

In the Matter of NEBEL KNITTING COMPANY, INC. and AMERICAN  
FEDERATION OF HOSIERY WORKERS

*Case No. C-284.—Decided March 30, 1938*

*Hosiery Manufacturing Industry—Interference, Restraint or Coercion:* anti-union statements; expressed opposition to labor organization; threats of retaliatory action; engendering fear of loss of employment for union membership and activity; persuading employees to refrain from forming or joining or to resign from union—*Discrimination:* discharges for union membership and activity—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Reeves R. Hilton*, for the Board.

*Mr. Richard E. Thigpen*, of Charlotte, N. C., for the respondent.

*Mr. Stanley J. Morris*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by American Federation of Hosiery Workers, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued a complaint, dated July 27, 1937, against Nebel Knitting Company, Inc., a New Jersey corporation, 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) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 30, 1937, an amended complaint was issued, which thereafter was amended at the hearing on motion of counsel for the Board. The amendments to the complaint each successively alleged instances of additional unfair labor practices within the mentioned provisions of the Act. Copies of the complaint, and of the complaint as amended prior to the hearing, accompanied by notices of hearing, were duly served on the respondent and the Union.

The complaint, as finally amended, alleged in substance that the respondent had discharged six of its employees, namely, A. Griffin, Charles Smith, Vance McCrorie, Joe Harkey, Howard Kelly, and

Arnold Kivette, because of their Union affiliation and organizational activity, thereby discriminating in regard to the tenure of employment of these persons and discouraging membership in the Union; that by these discharges and other acts and conduct, the respondent had interfered with, restrained, and coerced its employees in the exercise of the right to self-organization and to engage in concerted activities for their mutual aid and protection. On August 2, 1937, the respondent filed its answer, which thereafter was amended, denying generally the charged unfair labor practices and alleging that the six employees had each been discharged "for poor work and/or violation of company rules."

Pursuant to notice, a hearing was held in Charlotte, North Carolina, on August 19 and 20, 1937, before Henry J. Kent, the Trial Examiner duly designated by the Board. The respondent appeared and was represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues, was afforded all parties. During the course of the hearing the Trial Examiner made various rulings on the admission of evidence. He also denied a motion, made by the respondent at the end of the Board's case, and, again, at the close of all proof, that the complaint and proceedings be dismissed. The Board has reviewed these rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On November 10, 1937, the Trial Examiner filed an Intermediate Report, copies of which were duly served on all parties, finding that the respondent had committed 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 respondent cease and desist therefrom, and offer full reinstatement with back pay to the six above-named persons. No exceptions to the Intermediate Report were filed.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is engaged in the manufacture and sale of silk hosiery. It owns and operates a manufacturing mill in Charlotte, North Carolina, where 300 production workers are employed. All of the silk and cotton yarn used in the process of fabrication is purchased in Pennsylvania and brought from that State to Charlotte by motor transport. In turn, more than 50 per cent of the finished product is shipped out of North Carolina to purchasers located in 32 States and the District of Columbia. Orders for hosiery are procured through a single sales agency, the William Nebel

Hosiery Company, and are filled by direct shipment from the mill to purchasers. During the last peak month, November 1936, the respondent produced \$55,808 worth of hosiery.

## II. THE UNION

American Federation of Hosiery Workers is a labor organization affiliated with the Textile Workers Organizing Committee of the Committee for Industrial Organization. Its membership includes production workers employed in the manufacture of hosiery.

## III. THE UNFAIR LABOR PRACTICES

### *A. Interference, restraint, and coercion; and the discharges*

The Union first sought to organize the production employees of the respondent in the spring of 1935, shortly before the Act went into effect. A local was established and officers elected. The respondent, however, discharged all of the Union officers, and no further effort was made to organize the workers at the mill until April 1937.

At a party given around Christmas 1936 by the respondent for its employees, William Nebel, then president of the respondent,<sup>1</sup> took occasion during the course of a speech to make certain statements concerning labor policy. There were present some 200 persons including the superintendent of the mill, the foremen, and other supervisory employees. In view of impending events, Nebel's words bear particular significance. He said, as related by one employee, "that before he would have a union in his mill he would close his mill and go back to Germany, that he would not have any union and work any union people in his plant." Another employee testified that Nebel declared, after referring to the mill, "how well he owns it . . . 'I run it you understand. I am the head of this place' . . . and he goes on to say a year ago an organizer from the North comes down and he said 'You all ought to be satisfied and by God, they [meaning the Union and its organizer] are not going to tell me what to do.'" Two witnesses called to testify for the respondent, namely, Folkman, the mill superintendent, and Nebel, agreed that Nebel had spoken at the party about union activity but denied that he had said that recognition would not be accorded to any union or that the mill would be closed if the employees organized. However, Folkman did testify that Nebel had said that "personally he [Nebel] was opposed to the Union."

<sup>1</sup> William Nebel resigned as president on June 19, 1937, and was succeeded in that office by his son, Arthur Nebel. William Nebel continued as a director of the respondent, maintains an office at the mill, and acts in a general advisory capacity. Reference hereinafter to Nebel means William Nebel.

The six employees whose discharge by the respondent, it is alleged, constituted an unfair labor practice under the Act, joined the Union soon after the Union renewed its efforts to organize the employees at the mill. Smith, McCrorie, and Kivette became members at the end of April 1937; Griffin, Harkey, and Kelly, in the middle of May. All were active thereafter in soliciting memberships among their fellow workers. Griffin distributed Union circulars. Smith and McCrorie assisted Daneburg, the C. I. O. organizer, in meeting the men. That the Union affiliation of the six employees was known to the respondent before their discharge is amply supported by the record.

*A. Griffin* was discharged by the respondent on May 28, 1937. He had been employed as a knitter, and the record shows that his work was competent. Folkman told Griffin the reason for the discharge was that Griffin had purchased too many meal tickets in the preceding 2 weeks, and evidently was reselling them. The tickets are sold in book form by a cafeteria located on the mill premises, and are used by the employees in purchasing meals. Each book costs one dollar and is issued upon the signed receipt of the employee authorizing the respondent to pay the cafeteria the price thereof and to deduct the same from the employee's pay-roll check. Griffin had purchased 10 books in the 2 weeks. He testified that in so far as reselling any of these books was concerned, he had resold none, that at that time his wife and family were living out of town and he had been compelled to take practically all of his meals at the cafeteria. He further testified that he knew of no rule in effect prior to his discharge which prohibited resales of book tickets, and, indeed, on previous occasions had resold them at full price to the assistant superintendent, Cuthbertson, and the foreman, Ezell.

Folkman testified for the respondent. He stated that in his opinion three or four books in one week, or seven in two weeks, were all an employee could use; that Griffin told him that some of the 10 books had been resold. However, Folkman admitted that Griffin had protested at the time of his discharge that his family were away and that he had been having three meals a day at the cafeteria. Folkman related that in the latter part of 1936 he had found in checking the pay roll that the assistant superintendent and foremen were not purchasing enough tickets from the cafeteria; that it appeared that they had been purchasing book tickets from various employees in need of funds; that Folkman had instructed the supervisors to stop purchasing, and the employees to stop selling, the tickets; that a few employees, including Griffin, thereafter sold the books and he had told them that "some of them" would be discharged if they continued; that Griffin had been twice told that he had pur-

chased too many tickets. With respect to the mill rules, Folkman stated that the respondent had a rule against selling tickets but none against purchasing them, although he understood that since Griffin's discharge there had been put into effect a rule against purchasing.<sup>2</sup> However, there is no showing that any employee other than Griffin was ever discharged by the respondent for selling meal tickets.

On the night of Griffin's discharge, the knitters of the night shift, on their way out, were handed a mimeographed sheet entitled, "Facts about the Wagner Law," and were told to wait as Nebel wished to speak with them. The sheet was a reprint of a series of questions and answers relating to the Act which originally had appeared in a trade magazine. The reprint was wholly misleading in character because of statements which lacked necessary qualifying language. Earlier in the day, Nebel had posted on the bulletin board of the mill a letter addressed to the employees stating, in part:

I am distributing Questions and Answers pertaining to the Wagner Labor Act because I feel that most of us have been very ignorant in regard to its provision . . . The most important answer is the last one which leaves the employer the right to select his employees or discharge them. Personally, I don't deny the fact that I am against labor Unions. However, this corporation will live up 100% to the laws of this country. If by any chance 51% of our employees should join the Union, and their outside representative would call on us, an officer or representative of this company would naturally, under the law, bargain with him or them. I doubt however that my people would choose to have an outsider represent them.

Nebel spoke at midnight with the knitters. He told them, according to two witnesses, that he had heard that the C. I. O. was proposing to organize the employees, and said, "I cleaned them out two years ago and I am going to clean them out again if I have to fire every damned man I have got . . . This is my plant and I will run it the way I please." The witnesses testified that Nebel then turned to one of the knitters, Ford, saying, "I will fire you if I don't like the tobacco you smoke or I don't like the way you walk"; and declared that American boys ought to be satisfied, that in Germany people were contented with earning just a living.

<sup>2</sup> Another witness for the respondent Reitan, the mill manager, testified that a month or so after Griffin's discharge, he prepared a codification of the rules and regulations of the respondent which theretofore had been in force for a considerable time, that he directed that the list be framed and posted in the mill, that Rule No. 8 thereof provided, "Employees are not allowed to sell meal tickets to each other." The list was admitted as Respondent Exhibit No. 6. It reads, in part, "In order that all employees may become thoroughly familiar with the rules of this company, we are listing below the most important ones. As you know most of these rules have been in effect since the company was started"

The respondent called several witnesses on this matter. Belk, a non-union knitter, testified that Nebel had said that he knew the Union was trying to organize the employees and told the men that they did not have to join. Ford testified that Nebel had said, "I think the labor law is a good law because it shows what I can do and what you can do"; Helton, a supervisor, that Nebel said he could hire and fire if he wanted to; Belk, that Nebel said that it would be a hell of a thing not to be able to fire an employee. Two of these witnesses denied that Nebel had said that the mill would close down if the employees organized. Nebel was called by the respondent and stated that he had held no meeting, merely a conversation with the men about the questions and answers on the sheet, that he had "made a few comparisons between the social conditions and economic conditions pertaining to the youth of this country . . . in comparison with the ones that arise in Europe," that he told one knitter "laughingly as a joke, 'I might discharge you because you didn't smoke the kind of tobacco I like.'" Nebel admitted that he then knew of the circulars being distributed outside the mill by a Union organizer.

*Charles Smith*, a knitter, was discharged by the respondent on the following morning, May 29. He asked Folkman the reason and was told, "Your work is not satisfactory. . . . you go out and have parties on the week-ends, you drink liquor." No claim was made or proof offered that Smith ever drank while on duty. Smith testified that he had had no previous complaints of his work. Folkman, called by the respondent, testified that Smith had never earned a "bonus"; that 3 weeks before the discharge, on a Friday night, Smith had had a fight at a cafe, and the following Saturday had been unable to work; that Smith would have been discharged then except that there were no men at the mill sufficiently experienced to operate his machine. On cross-examination, Folkman testified that Saturdays were not workdays, that Smith had not been obliged to work that morning, but added that the knitters usually came down Saturday mornings to adjust their machines. No compensation is paid them for this. Smith testified that he had thought it better that Saturday to tell Folkman he was not feeling well, and that Folkman had said, "Go on back [home], and forget all about it; some other time will do just as well."

On the morning of Smith's discharge, two other knitters, McCrorie and Kivette, went to Funderburk, a supervisor, and confided that they had joined the Union. They told him that they "were sorry that they [the respondent] was firing us," that is, the Union members; that they did not want to lose their jobs; and asked whether Funderburk thought it advisable for them to see Nebel about it, and tear up their Union cards. Funderburk told them not to see Nebel because

Nebel was very angry. Funderburk said, "He [Nebel] thinks he has the two ring leaders. Just drop it and it will blow over in a day or so." This evidence is uncontradicted, and Funderburk, although called twice to the stand by the respondent, did not deny the conversation.

*Vance McCrorie* was discharged on June 16, 1937. He had been employed as a knitter at the mill for 6½ years. The reason given him by Folkman was that his work was poor. When McCrorie told Folkman that his record failed to show incompetency, Folkman said, according to McCrorie, "You are fired just the same." At the hearing Folkman denied making this statement. McCrorie testified that he had had no complaints about his work prior to his discharge; that he had once received a "five cent bonus" for knitting 100 dozen stockings without any defects; that in March or April 1937 the respondent put into effect a contingent wage increase payable to knitters who kept the number of their damaged stockings below a certain percentage and that he had earned such increase continuously until the last week; that at the time of his discharge Folkman brought him a set of stockings saying that McCrorie had not knit them properly, but McCrorie did not think so. Folkman, testifying for the respondent, stated that McCrorie was careless in his work, that on one occasion 3 weeks before the discharge McCrorie had run a two and seven-eighths inch shadowwelt instead of a two-inch one and his attention had been called to it, that on the day of the discharge McCrorie had knit a set of stockings which required retopping. However, Folkman also testified that about a month preceding the discharge, McCrorie had received a "three cent bonus" and a "one cent bonus" for good work.

*Joe Harkey* was discharged on June 17, 1937. His foreman, Hunter, found him smoking in the men's washroom and reported it to Folkman. Thereupon, Folkman ordered Harkey's discharge for infraction of an alleged rule against smoking. Harkey was a knitter and had been in the employ of the respondent for 9 years. There had been no complaints of his work; indeed, Hunter testified that Harkey's work was satisfactory both in production and quality. Harkey testified that it was permissible to smoke in the washroom; and three other employees stated that they knew of no rule against smoking. Folkman, the respondent's witness, testified that a year before the discharge he warned the knitters against smoking in the washroom and when the smoking did not immediately cease had repeated the warning, that there had been posted on the mill bulletin board for some time a printed rule against smoking, and "no smoking" notices were placed inside and outside the washroom in Mill No. 1. On cross-examination he testified that Harkey throughout the two years preceding his dis-

charge had worked in Mill No. 3, and agreed that he, Folkman, had seen no "no smoking" notices displayed there.

A short time after Harkey's discharge, Hunter, the foreman, chanced to meet one Mungo at a cafe. Although not in the employ of the respondent, Mungo had known Hunter for many years. Harkey was also there. Mungo asked Hunter, "Frank, what is the matter?" Hunter replied that he had caught Harkey smoking. According to Mungo's testimony, Mungo then asked whether the "main reason" for Harkey's discharge was not his joining the Union and that Hunter had replied, "Yes, that is about right." Hunter's version was that after he told Mungo that Harkey had been discharged for smoking, Mungo had said that he, Mungo, knew what it was all about, to which Hunter then replied, "What did you ask me for?" and that nothing more had been said.

Nebel was asked at the hearing on cross-examination if he had not on or about June 21, 1937, that is, a few days after Harkey's discharge, posted a notice on the mill bulletin board which read substantially as follows: "I was forced against my will to join the union so I could keep my job. The last six months was Hell. I shall never forget this rotten treatment. I will fight the union until my dying day. Those that are with me will help me fight it and stand by me." Nebel's first reply was, "Something to that effect. I did say that. But I wasn't the president of the corporation or any officer or manager and didn't take any part in the management."<sup>3</sup> His next reply was, "I didn't say those words." Upon being then asked whether he had posted any notice at all, he answered, "I did post it because it was no more than right for me to notify people that worked for me, being head of the concern, and I think that is what is contained in that notice." He then added, "As far as I remember that is not correct. I would not say it was substantially correct." Later, in his testimony, Nebel related that he had told the mill employees about his early experience with a union in New Jersey in 1908, that on an occasion when he had refused to join his coworkers in a strike for a closed shop he had been subjected to insult, and thereafter had been compelled to join the union because the employer lost. Nebel testified, "From that day since I will never have any love for the Union as long as I live."

*Howard Kelly* was discharged on July 2, 1937. Folkman called him to the mill office and showed him a set of stockings. Kelly testified "they had a set [of stockings] off my machine. The pointex [heel] was off one knot and I admitted it was off and he [Folkman] told me he would have to let me go for that." Kelly further testified that

<sup>3</sup> Nebel had resigned as president two days earlier. However, he retained his position on the board of directors of the respondent, and otherwise served it. See footnote 1.

the defect had been caused by a misadjustment in the part of his machine which controlled the pointex operation, that he had had no similar difficulty in 6 or 8 months, and that other employees had not been dismissed for running off bad sets. Kelly testified that the bad set in question had been run off after he returned from a midday lunch, and that his machine had been functioning properly before then. Folkman and Funderburk testified for the respondent that Kelly's work was poor, that in the latter part of June he had been cautioned about nine bad stockings which had had to be retopped, that on the day of the discharge Funderburk brought the bad set to Folkman and Kelly was then notified of his discharge.

One Clyde Coley, an employee at the mill, was subpoenaed by the Board to testify at the hearing. Coley testified that he worked in the same alley as Kelly, that when either Kelly or he went out to lunch it was the duty of the other to watch both of their machines in order to avoid any stoppage in work, that during Kelly's lunch period on the day the bad set was run off the witness observed Funderburk go to Kelly's machine in Kelly's absence, stop it, and pull the lever that controlled the pointex operation. Funderburk was called as a rebuttal witness for the respondent. He testified that he did "not . . . know of" any adjustments made by himself to Kelly's machine on July 2nd, that he made no adjustments on July 1st, that he probably was around Kelly's machine but he did not recall whether he made any adjustment.

*Arnold Kivette* was discharged on August 19, 1937. He had been employed at the mill for 3 years and his work was satisfactory. Kivette was told by Folkman that his discharge was occasioned by the testimony which he had given the previous day at a trial in the police court in Charlotte, and by his assisting the attorney there representing the prosecuting witness. On August 14 one Spies, a person not employed by the respondent and in no way connected either with it or the Union was attacked outside the mill and seriously beaten. Before the assault, someone had shouted, "There goes one of those C. I. O. organizers." Spies had no intimation that the reference was to him until he was struck. Folkman and two mill employees were arrested and tried for the assault. Kivette appeared as a witness in the case and testified to having seen Folkman approach the scene of the attack. The trial was attended by the C. I. O. organizers. Folkman was acquitted, but the other two employees were found guilty. Folkman testified at the hearing that he was informed that Kivette had not told the truth at the trial when he denied ever having been with Spies before the assault; that Folkman had been informed that Kivette was seen talking with Spies at least 30 minutes before then; that Kivette had helped Spies' lawyer by suggesting lines of interrogation; that under these circumstances he had discharged Kivette.

However, no evidence was introduced, if material, either at the hearing or police court, showing that Spies and Kivette had been together before the assault, and both men specifically denied the fact at the hearing.

We entertain little doubt, in view of the facts above-mentioned and in the light of the whole record, that coincident with the effort of the Union to organize the hosiery workers at the mill, the respondent through its officers and supervisory force engaged in a campaign to combat and defeat such attempt. Its labor policy throughout the period was controlled by Nebel. His attitude towards the Union was one of little-concealed hatred. In his own words, he would "never have any love for the Union as long as I live." Nebel's Christmas speech, as related in the testimony of the two employees, foreshadowed the hostility which the Union was to encounter. The version of these witnesses is entitled to credence, for it finds full corroboration in subsequent events. We are convinced that the midnight session with the knitters was a step deliberately taken for the purpose of interfering with, restraining and coercing these employees in rights which were secured them under the Act. Nebel's attempt to portray this incident as a casual conversation between himself and the employees, to discuss provisions of the Act, is not borne out by the evidence. The hour of the conversation, his own presence, the discharge of Griffin earlier in the day, his knowledge that the Union organizers had been distributing circulars outside the mill, render such interpretation highly implausible. The record supports the witnesses who testified that Nebel used the occasion to utter his defiance towards the Union and threaten discharge to any employee who joined it. We also view the use to which the respondent put the sheet "Facts about the Wagner Law" as interference and coercion of the same stamp. This unfair labor practice was rooted not so much in the distribution or contents, *per se*, of the reprint, but in the statements of Nebel which accompanied distribution. The emphasis placed, in his letter to the employees, upon the words of the reprint that an employer had the right to select and discharge employees, followed, as it was, by Nebel's own words that "Personally, I don't deny the fact that I am against labor Unions," was well calculated to intimidate. The concluding appeal of the letter, "I doubt however that my people would choose to have an outsider represent them," under the facts involved, was coercive. Whether or not Nebel, in the notice posted shortly after Harkney's discharge, used the language "I was forced against my will," etc., heretofore set forth, need not be determined; that some such language was used is shown by his own testimony. It, too, constituted coercion. Nebel's explanation that he had resigned as president of the respondent two days before posting it is immaterial. He

retained his identification with the management and purported to speak for it. No disavowal to the employees of his authority was undertaken by the respondent after he had spoken. In view of these facts and others in the record, little weight can be given to the testimony of some of the respondent's witnesses that a neutral position was undertaken by the respondent towards the organizing of its employees.

We find that the respondent, by the above acts of its officers and agents, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act.

Against this background of interference, restraint, and coercion, the discharges of Griffin, Smith, McCrorie, Harkey, Kelly, and Kivette stand out as part of the broader plan of the respondent to defeat the Union. All of the six men became members of the Union shortly after the organizational activity was begun at the mill. They participated in that activity. Within the space of about 1 month, all lost their jobs, except Kivette, who was discharged on the day of the hearing. We need not discuss at length the evidence which has led us to conclude that these discharges were caused by the Union affiliation and activity of the men. The fact is clearly shown.

Griffin, the respondent contends, lost his job because he purchased 10 books of meal tickets in the 2 weeks preceding his discharge, an amount which Folkman considered excessive by 3 and which he presumed indicated an intent to resell. Yet Folkman was then told that Griffin was taking all of his meals at the mill, and there is no reason to disbelieve Griffin's testimony that he actually used that amount. Griffin was the only employee ever discharged for such reason, and it seems strange that if the respondent wished to prevent resales, in which its supervisory employees had participated, it did not place a limit or other restriction on the receipts which it would honor, instead of allegedly fixing the penalty at loss of livelihood.

Smith, the respondent avers, was discharged for incompetency, having "parties on week-ends," and drinking liquor. The record does not support the claim that Smith was incompetent, and the incident of Smith's fight loses point in the light of Folkman's testimony that Saturday was not a workday.

Moreover, with respect to both Griffin and Smith, there is the uncontroverted admission of Funderburk that Nebel had discharged them as the "two ring leaders."

McCrorie, the respondent contends, also was discharged for poor work. The record shows, however, that he was a competent knitter. He had been employed for 6½ years by the respondent, had earned the wage increase which the respondent put into effect in April 1937,

contingent upon efficiency, and, according to Folkman's own admission, had been awarded two bonuses for good work about a month preceding the discharge. The active cause of his discharge, like that of the others, was his Union membership and activity.

Harkey, it is claimed, was discharged because he had smoked in the men's washroom in violation of an alleged company rule. He had been employed by the respondent for 9 years and his work was conceded to be good. The evidence discloses that if there were any rule against smoking, it was little known to the employees, and Folkman testified on cross-examination that the washroom in Mill No. 3, where Harkey worked, had no "no smoking" signs posted either inside or outside of it. We are satisfied with Mungo's version of Hunter's admission, to the effect that Harkey had been discharged for Union membership.

Kelly, the respondent urges, was discharged for alleged inefficient work. The immediate cause of the dismissal was his turning out a set with the pointex off one knot. We have examined carefully the record in respect to whether the bad run was caused by a tampering of Kelly's machine by Funderburk, and the proof yields strong suspicion of the occurrence of a malicious, intentional act. However, the matter need not be decided, for the evidence as a whole establishes that the real basis of Kelly's discharge was his affiliation and organizational activity.

Kivette, the respondent seems to argue, was discharged for testifying at the trial in the police court that he had not been with Spies 30 minutes before the assault, and for assisting Spies' lawyer. The evidence at the hearing shows that Kivette had not been with Spies, if that fact be relevant. That the criminal proceedings were intimately associated in the minds of both the respondent and its employees with the organizational activity of the Union appears from Folkman's testimony. Kivette's discharge, we are convinced, was occasioned by his Union affiliation and sympathies, and his willingness to assist the Union, in indirect fashion, by actively participating in the police court prosecution.

We find that the respondent in discharging Griffin, Smith, McCrorie, Harkey, Kelly, and Kivette discriminated in regard to their tenure of employment, thereby discouraging membership in the Union.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the business 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 foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. American Federation of Hosiery Workers is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to tenure of employment and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

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

#### 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, Nebel Knitting Company, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Union or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(b) In any other 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, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer reinstatement to A. Griffin, Charles Smith, Vance McCrorie, Joe Harkey, Howard Kelly, and Arnold Kivette, without prejudice to their seniority rights and other rights and privileges;

(b) Make said employees whole for any loss which they may have suffered by reason of their discharge, by offering to each of them a sum equal to that which he normally would have earned as wages

during the period from the date of his discharge until the date of the offer of reinstatement, less the amount, if any, which he may have earned during said period;

(c) Post immediately, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, notices in conspicuous places throughout the mill stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b), and that it will take the affirmative action set forth in 2 (a) and (b), of this order; and

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

[SAME TITLE]

### AMENDMENT TO DECISION AND ORDER

*April 7, 1938*

On March 30, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Order in the above-entitled matter. On April 2, 1938, Nebel Knitting Company, Inc., herein called the respondent, filed with the Board its motion requesting that said Decision and Order be vacated on the ground that its Exceptions to the Intermediate Report had not been considered by the Board. At the time of the issuance of the Decision and Order, the filing of said Exceptions to the Intermediate Report had not been called to the attention of the Board. The Board has since considered said Exceptions to the Intermediate Report and finds them without merit. The motion of the respondent is denied.

The Board hereby amends its Decision and Order by striking therefrom the sentence "No exceptions to the Intermediate Report were filed" and substituting therefor the sentence "Exceptions to the Intermediate Report were duly filed by the respondent."