

In the Matter of FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.
and AMALGAMATED CLOTHING WORKERS OF AMERICA

Case No. C-50.—Decided March 28, 1936

Men's Clothing Industry—Interference, Restraint or Coercion: engendering fear of loss of employment for union membership and activity; expressed opposition to labor organization, threats of retaliatory action; bribing union members; surveillance over union meetings and activities; propaganda against union; circulation of anti-union petition among employees; threat to move plant—*Discrimination:* discharge; non-reinstatement following temporary lay-off—*Reinstatement ordered—Back Pay:* awarded.

Mr. Gerhard P. Van Arkel and *Mr. A. L. Wirin* for the Board.

Weinberg & Sweeten, by *Mr. Leonard Weinberg* and *Mr. Harry J. Green*, of Baltimore, Md., for respondent.

Mr. John Hirschberg, of Richmond, Va., and *Mr. H. Blumberg*, of New York City, for the Union.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 11, 1935 the Amalgamated Clothing Workers of America filed with the Regional Director for the Fifth Region a charge that the Friedman-Harry Marks Clothing Company, Inc., Richmond, Virginia, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 15, 1935 the Board issued a complaint against the Friedman-Harry Marks Clothing Company, Inc., hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Fifth Region, and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint alleged in substance that the respondent, by its officers and agents, terminated the employment of certain named employees, all of said acts occurring on various days on and after September 27, 1935, for the reason that each of said employees had joined and assisted a labor organization known as the Amalgamated Clothing

Workers of America, said acts being contrary to Section 8, subdivisions (1) and (3) of the Act.

The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. The respondent, appearing specially, objected to the jurisdiction of the Board on stated constitutional grounds. Without waiving its rights under that special appearance, the respondent filed an answer to the complaint in which it admitted the discharges but denied the allegations of violations and moved to dismiss the complaint. On December 5, 1935 a hearing was held at Richmond, Virginia by Henry G. Perring, the Trial Examiner designated by the Board, and evidence was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties. Counsel for the Board introduced all of the evidence presented by the Board, consisting entirely of written stipulations and affidavits, in the prior case involving this concern (Case No. C-40). The respondent did not object to the introduction of such affidavits on the ground that it was deprived of the opportunity to cross-examine the affiants but solely on the ground of their irrelevance and incompetency. The respondent did not present any evidence, oral or written, on its behalf nor did it cross-examine any of the witnesses who testified orally for the Board. The Trial Examiner denied the motion to dismiss the complaint. The Board affirms this ruling.

Thereafter the Trial Examiner duly filed his Intermediate Report with the Regional Director. In said Report the Trial Examiner ruled that the evidence submitted by the Board was admissible and consequently overruled the various objections of the respondent. The Board affirms these rulings. He found that the respondent by discharging Annie Mae Rogers, Maggie High, Robert L. Morgan, Isaac Kenny, J. Wesley Owen, Albert J. Rogers, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Doris Koch, and Sylvia Johnson, said discharges being made for the reason that each employee had joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, hereinafter referred to as the union, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. No evidence having been introduced with respect to the cases of Edna Hicks, Reba Holder,¹ and Mrs. Lillian Tunstall, the Trial Examiner dismissed the allegations in the complaint concerning these employees. The Trial Examiner recommended that the respondent cease and

¹ This employee is involved in the first case concerning this respondent (Case No. C-40).

desist from its unfair labor practices and, in addition, offer reinstatement to the discharged employees and pay to said employees respectively a sum of money equal to the wages lost to them by virtue of the discharges. The respondent has not complied with these recommendations.

On March 28, 1936 we made our findings of fact and decision in the first case involving this respondent. See *In the Matter of Friedman-Harry Marks Clothing Company, Inc., Case No. C-40*. Since all of the evidence in that case has been introduced into this case, most of the findings of fact there made are here applicable. We therefore incorporate in this decision, similarly numbered, Findings 1 through 32 and Findings 36 and 37 of the prior case.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE MEN'S CLOTHING INDUSTRY

1. The men's clothing industry is among the twenty most important manufacturing industries in this country. It ranked in 1929, according to the U. S. Census of Manufactures, sixteenth in the number of wage earners employed, nineteenth in the value of its product and sixteenth in the amount of wages paid. In 1935² there were more than 3,000 firms in the industry which employed approximately 150,000 workers in the manufacture of men's clothing. In addition to these workers, there are about 58,000 engaged in the manufacture of the fabrics from which the clothing is made and about 100,000 who are engaged in the wholesale and retail distribution of the manufactured men's clothing. The total value of sales in 1929 by the manufacturing plants in the industry was \$833,242,000.

2. The various steps in the typical process of manufacturing men's clothing are as follows:

(a) The purchase, generally by specifications, of the raw materials—mainly woolen and worsted cloth, cotton and rayon, canvas, silesia, felt, hair-cloth, sewing materials and buttons;

(b) The sponging and shrinking of the cloth, after an examination to determine the proper method of so treating it;

(c) The cutting of the cloth, linings, canvas and other materials according to schedules prepared on the bases of sizes, models and customer;

² Unless the text indicates the contrary, the statistical statements in the findings of fact are based upon 1935 figures.

(d) The fabrication into separate garments, such as coats, pants and vests, of the cut materials through many sewing, basting and pressing operations;

(e) The assembly of these separate garments into completed suits, grouped according to customers' orders and, in some cases, having sewn on them the customer's label;

(f) The distribution of the garments to the manufacturers' customers, generally retailers; alteration of the garment by the retailer to fit it to the wearer and correction by the manufacturer of defects in returned garments.

3. Woolen and worsted cloth represent about 75 per cent of the total cost of raw materials. Much of the raw wool is imported from foreign countries. The production of the domestic raw wool is concentrated in the Western States, over 70 per cent having been produced in that area in 1933. Texas, Montana, Wyoming, and California constitute the chief wool-producing States. But while the raw wool is thus produced mainly in the West, the manufacture of that wool into woolen and worsted cloth, known as men's wear fabrics, takes place largely in the New England States, so that there is a constant flow of raw wool across the country to the mills in New England. These mills in 1929 produced over 63 per cent of the total of men's wear fabrics. Such fabrics constitute the largest single item as respects both quantity and value of the product of the wool textile industry.

4. The bulk of the rayon fabrics used for linings is produced in New Jersey and Pennsylvania, whose combined production in 1929 exceeded 50 per cent of the United States total. In all, only fourteen States produce rayon fabrics. As these fourteen States are not similarly prominent in the list of States producing men's clothing, it is clear that there must be an extensive flow of this raw material in interstate commerce. For example, sixteen States and the District of Columbia, which accounted in 1934 for over 25 per cent of the garments cut, produced no rayon fabrics in 1929, while New York which cut more than 46 per cent of the total of men's clothing cut in 1934, produced only 3.7 per cent of the total of rayon fabrics.

5. As in the case of the wool and rayon fabrics, the areas of production of the other materials, such as cotton fabrics, silesia for pockets, felt, hair-cloth, jute and hemp fabrics, bear no direct relation to the areas of production of men's clothing, so that a large amount of these materials must be transported to the latter areas.

6. Most of the sponging and shrinking, which is necessary to condition the fabrics for cutting, is performed in New York and Philadelphia for those firms which do not operate their own sponging plants. The cloth is generally shipped, after its purchase by the

men's clothing manufacturer, from the mill to the sponging plant and then reshipped to the manufacturer.

7. The principal operations after shrinking and sponging are cutting, sewing and pressing. All of these operations may be performed in one plant, but very frequently they are performed separately in plants located in different States. The term "inside manufacturer" is applied to establishments in which the entire manufacturing process is carried out in one place. The "contract manufacturer", on the other hand, purchases the cloth and, after sponging, cuts it in his plant but has the sewing and pressing performed by contractors to whom the cloth is let out on a piece rate basis. For the New York area, about 75 per cent of the goods cut are sent out to contract shops to be sewn.

Fifty per cent of the 3,225 establishments engaged in the fabrication of men's clothing are located in New York State; 95 per cent are located in eight States—New York (50.2 per cent); Pennsylvania (10.4 per cent); Maryland (10.2 per cent); New Jersey (5.9 per cent); Illinois (8.3 per cent); Massachusetts (3.6 per cent); California (3.3 per cent); and Ohio (3 per cent). Since the men's wear fabrics are produced largely in the New England States, the goods must be transported from the mills across state lines to the fabricating establishments in the States listed above. Sixty-five per cent of the total of suitings and pantings fabrics for men's wear produced in 1929—\$175,379,000 in value—was produced in five New England States, Massachusetts, Rhode Island, Connecticut, Maine and Vermont. In these same five States, 74 per cent of the overcoatings fabrics, or \$23,371,000 in value, was produced. While the combined total of men's wear fabrics produced in these States was thus about \$200,000,000, the value of men's clothing manufactured from these fabrics in the same States was only \$35,000,000. It is thus apparent that the great bulk of the fabrics are shipped to manufacturing establishments in other States.

In respect to the cutting of the cloth, about 46 per cent is performed in New York; 11.72 per cent in Pennsylvania; 11.17 per cent in Ohio; 9.12 per cent in Illinois; 7.20 per cent in Maryland; 4.07 per cent in Massachusetts; and the balance in other States (based upon 1934 figures). In 22 States, no cutting is performed. But while the three States of New York, Ohio and Massachusetts in 1934 cut 61.57 per cent of the total number of garments cut, only 44.81 per cent of the man-hours worked in the men's clothing industry were worked in these States. Conversely, although only 28.74 per cent of the garments were cut in Maryland, Illinois, New Jersey and Pennsylvania, 41.98 per cent of the man-hours were worked in these States. These comparisons indicate the extent to which the

cloth and garments are transported among the States in the process of manufacture.

8. The processes in many of the clothing factories are assembly operations. Many firms, for example, do not make shoulder pads for coats in their own factories but buy them from firms specializing in this part of the garment, in many cases causing the pads to be transported from other States. The same is true of the canvases used in the coats. Finally, certain parts of the suit, as the pants or coat and vest, may be manufactured in one State and the other parts elsewhere, so that the separate garments must be transported from the various manufacturing plants to a central place for assembly into suits before delivery to the retailer or other purchaser.

9. Thousands of clothing workers are employed in the retail stores in the task of making the alterations on the suits necessary to fit them to the particular customer. The manufacturing operations do not really end until after the suit is fitted to the customer and all alterations completed.

10. It is obvious that the market for men's clothing is a national one. Since most of the clothing is produced in a few States—over 90 per cent in seven States—but is used in every State, the sale and distribution of the clothing involves transportation and commerce among the States. In 1929 in the seven States which produced 90 per cent of the total—New York (46.33 per cent); Pennsylvania (11.72 per cent); Ohio (11.17 per cent); Illinois (9.12 per cent); Maryland (7.20 per cent); Massachusetts (4.07 per cent); New Jersey (.70 per cent), only 48 per cent of the total sales were made—New York (16.7 per cent); Pennsylvania (8.1 per cent); Ohio (5.9 per cent); Illinois (8.7 per cent); Maryland (1.3 per cent); Massachusetts (4.1 per cent); New Jersey (3.2 per cent). In 21 States no men's clothing was produced at all, but these same States accounted for 12 per cent of the total clothing sold.

11. The manufactured clothing is marketed in a variety of ways. The bulk of the clothing is sold by manufacturers to retailers located in every State. Sales to retailers in 1929 amounted to 63 per cent of the total measured by value. These retailers consist of men's and boys' clothing stores, furnishing stores, family clothing stores, department stores, general stores and dry goods stores. More than half of the total retail sales were made by the men's and boys' clothing and furnishing stores. Recently, the chain store method of distribution has become important and in 1929 there were 286 men's wear chains operating 3,054 stores. Nine of the 85 of these chains which sold only men's clothing were national in scope and sold 25 per cent of the men's and boys' clothing sold in the type of store described as "men's clothing stores". In addition, some manufacturers now

own and operate retail outlets located in many States. In 1929 distribution through the manufacturers' own retail outlets amounted to 8.3 per cent of the total sold. This method of distribution is increasing. Only 14 per cent of the product was disposed of to independent wholesalers and 6 per cent to wholesale branches owned by the manufacturers.

12. About 5.9 per cent of the men's clothing produced in 1929 was sold direct to household consumers by means of house-to-house canvassing. About 299 plants distributed their product in this manner. The canvasser has samples of material from which the customer makes his selection. His measurements are taken, the garment is manufactured pursuant to the order and shipped direct to the customer.

13. Sales to retailers are made through two main methods—sending salesmen out to travel from state to state and maintaining show rooms in New York City and other cities, which are visited by buyers from stores throughout the country. The New York market is the largest in the country for the sale of men's clothing. The Daily News Record, a trade journal, and the New York Times list daily the arrival of buyers of men's clothing. These buyers visit the show rooms of the manufacturers and make their selections from samples on hand. Many buyers maintain headquarters in New York and are visited there by salesmen for the manufacturers. The two directories of the men's wear industry, The American Clothier and Fairchild's Men's Wear, list sales offices and buying offices. Show rooms are maintained in other cities, including Chicago and Los Angeles.

The salesmen on the road establish in some large cities temporary show rooms where their samples may be inspected by the buyers of the stores in that area. Their main trips are at specified times during the year in advance of the Fall and Spring retail selling seasons.

14. National advertising of their product is utilized by many of the manufacturers. In addition to advertising in the trade journals, such as the Daily News Record, The American Clothier and Fairchild's Men's Wear, they advertise in magazines of national circulation. Moreover, by means of trade marks and trade names they are able to advertise nationally by using prominent newspapers in the various cities. Such advertising greatly assists the salesmen by creating a familiarity with the product and a demand for it. Eleven firms spent more than a half million dollars in magazine advertising in 1929.

15. The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation. There is a constant flow of raw wool from the Western States and foreign coun-

tries to the mills of New England where it is transformed into men's wear fabrics, thence to the sponging and shrinking plants of New York and Philadelphia, then, joined by the other necessary raw materials, to the fabricating factories of the Middle Atlantic States for manufacture into clothing. This last operation involves a large amount of movement of the cloth and manufactured garments from state to state until final assembly of the finished product. Finally, in the main by way of retail stores, the garments are distributed to customers located in every State. No clothing manufacturing concern could exist without this dependence upon interstate commerce. The industry itself has no doubt as to its status, for the Executive Director of the New York Clothing Manufacturers Exchange, Inc., which represents about 250 manufacturers doing 70 per cent of the total business in the New York market, stated in his affidavit that the industry is conducted as an interstate business and is entirely dependent upon interstate commerce.

16. As can be gathered from the above, the manufacturing plants are concentrated in certain areas. In recent years there has been a tendency, however, for clothing manufacturers to migrate to other areas. Migration is aided considerably by the mobile character of the industry. The amount invested in fixed capital is relatively small compared with other industries. Heavy machinery or special buildings are not required and dismantling of machinery and installation elsewhere does not involve large expenditures. A large proportion of the capital is invested in garments rather than in buildings and machinery. Moreover, transportation costs are low in proportion to the value of the product. For this reason the industry is carried on without regard to the sources of raw materials or the areas of consumption and involves an extensive use of transportation facilities even during the process of manufacture.

The chief incentive to this migration is the search for lower labor costs. The industry is highly competitive—no single concern does more than 3 per cent of the total business. While the largest manufacturer employs about 3,500 people, the fiftieth largest employs only 360. The average for about 3,000 of the total number of establishments is less than 35 employees per establishment. In view of the competitive aspect, reduction in labor costs is significant as those costs are the most important item next to that of the raw materials. The labor costs are from 20 to 28 per cent of the value of the manufactured product; they are more than 40 per cent of the value added by the manufacturer and are about 75 per cent of the purely manufacturing cost. Moreover, they are the most flexible item in the total costs. While the cost of raw materials is about 50 per cent of the total, the prices of the principal materials are standardized and do

not vary greatly from manufacturer to manufacturer. Moreover, since labor costs amount to several dollars on the average suit while transportation costs are only a matter of cents, the search for lower labor costs may be carried on without any regard for the sources of raw materials or the markets for the final product. The migration has thus not been toward such points but toward the lower wage centers.

The shift to low wage areas has been marked. Employment has decreased in those areas where wages have remained stable but increased in places where the wages were lower or less stable. From 1923 to 1929 employment in the industry increased about 20 per cent in cities in which wage earners received less than the average wage, whereas in those cities in which more than the average was paid there were large decreases in employment—38.3 per cent for Chicago, 24.3 per cent for New York, 18.2 per cent for Boston.

II. THE AMALGAMATED CLOTHING WORKERS OF AMERICA

17. The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in the men's and boys' clothing industry. These members are organized in local unions throughout the United States and Canada. In important industrial centers where there is more than one local, the locals are organized into "joint boards". All locals and other subdivisions are governed by their own by-laws, elect their own officers and manage their own affairs, subject to the general jurisdiction of the national organization which is exercised through a General President, General Secretary-Treasurer and a General Executive Board. The supreme authority of the union is vested in the biennial convention to which delegates are elected by all the local unions on the basis of membership. The Amalgamated Clothing Workers has been the representative of workers in the men's clothing industry for over twenty years.

18. The men's clothing industry has long faced and still copes with the problem of the sweat-shop. The units in the industry are relatively small. The reasons for the predominance of medium size and small size factories are, in part, absence of large overhead expenses, small initial capital investment, absence of expensive patents, and the seasonal nature of the industry, which permits a closing of the factory during part of the year. The prevalence of these small establishments led to sweat-shops and all the ills that flow therefrom—low wages, shocking and inhumane working conditions, child labor, home work, unfair competitive advantages to the employers who ran the sweat-shops and resulting competitive effect upon firms attempting to maintain decent standards, unrest and bitterness on the part of the

employees. Of late, moreover, there has been a tendency to maintain sweat-shop conditions in large factories by locating these factories in rural areas and small cities and exploiting the unorganized workers in those places. Out of such conditions grew the Amalgamated Clothing Workers and its history has been a constant attempt through the medium of collective bargaining to eliminate the sweatshop and to improve working conditions for the benefit of both manufacturer and employee. Its collective agreements with employers provide for the elimination of home work and child labor and for the maintenance of sanitary working conditions. These collective agreements have also meant shorter hours and higher wages to the workers in addition to better working conditions. In 1934, of the ten firms paying the lowest hourly wages, all were non-union firms, whereas all but one of the ten firms paying the highest wages had agreements with the Amalgamated. The average wage of the first ten firms was 46.25 cents an hour, that of the second ten 79.60 cents an hour.

19. The period before the recognition by the employers of the Amalgamated was marked by long and bitter strikes. In 1921 there had been a general strike in New York City which had lasted for eight months and caused losses of millions of dollars to employers and employees. A similar general strike in New York in 1924 lasted for six weeks and involved all of the 500 firms in that area and their 35,000 workers. The wage loss to the workers was nearly \$6,000,000, the financial loss to the manufacturers ran into the millions. In 1910 a strike occurred in the factories of the largest manufacturer of men's clothing in the country, Hart, Schaffner and Marx in Chicago, which employed 6,000 workers, and spread to other plants in the same area. Similar large strikes occurred in Rochester and Chicago at later periods. Smaller strikes and lockouts were frequent.

This costly industrial strife resulted finally in recognition of the Amalgamated by the employers. In 1910 the Hart, Schaffner and Marx firm entered into a collective agreement with its workers, who became members of the Amalgamated upon its organization, and has continued such relations ever since that time. Most of the other Chicago manufacturers made similar agreements in 1919. The New York strike of 1924 was ended by the establishment of a collective agreement between the leading manufacturers and the Amalgamated which was soon joined in by other manufacturers in that area. Factories in Rochester, Baltimore, Boston, Cincinnati, Cleveland, St. Louis and Philadelphia recognized the union and entered into agreements with it. Today the Amalgamated has collective agreements with clothing manufacturers and contractors employing the greater number of the clothing workers in the United States.

These collective agreements have brought peace to that portion of the industry that has entered such agreements. Since the signing of the agreement in New York, there has not been a strike or lockout involving signatories to the agreement, who account for about 70 per cent of the clothing manufactured in that area. Since 1919, when the first collective agreement was made there have been no strikes or lockouts in Rochester. The union has attempted to avoid strikes whenever possible and its industrial policy calls for the use of the strike only as a last resort, since it realizes the terrific cost to the employee, the employer and the public. The collective agreements provide for adjustment of grievances by negotiation between the union representatives and the employers' representatives. As most of the employers in the major centers are organized into associations so as to obtain the benefits of collective bargaining on the employers' side, the process of negotiation is simplified. The representatives on both sides are well versed in all aspects of the industry. Disputes which cannot be resolved in this manner are referred to arbitration before the impartial machinery established for that purpose by the collective agreement. Through the medium of the various decisions of the Impartial Chairmen who have functioned in the role of arbitrators there has been evolved a "common law" for this industry. The Impartial Chairmen, many of whom are well-known public figures,³ testified in their affidavits to the stabilization and peace effected by this collective bargaining and settlement of disputes.

Since the signing of the collective agreement for the New York area, the New York Clothing Manufacturers Exchange, Inc. and the Amalgamated have handled jointly a total of 21,193 complaints and disputes. In only 898 of these cases, or slightly over 4 per cent, was a resort to arbitration required because of inability to agree. Of these 898, 30 per cent were settled by the Impartial Chairman acting as a mediator; in the remainder he sat as an arbitrator and rendered a decision. In only seven cases has there been willful non-compliance with decisions of the Impartial Chairman and in only two of these seven was it necessary to resort to the courts. In Rochester, since 1928, 395 out of a total of 1,337 cases have been referred to the Impartial Chairman for his decision; the rest have been adjusted by agreement between the representatives of the employers and employees.

³ The following testified in this case. Dr. William M. Leiserson, now Chairman of the National Mediation Board and formerly an Impartial Chairman in Rochester, New York and Chicago, Dr. Henry Moskowitz, now Impartial Chairman in New York, Professor Harry A. Mills, a member of the former National Labor Relations Board and formerly an Impartial Chairman in Chicago, and Dr. Benjamin M. Squires, formerly Impartial Chairman in Chicago. Other well known men who have acted as Impartial Chairmen are Professor Felix Frankfurter, Professor William Z. Ripley, Professor David Friday, Professor James H. Tufts, Clarence Darrow, Dr. J. L. Magnes, Professor Frank J. Goodnow and Judge Jacob Moses.

20. The Amalgamated has also striven constantly to improve the general economic and social condition of its members. It has evolved a system of unemployment insurance based mainly upon contributions by employers. During the depression it has raised by assessments considerable funds for the relief of unemployed clothing workers. In order to enable the clothing workers to obtain credit and to maintain small saving accounts, it has established banks in New York and Chicago, credit unions and cooperative investment services. It has promoted a number of cooperative apartment houses in New York City, which accommodate over 4,000 people at low rentals. Beside affording comfortable living quarters, these houses furnish cooperative social and educational centers.

21. The Amalgamated has also cooperated with employers in attempts to improve their business. Processes have been analyzed and rates established in individual shops that enable a given firm to produce a garment which it could market on an equal basis with its competitors. The union has aided in the elimination of overhead expenses by assisting in the consolidation of shops and sections and by assuming responsibility for quality, thereby permitting a sharp reduction in the amount of supervision necessary. Wage rates have been reduced where employees' earnings were excessive. The employers have benefited from the improved morale of the workers. Restrictive practices have been modified and sometimes eliminated entirely when changes in manufacturing or distribution made such restrictions oppressive. By attempting to maintain a fair scale of minimum wages and maximum hours, the Amalgamated has done much to protect the manufacturer from the unfair competition of the wage-cutter and the sweat-shop operator. Since wages and prices in one market affect conditions in other markets, it acts as a stabilizing force in the industry by attempting to eliminate such unfair competition while at the same time preventing dislocation of certain markets by drastic demands on union manufacturers. When its members have ceased work and created a stoppage contrary to a collective agreement, the union has disciplined them and ordered them to return to work.

22. The benefits that flow from recognition of the Amalgamated and cooperation with it have been realized by those manufacturers that have entered into agreements with the Amalgamated. The President of the New York Clothing Manufacturers Exchange, Inc., which represents about 250 manufacturers doing about 70 per cent of the total business in the New York market, has stated that the "organization of collective bargaining machinery, the establishment of an impartial tribunal, and the founding of unemployment insurance are the outstanding achievements" in the industry and that

the Amalgamated Clothing Workers "has been perhaps the largest single contributing factor to the lasting peace and harmony that have characterized those clothing markets where the Amalgamated Clothing Workers of America was the other contracting party to the collective agreement". Similarly, the President of the Clothiers' Exchange of Rochester, New York, which includes 5 leading clothing manufacturers employing 6,500 workers, stated that "once the principle of collective bargaining is recognized and machinery is set up for the adjustment and arbitration of disputes under an agreement reached through collective bargaining, industrial peace may replace industrial war". The labor manager of the New York Clothing Manufacturers Exchange, Inc. testified to the effectiveness of the machinery established to adjust disputes by negotiation and arbitration rather than by strikes and lockouts.

III. THE FRIEDMAN-HARRY MARKS CLOTHING COMPANY, INC.

23. The respondent Friedman-Harry Marks Clothing Company, Inc. is a Virginia corporation having its principal office and a plant at Richmond, Virginia. At such plant it is engaged in the purchase of raw materials and the manufacture, sale and distribution of men's clothing.

24. The principal materials used by the respondent in the manufacture of men's clothing are woolen and worsted goods. Ninety nine and fifty seven hundredths per cent of the woolen and worsted goods so used by the respondent come from States other than the State of Virginia. The selling offices of the manufacturers from whom such materials are purchased are located in New York and 75 per cent of all the woolen and worsted goods used by the respondent was purchased in New York, the remainder being purchased at Richmond. The material so purchased was fabricated in the following States: Massachusetts (50 per cent); Connecticut (10 per cent); New York (8 per cent); Rhode Island (8 per cent); New Jersey (5 per cent); Pennsylvania (4 per cent); South Carolina (3 per cent); Illinois, Indiana and Maine (12 per cent); Virginia (.43 per cent).

25. With respect to the other materials used by the respondent in the manufacture of clothing, the cotton linings come from South Carolina (40 per cent), Georgia (40 per cent), and North Carolina (20 per cent), 95 per cent of the purchases of such linings being made in New York and the remainder in Maryland; rayon linings come entirely from New York; all of the canvas used is bought in and comes from Pennsylvania; all of the thread and other sewing materials and the buttons come from and are bought in New York; all of the shoulder pads are bought in and come from Maryland; the hymo (a hair material used in stiffening lapels) comes from

Pennsylvania; the felt and under-collar cloth are purchased in Virginia but come from New York; the silesia and wigan (cheap cotton materials) are purchased in Virginia but come from South Carolina; and the cotton tape is purchased in Virginia but comes from Pennsylvania.

26. The respondent acquires title to the woolen and worsted cloth at the point of shipment. Pursuant to its direction the cloth is sent by truck and rail to a sponging firm in New York City for shrinking. After this process is completed, the cloth is shipped to the plant at Richmond by truck or rail.

27. The woolen and worsted cloth is manufactured into men's clothing at its plant in Richmond, Virginia. The respondent has no work performed for it by contractors nor does it do work for other manufacturers. About 550 employees were employed by respondent in 1932, 625 in 1933, 675 in 1934 and 800 in 1935.

28. Of the garments manufactured by the respondent, 82.8 per cent are purchased by customers located outside of the State of Virginia, as follows: Texas (10 per cent); North Carolina (10 per cent); New York (7 per cent); Illinois (7 per cent); Tennessee (5 per cent); Louisiana (5 per cent); Indiana, Kentucky, Alabama, Georgia, Maryland, District of Columbia, South Carolina, Florida, Ohio, Missouri, Michigan, Massachusetts, Rhode Island, Connecticut and Pennsylvania. The customers are mainly department stores and men's clothing stores in the larger cities throughout the country. The respondent maintains a sales office and show room in New York City, through which 15 to 20 per cent of the total sales are made. Several officers of the company are usually resident in New York City. It has eight persons engaged as traveling salesmen, some being officers and members of the Board of Directors. The orders are sent to the Richmond plant; the goods being sold f. o. b. Richmond. They are shipped by railroad, truck, railway express, water or Parcel Post pursuant to the customers' orders. The respondent advertises in the Fairchild's Men's Wear Directory and in the American Clothier. It has a registered trade mark, "Rockingham", for use in commerce among the several States.

29. In 1932 the volume of business amounted to \$800,000 and 80,000 units; in 1933 to \$1,000,000 and 100,000 units; in 1934 to \$1,500,000 and 100,000 units; and for the first ten months of 1935, to \$1,750,000 and 150,000 units. This increase is in part due to an investment of \$50,000 in the company in 1931 by Louis M. Friedman, formerly engaged in the men's clothing business in New York City. The respondent is among the fifty largest firms in the men's clothing industry and among the ten firms in that group paying the lowest average wage.

IV. THE UNFAIR LABOR PRACTICES

30. The employees of the respondent in the summer of 1935 had formed a local of the Amalgamated Clothing Workers of America and were soliciting membership therein. The management of the respondent at once indicated hostility to the union organization of its employees and declared that it would not permit them to join the Amalgamated. Morton Marks, President of the respondent, at various times verbally expressed his antagonism to the Amalgamated. On June 28, 1935, he told an employee that union employees would not be permitted to work in the plant and that he was not going to run a union shop. Another employee was told on the same day that the "union was the worst thing in the world". That same month he stated to a group of female employees that "I will fire every damn one that attends the union meeting". During the first week of July, Keeve Marks, Secretary of the respondent, told an employee that "If we hear of your going to those damn meetings, you are going to get fired" and then suggested to him that he go to the union meeting with a number of employees and "wreck the damn place. Bang on the seats, boo them, stamp upon the floor." Then came a note of caution: "You had better let me know who is going, because if I notice any of you all over there that I do not know are going, you are going to get fired and I don't mean maybe. I don't mind your going if you go and then come back and tell me exactly what they are going to do." In September, Morton Marks told some of the employees that "If the union gets the upper hand of me, I will move my plant away from Richmond", and added, "I'll take anybody that does not belong to the union." On June 28, he discharged three employees, Farley Holder, Holder's sister Beulah Ashworth and her husband, for attending a union meeting, informing them that he was making examples of them since they had all been employed at the plant for a long time. At various times during this period Marks often questioned the employees about their relations with the union and made clear his enmity towards it.

31. The management of the respondent has maintained surveillance over union meetings and activities. On June 27, 1935, Morton Marks and the superintendent of the respondent's plant secretly observed a union meeting. On August 21, Marks again watched a union meeting of the respondent's employees. In September he told Katherine Hutchinson, an employee, to attend union meetings and report to him the names of those that attended, paying her \$22.50 a week for her services. The management appeared to be well-informed regarding the union activities of their employees.

32. On August 1, 1935, a petition was circulated in the plant by certain employees who requested the others to sign it. The petition

stated that the employees desired to express their loyalty to the firm and their satisfaction with working conditions. Moreover, it stated that they resented the activity of the union organizers and their attempts to create dissension. While it is not clear whether the idea of such a petition originated with the management or with the employees, it is obvious that the management was informed of those who refused to sign and that such refusal to sign was regarded as signifying either union membership or approval of the union. In some cases foremen attempted to obtain signatures. In one instance the employee circulating the petition informed another employee who was refusing to sign that the foreman said, "sign it or else"—the employee then signed the petition.

33. The complaint alleges that the respondent terminated the employment of a number of named employees because of their union membership and activity. Those cases as to which evidence was given will now be considered in detail:

(a) *Annie Mae Rogers*. She had commenced her employment with the respondent as an inspector in April, 1933 and was third in seniority in the group of six inspectors. She joined the union on August 13, 1935 at a social party given by herself and her husband, Albert J. Rogers, for some employees of the respondent and representatives of the union. On September 27 she was "laid off" on the ground that work was slack, although previously work had been shared under such conditions. The following Monday, September 30, she questioned Morton Marks, President of the respondent, about the reason for the "lay-off" and he finally said that it was "on account of the union." He said he had been informed of the union meeting at her house. A non-union employee was given her job and she had not been recalled to work at the time of the hearing.

(b) *Albert J. Rogers*. He had been employed by the respondent since July, 1935 as an under presser and was the junior in seniority of the group of five on that operation. He had refused to sign the August 1 petition. On August 13, 1935 he had joined the union with his wife as described in (a) above. On September 26 he was permitted to leave the plant for the day because of illness. On September 27 he and his wife were told that they were not needed any more. On the same day J. Wesley Owen was also dismissed (see (c) infra). He had not been recalled to work at the time of the hearing.

(c) *J. Wesley Owen*. He had commenced his employment as an under presser for the respondent in March, 1934. He was the oldest in point of seniority of the five engaged in that operation. He did not sign the August 1 petition. On August 10, 1935 he joined the union and thereafter attended its meetings and solicited members. On September 27, 1935 he was "laid off" for a day as work was slack.

The foreman then sent word by his wife that he was not to return until sent for by him. On Wednesday next, October 2, he returned and asked the foreman why he, the oldest man on the job, was being "laid off." The foreman told him that it was on account of some remark about slack work. He had not been called back to work at the time of the hearing.

(d) *Annic Garnett*. She was second in seniority of a group of twelve employed as trimmers in the pants department, having been employed since September, 1931. On August 25, 1935 she joined the union. On September 27 she was "laid off", no reason being given for the action. The foreman sent her word to return next Wednesday and then again sent word by her daughter, Beatrice Garnett, not to return until the second Wednesday. On that day he told her she would be notified when there was work for her. She had not been notified at the time of the hearing.

(e) *Beatrice Garnett*. She had been employed by the respondent since May, 1935, serging backs in the pants department and was third in seniority of the five on that operation. She joined the union on August 26, 1935. On September 27, the same day on which her mother was "laid off", she likewise was "laid off" by her foreman, who told her to return in a week. At that time, he told her that she would be called when there was work for her. She had not been recalled at the time of the hearing.

(f) *Madelyn Clarke*. She had commenced her employment with the respondent on February 16, 1932 and for most of the time was employed running a button hole machine, being the junior on that operation. On September 25, 1935 she joined the union. On September 27, 1935 she was "laid off" for a week. During that week she met Morton Marks and was asked by him why she had joined the union. She told him that she had not joined and he replied that he was "glad." Subsequently her foreman stated she would be sent for when needed, but she had not been notified to return at the time of the hearing. The wife of one of the foreman has been working on her machine.

(g) *Sylvia Johnson*. She had been employed by the respondent at the task of stitching side pockets since January, 1935, and was fourth in seniority of a group of seven. She joined the union on August 24, 1935 and thereafter attended its meetings. She was the only union member of the group. On October 21 she was "laid off", no reason being given. From the circumstances attending the termination of employment and later conversations with the management it is clear that neither inefficiency nor a lack of work were involved in the termination of employment. She had not been reinstated at the time of the hearing.

(h) *Maggie High*. She had been employed since June, 1931 as a button sewer and was the senior of the seven on that operation. She did most of the special work and instructed new employees. She joined the union in July, 1935 and was active in its affairs. Her foreman, who was friendly to her, about the middle of August discussed her membership in the union and stated that some morning he would have to come around, tear her work and then discharge her for poor work. On October 25, 1935 she was discharged by her foreman. The tenor of his conversation with her indicated that the discharge was for union activity; he said, "Mrs. High, it has come . . . I don't need to go to a lot of explaining, you understand" and she replied, "Yes, I do, but I haven't got anything to be sorry for and nothing to regret." She had not been reinstated at the time of the hearing.

(i) *Doris Koch*. Finding. 33(i) of Case No. C-40, dealing with the prior history of this employee, is here incorporated. A union member whose job was raising pants pockets, she was discharged on November 8, 1935 by the foreman who when asked by her for the reason, said, "Well, you are just not satisfied with the job." Her husband, also a union member, had been discharged previously (See Finding 33 (b) in Case No. C-40). She had not been reinstated at the time of the hearing.

(j) *Robert L. Morgan*. He had been employed by the respondent since April, 1932 and was a body presser. He joined the union in July, 1935 and was active in its affairs. He refused to sign the August 1 petition. The next day Mr. November, the superintendent, asked why he "wasn't satisfied". The assistant foreman on one occasion had told him to "keep his nose clean and don't mess with the union". On November 4, the superintendent told Morgan that he was going to fire everybody that belonged to the union and asked him where he stood. On November 8 he was discharged by the superintendent, who informed him that the discharge was on account of his membership in the union. He had not been recalled to work at the time of the hearing.

(k) *Isaac Kenny*. On November 4, the superintendent told Morgan, the employee referred to in (j) above, that he was going to fire Kenny, another employee, because he was a member of the union. Ten minutes later Kenny was discharged. He had not been reinstated at the time of the hearing.

34. On November 18, 1935, the superintendent of the plant, Mr. November, sent for nine or ten of the union members who had been discharged. Of the employees mentioned in Finding 33 above, Albert J. Rogers, Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson and Doris Koch, attended this meeting. In the presence of the entire group November questioned each in regard

to the union, asking why they had joined and what they now thought about the union. He informed them that "he wasn't going to have any union in the factory". He then dismissed them, saying that he would let them know when he wanted them. At the time of the hearing none of those present had received any further word from the respondent.

35. Considering the circumstances in each of the above cases in connection with the undeniable and open antagonism of the respondent toward the union, its attempts ruthlessly to stamp out the union's existence at the plant, the conduct of the superintendent at the meeting called by him on November 18, and the respondent's failure to offer any explanation of such acts, we conclude that the employment of each of the employees mentioned in Finding 33 above was terminated as therein described because of their membership in the Amalgamated Clothing Workers of America and their activities in connection with that organization. It is significant that many of these discharges occurred on the same day and that in several cases an entire family was affected. Moreover, the callousness of the respondent toward its employees and its firm determination to defy the National Labor Relations Act are indicated by the fact that several of the discharges occurred after the issuance of a complaint against it by this Board charging the company with engaging in unfair labor practices through discriminatory discharges and lay-offs (see Case No. C-40).

36. Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the contrary position, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce.

37. The President of the respondent stated on September 26, 1935 that the labor difficulties in the plant had seriously curtailed their production. The plant had produced 84,000 units in the spring and would probably be able to produce only 60,000 in the fall of 1935. One customer in a Western State had refused to give the respondent an order of 30,000 units since he had heard a strike was impending in the plant and he therefore could not be certain that the respondent would be able to fill the order.

38. Since no evidence was introduced with respect to the cases of Reba Holder, Edna Hicks and Lillian Tunstall, the Trial Examiner rightly dismissed the allegations in the complaint regarding these employees.

CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

39. The Amalgamated Clothing Workers of America is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

40. By terminating the employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett and Madelyn Clarke on September 27, 1935, Sylvia Johnson on October 21, 1935, Maggie High on October 25, 1935, Isaac Kenny on November 4, 1935, Doris Koch and Robert L. Morgan on November 8, 1935, as described in Findings 33, 34 and 35 above, and by each of said acts, the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Amalgamated Clothing Workers of America.

41. By the acts described in Findings 33, 34 and 35 above, and by each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

42. The aforesaid acts of respondent occurred in the course and conduct of commerce among the several States and immediately affect employees engaged in the course and conduct of such commerce.

43. The aforesaid acts of respondent have burdened and obstructed the course and conduct of commerce among the several States and lead and tend to lead to labor disputes burdening or obstructing such commerce and the free flow thereof.

Upon the basis of the foregoing the Board finds and concludes as a matter of law :

(a) Respondent, by discriminating in regard to the tenure of employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan, and by each of said acts, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(b) Respondent, by discouraging membership in the labor organization known as the Amalgamated Clothing Workers of America by discriminating in regard to the tenure of employment of Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice

Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Friedman-Harry Marks Clothing Company, Inc., and its officers and agents, shall:

1. Cease and desist (a) from discharging any of its employees or otherwise discriminating in regard to the tenure and conditions of their employment, and from threatening such action, for the reason that such employees have joined or assisted the Amalgamated Clothing Workers of America or otherwise engaged in union activity; and (b) from in any manner interfering with restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

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

(a) Offer to Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Annie Mae Rogers, Albert J. Rogers, J. Wesley Owen, Annie Garnett, Beatrice Garnett, Madelyn Clarke, Sylvia Johnson, Maggie High, Isaac Kenny, Doris Koch and Robert L. Morgan for the loss of pay they have suffered by reason of the termination of their employment by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of termination of employment, as stated in the findings of fact, to the date of such offer of reinstatement, computed in this case by averaging the wages earned during said period by the employees engaged in the same operations, respectively, as were the above employees prior to the termination of their employment;

(c) Post immediately notices to its employees in conspicuous places stating (1) that the respondent will cease and desist as provided in Paragraph One of this Order, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ordered,

3. That the complaint be, and hereby is, dismissed with respect to the allegations of Paragraph 4 respecting Reba Holder, Edna Hicks and Lillian Tunstall and so much of the allegations of Paragraphs 5, 6, and 8 as depend upon the aforesaid allegations.