2 (a) above for any loss of pay they have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment by payment to each of them of a sum of money equal to that which each would have earned as wages during the period from the date of such discrimination against him or her to the date of the offer of reinstatement, less any amount each has earned during that period;

(c) Make whole George Wilson for any loss of pay he has suffered by reason of the respondent's discrimination in regard to hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of such discrimination to the date of his subsequent reinstatement, less any amount he earned during that period;

(d) Make whole Grant Miller for any loss of pay he has suffered by reason of the respondent's discrimination in regard to hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of such discrimination to May 10, 1937, the date of the respondent's offer of reinstatement, less any amount he earned during that period;

(e) Post immediately in conspicuous places at the plant notices to its employees stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that the execution of the individual contracts of employment was in violation of the National Labor Relations Act and that such individual contracts will no longer be continued, enforced, or attempted to be enforced in any manner whatsoever;

(f) Maintain such notices for a period of thirty (30) consecutive days from the date of posting;

(g) Notify the Regional Director for the Ninth 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 complaint, in so far as it charges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act, be, and it hereby is, dismissed.

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, 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 ordered by the Board to ascertain representatives for the purposes of collective bargaining with Williams Manufacturing Company, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth 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 said company who were employed by it on August 15, 1937, excluding clerical and maintenance employees and supervisory employees not actually engaged in production work or having the power to hire or fire, and excluding also those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented, for the purpose of collective bargaining, by United Shoe Workers of America, Local 119, affiliated with the Committee for Industrial Organization.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

April 6, 1938

On March 24, 1938, the National Labor Relations Board, herein called the Board, issued a Decision, Order and Direction of Election in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the supervision of the Regional Director for the Ninth Region (Cincinnati, Ohio).

United Shoe Workers of America, the petitioner herein, through its attorney, has duly filed a motion requesting the Board to defer the election until such time as conditions brought about by the respondent's unfair labor practices, as found by the Board, shall have abated.

The Board hereby amends its Direction of Election by striking out the words, "within fifteen (15) days from the date of this Direction", and substituting therefor the words, "at such time as the Board shall hereafter direct, after it is satisfied that there has been sufficient compliance with its order to dissipate the effects of the unfair labor practices of the respondent".