

In the Matter of BALLSTON-STILLWATER KNITTING CO., INC. and
TEXTILE WORKERS ORGANIZING COMMITTEE

Case No. C-274.—Decided April 7, 1938

Hosiery and Sweater Manufacturing Industry—Interference, Restraint, and Coercion—Discrimination: lay-off and discharge of employees to discourage membership in labor organization—*Company-Dominated Union:* domination of and interference with formation and administration of; solicitation of support for, by supervisory employees; meetings on company time; contrast between hostility toward "outside" unions and open favoritism toward company-dominated union; dismissal of allegation of financial contributions to; disestablished as agency for collective bargaining—*Lock-Out—Strike:* brought on by employer's unfair labor practices—*Remstatement Ordered:* persons laid off or discharged; strikers, upon application—*Discharge Ordered:* persons hired since beginning of strike if necessary to make room for employees reinstated—*Back Pay:* awarded to employees locked out, to persons laid off or discharged, to strikers whose applications for reinstatement are refused by employer.

Mr. Lee Loevinger, for the Board.

Mr. James M. Noonan, of Albany, N. Y., for the respondent.

Mr. Theodore A. Knapp, of Saratoga Springs, N. Y., for the T. W. O. C.

Mr. Burton D. Esmond, of Ballston Spa, N. Y., for the Association.

Mr. Frank M. Noonan, of Ballston Spa, N. Y., for the Village of Ballston Spa.

Miss Margaret B. Bennett, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

A charge and amended charge having been filed by Textile Workers Organizing Committee, herein called the T. W. O. C., the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City), issued its complaint dated August 11, 1937, against Ballston-Stillwater Knitting Co., Inc., Ballston Spa, New York, 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), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint were duly served upon the respondent, upon Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill, herein called the Association, and upon the T. W. O. C. On August 14, 1937, the respondent filed its answer, in which it denied that it had engaged in or was engaging in the unfair labor practices alleged in the complaint and prayed that the complaint be dismissed.

Pursuant to notice served upon the respondent, the T. W. O. C., and the Association, a hearing was held at Ballston Spa, New York, from August 19 through August 21, from August 23 through August 28, and from August 30 through August 31, 1937, before Charles B. Bayley, the Trial Examiner duly designated by the Board. The Board, the respondent, the T. W. O. C., the Association, and the Village of Ballston Spa were represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the beginning of the hearing the Trial Examiner denied a motion by counsel for the Board to strike out, as irrelevant, paragraphs 17, 18, and 19 of the answer. At the close of the Board's case, the Trial Examiner granted a motion by counsel for the Board to strike from the complaint, for failure of proof, the names Jessie L. Petronis, maiden name Jessie Olewicki, and Elizabeth Tardoff. At the same time, a motion by counsel for the respondent to dismiss the complaint was denied. These rulings by the Trial Examiner are hereby affirmed. At the end of the hearing the Trial Examiner granted a motion by counsel for the T. W. O. C. to "amend the pleadings to include attempted coercion by legal actions, prosecutions, and litigation" on the part of the respondent against its employees, which ruling is hereby reversed. During the course of the hearing the Trial Examiner ruled upon other motions and upon objections to evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On October 25, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint, as amended, except with respect to the allegation of surveillance by the respondent of the meeting places of the T. W. O. C., which allegation he dismissed, as being unsupported by the evidence. He recommended that the respondent withdraw recognition from and disestablish the Association as a collective bargaining agency; that the respondent cease and desist from interfering with its employees in

the exercise of their right of self-organization and collective bargaining through representatives of their own choosing; that the persons alleged in the complaint, as amended, to have been discriminatorily laid off or discharged be offered reinstatement with back pay from the date of such lay-off or discharge; and that the respondent offer reinstatement to all of its employees, not now employed by it, who went out on strike June 12, 1937.

Exceptions to the Intermediate Report were filed by the respondent on November 3, 1937, and by the Association on November 5, 1937. The Board has considered these exceptions and, save to the extent that its findings set forth below depart from those of the Trial Examiner, finds that they are without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized and existing under the laws of the State of New York and having its principal place of business at Ballston Spa, New York. It is engaged in the manufacture of woolen and merino sweaters and wool, one-half wool, and cotton hosiery. It has two hosiery plants, one at Stillwater, New York, and one at Ballston Spa, New York, and one sweater plant at Ballston Spa. It produces about 40 per cent of all men's woolen socks manufactured in the United States. In 1936 it shipped 1,270,983 dozen pairs of hosiery, at a value of about \$1,834,980, and 37,599 dozen sweaters, at a value of about \$322,845. Approximately 90 per cent of the respondent's manufactured products are sold outside the State of New York, and over 50 per cent of the materials purchased by the respondent come from States other than New York. From January 1936 until April 1937 the total number of persons employed by the respondent ranged from about 886 to about 924, and its weekly pay roll from about \$13,640 to about \$17,720.

II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O., admitting to membership employees of the respondent.

Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill is an unaffiliated labor organization, admitting only employees of the respondent, including supervisory employees.

III. THE UNFAIR LABOR PRACTICES

A. *The lock-out*

On Friday, March 26, 1937, employees in several departments of the Ballston Spa hosiery plant presented to the respondent's president, Walter J. Mooney, petitions asking for a 15-per cent increase in wages. Immediately upon receiving the petitions, Mooney posted a notice, acknowledging receipt of the petitions and reading in part as follows:

. . . In the absence of any representatives from these departments it was deemed advisable to close down the plant on Saturday March 27, 1937, at 7 a. m., and I have instructed the foreman of each department to have their representatives meet with the officers on March 29th, at 2:30 P. M. . . .

Employees who came to work Saturday morning found the doors locked. They remained locked until about 11 o'clock Monday morning, at which time representatives were elected in the various departments under the supervision of the foremen.

At 2:30 that afternoon Mooney addressed the representatives. He said he was "indeed happy" that the employees had presented their petitions "without outside interference." He reminded them that the business was highly competitive and that the past president, whose place he had recently taken, had planned to dismantle the mill and move to the South. He said he could not discuss an increase until August, because "we have to sell our merchandise in November and December for delivery the following July, August, and September . . . As a result, we have at the present time our production sold on that basis." In conclusion, referring to the petitions for an increase in wages, he said:

Now, fellow employees, if you are willing to cooperate with us and fill these orders, we—in turn—will give you our solemn pledge that we will summons your representatives in our office in August for a conference. . . .

I want to make it emphatic that no discrimination will be made for signers on the petition and if you accept my proposal, all employees will be restored to their old jobs without prejudice. Your jobs are here—plenty of work for you, barring unforeseen circumstances, and if you are willing to go back on the basis of my word, which is the most sacred thing I possess, the doors will be open to you Wednesday morning. Therefore, give me your answer tomorrow afternoon.

During the lock-out some of the employees asked help from the T. W. O. C., and an organizing campaign was initiated.

It was obviously unnecessary for the respondent to close its plant in order to enable its employees to choose bargaining representatives. The only reasonable conclusion from the evidence is that the respondent closed the plant from March 27 to 30, 1937, both days inclusive, for the purpose of discouraging its employees in their first efforts toward collective bargaining, and we so find.

B. The formation of the Association

Shortly after Mooney's speech, two papers were circulated among the employees in the Ballston Spa hosiery mill during working hours and in the presence of foremen, one advocating an open shop, the other an inside union. Signatures were solicited and conversations were carried on at some length without objection by the foremen, although such activities were against the rules. One girl who was reluctant to sign was told by the woman who sometimes took the forelady's place: "When this goes down to the office and Mr. Mooney sees it, what do you think he will think; that you are against him. That is all it is for, just so he knows who is with him and who isn't."

Similar papers were circulated in the Stillwater plant by supervisory employees, including Sam Jones, Charles Baker, Cordelia Pitney, and others, who gave some of the employees, at least, to understand that they had better sign if they wanted to keep their jobs. We have concluded that Jones, Baker, Pitney, and others were supervisory employees even though the respondent contends no one in the Stillwater plant but the superintendent, Frank Hathorn, and the assistant superintendent in charge at night, Frank Hathorn, Jr., had supervisory authority. Several witnesses testified that these persons were foremen, and there is no doubt but that they transmitted orders from the superintendent to the employees and reported back to him concerning their work and behavior. Moreover, it is incredible that in a plant in which about 250 persons were employed no one but the day and night superintendents had any supervisory duties. At times when these papers were circulated during working hours either Hathorn, Sr., or Hathorn, Jr., was present and did nothing to indicate disapproval.

Employees soliciting signatures left their machines and conversed at length, in violation of the respondent's rules, without reprimand, but members of the C. I. O. were constantly watched and made to feel that they could not break the rules with impunity. In fact at both hosiery plants the discrimination against persons favoring the T. W. O. C. became so noticeable and the pressure to sign up for the inside union so great that some of the girls cried out of nervousness. Even Hathorn, Sr., as well as others in positions of authority, asked some of the employees point-blank whether they belonged to the C. I. O.

On April 9, 1937, a notice of a meeting to be held in a garage that afternoon during working hours was posted in the plant; and Pitney and Baker urged some of the employees to go. The respondent contends that it had no connection with this meeting, and in support of this contention Pitney testified that she was not a supervisory employee and that she had arranged to have the meeting during working hours without asking permission from anyone. Both she and Hathorn, Sr., testified that she had not mentioned the meeting to him, although she had had lunch with him in his office immediately beforehand. Hathorn, Sr. further testified that he noticed the employees were not at their machines during part of that afternoon but that he did nothing about it because he knew there was "labor trouble" and "surmised" the employees were having a meeting. He suspected labor unions were involved because he had "read through the papers and heard over the radio there were several labor organizations throughout the country" and because recently a whole shift working on stock numbers 703 and 705 had come to him with grievances. But he had no idea what unions they were. He thought if he was liberal and did not interfere with meetings the trouble would blow over.

Busses which ran to and from the plant changed their schedule and transported employees to and from the meeting free of charge. No one was docked for attending, but many employees lost wages because they were paid on a piece-work basis.

Pitney opened the meeting; Bud Deuel, an employee with intermittent supervisory duties, nominated Jones as chairman; and Jones introduced the speaker. The speaker, Sidney Hewitt, a justice of the peace who had been invited to speak by Pitney, advocated inside unions and said outside unions were rackets. Jones concluded the meeting by urging the employees to form an inside union and offering "to resign" any members of the C. I. O. who wished to discontinue their memberships.

Jones' offer "to resign" members of the C. I. O. was put into effect immediately by the circulation by supervisory employees and others in the Stillwater and Ballston Spa hosiery plants of prepared resignations, which the employees were urged to sign, and which, when signed, were sent by registered mail, return receipt requested, to the C. I. O. The receipts were returned to a post office box rented by Pitney's brother and used, on this occasion, by Jones.

On April 10, 1937, an advertisement addressed to the employees of the respondent appeared in a local paper. It advocated a local union and implied that the plant would close down and the respondent move south if the employees joined the C. I. O. It closely resembled Mooney's speech of March 29, 1937. It was signed by six employees of the respondent, four of whom became active proponents of the

Association. Those of the signers who testified stated that they had paid for the advertisement themselves and denied that the respondent had anything to do with it.

From the April 9 meeting on, employees were urged by supervisory employees and others to sign application cards of the Association.

Under the guiding hands of Pitney and Jones, Association representatives were elected in the various departments of the Stillwater plant, and on April 15, 1937, Jones, as "chairman" of the Association, wrote a letter to Mooney requesting a conference the next day. Pursuant to this request, Mooney, on April 16, 1937, came to Stillwater and read the same speech he had delivered at the Ballston Spa plant on March 29, 1937.

On May 9, 1937, a formal organization meeting of the Association was held in the Ballston Spa High School. The agenda and a constitution had been prepared beforehand by an attorney. Jones acted as chairman, and the constitution was read. Deuel was elected president by the executive committee of the Association. The executive committee was composed of one half of the Association representatives previously elected in both hosiery plants, but how and by whom the selection was made does not clearly appear. Free busses were also provided for this meeting.

The testimony of Association witnesses concerning how and why the Association was organized is contradictory and evasive. For instance, two of the organizers said that they wanted an inside union because it would strike for better wages, but upon further examination said they were opposed to the C. I. O. because it conducted strikes. One said that they had copied the wording on the Association cards from the paper; another said that they had not. They all agreed on two things, however: that one of the main reasons for organizing the Association was to keep out the C. I. O. and that the respondent had no hand in establishing the Association.

After the May 9 meeting the workers were pressed by supervisory employees to join the Association. Pitney even went so far as to advance initiation fees; and Baker, to convince at least one girl that she would be "sorry" if she did not join.

On May 10, 1937, officers of the Association notified the respondent that the Association represented a majority of the employees, and, as evidence of the majority, left on file in the respondent's office all of the Association's original application cards. The Association retained for itself only a list taken from those cards.

On June 2, 1937, the Association asked for a 10-per cent increase. On June 4 the requested increase was granted, and in addition the minimum rate per hour was raised, but no agreement, oral or written, was entered into concerning the duration of the increases.

The complaint alleges and the Trial Examiner found that the respondent had made financial contributions to the Association. This is denied by the respondent, and several employee organizers of the Association testified that they had paid all expenses out of their own pockets, or with money contributed by the employees to a flower fund. Their testimony is not entirely convincing, but we find that the evidence does not establish financial contributions by the respondent. We therefore hereby dismiss that allegation of the complaint and overrule the Trial Examiner in this respect.

We find that the respondent dominated and interfered with the formation of the Association in April and May 1937, that the respondent at all times thereafter dominated and interfered with its administration, and that, by the activities above set forth, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The lay-off of employees working on number 703 at the Stillwater plant

On April 9, 1937, Mary Mareno, Helen Lefco, and Mazie de Crescenzo; on April 16, 1937, Josephine Simyele, Mary La Vigne (married name, Mary Canard), and Antoinette Zullo; and on April 26, 1937, Anna Forte; all of whom worked on stock number 703 at the Stillwater plant, were told they were laid off. All were members of the T. W. O. C.; three were very active; and one was a committee member.

Mooney testified that the lay-offs were due to the discontinuance on April 5, 1937, of the lines 703 and 705 and the dismantling of some of the machines. These lines had been discontinued, he said, because the respondent had a large stock on hand and had been unable to obtain a profitable new contract with its only customer, J. C. Penny Co. Inc. J. C. Penny Co. Inc., he thought, had taken advantage of the fact that the respondent had a large stock on hand and had offered a less-than-cost price. The record shows, however, that although the machines were dismantled in April, negotiations with J. C. Penny Co. Inc. were still going on in June, and that up until that time no final prices had been quoted. In fact, Mooney testified that the respondent had been negotiating with J. C. Penny Co. Inc. since February but had been unable to "get a peep" out of that company before June. It seems extremely unlikely that the respondent would dismantle its machines for failure to get an order before it was clear that that order would not be forthcoming. Casting further doubt upon the reason given by Mooney is his previous testimony to the effect that the respondent made up stock numbers 703 and 705 without orders.

Q. Mr. Mooney, some of your stock numbers like 703 and 705 you make up without orders, do you not?

A. Absolutely.

Q. So that there are some products you make without having orders to fulfill at the time they are made?

A. Well, that 703 and 705 is a cotton number, the only cotton number we make. We gambled on that.

That the respondent, just prior to the hearing, at least, did make up stock numbers 703 and 705 without orders and did not limit its production to orders from J. C. Penny Co. Inc. is indicated also by a letter from Hathorn, Sr. to a worker on August 9, 1937, in which he said:

We are sending out salesmen about the first of September and are calling girls back to work. We are going to try to get some business on 703 and 705 but first we must know the price we are going to pay for knitting and the other operations in order to arrive at a selling price.

If you are not employed now or for any reason you wish to work here, we will be glad to have you report for work at once.

Along the same line is a remark made by Pitney when some of the girls in her department were unwilling to sign the open-shop paper. She said, according to one employee's testimony, "You know that this work was never stopped before. I really think that it is all because of this union business that is going on now that this work had to be stopped like that—many times we have had even more stock on hand than we have now, and we never had to have the machines removed before."

Other testimony indicates that the real purpose of the lay-off was to discourage union organization and collective bargaining. Hathorn, Sr., testified that the labor trouble had started on number 703 and that a whole shift had come to him for an increase in wages in March. Several other witnesses testified that this line had an exceptionally high percentage of T. W. O. C. members. One of the girls who was laid off complained to Hathorn, Sr., that he was violating the Act by failing to observe seniority. He replied, according to her story, that he would "take the Wagner Act by the whiskers." At the hearing he denied that he had said this, but admitted that he had referred to "the whiskers" of the Act, explaining that he meant he would comply closely with the Act. He admitted also that he had told some of the girls that he had a secret reason for laying them off. One of them accused him of laying them off because they belonged to the T. W. O. C., saying that that was his secret reason. To this he did not reply, but on the witness stand he said the secret reason was that he was planning to invent a way

of converting old machines into automatic machines for a new line, that is, a trade secret. Shortly after they were laid off some of the girls heard that workers were being transferred to line 703 from other operations and asked Hathorn, Sr., for reinstatement. He said, according to their testimony, that he had lost confidence in them, that he thought they were with him, but that he had "found different." He also asked one of them whether she belonged to the C. I. O. and who else did. She replied she was "no stooge." Another was requested to write her union affiliation on her social security card, although she had not been asked to make any such disclosure when she originally filled out the card.

De Crescenzo and Forte have had no employment since they were laid off. When they were working for the respondent they each averaged about \$14 a week. Zullo has worked about 2 weeks and has earned about \$12. She averaged about \$15 a week when working for the respondent. La Vigne has worked a few days in a soap factory and has earned about \$12. Before the lay-off she earned about \$15 a week. Lefco has worked as a waitress for about a week and has earned about \$7.50. Her average earnings were about \$14 a week when she was working for the respondent. Mareno has had two jobs, the first paying about \$8 a week and the second about \$6.50. When she was laid off she was averaging about \$13 a week.

Under all the circumstances we find that the respondent did not lay off the persons named in the first paragraph of this section because of slackness of work but rather because of their union affiliation, and that the respondent by discriminating in regard to tenure of employment has discouraged membership in the T. W. O. C. and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The lay-off of Irving Hurd

On Friday, April 16, 1937, Hathorn, Sr., notified Irving Hurd, a drier in the Stillwater plant, that he was laid off. No reason was given except that the last shift was being laid off for a short time; and Hurd was asked whether, in the meantime, he would take outside work. He said he would, but he did not hear from Hathorn again. About a week later the only other man who was laid off at the same time, and who was first in seniority, was reemployed. The Monday after Hurd was laid off an employee with less seniority was transferred from another operation to take Hurd's place. All three men were members of the T. W. O. C., but Hurd's membership was the most conspicuous because he was on a committee and had been active in organizing the respondent's employees.

In its answer to the complaint, the respondent contended that Hurd had been laid off solely because he argued with the other employees. For this reason he had previously been required to use a separate entrance and had been forbidden to come to work early. No particular instance of argument immediately preceding the lay-off is shown, but Hathorn, Sr., testified that when he laid Hurd off he intended to reemploy him on outside work only. The respondent also states in the answer that Hurd had been discharged twice before for the same reason. The record shows that after having worked for the respondent about 7 years he was discharged in 1930, but the reason for the discharge does not appear. He was reemployed in 1933 or 1934 and worked continuously until the spring of 1937.

Since the lay-off Hurd has received no regular employment.

Whether or not Hurd was argumentative, laying him off for this reason was discriminatory. As has been pointed out above, the respondent permitted employees favoring the Association to solicit signatures during working hours for papers advocating an open shop and papers advocating an inside union and to argue in favor of these papers with employees who were working. The respondent also permitted employees to go to Association meetings on company time. To deny similar privileges to an employee who was an organizer for the T. W. O. C. and to lay him off for breaking a rule which at the time of his lay-off was generally being broken with impunity by employees favoring the inside union constitutes an interference with the rights guaranteed in Section 7 of the Act and discrimination in regard to tenure of employment to discourage membership in a labor organization.

E. The discharge of Dorothy Dandereau and Agnes Coon

On May 2, 1937, Dorothy Dandereau, and on May 3, 1937, Agnes Coon were laid off, along with seven other bundlers at the Ballston Spa hosiery plant. Neither Dandereau nor Coon has been reinstated. The reason given by the respondent for failing to reemploy Coon is that she had the least seniority of those laid off and no new employee has been hired to take her place. Dandereau, the respondent contends, was recalled to work about June 1, 1937, in accordance with her seniority rights, but failed to appear. Both of these girls had worked two or more years for the respondent and were members of the grievance committee for the finishing department. As such, they had urged Mooney to adopt the seniority rule and to grant other benefits to the employees. Both had refused to sign inside-union papers. Coon was active in the T. W. O. C., and Dandereau was a member of a T. W. O. C. organizing committee. After Dandereau's membership

became known she was constantly watched by the forelady, Keene, and a paper urging her removal as representative of the bundlers was circulated during working hours, with the knowledge of and in the presence of Keene. Keene said they were being laid off according to seniority and "according to law" because of slack work. Mooney testified that 25 per cent of the workers in that department were laid off because those who remained wanted a 40- rather than a 30- or 32-hour week; but in his March 29, 1937, speech he said that there was plenty of work and that all spring and summer production was covered by existing contracts. Very shortly after the lay-off, work was piled up on the floor, and girls from other operations were doing bundling.

On May 28, 1937, Keene sent word through working employees, as was her custom, to the other girls who had been laid off to report back on June 1, 1937. She testified that she was unable to send word in a similar way to Dandereau because none of the bundlers then working lived near her. She finally admitted, however, that girls working in a neighboring department at the time did live near Dandereau. She explained that she had tried to send word through them but that they had all left work early that day. When asked whether it was not against the rules for the employees to leave early, she said they were permitted to oil their machines 10 or 15 minutes before closing time. Why the girls were not in the plant if they were oiling their machines she did not explain. According to her testimony, she thereupon went to the treasurer of the respondent, not the superintendent of the plant, and asked him to write a letter to Dandereau. The treasurer testified that he did write a letter and instructed his secretary to mail it. The respondent introduced what it claimed to be a copy of the letter, which said that, according to her seniority rights, Dandereau would be reemployed June 1. The person who had been instructed to mail the letter was not put on the stand, and Dandereau said she never received it. Counsel for the respondent said the respondent would be glad to reinstate Dandereau, but when counsel for the Board offered to strike her name from the complaint if the respondent would agree to reinstate her, the matter was dropped without an answer.

Upon the basis of all the testimony we find that these lay-offs were not due to lack of work but were for the purpose of discriminating against the respondent's active T. W. O. C. employees, and, as such, were but a part of the respondent's general campaign to keep outside unions away from its plants. We find that the respondent, in so doing, interfered with the rights of its employees guaranteed by Section 7 of the Act, and by discrimination in tenure of employment discouraged membership in the T. W. O. C.

G. The discharge of Florence Ippoliti

On May 4, 1937, Florence Ippoliti, a looper who had worked in the Ballston hosiery plant for about 11 years, was discharged. The forelady, Keene, testified that Ippoliti had been discharged because her work was "messy." Keene also testified, however, that Ippoliti's work at the time of her discharge was no worse than it had been during the rest of the 11 years, and that in the last 20 years only two people had, to her knowledge, been dropped for unsatisfactory work. Her contention was that Ippoliti's work had always been poor.

Ippoliti testified that on the occasion of her discharge Keene had reprimanded her for putting more than an even dozen in a bundle of socks, in violation of the respondent's rules, and had told her that she had been watching her and that she "was through." Up until this time this rule had not been enforced and the other loopers, like Ippoliti, customarily put more than an even dozen in the last bundle collected by the turners if necessary to avoid keeping the turners waiting. There is some evidence to the effect that this rule had recently been posted on the bulletin board, but the evidence does not show that the workers had been notified that the rule would be enforced.

The T. W. O. C., on the other hand, contends that Ippoliti was discharged because of her outside-union sympathies. She had refused to sign the inside-union papers while Keene, who was friendly and lenient toward the proponents of the Association, was in the room, and had, instead, joined the T. W. O. C. After Ippoliti joined the T. W. O. C., Keene began to watch her constantly, and, on one occasion, without explaining the reason, told her she was being watched.

Since her discharge, Ippoliti has received no employment.

We find the testimony that Ippoliti was discharged for poor work not persuasive, and we conclude that the real reason was her rejection of the Association and her affiliation with the T. W. O. C.

H. The strike

From the beginning, the T. W. O. C. met with discrimination in the community as well as in the plants, but the evidence does not establish direct participation by the respondent in this discrimination. The T. W. O. C. was refused meeting places, among them, at one time, a local high school. The respondent's treasurer was on the school board, but apparently, did not vote upon the request for the use of the school. A citizens' committee rally was held, at which the C. I. O. was condemned and its officers called racketeers, but there is no evidence connecting the respondent with this meeting.

The respondent's discriminatory practices at its plants, however, had become so severe that, since the May 9, 1937, meeting, the

T. W. O. C. had had difficulty in keeping its members from striking. Finally on June 12, 1937, some of the employees, without consulting the T. W. O. C., decided to strike. The night before, Walter Sweet, a T. W. O. C. committeeman, while working at his machine, had been provoked into an argument and assaulted by Association men, who were not working at the time and whose presence in the work room was a violation of the respondent's rules. A fight ensued, which was broken up by the foreman, who ordered the assaulters to leave. As the word of the assault went around, a group of employees conferred and decided the time had come to strike against the respondent's discriminatory practices. Once the strike had begun, the T. W. O. C. supported it.

At the time of the hearing the strike was still in progress.

We find that the strike was caused by the respondent's discriminatory practices in regard to tenure of employment which discouraged membership in the T. W. O. C., by its domination of the formation and administration of the Association, and by its other interference with the rights of its employees guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

THE REMEDY

We have found that the respondent closed its Ballston Spa hosiery mill from March 27 to 30, 1937, both days inclusive, for the purpose of discouraging its employees in their efforts toward collective bargaining. In so doing, the respondent engaged in an unfair labor practice. We shall, therefore, order the respondent to pay to each of its employees on the plant pay roll on March 27, 1937, the amount which he or she normally would have earned during the time the plant was closed had the plant continued operations.

We have found that the respondent has dominated and interfered with the formation and administration of the Association. By such domination and interference the respondent has prevented the free exercise by its employees of their right to self-organization and collective bargaining. In order to restore to the employees the full measure of their rights guaranteed under the Act, we shall order the respondent to withdraw all recognition from the Association and

disestablish it as representative of its 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.

We have found that on April 9, 1937, the respondent laid off Mary Mareno, Helen Lefco, and Mazie de Crescenzo; on April 16, 1937, Josephine Simyele, Mary La Vigne (married name, Mary Canard), Antoinette Zullo, and Irving Hurd; and on April 26, 1937, Anna Forte, from its Stillwater plant because of their affiliation with the T. W. O. C., which lay-offs constituted unfair labor practices on the part of the respondent. We have also found that on May 2, 1937, the respondent laid off Dorothy Dandereau, and on May 3, 1937, Agnes Coon, and on May 4, 1937, discharged Florence Ippoliti from its Ballston Spa hosiery plant for the same reason, which lay-offs and discharge likewise constituted unfair labor practices on the part of the respondent. We will, therefore, order the respondent to offer reinstatement to all of these persons, with back pay to each of them equivalent to the amount which he or she would normally have earned from the date of lay-off or discharge to the date of offer of reinstatement, less any amount actually earned during that period.

We have found that on or about June 12, 1937, a strike occurred at both of the respondent's hosiery mills, and that the strike was caused by the respondent's unfair labor practices in discriminating against its employees who joined the T. W. O. C., in dominating and interfering with the establishment and administration of the Association, and in interfering with the right of its employees guaranteed in Section 7 of the Act. We will, therefore, order the respondent to offer, upon application, reinstatement to their former positions to all of its employees who participated in the strike and who have not since been employed by the respondent, dismissing, if necessary, new employees hired since June 11, 1937. We will also order that any employee whose application for reinstatement is refused by the respondent in violation of the order herein shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.

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

CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee and Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By its domination of and interference with the formation and administration of Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Mary Mareno, Helen Lefco, Mazie de Crescenzo, Josephine Simyele, Mary La Vigne (married name, Mary Canard), Antoinette Zullo, Anna Forte, Irving Hurd, Dorothy Dandereau, Agnes Coon, and Florence Ippoliti, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

5. The afore-mentioned 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, Ballston-Stillwater Knitting Co., Inc., and its officers, successors, and assigns, shall:

1. Cease and desist:

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

(b) From discouraging membership in Textile Workers Organizing Committee or any other labor organization of its employees at its Ballston Spa or Stillwater hosiery plants, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment, or any term or condition of employment;

(c) From dominating or interfering with the administration of Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill, and from dominating or interfering with

the formation or administration of any other labor organization, and from contributing support thereto.

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

(a) Offer immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, to Mary Mareno, Helen Lefco, Mazie de Crescenzo, Josephine Simyele, Mary La Vigne (married name, Mary Canard), Antoinette Zullo, Anna Forte, Irving Hurd, Dorothy Dandereau, Agnes Coon, and Florence Ippoliti;

(b) Make whole said Mary Mareno, Helen Lefco, Mazie de Crescenzo, Josephine Simyele, Mary La Vigne (married name, Mary Canard), Antoinette Zullo, Anna Forte, Irving Hurd, Dorothy Dandereau, Agnes Coon, and Florence Ippoliti for any losses of pay they have suffered by reason of their lay-off or discharge, by payment to each of them of a sum of money equal to that which he or she would normally have earned as wages from the date of his or her discharge or lay-off to the date of such offer of reinstatement, less any amount actually earned during that period;

(c) Make whole all of its employees who were on the pay roll on March 27, 1937, for any loss they have suffered by reason of the closing down of the respondent's hosiery plant at Ballston Spa, New York, from March 27, 1937, until March 30, 1937, both days inclusive, by payment to each of them of a sum equal to that which he or she would normally have earned as wages during that period, less any amount actually earned during that period;

(d) Upon application, offer to those of its employees who were on the pay roll on June 11, 1937, and who subsequently went out on strike immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since June 11, 1937, to perform the work of such employees;

(e) Make whole all employees who were on the pay roll on June 11, 1937, and who subsequently went out on strike for any loss they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2 (d) herein, by payment to each of them, respectively, a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(f) Withdraw all recognition from Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill as representative of its employees at the Ballston Spa and Stillwater, New

York, hosiery plants, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill as such representative;

(g) Immediately post notices in conspicuous places throughout its Ballston Spa and Stillwater, New York, hosiery plants, and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist as aforesaid, and (2) that the respondent will withdraw all recognition from Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill as the representative of any of its employees in its Ballston Spa and Stillwater, New York, hosiery plants for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that Employees Welfare and Protective Association of the Ballston-Stillwater Knitting Mill is disestablished as such representative;

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