

In the Matter of INDUSTRIAL RAYON CORPORATION, A DELAWARE CORPORATION *and* TEXTILE WORKERS ORGANIZING COMMITTEE

In the Matter of INDUSTRIAL RAYON CORPORATION, A DELAWARE CORPORATION, *and* INDUSTRIAL RAYON CORPORATION OF VIRGINIA, A VIRGINIA CORPORATION *and* TEXTILE WORKERS ORGANIZING COMMITTEE

Cases Nos. C-188 and R-156, respectively.—Decided June 14, 1938

Textile Industry—Rayon Manufacturing Industry—Interference, Restraint, and Coercion—Company-Dominated Union: domination of and interference with administration; financial and other support; established with active assistance of employer prior to effective date of Act; use of, by employer, as bulwark against outside unionization; disestablished, as agency for collective bargaining—*Check-Off—Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; majority status disputed by employer; employer's refusal to grant exclusive recognition of union—*Strike—Units Appropriate for Collective Bargaining:* all employees in each plant, except supervisory, clerical, and salaried employees; separate unit for each of two plants; geographical differences; history of separate negotiations; wage differentials; dissimilarity in operations—*Certification of Representatives:* at one plant, following election—*Prior Election:* at one plant, voided, due to employer interference—*Election Ordered:* time to be set in future when effects of unfair labor practices have been dissipated.

Mr. Harry Lodish, Mr. Philip Levy, and Mr. Peter Di Leone, for the Board.

Tolles, Hogsett & Ginn, by Mr. Grover Higgins, Mr. W. T. Kinder, Mr. Thomas M. Harman, and Mr. Leslie Nichols, of Cleveland, Ohio, for Industrial Rayon Corporation and Industrial Rayon Corporation of Virginia.

Mr. Arthur A. Miller, of Cleveland, Ohio, and Mr. Arthur P. McNulty, of New York City, for the T. W. O. C.

Mr. J. C. Calhoun, of Cleveland, Ohio, for the Association.

Mr. Frederick P. Mett and Mr. Lewis M. Gill, of counsel to the Board.

DECISION
ORDER
CERTIFICATION OF REPRESENTATIVES
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges duly filed by Textile Workers Organizing Committee, herein called the T. W. O. C., the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated May 19, 1937, against Industrial Rayon Corporation, Cleveland, Ohio, 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 (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged in substance that the respondent, prior to July 5, 1935, had caused the formation of the Employees Association of Industrial Rayon Corporation, a labor organization of its employees, herein called the Association, and had at all times since July 5, 1935, dominated and interfered with the administration of and contributed financial and other support to that organization. The complaint and accompanying notice of hearing were duly served upon the respondent.

On May 25, 1937, the respondent filed an answer to the complaint, denying that it had engaged in or was engaging in the unfair labor practices as alleged.

Pursuant to the notice, a hearing was held at Cleveland, Ohio, from May 27 through June 10, 1937, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board, the respondent, and the T. W. O. C. were represented by counsel and participated in the hearing. Counsel for the Association was present at the hearing but did not participate, although advised that he would be allowed to intervene on behalf of his client.¹ Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the close of the Board's case and again at the close of the hearing, the respondent moved that the case be dismissed on the ground that the evidence adduced did not substantiate the allega-

¹After the conclusion of the hearing, however, the Association transmitted a brief to the Board

tions in the complaint. The Trial Examiner denied the motions, and we affirm his rulings. During the course of the hearing, the Trial Examiner made numerous other rulings on motions and on objections to the admission of evidence. We have reviewed the rulings and find that no prejudicial error was committed. The rulings are hereby affirmed.

On June 25, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceedings in the case transferred to the Board. Pursuant to notice duly served upon the respondent, the T. W. O. C., and the Association, oral argument was had before the Board at Washington, D. C., on August 5, 1937. The respondent and the T. W. O. C. participated in the oral argument, filed extensive briefs, and, subsequently, reply briefs. The Association did not appear for the oral argument, but submitted a brief.

On August 12, 1937, the T. W. O. C. filed with the Board a petition requesting permission to include in the record the sworn testimony of one Lawrence Martin, president of the Association, given by him on June 2, 1937, in the Court of Common Pleas of Cuyahoga County, Ohio, in the case of Industrial Rayon Corporation, Plaintiff, vs. Joseph R. White, et al., Defendants. A transcript of the testimony of Martin accompanied the petition, a copy of which was served upon the respondent by the T. W. O. C. No objection to the inclusion of such testimony has been made by the respondent. The testimony appears to be relevant, and it is hereby admitted and made a part of the record in this case.

The T. W. O. C. having previously requested permission to file with the Board a petition under Section 9 (c) of the Act, the Board on June 9, 1937, granted such permission. On the same day, the T. W. O. C. filed with the Board at Washington, D. C., a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the respondent and employees of Industrial Rayon Corporation of Virginia, Covington, Virginia, herein called the Virginia Corporation, and requesting the Board to conduct an investigation pursuant to Section 9 (c) of the Act and to certify representatives for the purposes of collective bargaining.² On June 10, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that

² On May 17, 1937, the Association filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition for investigation and certification of representatives. Charges involving the validity of the Association having previously been filed by the T. W. O. C. the Board took no action on the Association petition pending the determination of the T. W. O. C. charges. On August 11, 1937, the Association requested permission to withdraw its petition. Permission was granted by the Board on September 2, 1937.

an investigation be conducted and that an appropriate hearing be held. Copies of the T. W. O. C. petition and a notice of hearing thereon were duly served on the respondent, the Virginia Corporation, the T. W. O. C., and the Association. The respondent, the Virginia Corporation, and the Association thereafter filed individual answers to the petition. Pursuant to the notice, a hearing was held in Washington, D. C., on June 18 and 19, 1937, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the respondent, the Virginia Corporation, the T. W. O. C., and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties. During the course of the hearing, the Trial Examiner made various rulings on motions and objections to the admission of evidence. We have reviewed the rulings and find that no prejudicial error was committed. The rulings are hereby affirmed.

Thereafter each of the parties filed an extensive brief with the Board. On July 2, 1937, pursuant to notice duly served on the parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C. The respondent, the Virginia Corporation, and the T. W. O. C. were represented by counsel, but the parties elected to waive oral argument and stand on their briefs. The Association did not appear.

The case based upon the complaint having previously been transferred to it, the Board on July 9, 1937, acting pursuant to its aforementioned Rules and Regulations, ordered that case consolidated for all purposes with the case based upon the petition. Having previously examined the records in both cases, the Board, acting pursuant to Article III, Section 8, of said Rules and Regulations, on the same day issued a Direction of Elections,³ in which it found that a question affecting commerce had arisen concerning the representation of all of the employees of the respondent except supervisory, clerical, and salaried employees, that a question affecting commerce had also arisen concerning the representation of all of the employees of the Virginia Corporation except supervisory, clerical, and salaried employees, and that each of these groups as to which questions concerning representation had arisen constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The Board also found that the Association "is not a *bona fide* labor organization such as is entitled to a place on the ballot in an election ordered by the

³ 3 N. L. R. B. 8.

National Labor Relations Board.”⁴ For the purpose of expediting the election and thus to insure to employees of the respondent and the Virginia Corporation the full benefit of their right to collective bargaining as soon as possible, the Board directed the elections without at the same time issuing a decision embodying complete findings of fact and conclusions of law. The Board designated the Regional Director for the Eighth Region as its agent to conduct the ordered elections. Subsequently both the respondent and the Association filed exceptions to the Direction of Elections, protesting the exclusion of the Association from the ballot. We find no merit in such exceptions, in view of the fact that the administration of the Association has been dominated and interfered with by the respondent and the Association has received support from the respondent, as we find hereinafter.

Pursuant to the Board's Direction of Elections, the elections by secret ballot were conducted on July 17, 1937, by the Acting Regional Director for the Eighth Region. Thereafter the Acting Regional Director issued and served upon the parties his Intermediate Report on the results of the elections.

As to the balloting among the employees of the Virginia Corporation and its results, the Acting Regional Director reported as follows:

Total number of employees eligible to vote.....	1,160
Total number of ballots counted.....	1,098
Total number of votes for the T. W. O. C.....	639
Total number of votes against the T. W. O. C.....	431
Total number of blank ballots.....	1
Total number of void ballots.....	4
Total number of challenged ballots.....	23

As to the balloting among the employees of the respondent and its results, the Acting Regional Director reported as follows:

Total number of employees eligible to vote.....	1,021
Total number of ballots counted.....	961
Total number of votes for the T. W. O. C.....	423
Total number of votes against the T. W. O. C.....	469
Total number of blank ballots.....	3
Total number of void ballots.....	4
Total number of challenged ballots.....	62

Objections to the conduct of the election among the employees of the respondent and to the Intermediate Report of the Acting Regional Director thereon were thereafter filed with the Board by the T. W. O. C. An answer to such objections was subsequently filed by

⁴Detailed findings and conclusions concerning the status of the Association are set forth hereinafter.

the respondent. No objections to the election conducted among the employees of the Virginia Corporation were filed by any of the parties.

Pursuant to notice duly served on all the parties, a hearing on the objections of the T. W. O. C. was held at Cleveland, Ohio, on August 19, 20, and 21, 1937, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. The Board, the respondent, and the T. W. O. C. were represented by counsel and participated in the hearing. Although notified of the hearing, the Association did not participate; however, certain officers of the Association testified at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing, the Trial Examiner made various rulings on motions and objections to the admission of evidence. We have reviewed his rulings and find that no prejudicial error was committed. The rulings are hereby affirmed. After the hearing, certain affidavits from the former Regional Director for the Eighth Region and from the Acting Regional Director for the same region were transmitted to the Board by the respondent for incorporation in the record. Copies thereof were duly brought to the attention of the T. W. O. C. No objections having been made, the affidavits are hereby admitted into evidence and made a part of the record in this proceeding.

After an examination of the record concerning the objections to the election, the Board ordered a further hearing for the purpose of taking further testimony thereon. Pursuant to notice duly served on the parties, another hearing was held at Cleveland, Ohio, on December 2, 1937, before Madison Hill, the Trial Examiner duly designated by the Board. As was the case at the first hearing on the objections, the Board, the T. W. O. C., and the respondent were represented by counsel and participated in the hearing; the Association, although notified, did not participate, but its counsel and certain of its officers were present and testified. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. We have examined the rulings of the Trial Examiner on motions and objections to the admission of evidence, and find that no prejudicial error was committed. The rulings are hereby affirmed.

We have fully considered the briefs and memoranda submitted by the parties from time to time during this proceeding.

Upon the entire record in this proceeding, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE CORPORATIONS

The respondent is a Delaware corporation, having its principal office and place of business in Cleveland, Ohio. It is engaged in the manufacture of rayon yarn and in the manufacture, sale, and distribution of tubular knitted rayon fabric.⁵ The respondent wholly owns and controls the Virginia Corporation and the Rayon Machinery Corporation, an Ohio corporation which manufactures machinery used by the respondent.

In its operations the respondent uses a large quantity of raw materials such as wood pulp, caustic soda, sulphuric acid, carbon bisulphide, and salt cake. All of such raw materials except sulphuric acid are shipped to its Cleveland plant from points outside the State of Ohio. The respondent purchases substantially all of the rayon yarn manufactured by the Virginia Corporation, and sells both this yarn and its own rayon fabric to manufacturers throughout the United States. Between 85 and 95 per cent of the rayon fabric is shipped to customers outside the State of Ohio, and all the rayon yarn purchased from the Virginia Corporation is shipped to customers outside the State of Virginia. The annual productive capacity of the respondent is approximately 7,000,000 pounds of rayon yarn and 10,000,000 pounds of rayon fabric.

The Virginia Corporation is a corporation existing under the laws of the State of Virginia, with its principal office and place of business in Covington, Virginia. As stated above, it manufactures rayon yarn, substantially all of which is sold to the respondent. Its raw materials include wood pulp, coal, caustic soda, carbon bisulphide, sulphuric acid, and zinc sulphate. All of such raw materials except caustic soda and sulphuric acid are shipped to its Covington plant from outside the State of Virginia. As indicated above, all the rayon yarn sold by it to the respondent is distributed to customers outside the State of Virginia. The Virginia Corporation has an annual productive capacity of approximately 10,000,000 pounds of rayon yarn.

II. THE ORGANIZATIONS INVOLVED

The Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all of the employees of the respondent and the Virginia Corporation, except supervisory, clerical, and salaried employees.

⁵ Substantially all the rayon yarn manufactured by the respondent is used in the production of tubular knitted rayon fabric; almost all of the yarn manufactured by the Virginia Corporation is sold without being converted into fabric.

Prior to the spring of 1937 the United Textile Workers of America, a labor organization then affiliated with the American Federation of Labor, had two locals in the plants here involved. In the latter part of March or early part of April 1937, T. W. O. C. membership cards were signed by the members of the two locals, Local No. 2096 at the respondent's Cleveland plant, and Local No. 2214 at the plant of the Virginia Corporation.

The Employees Association is an unaffiliated labor organization local to the Cleveland plant of the respondent. It admits to active membership all but clerks and salaried and supervisory employees, and admits these latter classifications to inactive membership.

III. THE UNFAIR LABOR PRACTICES

On January 10, 1934, the United Textile Workers of America established its Local No. 2096 at the plant of the respondent. The organizational drive of Local 2096, which began immediately, soon ran afoul of a counter movement in the formation of the Association. The circumstances surrounding the birth of the Association, although comprising occurrences previous to the passage of the Act, warrant attention here as significant background against which the events after the passage of the Act are to be adjudged.

Between January 17 and 19, 1934, certain groups of employees called on Kline, vice president of the respondent. It appears that these workers were seeking Kline's approval of a project for an inside organization in the plant. They informed him that they regarded labor unions as "rackets," and that while the workers had no grievances against the respondent they desired to form the inside organization "to offset outside interference." However, they hastened to add "that if the company was against a movement of this kind to please tell them so and they would forget about the whole matter." One of the spokesmen assured Kline that "it was up to the Company to be for it in order to protect itself against outside interference." Kline informed the men that the respondent intended to abide by Section 7 (a) of the National Industrial Recovery Act, but he did not conceal his approval of their project. He told one group that he felt "a properly drawn-up plan would be not only for the benefit of the employees but also for the good of the company," and added that that he was "gratified to know that the employees themselves were thinking along this line." To another group he stated that "the Company would co-operate in the installation of a plan which would have teeth in it." These statements are taken from memoranda prepared by Kline himself.

On the afternoon of January 19, 1934, Kline called a meeting, in a plant office during working hours, of all the employees who had

previously approached him on this subject. Kline began by averring that in view of Section 7 (a), he was unable to participate in any way in the formation of the organization. However, this disability did not trouble Kline for long. He remained at the conference and participated fully.

Lawrence Martin, one of the employees present, asked Kline for advice as to the course of procedure they should adopt in getting the organization under way. Kline's own memorandum of the conference indicates the following response on his part:

I told them that I thot that that was a matter that they should properly work out for themselves, but did suggest that if I were doing the job the first thing that I would do would be to circulate a petition or a ballot, preferably the former, to all employees of the company in order to determine whether or not the employees generally desired to become a part of the plan which they had in mind . . . then it would be proper for them to either elect or appoint a committee to decide upon what kind of a plan they wanted, and if they desired to have a more or less formal plan, that the committee should then prepare a constitution and by-laws.

Kline assured the group that they could call upon any of the respondent's executives for assistance in getting the organization under way, although he added that they should treat any advice so secured as mere suggestions. A request by the employees that they be permitted to circulate a petition during working hours was granted.

Shortly after this conference, the respondent mimeographed the petition for circulation, although, according to Kline's testimony, the Association later paid the respondent for the expenses of preparation. The petition was circulated during working hours, and by January 24 the signatures of a considerable number of employees had been obtained in favor of an inside labor organization. Martin, along with certain other employees, presented the petition to Kline at that time and advised him that the employees desired to conduct an election to select representatives who were to draw up a constitution and bylaws. Kline offered Martin the services of a firm of accountants to aid him and the others in conducting the election; the offer was not accepted. The organizational group conducted the election shortly thereafter. It was held in the plant, during working hours. There is no evidence that those conducting the election suffered any loss of pay in so doing. After the election, a notice of the results was prepared by someone in the organizational group and submitted to Kline for his approval. Kline had his secretary type copies of the notice, which were posted on the respondent's bulletin boards in the plant.

Upon the election of the constitutional representatives, the "cooperation" of the respondent increased in intensity. The first meeting of these representatives took place on January 31, 1934, in Kline's office, again during working hours. Kline offered them the services of any reputable law firm which was acceptable to the respondent, for the purpose of assisting them in drafting their constitution and bylaws. The offer was not accepted. It may be pointed out here that even rejected offers of assistance served to indicate clearly the respondent's open preference for the inside organization. Kline then suggested that W. L. Allen, a consulting engineer and one time Deputy Administrator of the Rayon Code Authority, would be a valuable consultant on the form of organization for them to adopt. Kline and Grover Higgins, the respondent's attorney, promptly arranged a meeting between Allen and the representatives for February 9, 1934. Allen appeared on the scene at the appointed day, spent several hours conferring with officials of the respondent (but none conferring with employees), and finally addressed the representatives at a 4-hour meeting called by the respondent in a plant office during working hours. He was introduced by Kline. Allen's recommendations, later reduced to writing and sent both to the representatives and to Kline, included a suggestion that 25 cents per month should be adequate dues. He also admonished the representatives against "domination of any outside influence whose motives might be questioned, either by the employees or the management." He pointed out that "the management can not resent any reasonable request of the employees but may deem it unwise to discuss the intimate details of their business with any outsider who could carry that information to a competitor to the detriment of the company and the employees as well." He suggested that the Association rent office space from the respondent, on company property. Finally, after making detailed suggestions as to the mechanical set-up of the organization, he pointed out that his plan did not "permit the building up of a powerful political machine by an over-ambitious individual," and precluded "the assumption of obligations to employees in other companies or other industries." These ill-concealed indications of hostility toward "outside" unions were clearly sufficient to nullify any effect that another statement in the letter—to the effect that he was not passing on the question of a representation plan versus a trade union—might have had. As a matter of fact, Frank Kanda, an employee present when Allen spoke, testified that Allen's talk seemed directed against outside unions as compared to so-called company unions. Kline wrote to Allen shortly thereafter, saying that he thought Allen's letter "a masterpiece." A constitution and bylaws along the suggested lines were thereafter drawn up by the representatives, assisted by

certain officials of the respondent. On February 18, 1934, a draft of the proposed documents was presented to Kline for his suggestions and approval. Kline recommended a decrease in the proposed dues (which had been set at more than the 25 cents a month recommended by Allen) and the removal of a provision that the Association pay out sick benefits, in view of the great financial burden involved in such a program. He added that the respondent had for sometime been contemplating the installation of a health-benefit fund for its employees, and suggested that no doubt such a fund could be arranged between the new organization and the respondent, once the former became established.

The constitutional representatives revised the draft constitution and bylaws in accordance with Kline's suggestions, membership dues being set at 25 cents per month for both men and women, and the provision for sickness or disability benefits being deleted. The next step was an election among the employees on the adoption of the constitution and bylaws. The respondent engaged a firm of accountants to conduct the election for this purpose. While the accountants were instructed by Kline to take orders from the employees' group alone, the financial assistance rendered the new venture by this device was not insubstantial. For their services in connection with the election the accountants were paid nearly \$1,000 by the respondent. It is interesting to note that the ballots used contained spaces for the pay-roll numbers of the employees voting. The voting resulted in adoption of the constitution and bylaws, and the Employees Association of Industrial Rayon Corporation formally came into existence. At the same election, permanent representatives, one from each shift in each department, were chosen. Shortly thereafter these representatives met and elected officers and committee members.

A vigorous organizational drive immediately took place. Copies of the constitution and bylaws were freely distributed through the plant. Members of the Association solicited for membership during working hours without loss of pay, and upon occasion were paid overtime by the respondent for solicitation activities after regular working hours. The respondent made available its bulletin boards throughout the plant for Association notices, which were submitted to Kline for approval before posting. Within a month the Association membership had become substantial. During this period, Association meetings were held in various offices in the respondent's plant with the consent of and without charge by the respondent. Representatives attending such meetings during working hours lost no pay in so doing. The Association soon rented a regular office in the plant, paying the respondent \$6.50 a month therefor. This arrangement continues to the present day.

From the events related above, it is abundantly clear that the respondent participated in the formation of the Association, guided it on its way, and lent it comfort and support.⁶ The Association, from the start, was a favored organization standing athwart the path of unionization of the respondent's employees by "outsiders."

The Association has never been financially able to carry on normal union activities. We have noted that both Kline and Allen recommended the low dues of 25 cents per month. Under a sickness and disability benefit plan, initiated by the respondent in 1934, the respondent deducted these dues from the pay checks of Association members; of the 25 cents, there was placed in a health-benefit fund, created by the plan, 20 cents for each male Association member, 15 cents for each female. This left the Association with 10 cents a month from each female member and 5 cents from each male with which to operate. The regular Association expenses, including \$45 a month in salaries to its officers, \$6.50 a month rental for office space in the respondent's plant, and certain other payments to representatives for attending meetings, ate up this negligible amount, leaving the treasury in a constant state of depletion. In the spring of 1935, heedful of this condition, the respondent agreed to decrease the Association contribution of the health-benefit fund to 10 cents per month per member, regardless of sex. This necessitated an increase in the respondent's contributions to the plan.⁷ Still, with but 15 cents a month coming in from each member, the Association remained fiscally impotent. This financial arrangement, in the establishment of which the respondent played such a significant role, remains in effect today. We shall note presently that when the first item of substantial expense was incurred by the Association, the Association was unable to pay for it, and the respondent footed the bill.

On May 20, 1935, Local 2096 called a strike against the respondent, and operations ceased. The strike, called because of the break-down of negotiations between the respondent and Local 2096, was marked by mass picketing, and it appears that a number of Association

⁶From the outset, Local 2096 accused the Association of being the creature of the respondent. During the latter part of 1934, Local 2096 brought charges against the respondent before the Textile Labor Relations Board, alleging violation of Section 7 (a) of the National Industrial Recovery Act. On April 13, 1935, after a hearing on the matter, the Textile Labor Relations Board issued a decision dismissing certain charges of discrimination against members of Local 2096 and finding, as to the Association, "that while the Company undoubtedly did assist to some extent in the formation of a company union known as the Employees Association of Industrial Rayon Corporation, it has not maintained any supervision of it and it is being managed independently by the employees themselves." The respondent was warned against interference with self-organization of its employees through assisting the Employees Association in any way. The present proceeding is, of course, based on a different statute, and the events prior to the passage of the present Act constitute mere background for our purposes. Our findings as to whether the respondent violated the Act are based on its actions subsequent to July 5, 1935, the date of passage of the Act.

⁷The respondent furnishes whatever amounts are needed, over and above the Association contributions, to make benefit payments under the plan.

members and other employees were unable to leave the plant for a period because of the picket lines. In this situation, the close tie between the respondent and the Association was thrown into plain relief. The respondent, not content with seeking an injunction against the strikers, agreed to supply the Association with counsel so that it, too, could seek an injunction. The respondent secured as counsel for the Association one Paul Lamb, who not only secured an injunction but also prosecuted several contempt proceedings against members and officers of Local 2096, on behalf of the Association. For his services between May 20 and July 29, 1935, the respondent paid him approximately \$2,500. This has never been repaid by the Association, and indeed the payment was not made as a loan, but as an outright contribution. This unquestionable evidence of support to the Association was sought to be explained on the ground that the Association members needed protection; the respondent did not point out wherein the protection afforded by its own injunction proceeding was inadequate. Be that as it may, the Act in clear terms prohibits financial or other support to a labor organization, and attempted justifications on the ground of necessity cannot absolve an open violation of the Act's provisions.

This retention of counsel had a milder counterpart at a later date. On May 6, 1937, Lawrence Martin, president of the Association, feeling that the Association was "falling apart," went to Kline seeking advice on a course of procedure for the Association in view of the current campaign of the T. W. O. C. (successor to Local 2096) to organize the respondent's employees. It appears that Kline had confided in the Association that bargaining conferences had been requested of the respondent by Joseph White, local field director of the T. W. O. C. Kline refrained from making detailed suggestions to Martin, but readily saw to it that he secured guidance through another source. He called one Disbro, a local manufacturer, on the telephone and arranged an appointment for Martin at Disbro's home for that evening. Kline went to Disbro's home with Martin, introduced him, and left. Disbro, after hearing Martin's request for advice, recommended that he get in touch with one Joseph Calhoun, whom he described as an attorney "that is not connected with labor or management of any kind." Disbro telephoned Calhoun, who came over and was introduced to Martin. As a result of this meeting, Calhoun was retained by the Association as its counsel, with a rather vague understanding that he would be paid in monthly installments for whatever services he might render.⁸

⁸ In May 1937 the Association filed a petition seeking certification as exclusive bargaining agency for the respondent's employees. This petition was prepared by Calhoun and was later withdrawn. Calhoun's subsequent activities on behalf of the Association will be discussed at a later point in this Decision.

On May 14, 1934, a request by Local 2096 that it be allowed use of the respondent's bulletin boards was denied by Kline. In refusing the use of company bulletin boards to Local 2096, while at the same time permitting such use by the Association, the respondent was revealing a clear favoritism. It is true that this occurred before the passage of the Act, and that the respondent in fact subsequently adopted a policy of allowing neither organization to use its bulletin boards; nevertheless, this open indication of company preference for the Association is significant background against which to adjudge the events occurring after the passage of the Act.

We now turn to a consideration of the course of dealings between the respondent and the Association. There were introduced into evidence the respondent's memoranda of these conferences. It is well to keep in mind that these records were kept by the respondent itself. Most of them were prepared by Carrier, the respondent's plant superintendent; some were prepared by Kline himself.

A careful study of the course of dealings over a period of more than 3 years indicates clearly that the Association has been, rather than a truly independent bargaining agency, a company bulwark against "outside" unionization.

On September 11, 1934, the memorandum of the meeting includes the following:

At this meeting Mr. Kline read to the Negotiating Committee the demands of Local No. 2096. He gave them verbatim the entire conversation of the preceding day's meeting. He then asked them whether they felt that the Company was justified in its stand and whether in the event of a walkout the employees represented by the Association would wish the Management to close the plant down or continue its operation.

Mr. Moore, for the Employees' Association, assured the Management that the Association heartily endorsed their stand, and specifically requested that the Management continue operations as usual, in view of the fact that at least 1200 employees so desired.

On September 13, 1934, Moore, then president of the Association, addressed to Kline a letter informing him that the Association had formed a "vigilance committee," which would have "direct charge of a group of picked men whose duty it will be to advise members of the Employees' Association as to the methods to pursue in the event of a strike." Kline was urged to get in touch with one of the men on this committee in the event that "any serious labor trouble arises."

At a meeting on April 10, 1935, Richard Gilpin, then president of the Association, "stated that he was very much concerned for the

security of the Employees' Association as regards membership. He felt that the rank and file would be very much dissatisfied with the results of the negotiations and that many members would drop out." After Kline explained at some length the management's position on a requested wage increase, the following reaction was noted:

Messrs. Martin, Gilpin, and Moore expressed the willingness of the Employees' Association officers and representatives to sell to their membership the reasonableness of the Management's position relative to a wage increase and the other requests.

The memorandum of a conference on November 8, 1935, prepared by Plant Superintendent Carrier, is particularly interesting. It appears that one Reidy, Association representative for the powerhouse, had previously presented certain grievances relating to that department, and at this meeting it developed that the management had made no decision on the matter. Carrier's memorandum to Kline reads in part as follows:

Mr. Reidy stated that he felt that the employees of the powerhouse would withdraw from the Employees' Association unless they had some proof soon that the Association could secure them reasonable representation with the Management on their problems.

The device of appealing for action on the ground that the Association membership was in danger of depletion has been a familiar Association technique; in this instance, at least, it appeared to strike a responsive chord in Carrier, who pointed out further in his memorandum:

This matter has apparently reached a point where serious consideration should be given to the whole matter as soon as possible, and a decision rendered.

The meeting of April 23, 1936, is highly significant. H. S. Rivitz, president of the respondent, was present this time. Carrier's memorandum reveals a striking picture of the relationship between the Association and the respondent. The tone of the meeting may best be indicated by quoting excerpts from Carrier's notes:

Mr. Martin (then president of the Association) stated that the meeting had been requested because of the unrest produced by Local 2096 in their efforts to reorganize. . . . Mr. Martin stated that it was felt that even if a small increase was granted at this time it would not only be very helpful in meeting increased living costs, but would tend to offset the efforts of the outside union to produce discord. He called attention to the loyalty of

the Association, particularly during the period of the strike, and this past winter's operations under schedules which have been speeded up, and under curtailed hours of labor.

Rivitz then pointed out at length company reasons for not giving an increase, and stated that in the event of another strike closing the plant, the respondent would never resume operations in Cleveland. As usual, the Association representatives agreed to undertake the job of selling the management's viewpoint to the employees:

During a general discussion Mr. Rivitz particularly stressed the necessity, in view of Mr. Martin's assertion that the Employees' Association had shown their loyalty and interest in the company's welfare so completely, of in some manner passing along to the rank and file of the Association the facts given them in the meeting. He suggested that they hold a general meeting in the cafeteria for this purpose.

Mr. Carrier . . . suggested that as a first measure, in view of the fact that the general Employees' Association meeting was being held on Monday, April 28, at which at least thirty representatives would be present, this could be addressed by Mr. Kline to very good advantage, and that after this possibly smaller meetings of the rank and file could be held with talks by Messrs. Sanborn and Carrier along the same lines.

Mr. Rivitz seemed to feel that this was all right as far as it went, but that the Association should take some steps to hold a general mass meeting in some outside hall if necessary.

Several of the committee members felt that this would simply incite trouble at the hall, but others seemed to think that the Association should be able to police their own meetings.

Mr. Carrier was requested by Mr. Martin to advise Mr. Kline of their desire to have him address them on Monday.

Again, on July 11, 1936, the Association group brought up the matter of a wage increase. Once more, among the Association arguments for a pay boost, there appeared the contention that it was necessary in order to forestall Local 2096. The following appears in Carrier's notes:

Mr. Gilpin then made the statement that the employees of the company were losing interest in the Employees' Association; that the Association was losing members, and that more interest was being shown in Local 2096. He claimed that unless the Association could secure a wage increase for the employees he was fearful of the consequences.

Martin supplemented this plea by observing that "the members of the Employees' Association apparently now looked on the Association as simply an insurance company." After an extended discourse by Kline as to why the respondent could grant no increase, attention was again turned to ways and means of selling this viewpoint to the employees. Association representatives urged that Kline draw up a bulletin setting forth the respondent's position, "so that the representatives could refer to this bulletin and use it to back up their interpretation of the various subjects discussed." Kline responded by saying that "it would be much more advisable to have the explanation come through the Association." Kline assured the representatives that "the management fully appreciated the loyal support of the Association members both before, during and after the strike—that they had done a fine job; and that the company wished in every way to recognize this fact." However, he averred that this appreciation could not be shown by a wage increase unless it was justified. He informed them of the respondent's desire to have the Association "continue in the spirit of loyalty thus shown."

An increase was granted in the latter part of 1936. On March 9, 1937, the Association group again requested an increase, this time putting the matter even more openly than before on the basis of forestalling outside unionization. Carrier's notes read in part as follows:

Mr. Martin then said that one of the main reasons that the question had been brought up at the present time was the fact that the committee realized that the C. I. O. was planning to organize the rayon industry and that many of their members had already been approached by old members of Local 2096 with the request that they sign up, as this Local was now an affiliate of the C. I. O. He said that the committee was most anxious to obtain every possible consideration for the members of the Association so that they would be more firmly entrenched as the C. I. O. campaign progressed.

On March 23, 1937, another meeting took place. A good part of the discussion was concerned with the current C. I. O. organizational drive. McGovern, one of the Association representatives, volunteered the information that "the only interest of the organizers was to make money from the situation; that everything else was incidental, and that in the long run they could only expect higher dues, assessments and eventually lower wages than they were at present earning." He assured the assemblage that he was "doing everything possible to convince his fellow workmen of the foolishness of having

anything to do with any outside organization." Kline responded by giving the Association group an "off-the-record" statement as to the progress of the C. I. O. campaign in the Covington plant. He told them that the C. I. O. there claimed a heavy membership among the employees, and conceded that it probably had 700 or 800 members out of 1,200 employees at Covington. He also pointed out that the C. I. O. had there demanded recognition as sole bargaining agent for all employees. He characterized this as "of course" an "impossible demand." He went on to point out the allegedly spurious nature of the union's position in the Covington situation, saying that after a statement of the management's position, "all desire for a strike on the part of the employees had vanished." Kline finished off his discourse by stating that "the Employees' Association was faced with a very important selling job . . . that if the Employees' Association was convinced that the Management was sincere in its efforts and agreed that working conditions in the Cleveland plant were good and that wages were fair, they could only help themselves in the maintenance of their jobs by selling the honest facts to their fellow employees who were apparently not as well informed." At the conclusion of the meeting, Carrier gave a summary of the Association requests which had been granted since its inception. His memorandum concludes:

. . . believe the meeting broke up with a feeling on the part of all the members of the committee that the Association had accomplished a great deal and that because of this and because of undoubtedly good working conditions and wages they had many good selling points to combat the attempt of the CIO to make trouble in the Cleveland plant. Only time will tell whether any good was accomplished.

Finally, the meeting on April 20, 1937, merits some attention. Here again Kline took the Association group into his confidence and gave them inside information on C. I. O. activities. Asking them to treat his remarks as confidential, he told them that a C. I. O. representative had asked for a bargaining conference relating to both the Cleveland and Covington plants. Williams, one of the Association representatives, spoke up and said he had heard a rumor that after the C. I. O. meeting with the respondent, there would be no more Employees' Association. This apparently drew no direct comment from Kline, who was then handed by Martin a copy of a mimeographed letter which the Association was mailing out to its membership. The letter denied that the Association was a company union, citing an alleged decision of the "National Labor Relations Board" disproving any such claim, and asked the readers not to be misled

by any statements to the contrary.⁹ The letter, which was also shown to Carrier, did not elicit any comment so far as Carrier's memorandum shows.

Conclusions as to respondent's domination and support of the Association

It is clear that the Association, originally set up with the active assistance of the respondent, has, since the passage of the Act, continued to enjoy the support of the respondent, and has reciprocated by acting as a docile instrumentality serving the respondent well as a bulwark against outside unionization. Shortly after the passage of the Act in 1935, the respondent paid \$2,500 to Lamb for his services in helping break the strike of Local 2096, as attorney for the Association; again, in 1937, when the Association, threatened by the advent of the C. I. O., scurried to the respondent for advice, Kline assisted Martin in locating counsel. All the while, under the financial arrangement in the establishment of which the respondent had an important part, the Association has been devoid of funds with which to carry on substantial union activities. In addition to the above, the respondent's own records of its meetings with the Association and Local 2096 clearly reveal the subserviency of the Association. In fact, it may fairly be said that a customary procedure consisted of (1) the Association group requesting a wage increase and citing as one of the principal arguments the fact that the increase was necessary to forestall outside unionization and keep Association membership intact; (2) officials of the respondent stating reasons against the increase, although in at least one instance heartily commending the Association for its "loyalty," and giving out confidential information on the activities of the rival union; and (3) the meeting winding up with a pledge by the Association representatives to sell to the employees the management's viewpoint, this pledge sometimes being supplemented by a discussion of ways and means by which the Association could most effectively put across the management arguments and undermine the efforts of the "outside" organizers.

The Association's role as a management instrumentality in combatting the T. W. O. C. is further illustrated by its activities in connection with the election in July 1937, which we will discuss hereinafter in the section headed "The Determination of Representatives."

⁹The reference apparently was to the decision of the Textile Labor Relations Board in April 1935. It may fairly be assumed that either the Association officials or the respondent's officers, or both, realized the falsity of the assertion that this Board had passed on the question. No suggestion was made by anyone, however, that this misrepresentation be deleted from the letter.

We find that the respondent has dominated and interfered with the administration of the Association, and has contributed financial and other support to it, thereby engaging in unfair labor practices within the meaning of Section 8 (2) of the Act. We also find that by such illegal sponsorship of the Association, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8 (1) 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 business of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent has, since the passage of the Act, continued to support and dominate the Association, in the original creation of which the respondent played such a significant role. Under the circumstances, the Association stands as an organization incapable of serving as a true representative of the employees for collective bargaining purposes. We shall accordingly order the respondent to disestablish it as a bargaining representative. However, once the Association is thus removed from the picture, the continuation of the sickness and disability benefit plan on a non-discriminatory basis, or its abandonment, is a matter with which we are not concerned.

VI. THE QUESTIONS CONCERNING REPRESENTATION

In February 1937, Local 2214 and the Virginia Corporation began negotiating pursuant to a request of Local 2214 that an agreement be entered into covering the employees at the Covington plant. The negotiations broke down and a strike began on March 29, 1937. At about that time, the members of Local 2214, as well as those of Local 2096 at the respondent's Cleveland plant, signed membership cards in the T. W. O. C. The T. W. O. C. soon made known its desire to negotiate a single agreement covering both the respondent's Cleveland plant and the Virginia Corporation's Covington plant. Kline, vice president of the respondent, met with the T. W. O. C. represen-

tatives in New York City on May 2, 1937, and refused to negotiate concerning an agreement covering both plants, although willing to discuss the difficulties at Covington. He alleged that the Cleveland plant constituted a separate unit, and denied that the T. W. O. C. had a majority there; he also pointed to the presence of the Association at the Cleveland plant, and averred that he was under a duty to deal with that group as well. Kline and the T. W. O. C. group met again later without reaching an agreement on these issues, and on May 17, 1937, the T. W. O. C., in order to effectuate its demand for a contract, called a strike at the Cleveland plant. The Covington strike was still in effect, and in fact both plants remained struck at the time of the hearings in June.

The T. W. O. C. asserts that it represents a majority of the employees at each plant, as well as a majority of the two combined. The respondent and the Virginia Corporation, in their answers to the T. W. O. C. petition, denied accurate knowledge of the extent of T. W. O. C. membership in the respective plants. Neither denied the existence of a question concerning representation.

On the basis of the above facts, we find that a question has arisen concerning the representation of employees of the respondent, and also that a question has arisen concerning the representation of employees of the Virginia Corporation,

VII. THE EFFECT OF THE QUESTIONS CONCERNING REPRESENTATION UPON COMMERCE

We find that the questions concerning representation which have arisen, occurring in connection with the operations of the respondent and the Virginia Corporation described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes threatening and obstructing commerce and the free flow of commerce.

VIII. THE APPROPRIATE UNITS

The T. W. O. C. desires that all employees of the respondent and the Virginia Corporation, except supervisory, clerical, and salaried employees, be grouped together in a single unit; the respondent, the Virginia Corporation, and the Association dispute the appropriateness of a single unit and desire separate units for employees of the respondent and employees of the Virginia Corporation.

Certain facts in the record lend color to the T. W. O. C. contention. Thus, the Virginia Corporation is the wholly owned subsidiary of the respondent; Rivitz is president, Kline vice president,

of both corporations; broad questions of administrative and operating policy are centrally determined, and this includes major issues relating to labor relations. To some extent, the two corporations are unquestionably operated as a single, integrated enterprise.

On the other hand, there are present in this case a number of cogent reasons for separate units. The plant at Cleveland is several hundred miles from the Covington plant; they are in different sections of the country. Wages are lower in Covington, even for the same type of work. A larger proportion of the workers in the Covington plant are women. Nor are the operations of the two plants the same. No fabric is produced in Covington; the yarn manufactured there is of a different type from that produced at Cleveland. Negotiations between workers and management have been conducted locally in each plant for some years, despite the common ultimate management; although the T. W. O. C. has attempted to deal for the two plants together, this was a recent development, and did not progress sufficiently to indicate whether it would be as feasible as the separate negotiating which had previously prevailed. Because of the distance between the two plants and the different types of operations performed at each, interchange of workers between the plants is, if not impossible, at least highly impractical.

Upon the whole record, and for the reasons enumerated above, we are of the opinion that the T. W. O. C. contention should be overruled.

We find that all of the employees of the respondent, except supervisory, clerical, and salaried employees, and all of the employees of the Virginia Corporation, except supervisory, clerical, and salaried employees, constitute separate units appropriate for the purposes of collective bargaining, and that said units insure to employees of the respondent and employees of the Virginia Corporation 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

At the hearing, although representatives of the T. W. O. C. testified that a majority of the employees in both the Cleveland and Covington plants had signed T. W. O. C. cards, no documentary evidence, on which a certification of representatives without an election could be based, was introduced. We concluded that elections by secret ballot were necessary to resolve the questions concerning representation which had arisen, and we issued the Direction of Elections accordingly.

No question has been raised as to the ballot in Covington, where the results of the election, as set forth above, reveal a clear majority

in favor of the T. W. O. C. On the basis of the secret election, we find that the T. W. O. C. has been designated and selected by a majority of the employees of the Virginia Corporation in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

As to the Cleveland election, the T. W. O. C. objections raise a serious question as to whether, in view of the circumstances surrounding the voting, the results represent the free choice of the employees.

The Board's Direction of Elections was, as previously noted, issued on July 9, 1937. The election was held on Saturday, July 17, in a voting booth erected across the street from the respondent's plant in Cleveland. During the week preceding the election, the Association officers and counsel were extremely active in campaigning against the T. W. O. C. On July 13, and again on July 15, three sets of mimeographed or multigraphed letters were sent out by the Association to employees of the respondent. The letters related to the coming election, and vilified Sidney Hillman, chairman of the T. W. O. C., and other T. W. O. C. leaders, referring to the T. W. O. C. as a "racket" and "irresponsible gang," bent on lining their pockets with the employees' money. Employees were warned that the T. W. O. C.'s "irresponsible tactics" would run the country into another depression, "maybe another Spain." While the record does not show that officials of the respondent had a direct hand in the preparation of the letters, which were drawn up by Calhoun, the Association attorney, it will nevertheless be relevant to inquire into the circumstances surrounding this anti-T. W. O. C. barrage.

The individuals primarily involved in the preparation and mailing of these letters were Calhoun, Lawrence Martin, president of the Association, John Zinser, the secretary, George Delzieth, the treasurer, and John Maitland, vice president. This group comprised the executive committee of the Association, and met with Calhoun at his office several times during the week preceding the election.

Maitland testified at the first hearing on the objections that he spent about 2 hours "around noon time" on July 15, helping seal envelopes containing the letters sent out that day. He further stated that Martin, Zinser, Delzieth, and one or two others were present at the time. After considerable wavering, he finally recalled that he had been working at the plant that morning, and had secured the permission of his foreman, Russ Morgan, to go downtown "on business." He punched the time clock upon arriving at the plant in the morning, but did not punch out that day. At the second hearing his

story was somewhat different; he then said he had been at Calhoun's office helping seal envelopes perhaps 2 hours later than the noon period. He confirmed his prior testimony that he was excused from work by his foreman, and estimated that he was away about 2½ hours—2 hours at Calhoun's office and ½ hour to get there from the plant. He could not recall whether he was paid for this 2½-hour period. That he clearly was paid for most if not all of the time so spent appears from his time card, which shows that the respondent paid him on the 15th for working from 7:17 a. m. until 6 p. m.

Martin's testimony largely corroborates the general picture gleaned from Maitland's rather unclear story. Martin said that on July 15, he spent 3 or 4 hours in Calhoun's office sealing envelopes, sometime around noon. He further testified that, although he was supposed to work until about 3:30 or 4 p. m. that day, he merely told Carrier (the plant superintendent) or Sanborn (the employment manager) that he was going to Calhoun's office, and walked out of the plant. His time card reveals that on the 15th he was paid by the respondent for working from 7:05 a. m. until 3:45 p. m.

Zinser's testimony on this point does not fit very well into the story told by Maitland and Martin. It will be recalled that at the first hearing, which was held only about a month after the election period, Maitland testified that Zinser was among the group sealing envelopes at Calhoun's office on the 15th. Calhoun also testified and clearly recalled that Zinser was present at that time. Zinser, while admitting that during that week he had been down at Calhoun's office at least 3 times, placed the time as late afternoon, after he had finished work at the plant. His time card reveals that he was paid that day for the hours of 7:05 a. m. until 4 p. m.

Delzieth, whose evasiveness was so gross that the Trial Examiner commented on it for the record, admitted that he had been at Calhoun's office several times that week, and said it was always in the afternoon, although he was not quite sure whether it was late in the afternoon or not. His time card shows payment for the period from about 3:30 until 11:30 p. m. for the entire week.

It is abundantly clear from all the above facts that the respondent paid the Association officers for a considerable amount of time spent at Calhoun's office in electioneering work. While the record does not show affirmatively that officials of the respondent were aware of the precise nature of the activity of these men during the time they were absent, we would be credulous indeed to suppose that the respondent did not realize that they were engaged in some sort of electioneering work. Over a period of several years, the respondent had become entirely familiar with the fact that the Association officers were eager to hamstring the activities of Local 2096 and, later, the T. W. O. C. The respondent knew that the election had been scheduled for the end

of the week, with the Association excluded from the ballot. Under such circumstances, for the respondent to allow the Association officers to take time off from their work without loss of pay, clearly implicates the respondent in the anti-T. W. O. C. campaign waged by the Association.

The activities of the Association officers on election day are also significant. It appears that during the week preceding the election, the plant was being put into operation, although the T. W. O. C. picket lines were still present. Throughout the week the Association officers, as well as certain supervisory employees, had been engaged in bringing people in to work in their cars. They were paid by the respondent for time so spent, and paid as well for the gasoline used. On Saturday, July 17, the day of the election, the respondent apparently was to resume spinning operations for the first time since the reopening of the plant. There is no doubt that the Association officers were unusually active throughout the day in bringing people in to the plant in their cars; they were paid for the time and also the gasoline so used. The respondent contends that this activity was only for the purpose of bringing employees to the plant to report for work. The evidence shows that to a great extent employees were brought in in this manner for the purpose of voting. It will be necessary to scrutinize the evidence on this point rather closely.

At the first hearing on the objections, Martin testified on direct examination by counsel for the union that on election day he sent out a number of cars to bring people in to vote, that the respondent's employment office would receive telephone calls from the employees and transmit to the Association officers their names so that they could be found and brought in to vote, and that Carrier, the respondent's plant superintendent, paid for the gasoline. He also testified on direct examination that he was not paid for that day. On cross-examination by counsel for the respondent, Martin was asked whether it was not the case that he was merely furnished gasoline for bringing people to work, not to vote; he readily accepted this interpretation. On re-direct examination, he recalled that he had been paid after all for his services on election day, and became very hazy as to whether he was bringing in employees to work or to vote. Finally, on re-cross-examination by counsel for the respondent, he evolved still another theory, that he had not been paid at all on the Saturday of the election, but had been thinking of the prior Saturday all the time. That he was actually bringing in people to vote on election day became clear by the following question and answer:

Q. (By counsel for respondent) And the days you sent or the day you sent out cars to get people to vote you were not paid for?

A. No.

Coming to the second hearing on the objections, Martin started off his testimony by averring that he did not work for the respondent at all on election day. Later he changed this story and admitted he was paid for working that day, and that his work consisted of bringing people in to the plant. He testified that Sanborn, employment manager of the respondent, gave him the names of the people to get. Reminded that Sanborn was in the election booth all day as an observer, he suggested that someone else from the employment office must have given him the names. By this time he apparently had decided to adhere to the version that the employees were merely brought in to work, not to vote, although he admitted bringing in at least one person to vote. He said he was "on the go all the time" during election day, and confirmed the fact that he was paid for the gasoline used. His time card, introduced into evidence, shows that on election day, July 17, he was paid for 8 hours of work.

While Martin's testimony is a welter of confusion and contradiction, indicating that he was at all times in a state of indecision as to which story he wanted to tell, it appears fairly clear to us that he was paid on election day for bringing people in to vote, although some of them may also have worked, and it is very clear that he was extremely active in this undertaking.

The testimony of Zinser is somewhat more clear, although not entirely straightforward. He stated that the executive committee of the Association decided, sometime prior to the election, to send out cars on election day and round up the voters. He denied knowledge of getting any names from the employment office, saying that he and the other Association officials merely sent for those people they thought were not in the plant that day. He further testified that the gasoline for such expeditions was not paid for by the respondent, although the respondent had furnished the gasoline previously in the week for picking up employees to come to work. His testimony as to the procedure followed by the Association group on election day is revealing:

Q. Did you go about collecting employees* in any cars for the purpose of bringing them down to vote?

A. We did, yes.

Q. These employees were they brought into the plant property first before they went to vote?

A. Yes.

Q. Whereabouts in the plant were they first brought?

A. They were driven around into the rear of the plant and went into the plant right straight over to the voting booth.

Q. And where did they go after that?

A. They come back and we took them home.

The above testimony was given at the first hearing on the objections. At the subsequent hearing, Zinser did not elaborate on the occurrences on election day. He testified that he was around the plant during that day, but that he believed he was not paid for his services on election day. His time card, introduced into evidence, reveals that on July 17, election day, Zinser was paid for 8 hours of work.

Delzieth testified that he started working at his job in the dye house about 3:30 p. m. the day of the election, that he voted around noon, and that before starting work he sat around the Association office in the plant checking lists and seeing that members got out to vote. He denied knowledge of any cars being sent out to get voters, however, but admitted that he was not sure whether or not the other Association officials, who were in and out of the office during the day, had dispatched such cars. His time card shows that he was paid for 8 hours of work on election day. While his testimony is not generally very credible (the Trial Examiner commented for the record on Delzieth's evasiveness), such facts as were elicited from him fit into the general picture described by Zinser.

Maitland, the vice president, did not play an active role in the process of rounding up voters, since he was acting as an observer for the respondent at the voting booth throughout the day.

The testimony of Bessie McCormick, an employee who belongs both to the Association and to the T. W. O. C., is revealing in this regard. At about 8 a. m. on election day, two men whom she recognized as employees of the respondent drove up in a car to her home. One of them told her to be sure and go down to the plant and vote, and to see Sanborn, the employment manager, before doing so. She did not know the names of the men, but in the light of the other testimony in the case it is clear to us that this incident fits in with the picture of the Association officers' solicitation of voters.

Upon all the evidence, we are convinced that the Association officers did engage in extensive campaigning on election day, and did send out cars to bring in voters. They were, as their time cards show, paid by the respondent for that day, and the respondent also paid for the gasoline they used. And we cannot believe that the respondent's officials, most of whom were present throughout the day, were so blind as to be unaware of these strenuous activities which were centralized in and around its plant.

The above facts make it unnecessary for us to consider certain other allegations made by the T. W. O. C. as to the conduct of the election. Our purpose under the Act is to insure a free choice of rep-

representatives, and when, as here, the employer is implicated in electioneering activities, there is warrant for voiding the results and ordering another election. In this case, despite the obvious evasiveness of the Association officers on the witness stand, indicating that they did not tell the whole story, we are convinced from their own testimony that the election should be voided, and we hereby declare it void. We shall direct that another election be held, and we will set the date for such election when we are satisfied that there has been sufficient compliance with our order to dissipate the effects of the unfair labor practices of the respondent and to permit an election uninfluenced by the respondent's conduct.

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

CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee and the Employees Association of Industrial Rayon Corporation are labor organizations, within the meaning of Section 2 (5) of the Act.

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

3. 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.

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. Questions affecting commerce have arisen concerning the representation of employees of the respondent, Cleveland, Ohio, and the Virginia Corporation, Covington, Virginia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

6. All of the employees of the respondent, at its Cleveland, Ohio, plant, except supervisory, clerical and salaried employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

7. All of the employees of the Virginia Corporation, at its plant in Covington, Virginia, except supervisory, clerical and salaried employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

8. Textile Workers Organizing Committee is the exclusive representative of all the employees of the Virginia Corporation in the

above-stated unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations 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, Industrial Rayon Corporation, Cleveland, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Employees Association of Industrial Rayon Corporation, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the said Association or to any other labor organization of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in their rights 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 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) Withdraw all recognition from the Employees Association of Industrial Rayon Corporation as a representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish the Employees Association of Industrial Rayon Corporation as such representative;

(b) Post immediately in conspicuous places at its plant in Cleveland, Ohio, notices to its employees stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that the respondent withdraws and will refrain from all recognition of the Employees Association of Industrial Rayon Corporation as a representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and that the respondent completely disestablishes it as such representative;

(c) Maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

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

CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Textile Workers Organizing Committee has been selected by a majority of the employees of Industrial Rayon Corporation of Virginia, except supervisory, clerical, and salaried employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Textile Workers Organizing Committee is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with Industrial Rayon Corporation, Cleveland, Ohio, an election by secret ballot shall be conducted at such time as the Board shall in the future direct, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, among all employees of Industrial Rayon Corporation at its Cleveland, Ohio, plant, except supervisory, clerical, and salaried employees, to determine whether or not they desire to be represented by Textile Workers Organizing Committee for the purposes of collective bargaining.