

In the Matter of CROSSETT LUMBER COMPANY and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LUMBER AND SAWMILL WORKERS UNION, LOCAL 2590

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Cases Nos. C-201 and R-211, respectively.—Decided July 21, 1938

Lumber Industry—Interference, Restraint, and Coercion: employment of labor spies; membership and participation in association of employers engaged in labor practices declared unfair by the Act—*Discrimination:* discharges: for union membership and activity; to discourage membership in union; refusal to reinstate employees; charges of, not sustained as to certain employees, dismissed without prejudice as to certain employees—*Reinstatement Ordered—Back Pay:* awarded: from date of discrimination to date of reinstatement or offer of reinstatement; employees not desiring reinstatement, from date of discrimination to date of hearing; less the net earnings of each during said period of discrimination, remaining after deduction of expenses—*Investigation of Representatives:* petition for, dismissed without prejudice to renewal at future date.

Mr. Gerhard Van Arkel, for the Board.

Gaughan, Sifford, Godwin and Gaughan, by *Mr. Elbert Godwin* and *Mr. T. K. Gaughan*, of Camden, Ark., for the respondent.

Mr. Rawlings Ragland and *Miss Edna Loeb*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles H. Logan, Regional Director for the Fifteenth Region (New Orleans, Louisiana) issued its complaint dated July 9, 1937, against Crossett Lumber Company, Crossett, Arkansas, herein called the respondent, 8 N. L. R. B., No. 51.

alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and accompanying notice of hearing were duly served upon the respondent and upon the Union. With respect to the unfair labor practices the complaint, in substance, alleged that (1) the respondent terminated the employment of and refused to reinstate 41 named employees for the reason that they had joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection; and (2) the respondent had engaged the services of spies for the purpose of disclosing to the respondent the activities of its employees in behalf of the Union, in order that the respondent might use the information so obtained to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 15, 1937, an answer was filed on behalf of the respondent which admitted that the respondent is engaged in the production of lumber and lumber products, but denied that it is engaged in the sale or distribution of such products, or that its operations affect commerce within the meaning of the Act; denied on information and belief that the Union existed or that such Union had filed charges against the respondent; and denied that the respondent had engaged in or was engaging in the alleged unfair labor practices.

On November 30, 1935, the Union filed with the Regional Director a petition, and thereafter an amended petition, alleging that a question affecting commerce had arisen concerning the representation of the production employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On April 28, 1936, 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 an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On July 6, 1937, the Board issued a further order as to such investigation and hearing. On July 10, 1937, the Regional Director issued a notice of hearing upon the petition, copies of which were duly served upon the respondent and upon the Union. On July 22, 1937, the Board acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, ordered that the two cases be consolidated for the purposes of hearing.

Pursuant to notice, a hearing was held in Monticello, Arkansas, from July 26, 1937, to August 7, 1937, before D. Lacy McBryde,

the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. On July 26, 1937, during the course of the hearing, on motion of counsel for the Board the complaint was amended by corrections in names, by the addition of the names of 15 persons alleged to have been discriminatorily discharged and denied reinstatement, and by the deletion of the names of 7 persons previously alleged to have been discriminated against. The respondent accordingly filed an amended answer, dated July 27, 1937. The complaint was again amended at the hearing on July 28, 1937, to include the name of another person alleged to have been discriminatorily discharged and denied reinstatement.

Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. At the conclusion of the hearing, the respondent filed a motion to dismiss the complaint in the consolidated proceedings on the grounds that the evidence failed to show that the respondent was engaged in interstate commerce or that the respondent had violated the Act. The respondent further moved that the complaint be dismissed (a) as to persons discharged before July 5, 1935, for the reason that the Act did not become effective prior to that date; (b) as to persons discharged prior to August 7, 1935, for the reason that such persons were members of the Union and bound by an agreement made by the Union with the respondent on or about August 12, 1935; and (c) as to persons laid off after August 12, 1935, for the reason that the evidence failed to show that these persons were laid off because of their membership in the Union. As a final ground for its motion, the respondent stated that the fair preponderance of the evidence disproved each and all of the charges filed against the respondent. The Trial Examiner reserved judgment upon the motion. It is hereby denied for the reasons hereinafter set forth.

By order of the Board, dated August 3, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the Rules and Regulations. Pursuant to notice duly served upon the parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on September 17, 1937. The respondent was represented by counsel who participated in the argument. The Union did not appear. The respondent also filed a brief to which we have given due consideration.

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

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Crossett Lumber Company is an Arkansas corporation engaged in the production, sale, and distribution of lumber and lumber products, with its principal office and place of business in Crossett, Arkansas.

The town of Crossett, Arkansas, in which the respondent's plants are located is situated approximately 15 miles from Hamburg, Arkansas, its nearest neighbor, and approximately 25 miles from Bastrop, Louisiana. The record indicates that the town is altogether company-owned and operated, and that all municipal activities are controlled by the respondent.

On July 25, 1935, the respondent employed 886 persons. At the date of the hearing, however, its employees numbered 1,205 for the reason that the respondent had commenced to operate a paper mill in addition to its other plants. The pay roll of the respondent approximated \$600,000 per annum.

The respondent is one of the Crossett-Watzek-Gates Industries, which are composed of a number of affiliated corporations. Among them are the Crossett Chemical Company, a Delaware corporation operating in Crossett, Arkansas; the Fordyce Lumber Company, an Arkansas corporation operating in Fordyce, Arkansas; the Crossett Timber and Development Company; a Delaware corporation operating in Bastrop, Louisiana, as a holding company of timber and gas properties; the Crossett-Western Company, Wauna, Oregon; and the Jackson Lumber Company, Lockhart, Alabama. The Crossett Paper Mills are also listed among the Industries but they are in reality only an operating unit of the respondent. Other companies affiliated with the respondent are the Public Utilities Company of Crossett, the Bank of Crossett, the Crossett Housing Corporation, the Crossett Chemical Company, all located in Crossett, Arkansas, as well as the Fordyce-Crossett Sales Company, herein called the Sales Company. The latter is an Arkansas corporation, in which the respondent owns 192 of a total of 200 shares which the Sales Company has outstanding, and the directorate of which is largely composed of the individuals comprising that of the respondent.

Data secured from the Interstate Commerce Commission and introduced into evidence indicates that the respondent owns a considerable amount of stock in the Ashley, Drew, and Northern Railway Company, herein called the A. D. & N. Railway, an Arkansas corporation, which is within the jurisdiction of the Interstate Commerce

Commission. The principal large stockholders of the A. D. & N. Railway are affiliated in various ways with the respondent, and its directorate is substantially identical with that of the respondent. So complete is the control of the respondent over the A. D. & N. Railway that L. J. Arnold, manager of the respondent, refers to it as the respondent's railroad.

All of the lumber and lumber products produced by the respondent, consisting of about 50,000,000 board feet of finished lumber per annum, valued at approximately \$1,250,000, are sold to or through the Sales Company. The latter is engaged in selling lumber and lumber products for the respondent and for the Fordyce Lumber Company, and although constituted as a separate corporation, in reality represents their sales divisions in a merged form. It has offices on the respondent's property at Crossett, Arkansas, at Fordyce and Little Rock, Arkansas, and at Low Point, Illinois, employs about 200 salesmen throughout the country on a commission basis, and advertises in newspapers and in national periodicals. The respondent is paid for its lumber only after the Sales Company has resold it, and the latter does not take any profit, all of its expenses and losses being shared by the respondent and by the Fordyce Lumber Company.

According to the testimony of L. J. Arnold, more than 75 per cent of the lumber produced annually by the respondent and sold by the Sales Company is shipped outside of Arkansas. The finished lumber products are loaded in box cars at the mill in Crossett, Arkansas, and shipped by way of the A. D. & N. Railway. This railroad, 40 miles in length, and operating solely within the State, makes connections with the Missouri-Pacific and the Rock Island Railways which carry its consignments out of Arkansas. The chief center of consumption of the respondent's products is in the territory north of the Ohio River extending to the Atlantic seaboard, and in the territory west of the Mississippi River, from Texas to the Canadian border.

The respondent owns approximately 250,000 acres of timber land in Arkansas and some outside of Arkansas. In addition, it secures some timber and logs from the Crossett Timber and Development Company, which had a directorate identical with that of the respondent on November 30, 1936. L. J. Arnold testified at the hearing that the respondent employs independent contractors to cut timber on its land within and without Arkansas and on land owned by the Crossett Timber and Development Company, and to haul such timber to the A. D. & N. Railway. Some machinery, equipment, supplies, and timber are purchased from various other persons or concerns in Louisiana.

The records of the United States Patent Office, Department of Commerce, reveal that the respondent has a registered trade-mark

for use in interstate commerce as well as trade-marks of like nature which it had assigned to the Fordyce Lumber Company. The respondent also makes use of trade-marks registered through the Arkansas Soft Pine Bureau, which is an advertising agency for a group of sawmills in Arkansas.

II. THE UNION

United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, is a labor organization admitting to membership employees of the respondent. It is a local of an international union affiliated with the American Federation of Labor.

III. BACKGROUND OF THE UNFAIR LABOR PRACTICES

On or about April 14, 1934, J. W. Knight and Rufus Cartledge, foreman of the respondent's sawmill box factory, and about 12 other employees of the respondent and of the A. D. and N. Railway, went to Bastrop, Louisiana, to meet Holt Ross, representative of the American Federation of Labor, herein called the A. F. of L. After discussing with him the unfavorable conditions existing at Crossett, a joint telegram was sent to William Green, president of the A. F. of L., informing him of such conditions and asking what might be done to ameliorate them. The telegram was referred for reply to George Gooze, southern representative of the A. F. of L., at Atlanta, Georgia. Although a reply was received from Gooze, nothing further appears to have transpired during the remainder of the year 1934.

In March 1935, the undercurrent of dissatisfaction among the respondent's employees came to the surface, and union sentiment was aroused anew. Information was requested concerning the rules for organizing a local union affiliated with the A. F. of L. Thereafter, W. R. Williams, general organizer for the A. F. of L., and Robert E. Roberts, member of the executive board of the United Brotherhood of Carpenters and Joiners of America, personally contacted the men at Crossett and helped them perfect their organization plans. A charter was granted in April 1935, and the record indicates that organizational activities were so successful that at one time the Union numbered approximately 700 members among the respondent's 886 employees.

In May 1935, Knight, Leroy Maxwell,¹ and several other union members asked Cartledge whether he desired to join the new organization. According to Cartledge's uncontroverted testimony, he re-

¹ Maxwell's name appeared in the original complaint but was withdrawn therefrom on motion at the hearing.

fused to join the Union, reported the incident to Allen W. Bird, superintendent of manufacturing, and was warned by him that the respondent looked with disfavor upon the Union.

Two or three weeks later, Maxwell, Knight, and John Mitchell were discharged, Maxwell on June 3, Knight on June 7, and Mitchell on June 15, 1935. These three men had been employed by the respondent for many years. The incidents surrounding the dismissal of Knight and Mitchell are detailed in subsection (B) below. Maxwell was discharged by B. M. Sharkey, the respondent's master mechanic. The respondent's alleged reason for the discharge was that a reduction of force was necessitated by its discontinuance of work on foreign railroad cars. Although Maxwell was one of eight men laid off at this time, several of the others were reemployed soon thereafter in other divisions of the respondent's plant. Mitchell, Maxwell, and Knight had been interrogated concerning their union affiliation shortly before the severance of their employment, and the record is replete with evidence that it was common knowledge that the three men were the leaders of the Union. Maxwell was its first president, Mitchell its treasurer and later its president. Upon these facts and upon the facts and considerations hereinafter discussed, the conclusion is inescapable that Mitchell, Maxwell, and Knight were discharged because of their union activities.

Prior to the discharge of Mitchell, Maxwell, and Knight, the Southern Lumber Operators' Association, herein called the Association, sent to the respondent's plant an operative on the staff of the Pinkerton Detective Agency. This action was taken in accordance with the practice of the Association to make a semi-annual investigation of conditions existing at the plants of its members.

The Association, organized in 1906, was an unincorporated association of employers dedicated to the principle of the open shop. Its membership consisted of approximately 40 lumber companies, including the respondent. Its constitution, adopted April 30, 1934, and embodying in modified form the substance of its original constitution of 1906, set forth the purposes of the Association, one of which was "to deal with the conditions of labor." Provision was made in the constitution for a Benefit Trust Fund "for the purpose of assisting members of the Association to resist any encroachments." Another clause provided for making payments from the fund to members whose plants were closed down because of strikes. Assessments upon the membership were stipulated for maintenance of the fund.

During the month of June 1935, the Pinkerton operative reported that a local union had been organized and that approximately four or five hundred of the respondent's employees had become members thereof. The respondent's manager, Arnold, did not believe the re-

port accurate, and at his request the Association dispatched John McVitch, another Pinkerton operative, to survey the labor situation at Crossett. McVitch arrived in Crossett on or about June 26, 1935, and, at Arnold's direction, was given employment in the respondent's plant.

Since the Act became effective only on July 5, 1935, the acts of the respondent thus far discussed are not within the purview of the Act. They are important, however, in showing the significance of respondent's actions since that date.

IV. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Operative McVitch lost no time in setting about to accomplish his mission. He joined the Union, attended meetings, and had himself elected vice president of the organization. As an officer of the Union he was permitted to inspect its membership rolls and thereby to ascertain its numerical strength and the identity of its members. All of this information McVitch relayed to the Association by means of detailed daily reports. Through the medium of these reports which were transmitted to him by the Association, Arnold kept constant surveillance over the activities of the respondent's employees. McVitch testified that his reports included the names of approximately 200 union members, about 23 of whom were discharged during his sojourn in Crossett. From memory alone he was able to recall that he had reported upon 30 of the workers named in the complaint.

When on October 10, 1935, the Union discovered that McVitch was a labor spy, the Association replaced him by Hatfield, who was in turn supplanted by James E. Carr. The latter were operatives in the employ of the National Corporation Service. Their activities followed the familiar pattern of the work of the labor spy described above in connection with McVitch.

Although the evidence is not altogether clear as to the dates of the arrival and departure of the various operatives, it appears that at about the same time that Carr was sent to the respondent's plant, the Association also sent another operative, Frank Herbert, alias Leonard. The latter arrived in Crossett around the first of November 1935. In addition to making the usual reports, Herbert took affirmative action in an attempt to destroy the Union. Representing himself as a representative of a fictitious labor organization, the Federated Timber Workers of America, he sought to convince the leaders of the Union that their battle against the respondent was hopeless, and to persuade them to give up their charter and join

the Federated Timber Workers of America. Herbert testified that he had a "standing order to block the National Labor Relations Board." He formed a close friendship with Mitchell, then president of the Union, and used him as a tool to further the respondent's unlawful ends.

On or about November 19, 1935, while Herbert was still working on the Crossett case, W. E. Fairfield of the National Corporation Service was assigned to Crossett by the Association, with instructions not only to report fully concerning union activities but also to forestall, if possible, the Union's filing a charge or petition with the Board. This operative also attached himself to the unsuspecting Mitchell as a "friend" and advanced him money with which to leave Arkansas. The money was secured from Schneider, secretary of the Association, who knew the purpose for which it was to be used.

There is also evidence in the record showing that, by the use of the Association's facilities, the respondent interfered with union organization by preventing its discharged employees who were members of the Union from securing or retaining employment elsewhere. The Association transmitted to all its members a form of blacklist containing the names of active union men and of workers who had participated in strikes. Lee Howard, who is named in the complaint, testified that he was twice refused employment at the Bradley Lumber Company,² Warren, Arkansas, but that he was given work immediately when he made application under an assumed name. Several workers named in the complaint testified that they applied for jobs at other mills on occasions when men were being hired but that almost invariably their applications were denied after questioning elicited from them facts as to their employment at Crossett. Another illustration of the respondent's strategy was recounted by Mitchell. The latter secured a job with a trucking company in Dumas, Arkansas. One of the respondent's employees visited Dumas and the following week Mitchell was discharged suddenly and without apparent cause.

In attempted justification of its use of espionage, the respondent makes the following statement in its brief:

The acquiring of secret information by managers of plants may be the subject of criticism and yet secret information is sought and has always been by the Government and by persons on whom the burden of great responsibility is made to rest . . . Whatever may be said of the practice, it seems to have been used by mankind since the time when Moses sent spies into the land of Canaan and Jehovah, under whom he directly acted, did not appear to disapprove of the act.

² The Bradley Lumber Company was a member of the Association

It is a recognized fact that the use of labor spies is a frequent and cogent producer of industrial strife and we have invariably condemned such use as an unfair labor practice.³

The respondent further asserted that the information obtained through the labor spies was never used by its officers or foremen as a basis for retaliatory action or discharge. Arnold asserted that the reports transmitted to him were destroyed and their contents communicated to no one. It is inconceivable, however, that the respondent retained its membership in the Association and paid its dues without making use of the services and information obtained through the Association, particularly in view of the respondent's admittedly hostile attitude towards the Union. The testimony of Operatives McVitch, Herbert, and Fairfield indicated that they reported upon at least 43 of the 50 men who are named in the complaint. Nor is this number exclusive, since the operatives testified only as to the individuals whose names they could recall. It is impossible of belief that during the relatively short period of time 50 active union men were discharged without regard to their union affiliation.

Furthermore, the activities of the officers and foremen of the respondent clearly disprove the assertion that the respondent did not through them use the information obtained through the labor spies. The record abounds with evidence that the respondent, through its officers and foremen, pursued a course of coercion, intimidation, and interference clearly intended to discourage and restrain the respondent's employees from membership in the Union. Directly and indirectly pressure was exerted upon the workers either not to join the Union or to sever their union affiliations. The respondent's supervisory employees circulated anti-union propaganda and threats of retaliatory action, which were reinforced by numerous discharges and lay-offs. In an effort to discredit the Union, the respondent's officials subjected union men to slurring remarks and criticism of the "cheap," "four-bit," and "jimson weed" organization to which they belonged. As pointed out in detail in the section dealing with the individual discharges, the men were interrogated by foremen regarding the affairs of the Union and the identity of its members. Most of the testimony as to these activities of the respondent stands uncontroverted in the record.

About the middle of July 1935, the respondent caused to be distributed among its employees certain circulars, some of which were posted on the time clock. One of these handbills was entitled "To Our Employees and Their Families" and was signed by L. J. Arnold,

³ *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 1975*, 1 N. L. R. B. 68; *Matter of Brown Shoe Company, Inc. and Boot and Shoe Workers' Union, Local No. 65*, 1 N. L. R. B. 803; *Matter of Remington Rand, Inc. and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626.

manager, and approved by Edward C. Crossett, J. W. Watzek, Jr., and A. Trieschmann, directors of the respondent. This poster stated that the respondent was "deeply concerned" over rumors brought to its attention regarding efforts "to force [its] employees to organize," and contained assurances of the respondent's willingness to treat its employees well. In view of the respondent's attitude toward the Union and of the respondent's campaign to destroy the organization, the significance of this document was apparent. The carefully guarded statements were clear enough for the employees to perceive the respondent's policy toward the Union. A companion circular entitled "The Employer's Side of the Labor Question,"⁴ served to clarify the respondent's message to its employees. It described the disasters resulting from unionization and from strikes, especially in the South, and concluded with the following statement: "Until a more intelligent leadership is developed, or until the southern workmen manage the unions themselves, eliminating outside agitators, I feel sure that their best interest would be served by avoiding the unions."

On July 22, 1935, notices were posted by Arnold and L. R. Wilcoxon, one of the respondent's directors and superintendent of all of the respondent's activities outside the plant. These notices stated that Arnold and Wilcoxon would be in their offices each night during the week and that any employee who wished to talk with them "either privately or publicly about the Union and strikes and the Company's attitude," was urged to do so. Separate evenings were set aside for conferences with white and colored employees. The admitted purpose of these conferences was to dissuade as many employees as possible from becoming or continuing to be members of the Union. The record discloses that those employees who availed themselves of these invitations were instructed as to the company's attitude toward the Union and interrogated as to their union affiliation and activity.

At about the same time Arnold made speeches at negro and white churches in the vicinity of Crossett. The speeches, like the handbills and the conferences, were prompted by Arnold's desire to halt the organizational activities of the respondent's employees. In his addresses Arnold made known his anti-union sentiments by recourse to warnings of evils which would follow union organization.

At the hearing as well as in its brief the respondent contended that it had no objection "in the abstract" to a union or to collective bargaining, but that it did object to the particular type of union at Crossett. It is clear from the record that the respondent's objections

⁴ Reprinted from "The Adult Student," July 1935, The Sunday School Lesson Journal, Board Exhibit No. 29.

to union organization and activity were not of the alleged limited character. Moreover, the Act expressly forbids any interference, restraint, or coercion of employees in the exercise of the rights expressly guaranteed to them by the Act. The respondent also claims that its officers and foremen advised its employees to refrain from joining the particular Union after request for advice upon this matter. However, as we stated in the *Matter of Ingram Manufacturing Company and Textile Workers Organizing Committee*:⁵

The duty to remain aloof and impartial under all circumstances is clear. Employees who request advice of supervisors are uncertain as to which course to pursue, and they may also be fearful that the employer may frown upon a contemplated step in the direction of engaging in concerted activities. Interference at this point necessarily restrains or coerces employees in the exercise of rights guaranteed by the Act.

Throughout the month of July and the first week in August 1935, the respondent continued its practice of discharging active union members, 13 of whom are named in the complaint.⁶ The Union appealed for help to the United States Department of Labor which sent a conciliator to Crossett. His efforts to reestablish amicable relations between the employees and the management proved futile, due to the fact that Arnold refused to reinstate Mitchell, Maxwell, or Knight or to make any concessions whatever to the Union.

The rising tide of dissatisfaction and unrest among the employees reached a climax on or about August 7, 1935, at which time a union committee was sent to Arnold to demand, under threat of immediate strike, the reinstatement of discharged union members. Heedless of the ultimatum, Arnold flatly refused to comply with this demand. A strike meeting was then called and all employees present voted unanimously to go on a strike the following day. Accordingly, on or about August 8, 1935, a picket line was formed about the respondent's plant, and the respondent's operations were at a standstill for a period of 4 or 5 days.

When the morale of the strikers began to wane, John Riley, sheriff of Ashley County, seems to have been the moving spirit in arousing a back-to-work sentiment. He informed Arnold that the men had decided to cease their strike activities and that they were ready to return to work.

A committee was selected to meet with Arnold concerning settlement of the strike. The Union was permitted to have no voice in selecting the members of this committee. Arnold refused to meet

⁵ 5 N. L. R. B. 908.

⁶ Individual discharges are discussed in subsection (B) below.

with the Union's chosen representatives, Maxwell and Knight, on the ground that he had no obligation to deal with anyone not in the respondent's employ. The imposition of such a limitation on the personnel of the union committee was totally unwarranted. The Act guarantees to employees the right to representatives of their own choosing, which right negatives any privilege on the part of an employer to limit the group from which such representatives may be chosen.

At the strike settlement conference which was held on or about August 13, 1935, Arnold made no effort to adjust any differences existing between the respondent and the strikers, nor did he offer the strikers any alternative other than the barren privilege of returning to work. He proposed that they "let bygones be bygones," and that they forget all about the strike and the Union. He again refused to reinstate the men discharged prior to the strike and offered employment only to those who had been working when the strike began. When a question arose concerning the conduct of future union meetings, Arnold emphatically forbade meetings being held in Crossett. Finally Arnold stated that no employee would be discharged for union activity. H. J. Ready, a member of the committee and one of the men named in the complaint, asked whether Arnold would put the terms of the settlement in writing. Sheriff Riley then interposed a statement that he would vouch for Arnold's word and as a result no written agreement was executed.

Immediately following this conference, Arnold called a meeting of the foremen, told them of the manner in which the strike had been terminated, and advised them to lay off no employees because of union membership or activity. Arnold claimed at the hearing that he had been familiar with the provisions of the Act for several months, that he had received no complaints that discharges were not made for just cause, and that he had no reason to apprehend that discharges might be made without cause. He would not explain, however, why he had assured the strikers that no one would be discharged for union activity, or why he should have cautioned his foremen in this regard. The record indicates clearly that the meeting was called for the sole purpose of warning the foremen not to discharge any more active union members until some pretext or colorable "cause" should be found. This conclusion is strengthened by the fact that the foremen were in no way restricted in their plenary power to hire and discharge employees in the future.

Subsequent to the strike only three or four meetings of the Union were held and payment of dues was suspended. The respondent's use of espionage had been brought to light and apprehensive that further collective activity would result in more discharges, inactivity was

recommended by Robert E. Roberts, member of the executive board of the United Brotherhood of Carpenters and Joiners of America, and by H. M. Thackrey, secretary-treasurer of the Arkansas State Federation of Labor. Operative Fairfield testified that the respondent's plan to undermine the Union was so successful that by November 1935, the date of his arrival in Crossett, the Union was almost dead.

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

B. The discharges and refusals to reinstate

The complaint, as amended, alleged that the respondent terminated the employment of J. W. Knight on or about June 7, 1935; Richard Johnson, on or about June 10, 1935; John Mitchell, on or about June 15, 1935; Tom Ozment, on or about July 11, 1935; Neal Burt, on or about July 14, 1935; Herbert Lester Clark, on or about July 21, 1935; W. C. Wood, on or about August 1, 1935; C. V. Scribner, on or about August 1, 1935; William Lankford, on or about August 1, 1935; Mose Fields, on or about August 12, 1935; Hollis Hill, on or about August 19, 1935; J. A. Langley, on or about August 23, 1935; O'Dell Gray, on or about September 10, 1935; Albert De Weese, on or about September 10, 1935; Noel Jones, on or about September 13, 1935; Sam Phillips, on or about September 15, 1935; P. M. Rickman, on or about September 15, 1935; Jack Morgan, on or about September 15, 1935; Gene McKimmy, on or about September 15, 1935; Walter Lee Kellum, on or about September 16, 1935; Dave Sled, on or about September 20, 1935; E. J. Norman, on or about September 20, 1935; H. J. Ready, on or about October 1, 1935; Murry Jones, on or about October 19, 1935; D. Wolfong, on or about December 12, 1935; J. C. Billingsley, on or about January 16, 1936; D. L. Hume, on or about January 20, 1936; and thereafter A. C. Cunningham, Osa Savage, Cleve White, Wyle Fitzpatrick, Lesale St. John, Pat Dennison, J. B. Locke, Fred Burt, Charles Sparkman, Lee H. Aldrich, Wilson Peters, Hugh Murphy, Aubrey Murphy, Douglas Lanesdale, W. M. Clark, Erbie St. John, Marvin Roberts, T. C. Barnett, Frank Smith, Lee Howard, Earl Doss, Huey Clark, and Lester Mann; and that the respondent has at all times since the dates set forth above, refused to employ the above-named employees, because of their union affiliation and activities.

As has been noted above, the respondent filed at the hearing a motion which in part prayed the dismissal of the complaint in so far as it related to those employees who were discharged prior to Au-

gust 7, 1935.⁷ The grounds for this motion, as enlarged upon in the respondent's brief, were that Arnold's dealings with the union committee concerning settlement of the strike constituted collective bargaining within the meaning of the Act; that the settlement was satisfactory to the Union as a whole; and that those union members who were discharged before the strike of August 8, 1935, were bound by the terms of the settlement since no dissent thereto was registered by the Union at the hearing.

As has already been noted, however, Arnold refused to meet in conference with any chosen representative of the Union who was not then in the respondent's employ, and pursuant thereto he refused to allow Maxwell and Knight to be included among the Union's representatives at the strike settlement conference. Arnold did not meet with the committee as the representative of the Union, but as the representative only of the picketers, and he made no effort to ameliorate conditions which gave rise to the strike. At the meeting with the committee, Arnold merely agreed that if the employees returned to work he would not thereafter discharge them for union membership or activity. It is clear that there was at this time no collective bargaining within the meaning of the Act. Furthermore, it is clear that the terms of the so-called agreement and the other facts cited by the respondent do not bar employees discharged by the respondent from asserting rights guaranteed them under the Act. We find, therefore, that the contention of the respondent is without merit.

J. W. Knight. Knight was employed by the respondent off and on from 1919 to 1923, and worked steadily as a blacksmith from 1923 to the time his employment was terminated. He was among those employees who in 1934 appealed to the president of the American Federation of Labor for assistance and who was active in 1935 in organizing the Union. He was apparently the first employee to join the Union and was generally known to be a leader in the campaign for union organization. He was discharged by Sharkey, the respondent's master mechanic, on June 3, 1935, such discharge to become effective June 7, 1935.

At the hearing Sharkey claimed that Knight's unsatisfactory work was the reason for his discharge. Sharkey's testimony was to the effect that Higginbottom, Knight's foreman, had complained of Knight's work for a period of 3 or 4 months prior to his discharge

⁷ The respondent's brief listed the following employees as falling within the purview of this portion of the motion: Frank Smith, Lee Aldridge [Aldrich], Neil [Neal] Burt, William Lankford, Richard Johnson, O'Dell Gray, Douglas Landsale, C. V. Scribner, Joe W. [J. W.] Knight, Tom Ozment, Ozey [Osa] Savage, John B. Mitchell [John Mitchell], W. C. Wood. The respondent's brief stated that with the exception of C. V. Scribner, these employees all testified that they were members of the Union.

and that when he was cautioned concerning the quality of his work, Knight replied "I am doing enough work for the money I am getting and I don't give a damn what you do about it."

Knight's testimony, however, throws a different light upon the discharge. He states that on June 3, 1935, Sharkey questioned him in detail concerning what he termed "a jimpson weed union" and about his membership therein. Knight admitted that he was favorable to the Union but denied membership in it, stating that he belonged only to the International Brotherhood of Blacksmiths and Helpers. According to Knight's testimony, Sharkey stated that he had no objection to Knight's membership in the blacksmiths' union, but said "this other union you belong to, that is what I'm talking about." Sharkey admitted questioning Knight concerning the Union, but claimed that he did so merely "out of curiosity."

In view of all the circumstances presented in the instant case, we feel that it is clear that Knight was discharged because of his union membership and activity. Little credence can be placed in Sharkey's explanation of Knight's discharge. The record is replete with instances of inconsistencies in his testimony. Thus, Sharkey testified that he was unaware of the cause of the strike and testified that he inquired relative thereto only after its settlement had been effected. Sharkey claimed that at this time Arnold, the respondent's manager, was unable to enlighten him. Such indifference as this is inconceivable in Sharkey, a foreman who supervised the activities of more than 200 employees, and one who displayed so much alleged curiosity in interrogating Knight and others concerning the Union. Furthermore, the record clearly indicates that at the post-strike meeting Arnold knew the cause of the strike and explained to his foreman, that it had been occasioned by the discharge of men for union activity. Sharkey testified, moreover, that he consulted Arnold on important matters, such as drastic increases or decreases in personnel and changes in methods of operation, but he was unable to explain his alleged failure to confer with Arnold relative to general personnel matters or labor conditions, which he admitted that he considered very important matters. He stated that on occasion he discussed with his superior the discharge of an employee of many years' service. He claimed, however, that he had not done so in the cases of Knight and C. V. Scribner,⁸ both of whom had been in the respondent's employ for approximately 16 years, but he advanced no reasons for this alleged departure from his usual practice.

Since Knight was discharged prior to the effective date of the Act, his discharge does not constitute an unfair practice within the purview

⁸ Scribner's discharge is discussed hereinafter.

of the Act. However, as noted above, Knight was denied reinstatement subsequent to the effective date of the Act. Applications for his reinstatement were made by J. Clyde Howard, United States Department of Labor conciliator, and by union committees on August 7 and 13, 1935. It appears, moreover, that on two occasions Knight made application in his own behalf. Each of these applications was denied and under all the circumstances it is clear that in denying Knight reinstatement the respondent was motivated by the same considerations that prompted the discharge.

The record indicates that at the time of his discharge Knight worked 45 hours per week and earned 56 cents per hour, and that between the time he was denied reinstatement and the date of the hearing he earned approximately \$1,200.

August 7, 1935, is the earliest definite date, subsequent to the effective date of the Act, on which the record clearly indicates that Knight was denied reinstatement. We find, therefore, that on August 7, 1935, and thereafter, the respondent refused to reinstate J. W. Knight because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

*John Mitchell.*⁹ Mitchell entered the respondent's employ in 1916 and from 1927 until June 15, 1935, worked as hardwood inspector. He joined the Union in April or May 1935, early in its organizational period, was shortly thereafter elected its treasurer, and later became its president. The record indicates that it was common knowledge in the plant that Mitchell was one of the leaders of the Union.

On June 15, 1935, J. E. Lawson, the respondent's plant superintendent, discharged Mitchell, stating as the reason that Mitchell was "dissatisfied with his job." At the hearing, the respondent claimed that Mitchell was discharged because he was a "disgruntled, dissatisfied, and inefficient employee."

Mitchell testified that about a week or 10 days before his discharge Lawson interrogated him concerning the Union. Mitchell stated that he denied being a member thereof, and that Lawson then threatened discharge to all workers affiliated with the organization. Lawson admitted that he had questioned his subordinates regarding their union membership but denied that he uttered the threat attributed to him. In the light of his antagonism toward the Union, however, we give little credence to this denial.

Mitchell's uncontroverted testimony is significant to the effect that his work was skilled, drawing wages higher than those of the ordinary sawmill worker, and that for 10 or 12 years prior to his discharge he had been considered a sort of head inspector, taking precedence over Robert Rengo, the only hardwood inspector who

⁹ This individual is referred to in the record as John B Mitchell

had greater seniority than had Mitchell. Furthermore, although the respondent contended that Mitchell's work was so unsatisfactory that it had elicited complaints from some of the respondent's customers, Mitchell was apparently not advised thereof at the time of his discharge. Lawson admitted, moreover, that by the time finished lumber products reached the purchaser there was no way of determining by whom inspection had been made. In this connection it is significant to note Mitchell's testimony to the effect that his fellow-inspector Rengo was not discharged but occupied Mitchell's position following the termination of the latter's employment.

Certain incidents which transpired subsequent to the termination of Mitchell's employment merit notice in so far as they reveal the respondent's attitude toward Mitchell which clearly prompted his discharge. Mitchell was the recipient of particular attention at the hands of the labor spies assigned to Crossett. Operative Herbert became a "friend" to the unsuspecting Mitchell, while Operative Fairfield testified that his express instructions from the Association were to go to Hamburg, Arkansas, where Mitchell was then residing, and to "stick with Mitchell." Moreover, Mitchell testified that he was directed to stay out of the City of Crossett, and the respondent's manager, Arnold, admitted that he offered to finance Mitchell's departure from the vicinity, allegedly to eliminate the "disagreeable situation." Apparently no action was taken upon Arnold's offer, however, for, as has been noted above, Mitchell was finally enabled to leave Arkansas with the assistance of money given him by Fairfield. This money Fairfield secured from the Association expressly for this purpose, and Arnold later reimbursed the Association for the sum thus expended.

It is clear that Mitchell was discharged because of his union membership and activities, but his discharge, like Knight's does not constitute an unfair labor practice for the reason that it took place before July 5, 1935, the effective date of the Act. Mitchell, however, was refused reinstatement subsequent thereto. According to Mitchell's testimony, Lawson denied his application for work made about July 7, 1935. Thereafter applications were made in his behalf by J. Clyde Howard and by union committees on August 7 and on or about August 13, 1935. Arnold rejected each of these applications and from all the evidence herein presented it is clear that in so doing he was motivated by the same anti-union bias which prompted Mitchell's discharge. Since Mitchell testified that July 7, 1935, was only the approximate date of his first denial of reinstatement, it cannot be found with certainty that such denial took place subsequent to July 5, 1935, the effective date of the Act. The record does not indicate on what date J. Clyde Howard requested that

Mitchell be reinstated. August 7, 1935, is, therefore, the earliest definite date, subsequent to the effective date of the Act, on which the record clearly indicates that Mitchell was denied reinstatement by the respondent.

At the time of his discharge, Mitchell worked 45 hours per week and earned 50 cents per hour, and he testified that between the time he was denied reinstatement and the date of the hearing he earned approximately \$1,150.

We find that on August 7, 1935, and thereafter, the respondent refused to reinstate John Mitchell because of his union membership and activities, and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

Tom Ozment. Ozment was employed by the respondent at various times from 1932 to 1935. At the time his employment was terminated in July 1935, he was employed as a night watchman at the respondent's number three sawmill. He joined the Union in June 1935.

At the hearing, Ozment testified that he secured permission from his foreman, C. V. Scribner, to take off the Saturday and Sunday nights preceding the severance of his employment; that when he returned to work the following Monday, July 11, 1935, his card was not in the clock; that, in response to his inquiry, Scribner replied that he did not know the reason for its removal. Since removal of the work card normally signified termination of employment, Ozment departed from the plant without making further inquiry. Subsequent to the termination of the strike on or about August 13, 1935, Ozment sought reinstatement and was told by Sharkey and other foremen that there was no need for his services.

Sharkey testified that he believed that Ozment's foreman, C. V. Scribner, laid Ozment off for absenting himself from work for 2 nights without permission. This was the only explanation of the discharge advanced by the respondent at the hearing, and little credence can be given to it. Not only was this testimony based solely on Sharkey's belief, but it is significant to note that the respondent failed to question Scribner regarding Ozment's discharge, although afforded an opportunity for so doing at the hearing when Scribner was called as a witness for the Board. Such non-action can only be interpreted as signifying that the respondent sought not to clarify but to conceal the circumstances surrounding Ozment's discharge.

In its brief, in discussing Ozment's discharge, the respondent states that the number three sawmill was permanently closed down on July 31, 1935. Since, however, no causal relation was established between the shut-down and the discharge on July 11, 1935, either by the brief or by the respondent's witnesses at the hearing, the fact

of the shut-down cannot be considered as a reason for the termination of Ozment's employment.

We conclude that the motivating cause for the discharge of this employee was the respondent's desire to delete from its pay roll an active member of the Union. This conclusion is strengthened by the testimony of Operative McVitch to the effect that he and Ozment had lived in the same hotel, that he knew Ozment to be a very active union member, and that he reported Ozment's union activities to the Association. Operative Herbert testified that he, too, included Ozment in his reports.

At the time of his discharge, Ozment was working 40 to 41 hours per week and earning 25 cents per hour. He testified that he earned about \$90 between the date of his discharge and that of the hearing.

We find that the respondent discharged Tom Ozment on July 11, 1935, because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

O'Dell Gray. Gray entered the respondent's employ in March 1934 and from September 1934 to about June 1935 worked in the buggy shop under Sharkey's supervision. He joined the Union in June 1935.

Shortly after he joined the Union, Gray was forced to lay off from work to have treatments for an eruption on his leg. The leg having healed, he attempted to return to work in the buggy shop. Sharkey, however, informed him that he was not needed. At Sharkey's suggestion, Gray then sought work from G. R. Lessor, superintendent of the respondent's planing mill and box factory, and secured a job in the box factory. This employment was terminated shortly. Gray stated that on or about July 9, 1935, he was sent to get a medical certificate and that when he returned with the certificate on the following Monday, July 11, 1935, Lessor gave him a settlement ticket and stated that there was no longer any work for him.

Lessor testified that Gray was sick a great deal and that he left the respondent's employ of his own volition. In support of this contention, counsel for the respondent introduced into evidence at the hearing a hiring ticket stating that Gray was hired on July 1, 1935, and a settlement ticket dated July 11, 1935. The settlement ticket is a printed form containing spaces designated for the insertion of names, dates, and the like. A space is provided for statement of the reason for severance of employment and directly beneath it is printed "quit or discharged, state which." This direction was not followed and nothing is written in the space. A faint pencil mark is visible, haphazardly struck across the lower part of the word "discharged." Gray denied that he had quit and asserted that when the ticket was given him, he had not noticed the pencil mark.

In view of the ambiguous nature of the ticket's marking and in view of Gray's denial, this ticket has little evidentiary value.

Sharkey's anti-union bias has been demonstrated above. It is significant to note, moreover, that it was Lessor who at Arnold's bequest gave employment to Operative McVitch. Lessor admitted that he had not been unaware of the presence of an under-cover operative in the plant, but he, like the respondent's other witnesses, claimed that he had heard of no secret reports transmitted to Arnold. The latter testimony is hardly credible under the circumstances and lessens the credence given to Lessor's explanation of the termination of Gray's employment. Under the circumstances we are convinced that Sharkey and Lessor, in acting in the manner described above, were executing a plan to eject Gray from the respondent's service without the appearance of unnecessary abruptness. We are further convinced that Gray's alleged quitting was a fabrication employed by the respondent in an effort to camouflage the fact that Gray was discharged for his union affiliation and activity. This conviction is strengthened by Gray's uncontroverted testimony that his subsequent applications for reinstatement were denied by all of the respondent's foremen.

According to the employment statement submitted by the respondent for the record, the last day on which Gray worked for the respondent was July 8, 1935. His employment was not definitely terminated, however, until July 11, 1935. At this time, Gray worked 40 hours per week and received 25 cents per hour.

We find that the respondent discharged O'Dell Gray on July 11, 1935, because of his union affiliation and activities, and that the respondent thereby discriminated against him with respect to hire and tenure of employment.

Douglas Lansdale. Lansdale entered the respondent's employ in 1925 and except for a few months worked throughout the period of his employment as a grader under Buchner, foreman of the green yard. He joined the Union about June 10, 1935, and was active in its affairs, attending meetings and soliciting members. His activities were reported upon by Operatives Herbert and McVitch.

According to Lansdale's testimony, during June 1935 S. S. Jarvis, Buchner's assistant, stated that he had learned that Lansdale was a union member, and on several occasions thereafter questioned Lansdale concerning the Union and advised him to report to Arnold if he wanted to hold his job. Jarvis denied that he had questioned Lansdale or so advised him but admitted that he had been certain of Lansdale's union affiliation. He also admitted that he had talked with Lansdale and others in his crew about the Union. The inconsistencies in statements made by Jarvis at the hearing cast doubt upon the credibility of his testimony and of his denials.

During the latter part of June 1935 Lansdale laid off for a week or two to obtain treatment for hemorrhoids. He testified that upon his return on July 9, 1935, Buchner stated that Arnold had instructed him to send Lansdale to the respondent's doctors for a physical examination before permitting him to return to work. It appears that the doctors, Smith and Spivey, found Lansdale physically fit, and he returned to work. After Lansdale had worked for about an hour, J. E. Lawson, plant superintendent and Buchner's superior, informed him that he would have to obtain from the doctors a written certificate that he had passed the examination. No requirement such as this had been made before, it appears, and on July 9, 1935, Dr. Spivey informed Lansdale that he had no authority to issue any such certificate. Several days later both Lawson and Jarvis told Lansdale that they could not use him any more, and about a week later he received notice to vacate his company-owned house.

The respondent claimed that Lansdale's irregularity on the job necessitated the requirement of a certificate of physical fitness. It is significant, however, that no evidence was introduced to controvert Lansdale's testimony that the procedure employed in his case was unprecedented and that the respondent's doctors were not authorized to issue written certificates to employees.

The respondent further contended that Lansdale was not an entirely satisfactory worker. Jarvis testified that although Lansdale's grading work was good, he caused a good deal of friction because of his alleged lack of cooperation with the mill foreman and because of his alleged unwarranted assumption of authority around the mill. Jarvis stated that Lansdale had threatened a negro worker that the latter would lose his job if he did not join the Union. It is significant to note that Jarvis admitted that Lansdale's alleged lack of cooperation had continued for about 4 years without meriting disciplinary action. Furthermore, in a letter dated July 30, 1935, A. W. Bird, the respondent's superintendent of manufacture, characterized Lansdale as "very capable, energetic, and considerably above the average man pursuing this line of work . . . law abiding . . . and being progressive has wonderful possibilities of development ahead of him." Relative to Jarvis' testimony it may be noted finally that, on his own admission, he was extremely antagonistic to the Union and reported all of his findings concerning it to Buchner. He quoted Buchner as having said, "We are too far south to tolerate such as that ["any type Union that would call the negro and the white man brother"], if we got a way to avoid it."

In view of all of the facts presented, we conclude that the respondent's alleged reasons for terminating Lansdale's employment were merely pretexts employed in an effort to disguise its true motives.

The record indicates that at the time of his discharge Lansdale was earning 39 cents per hour and working 48 hours per week, and that between that time and the date of the hearing he earned approximately \$315.

We find that the respondent terminated the employment of Douglas Lansdale on July 9, 1935, because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

William Lankford. At the time his employment was terminated, Lankford had worked for the respondent approximately 2 years on the dry chain under Ross' supervision. The record indicates that Lankford and another employee, Lamar Carver, handled cars jointly "taking down lumber," and that the amount of their pay depended upon the outcome of their joint endeavors. For each car handled the respondent paid a fixed rate which the two men split between them. Lankford joined the Union in June 1935 and attended its meetings.

The evidence shows that on July 16, 1935, Lankford's work card was missing from the clock. Lankford testified that in response to his inquiry Ross stated that Lankford was "through" and that he, Ross, "was getting tired the way . . . [Lankford] had been doing there lately."

The respondent's alleged reason for Lankford's discharge was that he was a "big talker" and that his work was not satisfactory. According to Ross' testimony, Lankford was warned that he was not achieving the required quota. Lankford testified without contradiction, however, that the warning consisted of a statement to the effect that he and Carver had "better pay a little more attention to . . . work instead of night meetings."

Carver was laid off at the time of Lankford's discharge, but was reemployed the next morning. Ross explained that Carver was reinstated because it was discovered that Lankford was the one responsible for the failure of the two men to achieve their production quota. Ross failed to explain, however, how he was able to ascertain this fact. The testimony of Fred Burt and Lester Mann who are also named in the complaint throws a different light on Carver's reinstatement. Burt testified that Carver withdrew from the Union on the day of his discharge and Mann quoted Carver to the effect that he had withdrawn from the Union and that Mann had better do likewise if he desired to continue working.

It is also significant that according to Ross' testimony Lankford's job was given to Jim George. Whereas Lankford had been a regular employee, Ross admitted that George had been an extra hand, and that he, Ross, had not known whether George's work would be any better than Lankford's. Ross also admitted that he advised the men that he "could not see any good a Union would do for the men, a

four bit Union; there wasn't enough behind it." Cross-examination elicited from him an admission that he did not like any kind of union, and that in expressing his opinion of the Union he had not always made it clear to his subordinates that he was giving utterance to his personal sentiments and not those of the respondent.

Lankford was earning from \$9.60 to \$10 per week at the time of his discharge. He testified that between that date and the time of the hearing he had earned about \$700.

In view of the considerations herein discussed and of the record as a whole, we are of the opinion that the real motive behind Lankford's discharge was not the one advanced by Ross. We find that the respondent discharged William Lankford on July 16, 1935, because of his union membership and activities, and thereby discriminated against him in regard to hire and tenure of employment.

Neal Burt. Burt worked for the respondent on various occasions from 1933 to 1935. In February 1935, he was put on one of the two dry-chain crews where he worked until his employment was terminated on July 23, 1935. He joined the Union in May or June 1935. Burt testified that he participated in the strike of August 8, 1935, and after the strike settlement frequently but unsuccessfully sought reinstatement.

According to Burt's testimony, his brother Fred, who was a grader in the dry kiln, directed him and two fellow employees to wait a few minutes before bringing up additional empty buggies. Accordingly the three men sat down to wait. Burt stated that under the circumstances this was not an unusual or forbidden course of action but that his foreman, Ross, saw them, asked why they were not at work, and upon being informed of the facts discharged Burt. Ross testified that Burt exchanged words with him relative to the propriety of his doing other work while waiting for the buggies and that he discharged Burt when the latter failed to heed his instructions. Burt, on the other hand, denied that he refused to carry out any instructions given him by Ross.

At the hearing, the respondent took the position that Burt was discharged for sitting down on the job and for refusing to obey orders. In view of all the facts, this contention cannot be accepted. Burt's fellow workers were apparently neither discharged nor reprimanded. Ross was admittedly hostile to the Union and, according to Burt's uncontroverted testimony, had questioned Burt relative to his union membership and had warned him that he had better get on the "right side." It is significant that Operative Herbert reported upon Burt's union activities.

At the time of his discharge Burt worked 44 or 45 hours per week and was paid 24 cents per hour. He testified that he had earned

approximately \$360 since his discharge and that he was unemployed at the time of the hearing.

We find that the respondent discharged Neal Burt on July 23, 1935, because of his union affiliation and activities, and that the respondent has thereby discriminated against him in regard to his hire and tenure of employment.

Lee H. Aldrich. Lee H. Aldrich was employed by the respondent in May 1933, and in May 1935 began to work as a teamster in the logging department under the supervision of Jack Shaw, logging foreman. Aldrich joined the Union on June 8, 1935.

On July 31, 1935, at the end of the working day, Shaw told his crew, "We will take our rigs all in tonight. This means all of it." Aldrich testified that when he asked the reason for such action, Shaw replied, "Well, you boys are in this Union, we will all be without a job; no doubt but what we'll all be without a job."

The respondent stated that a reduction in logging operations, which had been continuing over a period of 4 years, made necessary the lay-off of Aldrich and the other members of the logging crew. This explanation of Aldrich's discharge must be considered, however, in the light of all the facts presented at the hearing. Particularly significant in this connection is Aldrich's testimony that the other members of the logging crew were put back to work after the strike of August 8, 1935, and that his place was filled. The respondent advanced no convincing argument to negative the implications of this testimony.

Wilcoxon stated that Aldrich was not considered a leader of the Union but just a "big talker." The evidence indicates, however, that Aldrich was active in union affairs, and Operative McVitch stated that he had seen him several times at Maxwell's house, at union meetings, and on the picket line.

Aldrich testified without contradiction that a day or two before the strike he asked Shaw whether he knew when the crew was going back to work and that Shaw replied, "No, I don't, I haven't heard anything, only this . . . Lee, as far as your part is concerned, I think you are done definitely. However, . . . you go and talk to him [Wilcoxon] and his decision will be final." Aldrich related that after the strike he requested Wilcoxon to restore him to his job, but that the latter replied "Lee, I held my office open until 9:30 each night for your benefit, and you did not come. So far as I am concerned, you haven't got any job." Wilcoxon denied making this statement and stated that any conversation between them was general in nature. Wilcoxon gave Aldrich a letter of recommendation, dated August 14, 1935, which stated that Aldrich's work had been "entirely satisfactory" and that his lay-off had been caused by reduction in respondent's logging department force.

Aldrich also went to see Arnold, the respondent's manager. Aldrich claimed that he did this on Wilcoxon's suggestion, which the latter denied. On this and on subsequent occasions Aldrich sought reinstatement but Arnold denied his applications, and refused, moreover, to allow him to serve as a member of the strike settlement committee or to be included among those who were to return to work after the strike. Aldrich was served with notice, dated August 24, 1935, to vacate his company-owned house. Because of his wife's illness, Aldrich did not comply with the notice, and the respondent had him moved out.

The record indicates that Aldrich was unable to secure work elsewhere for the reason that the respondent, in cooperation with other companies belonging to the Association, maintained a blacklist against union members. On August 22, 1935, Aldrich secured a job with the Louisiana Delta Hardware Company, Trout, Louisiana, loading trucks under the supervision of T. V. Toler, brother of J. W. Toler, the respondent's woods superintendent. According to Aldrich's testimony, T. V. Toler discharged him on September 2, 1935, stating that he did so on the advice of J. W. Toler who had written him that Aldrich had been in the picket line at Crossett. Although the Toler brothers attempted to controvert this testimony, little credence can be placed in their explanations due to manifold inconsistencies and contradictions in their testimony.

In the spring of 1936, Aldrich secured employment with the Russ Construction Company, which was then engaged in erecting the Crossett Paper Mills. He was discharged after 2 weeks' work. According to the testimony of Crossett Erwin, safety director for the construction company, Aldrich's foreman reported that Aldrich was complaining of a chronic back ailment, and Erwin recommended his discharge allegedly to protect the construction company from possible liability. Erwin admitted, however, that his recommendation was made without any investigation or examination to determine the actual condition of Aldrich's back, and admitted further that Aldrich told him that his back was all right. These facts and other circumstances surrounding the discharge cast considerable doubt upon the genuineness of the alleged reason for the discharge.

There is some confusion in the testimony as to when Aldrich was discharged by the respondent. The employment statement submitted by the respondent for the record stated that July 31, 1935, was the date on which Aldrich last worked for the respondent, and we find that Aldrich was discharged on that date. The record indicates that at that time Aldrich was earning 30 cents per hour, and that he had earned approximately \$200 since that date.

On the basis of all the facts, we are of the opinion that the real motive behind Aldrich's discharge was not the one alleged by the

respondent. We find, therefore, that the respondent discharged Lee H. Aldrich on July 31, 1935, because of his union affiliation and activities, and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

C. V. Scribner. The complaint, as amended, alleged that the respondent terminated the employment of C. V. Scribner on or about August 1, 1935, and thereafter refused to employ him because of his union membership and activities. The respondent contended that Scribner's lay-off and subsequent denial of reinstatement was due solely to the fact that on July 31, 1935, the respondent closed down its number three sawmill. Relative to the close-down, the respondent stated that because of the depression plans had been worked out in 1933, with the aid of the United States Forest Service, whereby the respondent might handle its business on a "sustained yield basis." These plans allegedly necessitated the reduction of the logging and mill output, and respondent stated that this reduction had been accomplished by abandoning the logging camp in 1934 and discontinuing the mill in 1935.

The respondent's explanation of its failure to continue Scribner in its employ must be judged in the light of all the circumstances. Scribner was employed by the respondent in 1918, and at the time of his lay-off he was working as mill foreman at number three sawmill. He was not a union member but as early as May 1935 had expressed himself to the respondent's officials as being in favor of labor organization. Scribner testified that Arnold, in making his frequent tours of inspection, asked him if he knew anything about the Union, and, upon receiving a negative reply, remarked, "Well, it is probable they have a union started. Of course, we don't want to tolerate this thing. We can't afford to as a corporation." Arnold failed to deny this testimony when questioned concerning it. Scribner also testified without contradiction that Sharkey, his immediate superior, asked him if he had any union men working under him, and made remarks in the nature of a reprimand when Scribner did not furnish detailed information concerning the Union.

After the closing of number three mill, Scribner was left unemployed, although 20 or 30 of his subordinates were shortly thereafter transferred to other work. Scribner testified that two of his subordinates were put on the millwright crew, assigned to do a type of work in which he had considerable experience. According to Scribner's testimony, before the strike of August 8, 1935, he applied to Arnold for reinstatement, but Arnold denied his application and stated that 35 or 40 men had reported that Scribner was involved in union activities. Shortly thereafter Scribner's wife secured a letter of recommendation for her husband. She testified without contradiction that in response to her inquiry as to why her husband

was not given employment, Arnold said that Scribner had not advised the men against the Union but had merely told them "Let your conscience be your guide." Arnold concluded by stating that that was "not working for the company's interest."

Operative McVitch testified that when he first came to Crossett and applied for a job with the respondent, he had conversed with Scribner and had reported him as a man friendly to the Union. Apparently Scribner was another victim of the respondent's blacklisting activities. He testified that in March 1936 he asked whether or not Arnold objected to his working in the paper mill, and Arnold replied that he had no objection if Scribner could get a job. Scribner related that when he applied for work with the Russ Construction Company, which was erecting the respondent's paper mill, he was given a physical examination and was refused employment because of an alleged heart leakage. According to Scribner's uncontradicted testimony, however, other doctors did not discover any such ailment, and at the time of the hearing he was experiencing no difficulty in performing difficult manual labor. Scribner stated, moreover, that an employer at "Charles, Louisiana," refused him employment when questioning elicited the fact that Scribner had worked at Crossett.

Under all the circumstances we are of the opinion that Scribner was not transferred to other work at the time the mill closed down on July 31, 1935, because he manifested a lack of antagonism to the Union, and because he failed to assist the respondent in its anti-union activities. It appears that it was customary for the respondent to replace almost immediately foremen whose work was discontinued or completed. The evidence indicates that only a short time elapsed between the close-down of the mill and the transfer to other-work of most of the other employees in the number three mill. As noted above Scribner applied for work prior to the strike of August 8, 1935. We conclude that, except for his failure to assist the respondent in its anti-union activities, Scribner might have been laid off for a few days, but that by August 8, 1935, he would have been again in the respondent's employ.

The record indicates that at the time of his lay-off Scribner was working 30 hours per week and earning 50 cents per hour, and that between that time and the date of the hearing he had earned approximately \$400.

We find that by its failure to reinstate C. V. Scribner prior to August 8, 1935, and thereafter, the respondent discriminated against him in regard to hire and tenure of employment in order to discourage membership in the Union.

W. C. Wood. W. C. Wood worked for the respondent off and on from 1918, and regularly from 1929 until August 1, 1935. For approximately 2 years preceding the termination of his employment, he

was employed as a night watchman in the respondent's number one sawmill. He became a member of the Union in July 1935.

Wood was discharged on August 1, 1935, by Walter Stepherson, foreman of the number one sawmill. The respondent's alleged reason for Wood's discharge was that his poor eyesight disabled him for work. On the day prior to his discharge he was required to take a physical examination. He was found physically fit and was then required to have his eyes examined. During the course of this examination he mistakenly read the letter "F" as the letter "E." Stepherson and his superior, Sharkey, the respondent's master mechanic, stated that the examinations were required because Wood seemed unable to perform his duties adequately, and failed to clean the mill properly during his night watch, which allegedly created a fire hazard. Stepherson also testified that he had previously transferred Wood from a dangerous position in the mill to the job of night watchman because he thought it was suitable employment for one with defective vision.

It is significant to note that, on Sharkey's own admission, the requirement of an eye test was unusual, the only other case in which it had been made being that of a jitney driver who on several occasions had wrecked his jitney. Furthermore, a practical test was made at the hearing, which revealed that defects in Wood's vision were adequately corrected by his use of glasses.

The evidence indicates, moreover, that prior to his discharge Wood was not apprised that his work was faulty but was interrogated by Stepherson as to the Union and his affiliation with it. Wood testified that by questioning of this kind on several occasions, Stepherson elicited from him an admission that he was a union member; that Stepherson warned him that he would lose his job if he did not withdraw from the Union; and that Stepherson finally told him that he could quit whenever he desired. This testimony stands uncontroverted in the record. Wood's job was taken by A. L. Kenoyer, an employee with less seniority than Wood and apparently not a member of the Union.

At the time of his discharge Wood was working 39 hours per week and earning 25 cents per hour. From that date to the time of the hearing he earned approximately \$350.

On the basis of all the facts, we cannot accept the respondent's explanation of Wood's discharge. We find, therefore, that the respondent discharged W. C. Wood on August 1, 1935, because of his union affiliation and activities and thereby discriminated against him in regard to hire and tenure of employment.

*Osa Savage.*¹⁰ Osa Savage worked for the respondent on various occasions from 1929 to 1935. His last period of employment began on

¹⁰ This individual was referred to in the record as Ozey Savage.

March 18, 1934, and at the time his employment was terminated he was a grader in the oak flooring plant. He became a member of the Union in April 1935, was elected to an office, and became very active in union affairs.

Savage was discharged by his foreman, White, on August 1, 1935. Lessor, supervisor of the flooring plant and White's superior, stated that the National Oak Floor Manufacturers Association had recommended a reduction of the respondent's staff of graders from three men to two, and that the respondent had chosen to effect the reduction by laying off Savage for the reason that he had less seniority than the other two graders.

Little or no evidence was introduced by the respondent to substantiate this testimony and considerable doubt is raised as to Lessor's credibility. As has been noted above, he was the only foreman who admitted having known that there were under-cover operatives at work in the plant, and it was he who hired Operative McVitch. This merits particular consideration in connection with Savage's discharge, for McVitch called upon Savage at his home and thereafter reported him as being a very staunch union member.

Lessor admitted that Savage was a good grader and refused to state whether or not the two graders retained had more experience than Savage. Further significant facts are gathered from Savage's uncontroverted testimony. Shortly before his discharge, he was advised by Foreman White to talk with Arnold, the respondent's manager, and "to pull out of the union."¹¹ Moreover, the respondent subsequently hired a man named Poindexter expressly for the purpose of replacing Savage. On August 7, 1935, Savage served upon the union committee which conferred with Arnold concerning the discharged union members. On approximately the same date his applications for reinstatement were denied by White and Lessor.

At the time of his discharge Savage worked approximately 44 hours per week and earned 42½ cents per hour. Between that date and the time of the hearing he earned approximately \$1500. At the latter date, he was employed by the Southern Lumber Company, Warren, Arkansas, earning 52½ cents per hour. He expressed his preference for his former position with the respondent and stated that he would accept an offer of reinstatement if he could return to work in good standing.

In view of all considerations herein discussed and in the light of the record as a whole, we are of the opinion that the true reason for Savage's discharge was not the one stated by the respondent. We find, therefore, that on August 1, 1935, the respondent discharged Osa Savage because of his union affiliation and activities, and there-

¹¹ White was not called as a witness at the hearing.

by discriminated against him in regard to hire and tenure of employment.

Frank Smith. Smith worked for the respondent off and on from the year 1908, and was regularly employed from 1921 to 1935 in the respondent's woods division. He joined the Union in June 1935, and participated in the strike of August 8, 1935. His activities were described in the reports of Operatives McVitch, Herbert, and Fairfield.

Fred DeLong, right-of-way foreman, testified that about July 24, 1935, he was forced to lay off Smith and five other members of the logging crew because of a lessening of the crew's activities. Although it was admitted that he had greater seniority than most of his fellow employees, Smith was apparently the only member of the crew laid off who was not transferred to some other regular work. DeLong admitted that he had questioned his men concerning their union membership, allegedly "out of curiosity," but asserted that Smith had denied belonging to the Union.

Smith testified that he had not been laid off until after the strike on August 8, 1935; that prior to his lay-off he had been transferred from DeLong to Bagley, team boss in the logging woods; and that he did not recall how much time elapsed between the date on which he last worked for DeLong and the date on which he began to work for Bagley. The respondent's records indicated that Smith worked for Bagley on August 14 and 15, 1935, on a temporary job and that his employment was terminated on August 15, 1935. Smith stated that when Bagley no longer needed him, he reported to DeLong but was told that the latter was "not hiring any damn hands."

Smith was thereafter put out of his company-owned house. He consulted Superintendent Wilcoxon concerning this and testified that Wilcoxon stated, "Never mind the damn house, I just want to tell you fellows you were cheated by the Union . . . I learned that you were one of the union leaders, and done lots of work at night for the Union, and lots of damn agitating. Well, now you are out of a job and will be out of a job, for I am going to get rid of the union bunch." Smith recounted that he argued that a negro could not be a union leader but that Wilcoxon refused to discuss the matter allegedly because Smith had not called on him pursuant to the notice of July 22, 1935. Wilcoxon denied that he had such a conversation with Smith. In view of the reports of the labor spies and of the other facts presented, we give little credence to his denial and conclude that Smith was discharged because of his union activity and membership.

Although the exact date of Smith's discharge does not appear, it is clear and we find that it occurred not later than August 15, 1935. He was then earning 24 cents per hour. From that date to the date of the hearing he earned approximately \$175.

We find that the respondent terminated the employment of Frank Smith on August 15, 1935, because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

J. A. Langley. Langley was employed by the respondent at various times from 1928 to 1935. He joined the Union on May 15, 1935, but took no active part in its affairs. He received temporary employment from May 6 to June 4, 1935. Langley participated in the strike of August 8, 1935. Nevertheless, on August 19, 1935, he was employed by the respondent at the treating plant. On August 21, 1935, he was laid off by Bill Jones, foreman. Langley testified without contradiction that Jones said, "Arnold gave me orders to lay you off." The evidence introduced by the respondent indicated that Langley was employed on August 19, 1935, merely as an "extra worker." Langley's subsequent application for reinstatement was unsuccessful.

We find from the above facts that the respondent did not discriminate against Langley with respect to hire and tenure of employment, and we shall therefore dismiss the amended complaint in so far as it pertains to him.

Gene McKimmy. McKimmy entered the respondent's employ in 1932. In 1934 he began to work in the transfer department "putting up sticks for the stackers." He joined the Union in May or June 1935, attended its meetings, and participated in the strike of August 8, 1935.

On August 24, 1935, Foreman Buchner discharged McKimmy. Buchner died prior to the date of the hearing, but Lawson, plant superintendent, claimed that he had heard Buchner discuss the circumstances surrounding the discharge. Lawson testified that Buchner discharged McKimmy because of his unsatisfactory work; that Buchner had for several months made complaints concerning McKimmy's poor work but had retained him as long as possible out of respect for McKimmy's half brother, the respondent's chief inspector of manufacture and grades and a loyal employee of many years' service. It is significant to note that the respondent had not been impelled to take disciplinary action against McKimmy because of poor work until he became active in the Union. Furthermore, McKimmy was apparently not advised of his alleged deficiencies, either at the time of his discharge or prior thereto. McKimmy testified without contradiction that immediately following his discharge Arnold asked him whether he had been "treating the company right" by joining and assisting the Union. He testified further that Buchner said he had "talked union too damn much."

When explaining the circumstances surrounding the discharge, Lawson seriously damaged the credibility of his own testimony. In

addition to his statement that McKimmy was discharged because of unsatisfactory work, Lawson advanced other alleged reasons which he later admitted had nothing to do with the discharge. Moreover, McKimmy testified without contradiction that 4 or 5 weeks prior to his discharge Lawson had questioned him concerning the Union and had disclosed that he was very much opposed to the Union and thought it just something to get the men into trouble.

The record reveals that McKimmy's union activities were described in the reports of Operatives McVitch, Herbert, and Fairfield.

At the time of his discharge McKimmy was working about 45 hours per week and earning 24 cents per hour. Between that time and the date of the hearing he earned approximately \$300.

In view of all the evidence presented, we are of the opinion that the real motivating cause for McKimmy's discharge was not his unsatisfactory work. We find that the respondent discharged Gene McKimmy on August 24, 1935, because of his union membership and activities and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

*Pat Dennison.*¹² Dennison was in the respondent's employ on several occasions from 1928 to 1935. His last period of employment for the respondent began on March 1, 1934, and about a month thereafter he was made section foreman in the woods section. He joined the Union in May 1935 and participated in the strike of August 8, 1935.

On August 26, 1935, Dennison was discharged by J. W. Toler, the respondent's woods superintendent. The respondent contended that a change in operations had effected the consolidation of the camp repair and section crews, obviating the need for two foremen, and that Dennison was laid off because he had less seniority than Walzer, foreman of the camp repair crew. It is significant, however, that Dennison was the only member of the crew who was discharged on August 26, 1935, because of the alleged consolidation. It was not until a few days later that a few of his subordinates were laid off, and the remaining members of the crew were thereafter transferred to other work or given employment on the consolidated crew. These facts were admitted by Toler who testified that with the possible exception of two or three subordinate workers, concerning whom his testimony was very vague, Dennison was the only employee whose service was terminated by the alleged consolidation. No effort was made to place Dennison nor was any explanation made of the fact that Toler was able to find work for Dennison's subordinates but not for Dennison.

¹² This individual was referred to in the record as **Pat Denison**.

Dennison testified without contradiction that about a day or two prior to his discharge he conferred with Toler concerning the project on which Dennison was then engaged, and that Toler directed him to carry the project to completion, a matter of about 3 months' steady work. It is significant that at that time Toler gave Dennison no indication that the alleged change in operations was contemplated.

In connection with the discharge of an employee such as Dennison, whose work was satisfactory and whose qualifications were excellent, it is particularly significant to note the testimony of Operatives McVitch, Herbert, and Fairfield, to the effect that they had included him in their reports. Furthermore, Dennison testified that prior to his discharge Toler had questioned him concerning the union affiliation of members of the crew, and that both Toler and Arnold, the respondent's manager, directed him to advise the men to withdraw from the Union. This Dennison did not do. This testimony is not directly controverted in the record and under all the circumstances we find it worthy of credence.

At the date of his discharge Dennison was working 45 hours per week and earning 32 cents per hour. Between that time and the date of the hearing he earned approximately \$46. He was unemployed at the latter date.

In view of the facts herein related and of the record as a whole, we are of the opinion that Dennison was discharged and not reinstated because he affiliated himself with the Union, manifested a lack of antagonism toward it, and failed to aid the respondent in its anti-union activities. We find, therefore, that by its discharge of Pat Dennison on August 26, 1935, the respondent discriminated against him in regard to hire and tenure of employment.

*Herbert Lester Clark.*¹⁸ Clark was employed by the respondent in the year 1932 and worked in the respondent's machine shop for about 14 months preceding his lay-off. He joined the Union in July 1935, and took an active part in the strike of August 8, 1935. Operative McVitch stated at the hearing that he had described Clark in his reports as a very active union member.

During August 1935, Clark's work card was taken from the clock, and his foreman, W. J. Gulledege, told him that it was necessary to lay him off in order to take care of older men. Gulledege testified that his crew was rearranged to make room for John Draper, an all-around sawmill worker who was thrown out of work in July 31, 1935, by the closing down of the number three sawmill. Gulledege claimed that the innovation necessitated Clark's lay-off, and added that the latter was often drunk and was "the youngest man in the draw."

¹⁸ This individual was referred to in the record as Lester Clark.

The evidence indicates, however, that a number of employees with less seniority than Clark were retained on Gullede's crew at the time Clark was laid off. In this connection Clark testified that he asked Arnold why he was laid off in lieu of two negro workers hired the previous week and that Arnold, after first attempting to evade the question by asserting that Clark could not do a negro's job, stated, "I will tell you Clark, you are just hard-headed, you are full of fire and brimstone." Clark testified further concerning Arnold's remarks, ". . . and he told me I was too hot for Crossett. He told me to go on and take a while to cool off and come back, and he would gladly work me . . . suggested a year, and . . . he says 'You were seen on the picket line, wasn't you?'" This testimony is not controverted in the record.

As for Clark's alleged drunkenness, we find that he was laid off on one occasion for being intoxicated. After 2 or 3 weeks, however, he was reinstated, on June 3, 1935, and Gullede admitted that there had been no similar complaint of Clark since that time.

Subsequent to his discharge Clark made several applications for reinstatement, but such applications were rejected by the respondent's foremen. Furthermore, the record indicates that Clark was an added victim of the respondent's blacklisting activities.

In view of all the facts, we conclude Clark was discharged and denied reinstatement because of his union activities and membership. There is some variance in the testimony as to the exact date on which his discharge took place. Clark thought that the date was approximately August 17, 1935. The respondent's records indicate, however, that the date was August 30, 1935, and we find the latter date correct.

At the time of his discharge Clark earned 24 cents an hour for work on the day shift, and 27½ cents an hour for work on the night shift. Between the time of his discharge, and the date of the hearing he earned approximately \$660. The record indicates that Clark was unemployed at the latter date.

We find that the respondent discharged Herbert Lester Clark on August 30, 1935, because of his union affiliation and activities, and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

Hollis Hill. Hill worked for the respondent as a common laborer at various times during 1934 and 1935. His last period of employment with the respondent began in April 1935. He joined the Union in June 1935, attended its meetings, participated in the strike of August 8, 1935, and served on the committee which conferred with Arnold concerning settlement of the strike.

Lessor, Hill's foreman, discharged him in August 1935, assuring him that his work was satisfactory, but stating that the older men

had to be taken care of first. Lessor testified at the hearing that a decrease in the work at the planing mill and box factory had necessitated a reduction in force, and that the respondent's seniority rule had required Hill's lay-off.

Throughout the record it is clear that the respondent utterly disregarded all seniority rules whenever adherence thereto would have been prejudicial to non-union employees. For this reason Lessor's testimony as to his alleged observation of the rule of seniority in discharging Hill is of no particular significance. Additional light is thrown upon the discharge by the testimony of Operative MvVitch that he included Hill in his reports as being a union member who attended all its meetings and who was very active on the picket line. In view of all the facts, we are of the opinion that the respondent's real motive in discharging Hill was to eject from its service an active union man.

There is some variance in the testimony as to the exact date on which Hill's employment was terminated. The latter testified that the date was approximately August 21, 1935, but the respondent's records indicate that the date was August 30, 1935. We find that Hill's discharge occurred on August 30, 1935.

At the time of his discharge Hill was working 44 hours per week and earning 24 cents per hour. He testified that since his discharge he had worked for the Southern Kraft Paper Corporation, Bastrop, Louisiana, earning 36 cents per hour during a period of 11 months, and 40 cents per hour during a period of 3 months. On April 19, 1937, Hill secured employment at the Crossett Paper Mills, Crossett, Arkansas, and he was working there at the time of the hearing, earning 42 cents per hour. No indication is found in the record that Hill preferred his former employment to his present work.

We find that on August 30, 1935, the respondent laid off Hollis Hill because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

T. C. Barnett. For about 15 years prior to 1935, Barnett on various occasions hauled lumber for the respondent. He was not steadily engaged to do this work, but at various times applied at the respondent's office for a hauling job and if any timber was ready for hauling, Wilcoxon or some other supervisory employee engaged him to do a specific job. At times it required a period of months to do such work. Barnett operated his own truck, bought his own gas, and, after being advised as to the lumber which he should haul, did not work under instruction of the respondent. He was paid on the basis of the amount of lumber handled. He obtained his last hauling job with the respondent in October 1934 and pursuant thereto was engaged in hauling lumber until the last of December 1934.

Barnett contends that his failure to secure additional hauling jobs was due to his union membership and activities. He joined the Union in July 1935 and participated in the strike and picketing. Operatives Herbert and McVitch reported upon his union activities.

The respondent claims that any failure of Barnett to secure additional hauling jobs was due to a discontinuance of certain of its wood cutting operations and that, in addition, Barnett was an independent contractor rather than an employee and hence not within the purview of the Act. Although the evidence as to Barnett's relationship with the Company is somewhat vague, it appears that he was in fact an independent contractor rather than an employee. However, we are of the opinion that irrespective of this it was not established at the hearing that Barnett was denied employment by the respondent because of his union membership or activity. The record does not show any definite application for work by Barnett or establish that the respondent had available any work of the type sought by Barnett. We have only Barnett's rather confused testimony that on various occasions he tried to get another "contract" and that on one occasion Wilcoxon told him, "Tom, I guess you have made a mistake." It is not clear from Barnett's testimony whether his applications for a "contract" were made before or after the effective date of the Act or whether the remark he attributed to Wilcoxon was prior to such date.

On the basis of the facts presented, we are of the opinion that it has not been established that the respondent discriminated against T. C. Barnett in regard to hire and tenure of employment and we shall therefore dismiss the allegations of the amended complaint in so far as they apply to him.

Richard Johnson. Johnson entered the respondent's employ in 1911 and for approximately 6 years prior to 1935 worked as a cleaner in one of the respondent's woods camps. When the camp was abandoned in the spring of 1935, Johnson was laid off. No assertion was made at the hearing that this action was discriminatory. Furthermore, the lay-off occurred prior to June 10, 1935, the date on which Johnson joined the Union, and also prior to July 5, 1935, the effective date of the Act.

Shortly after his work with the respondent terminated, Johnson secured employment with the sanitary department of the town of Crossett under the supervision of J. H. Reed, the town street commissioner. Thereafter, apparently about the first part of August 1935, Johnson was discharged by Reed allegedly because of unsatisfactory work. Johnson testified that, prior to his discharge, Reed questioned him concerning his union membership.¹⁴ However, even

¹⁴ About the time of his discharge Johnson participated in the strike and picketing.

if Johnson were discharged because of such membership, it is not established that the respondent is chargeable for such action. Although the gang of which Johnson was a member at times did work for the respondent, the evidence indicates that municipal employees were separate and distinct from the employees of the respondent. Furthermore, the respondent apparently reimbursed the town for the costs of the occasional work done for the respondent by the municipal crew. Although Johnson lived in one of the respondent's houses, the town apparently rented it for him. Johnson's wages were paid by the municipality.

Johnson also testified that he had entered the employ of the municipality upon the assurance by Reed that upon the termination of his work Reed would return him to the respondent's employ. He stated that Reed had refused to keep this agreement although requested to do so. At the hearing, Reed admitted that Johnson had asked him for a job with the respondent but testified that he told Johnson he "had nothing to do with that at all." The record does not show that Reed had any authority to bind the respondent in any fashion.

Johnson testified further that about a month after his discharge by Reed he consulted Wilcoxon, the respondent's superintendent, about a notice which he had received to vacate his respondent-owned house and at the same time requested employment. According to Johnson, Wilcoxon elicited from him an admission as to his union membership, and then stated, "I seen you pass my house going down to meet these union boys. * * * Mr. Arnold wants his house; the best thing I can tell you to do is to give it to him * * * I had three nights for you colored boys and three nights for the whites to meet me in my office with Mr. Toler * * * none of you met me there and now I don't give a darn." Although Wilcoxon made no reference in his testimony to Johnson's statement that he applied to Wilcoxon for employment, the latter denied that he ever had any conversation with Johnson concerning the Union. He stated that it had been his impression that Johnson was not a union member inasmuch as he had been employed by the municipality rather than by the respondent.

According to Johnson's testimony, he thereafter sought work from Toler, woods superintendent under Wilcoxon. Toler informed him that the respondent was planning to put all woods operations in the hands of private contractors, and advised him to apply to them for work. Johnson followed this advice and succeeded in securing employment. His earnings up to the time of the hearing were approximately \$406.

On the basis of the facts presented we are of the opinion that it has not been established that the respondent has discriminated in

regard to Johnson's hire or tenure of employment as alleged in the amended complaint. We shall, therefore, dismiss the allegations of the amended complaint in so far as they apply to Richard Johnson.

Lester Mann. Mann entered the respondent's employ in 1929, but quit voluntarily during 1931 or 1932. He returned to work in 1933, and at the time his employment terminated was stationed on the dry chain under Everett Ross, foreman of the dry kiln. Mann joined the Union on June 10, 1935, and participated in the strike of August 8, 1935.

The respondent's contention at the hearing was that Mann was an intermittent worker and that he quit of his own accord on September 2, 1935.

Mann testified, however, that shortly after he joined the Union Ross obtained from him an admission that he was a union member; that Ross warned him that he had "better get on the right side" if he wanted to hold his job; that Ross then for the first time began to complain that he was not getting enough work done, and on September 2, 1935, told him that he would be fired if he did not get out a specified amount of work; that since it was impossible to do the specified work, he volunteered to quit and Ross said he would "help him quit;" and that Ross then offered him a transfer slip, but stated at the time that he knew Mann could not get a job. Mann testified that subsequent to his discharge Lawson, plant superintendent, told him that the termination of his employment was in some way concerned with "labor trouble;" but that 3 or 4 months later Arnold, the respondent's manager, in response to Mann's application for re-employment stated that he was not given work because none of the foremen found his work satisfactory.

The respondent introduced no evidence tending to controvert Mann's account of the circumstances surrounding the termination of his employment. We must conclude, therefore, that the respondent has discriminated with regard to the tenure of Mann's employment.

At the time of the termination of his employment, Mann earned 24 cents per hour, plus additional wages for production over a fixed quota. He testified that from September 2, 1935, to the date of the hearing, he had earned approximately \$360.

We find that the respondent caused the termination of Lester Mann's employment on September 2, 1935, because of his union affiliation and activities, and that the respondent thereby discriminated against Mann in regard to hire and tenure of employment.

P. M. Rickman. After having worked for the respondent on various occasions since 1911, Rickman was employed on May 9, 1935, as a night watchman at the respondent's number one planing mill. He joined the Union on June 29, 1935, and participated in the strike of August 8, 1935.

In September 1935 Rickman was discharged by Lessor, the foreman of the planing mill, and his subsequent application for reemployment was denied.

Lessor testified at the hearing that a change in the operations of the number-one planing mill made it necessary to reduce the staff of night watchmen from three to two, and that as a result he discharged Rickman since the latter had less seniority than either one of the other watchmen. Lessor also stated that the alleged change of operations had eliminated the midnight shift, the shift upon which Rickman worked.

It is significant, however, with regard to Rickman's discharge, that he was active on the picket line during the strike on August 8, 1935, and that Operative McVitch made a report on Rickman's union activities. It is also significant that the respondent stressed seniority in this instance, whereas it admittedly failed to apply seniority principles on numerous occasions when the result would have been the discharge of non-union men and the retention of union men. Taking all of the facts into consideration we conclude that the respondent has failed to establish its claim that Rickman's discharge was due merely to a change in operations made in the normal course of business. We are of the opinion that the respondent's subsequent refusal to reemploy Rickman was prompted by the same motives which occasioned his discharge.

Some variance is found in the testimony as to the exact date on which Rickman's employment was terminated. He testified that to his best recollection the date was September 16, 1935. The employment statement submitted by the respondent for the record specified September 9, 1935, as the date on which Rickman last worked, and Lessor testified accordingly. We conclude that Rickman was discharged on September 9, 1935. At the time of his discharge he was working 39 hours per week and receiving 25 cents per hour. The record does not indicate whether or not Rickman secured employment between the date of his discharge and the time of the hearing.

We find that the respondent discharged P. M. Rickman on September 9, 1935, because of his union affiliation and activities, and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

Jack Morgan. Morgan was in the respondent's employ from 1929 to 1935. At the time his employment was terminated in 1935, he was a member of the tram crew and, according to his testimony, had greater seniority than any other man on the crew. He joined the Union on May 28, 1935, participated in the strike, and was present at the union meeting at which McVitch was elected a union officer.

On September 14, 1935, Lummie Johnson discharged Morgan allegedly on Lawson's direction and because of unsatisfactory work.

Johnson testified that Morgan had taken 4 days to do a job which should have required only 1 day, that Morgan had been a slow worker for 5 or 6 years and that he "didn't learn."

Morgan testified without contradiction that about a month prior to his discharge Johnson had warned the members of the Union that "us boys were going to keep fooling with the union until we would be let out, laid-off; our work would be just like it always been, but we would be laid off because our work would not be satisfactory." Operatives McVitch and Herbert testified that they had reported upon Morgan.

The respondent's explanation of the discharge cannot be accepted since, if valid, it should have led to Morgan's discharge a number of years before. No evidence was produced of the aggravation of Morgan's normal deficiencies or of the commission of any new errors on his part that would account for the discharge at that time. Under the circumstances we conclude that the respondent's action was motivated by Morgan's union membership and activities which had come to the respondent's knowledge through the reports of labor spies.

At the time of his discharge Morgan was working 5½ days a week and earning 24 cents per hour. The record indicates that between the time of his discharge and the time of the hearing he earned approximately \$325. Morgan testified that on July 5, 1937, he secured employment cutting and splitting chemical wood for the Crossett Chemical Company, and that he and another man working together could make 10 pens per day at 25 cents per pen.

We find that the respondent discharged Jack Morgan on or about September 14, 1935, because of his union affiliation and activities, and thereby discriminated against him in regard to hire and tenure of employment.

*Walter Lee Kellum.*¹⁵ Kellum first entered the respondent's employ in 1925, but voluntarily laid off on several occasions. His last period of employment began in June or July 1935, and he was working as a night watchman at the number two sawmill under W. J. Gulledge at the time his employment was terminated in September 1935. Kellum joined the Union in June 1935, participated in the strike of August 8, 1935, and conversed with Operatives Fairfield and Herbert about the Union. He was reported upon by Operatives Fairfield, Herbert, and McVitch, and the latter testified at the hearing that Kellum was a very active union man.

On September 15, 1935, Gulledge discharged Kellum, allegedly for failing to clean the mill properly. Kellum testified that, when he began his duties as watchman, Gulledge advised him to follow the instructions of his fellow workman, Carver, as to the manner of clean-

¹⁵ This individual was referred to in the record as Walter Kellum.

ing; that he had always done so; and that there had been no complaints as to his cleaning prior to his discharge.

Gulledge expressly admitted at the hearing that this testimony of Kellum's was accurate but he later asserted that he had warned Kellum concerning his cleaning about a week before his discharge. We are of the opinion, however, that irrespective of whether such warning was given, poor cleaning was not the real reason for Kellum's discharge. We conclude that the facts here presented show rather that discharge had as its basis Kellum's union membership and activity.

Kellum testified that at the time of his discharge he was working 39 hours per week and earning 25 cents per hour, and that between that time and the date of the hearing he had earned approximately \$550. Since the date of his discharge, he had been unsuccessful in his attempts to secure reinstatement.

We find that the respondent discharged Walter Lee Kellum on September 15, 1935, because of his union affiliation and activity, and that the respondent thereby discriminated against Kellum in regard to hire and tenure of employment.

E. J. Norman. Norman worked for the respondent occasionally over a period of years. On June 24, 1935, he secured a job with the respondent, earning 24 cents per hour as a stacker. He became a member of the Union in July 1935, but testified that prior to the strike he had gone to see Arnold, admitted his membership, and stated his willingness to withdraw from the Union. He took part in the strike, however, and was a guard on the picket line.

On September 4, 1935, Norman got a splinter in his finger and because of it, was forced to lay off until September 24, 1935. Norman testified that when he attempted to return to work on the latter date his foreman, Buchner, now deceased, told him, "You can go back on the guard post with the Union . . . I don't need you any more." Lawson, plant superintendent, stated, however, that according to his recollection, Buchner had no work for Norman to do.

Although there are some indications in the record that Norman was refused work because of his union affiliation and activity, we are of the opinion that the allegations of the amended complaint that Norman was discharged and thereafter refused reinstatement because of such affiliation or activity are not sufficiently established. The allegations of the amended complaint in so far as they relate to Norman will, therefore, be dismissed.

Earl Doss. Doss was in the respondent's employ at various times since 1920. From February 1935 until his employment was terminated in September 1935, he worked in the sawmill box factory. He joined the Union in May 1935, became an officer of the Union, par-

ticipated in the strike, and was on the picket line. His activities were reported by Operatives Herbert and Fairfield.

On September 24, 1935, Cartledge, foreman of the sawmill box factory, gave Doss a discharge slip and stated that "it was an order from the main office." The respondent states that Doss was hired as an extra man and that he was laid off because the box factory work became slack and made it necessary to reduce the force from 24 to 21 men. One of the other two employees laid off at the time of Doss' discharge was reemployed within 2 weeks.

At the hearing, Doss testified that at the time of his discharge Cartledge stated that "they were going to keep on until they got all the rest of the boys." Although Cartledge denied making such statement, the circumstances show that little credence can be given to his denial. Thus, at the hearing, he claimed at first not to know that Doss was a union member, but later indicated that he had such knowledge. He denied that he was a member of the group which went to Bastrop, Louisiana, to discuss Crosssett labor conditions, but the testimony of numerous witnesses showed the contrary to be true.

At the time of his discharge, Doss was earning 24 cents per hour and working 42 hours per week. Between the date of his discharge and the time of the hearing, he earned approximately \$450 to \$500.

We find that the respondent discharged Earl Doss on September 24, 1935, because of his union membership and activity, and thereby discriminated against him in regard to his hire and tenure of employment.

Dave Sled. Sled was in the respondent's employ off and on from May 1933. At the time his last employment was terminated in September 1935, he was the only machinist in the respondent's flooring plant. He joined the Union in May 1935, became an active member, and participated in the strike. His union activities were reported upon by Operatives McVitch and Herbert.

September 27, 1935, was the last day on which Sled worked for the respondent. Lessor, Sled's foreman, testified concerning the termination of Sled's employment, as follows: Sled was in the habit of becoming intoxicated every Saturday night and reporting on Monday unfit for work; Joe White, subforeman, was instructed to warn Sled about this; shortly thereafter, while Sled was away from work, ostensibly for sickness, Lessor saw Sled in town, drunk; pursuant to Lessor's instructions, White informed Sled either to stop getting drunk or to quit; and about a week later Sled quit.

This testimony was controverted by Sled in several respects. Although he stated that he drank as much as he pleased, he recalled only one complaint as to his drinking. He denied that he quit or signed any ticket which said that he quit; denied that the slip ten-

dered him for examination at the hearing bore his signature; and stated that at the time a slip was given him, he took it to the paymaster without observing whether or not it was marked "quit." Significant in this connection is the fact that, although counsel for the respondent tendered a slip to Sled for identification, counsel made no attempt to submit it in evidence as proof that Sled had quit, nor did counsel call upon White as a witness to corroborate Lessor's testimony. Significant also is Sled's testimony that on one occasion Lessor summoned him to his office, informed him that he was aware of Sled's union affiliation, stated that a union would not be tolerated at Crossett, and advised Sled to withdraw; and that about a week prior to the termination of his employment, White questioned him relative to McVitch. Although Lessor asserted at the hearing that he did not know Sled was a union member, we find such an assertion incredible in view of Lessor's demonstrated unreliability as a witness. Sled's testimony stands virtually uncontroverted in the record and we find it to be worthy of credence.

We conclude that Sled did not quit voluntarily but that the respondent terminated his employment because he had joined and assisted the Union. At the time of his discharge, Sled worked 44 hours per week and received 55 cents per hour. At the time of the hearing, Sled was working for the Southern Lumber Company at Warren, Arkansas. The record does not disclose the terms of his employment.

We find that the respondent discharged Dave Sled on September 27, 1935, because of his union membership and activity and thereby discriminated against him with regard to hire and tenure of employment.

J. B. Locke. Locke worked for the respondent on various occasions from 1913 until 1929. From 1929 until the date of his discharge he worked regularly on the millwright crew. He joined the Union in 1935 and participated in the strike of August 8, 1935. His union activities were reported by Operatives Herbert and McVitch, and the latter testified at the hearing that Locke was a staunch union member.

On September 28, 1935, Locke was discharged by J. W. Moffatt, millwright foreman under Sharkey. Moffatt told Locke that Sharkey had to cut his crew and had directed Locke's discharge. Approximately a month later Locke received notice to vacate his company-owned house.

Moffatt testified at the hearing that millwright work had become slack, necessitating a reduction in the crew of six men, and that pursuant to the reduction, Locke was discharged because his work was unsatisfactory, because he was the slowest worker on the crew,

and because he was frequently injured. Moffatt stated further that Locke's work had been poor for 6 years, but that he had been retained out of sympathy.

Under the circumstances, we cannot accept Moffatt's explanation of the reasons for Locke's discharge. It is significant that although Locke's work had allegedly been poor for years, disciplinary action was not taken against him until he became active in Union affairs and was named in the reports of the labor spies. Furthermore, although Locke ranked third in seniority on the crew, he was the first member of the crew to be discharged. Moffatt admitted, moreover, that Locke was, to his knowledge, the only union man on the crew.

At the time of his discharge Locke worked 45 hours per week and earned about 26½ cents per hour. Between that time and the date of the hearing he earned \$300 or \$400.

We find that on September 28, 1935, the respondent discharged J. B. Locke because of his union affiliation and activities and thereby discriminated against him with regard to hire and tenure of employment.

H. J. Ready, Marvin Roberts, Lee Howard,¹⁸ Sam Phillips, Hugh Murphy, and Fred Burt. Prior to September 30, 1935, the respondent operated day and night shifts in the dry kiln supervised by Everett Ross, foreman. On the latter date, and during October 1935, a reduction in the crew was effected, allegedly because of a decrease in business, and the night shift was discontinued. It appears that most of the men in the dry kiln were left unaffected by the reduction or were given other work, but such was not the case with respect to Ready, Roberts, Howard, Phillips, Murphy, and Burt. The respondent states that work was not available for all the men and that the reduction in personnel was based primarily on the efficiency of the individual employees. The six men contend that they were discharged because of their union membership and activity.

Ready, who had a record of some 11 years' service, ran a cut-off saw on the day shift at the time of his discharge. He received 24 cents per hour and worked 45 hours per week. The respondent states that Ready had "become fat and old and slow on the job;" that the cut-off saw required an alert, quick worker; and that Ross replaced Ready with a younger and more efficient worker. Ross admitted, however, that Ready's work was satisfactory and at times above the average, and that one of the cut-off sawyers retained was even older than Ready. It appears, furthermore, that Ready was replaced by a man who had been employed as an extra man, doing

¹⁸ This individual is referred to in the record as A. Lee Howard.

odd jobs about the mill and "trucking shorts," which is work whereby one learns to run the cut-off saw.

Ready joined the Union in May 1935, was active on the picket line, and served upon the strike settlement committee. He was reported upon by Operatives Herbert and McVitch. According to Ready's uncontradicted testimony, about July 1, 1935, Ross talked to him during working hours about the Union and stated that the respondent would not tolerate its employees' joining the Union.

The record indicates that by farming Ready had been able to support himself and to make a profit of about \$12 by the time of the hearing.

Roberts had worked for the respondent irregularly since 1923 and, according to a statement submitted by the respondent, regularly since a date prior to the year 1934. Contrary to this statement, however, the respondent sought to show at the hearing that Roberts was employed on February 28, 1935, when the night crew began work, and that at the time the night crew was discontinued, Roberts was laid off inasmuch as he was primarily an extra man. Roberts testified that he had worked on the night shift for one night only, that he was then transferred to cut-off saw work on the day shift, and that he had greater seniority than the man who replaced him.

Roberts joined the Union in June 1935 and was active during the strike. He testified without contradiction that on one occasion prior to the strike Ross had quizzed him about membership in "this four-bit jimson weed union," but that he had denied union membership at the time.

At the time his employment was terminated, Roberts worked 45 hours per week and received 24 cents per hour. The evidence indicates that subsequent to such date and until July 31, 1937, he had worked at the Southwestern Lumber Mills, McNary, Arizona, and had earned approximately \$500 by the date of the hearing.

Howard, according to the employment statement submitted by the respondent, was employed by the respondent on February 1, 1934. He worked on the night shift, stacking lumber from the dry chain. He received 24 cents per hour, plus an additional amount for all production exceeding a set quota.

Ross testified that Howard was let out on September 30, 1935, at the time the night shift was discontinued because his work had been unsatisfactory. Ross later stated, however, that Howard "had some good points and he had some bad points," and that he was a "hard worker, that was one of his good points, a good worker before." Ross did not indicate what he considered Howard's "bad points" or explain the meaning of his use of the word "before." In its brief, the respondent shifts its ground relative to Howard's discharge, stat-

ing that "the facts are that he (Howard) was let out on September 30, 1935, when the night shift on the dry chain was discontinued and on account of the seniority of others the claimant could not be employed."

Howard testified that prior to the strike Ross had asked him whether he was a member of the Union and had said, "You boys better let it alone." This testimony was not controverted in the record. Howard had joined the Union in May 1935, had been active in its affairs, and had participated in the strike and the picketing. Operative Herbert had reported on his membership and activity. Howard also testified without contradiction that subsequent to his discharge he went to see Lawson who said, "You boys, you all have just mistreated yourselves . . . it is just against the company's rules for anyone to go against the company . . . Your foremen seem to think you are a good worker . . . perhaps you just violated the rules." Howard recounted that Lawson advised him to consult a "good colored citizens' committee" and then to report back to him. Howard consulted the committee which discussed with him his union membership and activity on the picket line. About a week later he saw Lawson but was unable to secure a job. Lawson testified that he did not know of the existence of a colored citizens' committee until Howard told him of it and asked whether its recommendation would assist him in securing reinstatement. Lawson admitted that he advised Howard to consult the committee, but claimed that he did so merely to get rid of Howard. In view of Lawson's clear hostility to the Union, his explanation seems hardly plausible. It appears that such was a means of enlisting the aid of the colored citizens of Crossett in the respondent's campaign against the Union.

After the respondent terminated his employment, Howard sought jobs with various companies, but was consistently turned down. Finally, using an assumed name, he obtained employment at the Bradley Lumber Company, Warren, Arkansas. At the time of the hearing, he had worked for this company for about a year, earning \$2.50 per day. He testified that he had earned approximately \$350 since his discharge.

Phillips worked on the loading tram from 1932 to the end of 1933 and from April 5, 1934, to September 1935. On September 10, 1935, when work became slack, his foreman, R. F. Ragland, transferred him to the dry-chain night shift where he worked until September 30, 1937. Phillips received 24 cents per hour, plus an additional sum for all production exceeding a fixed quota. He joined the Union in June 1935, and was an active participant in the strike. His activities were reported upon by Operative Herbert.

When the night shift was discontinued, Phillips was discharged. Phillips consulted Manager Arnold who referred him to Lawson.

Phillips testified that he saw Lawson about a week later and that the following conversation took place:

. . . I . . . told him . . . I wants to get me work, and he said, "Well, it is pretty hard, wasn't you on the picket gate?" I said, "Yes", I say. He said, "Don't you know that was against the company's rules?" And I said, "Sometimes you makes a mistake not knowing", and I spoke to him, and he said he will look into it, and then he said he could not do with a man like that who worked against the company, and then I saw him a week later . . . I told him what about my job, getting work back, and he said it is all right if I can find anything, and I said I couldn't find anything right then, and he laughed and walked off.

At the hearing, Lawson did not controvert this testimony, but merely stated that he had no recollection of such conversation with Phillips.

In March 1936, Phillips secured employment at the Southern Lumber Company, Warren, Arkansas. At first, he earned 24 cents per hour, but about 3 months prior to the hearing the rate was increased to 27 cents per hour. At the hearing, Phillips stated that he preferred employment in Warren, Arkansas, and did not desire reinstatement with the respondent.

Murphy was first employed by the respondent in 1924, and worked for the respondent at various times thereafter. At the time his employment was terminated, he was stationed on the day shift at the box factory, unloading boxes for the dry kiln.

Murphy joined the Union in July 1935, and was active on the picket line. Operatives McVitch and Herbert included Murphy in their reports to the Association. McVitch testified that he had worked with Murphy for a while on the nailing crew and had seen him at the union meetings.

On September 30, 1935, when the night shift was discontinued, Murphy was discharged, although he was on the day shift. His place was taken by Peyton Downey, an extra hand. The evidence indicates that a non-union man who worked with Murphy was retained.

According to Murphy's uncontradicted testimony, about a month before his discharge, Ross told Murphy that Lawson had expressed the opinion that one man could do the work then done by Murphy and his fellow worker and had directed that Murphy be laid off. When the latter protested that this was not the real reason for his discharge, Ross replied, "All you boys think it is on account of the Union, and it is not that . . . You go ahead and work, and I will go and talk to Mr. Lawson myself." It is significant that shortly

prior to this conversation Ross had criticized the Union, inquired if Murphy was not ashamed to belong to it, and asked him to see Arnold about withdrawing from it.

Subsequent to his discharge, Murphy earned approximately \$374 working for two contractors. On June 20, 1937, the respondent re-employed him as a carpenter on a housing project and he was so engaged at the time of the hearing.

Burt entered the respondent's employ on the dry kiln in February 1934, and, at the time his employment was terminated on October 1, 1935, was one of a crew of nine men on the day shift under Ross. He joined the Union in June 1935, took an active part in the strike, and was a picket captain.

Ross stated that he had to cut down his crew due to the discontinuance of the night shift and that inasmuch as Burt was "hot-headed" and a "troublemaker" he was among those laid off. He added that Burt had been laid off on a previous occasion because he was a troublemaker.

There is considerable evidence which indicates, however, that other considerations motivated Ross. Thus, Burt testified without contradiction that Ross had tried to get him to withdraw from the Union and had stated that he was afraid he would have to fire him if he did not get out. The evidence indicates that although Burt's particular job on the day shift was taken by a night grader who had greater seniority than Burt, the latter would have been retained if the discharges as a whole had been based on seniority.

At the time of his discharge, Burt earned 30 cents per hour. He testified that he had earned approximately \$300 since his discharge. In so far as the evidence indicates, he was unemployed at the time of the hearing.

On the basis of the foregoing, we find that the respondent discharged H. J. Ready, Marvin Roberts, Lee Howard, Sam Phillips, and Hugh Murphy on September 30, 1935, and Fred Burt on October 1, 1935, because of their union membership and activities, and that the respondent thereby discriminated against them in regard to hire and tenure of employment.

Aubrey Murphy. Murphy worked for the respondent from March 1934 to September 1935. At the latter date, he was engaged as a watchman at the number one sawmill. He joined the Union in June 1935 and was reported upon by Operative Herbert.

On October 3, 1935, Stepherson, foreman of the number one sawmill, discharged Murphy and told him that the respondent was making changes in its business and was retaining the old men. At the hearing Stepherson testified that the reason for Murphy's discharge was that the watchmen were not cleaning properly, thereby

creating fire hazards which elicited unfavorable reports from insurance inspectors.

The respondent's explanation of the discharge cannot, however, be accepted in view of all the facts here presented. Stepherson testified, for example, that Sharkey had on previous occasions complained of inadequate cleaning. No action was taken, however, until Murphy had joined the Union and had been reported upon by a labor spy. The evidence indicates that at the time of the discharge a reason other than poor cleaning was advanced. Murphy's testimony was uncontroverted that Arnold, in refusing to allot him a company house in September 1935, gave as a reason Murphy's appearance on the picket line. Also uncontroverted was Murphy's statement that his place was taken by a non-union man who had less seniority than he. He testified further that Stepherson had advised him to withdraw from the Union. This testimony Stepherson denied, but he admitted knowing that Murphy was a union member.

At the time of his discharge, Murphy worked 39 hours per week and earned 25 cents per hour. From such date to the time of the hearing, he had earned approximately \$250.

We find that on October 3, 1935, the respondent discharged Aubrey Murphy because of his union membership and activity, and thereby discriminated against him in regard to hire and tenure of employment.

*Erbie St. John*¹⁷ and *Wilson Peters*. Peters entered the respondent's employ in 1924, St. John in 1930, and both worked regularly until their employment was terminated in November 1935. At the latter date they were engaged as teamsters in the logging department. St. John testified without contradiction that only one of the six teamsters on his crew had greater seniority than he. St. John joined the Union in May 1935 and Peters in June 1935. Both were active union members and their union activities were reported by the labor operatives. McVitch testified that while in the respondent's employ, he worked near St. John for a considerable length of time, met him at Maxwell's house on several occasions, and had a number of conversations with him as well as with Peters.

St. John and Peters were discharged on November 13, 1935. The respondent states that due to the completion or discontinuance of certain logging operations in November the two men were laid off together with their respective crews. The respondent's witnesses conceded, however, that with the exception of St. John, his brother Lesale St. John,¹⁸ and Wilson Peters, the members of these crews were transferred to other work immediately or shortly thereafter.

¹⁷ This individual is referred to in the record as Ervie St. John.

¹⁸ This individual, also named in the complaint did not appear at the hearing. He is referred to in the records as Leslie and as Lesale St. John.

On the basis of all the facts presented the conclusion is inescapable that the discharges of St. John and Peters stemmed from their union membership and activity rather than from a change in logging operations, and that such change was merely a subterfuge employed in an attempt to conceal the real reason for the discharges. In addition to the fact that the labor operatives reported on the two men's union activities and that the other members of the crews were given other employment, we have considerable evidence of the respondent's attitude towards the union membership and activity of these men. Thus, St. John testified that on a number of occasions prior to the strike of August 8, 1935, his foreman, Shaw, advised him to get out of the Union; that about a week prior to the strike Shaw stated, "You boys better pull out of this union, if you don't you are going to get fired"; that at the time he was discharged Shaw stated "you would not turn your card in and I got orders to can you." Shaw did not expressly contradict this testimony but attempted to controvert indirectly all testimony as to his anti-union threats and comments by stating that prior to the strike of August 8, 1935, he had known nothing of the Union, its activities, or members. On cross-examination he admitted, however, that prior to August 8, 1935, he had heard Aldrich and St. John discuss the Union, and by this admission and other statements he seriously damaged the credibility of his testimony. The record amply indicates that he was an obdurate, evasive, and mendacious witness.

Peters testified that the night before the strike he and five other members of the Union discussed the impending strike with Toler and Wilcoxon, at which time the latter expressed himself as opposed to the Union and stated that if the men "would get out of the Union and stay out . . . [they] would have a job with the Crossett Lumber Company as long as he had a job." Toler recalled the conference, but stated that he did not recall what was said. Wilcoxon controverted the statement attributed to him and stated that the men approached him to express their desire to withdraw from the Union. In view of the fact that the men did not withdraw from the Union but went out on strike the next day, this testimony and denial of Wilcoxon's do not appear plausible.

Peters also testified that at the time he was laid off he applied to Toler for a transfer to other work, but failed to obtain such transfer. Toler stated at the hearing that he did not give Peters work or refer him to his former foreman, DeLong, because the latter had complained about his work. In this connection it is significant to note Peters' testimony as follows: "My brother came to me Sunday morning [immediately prior to or during the hearing] and told me that . . . Mr. Toler asked him to tell me that he was afraid I was getting into something that would cost me money, and I would not

get anything out of it; that the company was going to prove beyond a doubt that my work was unsatisfactory." This testimony was offered at the hearing without objection and was not controverted. Furthermore, it is significant that in June 1935 Peters was made a foreman¹⁹ and that he was relegated to a teamster's job only after the strike of August 8, 1935, and the conference with Toler and Wilcox. It is hardly likely that Peters would have been made foreman had his work been unsatisfactory.

At the time of their discharges, St. John received 27½ cents or 30 cents per hour and Peters received 27½ cents per hour. The record does not disclose the number of hours these two men worked. It appears that at the time of the hearing St. John was unemployed, and that he had earned approximately \$400 since his discharge. The record indicates that Peters was engaged in farming and that he had earned approximately \$130 since his discharge.

We find that the respondent discharged Erbie St. John and Wilson Peters on November 13, 1935, because of their union membership and activity, and thereby discriminated against them in regard to their hire and tenure of employment.

*Albert De Weese.*²⁰ De Weese testified he entered the respondent's employ in 1925 and that during the greater part of his service he worked on the log pond. The respondent, however, submitted a statement regarding the terms of service of the employees in its sawmill division, which statement indicates that De Weese's employment extended only from April 1 to November 29, 1935. Fred Murphy, pond foreman, testified that De Weese began to work for him on August 3, 1935. Counsel for the Board requested of Murphy a detailed statement of De Weese's employment. This was not produced at the hearing and as a result it is impossible to gather from the record a clear picture of De Weese's service from 1925 to 1935 or of his employment from April 1 to August 3, 1935.

On or about August 7, 1935, Murphy laid De Weese off, stating that he was not doing any work. At the hearing Murphy testified in detail that De Weese was discharged because he got into a dispute with the log grader and refused to do his work or to obey instructions. De Weese, on the other hand, asserted that he was doing his work, and testified that Murphy had discharged him after eliciting from him an admission that he was a member of the Union.²¹ He also quoted Murphy as having said, a few days before the discharge, "You boys joined that Union, that Union is going to have to take care of you." Murphy did not directly controvert this testimony. He stated, how-

¹⁹ Shaw testified that Peters was made temporary foreman while the crew was building a fill across a creek.

²⁰ This individual is referred to in the record as Albert De Weelse.

²¹ De Weese joined the Union in June 1935, attended meetings, and solicited members.

ever, that all of his men were members of the Union and that if union affiliation had been the motivating cause for De Weese's discharge, his whole crew would have been discharged for the same reason. Murphy also stated that he was merely a "straw boss" and that he did not attend foremen's meetings or report to the respondent's officials what he learned concerning the Union.

De Weese lost very little working time because of his lay-off, for on the following day the strike was called, and about 2 days after its settlement he was given employment in the respondent's box factory. It appears that he worked there, earning \$2.50 per day, until he was laid off on or about November 16, 1935, by Taylor, assistant to Lessor, box factory foreman. De Weese then secured 2 weeks' employment in the respondent's treating plant, and was finally laid off on November 29, 1935. No reasons for the two latter lay-offs were assigned by De Weese or by the respondent.²² The complaint, as amended, alleged that the respondent discriminatorily terminated De Weese's employment on September 10, 1935.

De Weese testified that since November 29, 1935, he had earned approximately \$400, and that at the time of the hearing he was working for the Southern Lumber Company earning \$2.50 per day. This position he secured in March 1937.

On the basis of the evidence presented, we are of the opinion that it has not been established that the respondent discharged or refused reinstatement to De Weese because of his union affiliation or activity. The allegations of the amended complaint in so far as they relate to De Weese will, therefore, be dismissed.

W. M. Clark. From about 1917 to September 1935, Clark was employed in the respondent's car shop where work was done on cars both of the respondent and of the A. D. and N. Railway. Clark was the oldest employee in the shop in September 1935, and for many years prior thereto held the position of car-shop foreman, in which capacity he directed the activities of a crew of from four to eight men. Although he received his wages from the A. D. and N. Railway, the respondent contributed to such wages. Clark was under the general supervision of B. M. Sharkey, master mechanic, who is referred to throughout the record as an employee of the respondent.

Clark joined the Union in June 1935, attended union meetings, solicited new members, and participated in the strike of August 8, 1935. His union activities were reported by Operative Herbert.

In September 1935 Clark was deprived of his foremanship and given a job of lesser importance with the A. D. and N. Railway. His new duties consisted of the inspection of foreign railway cars, and the repair of motor and push cars. Sharkey and Wilcoxon, superin-

²² Taylor did not appear as a witness at the hearing.

tendent both for the respondent and the A. D. and N. Railway, testified that the change in job was due to the fact that the respondent discontinued work on foreign cars, which decreased operations at the car shop so much that Clark's services were no longer needed. Sharkey also stated that, at his behest, J. D. Richards, trainmaster of the A. D. and N. Railway, created a job for Clark so that he might not be without employment. It is to be noted, however, that the car shop was not closed down at the time the foreign car repairs were discontinued and that a number of the members of Clark's crew continued working in the car shop. Furthermore, the car shop still required a foreman, and Kelsey Ward, who had less seniority than Clark, was given this position. Clark, in fact, had greater seniority than any employee in the car shop, admittedly was a good mechanic, and no fault was found with his work. Significant in connection with Clark's transfer and demotion is his testimony that, "He [Sharkey] asked me [about four or five days before the strike] what I knew about this union that was going around there, and I told him that I did not know, and he told me that . . . every one of my men . . . belonged one hundred per cent, and that he knew that . . . I could not work those men and not know it, and he believed that I was one [a union member]." Sharkey controverted this testimony, asserting that he did not know that Clark or any members of his crew belonged to the Union. Little credence can be given this assertion, however, in view of the fact that Clark was reported upon by at least one of the labor spies; that Sharkey, as pointed out hereinbefore, proved himself an unreliable witness; and that no adequate explanation has been given for the action in depriving Clark of his foremanship in the car shop.

On or about December 22, 1935, Richards informed Clark that Wilcoxon had ordered Clark's employment terminated as of January 1, 1936. Wilcoxon testified that the work which Clark was doing for the A. D. and N. Railway decreased to such an extent that it was necessary to discharge him to save expenses. According to Richards' testimony, the type of work which Clark was doing was returned to the respondent's car shop. In the light of the previous events, we cannot accept the testimony of Wilcoxon and Richards as an adequate explanation of Clark's discharge.

Under all the facts, we conclude that Clark's demotion in September 1935 and his discharge on January 1, 1936, was due to his union membership and his failure to discourage his crew from participating in the union activities rather than for the causes asserted by the respondent.

The respondent contends in its brief that Clark was not in its employ at the time of his discharge on January 1, 1936, but was in the employ of the A. D. and N. Railway. It is to be noted in this connection that there is a substantial identity of stock ownership of

the respondent and of the A. D. and N. Railway; that the respondent itself owns a considerable part of the stock of the A. D. and N. Railway; that there is a substantial identity between the directors of the two companies; that admittedly the same persons control the labor policies of the two companies; and that Wilcoxon, who ordered Clark's discharge, is an employee of the respondent as well as of the A. D. and N. Railway. It is also significant to note that the A. D. and N. Railway is apparently operated solely for the benefit of the respondent and serves as a necessary connecting link between the respondent's plant and main shipping points through which the respondent's supplies are received and its products transported to its customers in Arkansas and other States. Furthermore, as shown above, the respondent's actual control over the A. D. and N. Railway is so complete that Arnold, the respondent's manager, refers to it as the respondent's railroad. In view of all the facts, we are of the opinion that the respondent substantially controls the labor policies of both companies and is responsible for Clark's demotion and discharge.

At the time of his discharge, Clark received 57½ cents per hour and worked 44 or 45 hours per week. At the hearing, he stated that he did not desire reinstatement.

We find that the respondent demoted Clark in September 1935, and caused his discharge on January 1, 1936, because of his union membership and activity and because the respondent desired to discourage union activity among its employees, and that the respondent thereby discriminated against him in regard to hire and tenure of employment.

D. L. Hume. Hume entered the respondent's employ in October 1932 and worked in the car shop, first as a mechanic and later as an oiler. He joined the Union in June 1935 and participated in the strike and picketing. His union activities were reported by Operatives McVitch and Herbert.

Hume testified that in August, immediately following the settlement of the strike, he was discharged by Sharkey, master mechanic, who stated that he was a "radical on the picket line"; that Sharkey reinstated him on the same day but advised him to "forget about the Union"; that thereafter, although he performed his work as before, Sharkey continually complained of his poor work, rendering working conditions intolerable for him; that on January 25, 1936, he told Sharkey that under the circumstances he thought it advisable to quit; that Sharkey agreed and "told . . . [him] it would be a good thing for . . . [him] to leave town, and for . . . [him] to go some place else, there wasn't nothing in the mill for . . . [him]"; and that he quit on January 25, 1936.

Little evidence was introduced by the respondent to controvert Hume's testimony. Sharkey did not expressly deny that he dis-

charged and reinstated Hume following the strike, but testified that he never told him that he knew Hume was on the picket line. Sharkey did not comment as to his alleged complaints concerning Humes' work, but merely testified that Hume quit of his accord, stating that he was going to McNary, Arizona.

Hume's uncontradicted testimony indicates that he was a victim of the respondent's blacklisting activities. He secured employment with the contractor who was drilling wells for the respondent. After about 8 days' work, Gibbs, the foreman, laid him off, stating that the contractor was short of materials, and directed him to come back in a week. Hume did so and was told that Gibbs had orders to let him go. Gibbs stated at this time that his work was satisfactory.

Hume testified that since the termination of his employment with the respondent he had earned \$600 or \$700 less than he would have earned in the respondent's employ. At the time of the hearing he was driving a taxicab in Monroe, Louisiana. He expressed a desire to be reinstated to his job with the respondent.

In view of the evidence presented we find that the respondent caused the termination of D. L. Hume's employment on January 25, 1936, because of his union affiliation and activities, and that the respondent thereby discriminated against Hume in regard to hire and tenure of employment.

Huey Clark. Clark began working for the respondent in June 1933 and at the time his employment was terminated on May 21, 1936, he was engaged on the gang saw at the number two sawmill. He joined the Union on June 15, 1935, participated in the strike and picketing, and was named in the reports of Operative Herbert.

Clark became ill on May 2, 1936, returned to work on May 21, 1936, and after working about an hour and a half was discharged by Gullledge, sawmill foreman. The latter testified without contradiction that Clark was frequently absent from work and that after working the stated period on May 21, became ill again. Gullledge denied knowing that Clark was a union member and stated that he discharged Clark solely because of his irregularity in attendance at work, and because an able-bodied man was then available to replace him.

At the hearing, Clark did not testify concerning any illness on May 21, but he conceded that Gullledge had informed him on that date that he was being discharged "on account of his irregular work, sickness." He stated, moreover, that at the time of his discharge he had not believed himself discriminately treated. He testified, however, that about a month later Claude Morris, a fellow worker, told him that Gullledge had stated that Clark was laid off because of his union affiliation. Upon objection, the Trial Examiner admit-

ted this latter testimony subject to corroboration. No corroborative testimony was introduced.

Under all the circumstances, we are of the opinion that the allegations of the amended complaint that Huey Clark was discharged because of his union membership and activity have not been established. The amended complaint in so far as it relates to Clark will, therefore, be dismissed.

A. C. Cunningham, J. W. Fitzpatrick, Murry Jones, Noel Jones, Lesale St. John, Charles Sparkman, Mose Fields, D. Wolfong, J. C. Billingsley, and Cleve White. These persons named in the amended complaint did not appear at the hearing to testify in their own behalf. We are of the opinion that the evidence presented does not sufficiently establish the allegations of the amended complaint that the respondent terminated their employment and thereafter refused to employ them because of their union affiliation and activities. We shall therefore dismiss without prejudice the allegations of the amended complaint in so far as they apply to these persons.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section IV 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 have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

We have found that the respondent has interfered with, restrained, and coerced its employees in their right of self-organization. We shall order the respondent to cease and desist from so doing.

We have found that the respondent has refused reinstatement to J. W. Knight, John Mitchell, and C. V. Scribner because of their union affiliation and activities. We shall order the respondent to offer the three men immediate and full reinstatement, without prejudice to their seniority and other rights and privileges, and to make them whole for any loss of pay they may have suffered by reason of the respondent's refusal to reinstate them by payment to each of them of a sum of money equal to that which each would normally have earned as wages from the date of the respective refusal to reinstate to the date of the offer of reinstatement, less the net earnings of each during said period, remaining after deductions of expenses.

We have found that the respondent discharged or caused the termination of the employment of Tom Ozment, O'Dell Gray, Douglas Lansdale, William Lankford, Neal Burt, Lee H. Aldrich, W. C.

Wood, Osa Savage, Frank Smith, Gene McKimmy, Pat Dennison, Herbert Lester Clark, Hollis Hill, Lester Mann, P. M. Rickman, Jack Morgan, Walter Lee Kellum, Earl Doss, Dave Sled, J. B. Locke, H. J. Ready, Marvin Roberts, Lee Howard, Sam Phillips, Hugh Murphy, Fred Burt, Aubrey Murphy, Erbie St. John, Wilson Peters, D. L. Hume, and W. M. Clark because of the union affiliation and activities of each of said employees. We have found also that Hollis Hill and Hugh Murphy were reemployed by the respondent on April 19, 1937, and on June 20, 1937, respectively, and that Sam Phillips and W. M. Clark stated at the hearing that they did not desire reinstatement. We shall order the respondent to offer the above-named persons, except Hill, Hugh Murphy, Phillips, and W. M. Clark, immediate and full reinstatement, without prejudice, to their seniority and other rights and privileges, and to make them whole for any loss of pay they may have suffered by reason of their discharge or termination of employment, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from the date on which each was discharged or his employment terminated to the date of the offer of reinstatement, less the net earnings of each during said period, remaining after deduction of expenses. We shall also order the respondent to make Hill, Hugh Murphy, Phillips, and W. M. Clark whole for any loss of pay they may have suffered by reason of their discharges by payment to Hill and Murphy of sums of money equal to those which they would normally have earned as wages from the dates of their discharges to the dates of their reemployment on April 19, 1937, and on June 20, 1937, respectively, by payment to Phillips of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the hearing on July 26, 1937, and by payment to Clark of a sum of money equal to that which he would normally have earned as wages apart from the said discrimination against him up to the date of the hearing on July 26, 1937, less the net earnings of each during said period, remaining after deduction of expenses.

In setting forth the payments which the respondent is to make to employees for losses of pay suffered by reason of the respondent's discriminatory discharges and refusals to reinstate, we have stated that such payments shall be less the net earnings of said employees during the respective periods of discrimination, remaining after deduction of expenses. It is to be noted in this connection that many of the employees against whom the respondent discriminated found it necessary, in view of the limited employment opportunities at Crossett and its immediate vicinity, to seek work in California, Arizona, Louisiana, or other places. Some of the employees maintained

homes in Crossett or its immediate vicinity, where they lived with their families, and in going to other places to work, they incurred expenses such as for transportation, room, and board, which they would not have incurred had they continued to work for the respondent and not been forced, by virtue of the respondent's unfair labor practices, to leave their homes. Moreover, many of the said employees were forced, by virtue of the respondent's unfair labor practices, to give up respondent-owned houses, and thereby incurred expenses which they would not have incurred except for the said unfair labor practices. It is this sort of extra expense to which reference is to be made in determining the net earnings of the employees. To the extent that all such expenses diminished the earnings of the employees whom we have found were discriminated against during the respective periods of discrimination, such earnings shall not be deducted in computing the loss of pay the said employees may have suffered.

THE PETITION

No evidence was introduced at the hearing relative to the petition of the Union for an investigation and certification of representatives. Indeed, the hostile attitude of the respondent toward the Union and its interference with, restraint, and coercion of the employees in the exercise of the rights guaranteed them by Section 7 of the Act, so thwarted the organizational activities of the Union that by November 1935 the Union was almost completely disorganized. Thus, it is clear that the lapse of some time after the issuance of this Decision and Order is required for the Union to overcome the effects of the respondent's unfair labor practices. The petition will, therefore, be dismissed at this time, without prejudice to renewal at a future date.

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. United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to hire and tenure of employment and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and by discriminating in regard to their hire and tenure of

employment, 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. The respondent has not discriminated in regard to the hire and tenure of employment of J. A. Langley, T. C. Barnett, Richard Johnson, E. J. Norman, Albert De Weese, and Huey Clark, within the meaning of Section 8 (3) 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, Crossett Lumber Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner discouraging membership in United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment because of their membership in, or activity in behalf of, any such labor organization;

(b) In any manner engaging the services of labor spies or employing espionage for the purposes of interference with the activities of its employees on behalf of the United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, or any other labor organization of its employees;

(c) 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, or to engage in concerted activities for the purposes of collective bargaining or 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 to J. W. Knight, John Mitchell, and C. V. Scribner immediate and full reinstatement, without prejudice to their seniority and other rights and privileges; and make them whole for any loss of pay they may have suffered by reason of the respondent's refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from

the date of the respective refusal to reinstate to the date of the offer of reinstatement, less the net earnings of each during said period, remaining after deduction of expenses;

(b) Offer to Tom Ozment, O'Dell Gray, Douglas Lansdale, William Lankford, Neal Burt, Lee H. Aldrich, W. C. Wood, Osa Savage, Frank Smith, Gene McKimmy, Pat Dennison, Herbert Lester Clark, Lester Mann, P. M. Rickman, Jack Morgan, Walter Lee Kellum, Earl Doss, Dave Sled, J. B. Locke, H. J. Ready, Marvin Roberts, Lee Howard, Fred Burt, Aubrey Murphy, Erbie St. John, Wilson Peters, and D. L. Hume, immediate and full reinstatement, without prejudice to their seniority and other rights and privileges; and make them whole for any loss of pay they may have suffered by reason of their discharge or termination of employment by the respondent, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from the date on which each was discharged or his employment terminated to the date of the offer of reinstatement, less the net earnings of each during said period, remaining after deduction of expenses;

(c) Make whole Hollis Hill, Hugh Murphy, Sam Phillips, and W. M. Clark for any loss of pay they may have suffered by reason of their discharges by payment to Hill and Murphy of sums of money equal to those which they would normally have earned as wages from the dates of their discharges to the dates of their reemployment on April 19, 1937, and on June 20, 1937, respectively, by payment to Phillips of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the hearing on July 26, 1937, and by payment to Clark of a sum of money equal to that which he would normally have earned as wages apart from the said discrimination against him up to the date of the hearing on July 26, 1937, less the net earnings of each during said period, remaining after deduction of expenses;

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

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

It is further ordered that the complaint, as amended, be, and it hereby is, dismissed in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of J. A. Langley, T. C. Barnett, Richard Johnson, E. J. Norman, Albert De Weese, and Huey Clark.

It is further ordered that the complaint, as amended, be, and it hereby is, dismissed, without prejudice, in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of A. C. Cunningham, J. W. Fitzpatrick, Murry Jones, Noel Jones, Lesale St. John, Charles Sparkman, Mose Fields, D. Wolfong, J. C. Billingsley, and Cleve White.

And it is further ordered that the petition for an investigation and certification of representatives filed by United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, be, and it hereby is, dismissed, without prejudice to renewal at a future date.