

In the Matter of WILSON & Co., INC. and INDEPENDENT UNION OF ALL WORKERS OR ITS SUCCESSOR UNITED PACKING HOUSE WORKERS

Case No. C-483.—Decided June 20, 1938

*Meat Packing Industry—Interference, Restraint, and Coercion:* removing union officials from pay roll and warning others about participating in union activities—*Company-Dominated Union:* domination of and interference with formation and administration; support; disestablished, as agency for collective bargaining—*Discrimination:* discharge—*Reinstatement Ordered:* discharged employee—*Back Pay:* awarded to discharged employee.

*Mr. Thurlow Smoot*, for the Board.

*Mr. James D. Cooney*, of Chicago, Ill., *Mr. Marshal Wiedel*, of Chicago, Ill., and *Mr. John F. D. Meighen*, of Albert Lea, Minn., for the respondent.

*Mr. Daniel J. Harrington*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Independent Union of All Workers, Albert Lea and Austin, Minnesota, herein called the Independent, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota) issued a complaint, dated March 14, 1936, against Wilson & Co. Inc., Albert Lea, Minnesota, 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), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by a notice of a hearing to be held on March 26, 1936, were duly served upon the respondent and the Independent. Thereafter the respondent sought to restrain further proceedings under the Act by filing a bill in equity with the District Court of the United States for the District of Minnesota, Second Division, praying for a temporary restraining order, a pre-

liminary injunction after notice and hearing; a permanent injunction on final hearing, and a declaratory judgment. The hearing on the Board's complaint was postponed indefinitely. The District Court dismissed the respondent's bill in equity and the respondent appealed to the United States Circuit Court of Appeals for the Eighth Circuit. On May 5, 1937, the latter court affirmed the decree of the District Court<sup>1</sup> and on May 26, 1937, issued its mandate. The District Court entered its decree on the mandate on June 10, 1937, affirming its former decree in all respects.

Thereafter the Independent filed with the Regional Director for the Eighteenth Region a second amended charge, dated June 16, 1937, upon which the Board, by the Acting Regional Director for the Eighteenth Region, issued an amended complaint, dated June 30, 1937, against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. Copies of the amended complaint, accompanied by notice of hearing, were duly served upon the respondent and the Independent.

The amended complaint alleged in substance that the respondent dominated and interfered with the formation and administration of a labor organization of its employees, known as Wilson Employees' Representation Plan, herein called the E. R. P., and contributed financial and other support to it; that the respondent discriminated in regard to the tenure of employment of Elmer Wenzel to discourage membership in the Independent; and that by these acts the respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and to engage in concerted activities for their mutual aid and protection as guaranteed in Section 7 of the Act. On July 10, 1937, the respondent filed an answer to the amended complaint, denying that its business affected commerce within the meaning of the Act, denying the alleged unfair labor practices, and setting forth a number of affirmative defenses in regard to the discharge of Wenzel.

Pursuant to notice, a hearing was held in Albert Lea, Minnesota, on July 19, 20, 21, 22, 23, 24, 26, and 27, 1937, before Patrick H. McNally, the Trial Examiner duly designated by the Board. The respondent appeared, was represented by counsel, and participated in 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. At the close of the Board's case and again at the conclusion of the hearing, the respondent moved to dismiss the complaint for lack of jurisdiction and also on the ground that

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<sup>1</sup> 90 F. (2d) 247.

the evidence failed to show any violation of the Act by the respondent. The motions were denied by the Trial Examiner. The rulings are hereby affirmed.

At the conclusion of the hearing, counsel for the respondent stated for the record that on July 16, 1937, he had filed an application in the Regional Office for the Eighteenth Region (Minneapolis, Minnesota) for the issuance of subpoenas, but that they had never been issued or delivered to him. He offered a copy of the application for inclusion in the record and the Trial Examiner permitted it to be made part of the record. Subpoenas had in fact been issued and were available to respondent at the hearing, but respondent made no request for them at any time after it had filed its application in the Regional Office or at the hearing. We do not feel that the respondent has been prejudiced in any manner by the failure to receive subpoenas, and in fact the respondent made no such claim.

On March 14, 1938, the Trial Examiner filed his Intermediate Report, copies of which were duly served upon all the parties, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom and, affirmatively, withdraw recognition from and disestablish the E. R. P. and offer full reinstatement with back pay to Wenzel. Exceptions to the Intermediate Report were filed by the respondent on March 28, 1938.

Pursuant to notice, a hearing was held before the Board on May 3, 1938, in Washington, D. C., for the purpose of oral argument on the Exceptions to the Intermediate Report and on the record. The respondent and the Independent were represented by counsel and participated in the oral argument.

During the course of the hearing, the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also reviewed the respondent's Exceptions to the Intermediate Report and finds them to be without merit.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The Albert Lea Packing Company, Inc., was incorporated under the laws of the State of Virginia on August 24, 1914. Its name was changed to Wilson & Company, Inc., of Minnesota on August 26, 1932. This company, a subsidiary of the respondent, operated a plant at Albert Lea, Minnesota, until August 25, 1935, at which time

it leased the plant to the parent company, Wilson and Company, Inc., a Delaware corporation, the respondent herein.

The respondent through some 50 subsidiaries is engaged in the purchase and slaughter of livestock, the processing of meat products and byproducts, and their sale and distribution. It operates seven or eight slaughter houses and packing plants; one of which is the plant at Albert Lea, Minnesota. At the Albert Lea plant livestock is slaughtered, meat processed, and sales conducted. During the period from July 1, 1935, to July 1, 1937, the sale of the products of this plant outside the State of Minnesota amounted to \$24,614,853.78, or 81 per cent of all sales, while the sales within the State amounted to \$5,758,236.34, or 19 per cent of all sales. During the same period, purchases of livestock outside the State of Minnesota amounted to 13 per cent of all cattle purchased, 1 per cent of all veal purchased, 32 per cent of all sheep purchased, and 17 per cent of all hogs purchased. Livestock purchased outside Minnesota is shipped to the plant by rail and truck. The plant employs 70 salesmen covering Minnesota, part of North Dakota, the upper part of Iowa, the northern part of Wisconsin, and small portions of Michigan and New York. There is a continuous flow of livestock into the Albert Lea plant of the respondent and of meat products and byproducts out and into interstate commerce.

## II. THE ORGANIZATIONS INVOLVED

Independent Union of All Workers is a labor organization incorporated under the laws of Minnesota on October 4, 1933, admitting to membership all wage earners, who are 16 years of age or over, exclusive of superintendents, foremen, timekeepers, and managers of wholesale houses. Local unions of the Independent were set up in communities and units for particular industries were set up within the locals. On October 13, 1933, a charter was issued by the Independent to Local Union No. II, Unit No. 1, to cover the employees of the respondent's Albert Lea plant. On April 26, 1937, in order to conform to industrial organization, Unit No. 1 applied to and received from the Central Body of the Independent a charter designating it as United Packing House Workers, Local No. 2.

About June 15, 1937, the Committee for Industrial Organization, herein called the C. I. O., granted a charter to United Packing House Workers, Local No. 2. It then became designated as United Packing House Workers Local Industrial Union No. 122 and severed its connection with the Independent. It is now an affiliate of the C. I. O., admitting to membership all workers employed in the meat production industry.

Wilson Employes' Representation Plan is a labor organization, admitting to its membership all employees of the respondent, except supervisors.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The background of the unfair labor practices*

The Independent filed articles of incorporation under the laws of the State of Minnesota on July 15, 1923. It was organized in Austin, Minnesota, and in a few weeks spread to Albert Lea. On October 13, 1933, the Independent granted a charter establishing a local union in Albert Lea. A substantial number of the respondent's employees had become members by the fall of 1934. From the time of the formation of the Independent until April or May of 1937, there was considerable industrial strife in Albert Lea and Faribault, Minnesota. In January 1934, operations were halted by employees in the respondent's plant at Albert Lea as a protest against the Joint Representation Plan, then functioning in the plant, and on July 31, 1934, there was a 7-hour sit-down strike in the plant in sympathy with striking employees in the respondent's plant at Faribault, Minnesota. Again, on February 23, 1935, the calf-killing gang in the Albert Lea plant walked out, refusing to work overtime.

The respondent met this situation by removing some ranking union officials from its pay roll and warning others about participating in union activities. Hemenway, who was in charge of the sit-down strike of July 31, 1934, was laid off the following month on the basis of seniority with 35 or 40 other employees. All the other steady employees were subsequently rehired, but Hemenway was not rehired although he was classed as a steady employee and was the oldest in seniority of those laid off. Jones, who negotiated with the respondent in respect to reinstatement of the calf-killing gang, was told by James Cooney, a vice president of the respondent, that he could not make speeches hostile to the respondent at union meetings and yet try to "keep peace in the family" at the plant. Drier, a former employee, was told by the superintendent of the plant, when he applied for work in 1936, that he would never be rehired because he was too good a union organizer. Sanders, who had become involved in a fracas during a labor dispute in a neighboring plant and had failed to report to work for 4 days, was discharged, although other employees who had at times been absent from work for 3 or 4 days had not been discharged. When Sanders subsequently applied for work, he was told that his work had always been satisfactory, but that he had become involved in the Union, and had been led astray. Wolden, who had been vice president and acting president of the Packing House Unit of the Independent, herein called the Unit, was

informed that if he got into trouble over a strike in another company's plant, he was not to return to the respondent for work, and that some other union members would never return to work.

Knutson, who was president of the Unit at the time of the hearing, testified that Williams, general superintendent of the plant, told him that the respondent knew what was going on at their meetings and everything that was taking place and that the telephone wires into their office were tapped. At the hearing Williams denied that he made these statements to Knutson. However, he admitted warning Knutson that any union member who failed to report to work as a result of becoming involved in a labor dispute at another company's plant would be discharged. Wenzel, who was discharged in 1935 for alleged unsatisfactory workmanship, was president of the Unit at the time of his discharge. Hemenway, who was on the Executive Board of the Central Body of the Independent and who stated that he was familiar with the membership records of the Unit through his official position, testified that there was a substantial decrease in the membership of the Unit due to the discharge of Wenzel.

*B. Domination of and interference with the formation and administration of the E. R. P.*

There had been an employee-representation plan, called the Joint Representative Committee Plan, at the Albert Lea plant since 1921, composed of an equal number of management and employee representatives. As previously stated, during 1934 and the spring of 1935 there was a considerable amount of turmoil and controversy among the employees concerning the Independent and also concerning industrial conditions in Albert Lea and vicinity. According to the testimony of Eastwood, manager of the plant, the E. R. P. was formed in the following manner: A large number of employees, who were interested in their jobs and in preserving peace and harmony about the plant, asked from time to time during this period if something could not be done to eliminate the causes of disturbance in the plant. The employees were dissatisfied with the Joint Representative Committee Plan because of the management representation. A group of employees asked Eastwood if some bargaining agency could be established whereby grievances could be settled in a more peaceful manner. Several discussions were held between Eastwood and the group and between Cooney, a vice president of the respondent, and the group. Information as to what had occurred at the meetings was sent to the Chicago office of the respondent and a constitution was requested. The Chicago office formulated the information it had received into a plan and sent it to the Albert Lea

plant. Copies of the form of the plan, known as the E. R. P., were given to the employees to study.

Stanzuk, who served as chairman of the E. R. P. for 2 years, testified, on the other hand, that he first learned of the E. R. P. when Eastwood and Williams called him and 11 other employees from different departments of the plant into Williams' office around April 15, 1935, and presented them with a typewritten copy of the E. R. P. He stated that Eastwood told the 12 employees that he had something to "work up" harmony in the plant. The 12 employees requested that they be allowed to study the E. R. P. and show it to other employees. This request was granted and copies were placed on the bulletin board in the plant to enable the employees to study it. About 2 weeks later the 12 employees went through the plant to determine the sentiment of the employees toward the E. R. P. Since some of the employees were in favor of it, while others were opposed to it, the group decided that an election would be the fairest way to settle the issue. They, therefore, requested and received permission from the management to hold an election.

Notices for the election were prepared in the office of Williams, general superintendent of the plant. Ballots for a primary and a final election were prepared by the respondent and the elections were held in the plant during working hours. The election was merely for the purpose of electing representatives to the E. R. P., there being no provision on the ballots whereby employees could signify either their acceptance or rejection of the E. R. P. The plant was divided into 10 districts from which representatives were elected.

(1) *Constitution and bylaws of the E. R. P.* The constitution and bylaws clearly reveal the respondent's participation in and domination of the formation and administration of the E. R. P. The constitution and bylaws were printed in booklet form by the respondent at no cost to the E. R. P., and every employee in the plant received a booklet with his pay check. The constitution states in part that "it is adopted by the employees of Wilson & Co., at Albert Lea and Faribault, Minnesota, and *approved by the management* to provide a means whereby employees through representatives of their own choosing may deal collectively with management."<sup>2</sup> Eastwood stated that the E. R. P. was designed to cover both the Albert Lea and the Faribault plants, but stated that he did not know why the only districts named from which representatives were to be chosen were those of the Albert Lea plant. He also stated that he did not remember who conceived the idea of having the E. R. P. adopted for both plants in identical form. Article 7 provides for the holding of meetings during regular business hours without loss of pay for

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<sup>2</sup> Italics supplied.

the time spent by employee representatives in attendance at such meetings. Article 10 provides that the constitution and bylaws, including the sections covering organization and election procedure, may be amended with the approval of the management.

(2) *Operation of the E. R. P.* The operation of the E. R. P. further discloses the domination exercised over it by the respondent. Meetings of representatives, not for the purpose of conferring with the management, are held once a month in the respondent's office and usually last about 3 hours. Representatives attending such meetings suffer no deduction from their wages for time spent at the meetings. Eastwood and Williams were generally called into the meetings and at times called special meetings themselves. Niehaus, who had been a representative in 1936, testified that on several occasions he was notified of special meetings by his foreman. Minutes of the meetings are turned into Williams' office where they are typed and copies distributed throughout the plant.

Niehaus testified that practically every man working at the respondent's plant is a member of the E. R. P. and that quite a number are also members of the C. I. O. with which the Unit, formerly a local of the Independent, is now affiliated. He further stated that he did not know of any reason why an employee could not be a member of both the E. R. P. and the C. I. O. at the same time. The E. R. P. has no application cards or membership lists and collects no dues. Stanzuk testified that he did not know how a person became a member of the E. R. P.

(3) *Expenses.* The E. R. P. is absolutely dependent on the respondent for financial support. It has never possessed any funds. Ballots and notices of elections are printed by the respondent at no cost to the E. R. P. There is no deduction in the pay of employees for time spent in arranging and conducting elections. We have already referred to the fact that there is no deduction in the pay of representatives for time spent in attending meetings of the E. R. P. The respondent bears the expenses of picnics and dances which are given by the E. R. P. Employees make arrangements for these affairs during working hours and, as in the other instances cited, there is no deduction in pay for time so spent.

(4) *Relations between the respondent and the E. R. P.* The relations between the respondent and the E. R. P. illustrate the incapability of the E. R. P. to function as a collective bargaining agency and its dependence on the respondent. The respondent has never entered into any contract with the E. R. P. In October of 1936, the E. R. P. requested a 10-per cent increase in the wages of employees at the Albert Lea plant. Eastwood and Williams agreed to recommend to the Chicago office of the respondent that a 5-per cent increase

in wages be granted. On October 27, 1936, at a special meeting of the E. R. P. representatives, Williams read a letter from the respondent's Chicago office. The letter stated that the respondent had received requests from the representative committees of all its major packing plants except one and that a wage increase of 7 per cent was granted effective at all such plants on November 2, 1936. The E. R. P. did not ask for a signed agreement relative to this wage increase. Stanzuk testified that Williams merely announced that the respondent would grant a wage increase and that the length of time the raise was to be in effect was never stated. It is clear that the wage increase cannot be credited to the functioning of the E. R. P. as a collective bargaining agency. It was not confined to the employees of the Albert Lea plant, but was granted to employees in all the respondent's plants. Moreover, it was terminable at the pleasure of the respondent, its continuance not being safeguarded by any contract.

Some doubt as to the legality of the E. R. P. under the Act was expressed by different employees in April 1937, and the E. R. P. representatives requested the respondent for an opinion on the validity of the E. R. P. A special meeting of the E. R. P. representatives was held on April 19, 1937, to discuss the matter. A letter was read by Eastwood stating, in substance, that the E. R. P. was not illegal under the Act, and that the respondent would continue to deal with it as in the past. It is significant that in this situation the E. R. P. deemed it proper to seek the advice of the respondent, to whom it owed its formation and continued existence.

We find that the respondent has dominated and interfered with the formation and administration of the E. R. P. and has contributed financial and other support to it and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### *C. The discharge of Elmer Wenzel*

The complaint alleged that on August 17, 1935, the respondent discharged and thereafter refused to reinstate Elmer Wenzel because he joined and assisted the Independent and engaged in concerted activities with other employees in the Albert Lea plant for the purpose of collective bargaining and other mutual aid and protection. The respondent's answer alleged that Wenzel was discharged for cause, that he was sabotaging at the instigation of the Independent, and that on his application for reemployment the respondent had offered him reinstatement with a subsequent restoration of his seniority rights if he performed his work in a capable manner.

Wenzel had been employed by the respondent and its predecessor since 1913 and had worked at the Albert Lea plant during practi-

cally the entire period up to his discharge on August 17, 1935. From the fall of 1917 to the date of his discharge, he was engaged in "loin pulling," which is one of the operations involved in cutting up hogs and is classed as skilled work. The loin puller removes the loin at the point where the side is "scribed," that is, where the ribs are cut through. He must remove the loin without cutting into the lean meat of the loin or leaving too thick a layer of fat on it. A loin that is pulled improperly in either of these respects is considered scored. Usually a loin puller is skilled in pulling either the right or left loin, but Wenzel was exceptional in that he could pull both sides. From February 1935, to the date of his discharge, Wenzel was pulling right loins. During this period, there was considerable trouble in the plant over scored loins. In the period from February 18, 1935, to June 4, 1935, three letters were received from the Chicago office of the respondent concerning the scoring. The letters, however, were not confined to criticisms of the scoring, but also complained of poor workmanship in scribing, packing, splitting on the kill, and ribbing of spareribs.

During this period an employee named Torgerson pulled loins with Wenzel. Torgerson pulled on the left side. His fellow employees characterized him as a rough butcher and a poor loin trimmer. Wenzel testified that Torgerson told him many times that he did not like the work and did not care how he performed it. Wenzel further testified that it appeared to him that Torgerson did a lot of scoring intentionally. Jones, a former loin puller at the plant, stated that he had pulled loins with Torgerson and that Torgerson intentionally scored loins. He also stated that Torgerson had told him that he did not like the work. Wenzel, on the other hand, was considered by his fellow employees to be a very good loin puller. Jackson, who was assistant foreman in the hog killing and cutting department in 1934, testified that Wenzel was a good loin puller in 1934. The respondent admitted in its answer that Wenzel was a satisfactory and desirable employee for many years prior to 1935.

From February 18, 1935, to the date of Wenzel's discharge, frequent tests were made of the loin pulling. Several officials of the plant testified that they had made examinations and observations of the loin pulling, which disclosed that from 10 to 60 per cent or an average of from 20 to 35 per cent of the loins were scored. However, none of these tests indicated whether the scored loins were right or left loins, although it was stated that no appreciable difference in scoring between right and left loins was noticed at the time of taking tests. Some written tests were made by checking 100 pork loins, alternating between right and left loins. These tests, however, showed merely the number of loins scored out of 100 and did not disclose whether the scores were on right or left loins. Al-

though written tests were customarily destroyed after they had served their purpose, the respondent introduced in evidence 11 written tests which it had found. These tests, which are dated from July 9, 1935, to August 10, 1935, disclose that from 13 to 50 per cent of the tested loins were scored.

Inasmuch as all the complaints about scoring, except the first one, were made during the time in which Torgerson was pulling loins, and the poor work on loins continued until his discharge at the same time as Wenzel, it is inexplicable why the respondent made no effort to ascertain which loin puller was responsible for the poor workmanship. Wenzel was a loin puller for 18 years and admittedly a good one. Torgerson was pulling loins for only a short time and his workmanship was criticized by his fellow employees. We have only the statements of officials of the respondent, made 2 years after the events occurred, that they noticed no difference between the number of loins scored by each loin puller, although admittedly these statements were based merely on personal observations and were not supported by any tests. Jackson testified that he "assumed that the man who had been pulling loins for 18 years was doing the same amount of scoring as the man that was in there for a short while." This assumption seems to have been followed by the other officials in their tests. All but two of the written tests introduced in evidence by the respondent were made either while Wenzel was breaking in a new man to take his place while he was on his vacation, or while he was on his vacation. Wenzel was pulling loins when the two remaining tests were made, but stated that he did not know whether or not one of them was made on loins which he was pulling. The other test made when Wenzel was pulling loins disclosed that 13 per cent of the loins checked were scored. There is no showing of how much of this scoring was attributable to Wenzel.

As has been noted above, the complaints from the respondent's Chicago office were not confined to criticisms of the scoring. The respondent's officials testified that checks were made of the other types of poor cutting complained of, and that after the poor workmanship was called to the attention of the employees doing such work, their work improved. The work of the loin pullers also improved, but the respondent's officials testified that the improvement would last for only a short time and that then the loin pulling would again become poor. Every complaint from the Chicago office, however, referred to other types of poor workmanship as well as to the loin pulling. Thus a complaint dated June 4, 1935, characterized the scribing as "frightful." Eastwood stated that a loin must be pulled at the exact point where the side is scribed, while Jackson admitted that the scribe mark helps to guide the loin puller in pulling the loin. The respondent's officials seem to have more or less ignored the other complaints about faulty

workmanship and to have concentrated on the loin pulling without any consideration of the ability of the individual pullers.

Various other factors tended to increase the difficulty of pulling loins properly. At times the meat was either too hard, too dry, or too soft. The respondent's officials, however, claimed that the loin pullers could remove such loins properly by exercising more care and that the speed of the cutting gang was reduced, but that the loin pulling did not improve. This fact would not justify the respondent in discharging Wenzel for poor workmanship. While the condition of the meat might serve to increase the scoring, the reasonable conclusion is that the increase in scoring would be due to Torgerson, the inexperienced and careless loin puller, rather than to Wenzel, the skilled and careful loin puller.

Wenzel testified that during the period from February 1935, to the date of his discharge he never scored over 15 per cent of the loins he pulled. At times he would count as high as 150 loins before scoring one. He stated that on the morning of the day he was discharged he scored about 4 out of 50 loins. He further stated that during this period the checking was much closer than it had ever been before and that small scores on a loin that had never been considered as such before were now counted as scores. Nevertheless, when he was criticized for scoring, he attempted to do the best he could.

Jackson testified that he was severely criticized by his supervisors for the poor loin pulling and feared that he would be removed from his position. He stated that he talked to the loin pullers daily about the scoring and told Wenzel that he believed that he could do better work, to which Wenzel would reply that he was doing the best he could. In June of 1935, Jackson wanted to discharge the loin pullers, but Chap, assistant superintendent, told him to give them another chance. Jackson testified that the loin pulling failed to improve and that he was worried about his job. On August 17, 1935, he found some scored loins and decided to discharge Wenzel and Torgerson. Jackson stated that no one ordered him to discharge the loin pullers, but that he acted on his own volition. Although Jackson may have been worried over the poor quality of the loin pulling, he never endeavored to ascertain which loin puller was actually guilty of the poor workmanship.

Wenzel testified that he was never severely criticized for his workmanship in pulling loins until February of 1935. At that time he was summoned to Eastwood's office and told by Eastwood that his work had always been satisfactory, but that lately the Chicago office had complained about scored loins which were received from the Albert Lea plant. Wenzel replied that he was doing the best work he could, but that the hogs were not in proper condition for cutting.

He further testified that Eastwood said that all he had on his mind was union activities and that he had better get down to earth and do his work properly. Eastwood told him that he was getting mixed up in rioting at a neighboring plant and that it was interfering with his work. He also accused Wenzel of going from one department of the plant to another telling employees not to vote in an E. R. P. primary that was to be held in April. Wenzel denied this accusation, but did inform Eastwood that he had told some employees in the dressing room during the noon hour that he was not going to vote in the E. R. P. primaries.

It is significant that Wenzel was summoned to Eastwood's office a short while after he had been elected temporary president of the Unit. He was a charter member of the Independent and was on the grievance committee and vice president of the Unit from January 1934, to February 1935. In February 1935, he was elected temporary president and shortly thereafter was warned about indulging in union activities. A close check was made of his work and he was daily criticized by Jackson about poor workmanship. In spite of the warning about indulging in union activities, Wenzel continued to do so, and in July 1935, became president of the Unit. On August 17, 1935, he was discharged for alleged poor workmanship.

The facts stated above clearly show that the respondent had no actual knowledge of poor workmanship on Wenzel's part and made no effort to inform itself of the quality of his workmanship. In all the tests and checks of the loin pulling, there was no attempt made to discover which loin puller was guilty of the poor workmanship. Furthermore, Williams in March or April of 1937, expressed his hostility to the Unit to Wolden, who became its acting president after Wenzel's discharge, and told him that Wenzel and some others active in the Independent would never return to work for the respondent. At the hearing Knutson, who was then president of the Unit, testified that Williams had asked him if he didn't realize that he was "putting himself on the spot" by becoming president. Williams, however, denied making this statement. Knutson also stated that Williams cited Wenzel as an example and inquired if Knutson wanted to be in Wenzel's position, and "how grey haired he had been getting walking the streets." The inescapable conclusion is that Wenzel's discharge was due to his union activities. The effectiveness of the discharge in discouraging membership in the Independent is evidenced by a substantial decrease in its membership following his discharge.

The respondent contends that Wenzel was sabotaging at the instigation of the Independent to force the respondent to discharge him in order to enable him to bring his case before the Board. This contention is without merit since the respondent claimed that Wenzel's

alleged poor work dated from February of 1935, while the Act did not become effective until July 5, 1935.

A few days after the discharge of Wenzel and Torgerson, the E. R. P. requested the respondent to reinstate them. The officials of the respondent were willing to do so, but Jackson refused to take them back, claiming that he felt that he would be responsible if their work continued to be unsatisfactory. About a month later, Wenzel again sought reinstatement, but was unsuccessful. In May of 1937, Wenzel had several conferences with Eastwood and Cooney. He testified that Cooney told him that he had let Bolsheviks talk him into doing things that he should not have done and that, if he broke away from them, he would get along fine. He also stated that Cooney said that he did not care about the Board and that he had been in "this racket too long." Eastwood, however, denied that Cooney had made such a statement. Cooney and Eastwood offered him employment with restoration of his seniority rights later, if his work proved satisfactory, and also offered to give him a letter to that effect. Wenzel, however, refused to return to work without full restoration at once of his seniority rights, vacations, and insurance. He feared that, if he returned to work under the respondent's conditions, it would find an excuse to lay him off within a few weeks. If he returned to work as a new man, he felt that he would be injuring his fellow workers.

We find that Elmer Wenzel was discharged because of his membership in the Independent and his activities in its behalf. We find that the respondent in discharging Wenzel discriminated in regard to his tenure of employment, thereby discouraging membership in the Independent and interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the 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 with foreign countries, 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 committed certain unfair labor practices. We will, therefore, order it to cease and desist therefrom. Since the respondent dominated and interfered with the

formation and administration of the E. R. P. and contributed financial and other support to it, we will order it to withdraw recognition from the E. R. P. as a collective bargaining representative of any of its employees and to disestablish it as such representative. Since the respondent discriminated in regard to the tenure of employment of Elmer Wenzel, we will order it to offer him full reinstatement with back pay.

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

#### CONCLUSIONS OF LAW

1. Independent Union of All Workers, United Packing House Workers Local Industrial Union No. 122, and Wilson Employes' Representation Plan are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Wilson Employes' Representation Plan and by contributing financial and other support to it, 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 tenure of employment of Elmer Wenzel and thereby discouraging membership in a labor organization, 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 labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

#### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Wilson & Co., Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From discouraging membership in Independent Union of All Workers, United Packing House Workers Local Industrial Union No. 122, or any other labor organization of its employees by discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) From dominating or interfering with the administration of Wilson Employees' Representation Plan or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Wilson Employees' Representation Plan or to any other labor organization of its employees;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of 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 and other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer Elmer Wenzel immediate and full reinstatement to his former position without prejudice to his seniority and other rights and privileges;

(b) Make whole Elmer Wenzel for any loss of pay he may have suffered by reason of his discharge, by the payment to him of a sum of money equal to that which he would normally have earned as wages from August 17, 1935, the date of his discharge, to the date of such offer of reinstatement, less the amount which he has earned during said period;

(c) Withdraw all recognition from Wilson Employees' Representation Plan as a representative 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 work, and completely disestablish Wilson Employees' Representation Plan as such representative;

(d) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of at least thirty (30) consecutive days, stating (1) that the respondent will cease and desist in the manner set forth in paragraphs 1 (a), (b), and (c) of this order; and (2) that the respondent withdraws all recognition of Wilson Employees' Representation Plan as a representative of its employees and completely disestablishes it as such representative;

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