

In the Matter of ATLANTA WOOLEN MILLS and LOCAL No. 2307,
UNITED TEXTILE WORKERS OF AMERICA

Case No. C 13.—Decided March 11, 1936

Cotton Textile Industry—Wool Textile Industry—Company-Dominated Union: discrimination in favor of; sponsorship; participation in affairs; disestablished under finding of violation of Section 8(1)—*Discrimination:* discharge; non-reinstatement following temporary lay-off—*Remstatement Ordered—Back Pay:* awarded.

Mr. Thomas I. Emerson for the Board.

Spalding, Sibley, Troutman & Brock, by *Mr. P. F. Brock*, of Atlanta, Ga., for respondent.

Mr. Frank Constangy, of Atlanta, Ga., for Local No. 2307, and *Mr. Charlton Ogburn*, of Washington, D. C., for American Federation of Labor (*Amicus Curiae*).

Mr. A. Lee White, of Atlanta, Ga., for Good Will Club.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 8, 1935, Local No. 2307, United Textile Workers of America (hereinafter referred to as Local No. 2307), by I. E. Perkins, President, and Frank Sanders, Vice President, filed a charge with the Regional Director for the Tenth Region against the Atlanta Woolen Mills, Atlanta, Georgia (hereinafter referred to as the respondent), charging the respondent with violations of Section 8, subdivisions (1), (2) and (3) of the National Labor Relations Act, approved July 5, 1935 (hereinafter referred to as the Act). On November 29, 1935, a complaint and notice of hearing, signed by Charles N. Feidelson, Regional Director for the Tenth Region, were issued and duly served upon the respondent and upon Local No. 2307. The complaint charged respondent with violations of Section 8, subdivisions (1), (2) and (3) of the Act because of the discharge of and refusal to reinstate 12 employees for the reason that they joined and assisted Local No. 2307 and failed or refused to join the Good Will Club, a labor organization, and because the respondent, by various acts, has dominated and interfered with the administration of the Good Will Club and contributed support to it. On

December 5, 1935, an amended notice of hearing was issued and duly served. Pursuant to the amended notice of hearing, a hearing was held on December 11, 12, 13 and 14, 1935, at Atlanta, Georgia, before Benedict Wolf, duly designated Trial Examiner, at which hearing full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issue, was afforded to all parties. The respondent, by counsel, participated in the hearing. Before testimony was taken, respondent made a motion to dismiss, a plea to the jurisdiction and in abatement, and a motion to dismiss on the merits. At the time these were made, the motions and pleas were all denied by the Trial Examiner in so far as they were based on the alleged unconstitutionality of the Act, and were subsequently denied by him in so far as they were based on the alleged inapplicability of the Act to the respondent's business. The rulings of the Trial Examiner are hereby affirmed.

At the hearing the complaint was amended by adding the name of Corinne Smith as an employee who had been discharged because she had joined and assisted Local No. 2307 and failed or refused to join the Good Will Club.

By order of the National Labor Relations Board, dated December 16, 1935, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1.

Upon the evidence adduced at the hearing and from the entire record now before it, including the transcript of the hearing and exhibits introduced, the National Labor Relations Board makes the following:

FINDINGS OF FACT

1. The respondent is, and has been since 1896, a corporation organized under and existing by virtue of the laws of the State of Georgia, engaged in the manufacture and sale of textile products. The mill of the respondent (hereinafter referred to as the mill) is located at Atlanta, Georgia, and is divided into two principal units, a cotton mill and a woolen mill. The respondent employed approximately 350 persons at the time of the hearing.

2. The cotton used by the respondent in the manufacture of cotton yarn is purchased in Atlanta both directly from growers and also from brokers having their sole or branch offices in Atlanta. The evidence indicates that most, if not all, of this cotton is grown in Georgia. All of the cotton is delivered by trucks, none of which are owned or operated by the respondent, to the respondent's warehouse in Atlanta. Approximately 3,000 bales of cotton are purchased annually by the respondent, the cost of the amount purchased in the month of July, 1935, being approximately \$130,000. Twenty-five

to fifty per cent of the cotton yarn manufactured by the respondent is retained by it to be used in the manufacture of textile fabrics. The balance of the cotton yarn so manufactured is sold to Southern Mills, Atlanta, Georgia, who in turn manufacture it into laundry supplies which are sold, shipped, and distributed throughout the United States.

3. In the manufacture of woolen suitings and other textile fabrics, the principal materials used are the cotton yarn manufactured by the respondent and wool by-products. Wool by-products are purchased entirely outside the State of Georgia from dealers located principally in the east and midwest sections of the United States. About one to one and one quarter million pounds of wool by-products are purchased annually, the cost of such purchases in the month of July, 1935, being approximately \$300,000. Twenty-five per cent of the wool by-products so purchased are sent to the mill f. o. b. the point of shipment. The woolen suitings and fabrics manufactured by the respondent are sold to manufacturers who in turn manufacture garments from them. Sales to manufacturers are made by representatives located in various centers, particularly in and about New York, who are paid on a commission basis. About seventy-five per cent of the fabrics so manufactured are sold to manufacturers outside of the State of Georgia and throughout the United States. The goods so sold by the respondent are shipped f. o. b. Atlanta, Georgia.

4. Coal used for heating, dyeing and finishing; dyes and chemicals; and parts for equipment are purchased by the respondent entirely outside the State of Georgia.

5. The aforesaid operations of the respondent constitute a continuous flow of trade, traffic and commerce among the several States.

6. The Good Will Club (hereinafter referred to as the Club) is a labor organization which was formed among the respondent's employees in the early part of 1935. The constitution and by-laws of the Club state that one of its purposes is to act as a collective bargaining agency. Representatives of the Club requested Mr. Vaughn Nixon, President and Treasurer, and Mr. William Nixon, Vice President, of the respondent, to enter into a closed shop agreement with the Club. The request was refused. None the less, the following notice appeared on several bulletin boards in the mill in the latter part of July:

"We, the undersigned Officers and Board of Directors, of the Good Will Club of the employees of the Atlanta Woolen Mills in compliance of a signed petition do hereby declare the Atlanta Woolen Mills a Closed shop—giving employment only to members of the Good Will Club.

"We would suggest that all employees, who have not yet joined the Good Will Adjustment Club, get in touch with the applica-

tion committee and make application for membership in the Club Before Monday, August 5th.

(signed)

“Executive Council:

W. A. Lester
Zollie Hauey
Sue Emerson

“Board of Directors:

L. W. Webb
E. G. Guthrie
V. B. Blalack
Eula La Fay
Fred La Fay”

The notice remained posted for several days. Mr. William Nixon admits having been asked by an employee whether he had seen the notice. He testified that he walked over to one of the bulletin boards to see it, but that it was not on the board at that time, and that he made no further effort to ascertain whether such a notice had been or was subsequently posted. Mr. Vaughn Nixon and the respondent's two superintendents, Mr. Pryor and Mr. Ray, denied that they had ever heard that such a notice had been put on the bulletin boards or that they had ever seen it. These denials, as well as the similar denials of the respondent's foremen and overseers, set forth below, are difficult to credit. The presence of the notice on the bulletin boards is clearly established by competent and uncontradicted testimony; the Nixons, the superintendents, foremen and overseers pass these bulletin boards many times a day; the bulletin boards are used to show weekly dockings, to indicate changes in the type of work to be done, and other matters pertaining to the operation of the mill; and, finally, no notices may be posted on the bulletin boards without the permission of the management.

7. There is evidence throughout the record of affirmative acts on the part of foremen and overseers in aiding the cause of the Club.

Mr. Gibson, now foreman in the finishing room, was one of the organizers of the Club before his promotion. His continued interest in the welfare of the Club after he became a foreman, although by written resignation he had ceased to be a member, is understandable. The use of his position as foreman to secure members is a different matter. Four witnesses still employed by the respondent, testified that Gibson, as their foreman, discussed the Club with them. Gibson himself admits advising three of these witnesses to join the Club, but claims the advice was given as a friend and not as a foreman. It cannot be supposed that an employee who, while at work, is asked or advised by his foreman to join a labor organization is unreasonable in assuming that an official demand is being made, especially where, as here, the foreman has power to hire and discharge.

There was testimony that Jackson, foreman of the weaving room, asked three employees to join, stating to two of them that they

must abide by the notice on the bulletin boards. Jackson does not deny discussing the Club with employees. He admits hearing employees say that a closed shop agreement was in effect. He denies that he ever asked anyone to join the Club, or that he saw, or referred anyone to, the notice on the bulletin boards. In the light of Jackson's evasive testimony, and particularly in the light of his testimony that he must, as a necessary part of his job, look at the bulletin board every day, his denials are totally unconvincing and entitled to no weight.

There was testimony that Mr. Whitmire, one of the overseers in the spinning room, discussed the Club with two witnesses, advising one to join if he wished to hold his job, and advising the other, who had been discharged, to ask the superintendent if she could go back to work if she joined the Club. Mr. Whitmire denies having made these statements, but since all of his testimony was obviously evasive, we cannot credit his denials.

Brown, also an overseer in the spinning room, admits discussing the Club with one of the employees. The employee and Brown flatly contradict each other as to the conversation that occurred. It is obvious that Brown was sufficiently informed about the situation to discuss it, although, strangely enough, he neglected to find out enough about it to repudiate the existence of a closed shop agreement, and failed to call the attention of his superiors to a situation which he must have known existed.

Fall, at the time he was foreman, is accused of asking an employee if she had joined. Fall testified he may have spoken to the employee about it but cannot recall what he said.

Wesson, overseer of the card room, admits discussing the Club with one of the witnesses but denies the latter's testimony that Wesson told him that a closed shop agreement would become effective on August 5. Wesson, who then had a son working in the department, admits that he heard employees talking about a closed shop and that he passes the bulletin board at least a dozen times a day, but denies that he ever saw the notice, or that he ever told anyone he would have to join the Club. As in the case of the foremen and other overseers, the conclusion is inescapable that Wesson knew what was going on, and at least did not, to any employee seeking advice, repudiate the existence of a closed shop agreement.

The testimony of one witness to the effect that he secured a Club membership card from one of the company offices and that after signing it, he returned it to a watchman on duty, is uncontradicted. The evidence also shows that members of the Club solicited memberships and contributions during working hours.

8. By August 10, 1935, all of the respondent's employees were members of the Club. There is no doubt, from all the evidence in the case,

that without at least the tacit support of the officers of the respondent and without the active support of the respondent's overseers and foremen, the Club could not have won so quick and unanimous a response. There is even less doubt that the notice, with respect to which the management must assume responsibility, precipitated the influx of membership into the Club. Since all the management need have done, if its hands were clean, was to repudiate the existence of a closed shop agreement, no injustice is involved if responsibility for the effect of the notice is placed upon the respondent..

9. The evidence shows that a deduction from the wages of certain employees was made by the respondent to pay for a chicken dinner given by the Club and that the respondent permitted one of its trucks to be used to carry employees to a Club picnic. It may be, as the Nixons testified, that similar services had been given to groups of employees upon prior occasions and that they were unaware that the chicken dinner and picnic were Club functions. In view of the situation created by the posting of the notices, and by the acts set forth in paragraph 7 above, the members of Local No. 2307 might well have believed that these further acts of the respondent were discriminatory and that the respondent was contributing support to the Club. However, we do not feel that such acts are serious enough in themselves to warrant a distinct finding that the Act has been violated because of them.

There is no evidence that the suggestion that the Club be formed was made by the management of the respondent and not sufficient evidence to warrant us in finding that the management dominated or interfered with its administration.

10. Local No. 2307 is a labor organization which is a local of United Textile Workers of America, affiliated with the American Federation of Labor. It was organized by the respondent's employees in September, 1934, during a shut-down of the respondent's mill due to participation of its employees in a general strike in the textile industry at that time. At the time the Club was being organized, many employees of the respondent were members of Local No. 2307. When an intensive membership drive to secure members for the Club was started in July, 1935, I. E. Perkins, President of Local No. 2307, on the advice of officers of the United Textile Workers of America, advised all employees of the respondent who were members of Local No. 2307, except Arthur Brown and Hubert Brown, to join the Club in order to retain their positions. There is no evidence that employees on becoming members of the Club were required to, or did, resign from Local No. 2307. Foreman Gibson admits, however, that the undisclosed purpose of the Club's organization was to "replace the union". That the formation and activities of the Club were almost successful in achieving this purpose, is shown by the testimony

that the average attendance at meetings of Local No. 2307 prior to July 1, 1935, was between 50 and 80; that the average attendance after July 1, 1935, was from 8 to 10; and that no meetings had been held since September, 1935.

11. Upon the rehiring of employees following the strike in September, 1934, and at all times since, every person employed by the respondent has been required to fill out an application blank which, among other things, requires the applicant to state whether or not he is a member of a union. These application blanks are retained by the respondent and are accessible to any officer or employee of the respondent who wishes to consult them. There is also other evidence in the record that most, if not all, of the officers and supervisory employees of the respondent knew from other sources which of the employees were members of Local No. 2307.

12. With respect to the employees whom the respondent is alleged to have discharged and refused to reinstate, no evidence was presented as to Hulette Moore, Marvin Moore and Harold Perkins. The evidence shows that another employee, Olie Moon, was reinstated prior to the time of the hearing. The complaint as to these four persons will be dismissed.

13. Woodrow and Truman Perkins, discharged on July 12, 1935, by Foreman Gibson, are the sons of I. E. Perkins, President of Local No. 2307. I. E. Perkins was an employee of the respondent at the time of the strike in September, 1934, but was not reinstated after the strike because of the management's resentment against him for his part in calling the strike. Although both Woodrow and Truman had been employees prior to the strike, they were not reinstated until February and April, 1935, respectively. Both are members of Local No. 2307, Truman being Recording Secretary. He began working for the respondent in 1929 and was operating a drier at the time of his discharge. Woodrow had been employed for over two years and was a washer at the time of his discharge. Woodrow testified that at the time of his discharge, Gibson told him that he was sorry to let him go, that his work was satisfactory but that his father was an enemy of the company. Truman testified that Gibson in discharging him said there was nothing wrong with his work but that he, Truman, knew why he was being fired. Gibson, on the contrary, testified that he was made a foreman for a thirty-day trial period to see whether he could eliminate the bad work being done in the department in which the Perkins boys worked. He also testifies that he discharged both of them for poor work and that the department began to improve in the quality of work produced immediately after their discharge.

Gibson's testimony as to his reasons for knowing that the Perkins were the ones producing the bad work is no more convincing than

his testimony in regard to his knowledge of the Club's activities. As to Truman, he says that he was told by Lester, the employee who conceived and founded the Club, that Truman had been scuffling on the floor with another boy while his machine was running. Gibson admits that this occurred some time prior to the discharge, that he never checked Lester's story nor asked Truman if it was so, and never tried to find out who the other person was who was scuffling with Truman. As to Woodrow, the evidence shows he had a helper on the drier, that they both worked together doing the same work, and that the helper who was junior in time of service was not discharged.

It is apparent that the true reason for the discharge of the Perkins boys was their own union activities and their relationship to I. E. Perkins.

14. Mrs. M. E. Green (referred to in the complaint as Lizzie Green), a member of the organizing committee of Local No. 2307, had been employed by the respondent for eight to nine years. She was working as a spinner on the evening shift at the time she was laid off on July 17, 1935. There had been no complaint about her work, and she had not previously been laid off in eight years. She was told by Mr. Ray, superintendent, that she was being laid off because the mill had a surplus of yarn. A helper, Nina Frazier, was also laid off at the same time. However, the shift was started up two nights after the lay-off and Nina Frazier was re-employed but Mrs. Green was not. The respondent alleges that it would have put Mrs. Green back to work if she had made application. The evidence shows that the policy of the respondent was to notify laid-off employees to return to work. The explanation given by Whitmire, one of the overseers in the spinning room, that he intended to call her back but had no way to send for her is also unconvincing. There is no reasonable explanation of the failure to re-employ Mrs. Green except the fact of her union affiliation and activities.

15. Frank Sanders, Second Vice President of Local No. 2307, had been employed eight to nine years and had been regularly employed as a twister since 1932. On July 12, 1935, Wiley, who was a twister and whom Sanders had been helping, was discharged for bad work. Frank Sanders was given his position and a new employee was put on as a helper. One week later, on July 19, Frank Sanders was discharged for alleged bad work also and his helper retained. Wiley was subsequently taken back though Frank Sanders was not. When Mr. Whitmire was asked at the hearing how he knew who the person responsible for the bad work was, his very revealing reply was, "I could tell by looking at Frank when he idled away from his job talking union, that was why the work was getting by." He also admitted that he did not really know that Frank was "talking union"

but insisted that he believed he was. The testimony clearly indicates Whitmire's attitude which, in conjunction with the circumstances surrounding the discharge and Sanders' satisfactory employment record, leads to an irresistible conclusion that Sanders was also discharged because of his union affiliation and activities.

16. A. O. Sanders, a member of Local No. 2307, had been employed by respondent for five to six years as a fixer. He was discharged July 22, 1935, by Mr. Ray, superintendent, who gave as the reason a desire to cut overhead and to employ one person to both fix and run a frame. While it seems strange that Mr. Ray did not even ask A. O. Sanders whether he could do this nor seek to keep on an employee of five to six years standing in some other capacity, there is no positive evidence in the record to show that the management had any particular antipathy towards A. O. Sanders as a member of Local No. 2307. The record does not justify a finding that the discharge of A. O. Sanders was because of his union activities.

17. Arthur Brown, warden of Local No. 2307, had been employed by the respondent since 1921 as a weaver. Although asked by Jackson, his foreman, Harrison, manager of the company houses, and by four employees to join the Club, he refused to do so. The last day Brown worked in the respondent's mill was Monday, August 5, 1935, the day given in the Club's notice placed on the bulletin boards before which employees should make application for membership. When he reported to work the following day he was told that a broken shaft would prevent operations and he would not be needed. When he reported to work on August 7, he was told by Jackson that he would not need him as the Draper loom he had been working on was being taken out. Brown asked Jackson whether there was any other work for him and Jackson replied there was not. The evidence shows that although this loom was taken out, other Draper looms are still being used and also that no opportunity was given Brown to try to operate a Crompton-Knowles loom. This is not understandable in the light of his work record except on the basis that Jackson in his overzealous championing of the outcome of the contest between the Club and Local No. 2307 discharged Brown because of his refusal to join the Good Will Club and for his union activity.

Hubert Brown had worked as a weaver for respondent for nine years. He also had refused to join the Club. About one and one-half months before his discharge, he was transferred from the second to the third shift. Hubert worked the day of August 5 but when he reported to work on August 6, was told that the third shift was being shut down and that they had nothing else for him to do. Jackson testifies that Hubert was not discharged but merely laid off because the third shift was stopped and that he might have been

re-employed had he made application when the third shift again commenced operation. As we have already stated, the policy of the respondent was to send for employees who had been laid off. In addition, the record shows that Hubert, after August 6, went back to see Jackson to ask for a recommendation in order to secure other employment. Jackson, therefore, knew that Hubert was unemployed and gives no explanation of why if he desired to re-employ him he did not offer to do so at that time.

The only logical explanation for the discharges of Hubert and Arthur Brown was their refusal to join the Club and their union membership and activities.

18. The evidence concerning the resignation of Bud Richardson on September 10 does not clearly establish a discrimination in regard to hire and tenure of employment. Richardson was a member of Local No. 2307 and also a member of the Club. Although he had been employed for about ten years by the respondent, the evidence shows he had probably been guilty of careless workmanship. On September 10, Jackson notified Richardson that he had been "docked" eleven dollars on one piece of cloth for bad work. Rather than suffer this deduction, Richardson resigned. Richardson testified that he had been frequently "docked" before but that the amount had never exceeded \$1.50. The fact that Richardson chose to resign rather than be subject to an eleven-dollar deduction would not necessarily prevent a finding of discrimination against him. However, in view of the evidence of his inefficiency, we do not feel justified in finding that he was discriminated against because of his union membership.

19. Corinne Smith had been employed for about six months as a burler, when with the permission of the respondent, she and her husband, also an employee, went on a vacation the first week in July, 1935. Upon her return, she was not re-employed because, according to Foreman Gibson, the respondent had decided to discontinue using burlers. Gibson admits he had been told by someone that Mrs. Smith had been talking against the Club and calling some of the employees "scabs". He also admitted talking to her husband about this but denies that he told her husband she would not be re-employed because she had been talking too much. Gibson also testified that Mrs. Smith's acts did not influence him in discharging her. He does not, however, satisfactorily explain why Mrs. Smith's job as a burler was discontinued while other burlers were retained. We believe that her activity in opposition to the Club was the cause of her being discharged. Inasmuch as Mrs. Smith did not testify as to the exact date on which she was refused re-employment, for purposes of our order, we shall assume the date to

have been July 11, which, on the evidence, is the latest date on which the refusal could have taken place.

20. By the discharges and refusals to reinstate, as above set forth, the respondent discriminated in regard to hire and tenure of employment and thereby discouraged membership in Local No. 2307 and encouraged membership in the Club.

21. By the acts set forth in paragraphs 6, 7 and 8 of the findings of fact and by the discharges as above set forth, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

22. The aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Local No. 2307, United Textile Workers of America, and the Good Will Club, are labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by its discharge of, and refusal to reinstate, Woodrow Perkins, Truman Perkins, Mrs. M. E. Green, Frank Sanders, Arthur Brown, Hubert Brown and Corinne Smith, and each of them, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (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, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

5. The respondent has not dominated or interfered with the administration of the Good Will Club nor contributed support to it, within the meaning of Section 8, subdivision (2) of the Act.

6. The respondent in the discharge of A. O. Sanders and in the resignation of Bud Richardson has not engaged in unfair labor practices, within the meaning of Section 8, subdivisions (1) or (3) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Rela-

tions Act, the National Labor Relations Board hereby orders that the respondent, Atlanta Woolen Mills, and its officers and agents, shall:

1. Cease and desist:

a. From requiring from applicants for employment information respecting their affiliation with Local No. 2307, United Textile Workers of America, or with any other labor organization;

b. From in any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid and protection;

c. From in any manner soliciting or encouraging membership in the Good Will Club, or permitting such soliciting in the mill during working hours;

d. From discouraging membership in Local No. 2307, United Textile Workers of America, and from encouraging membership in the Good Will Club, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

a. Offer to the employees listed in Appendix A, and each of them, reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed;

b. Make whole said employees, with the exception of Mrs. M. E. Green and Corinne Smith, for any loss they may have suffered by reason of their discharges, by the payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the time they were discharged to the date of such offer of reinstatement, computed at the average weekly wage at the time of discharge, as set forth in Appendix A, less the amount which each, respectively, has earned subsequent to the time of discharge and up to the time of the offer of reinstatement; make whole Mrs. M. E. Green by payment, computed in the same manner, for the period from July 19, 1935, to the time of the offer of reinstatement; and make whole Corinne Smith by payment, computed in the same manner, for the period from July 11, 1935, to the time of the offer of reinstatement;

c. Post immediately notices to its employees in conspicuous places throughout the mill, stating that the respondent will cease and desist in the manner aforesaid; that there is no closed shop agreement with the Good Will Club; and that such notices will remain posted for a period of thirty (30) days.

It is further ordered that the complaint is hereby dismissed: (a) as to the allegations that the respondent has dominated and interfered with the administration of the Good Will Club and contributed support to it; and (b) as to the allegations of discriminatory discharges of Hulette Moore, Marvin Moore, Harold Perkins and Olie Moon, without prejudice, and as to the alleged discriminatory charges of A. O. Sanders and Bud Richardson.

APPENDIX A

| Name | Average weekly wage at time of discharge | Wages received from employment elsewhere from date discharged to December 12, 1935 |
|----------------------|--|--|
| Woodrow Perkins..... | \$15 50 | \$43 00. |
| Truman Perkins..... | 16 00 | About 128 15 ¹ |
| Mrs. M E Green..... | 12 40 | 25 00-50 00 ² |
| Frank Sanders..... | 15 50 | 1 50 |
| Arthur Brown..... | 18 50 | About 67 50. ³ |
| Hubert Brown..... | 16 80 | None |
| Corinne Smith..... | 14. 50 | About 81 00 ⁴ |

¹ Perkins testified that he had earned \$7.50 per week from about the middle of August to within about a month before the hearing and that he had earned \$8.25 per week since.

² Mrs. Green testified she has earned "somewhere around between \$25 or maybe \$50".

³ Arthur Brown testified he had received about \$7.50 per week for "something like two months".

⁴ Mrs. Smith testified she had earned 25 cents an hour, an average of about 24 hours a week for about three months.

[SAME TITLE]

SUPPLEMENTARY DECISION AND MODIFICATION OF ORDER

June 10, 1936

On March 11, 1936, the Board issued its decision in this matter, finding that the respondent had engaged in unfair labor practices, within the meaning of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, and finding further that the respondent had not dominated or interfered with the administration of the Good Will Club, a labor organization of its employees, or contributed support to it, within the meaning of Section 8, subdivision (2) of the Act. On March 23, 1936, counsel for Local No. 2307, United Textile Workers of America, hereinafter called the union, filed a petition with the Board praying that the latter conclusion be modified, and that the Board order the dissolution of the Good Will Club. After due notice to all parties, counsel for the union argued before the Board in support of his petition on April 9, 1936, and thereafter he and counsel for the American Federation of Labor, amicus curiae, filed briefs in support of the petition.

It has not been urged upon us that the findings of fact made by the Board in its decision are erroneous or that they should be modi-

fied. Rather, counsel for the union argues that upon the findings of fact the Board should have concluded that the respondent interfered with the formation of the Good Will Club, and contributed support to it, and counsel for the American Federation of Labor in his brief argues that the proper conclusion should have been that the respondent interfered with the administration of the Good Will Club and contributed support to it. The findings of fact principally referred to are the following:

6. The Good Will Club (hereinafter referred to as the Club) is a labor organization which was formed among the respondent's employees in the early part of 1935. The constitution and by-laws of the Club state that one of its purposes is to act as a collective bargaining agency. Representatives of the Club requested Mr. Vaughn Nixon, President and Treasurer, and Mr. William Nixon, Vice-President, of the respondent, to enter into a closed shop agreement with the Club. The request was refused. None the less, the following notice appeared on several bulletin boards in the mill in the latter part of July:

"We, the undersigned Officers and Board of Directors, of the Good Will Club of the employees of the Atlanta Woolen Mills in compliance of a signed petition do hereby declare the Atlanta Woolen Mills a Closed shop—giving employment only to members of the Good Will Club.

"We would suggest that all employees, who have not yet joined the Good Will Adjustment Club, get in touch with the application committee and make application for membership in the Club before Monday, August 5th.

(signed)

"Executive Council:

W. A. Lester
Zollie Hauey
Sue Emerson

"Board of Directors:

L. W. Webb
E. G. Guthrie
V. B. Blalack
Eula La Fay
Fred La Fay"

The notice remained posted for several days. Mr. William Nixon admits having been asked by an employee whether he had seen the notice. He testified that he walked over to one of the bulletin boards to see it, but that it was not on the board at that time, and that he made no further effort to ascertain whether such a notice had been or was subsequently posted. Mr. Vaughn Nixon and the respondent's two superintendents, Mr. Pryor and Mr. Ray, denied that they had ever heard that such a notice had been put on the bulletin boards or that they had ever seen it.

These denials, as well as the similar denials of the respondent's foremen and overseers, set forth below, are difficult to credit. The presence of the notice on the bulletin boards is clearly established by competent and uncontradicted testimony; the Nixons, the superintendents, foremen and overseers pass these bulletin boards many times a day; the bulletin boards are used to show weekly dockings, to indicate changes in the type of work to be done, and other matters pertaining to the operation of the mill; and, finally, no notices may be posted on the bulletin boards without the permission of the management.

7. There is evidence throughout the record of affirmative acts on the part of foremen and overseers in aiding the cause of the Club.

Mr. Gibson, now foreman in the finishing room, was one of the organizers of the Club before his promotion. His continued interest in the welfare of the Club after he became a foreman, although by written resignation he had ceased to be a member, is understandable. The use of his position as foreman to secure members is a different matter. Four witnesses still employed by the respondent, testified that Gibson, as their foreman, discussed the Club with them. Gibson himself admits advising three of these witnesses to join the Club, but claims the advice was given as a friend and not as a foreman. It cannot be supposed that an employee who, while at work, is asked or advised by his foreman to join a labor organization is unreasonable in assuming that an official demand is being made, especially where, as here, the foreman has power to hire and discharge.

There was testimony that Jackson, foreman of the weaving room, asked three employees to join, stating to two of them that they must abide by the notice on the bulletin boards. Jackson does not deny discussing the Club with employees. He admits hearing employees say that a closed shop agreement was in effect. He denies that he ever asked anyone to join the Club, or that he saw, or referred anyone to, the notice on the bulletin boards. In the light of Jackson's evasive testimony, and particularly in the light of his testimony that he must, as a necessary part of his job, look at the bulletin board every day, his denials are totally unconvincing and entitled to no weight.

There was testimony that Mr. Whitmire, one of the overseers in the spinning room, discussed the Club with two witnesses, advising one to join if he wished to hold his job, and advising the other, who had been discharged, to ask the superintendent if she could go back to work if she joined the Club. Mr. Whitmire denies having made these statements, but since all of his testimony was obviously evasive, we cannot credit his denials.

Brown, also an overseer in the spinning room, admits discussing the Club with one of the employees. The employee and Brown flatly contradict each other as to the conversation that occurred. It is obvious that Brown was sufficiently informed about the situation to discuss it, although, strangely enough, he neglected to find out enough about it to repudiate the existence of a closed shop agreement, and failed to call the attention of his superiors to a situation which he must have known existed.

Fall, at the time he was foreman, is accused of asking an employee if she had joined. Fall testified he may have spoken to the employee about it but cannot recall what he said.

Wesson, overseer of the card room, admits discussing the Club with one of the witnesses but denies the latter's testimony that Wesson told him that a closed shop agreement would become effective on August 5. Wesson, who then had a son working in the department, admits that he heard employees talking about a closed shop and that he passes the bulletin board at least a dozen times a day, but denies that he ever saw the notice, or that he ever told anyone he would have to join the Club. As in the case of the foremen and other overseers, the conclusion is inescapable that Wesson knew what was going on, and at least did not, to any employee seeking advice, repudiate the existence of a closed shop agreement.

The testimony of one witness to the effect that he secured a Club membership card from one of the company offices and that after signing it, he returned it to a watchman on duty, is uncontradicted. The evidence also shows that members of the Club solicited memberships and contributions during working hours.

8. By August 10, 1935, all of the respondent's employees were members of the Club. There is no doubt, from all the evidence in the case, that without at least the tacit support of the officers of the respondent and without the active support of the respondent's overseers and foremen, the Club could not have won so quick and unanimous a response. There is even less doubt that the notice, with respect to which the management must assume responsibility, precipitated the influx of membership into the Club. Since all the management need have done, if its hands were clean, was to repudiate the existence of a closed shop agreement, no injustice is involved if responsibility for the effect of the notice is placed upon the respondent.

The Board has carefully reconsidered the conclusion which it reached from these facts, and is impressed with the arguments of counsel that Section 8, subdivision (2) of the Act should be inter-

preted to embrace this kind of employer activity; and if a similar state of facts was again presented, the Board might broaden its interpretation of the meaning of Section 8, subdivision (2) of the Act.

Be that as it may, we feel that the practical consideration governing the union in the presentation of the petition is its dissatisfaction with the scope of our previous order; and apparently the arguments concerning the proper interpretation of Section 8, subdivision (2) are based upon the premise that before the Board can make an order requiring the disestablishment of the Good Will Club, it must find that this subdivision has been violated.

Without therefore attempting at this time to re-interpret Section 8, subdivision (2), the Board has reconsidered the order which it made on the basis of the findings of fact set forth above. Although the Board concluded that Section 8, subdivision (2) of the Act had not been violated, it did conclude that the respondent had violated Section 8, subdivision (1) of the Act by reason of the acts set forth in such findings. In its order, the Board provided, *inter alia*, that the respondent should post notices to its employees "that there is no closed shop agreement with the Good Will Club."

We now believe that this order did not go far enough on the facts as found. It merely requires the respondent to make an announcement that there is no closed shop agreement with the Good Will Club. However, we found that if it had not been for the affirmative acts of the respondent's officers and the respondent's failure to act with respect to the closed shop notices on the bulletin boards, the Good Will Club would not have succeeded in enlisting the membership of most of the employees. The only effective remedy which will restore the situation as it existed before the respondent interfered with the self-organization of its employees is to require the disestablishment of the Good Will Club. We feel that in going this far we are doing no injustice to the respondent, inasmuch as it is clear on the evidence, and we have so found, that before the respondent had interfered in the manner set forth, the Good Will Club led merely a formal existence. If we were right in concluding on the evidence that the Club was feeble and insignificant as an organization representing the employees before the respondent gave it life, we feel that we are justified in requiring such action as will render the Club as ineffective as it had previously been. We do not believe that the posting of a notice stating no more than that there is no closed shop agreement can achieve this result.

In basing an order that the Club be disestablished as a bargaining agency on a conclusion that Section 8, subdivision (1) of the Act has been violated, and not, as is normally the case, on a conclusion

that Section 8, subdivision (2), has been violated, we are not exceeding the power granted to the Board in Section 10, subdivision (c) of the Act wherein the Board is empowered to require the taking of "such affirmative action as will effectuate the policies of this Act." It is clear from this provision that in order to require the disestablishment of a labor organization as a bargaining agency, it is not essential that the Board conclude that an employer has violated Section 8, subdivision (2) with respect to it. We construe Section 10, subdivision (c) as empowering the Board to require the taking of such affirmative action as will provide an appropriate and effective remedy for any violations of any subdivision of Section 8.

Inasmuch as objections have been made to the Board's conclusion that the Good Will Club is a labor organization within the meaning of Section 2, subdivision (5) of the Act, the Board wishes to take this opportunity of pointing out that such a conclusion is made merely to comply with the technical requirements of the Act. Section 2, subdivision (5) defines a labor organization as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." This definition is clearly comprehensive enough to embrace an organization which is dominated or interfered with, or to which an employer contributes financial or other support, within the meaning of Section 8, subdivision (2).

In fact, from the legal point of view, the Board has no power to find that an employer has violated that subdivision unless it also finds that his illegal acts were taken with respect to a "labor organization"; as used in Section 8, subdivision (2), the term has the meaning given by Section 2, subdivision (5). A review of the decisions thus far made by the Board will demonstrate that by making the essential finding under Section 2, subdivision (5), the Board does not intend to place the stamp of legitimacy upon organizations which should be, and which have been, outlawed. (*In the Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, Corporations and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Case No. C-1*; decided December 7, 1935. *In the Matter of Wheeling Steel Corporation and The Amalgamated Association of Iron, Steel, and Tin Workers of North America, NRA Lodge No. 155, Goodwill Lodge No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163, Case No. C-3*; decided May 12, 1936.)

MODIFICATION OF ORDER

Paragraph 2 of the Order made by the Board on March 11, 1936, is hereby modified as follows:

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

a. Offer to the employées listed in Appendix A, and each of them, reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed;

b. Make whole said employees, with the exception of Mrs. M. E. Green and Corinne Smith, for any loss they may have suffered by reason of their discharges, by the payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the time they were discharged to the date of such offer of reinstatement, computed at the average weekly wage at the time of discharge, as set forth in Appendix A, less the amount which each, respectively, has earned subsequent to the time of discharge and up to the time of the offer of reinstatement; make whole Mrs. M. E. Green by payment, computed in the same manner, for the period from July 19, 1935, to the time of the offer of reinstatement; and make whole Corinne Smith by payment, computed in the same manner, for the period from July 11, 1935, to the time of the offer of reinstatement;

c. Withdraw all recognition from the Good Will Club as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;

d. Post notices in conspicuous places in the mill stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that there is no closed shop agreement with the Good Will Club; (3) that the Good Will Club is so disestablished and that the respondent will refrain from any recognition thereof; and (4) that such notices will remain posted for a period of at least 30 consecutive days from the date of posting.