

In the Matter of UNITED CARBON COMPANY, INC. and OIL WORKERS
INTERNATIONAL UNION, LOCAL 236

In the Matter of UNITED CARBON COMPANY, INC. and OIL WORKERS
INTERNATIONAL UNION

Cases Nos. C-446 and R-586, respectively.—Decided June 1, 1938

Carbon Black Manufacturing Industry—Interference, Restraint, and Coercion: antiunion statements; circulation of petitions designating plant representatives; discrediting union; expressed opposition to labor organization; threats of retaliatory action; threat to close plant—*Discrimination:* discharges; for union activity—*Reinstatement Ordered:* discharged employees—*Back Pay:* awarded to discharged employees—*Investigation of Representatives:* controversy concerning representation of employees; employer's refusal to grant recognition of union; majority status disputed by employer—*Prior Election:* prior consent election no bar to determination of representatives, in view of numerous acts of interference, restraint, and coercion engaged in by employer to influence results of election—*Unit Appropriate for Collective Bargaining:* employees at eight plants, central machine shop, and laboratory, and "general supervision" employees paid on hourly basis, excluding supervisory employees, office and clerical workers, and construction employees; stipulation as to—*Election Ordered:* time to be set by Board, after compliance with accompanying order.

Mr. L. N. D. Wells, Jr., for the Board.

Adkins, Pipkin, Madden & Keffer, by *Mr. Wales H. Madden* and *Mr. H. C. Pipkin,* of Amarillo, Texas, for the respondent.

Mr. George E. Bebermeyer, of Borger, Texas, and *Mr. John L. Coulter,* of Washington, D. C., for the Union.

Mr. David Y. Campbell, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Oil Workers International Union, Local 236, herein called the Union, the National Labor Relations Board, herein called the Board, by Edwin A. Elliott, its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated November 4, 1937, against United Car-

bon Company, Inc.,¹ Borger, Texas, 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 August 24, 1937, and on November 1, 1937, the Union filed with the Regional Director a petition and amended petition, respectively,² alleging that a question affecting commerce had arisen concerning representation of employees of the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On October 26, 1937, the Board, acting pursuant to Article II, Section 37 (b), and Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the cases consolidated for purposes of a hearing, and acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, ordered an investigation on the petition and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. Notices of hearing were issued and duly served, together with copies of the complaint, upon the respondent and the Union, and service thereof was admitted by the respondent and the Union.

The complaint alleged in substance (1) that the respondent discharged Luther Martin on September 1, 1937, and Sam Scarborough on October 2, 1937, and has since refused to reinstate them because they, and each of them, joined and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and for other mutual aid and protection, thereby discouraging membership in a labor organization; (2) that the respondent through certain of its agents interfered with, restrained, and coerced its employees by threats and other means in the selection of bargaining representatives in a consent election held September 14, 1937, pursuant to an agreement made between the respondent and the Union; and (3) that by these and other acts the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

On November 16, 1937, the respondent filed its answer admitting the allegations as to the character of its business, but denying that it is engaged in interstate commerce or that its activities affect such commerce, denying that it had engaged in unfair labor practices, alleging affirmatively that Martin had been discharged for ineffi-

¹ Incorrectly designated in the charge as United Carbon Company, which designation was corrected by amendment at the hearing

² Both were amended at the hearing to show the correct name of the respondent

ciency and that Scarborough had voluntarily quit his employment, but that the respondent had cause to discharge Scarborough, and alleging that the Union was estopped to deny the validity of the consent election, the Regional Director's certification of its results not being subject to a collateral attack. On the same date, the respondent filed exceptions to the complaint, which are in the nature of a special demurrer, and separate motions to dismiss the complaint and the petition. The grounds assigned for dismissal of the complaint and petition are in substance (1) that the Board lacks jurisdiction; (2) that the petition and the charge erroneously designated as the employer United Carbon Company, a separate legal entity, of which the respondent is the wholly owned subsidiary, and therefore the respondent is not properly brought before the Board; and (3) that no exceptions to or appeal from the certification of the results of the consent election by the Regional Director having been taken, pursuant to Article III, Section 9, of said Rules and Regulations, the validity of said election cannot be questioned in this proceeding. These motions and the exceptions, renewed orally at the hearing, were overruled by the Trial Examiner, which rulings we hereby affirm.

It is to be noted in connection with the foregoing motions and exceptions that, as pointed out herein, the petition and charge were amended at the hearing to substitute the respondent for United Carbon Company, and that Article III, Section 9, of said Rules and Regulations does not refer to consent elections.

Pursuant to notice, a hearing was held on November 22, 1937, through December 2, 1937, inclusive, at Stinnett, Texas, before Charles Bayly, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and the Union was represented and participated in the hearing. 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 hearing, motions were made by the Union to amend the amended petition and amended charge to state correctly therein the name of the respondent, and to amend the amended petition to include allegations as to the consent election and the membership claimed. No objections were made to the latter motion. Counsel for the Board moved to amend the complaint to include allegations regarding the business organization of the respondent, which allegations were admitted in the answer. At the close of the respondent's case, counsel for the Board moved to amend the complaint to conform to the evidence, and the respondent made a similar motion to amend the answer. All said motions were granted by the Trial Examiner, which rulings are hereby affirmed. During the course of

the hearing, the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. Said rulings are hereby affirmed.

On February 14, 1938, the Trial Examiner issued his Intermediate Report, which was filed with the Regional Director and duly served on the parties, finding 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 Act, and recommending that the respondent be ordered to cease and desist from its unfair labor practices, reinstate, with back pay, both individuals named in the complaint as having been discriminated against, and take certain other appropriate action to remedy the situation brought about by the unfair labor practices. Thereafter, the respondent filed its exceptions to the findings and recommendations of the Intermediate Report. The Board has fully considered the exceptions to the Intermediate Report and finds no merit in them. Although accorded the opportunity, the respondent has not requested oral argument before the Board, nor has it filed any briefs.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, United Carbon Company, Inc., is a Maryland corporation, organized in 1935 as a subsidiary of United Carbon Company, a Delaware corporation. The respondent maintains a main office in Charleston, West Virginia, and a local office in Borger, Texas, in the vicinity of which are located the eight plants involved in this proceeding, namely the Alexander, Norrick, Rock Creek, McIlroy, Combined, Sanford A, Sanford B, and Stinnett plants of the respondent. At least one other plant is operated by the respondent elsewhere in the State of Texas, and is not here involved. The respondent also maintains a laboratory and machine shop in Borger, Texas, in connection with the eight plants.

The respondent manufactures carbon black from processes involving the incomplete combustion of the residue of natural gas, from which all gasoline content has been stripped, purchased wholly within the State of Texas. Carbon black is used universally, in the manufacture of a large variety of articles. Its chief use, however, is to give wearing quality and color to rubber, principally in the manufacture of tires. It is also utilized in the manufacture of radio sets, phonograph records, telephone sets, rubber goods of all

kinds, printer's ink, and the like, as well as in highway construction. Approximately 80 per cent of the world's supply is manufactured in the State of Texas, where the respondent is one of the two leading producers of this widely used commodity.

Carbon black is manufactured in continuous process. The respondent's plants operate 24 hours a day and 7 days a week at capacity, except when units are temporarily shut down for repairs. The manufactured black is stored in warehouses at the respective plants, pending the receipt of orders for shipment from the respondent's Charleston, West Virginia, office via its Borger, Texas, office. Orders for shipment designate the type, amount, and quality of the black and the plant from which it is to be shipped, the name of the consignee and the destination, the date of shipment and carrier, and show on their face whether the shipment is for foreign or domestic consignment. Upon the receipt of said orders, the respondent's employees load the black directly in the railroad cars, spotted by the carrier on a spur track leading into the particular plant according to the respondent's instructions, or upon trucks. The shipment is then transported to the consignee by the carrier under uniform straight bills of lading, inland freight prepaid on foreign shipments and f. o. b. cars or trucks in the case of domestic shipments.

Foreign shipments are thus sent principally through Texas ports, with about 2,500,000 pounds shipped via New Orleans, Louisiana, during the first 6 months of 1937, and a small amount shipped via Vancouver, British Columbia. Of the respondent's total production of 50,041,673 pounds of carbon black in the eight plants during the first 6 months of 1937, 37.3 per cent was shipped to foreign points and 62.6 per cent was shipped to other States, 99.9 per cent thus being shipped to points located outside the State of Texas. During the same 6-month period, the respondent received at its 8 plants 82 carloads of bags, nails, shooks, carbon black, pipe, steel, machinery, lumber, sheet iron, and bricks for use in the operation of its business, 76 carloads, or 92.68 per cent, of which were received from points situated outside the State of Texas. During the same period, 240,000 pounds of such materials in less than carload lots were so received, 75 per cent of which were from outside the State of Texas. By dollar volume, 83.8 per cent, or \$539,519 worth, of the raw materials were received from outside Texas. Annual sales from the eight plants amount to approximately \$4,500,000. The respondent consumes annually between 72,000,000 and 75,000,000 thousand cubic feet of gas and produces annually between 92,000,000 and 94,000,000 pounds of carbon black.

The respondent employs about 320 persons in the Borger, Texas, area.

II. THE ORGANIZATION INVOLVED

Oil Workers International Union, Local 236, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership production and maintenance employees of the respondent. It excludes from its membership executive and supervisory employees, office and clerical workers.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

In March 1937, the Union began its organizational activity among employees in the respondent's plants. The first meeting was held on March 15, 1937. It appears from the record that the respondent was aware at that time of the Union's activity among its employees. During the first part of April, the respondent caused to be circulated among its employees in each of the plants, petitions making certain requests concerning conditions of employment and wages and naming plant representatives to deal with the respondent. In at least one instance, the designation of a plant representative was written into the body of the petition after the signatures had been obtained. These petitions, most of which were typewritten on the respondent's letterheads, were principally circulated by two of the respondent's foremen, C. L. Lipps and Okey Naylor. The first of the petitions, the one circulated in the Sanford A plant, was dated April 2, 1937. Petitions in five of the other plants were dated April 3, 1937, and in the seventh plant the petition was dated April 6, 1937. The petition circulated in the remaining plant is not in evidence, but it was circulated at about the same time as the others.

On April 3, 1937, Keenan, an official of United Carbon Company, the parent corporation, arrived in Borger, having come by train from the main offices of the respondent and the parent corporation in Charleston, West Virginia. Keenan admitted that he knew at least 1 week before leaving Charleston to come to Borger that there was a movement among the respondent's employees to select representatives to bargain with the respondent. The petitions having been circulated in various plants, Keenan and Shinn, the respondent's general superintendent, called a meeting of the plant representatives named in said petitions on April 7, 1937. At this meeting, the contents of the several petitions were discussed and amplified. Keenan testified that the meeting then adjourned and he then drafted a working agreement, admittedly modeled after contracts used by certain inside unions, which dealt with the points requested during the said discussion. The testimony of employee witnesses, however, is that there was little or no discussion and that the agreement was

submitted to them by Keenan and Shinn at the meeting. The latter statement we find to be more in accordance with the facts leading up to the proposal of the agreement by Shinn and Keenan.

While the agreement granted certain concessions, including a general increase of 3 cents per hour in wages, it also bound the employees not to request additional wage increases for the period of 1 year.

The agreement failed of consummation, and Keenan left Borger, returning in several days to Charleston. The respondent then made a large number of improvements in its camps at the several plants, which were among the things requested in the petitions. About May 10, 1937, the respondent voluntarily placed in effect a general wage increase of 5 cents per hour, retroactive to May 1. During the time subsequent to the formation of the Union in March 1937, the respondent's foremen and plant superintendents made various derogatory remarks about the Union, and belittled the benefits to be secured from membership.

It is clear from the foregoing facts that the respondent and its officers in Charleston, West Virginia, knew of the formation and activity of the Union practically from the outset. The respondent then set about to forestall the growth of the Union by circulating petitions naming plant representatives and by the making of numerous statements to the employees by its plant superintendents and foremen, which were calculated to undermine the Union.

During the months that followed, at least six of the plant superintendents, several of the foremen, and the assistant general superintendent, Reeder, openly expressed to employees their hostility toward the Union and made various other statements calculated to discourage the employees from membership in the Union. The evidence of such statements is extensive and is so clear as not to require discussion.

On July 30, 1937, a committee of the Union, composed of L. P. Martin, D. E. Comer, S. C. Scarborough, C. E. Hart, and G. W. Patton, wrote the respondent that the Union represented a majority of its employees and requested the respondent to enter into negotiations for a contract. On August 9, 1937, the committee, together with Bresseler, president of the Union, and Bebermeyer, a Union representative, met with Shinn and Reeder and submitted a proposed contract. The proposed contract was referred by Shinn to the respondent's officers in Charleston, West Virginia, for their consideration. A second such meeting was held on August 23, 1937.

At the latter meeting, the respondent raised the question of proof of the Union's right to represent a majority, and requested the Union to turn over to the respondent its membership cards. The

Union refused the request, for fear that such disclosure would result in discrimination against its members. The Union then requested the respondent's pay roll, against which to check its membership, which request was refused. It was then agreed orally that the matter would be left to determination by a secret election to be conducted by the Board.

On August 27, 1937, Shinn read a prepared statement to the employees at each of the respondent's plants. This statement was, in essence, that it was left to the employees either to select a representative or to retain their individual freedom of action, in this connection saying, "In other words, in the event you do not join any union your job will be just as safe as it is at this moment." The statement then recited that it was reported that the Union claimed to be negotiating a contract, that if the employees presently joined it would cost them \$2, which amount would be later increased to \$36, and that the failure to join the Union at that time would mean the loss of jobs, since there would be a closed shop. Referring to these alleged rumors, the statement then said, "As far as negotiating a contract at this time, and you being out of a job if you do not sign are concerned, this is false, and there is not a word of truth in such propaganda." The statement then said that the Union committee had declined to furnish satisfactory proof that the Union represented a majority of employees.

Several employees testified that they felt from the reading of this statement that the respondent was against the Union. While the proposed contract contained no closed-shop clause, it seems to have been a prevalent belief that one of the Union's objectives was the closed shop.

On the 2 successive days following the reading of the statement by Shinn on August 27, 1937, both Reeder, and Patterson, the plant superintendent, made statements to groups of employees at the Combined plant to the effect that the plants would be closed before the respondent would agree to a closed shop. About the same time, W. McKinney, the plant superintendent at the McIlroy plant, made a similar statement to one Scroggins, an employee.

In view of the previous evidences of the respondent's antiunion attitude, we think it obvious that these statements of the plant superintendents and the assistant general superintendent, together with the statement read by Shinn, constituted a coordinated effort on the part of the respondent to discourage membership in the Union and to influence its employees for the purposes of the election to designate the majority representative, which the respondent had reasonable cause to believe was soon to be held.

On September 10, 1937, the respondent and the Union signed an agreement to have an election conducted by the Regional Director.

Just prior to the election, the Union reported to representatives of the Regional Director several instances of alleged interference, restraint, and coercion by the respondent in connection with the proposed voting. On September 14, 1937, the election was held, the Union having expressly reserved its right to file charges against the respondent upon the basis of its alleged efforts to influence the outcome of the election. In the election the Union lost by eight votes, which results were certified to the parties by the Regional Director.

It was testified by Bebermeyer, Kelley, Martin, and several other witnesses for the Board that the Union represented a majority of the employees just prior to the election. The most conservative of this testimony was to the effect that the Union represented a majority by at least 40 employees at the time of the election. It was also testified that membership in the Union declined prior to the election coincidentally with the respondent's campaign to disparage the Union. This testimony stands substantially uncontroverted by the respondent.

During the week preceding the holding of the election, the evidence shows that Reeder and several of the plant superintendents and foremen made various statements and threats to employees to influence their votes in the coming election. Most of these acts of interference, restraint, and coercion are not denied by the respondent, and the remainder are not satisfactorily refuted. Because of the clarity of the evidence, we deem it unnecessary to describe each of these instances in detail, but will mention most of them only by general reference.

About 1 week before the election, Reeder told Spraggins, an employee at the Combined plant, that Reeder's brother-in-law had lost his job and home in West Virginia because of membership in a union and could tell Spraggins all about unions. Reeder also told Spraggins to tell his fellow employee, Kelley, that Reeder didn't think the Union was needed. Spraggins delivered Reeder's message to Kelley the day before the election.

On the day before the election, Reeder approached T. F. Scarborough, an employee at the Combined plant, and after minimizing the benefits to be derived from membership in the Union and pointing out how well the respondent treated its employees, announced confidently that the Union would lose in the election. Reeder likewise stated that even if the Union were designated in the election it still would not have a contract. This confidence in the election results was again reflected in a conversation between Reeder and S. C. Scarborough the evening of election day, when Reeder said, "Sam, we can whip you down at anything you go at. Anything you bring up we can whip your ears down on it."

Two days before the election, H. Teegerstrom, the Sanford B plant superintendent, called two employees into his office and talked to them at length about the pending election and the Union. In essence, he told the men that the Union would cause strikes and disrupt the relations between the respondent and its employees. He also remarked that the respondent would close its plants rather than have a closed shop. Teegerstrom then stated that he understood that some employees desired to form an inside union, and that the first step was to defeat the Union in the election.

On the morning of the election, Teegerstrom remarked to one of the employees he had called into the office 2 days before, that the employee might not be working by the following week. Similar remarks were made by Teegerstrom to two other employees on the day previous. Strong hints that the Union might cause the respondent to close its plants were also made to various employees by Reeder, at the Sanford A and Sanford B plants, and by McKinney, the McIlroy plant superintendent. Naylor, acting superintendent of the Alexander plant and foreman at the Sanford B plant, informed one employee on the day before the election, "Remember who has been paying you for the last three months."

Various employees were also told by the superintendents of the McIlroy and Sanford A plants, and by Reeder, at the Combined and Sanford B plants, that the respondent would pay no annual bonus if the Union were successful in the election. In one instance, it was stated that a better bonus would be paid by the respondent if the employees failed to select the Union in the election. On one occasion, Reeder stated that the information concerning the closing of the plants and the failure to pay a bonus had come from Nelson, the respondent's president, and from another of the respondent's officials in the main office in Charleston, West Virginia.

Attempts were also made to destroy the confidence of employees in the Union by Larson, the Stinnett plant superintendent, and by Hanson, a supervisory employee of United Carbon Company, the parent corporation, from the main office in Charleston, West Virginia. Hanson openly asked two employees at the McIlroy plant, 2 days before the election, how they intended to vote.

While not seriously denying the occurrence of these activities by its supervisory employees, the respondent contends that such actions were contrary to instructions and without the scope of their authority, and therefore not attributable to the respondent. Such contention is obviously without merit. The plant superintendents had authority to hire and discharge employees and were responsible for the work in their respective plants. The respondent clearly made them its agents in its dealings with the employees. Further, the assistant general superintendent, Reeder, was one of the most active of the respondent's

supervisory employees in the efforts to defeat the Union. There is confusion in the record as to whether or not the respondent actually instructed its plant superintendents and Reeder not to interfere in the election. Assuming that such instructions were issued, however, it is noteworthy that their flagrant violation by Reeder and the plant superintendents resulted in no disciplinary action, although admittedly known to the respondent's general superintendent and to Keenan.

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

B. *The discharges*

Luther Martin started to work for the respondent about June 8, 1932. Since December 1935 he had been employed as an operator at the Alexander plant, under C. V. Teegerstrom, the plant superintendent. Among other things it was his duty to operate the machinery in units 5, 6, and 7 and, until July 16, 1937, to keep such machinery lubricated. On that date, the duties of Martin and the other operators were changed slightly, so that thereafter he was responsible for the lubrication of the machinery in unit 6 only. He had never received complaints about his work. Rather, Teegerstrom had publicly complimented his efficiency in lubricating the machinery on several occasions.

Martin joined the Union in March 1935, as a charter member. He became the most active member in the Alexander plant, about 97 per cent of whose employees were members of the Union. The respondent admits that it knew of Martin's prominence in affairs of the Union. Martin also held offices with the Union, and served on the committee that attempted to negotiate a contract with the respondent on August 9 and August 23, 1937.

On August 31, 1937, after the end of his shift, Martin posted in the bathhouse used by employees several copies of a notice by the Union concerning a speech to be made regarding oil workers' problems by John L. Lewis, chairman of the Committee for Industrial Organization. Martin then left. Shortly thereafter, Teegerstrom and Williams, the foreman, entered the bathhouse. Upon seeing the notices posted, Teegerstrom tore them down. He then asked Williams if the latter knew who had posted the notices. Williams said he did not know. Teegerstrom then said that he had an idea as to who had posted the notices,³ and instructed Williams to have Martin report to him the next morning before going to work. Later, Teegerstrom attached a note to Martin's locker telling him to report the next morning before going to work. On the following morning, September 1, 1937, Martin

³ Teegerstrom testified upon cross-examination that he assumed that Martin had posted the notices.

reported to Teegerstrom and was discharged, allegedly because of unsatisfactory work. Martin protested the basis assigned for his discharge and accused Teegerstrom of discharging him for union activity. Martin then obtained his check from the respondent's office in Borger.

At the time of his discharge, Martin received 70 cents per hour for 40 hours a week, or \$28 per week. From that date until the time of the hearing he has earned not more than \$88.

On October 5, 1937, Martin received a letter from Nelson, the respondent's president, inviting Martin to appear at the Borger office the following day and prove that he was not discharged for inefficiency. In response to the letter, Martin saw Nelson and the respondent's attorney on October 6, 1937. At that time Nelson asked Martin to hand over whatever evidence he had that he was discharged for union activities, which request Martin refused. Martin requested Nelson for reinstatement with back pay, but with no success.

It is admitted by the respondent that notices of wrestling matches, baseball games, dances, and other gatherings are customarily allowed to be posted in the bathhouse. It is also admitted that no rule exists against the posting of union notices, although Teegerstrom testified that he would not allow this type of notice to be posted.

The respondent contends that Martin was discharged for improper lubrication of the machinery assigned to him. Hedgecoke, a repairman, testified on behalf of the respondent that some time after October 4, 1937, at Teegerstrom's instructions, he made a thorough inspection of the machinery in unit 6, which it was Martin's duty to lubricate, and in units 5 and 7. Hedgecoke testified further that as a result of the inspection he found some bearings in unit 6 worn out, but admitted that some repairs had to be made in unit 5 but not in unit 6. The following is his testimony with reference to the worn-out bearings allegedly found in unit 6:

Q. Unit 6?

A. No, they aren't replaced yet in unit 6. I just said they were worn out.

Q. But they are still running on?

A. They are running, yes.

Q. And the machinery is operating satisfactorily?

A. Yes.

Hedgecoke also testified to the truth of a statement made by him on September 15, 1937, that Martin's work was satisfactory, and that daily inspections of the machinery failed to disclose anything wrong.

Goodnight, another repairman, testified that he had made daily inspections of Martin's work during the entire period that the latter was employed as an operator, and that he continually found something wrong. During the same time, however, Teegerstrom publicly

complimented Martin several times on his efficiency. It is significant also that Martin was not warned that his work was unsatisfactory prior to his discharge. Moreover, the respondent admitted that one operator whose work was worse than Martin's is still employed. The failure to lubricate the machinery properly is stated by the respondent to be the sole cause of Martin's discharge, and it is admitted that his work was otherwise satisfactory. All the other operators on units 5, 6, and 7, who daily came in contact with Martin's work, testified to his efficiency.

Moreover, there is unrefuted testimony by one of the employees that Teegerstrom said on one occasion in June 1937, with reference to Martin and certain other active Union members, "I'll fire the damn bunch of them." There is further testimony in the record that Teegerstrom approached Bowling, a fellow employee of Martin, about July 1, 1937, with the proposition that Bowling start a fight with Martin over union activities, which fight was to serve as a cause for Martin's discharge. This incident is substantially admitted by Teegerstrom.

We find that the respondent discharged Martin on September 1, 1937, because of his union activities.

Sam Scarborough was employed at the Combined plant from June 1935, until October 9, 1937. During his employment, Scarborough worked in several capacities, finally being promoted to operator in the dustless unit, the highest paid class of hourly work. The respondent admits that his work was satisfactory.

Scarborough joined the Union in June 1937, and became an active member. He was selected by the Union to be in charge of activities at the Sanford A, Sanford B, and Combined plants, in the vicinity of Sanford, Texas, which is about 17 miles from Borger. Scarborough arranged and conducted the Union meetings held in Sanford and served on the committee which attempted to negotiate a contract with the respondent. His activity in behalf of the Union was admittedly known to the respondent.

After the election held on September 14, 1937, Reeder approached Scarborough, in the presence of Patterson, the plant superintendent, and said in substance, "A guy called me Bebermeyer" (the Union representative). Scarborough replied, "Hell, man, you ought to put him on a pension. That is the first time you have been called a white man in 90 days." Reeder then said, "What? Let a man call me that old bald-headed son-of-a-bitch?" Reeder then asked what the Union intended to do since it had lost the election. Scarborough replied that the Union had not been treated fairly in the election. Reeder then suggested the formation of an inside union and told Scarborough to get a copy of the contract used by the inside union at the Phillips Petroleum Company's plant nearby. Four or 5 days

later, about October 1, 1937, Reeder again addressed Scarborough and said that the previous conversation was not meant to be repeated. Reeder then said, "What have you decided about the company union?" Scarborough replied in emphatic terms that he would have nothing to do with the formation of an inside union.

On October 9, 1937, Patterson and Lundquist, the bookkeeper, stopped Scarborough on the road and told him to report at the Sanford B plant at 4 p. m. that day. Scarborough was given no information as to the tenure or the wages of his new job. Scarborough told Patterson he would see him at the Combined plant later. Thereafter, Scarborough returned to the Combined plant, to find that Patterson had gone to a meeting called by Shinn in Borger. The bookkeeper and the foreman instructed Scarborough to report to the Sanford B plant, but were unable to answer his questions concerning the wages and tenure of employment. Scarborough, however, was informed that he was transferred to the Sanford B plant in accordance with a request by its superintendent, H. Teegerstrom, for a man to work in the dustless unit. Scarborough then went to the Sanford B plant, where he found that its superintendent had also gone to the meeting in Borger. The bookkeeper was unable to give Scarborough any information concerning his new job, and excused him from work for the day.

Scarborough then went to see Shinn, who professed ignorance of the transfer and told Scarborough that Patterson could tell him about it in the morning. On the following morning, October 10, 1937, Scarborough saw Patterson at the Combined plant office. Patterson refused to talk without a witness. Scarborough having also obtained a witness, the four men went outside the building and discussed the transfer. Patterson was unable to give definite information as to the wages and permanency of the new job. Scarborough then said that he preferred to remain in his old job, that the machinery in the dustless unit at Sanford B was of a type new to him, and he would have to start anew to learn it. He also asked Patterson if he could have his old job back if he did not make good at the Sanford B plant. To this Patterson replied that he had nothing more to do with the transfer, that he had the power to transfer Scarborough to the other plant but not to bring him back.

Scarborough went that afternoon to see Teegerstrom, and discovered that he was out of town for the day. He then told Naylor, a foreman at the Sanford B plant, that he would see Teegerstrom the next morning about 10 o'clock. Naylor excused Scarborough from work for the day. Scarborough called at the office of the Sanford B plant the next morning, October 11, and found awaiting him there Teegerstrom, Naylor, Eldridge, another foreman, and Means, the bookkeeper. Teegerstrom refused to give Scarborough any in-

formation concerning the job, except that he could "take it or leave it." The details of the conversation are disputed, but it appears that Scarborough either accepted the job or indicated that he would be back. In any event, from subsequent events it is clear that Teegerstrom expected Scarborough to return.

Some 2 hours after the conversation Teegerstrom decided to fill the job meant for Scarborough by transferring another employee in the plant. Although the respondent contended in its answer that Scarborough voluntarily quit his employment, which contention was also advanced at the hearing, Teegerstrom finally admitted on cross-examination that he terminated Scarborough's employment at this time because of the latter's alleged refusal to state definitely whether or not he would return to work in the afternoon.

About 3:30 p. m. the same day, Scarborough returned to the plant preparatory to starting work. He accosted Eldridge regarding the availability of a locker and was told by him that there were some vacant lockers in the bathhouse. Eldridge then told Scarborough that Teegerstrom wished to see him. In this connection, Eldridge testified that Teegerstrom instructed him to send Scarborough to the office when he came.

Scarborough then went to the office, followed by Eldridge, although the latter testified that he was in the midst of giving instructions to another employee. In the office Scarborough found Teegerstrom, Naylor and Means. Teegerstrom asked Scarborough if he had decided whether or not to take the job. Scarborough replied that he had and was ready to start to work. Teegerstrom then told Scarborough there was no job for him, that another man had been put in his place, and that Scarborough should have accepted definitely that morning.

On the following morning, October 12, 1937, Scarborough went to see Patterson at the Combined plant, and requested his job back, telling what had transpired at the Sanford B plant. Patterson stated that he could not use Scarborough, and that the matter was closed. It is admitted, however, that Scarborough's old job was then vacant and was not filled until about a week or 10 days later.

At the time of the termination of his employment, Scarborough received 75 cents per hour for 40 hours work a week, or \$30 per week. He has since been paid on the Sanford B pay roll for October 9, 1937, the day of the transfer, although he did no actual work on that day. Scarborough has not since found other employment.

Teegerstrom testified that he saw Reeder and Patterson at the Combined plant on the morning of October 9, but that Scarborough's prospective transfer was not discussed. Teegerstrom also rode the 17 miles to Borger with Patterson on the afternoon of October 9, but testified that Scarborough's transfer was not then discussed.

He further testified that he called Patterson about noon on October 9 and requested an extra man to work in the dustless unit. Patterson's testimony on the point made no mention of the word, "extra." Teegerstrom admitted that he only wanted an extra dustless operator on hand, although there already were several extra dustless operators in the plant. No satisfactory explanation was offered as to why Teegerstrom did not break in one of his other employees as an extra dustless operator, as he eventually did. Likewise, the record offers no satisfactory answer to the question of why Scarborough, rather than one of the extra employees at the Combined plant, was transferred to meet Teegerstrom's request. It was shown to be unusual for regular operators to be transferred, and then only in cases of promotion or for disciplinary reasons.

The respondent offers as an additional contention that Scarborough was transferred because of insubordination toward his superintendent and because he was a troublemaker. The overwhelming weight of the evidence fails to sustain this contention. Rather, it tends to show that at most Scarborough was outspoken in favor of the Union, and was no more contentious than his fellow employees.

Moreover, it was testified by two witnesses that Lundquist, the Combined plant bookkeeper, who was closely identified with Patterson, told them several days prior to the transfer that Scarborough was causing trouble and would be gotten rid of the first chance that might arise. This testimony is inconclusively refuted by the respondent.

We find that the respondent discharged Scarborough on October 11, 1937, because of his union activities.

We find that the respondent has discriminated with respect to hire and tenure of employment against Luther Martin and Sam Scarborough, thereby discouraging membership in a labor organization, and that by such acts, and by other acts herein mentioned, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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 operation of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

In addition to an order to cease and desist from its unfair labor practices, we shall further order the respondent to offer immediate

and full reinstatement to the two employees whom we have found were discriminatorily discharged. The respondent will also be ordered to pay them back pay from the dates of their respective discharges to the date of the offer of reinstatement, less any amounts they may have earned in the meantime.

VI. THE QUESTION CONCERNING REPRESENTATION

On July 30, 1937, the Union notified the respondent by letter that it represented a majority of the employees, and requested a conference for the purpose of negotiating a contract. On August 9, 1937, the conference was held, at which time a proposed contract was submitted to the respondent. Subsequently, on August 23, 1937, the respondent questioned the authority of the Union to act for its employees and called for proof of the membership claimed. On August 27, 1937, the respondent announced publicly to meetings of its employees held in its several plants that it had ceased negotiations with the Union, in view of the latter's failure to produce evidence substantiating its claim to represent a majority of the employees.

Since we have found that the respondent, through its agents, engaged in numerous acts of interference, restraint, and coercion in connection with the consent election, the Board is clearly not precluded by the consent election from determining bargaining representatives.

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

VII. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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

VIII. THE APPROPRIATE UNIT

At the hearing, it was stipulated that the bargaining unit should be the same as that agreed upon on September 10, 1937, for the consent election. However, the unit was not clearly defined in the consent election agreement, eligibility to vote being determined on the basis of a list of employees attached to the said agreement. An investigation of the names on such list shows that it includes most but not all employees at the respondent's laboratory, central machine shop, the eight plants here involved, and hourly employees on the general supervision pay roll, excluding supervisory employees, office and clerical

workers, and the construction gang. The testimony does not reveal the reason for the exclusion of the few employees within the aforesaid classifications. We are of the opinion that significance should not, therefore, be given to the omission of such names from the list.

We find that all employees of the respondent in its Alexander, Norrick, McIlroy, Rock Creek, Stinnett, Sanford A, Sanford B, and Combined plants, at its central machine shop, its laboratory, and those termed "general supervision" employees who are paid on an hourly basis, excluding supervisory employees, office and clerical workers, and construction employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

IX. THE DETERMINATION OF REPRESENTATIVES

There was introduced in evidence at the hearing the respondent's pay rolls for the pay period ending August 31, 1937, showing approximately 257 employees within the appropriate unit. There was also introduced, by stipulation, a list of the employees shown on the records of the Union as members. Of the approximately 257 employees, the names of some 145 appear on this list. However, as stated above, a majority of the employees did not designate the Union at the consent election. Since such result we have found was influenced by the respondent's unfair labor practices, it cannot be taken as determinative of the true choice of the employees. We are of the opinion, however, that in view of such circumstance the question concerning representation can best be resolved by the holding of an election by secret ballot.

Inasmuch as considerable time has elapsed since the date of the filing of the petition, we shall direct that all employees in the appropriate unit who were employed by the respondent during the pay period next preceding the date of this Direction of Election, except those who have since quit or been discharged for cause, shall be eligible to vote in the election. We shall not at this time set the date for holding an election but shall direct that the election be delayed until such time as the Board is satisfied that there has been sufficient compliance with its order to permit an election uninfluenced by the respondent's conduct.

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

CONCLUSIONS OF LAW

1. Oil Workers International Union, Local 236, is a labor organization, 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 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.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Luther Martin and Sam Scarborough, 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.

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

5. A question affecting commerce has arisen concerning the representation of employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the Act.

6. All employees of the respondent at its Alexander, Norrick, McIlroy, Rock Creek, Stinnett, Sanford A, Sanford B, and Combined plants, at its central machine shop, its laboratory, and those termed "general supervision" employees who are paid on an hourly basis, excluding supervisory employees, office and clerical workers, and construction employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the 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 United Carbon Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, Local 236, or any other labor organization of its employees, by discharging any of its employees because of membership in Oil Workers International Union, Local 236, or any other labor organization, or by discriminating in any other manner in regard to their hire or tenure 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 National Labor Relations Act.

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

(a) Offer immediate and full reinstatement to Luther Martin and Sam Scarborough to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Luther Martin and Sam Scarborough for any losses of pay they have suffered by reason of the respondent's discrimination in regard to their hire or tenure of employment, by payment to each of them, respectively, of a sum of money equal to that which he would have earned as wages during the period from the date of such discrimination to the date of the offer of reinstatement, less any amount he may have earned during such period;

(c) Post immediately in conspicuous places throughout its plants and other places of employment, and maintain for a period of at least thirty (30) consecutive days, notices stating that the respondent will cease and desist in the manner aforesaid;

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

DIRECTION OF ELECTION

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with United Carbon Company, Inc., an election by secret ballot shall be conducted at such time as the Board shall hereafter direct as stated in Section IX of the above decision, under the direction and supervision of the Regional Director for the Sixteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all employees of United Carbon Company, Inc., at its Alexander, Norrick, McIlroy, Rock Creek, Stinnett, Sanford A, Sanford B, and Combined plants, at its central machine shop, its laboratory, and those termed "general supervision" employees who are paid on an hourly basis, who were employed by the respondent during the pay period next preceding the date of this Direction, excluding supervisory employees, office and clerical workers, construction employees, and those who since have quit or been discharged for cause, to determine whether or not they desire to be represented by Oil Workers International Union, Local 236, for the purposes of collective bargaining.