

In the Matter of THE GRACE COMPANY and UNITED GARMENT WORKERS
OF AMERICA, LOCAL NO. 47

Case No. C-431.—Decided June 8, 1938

Children's Garment Manufacturing Industry—Interference, Restraint, and Coercion: threat to close plant—*Company-Dominated Union:* domination of and interference with formation and administration; support; activities of supervisory employees; disestablished, as agency for collective bargaining—*Discrimination:* discharges: for union membership and activity—*Lock-Out—Contract:* closed shop, with company-dominated organization; employer ordered to cease giving effect to—*Reinstatement Ordered:* discharged employees; employees locked out—*Back Pay:* awarded: to discharged employees; to employees locked out; not to include period between date of Intermediate Report and date of Decision in case of employee as to whom Trial Examiner recommended dismissal of complaint—*Collective Bargaining:* charges of refusal to bargain collectively, not sustained.

Mr. Daniel J. Leary, for the Board.

Mr. Gibson Langsdale, of Kansas City, Mo., for the United.

Cooper, Neel, Kemp & Sutherland, by *Mr. William E. Kemp*, of Kansas City, Mo., for the respondent.

Mr. Melvin S. Frazier, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the United Garment Workers of America, Local No. 47, herein called the United, the National Labor Relations Board, herein called the Board, by George O. Pratt, Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint, dated September 8, 1937, against The Grace Company, Belton, Missouri, herein called the respondent. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

A copy of the complaint and notice of hearing thereon were duly served on the respondent, the United, and The Grace Company Workers' Labor Union, herein called the Workers Union.

On or about September 20, 1937, the respondent filed an answer to the complaint which denied, in substance, that the respondent had engaged in or was engaging in unfair labor practices, but admitted certain allegations as to the nature of its business.

Pursuant to the notice of hearing and orders by the Regional Director postponing the hearing, a hearing was held on October 12, 13, 14, 15, and 16, 1937, before Alvin M. Douglas, the Trial Examiner duly designated by the Board. The Board, the respondent, and the United 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.

The Trial Examiner granted the respondent's motion to strike the testimony of Helen Swain, and recommended the dismissal of the complaint in so far as it alleged she had been discriminatorily "locked out." Swain's testimony bears upon the question of whether she was discriminatorily locked out because of her membership in the United, and we hereby reverse the Trial Examiner's ruling.

During the course of the hearing and in his Intermediate Report the Trial Examiner made other rulings on motions and on objections to the admission of evidence. The Board has reviewed such rulings and finds that no prejudicial errors were committed. Such rulings are hereby affirmed.

On January 11, 1938, the Trial Examiner issued his Intermediate Report. He found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7), of the Act. He recommended that the respondent cease and desist from its unfair labor practices; that it disestablish the Workers Union as a collective bargaining agency; and that it reinstate certain employees with back pay. He also recommended that that part of the complaint which alleged that the respondent had refused to bargain with the United be dismissed. Subsequently the respondent filed a statement of partial compliance with the Intermediate Report, and exceptions to the Intermediate Report. The United filed an answer to the respondent's statement of partial compliance and also filed exceptions to the Intermediate Report. Thereafter the Board notified all parties of their right to request oral argument. No request was made for oral argument but the respondent requested permission to file a brief. Although this request was granted no brief was filed. The Board has fully considered the exceptions filed, and, in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them.

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

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS

The Grace Company is a corporation organized under the laws of the State of Missouri. From the time it was organized in 1934 until February 15, 1937, its office and principal place of business was in the home of its president, Mrs. Grace Van Brunt, in Kansas City, Missouri. On February 15, 1937, the respondent moved its office and plant to 3219 Troost Avenue, Kansas City, Missouri. In June 1937 the office and plant were moved to Belton, Missouri.

The respondent is engaged in the manufacture of children's and infants' garments. Approximately 50 per cent of the raw materials from which such garments are manufactured are purchased outside the State of Missouri, and more than 80 per cent of the products the respondent manufactures are sold to customers outside the State of Missouri.

II. THE LABOR ORGANIZATIONS INVOLVED

United Garment Workers of America, Local No. 47, is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. It admits to membership all employees of the respondent except janitors, timekeepers, and supervisory and clerical employees.

The Grace Company Workers' Labor Union is a labor organization without affiliations. It admits to membership all employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Interference, restraint, and coercion; and the Workers Union

Shortly after March 1, 1937, the respondent completed moving its equipment to the new plant on Troost Avenue, and during the following 4 weeks increased its personnel from approximately 8 to approximately 64 employees. Among the new employees engaged were Clara Enloe and Dorothea Yates, both of whom had been members of the United. About April 1, 1937, Mrs. Yates talked to Mrs. Enloe and they decided the respondent's employees should be organized. Mrs. Yates attempted to interest her fellow employees in the United. As a result of her activities a number of the employees visited Leonard Williams, business representative of the United, and during the following 20 days, 23 of the respondent's employees joined the United.

Mrs. Van Brunt soon learned of such activities. It is apparent that she became concerned, because on about April 9 she called Mrs. Byrne, her oldest employee in point of service, into her office and asked her if she knew whether any of the girls were members of the "union." Mrs. Byrne told her she thought Dorothea Yates, Nina Hafford, and Hazel Martin were members.

About April 10 Williams and one Brookes called on Mrs. Van Brunt and after advising her that a number of the respondent's employees were members of the United, told her that they would like to discuss the situation with her in an effort to reach an agreement. Mrs. Van Brunt advised them she would have to confer with her attorney.

On April 16 Mrs. Van Brunt met Williams and Brookes at her attorney's office. Williams told her a majority of the employees were members of the United and presented a proposed contract. Mrs. Van Brunt requested that Williams give her additional time to consider the contract.

That afternoon Mrs. Yates, Hazel Martin, and Grace Rollins, all members of the United, were discharged. We will discuss the reason for their discharge under subsection B hereof. It is sufficient to state at this point that their discharge was considered by other employees to have been due to their membership in and activities on behalf of the United and believed that if Mrs. Van Brunt signed a United contract she would have to reinstate them.

On April 17 a representative of the International Ladies Garment Workers Union, herein called the International, affiliated with the Committee for Industrial Organization, herein called the C. I. O., called on Mrs. Van Brunt and, claiming the International had jurisdiction of the respondent's employees, presented her with a proposed contract, although the International had not attempted to organize the employees.

About April 19 Brookes called Mrs. Van Brunt on the telephone and, according to Mrs. Van Brunt, angrily accused her of discharging the three United members because of their union affiliations.

In the meantime Mrs. Van Brunt's interest in the union affiliations of her employees had not waned. She frequently called Mrs. Byrne into her office and asked her whether certain employees were members of the United and urged her to find out how the employees felt about the "union." During one of such conferences, Mrs. Van Brunt told Mrs. Byrne that she (Mrs. Van Brunt) "would have to join the C. I. O. or none at all; that she could not pay the wages the A. F. of L. demanded." (It appears that the United contract provided for a minimum weekly wage of \$16, whereas the International contract provided for a minimum weekly wage of \$13.) That Mrs. Van Brunt made

such statements appears clear because another employee, Nellie Boesch, was told by Mrs. Van Brunt that before she would sign with the United she would close the plant.

On April 21 or 22 Mrs. Van Brunt ordered an election among the employees, ostensibly to determine to which union they preferred to belong. The ballots were distributed and collected by Mrs. Blann, Mrs. Van Brunt's stenographer, and Minnie Gehrke, the floorlady.

The respondent relies on the fact that Mrs. Van Brunt ordered the election to show its good faith, and numerous witnesses testified that they voted their choice of unions. However, it appears that the ballot was not a secret one, that at least two United members were not given ballots, that Mrs. Blann, in response to questions as to which union to vote for, told at least four employees they should vote for the International, and that the floorlady and some, if not all, of the clerical employees voted in the election. It is, therefore, not surprising, particularly in view of Mrs. Van Brunt's previous statements that the plant could not be operated under a contract with the United and the general impression prevalent in the plant that Yates, Rollins, and Martin had been discharged for their United affiliations, that the International, apparently without a single member in the plant, won the "election" 33 to 24. However, the employees were not told the result of the vote. Instead Mrs. Van Brunt told them she had signed a contract with the International and she hoped they realized "the importance of becoming members of that organization."¹

On April 23 Williams visited Mrs. Van Brunt again. Mrs. Van Brunt told him she had signed with the International and saw no reason to negotiate further with him. Williams told Mrs. Van Brunt that he thought the contract was invalid, and as the United represented a majority of the employees, he insisted on bargaining rights for the United members. Mrs. Van Brunt questioned the jurisdiction of the United over her plant. Williams told her the United had jurisdiction and requested that he be given samples to send to headquarters to determine the question. Mrs. Van Brunt refused to give him the samples and, according to her own testimony, became very upset and stated she could close the plant. That afternoon a note, signed by Mrs. Van Brunt, was passed around among the employees stating that the plant was being closed that evening.

On Monday, April 26, Mrs. Byrne talked to Mrs. Van Brunt on the telephone. Mrs. Van Brunt asked Mrs. Byrne if she wanted to work and upon receiving an affirmative reply, told her to report to a private home in Kansas City. Mrs. Byrne went to the private

¹The contract was given to a representative of the International for execution but the International never executed it

home and while she was there Mr. Van Brunt, vice president of the respondent, came in. He told Mrs. Byrne that they "would fool those union people yet."

On the same date Lucille Smyth, another employee, called Mrs. Van Brunt on the telephone and asked her when the plant would reopen. Mrs. Van Brunt told her she did not know. Mrs. Smyth then told Mrs. Van Brunt that she had a friend who was a C. I. O. organizer, and he thought they might organize the employees. Mrs. Van Brunt invited them to come out to the plant. Mrs. Smyth and her friend, one Basher, apparently an organizer for the United Automobile Workers of America, went to the plant and met Mrs. Van Brunt, Mrs. Blann, and Floyd, the respondent's bookkeeper. Upon receiving Mrs. Van Brunt's promise to give them a list of the employees and their addresses, Mrs. Smyth and Basher left to secure International application cards. They were unable to obtain the cards and Mrs. Smyth telephoned Mrs. Van Brunt and told her they had been unable to get the cards. Mrs. Van Brunt told her they might be obtained some other way.

The following day Minnie Gehrke, the respondent's floorlady, secured International application cards and gave them to Mrs. Van Brunt. That evening Mrs. Smyth went to Mrs. Van Brunt's home and Mrs. Van Brunt gave her the cards, Mrs. Smyth testified that as she was leaving Mrs. Van Brunt requested that Mrs. Byrne be made "head" of the organization and Mr. Van Brunt told her to tell the employees they visited that if they did not sign the cards it would be necessary to liquidate the plant.

The following day Mrs. Smyth, Basher, Minnie Gehrke, Mrs. Blann, Mrs. Byrne, Hazel Neumer, an employee who is in a supervisory position, Neumer, her husband, and two or three other employees whom Mrs. Van Brunt had requested Mrs. Smyth to take along, visited the employees.² Following the instructions of Mr. Van Brunt they told the employees they visited that if they did not sign the cards the plant would be liquidated. As a result of their efforts 38 employees signed the cards.

However, the International contract had not been executed and returned by Thursday and after Mrs. Van Brunt had called the International representative and had been advised that it might never

²The respondent denied that Hazel Neumer was a supervisory employee and tried to minimize her position with the respondent. However, the record shows that prior to the time Mrs. Gehrke was engaged, Hazel Neumer was the floorlady and after Mrs. Gehrke was hired Hazel Neumer was promoted to a more responsible position. In her new position she not only timed and set prices for the operations performed on the garments and checked all work tickets, but she helped Mrs. Gehrke on the floor when necessary. Furthermore, there is very credible testimony to the effect that she is the assistant manager of the plant. It is clear, therefore, that she is at least a supervisory employee whose duties required her to be in constant communication with Mrs. Van Brunt.

be signed, a decision was made to change the incipient organization to an independent union. Just who made the decision is not clear, although it does appear that Mrs. Blann called a Mrs. Todd, who, according to Mrs. Blann, had formed an independent union in another garment factory in Kansas City, to secure information regarding the manner an independent union should be formed. We do not consider it important to determine who made the decision as it clearly appears from the record that Mrs. Van Brunt continued to lend her active support to the efforts of her agents and her "loyal" employees to form a labor organization.

That evening Mrs. Van Brunt called Mrs. Byrne on the telephone and told her that she (Mrs. Van Brunt) had decided against "going C. I. O." and instructed Mrs. Byrne to go with Mrs. Gehrke, Mrs. Neumer, and Mrs. Smyth to see one Tyler, an attorney, the following morning. She cautioned Mrs. Byrne to keep her name out of it. Mrs. Van Brunt also called Mrs. Smyth that evening and told her she wanted Mrs. Smyth to go with Mrs. Gehrke, Mrs. Neumer, and Mrs. Byrne to see a lawyer about forming a "company union" and cautioned Mrs. Smyth to keep her name out of it. Telegrams were also sent to all those employees who had signed the International cards advising them to attend a meeting at the Hotel Baltimore Friday afternoon "expenses paid." The telegrams were sent by Hazel Neumer and Mrs. Gehrke.

The following day, April 30, Mrs. Gehrke, Mrs. Byrne, Floyd, Mrs. Neumer, Mrs. Smyth, Mrs. Blann, and two or three other employees called on Tyler. He refused to accept them as clients and referred them to Brasher, another Kansas City attorney. They thereupon visited Brasher and told him they had attempted to affiliate with the International but were refused because they came under the jurisdiction of the United and that they did not want to join the A. F. of L. He thereupon advised them that under the Act they had a right to organize an independent union if they so desired. The meeting at the Hotel Baltimore was held that afternoon and Minnie Gehrke, the floorlady, was chosen temporary chairman. Those present, numbering about 40, voted to form an independent union when they were advised, apparently by Brasher, that it would be the best method to get back to work.

The following day another meeting was held at the Hotel Baltimore. All employees had been invited to attend such meeting by a registered, special-delivery letter sent the night before. Eight members of the United accepted the invitation and attended the meeting. However, they refused to sign a petition to form an independent union and they were requested to leave. The remaining 35 or 40 employees then adopted bylaws for "The Grace Company Workers' Labor Union," selected officers, and chose a committee to negotiate

with the respondent. Floyd, the bookkeeper, was elected president, and Mrs. Blann, Mrs. Van Brunt's stenographer, was elected secretary of the new organization. After the Workers Union had been formed, Mrs. Blann called Mrs. Van Brunt on the telephone and told her it had been formed and advised her that it represented a majority of the employees. She also asked Mrs. Van Brunt if they could come back to work on Monday and requested a conference with her. Mrs. Van Brunt told her the plant would reopen Monday and acceded to the request for a conference. Mrs. Blann returned to the meeting and announced that the plant would reopen May 3, and the committee left for the plant to "negotiate" with Mrs. Van Brunt regarding a contract. The character and purpose of the Workers Union is well exemplified by a statement made by one of the committee members to Mrs. Van Brunt when the committee arrived at the plant. This member of the committee advised Mrs. Van Brunt that they had come to give the plant back to her. Some perfunctory "bargaining" took place and on Monday morning a "contract" containing a "closed shop" provision was formally executed.

The record further discloses that Mrs. Van Brunt paid some of the employees who had been active in forming the Workers Union for the time they lost during the week. Thus Mrs. Blann and Mrs. Byrne, whose main work during the week was coercing employees into signing International cards and later forming the Workers Union, received a full week's salary for such work. Furthermore, Mrs. Van Brunt gave Mrs. Byrne \$10 to pay Basher for his efforts in persuading employees to sign the International cards.

We find that the respondent has dominated and interfered with the formation and administration of the Workers Union and has contributed support thereto, and by such acts has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act.

B. Discrimination in regard to hire and tenure of employment

1. The discharges

On April 16, 1937, Dorothea Yates, Hazel Martin, and Grace Rollins were each given a note signed by Mrs. Van Brunt which read, "Please come to the office and turn in your tickets on today's work and will give you a check and call you in again when we are in need of you for further work."³

All were members of the United, Mrs. Yates being the most active United member in the respondent's employ. Not one of them had ever been reprimanded or criticized for any reason—in fact, each one

³ The respondent admitted this note was meant as a discharge.

of them had been complimented on her work by either Mrs. Gehrke or Mrs. Van Brunt or by both.

The respondent contended it was unaware of their union affiliations at the time of their discharge and as justification for discharge of such employees claims that Dorothea Yates was discharged because she stayed away from work 1 or 2 days each week for the last 3 weeks she worked and when she was at work she was not attentive to her duties; that Grace Rollins was discharged because she spent too much time away from her machine; and that Hazel Martin was discharged because she complained she could not earn enough at the low prices the respondent paid and appeared so "dissatisfied."

It would have been a strange coincidence that the only employees the respondent had ever discharged should all have been members of the United, one of them the most active union worker in the respondent's employ, although only about 50 per cent of the respondent's production employees were members of the United.⁴ The reasons advanced by the respondent for their discharge are even more improbable when it is considered that all of such employees had been complimented on their work, and not one of them had been reprimanded for any cause.

Furthermore, statements made by Mrs. Gehrke and Hazel Neumer immediately after the discharge of such employees dispel all doubts that they were discharged because of their union affiliations and activities. On the evening they were discharged Mrs. Gehrke told Lillian Adams, another employee, that they were discharged because they belonged to a union and were causing trouble. Gehrke also told Serrilda Holt, another employee, shortly after their services were terminated, that they had been discharged because they were agitators. Moreover, on April 16 or 17, 1937, Hazel Neumer told Howard Owens, an employee, that they had been discharged for their union activities.

Under the circumstances we are satisfied that they were discharged for their union affiliations and activities and we find that the respondent has discriminated in regard to the tenure of employment of Dorothea Yates, Hazel Martin, and Grace Rollins, thereby discouraging membership in the United.

2. The lock-out

The complaint does not allege that the closing of the plant on April 23, 1937, was an unfair labor practice and, therefore, we will not consider whether or not it was discriminatory, discouraging membership in a labor organization.

The complaint, however, does allege that Ethel Erwin, Jessie Cleeton, Marie Stewart, Opal Lindsey, Clara Enloe, Nellie Morrow,

⁴Mrs. Van Brunt testified that they were the only employees she had ever discharged.

Nellie Boesch, Alma Kirkner, Florence Pennington, Lillian Adams, Roxie Stallings, Lillie Hobbs, Eula Kendrick, Sirrilda Holt, Nora Schaefer, Della Schell, and Howard Owens were locked out on May 3, 1937, and that Helen Swain was locked out on May 6, 1937, because they had joined and assisted the United.

On May 3, 1937, the respondent reopened its plant and all of the above-named employees except Della Schell and Helen Swain went to the plant to resume their positions. When they arrived they found Hazel Neumer, her husband, and Floyd, president of the Workers Union, blocking the entrance. They were told they could not come in unless they joined the Workers Union. This they refused to do, and when they attempted to go into the plant without joining the Workers Union they were repulsed by Floyd and Mr. Neumer. They continued to seek admittance the better part of the morning but each time were denied. They thereupon established a picket line as a protest against the respondent's refusal to permit them to resume their positions.

Although the respondent had entered into a closed-shop contract with the Workers Union, the respondent does not attempt to justify the lock-out on that ground. Instead it claims that no one with authority to hire and discharge refused to permit them to resume their positions.

The Workers Union's refusal to allow such employees to resume their positions unless they joined the Workers Union was known to the respondent and was within the scope of the authority purported to be granted the Workers Union by the closed-shop agreement. It necessarily follows that the respondent is responsible for the lock-out of such employees.

We find that the respondent discriminated in regard to the tenure of employment of such employees because they refused to join the Workers Union, thereby discouraging membership in the United and encouraging membership in the Workers Union.

Della Schell did not go to the plant on May 3, 1937. She testified she did not do so because she had heard at the meeting at which the Workers Union was organized that only Workers Union members were to be reemployed and as she was a member of the United she believed that it would be useless for her to report for work.

We do not think Mrs. Schell's failure to go to the plant in any way altered her position as an employee and had not the respondent engaged in its unfair labor practices we are satisfied that Mrs. Schell would have reported for work May 3, 1937. We, therefore, find that the respondent discriminated in regard to her tenure of employment also, as in the case of the others.

Helen Swain had temporarily left the respondent's employ about April 15, 1937, to take care of her sick mother in a neighboring city.

She returned to the plant on May 6, 1937, to resume her position but was told by one of the pickets that United members were locked out. As she was a member of the United she did not apply for reinstatement.

The respondent contends that Helen Swain had quit her position in April and was, therefore, no longer an employee of the respondent.

Although Helen Swain admitted on the stand that she did not expect the respondent to hold a machine for her it is apparent that both she and Mrs. Van Brunt considered her absence temporary and that she would be reinstated upon her return because when Mrs. Swain went on leave Mrs. Van Brunt asked her if she was quitting and she told Mrs. Van Brunt that she would be back as soon as her mother was able to take care of herself.

We are satisfied that, had not the respondent been denying work to United members, Helen Swain would have been reinstated to her position on May 6, 1937. Her failure to speak to Mrs. Van Brunt regarding reinstatement was unquestionably due to the respondent's discrimination against United members and was a natural consequence of the respondent's illegal acts for which it is responsible.

We, therefore, find that the respondent locked out Helen Swain on May 6, 1937.

C. The alleged refusal to bargain

The complaint alleges and the United contends that all production employees of the respondent, exclusive of foremen, supervisors, and timekeepers, constitute an appropriate unit. The complaint further alleges that although the United has been designated the bargaining representative by a majority of the employees in such unit the respondent has refused to bargain with it. It appears from the record that such a unit would insure employees the full benefit of their right to self-organization.

The record does not conclusively show, however, the number of employees in such unit in April 1937, the date the United attempted to bargain with the respondent. Williams testified that he understood there were 42, but other testimony indicates that there were at least 50 employees in such unit at all times during the month of April 1937.

To sustain the allegation that the respondent refused to bargain with the United it was necessary to prove the United had been designated the bargaining representative by a majority of the employees in such unit. As it appears that only 23 of the respondent's employees were members of the United, the record does not satisfactorily prove that the United represented a majority of the employees in the unit.

The complaint, in so far as it alleges the respondent has refused

to bargain collectively with the representative of its employees must, therefore, be dismissed.

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

V. THE REMEDY

We have found that the respondent dominated and interfered with the formation and administration of the Workers Union and contributed support thereto. In order to remedy the respondent's unlawful conduct, the respondent must withdraw all recognition from the Workers Union as an organization 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 employment. We will, therefore, order the immediate disestablishment of the Workers Union as such representative. Further, the respondent must cease to give effect to its contract with the Workers Union.

Since we have found that the respondent discriminatorily discharged Dorothea Yates, Hazel Martin, and Grace Rollins because of their membership in the United, they are entitled to reinstatement to their former positions together with reimbursement for any losses of earnings they suffered by reason of their unlawful discharge, and we shall so order.

We have found that Ethel Erwin, Jessie Cleeton, Marie Stewart, Opal Lindsey, Clara Enloe, Nellie Morrow, Nellie Boesch, Alma Kirkner, Florence Pennington, Lillian Adams, Roxie Stallings, Lillie Hobbs, Eula Kendrick, Sirrilda Holt, Nora Schaefer, Della Schell, and Howard Owens were locked out on May 3, 1937, because they refused to withdraw from the United and join the company-sponsored Workers Union. They are entitled to reinstatement to their former positions together with reimbursement for any loss of earnings they have suffered by reason of the respondent's unlawful conduct.

We have found Helen Swain was locked out on May 6, 1937, and we shall order the respondent to reinstate her to her former position and to pay her a sum of money equal to the amount she would normally have earned from May 6, 1937, to the date of the Intermediate Report and from the date of this order to the date she is offered reinstatement, less any amount she may have earned during such

period. As we have previously held, we do not believe that the respondent could have been expected to reinstate her after it received the Intermediate Report recommending the dismissal of the complaint as to her, and therefore, it should not be required to pay back pay from that time to the date of this order.⁵

Practically all of the above-named employees were paid on a piecework basis. The amount of back pay to be paid such employees shall, therefore, be computed at the rate each earned for the 2-week period immediately prior to April 23, 1937, subject to any modification in the pay rate which has been instituted since April 23, 1937.

At the hearing testimony was adduced to show the earnings of such employees since the date they were discharged or locked out by the respondent. However, it appears that many of the witnesses were uncertain as to the exact amount they had earned during such period and we will therefore make no finding as to the amount of their earnings subsequent to the date they were discriminately deprived of employment by the respondent.

One such employee has secured employment as a domestic. Part of her salary consists of board and room which is furnished her by her present employer. In computing the amount of back pay to be paid her the reasonable value of the board and room she receives shall be deducted.

We shall also order the respondent to cease and desist from the unfair labor practices in which it has engaged and shall order it to perform such other affirmative acts as will give its employees free opportunity to exercise the rights guaranteed them by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. United Garment Workers of America, Local No. 47 and The Grace Company Workers' Labor Union are labor organizations, within the meaning of Section 2 (5), of the Act.

2. By dominating and interfering with the formation and administration of The Grace Company Workers' Labor Union, and by contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2), of the Act.

3. By discriminating in regard to the hire and tenure of employment of Dorothea Yates, Hazel Martin, Grace Rollins, Ethel Erwin,

⁵ See *Matter of E. R. Heffelfinger Company, Inc and United Wall Paper Crafts of North America, Local No. 6*, 1 N. L. R. B. 760

Jessie Cleeton, Marie Stewart, Opal Lindsey, Clara Enloe, Nellie Morrow, Nellie Boesch, Alma Kirkner, Florence Pennington, Lillian Adams, Roxie Stallings, Lillie Hobbs, Eula Kendrick, Sirrilda Holt, Nora Schaefer, Della Schell, Howard Owens, and Helen Swain because of their membership in the United, thereby discouraging membership in a labor organization of its employees, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3), of the Act.

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

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

6. The respondent has not engaged in an unfair labor practice within the meaning of Section 8 (5), of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Grace Company, Belton, Missouri, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of The Grace Company Workers' Labor Union, or with the formation and administration of any other labor organization of its employees, and from contributing support to The Grace Company Workers' Labor Union, or to any other labor organization of its employees;

(b) Giving effect to its contract with The Grace Company Workers' Labor Union;

(c) Discouraging membership in the United Garment Workers of America, Local No. 47, or any other labor organization of its employees by discrimination in regard to hire or tenure of employment or any term or condition of employment;

(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 purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of the Act.

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

(a) Offer Ethel Erwin, Jessie Cleeton, Marie Stewart, Opal Lindsey, Clara Enloe, Nellie Morrow, Nellie Boesch, Alma Kirkner, Florence Pennington, Lillian Adams, Roxie Stallings, Lillie Hobbs, Eula Kendrick, Sirrilda Holt, Nora Schaefer, Della Schell, Howard Owens, Helen Swain, Dorothea Yates, Hazel Martin, and Grace Rollins immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Dorothea Yates, Hazel Martin and Grace Rollins for any loss of earnings they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned from the date of her discharge to the date of such offer of reinstatement, less any amounts each has earned during that period;

(c) Make whole Ethel Erwin, Jessie Cleeton, Marie Stewart, Opal Lindsey, Clara Enloe, Nellie Morrow, Nellie Boesch, Alma Kirkner, Florence Pennington, Lillian Adams, Roxie Stallings, Lillie Hobbs, Eula Kendrick, Sirrilda Holt, Nora Schaefer, Della Schell, and Howard Owens for any loss of earnings they have suffered by reason of being locked out on May 3, 1937, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned during the period from the date they were locked out to the date of such offer of reinstatement, less any amount each has earned during such period;

(d) Make whole Helen Swain for any loss of earnings she has suffered by reason of being locked out on May 6, 1937, by payment to her of a sum of money equal to that which she would normally have earned during the period from May 6, 1937, to the date of the Intermediate Report and from the date of this order to the date of such offer of reinstatement, less the amount which she has earned during such period;

(e) Withdraw all recognition from The Grace Company Workers' Labor Union as the 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 other conditions of employment, and completely disestablish The Grace Company Workers' Labor Union as such representative;

(f) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondent will cease and desist as aforesaid, and (2) that the respondent withdraws all recognition from The Grace Company Workers' Labor Union as the 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 other

conditions of employment, and that The Grace Company Workers' Labor Union is disestablished as such representative;

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

And it is further ordered that the complaint, in so far as it alleges the respondent has refused to bargain collectively with the representative of its employees, be and it hereby is, dismissed.

[SAME TITLE]

AMENDMENT TO DECISION AND ORDER

June 17, 1938

On June 8, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Order in the above-entitled case.

Paragraph 5 of subsection A of Section III is hereby amended to read as follows:

That afternoon Mrs. Yates, Hazel Martin, and Grace Rollins, all members of the United, were discharged. We will discuss the reason for their discharge under subsection B hereof. It is sufficient to state at this point that other employees considered their discharge to have been due to their membership in and activities on behalf of the United and believed that if Mrs. Van Brunt signed a United contract she would have to reinstate them.