

In the Matter of TINY TOWN TOGS, INC. and INTERNATIONAL LADIES
GARMENT WORKERS UNION

Case No. C-381.—Decided May 9, 1938

Children's Garment Manufacturing Industry—Interference, Restraint, and Coercion: derogatory statements to persuade employees to refrain from joining union; threats to move plant; surveillance of distribution of union literature; surveillance of union meeting—*Company-Dominated Union:* domination of and interference with formation and administration; support; check-off; supervisory employees, members of; disestablished as agency for collective bargaining—*Strike:* result of unfair labor practices—*Discrimination:* discharge—*Reinstatement Ordered:* of discharged employee; of all striking employees, upon application, who were employed prior to first day of strike, dismissing newly hired employees if necessary; preferential list ordered: to be followed in further reinstatement—*Back Pay:* awarded to discharged employee; ordered to employees who are not reinstated or placed on preferential list within 5 days of application for reinstatement.

Mr. Lester M. Levin and *Mr. John T. McCann*, for the Board.

Mr. Frederick E. Draper, of Troy, N. Y., and *Mr. A. Herbert Barenboim*, of Boston, Mass., for the respondent.

Mr. Thomas J. O'Conner, of Troy, N. Y., for the Association.

Mr. I. Nathan Sidman, of Troy, N. Y., for the Union.

Mr. D. R. Dimick, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by International Ladies Garment Workers Union, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued and duly served its complaint, dated October 19, 1937, against Tiny Town Togs, Inc., Troy, 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.

In respect to the unfair labor practices, the complaint alleged in substance (1) that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) that the respondent, on or about April 1936, instigated, fostered, dominated, and interfered with the formation of a labor organization known as Tiny Town Togs Benevolent Association, herein called the Association; (3) that the respondent, on or about September 1936, discharged and refused to reinstate Vergie Horachian because she joined and assisted the Union; and (4) that by reason of the unfair labor practices the respondent's employees, on or about July 1937, went on strike, and since that date have remained on strike. The respondent filed an answer, dated October 21, 1937, to the complaint admitting its corporate existence and that it is engaged in interstate commerce, but denying "each and every allegation" in the remainder of the complaint.

A motion filed by respondent for change of venue was granted and, thereafter, on October 25, 1937, the Regional Director issued an amended notice of hearing, copies of which were duly served upon the respondent, upon the Union, and upon the Association. Pursuant to the notice a hearing was held on October 27, 28, 29, and November 3 and 4, 1937, at Troy, New York, before George Bokot, the Trial Examiner duly designated by the Board. The Board, the respondent, the Union, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Prior to the commencement of the hearing, the Association filed with the Regional Director a motion to intervene. At the hearing counsel for the Association renewed the motion and it was granted by the Trial Examiner. Counsel for the respondent and counsel for the Association, near the close of the Board's case, moved to dismiss the complaint on the ground that the Board had failed to prove a case. The two motions were denied. At this time further motions were made by counsel for the respondent, among which was the following: That Vergie Horachian, the person allegedly discharged, was not an "employee" as defined in the Act, for the reason that she had obtained "other regular and substantially equivalent employment." The Trial Examiner reserved ruling on the motion. Upon completion of the Board's case the Trial Examiner granted a motion by the respondent that the request for the reinstatement of Agnes Grill be denied on the ground that she had not ceased employment as a result of a current labor dispute. Upon the termination of the entire case the respondent renewed the motions made near and at the completion of the Board's case, with the exception of the motion pertaining to Agnes Grill. The motions were denied. The Trial Examiner granted the

motion made by the Board's attorney at the close of the hearing that the pleadings be conformed to the proof. Decision was again reserved on the motion relating to Vergie Horachian.

Thereafter, a brief was submitted by counsel for the respondent.

During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings and the rulings made with respect to other motions of the parties, including those motions specifically mentioned above, and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Thereafter, on January 14, 1938, the Trial Examiner duly filed his Intermediate Report finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. The motions made during the hearing regarding the "employee" status of Vergie Horachian were denied in the Intermediate Report. We hereby affirm these rulings. On February 2, 1938, the respondent filed exceptions to the Intermediate Report and requested to be heard in oral argument before the Board. On March 10, 1938, pursuant to notice, a further hearing was held before the Board in Washington, D. C., for the purpose of oral argument. The respondent and the Union were represented by counsel and participated in the oral argument.

The Board has reviewed the exceptions to the Intermediate Report, and save as consistent with the findings, conclusions, and order, hereinafter set forth, finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT¹

The respondent, Tiny Town Togs, Inc., is a corporation duly organized and existing by virtue of the laws of the State of New York, having its office and principal place of business in Troy, New York. The respondent has one subsidiary corporation known as The Dollar Line, Inc. Manufacturing units of the corporation are located in the State of New York and one in Puerto Rico. In this proceeding we are concerned only with the manufacturing plant at Troy, New York.

The respondent is engaged in the manufacture, sale, and distribution of children's dresses and other products. The principal raw materials used are cotton cloth, threads, buttons, and dress trimmings. The respondent normally purchases approximately \$300,000

¹ Substantially all of the facts in this section were stipulated to by the respondent.

worth of raw materials annually, of which more than 50 per cent are purchased through the New York office of the respondent, and come from sources other than the State of New York. More than 50 per cent of the products manufactured by the respondent are shipped to points outside of the State of New York. During a normal year, sales of products manufactured by the respondent amount to approximately \$850,000. There are approximately 165 or 170 employees, including supervisory employees, working in the Troy plant.

The respondent admits that it is engaged in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

International Ladies Garment Workers Union, affiliated with the Committee for Industrial Organization, is a labor organization admitting to its membership all production employees of the respondent, excluding clerical and supervisory employees.

Tiny Town Togs Benevolent Association is a labor organization without any outside affiliation, admitting to its membership any employee of the respondent employed in the respondent's factory at Troy, New York, exclusive of salesmen.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The Union had contractual relations with the respondent during the year of 1934 and during part of 1935, at which time the manufacturing unit, herein considered, was located in New York City. At the expiration of the contract it was not renewed, and thereafter, about September 1935, the respondent moved its plant to Troy, New York. Sometime during April or the early part of May 1936, the Union began organizational activities at the respondent's plant in Troy. From the inception of the organizing movement, opposition by the respondent to the Union became apparent. The activities of the Union in organizing the respondent's employees took the form of a distribution of Union literature and leaflets, by the Union organizers, to the employees as they left the plant. Such distribution occurred once or twice a month over a period of more than a year. On each such occasion supervisory officials of the respondent would stand in front of the plant where they could observe those employees who accepted the literature. Mrs. Feehan, forelady in the pressing department, on numerous occasions, would leave the plant with a large group of pressing department employees and tell the girls not to accept the literature, and that the organizer had no business there. She would also call the organizer vile names. At other times under similar conditions, Mrs. Feehan tried to incite the employees to

violence by saying, with reference to the organizer, "I am going to give you a beating," and "What do you say, girls, we give her a beating?" It is clear from the record that, while the respondent's employees were not told directly that they would be discharged if they accepted the Union's literature, nevertheless, the constant surveillance of the employees by supervisory officials when the literature was distributed, together with the overt acts of Mrs. Feehan, can only be interpreted as conduct which had the necessary effect of discouraging membership in the Union.

Vergie Horachian testified that Mrs. Feehan was always "knocking down" the Union, saying that it was a racket, and that if the employees joined it the respondent would move to New York. George Bryans, employee in the cutting department, testified that Simon Stranger, foreman in that department, told the witness, in effect, that he had been in the Union in New York and that "if one of the head shots wanted a mortgage paid off, they would assess you a dollar. If they wanted to do this or that they would assess you another dollar." He further stated that Stranger told him that if the employees joined the Union the respondent would have the "cutting" done in Puerto Rico. Significantly, neither Stranger nor Mrs. Feehan were called as witnesses to deny this testimony.

On October 7, 1936, a meeting was held by the Union at its headquarters on King Street. Members of the Union from the respondent's plant and from other dress manufacturing plants in Troy were requested to attend the meeting. Three witnesses were called by the Board to prove the events that took place in connection with the meeting. At the outset we take cognizance of the fact, urged by the respondent, that the testimony elicited from each of the three witnesses differs in some respects. Especially is this true with regard to the number of people attending the meeting, the exact hour and minute when certain events transpired, and the number of people who left the meeting from time to time. Inasmuch as the meeting took place more than a year before the hearing, discrepancies are to be expected, and in fact, were these differences and contradictions in the testimony absent we would view the statements with some distrust. However, there is no ambiguity in this testimony concerning the material facts.

Sometime between 8:00 p. m. and 9:00 p. m., before the meeting was called to order, and after 30 or 40 people, 10 or 12 of whom were employees in the respondent's plant, had assembled in the meeting room, which was located on the second floor of the building, Vergie Horachian's sister looked out of the window and saw 3 men across the street apparently trying to peer into the meeting room and obviously in such a location that they could observe the identity of anyone going into or leaving the building. Immediately, commotion

ensued in the meeting room and some of those present went downstairs where they could better identify the three men. The men seen were Phil Rubensohn, paymaster for the respondent, George Kniager, an employee, and Beiermeister, Jr., son of the plant superintendent. Beiermeister, Jr., testified that he had no special duties, that he worked in the shipping department, performed maintenance work when the machinist was not there, and carried out the wishes of his father. On cross-examination he admitted making recommendation to his father for hiring workers. The record clearly shows Beiermeister, Jr., helped Mrs. Feehan supervise the pressing department employees. Rose Girardi testified Beiermeister, Jr., hired her, which testimony was denied. Vergie Horachian testified that she was discharged by Beiermeister, Jr. The nature of the work performed by Beiermeister, Jr., and his close relationship to the plant superintendent clearly establish that he is employed by the respondent in a supervisory capacity.

The record does not definitely indicate how long the three men stood across the street. However, Mona Futia testified that she was outside the building, had walked up and down the street and stood on corners for 45 or 50 minutes, that she saw the three men for about an hour, and that when she left they were still standing there. Beiermeister, Jr., testified that Kniager and he had gone to a picture show, which was located about 4 blocks from the Union's headquarters, and as they were returning to where they had parked the car they saw Rubensohn across the street. They were joined by Rubensohn and shortly thereafter Kniager walked on up the street to get the car. Beiermeister, Jr., and Horachian both testified that Vergie Horachian came out of the building and called Beiermeister, Jr., a sneak.

The weight of the evidence establishes that the three men stationed themselves in the vicinity of the Union's meeting place for the purpose of ascertaining the identity of the respondent's employees who attended the Union meeting.

During November 1936, a meeting of all employees, including supervisory employees, was called during working hours on the respondent's property by Beiermeister, Sr., superintendent of the plant. Apparently the meeting was called as a result of certain incidents and events that had taken place due to the organizational drive of the Union. Beiermeister, Sr., testified that he told the assembled employees that he had been informed by representatives of the Union that the Union represented 90 per cent of the employees. On cross-examination he admitted that perhaps the representatives of the Union had told him that 90 per cent of the employees were "sympathetic" toward the Union. Further testimony by Beiermeister, Sr., revealed that he told the employees at the meeting that he did

not think the representation made by the Union officials was true, and that he would like the employees to vote whether or not they wished him to negotiate with the Union. Blank slips of paper were passed around, the employees voted, and the ballots were counted in the office of the paymaster in the presence of Beiermeister, Sr. Rose Girardi, employee in respondent's plant, testified that Beiermeister, Sr., told the employees, during the meeting, that he did not care which organization the employees belonged to, but it would be better if they belonged to the one in the shop.

Prior to the meeting Rose Girardi had received a letter from the Union. When she showed this letter to Beiermeister, Sr., she testified that he said, "Don't pay no attention to them." Carl Cummings, Union organizer, testified that Beiermeister, Sr., when approached during the first part of October 1936, by the witness and one Goodman, business agent for the Union, told them that he, personally, was definitely opposed to friendly relations between the Union and the respondent.

Throughout the entire record there is a clear indication of the hostile attitude of the respondent toward the Union. The respondent coerced its employees and interfered with their right of self-organization by holding under surveillance the distribution of the Union literature. The same conclusion is applicable to the threats by Mrs. Feehan, against the organizer in the presence of the employees, and the derogatory statements made by Stranger coupled with his threats that the respondent would move its plant if the employees joined the Union. We find that the respondent further interfered with, restrained, and coerced its employees in the exercise of their right to self-organization guaranteed in Section 7 of the Act by holding under surveillance the meeting place and meeting of the Union on October 7, 1936, and by Beiermeister, Sr.'s statements and acts during and preceding the meeting of the respondent's employees in November 1936.

B. Tiny Town Togs Benevolent Association

During the early part of May 1936, shortly after the Union had started its organizational drive among the respondent's employees, three employees of the respondent, Beiermeister, Jr., George Kniager, and Ben Rosenkranz, machinist, decided to form an inside association. The constitution and bylaws for the proposed association were drawn up by the three employees and were then delivered by Beiermeister, Jr., to his father, Beiermeister, Sr. During the latter part of May 1936, Beiermeister, Sr., called a meeting of all employees in the plant. The meeting was held on the respondent's property during working hours, and was called for the purpose of forming a

welfare association that would provide for various social affairs, sick and loan benefits, and assistance to the family of a deceased employee in obtaining the proceeds of the insurance policy furnished employees by the respondent. In attendance at the meeting, in addition to the employees, there were Rubensohn, president of the respondent, Levy, treasurer, Barenboim, an attorney, an insurance agent, and certain other officials. Some of the officials spoke, the insurance agent told the employees that the respondent had decided to present, without cost, an insurance policy to each of its employees, and Barenboim read and explained the various provisions of the constitution and bylaws as prepared by Beiermeister, Jr., Kniager, and Rosenkranz. Slips of paper were then passed out to all the employees, including foremen, foreladies, and supervisory officials, and they were asked to vote whether or not they desired the Association. Apparently at the same meeting a vote was taken to determine whether dues for the Association would be fixed at 10 or 15 cents a week. Thereafter, an announcement was made by Rubensohn that the Association had been chosen by the employees by a vote of about 152 to 6. About 3 weeks later, during working hours, application cards for membership in the Association were distributed by Marian Neisen, bookkeeper and stenographer in the respondent's office. Dues, as a result of the afore-mentioned vote, were fixed at 10 cents a week and were collected during working hours by Marian Neisen.

The first meeting of the Association was held during June 1936, at which meeting officers for the Association were elected. Beiermeister, Jr., was elected president, Mrs. Sheffield, forelady in the operating room, treasurer, and Marian Neisen, secretary. The record is replete with testimony showing that financial support was contributed to the Association by the respondent, that meetings of the Association were held during working hours in the plant, and that foremen, foreladies, and other supervisory officials were members of the Association and attended the meetings.

Beiermeister, Jr., testified that during April 1937, he went to see Thomas J. O'Conner, an attorney whom he had known for many years and who was a friend of his father. Although the witness stated that he went to see O'Conner on personal business, nevertheless, they discussed the Association and O'Conner was asked whether he thought that it was a good social organization. Upon request of O'Conner, the constitution and bylaws of the Association were brought to him. Subsequently, during another visit by Beiermeister, Jr., they again discussed the Association, and, according to Beiermeister, Jr., O'Conner suggested incorporating certain clauses, as amendments to the constitution and bylaws, pertaining to a grievance committee. Apparently O'Conner made a rough outline of the clauses relating to the proposed amendments.

On May 6, 1937, the Association held a meeting during working hours on the respondent's property, which meeting was attended by employees who were members of the Association, including foremen, foreladies, and supervisory employees. A motion was made, seconded, and unanimously passed, that from that date, May 6, 1937, a check-off system for the collection of dues be put into operation. Beiermeister, Sr., testified, during the hearing, that he thought foremen and foreladies were still members of the Association and that dues were still being deducted from their salaries. Beiermeister, Jr., president of the Association, during the meeting on May 6, 1937, read the proposed amendments to the constitution and bylaws relating to the grievance committee. Thereafter, a vote was taken and the amendments were adopted. The materiality of the change made in the constitution and bylaws of the Association by the amendments is clearly evident. Article II, Section 1, provides:

The purposes of this Association shall be to promote good fellowship, to assist fellow employees in time of need arising through sickness or other cause, *and to act on behalf of all members in adjusting and obtaining improved wage, hour and working conditions.*²

The constitution and bylaws were further amended by adding Section 5 to Article XI. Section 5 provides, in effect, that the members of the Association, from each department, should elect one person from that department to confer with the management regarding adjustments of all wages, hours, and working conditions, and that such representatives should be known as the grievance committee. A nominating committee was appointed by Beiermeister, Jr., and thereafter, pursuant to the amendments, a grievance committee was duly nominated and elected.

The respondent at all times prior to the Intermediate Report of the Trial Examiner maintained that both prior and subsequent to May 6, 1937, the Association functioned solely as a social and benevolent organization, and that it did not consider the Association as a labor organization. The respondent, in its exceptions to the Intermediate Report, admits that the Association is a labor organization.

However, the respondent contends that not having been made aware of the change in the status of the Association it is not chargeable with such knowledge. The circumstances, as heretofore described, surrounding the meeting at which the constitution and bylaws were amended, refute this contention. Additional factors may also be noted which establish the converse of the respondent's contention.

² Italics indicate amendments made to this section.

Article XVI, of the constitution and bylaws, states, in part, as follows:

When an amendment shall be proposed, the same must be submitted in writing to a meeting of the officers, the executive committee, and the foreladies of the respective departments or heads of the respective departments of Tiny Town Togs, Inc. . . .

Beiermeister, Sr., testified that he knew of the meeting on May 6, 1937, and that subsequently he heard that a grievance committee had been elected. Beiermeister, Sr., further testified that he did not consider the Association a labor organization. However, in a letter dated June 10, 1937, addressed to the Union, Beiermeister, Sr., wrote, in part, as follows:

There is at present an organized group of employees (the Association) in our establishment which we believe to constitute such a majority and we have recognized them as the sole bargaining agency in conformity with the Wagner Act as we understand it.

We find that the respondent has dominated and interfered with the formation and administration of the Association, and has contributed support to it.

C. The strike

As a consequence of the respondent's unfair labor practices, as described in subsection B above, on the morning of July 14, 1937, Carl Cummings, the Union organizer, called a strike of the respondent's employees. Prior to the date of the strike, Cummings, on June 9, 1937, wrote a letter to the respondent, which stated, among other things, that:

For some time your workers were denied the privilege of collective bargaining through the means of fostering on them a bogus organization which has not been and is not today free from the influence of yourselves and your agents . . .

The above-quoted segment of the Union's letter is a clear and unequivocal indication that the Union was fully cognizant of the scope and effect of the respondent's unfair labor practices. Although the record indicates that the respondent's refusal to bargain with the Union was one of the factors that precipitated the strike, nevertheless, the respondent's domination and interference with the formation and administration of the Association was an underlying and primary factor in causing the dissatisfaction and unrest which resulted in the strike.

A large number of the respondent's employees congregated outside of the plant on the morning the strike was called. Considerable commotion ensued and there was some violence. After a short time a majority of the employees entered the plant and started to work. The plant operated on that day and was operating at the time of the hearing. Picketing has been in progress since the first day of the strike.

There were approximately 13 of the respondent's employees who formed a picket line on the first morning of the strike, not all of whom were members of the Union. These employees were assisted by employees from other union plants in Troy. On the second day of the strike not all of the striking employees returned to the picket line. Thereafter, from time to time a few of the respondent's employees became strikers. The respondent, shortly after the commencement of the strike, hired new employees, some of whom worked for a few days or weeks and then joined the strike.

As heretofore mentioned, the request for the reinstatement of Agnes Grill was denied on the ground that she had not ceased employment as a result of a current labor dispute. It is apparent from the record that Agnes Grill was laid off about May 1, 1937, at which time no labor dispute existed in the respondent's plant. The striking employees, who ceased employment as a result of a current labor dispute, and because of the unfair labor practices of the respondent, did not seek reinstatement prior to the hearing, and all of them now desire reinstatement.

D. The discharge of Vergie Horachian

The complaint alleges the discriminatory discharge of Vergie Horachian, an employee in the respondent's plant. Vergie Horachian was hired by Beiermeister, Jr., as a presser in the pressing department in November 1935, and was discharged on October 6, 1936. She earned \$8 or \$9 a week during the first part of her employment. At the time she was hired there were about 50 pressers working in the pressing department, and at the time of her discharge, at which time she was earning an average of \$11 or \$12 a week, the personnel in that department had been increased to about 80 girls. The record indicates that no other pressers were discharged or laid off on the day of Horachian's discharge, and that other pressers were hired subsequent to that time.

In May 1936, at which time a strike was in progress in another clothing manufacturing plant in Troy, a picture of Horachian's sister appeared in a newspaper in connection with the strike. Mrs. Feehan, the forelady in the pressing department in the respondent's plant, knew that Horachian's sister was a strike leader and active in the Union. Mrs. Feehan, thereafter, until Horachian's discharge on

October 6, 1936, harassed Horachian by repeated derogatory statements concerning the Union and by frequent interrogations having to do with whether or not she had joined the Union. In August 1936, Horachian, because of the antagonistic attitude of Mrs. Feehan, quit work at respondent's plant, but was rehired the following Friday. Horachian testified that Beiermeister, Jr., "asked me to please come back, that he needed the help." The respondent contends that the rehiring of Horachian at this time is some evidence that she was not later discharged in violation of the Act. However, the fact that the respondent "needed the help" together with events, as hereinafter described, that transpired subsequent to the rehiring, outweighs the evidence tending to bear out the respondent's contention.

After being rehired, Horachian, sometime in August or September, joined the Union and thereafter, until the date of her discharge was actively engaged in soliciting members for the Union. Mrs. Feehan continued to annoy her concerning the Union.

About a month before her discharge, Mrs. Feehan asked her if she liked the Union, and stated that she would be foolish if she joined it because it would get her nowhere. Mrs. Feehan, on another occasion, informed Horachian that a letter had been received by the respondent stating that she and nine other girls had joined the Union. The testimony in the record concerning the discharge is noteworthy:

A. I went to his table and he (Beiermeister, Jr.) told me I was through, and I asked him what the reason was. He did not say anything then, so the first thing I thought of was another letter, because a week before that they had received one.

Q. How did you know they had received one?

A. The girls that worked in front of me was called into the office * * *

Q. Tell us what your conversation was with Beiermeister, Jr.

A. I said, "Did you receive another letter?" He just shrugged his shoulders and he laughed. I told him there was no need to cry about losing my job and I just walked out.

Eleanor Jones, employee in the respondent's plant, testified that on the same day Vergie Horachian was discharged, she met Mrs. Feehan during working hours in the ladies' room of the respondent's plant, and that Mrs. Feehan said, "Vergie was fired for joining the I. L. G. U."

The respondent, throughout the hearing, failed to offer any explanation for the discharge of Horachian. Mrs. Feehan was not called as a witness and the testimony of both Horachian and Jones remains uncontradicted. Beiermeister, Jr., was sworn as a witness, but he was asked no questions concerning the discharge, hence, no refutation, qualification, or explanation was made relative to the

conversation between Beiermeister, Jr., and Horachian at the time she was discharged.

About 2 weeks after the discharge, Horachian started to work for another company, and since that time she has been employed for most of the time. Although at the time of the hearing she was working as a presser for another dress manufacturing company in Troy, and was earning as much or more than she was making when working for the respondent, nevertheless, she desired reinstatement with the respondent and gave as the reason therefor, "To show the girls not to be scared to join the Union."

We find that Vergie Horachian was discharged for the reason that she had joined and assisted the Union.

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

V. THE REMEDY

The Board has found that the respondent dominated and interfered with the formation and administration of Tiny Town Togs Benevolent Association and contributed support thereto. In order to effectuate the policies of the Act, we shall order the respondent to withdraw all recognition from the Association, and to disestablish it as a representative of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, hours of employment, or conditions of work.

In addition to an order to cease and desist from its unfair labor practices, on the basis of the Board's finding that Vergie Horachian was discharged because she joined and assisted the Union, we shall order the respondent to offer her reinstatement together with back pay.

We have found that the respondent by its unlawful acts in dominating and interfering with the formation and administration of the Association, provoked a strike of its employees. The respondent's unfair labor practices, in this respect, continued throughout the entire period of the strike.

Since the strike was caused by the respondent's unfair labor practices we shall, in accordance with our usual custom, order the respondent, upon application, to offer reinstatement to their former or sub-

stantially equivalent positions to those employees who went out on strike on July 14, 1937, or thereafter, and who were in the employ of the respondent prior to July 14, 1937, and who have not since been fully reinstated. Such reinstatement shall be effected in the following manner: All employees hired after the commencement of the strike shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual manner of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

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. Tiny Town Togs Benevolent Association and International Ladies Garment Workers Union are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Tiny Town Togs Benevolent Association, and by contributing support thereto, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. The respondent, by discharging Vergie Horachian for having joined and assisted a labor organization, has engaged in an unfair labor practice within the meaning of Section 8 (3) of the Act.

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

ORDER

Upon the basis of the foregoing 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, Tiny Town Togs, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Tiny Town Togs Benevolent Association, or with the formation and administration of any other labor organization of its employees, and from contributing support to said Association or to any other labor organization of its employees;

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

(c) Spying, maintaining surveillance, or employing any other manner of espionage over the meetings or meeting places and activities of the International Ladies Garment Workers Union, or any other labor organization of its employees;

(d) 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 National Labor Relations Act.

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

(a) Offer to Vergie Horachian immediate and full reinstatement to the position held by her immediately prior to October 6, 1936, without prejudice to her seniority or any other rights and privileges;

(b) Make whole Vergie Horachian for any loss of pay she may have suffered by reason of her discharge on October 6, 1936, by payment to her of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of respondent's offer of reinstatement, less the amounts which she has earned during that period;

(c) Withdraw all recognition from Tiny Town Togs Benevolent Association, as a representative of any of its employees for the purpose

of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and disestablish the Tiny Town Togs Benevolent Association as such representative;

(d) Upon application, offer to those employees, except Agnes Grill, who went out on strike on July 14, 1937, and thereafter, who were in the employ of the respondent prior to July 14, 1937, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "The remedy," above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(e) Make whole the employees ordered to be offered reinstatement for any loss of pay they will have suffered by reason of the respondent's refusal to reinstate them, upon application, following the issuance of this order, by payment to them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from five (5) days after the date of such application for reinstatement to the date of the offer of employment or placement upon the preferential list required by paragraph (d) above, less the amount, if any, which each will have earned during that period;

(f) Post in conspicuous places in its plant, and maintain for a period of at least thirty (30) consecutive days, notices stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that Tiny Town Togs Benevolent Association is disestablished as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and that the respondent will refrain from any recognition of it as a labor organization;

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