

In the Matter of CLOVER FORK COAL COMPANY and DISTRICT 19,
UNITED MINE WORKERS OF AMERICA

Case No. C-213.—Decided November 27, 1937

Coal Mining Industry—Interference, Restraint, or Coercion: employment of labor spies; membership and participation in association of employers engaged in labor practices declared unfair by the Act; intimidation of union leaders and organizers; attempts by terrorism to force union organizers to leave town; violence; interference with and surveillance of union meetings; expressed opposition to labor organization; threats of retaliatory action; threat to close plant unless organization cease; misrepresenting terms and purposes of the Act to employees; expressing to employees approval of anti-union statements or activities; questioning employees regarding union affiliation and activity; efforts to secure disclosure of identity of union members from union organizer; circulating anti-union petition in plant; attempts to induce resignation from employment of union members; engendering fear of loss of employment for union membership and activity; shut-down of plant—*Discrimination:* discharge; charges of, not sustained as to certain employees—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Leonard S. Shore and Mr. Charles M. Ryan, for the Board.

Mr. Cleon K. Calvert, of Pineville, Ky., for the respondent.

Mr. James S. Golden and Mr. W. R. Lay, of Pineville, Ky., for the Union.

Mr. Martin Kurasch, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by William Turnblazer, president of District 19, United Mine Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Philip G. Phillips, Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint, dated July 24, 1937, against the Clover Fork Coal Company, Kitts, Harlan County, Kentucky, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7),

of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On July 28, 1937, respondent filed its answer to the complaint denying that its operations affect interstate commerce within the meaning of the Act and that it had engaged in or was engaging in the alleged unfair labor practices.

Pursuant to the notice, a hearing was held in Harlan, Kentucky, from August 2 to August 12, 1937, inclusive, before Irving G. McCann, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

At the opening of the hearing, counsel for the Board moved to amend the complaint to include the names of twelve additional men who were allegedly discharged by the respondent in violation of the Act. The respondent agreed to this amendment to the complaint, and it was agreed by the parties that the respondent might traverse the amended complaint of record, without filing a formal answer. A list of additional names thus added to the complaint was given to the respondent during the hearing. During the course of the hearing, the Trial Examiner, upon motion of counsel for the respondent, ordered a portion of paragraph 10 of the complaint to be stricken.

At the close of the Board's case, attorney for the Board made a formal motion that the complaint be conformed to the proof that had been adduced. This motion was denied by the Trial Examiner. The Board hereby reverses that ruling and orders that the complaint be conformed to the proof adduced during the hearing. During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings, and the rulings made with respect to other motions made by the parties, and finds that no prejudicial errors were committed. These rulings are hereby affirmed.

On August 18, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered this proceeding to be transferred to and continued before it.

On August 30, 1937, the respondent moved for leave to introduce into evidence the testimony of Roscoe Petrie, John Fagg and Ed Whitfield. On September 11, 1937, the Board issued an order denying the motion for leave to introduce further proof.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Kentucky corporation, is engaged in the mining of coal in Kitts, Harlan County, Kentucky. The stockholders of the respondent are A. F. Whitfield and his wife, and his four sons and five daughters. The sons, A. F. Whitfield, Jr., sometimes called "Buster" Whitfield, secretary-treasurer of the respondent, J. George Whitfield, general superintendent of the Kitts mine, Ed Whitfield, and Thomas Whitfield, sometimes called "Jack", manage and operate the mine.

The respondent owns about 2,000 acres of land in fee, in Kitts, Kentucky, of which about 1,250 acres are coal land. It owns the coal mine and mine equipment, the tipple, which separates the different sizes of coal, about 170 houses which it rents to its employees, and a commissary which is worth about \$7,000 and which the respondent operates for profit.

The respondent mines about 300,000 tons of coal a year. It was stipulated by the parties that the shipments made during the month of June 1937, are a fair sample of the shipments made in each of the other months during the period from July 5, 1933, to July 1937, and "that this month of June may be taken in evidence and used the same as if each of the other months had been introduced and are like and similar to the month of June." It was further stipulated that of the total of 482 coal cars carrying approximately 50 tons per car that were shipped by the respondent on the Louisville and Nashville Railroad, 398 cars carried coal to Michigan, Indiana, Ohio, Tennessee, Georgia, North Carolina, South Carolina, Alabama, Minnesota, and Illinois; 54 of the remaining 84 cars carrying coal were used by the Louisville and Nashville Railroad for the fueling of its equipment. Coal cars from the Baltimore and Ohio Railroad Company, the Chesapeake & Ohio Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Pennsylvania Railroad Company and the Southern Railroad Company, all of which are interstate railroads that connect with the Louisville and Nashville Railroad, were used in the shipment of coal mined by the respondent. In the Harlan area, four or five times as many railroad employees are engaged in handling coal and other merchandise as are engaged in the passenger service. The major portion of freight shipped out consists of coal.

The respondent's siding can hold about 48 cars. A day's run at the mine is about 32 to 35 cars of coal. Thus the coal mined by the respondent must move quickly into the channels of interstate commerce.

The respondent contends that its dealings with Walter Bledsoe and Co., a national coal-sales company, removes the respondent from the scope of the federal jurisdiction over interstate commerce. Walter Bledsoe and Co. has its principal office at Terre Haute, Indiana, and maintains sub-offices throughout the country. The respondent deals with the Cincinnati office, and respondent has entered into an unwritten arrangement with Walter Bledsoe and Co. whereby the latter is given the right to the exclusive sale of the coal mined by the respondent. Walter Bledsoe and Co. sends instructions by mail and telephone, and the respondent's office fills out the shipping orders, in which the respondent is named as consignor. The respondent frequently knows where coal is to be shipped before it is mined. Bledsoe and Co. pays the respondent by its own check, once a month, the market price of the coal that has been shipped, less eight per cent. It is clear that this arrangement between the respondent and Walter Bledsoe and Co. in no way affects the fact that the major portion of the coal mined by the respondent is sent immediately into interstate commerce.

Fred Berquist, who qualified as an expert on the coal industry, testified that labor is the flexible and principal item in coal production costs, and that wages represent anywhere from 45 per cent to 70 per cent of the total production cost, and that an overall average for this item would be 60 per cent. Since all coal in the Appalachian area is competitive,¹ labor productivity is an important factor in the development of a coal area, and in the competitive position of various areas and mines. Prior to 1922, the coal area south of the Ohio River, embracing Kentucky, West Virginia, and Virginia contributed 30 per cent of the volume of coal mined in the seven states in the Appalachian area, Pennsylvania, Ohio, Illinois, Indiana, Kentucky, Virginia, and West Virginia. In 1922, there was a sharp rise in this percentage because of a strike which occurred in the northern group of states, consisting of Ohio, Illinois, Indiana, and Pennsylvania. In 1924 an agreement, known as the Jacksonville Wage Agreement, was reached between the coal operators in this northern group of states and their employees, which established a \$7.50 basic day rate for the mines in the northern group. The coal fields in the southern group were not unionized and were covered by no contract. The relative production of the southern group increased, while the relative production of the northern group, unable to hold its own in the competitive struggle, decreased. In 1927, there was great difficulty in renewing the Jacksonville Wage Agreement. Western Pennsylvania be-

¹ In *Appalachian Coals, Inc. v. U. S.*, 288 U. S. 344 (1933), the Supreme Court pointed out, at p. 368, that "While strikes and interruptions of transportation may create temporary and abnormal dislocations, the bituminous coal industry under normal conditions affords most exceptional competitive opportunities."

came a non-union area. The Agreement was renewed in Illinois, at the then current rate, until 1928. Then it was renewed again, with a \$6.10 rate, and again with a \$5.00 day rate. Another instance of the effect of the competition of one area upon conditions in another was given by William Turnblazer, president of District No. 19, of the United Mine Workers, who testified that a strike occurred in 1935 when the Southern Appalachian Coal Operators Association refused to renew a contract with the Union, claiming that it could not meet Harlan competition.

Thus, any interference in the production of coal in any one of the principal areas, such as is occasioned by higher labor costs, strikes, or other obstruction, has the effect of shifting the production of coal from one or more states to others and of changing the demands on the pre-existing channels of distribution. It also materially affects the financial status of the coal-carrying railroads involved.

Invoices for purchases of mine equipment show that many purchases were made for the Kentucky Mine Supply Company of Harlan which purchases equipment from all over the United States. A. F. Whitfield, Jr. is president of the Kentucky Mine Supply Company, and his father also has an interest in the Company. The fact that this mine equipment is purchased in interstate commerce cannot be obscured by the interposition of the Kentucky Mine Supply Company, especially in view of the identity of interest between it and the respondent. Invoices for purchases of supplies for the operation of the mine show that some purchases were made directly from Illinois and Ohio, and during the year preceding the hearing, the respondent purchased 300 mine cars at \$200 each in Tennessee. Motors are bought in Ohio. Other mining machinery, including locomotives, pumps, and fans are bought outside of Kentucky. The tipple, purchased in Chicago, cost the respondent \$70,000.

The supplies for the commissary consist mainly of groceries, notions, and dry goods. A book of invoices shows that, during July 1936, the commissary purchased eggs and chickens from Tennessee, hardware from Tennessee, shoes from Virginia, clothes from Indiana and Ohio, meat from Illinois and Virginia, groceries from West Virginia, and coffee from Tennessee. This month may be taken as fairly typical of other months.

II. THE UNION

United Mine Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization which admits to membership employees working in the mining industry.

District 19, covers the whole State of Tennessee and five counties, including Harlan County, in southeastern Kentucky.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

1. The Association

The Harlan County Coal Operators' Association, herein called the Association, was organized in 1916. It is not incorporated. All corporations, firms, and individuals engaged in mining coal in Harlan County, Kentucky, are eligible to active membership. The by-laws of the Association state, as one of its objects:

The establishment and maintenance of cordial and peaceful relations between the employer and employee, but resisting with all it's (sic) power and influence all movements to force the coal operators to recognize or adopt the so-called "closed shop" policy or practices.

The evidence in the record clearly indicates that one of the major functions of the Association is to exert the combined power of the coal operators of Harlan County against the organization of the mine employees, and to interfere with, restrain and coerce the workers in the mines of Harlan County in the exercise of their right to self-organization, and to form, join and assist United Mine Workers of America.

Coincident with the beginning of United Mine Workers' organizational drive in January 1937, the dues for the Association's members were raised from one-half cent per ton to one cent per ton of coal mined.

Ben Unthank, who had been a deputy sheriff in Harlan County under every sheriff since 1921, was hired by the Association as "detective field man". In January and February 1937, Unthank had from 12 to 15 men working for him. He testified that he understood that United Mine Workers were putting on an organization drive beginning in January 1937, and that he increased his force of deputy detectives because of it. Some of his men got jobs in the mines and derived information about union activities there. Others were engaged to spy upon Dwyer, Silas, Burgess, Garland, and A. T. Pace, organizers for the United Mine Workers. These men and others made weekly reports to Unthank on the Union activities of the employees and the activities of the Union organizers. Unthank reported back to George Ward, who had been secretary of the Association since October or November 1931.

Unthank testified that he did not know the names of his subordinates, that he knew them only by number. He stated that they were sent to him by a Mr. Hayward of Cincinnati, whose address he could not recall. Unthank denied that George Lee, Lee Flenor, Wash Irving, or Hugh Taylor, all identified as persons engaged in

anti-union activity, were among those working for him. The Trial Examiner stated that it was obvious that Unthank was not telling the truth, and it is clear from the record of his testimony that Unthank is not a trustworthy witness. These men did accompany Unthank in his various anti-union activities and did, together with Unthank, harass Union organizers. Unthank was a special deputy, appointed by High Sheriff Theodore Middleton, and these men were deputies. The connection between these men and Unthank is clear.

Unthank was paid \$150 per month by the Association. In late January, he received from the Association \$1,252 for expenses. Part of this amount was used for the protection of coal in cars which had been stalled by the Ohio floods. By far the greater part, however, was used to keep a check on the Union organizers and to engage in other anti-union activities. In February 1937, an additional \$1000 was given to Unthank for "expenses". This was also used to help keep watch on the organizers. Unthank testified that the monthly pay roll for January, February, March, and April, 1937, was about \$1000.

Unthank left Harlan County in March. He testified that he went to Florida and various other parts of the country for a vacation. He admitted that, during the last part of his vacation, he knew that the Senate Committee investigating Civil Liberties was attempting to subpoena him to testify at Washington in connection with the Committee's investigation of Harlan County.

Several specific incidents were testified to, which serve to illustrate the work of Unthank and his subordinates in Harlan County.

On July 20, 1935, A. T. Pace, an international representative of the United Mine Workers, was driving into Harlan County from Bell County, together with two other international representatives and a hitch-hiker. Pace was, at that time, engaged in setting up Union headquarters in Harlan. He had rented a building and had purchased some furniture. When Pace had driven about three miles into Harlan County, he was stopped by Unthank, George Lee, Frank White, and Lee Bowling. They were armed with a high-powered rifle, a sawed-off shotgun and another small weapon of some kind. Pace and his fellow organizers were then forced to turn around and leave Harlan County.

On January 7, 1937, James Bates, district organizer of District 19, United Mine Workers, George Burchett, his associate, and George Titler, an international representative of United Mine Workers, drove to the Bell County Country Club to contact some men. Lee Fleenor, George Lee, and Unthank then drove up. By keeping their hands on their guns and by pointed use of foul language, Unthank and his companions clearly indicated that the Union representatives

were to turn back and stay out of Harlan County. The Union men did so.

On January 19, 1937, Titler was rooming at the New Harlan Hotel with L. T. Arnett, vice-president of District 19. Bowling, Fleenor, and White began to hang around the hotel as soon as Titler took quarters there. At 2 A. M. Titler found tear gas coming from under his door and roused the hotel. The guests were forced to scramble out of the building, choking. Titler remained inside until morning because he had been instructed not to venture out after dark. The next day, Titler and Arnett were told to leave the hotel as the management feared for the safety of their guests. Since people in Harlan were afraid to be seen talking to a labor organizer, they were unable to find quarters anywhere else in Harlan and were forced to go to Pineville.

Marshall A. Musick, a Baptist minister who is a field representative and organizer for United Mine Workers, has experienced many attempts at intimidation and has been falsely arrested and threatened. In June 1934, he was arrested by Unthank, White, and Lee, while he was on his way to preach at the funeral of a Union man. After he had been prevented from attending the funeral, he was released on bail. Subsequently, the proceedings against him were dropped. From the day he began his organization campaign in January 1937, he was followed by one to three carloads of deputy sheriffs, including Eldridge, Taylor, and Unthank. He was threatened by the deputies with shooting, arrest, and expulsion from the camp. One Sunday in January while he was on a highway waiting with his wife for a bus, several carloads of deputies drove up and opened fire. He recognized Taylor and Eldridge in the cars.

On February 9, 1937, Musick was warned by friends that he had better leave town. He did so, after leaving his 19-year old son Bennett, in charge of his house. That evening, the Musick house was fired upon and Bennett was killed.

On June 17, 1937, Alonzo Tally, a colored field worker and organizer for United Mine Workers, was going to a place in Kitts called Golden Ash, for a union meeting. As he started to cross the bridge, which is at the county line, two carloads of deputies came up. The deputies, including Bowling, Fleenor and Lee, prevented him from crossing the bridge.

At all times, Union organizers were harassed and threatened by a display of arms. Deputies also attended Union meetings, and by blowing their automobile horns, made it difficult or impossible for Union speakers to be heard.

The respondent contends that it is no longer a member of the Association and therefore no longer responsible for the actions of

the Association. It asserts that in May 1934 its representatives walked out of a meeting of the Association after a disagreement on policy, and that it formally resigned from the Association by a letter dated May 19, 1934. The ledger of the Association, on a sheet devoted to the Clover Fork Coal Company, contains the notation: "Resigned May 19, 1934." This is written in ink of a color different from the ink used for the notations made in the ledger for that period, but identical with the color of the ink used for many notations made during and subsequent to February and March 1937. George Ward, secretary of the Association, at first testified that he was sure that the "resigned" notation was not made in recent months and that it was in the ledger at the time it was turned over to the Senate Civil Liberties Committee. Near the end of the hearing, however, he changed his testimony and stated that he had made the notation in the latter part of May 1937. His testimony as to the relation of the respondent to the Association was evasive, untrustworthy, and unsatisfactory. Although the Whitfields testified that they did not attend meetings of the Association and in no way attempted to influence the policy of the Association, after their resignation in May 1934, it appears that during 1936, A. F. Whitfield, Jr. was elected to the Executive Board of the Association, and his name appeared on the letterhead of the Association subsequent to November 1936. Ward and A. F. Whitfield, Jr. testified that A. F. Whitfield, Jr. had never accepted the position. Ward stated that Whitfield was elected in an effort to induce the Clover Fork Company to reenter the Association. Little credence can be given to this contention.

In his early testimony George Ward stated that the Association spent about \$350 per month in safety work in the mines. J. S. Bryson, who has been the safety director for about five years, receives \$300 per month. When Ward was recalled to the stand later in the hearing, he stated the \$350 figure was only for Bryson's salary and personal expenses. He was unable to give any more complete account. He stated that the expenses of the safety department might depend upon any disaster that occurred, but he could name no instance in the past where extraordinary expenses had been incurred. Bryson, the safety director, was also vague. He talked of having spent "an enormous amount of money I did not keep track of delving into various things." He spoke of possible expenses in "any disaster where I have got to supply chemicals and everything it may run one from \$500.00 to \$3000.00"; yet he did not mention one instance in his nine years with the Association in which he had had any extraordinary expense. The only equipment of the safety department that was mentioned was a respirator.

The respondent does not appear to have made any payments to the Association from May 1934 to November 1935. From the latter date, the respondent contributed at the same rate as other members. The respondent asserts that it is contributing merely for the safety services of the Association. All contributions which the Association receives, however, are placed in the general fund. All payments for salaries and expenses that were made to Ben Unthank were made from this general fund.

The Association, by its activities, is engaging in labor practices declared unfair by the National Labor Relations Act. The purpose of the Association is clearly to interfere with, restrain and otherwise hinder union organization in Harlan County. It is clear also that the respondent, admittedly a former member, was fully aware of this purpose. When the dues were increased in January 1937, from one-half cent per ton to one cent per ton, the respondent's contributions were also increased. The contributions of the respondent averaged about \$275 a month during the first six months of 1937; a sum close to the total expenses of the Association's safety department, which have been shown to amount to about \$350 a month.

From all the evidence it is clear that the respondent must be held responsible for the anti-union activities of the Association, and that the illegal acts of the Association are, in effect, the acts of the respondent.

2. The activities of the respondent

The contributions of the Association were not the only method by which the respondent put into practice its admitted anti-union bias. The officers and agents of the respondent engaged in a course of activity designed to stifle Union organization and to eradicate whatever progress the Union had achieved.

Roscoe Petrie, the mine foreman, asked prospective employees of the respondent if they belonged or had ever belonged to a union. The respondent frequently expressed to the men its opinion of unions. Roscoe Petrie stated to the employees that there were many denominations of churches and many organizations that they could belong to, but that the respondent would not have anything to do with United Mine Workers. Ed Whitfield made a speech to the men in which he stated that he would close down the mine before he would allow Union men to work in it. In a speech before the camp, where the colored miners live, he pointed out that the respondent had been good to the men. He then told the men that he had money enough to live on for ten years and that he would close the mine for that period, and deprive the men of their jobs if they followed the Union organizers. On one occasion he told the men that the "Wagner Labor Relations Act was just a bluff".

Several attempts were made by the respondent to incite its employees against Union organizers. On one occasion George Whitfield said, "if one of my men will pick up a stick and whip hell out of one of them organizers, I will go to Judge Gilbert and see he don't put in a day in jail and I will pay the fine". On another occasion George told the men that when the Union organizers came into the camp, he would order a special "man-trip" out of the mine, that he would appreciate it if the men went to the meeting, and that he could not help it if they ran the organizers off or baptized them in the river. Ed Whitfield also urged the men to beat the organizers and to drive them out.

Attempts were made by the respondent to induce the employees to reveal the Union activities of their fellows. John Fagg, the assistant mine foreman, told Clarence Lloyd, an employee, that it would benefit them both if Lloyd would report what he heard about the Union and which men had joined. Roscoe Petrie continually asked one of the men who lived near the Union hall which of the employees he had seen going to or coming from the hall.

On June 15, 1937, Alonzo Tally and Taylor Miller, union organizers, conducted a Union "pep meeting" at the cross roads at Kitts. George, Jack, and Ed Whitfield, Roscoe Petrie, Dan Killion, a mine guard, and Charlie Anderson, a man who was described by Union men as one who does not do much work at the mine, carries a gun, and gets company scrip whether or not he has earned it, came up and stood around at the meeting. Ed Whitfield, at one point, said, "Tally, you can't speak to my men". Tally continued speaking, however. When he stated that 85 per cent of the men at Kitts had joined the Union, one of the Whitfields called him a liar. Tally then agreed to show the Whitfields the list of Union men, if they promised not to discharge anyone; if there were not 85 per cent, Tally was to admit that he was a liar, and if there were, the Whitfields were not to fire anyone. It is not clear whether Tally did furnish a list of names, or merely stated to the respondent at its offices that 191 men were signed up. At any rate Jack Whitfield testified that he called George Titler three times on the phone in an attempt to have the Union cards shown to him as proof of the 85 per cent, and then took Tally with him to the town of Evarts in an attempt to get these cards. The eagerness to see the Union cards adds credence to the testimony that the respondent was at this time engaged in a program of discharging Union men. Jack Whitfield testified that he had promised not to fire any of the men if proof of the 85 per cent were produced. The fact of such a promise indicates a naive conception of the rights guaranteed to employees by the National Labor Relations Act, and admits a strong anti-union bias.

The presence of representatives of the management at Union

meetings and their heckling of union speakers are acts which tend to thwart union organization and constitute interference with, and restraint and coercion of, the 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 or other mutual aid or protection.

B. *The discharges*

The respondent during 1937 discharged a great many men. The respondent's whole working force approximates 220 men. During May, June and July 1937, over 60 men were discharged. As to many of the discharges the respondent adduced no evidence to rebut testimony that the men had been discharged pursuant to an unfair labor practice as defined by the Act. In a great many cases, the respondent did produce testimony to explain the discharges.

A discussion of the discharges appears below. However, several general observations are necessary before the discharges can be individually discussed.

During June 1937, a petition was circulated at Kitts. The petition stated that the signers did not want to work with Union men. George Whitfield testified that he found this petition on his dinner pail on June 9, 1937, and that he then made a speech to the men. He told them that he thought the petition, which was referred to by employees as "the yellow-dog petition" or "yellow-dog paper", was a very valuable paper and that he was going to have it framed. Then, according to his own testimony, he requested the Union employees to leave "like men". Other accounts of his speech indicate that he may have spoken in stronger terms. At the least, it appears that he so couched his language as to indicate that he did not want Union men to continue in his employ. Some of the Union men received slips which entitled them to get from the respondent's offices what was due them. The receipt of such a slip, known to the men as "an order for their time", signifies discharge.

On July 14, 1937, a banner was hung across the mouth of the mine which contained words in substance as follows, "Although they call us yellow dogs, we are 100 per cent Americans and will not work with Union men". Jerry North, who carries a gun around the camp and is very often in the company of Dan Killion, a mine guard, told Petrie and George that they were going to strike that day in protest against the employment of Union members. There was a good deal of laughing and joking among North, Petrie, and George, according to the testimony. George then ordered the mine shut down, and said to John Fagg "Hell, yes, give everyone of them

(referring to the Union men) their time, we've got to get these men back to work". Groomster, one of the colored employees, who was also a preacher, made a speech to the assembled men in which he stated that because of the Union "the men would become cuckold, their wives and daughters whores and their sons gun thugs and thieves". Some of the men were given orders for their time. A parade, referred to by employees as "the yellow-dog parade", was organized, and the men marched through the camp behind the banner referred to above. The respondent furnished two kegs of beer for the white, and one or two kegs for the colored employees. A. F. Whitfield, Jr. stated that the respondent furnished the beer after being requested to do so by the men. Then, at about 4 p. m. the men reconvened, and certain Union men were "voted out" by a procedure which, as may be seen from the discussion below of the discharge of Ed Howard, was farcical. The next day, George Whitfield after climbing to the top of the motor said to the assembled men "Boys, we have got two or three men here and we ain't going to let them work and tie this mine up here and keep us out of work". George and Ed Whitfield then discharged more Union men on the ground that the other men refused to work with them. At no time was there any spontaneous outbreak of non-union men against Union men. Except for the two occasions mentioned, there is no evidence whatever that non-union men refused to work with Union men.

The motivating cause for the discharges of June 9, 1937, and July 14, 1937, was the Union affiliation of the discharged men. The Act prohibits the discouraging of membership in a labor organization by discrimination in tenure of employment. The discharges on these two days had the clear tendency of discouraging membership in United Mine Workers.

It is evident that in the present case, there was no real desire not to work with union men. The events of July 14 and June 9 were organized and led by Jerry North, Claus Dalton, and Charlie Anderson. It has already been pointed out that Anderson and North were regarded by many men as being in close touch with the respondent. Dalton was often seen in the company of Petrie, the Whitfields, the deputy sheriffs and the other armed men in the camps. These were the men who circulated the yellow-dog petition and who took the leading role on July 14.

The zeal of the respondent in discharging Union men because the non-union men refused to work with them, is, in light of the facts, a suspicious circumstance. The Union organizers claim a majority of the men at Kitts as members. Over 60 employees who were discharged testified that they belonged to the Union. The claim of the respondent that it would have had only 19 men to work the mines

had it not discharged the Union men is, therefore, hardly tenable.

Many of the discharged employees testified to conversations with Petrie, Fagg, and Ed Whitfield which clearly indicated that their discharges were unfair labor practices under the Act. Although these three were at the hearing, they did not take the stand to refute the testimony. On August 30, 1937, three weeks after the close of the hearing, the respondent asked leave to introduce into evidence the testimony of these three men on the ground that such testimony could not have been intelligently taken before the record of the testimony had been transcribed. The Board denied the motion.

Charles Russell. Charles Russell worked for the respondent from November, 1936 to June 1, 1937. He joined the Union on May 3, 1937.

On Tuesday, June 1, 1937, Roscoe Petrie called him over and told him that he was fired for loading dirt. When dirt as well as coal, is loaded in the coal car, it often results in jamming the tipple when the coal is dumped into it. Russell testified that a loaded car is tipped on the tipple the next run day after the car is loaded. There had been no work on Monday, and hence the coal in the car would ordinarily have been loaded on Saturday, if it caused trouble with the tipple on Tuesday. Russell testified that he did not work on Saturday.

At any rate, it appears that this would have been Russell's first offense. John Herman, the tipple boss, stated that he did not know whether a man was ever fired for his first offense in loading dirt. He also stated that he never had any reason for dissatisfaction with Russell's work before. Russell testified that the company rule had been a five-day lay-off for the first offense and discharge for the second.

Raymond Muncie and Park Osborne, the men who were working with Russell, testified that he was loading dirt. They admitted, however, that they were all not loading "clean coal," a term which means coal without dirt. Yet, of the three, only Russell was discharged. The others were not even reprimanded.

Russell's average monthly earnings during his last two months of employment were \$53.59.

Taylor Miller. Taylor Miller had been working for the respondent steadily for three years. He joined the Union on May 10, 1937 and was president of the Local.

On May 29, 1937, he left the door to the third mine entry open, and George Whitfield, who was behind him at the time, discharged him. It appears that the door is one of the devices used to keep air in the mine, and that it should be kept closed. The door is opened when it is necessary to drive a motor into an entry. It is then necessary for the motorman to stop, get out, and close the door. If

there is a coupler on the train of cars, it is his function to close the door. There was conflict in the testimony as to whether Miller should have been given a coupler to work with him on this occasion.

Miller stated that he had been warned, as one of a body of men, to keep the trap doors closed, and that he had once been warned personally after having left a trap door, not the one in issue, open.

On the other hand, Miller testified that he had previously left the door open in Roscoe Petrie's presence, and nothing was said. Further, he stated that he could have gotten the cars in the entry and backed out in the time it would have taken him to shove the trip of cars in, clear the door, stop the train, close the door, get the cars that were in the entry or leave some cars in the entry, and open the door again to drive out.

Jess Killion, who had been a motorman with the respondent, testified that motormen left the trap door open when they didn't have a coupler with them. E. A. Chandler, who worked in another entry, but nevertheless had opportunity to see the trap door in issue, stated that during his employment with the respondent, the trap door had frequently been left open. Miller testified that during his seven years with the respondent, he did not know of a discharge for leaving a trap door open. Another trap door protecting air for the same entry had been broken at "one or two in the evening" and the respondent did not have it fixed until the next evening. Jess Walters, the motor boss, testified that Miller was a good motorman.

The evidence thus far leaves in doubt the question of whether or not Taylor Miller was discharged for union activities. The question is resolved, however, by a consideration of other factors. Miller was president of the Union Local. He operated a grocery store which appeared to have been a hangout for the men working at the Kitts mine, and Miller's effectiveness as a worker for the union would obviously be enhanced.

That the respondent was aware of this is indicated by the testimony of Ernest Weatherly, who testified that on Friday, May 28, 1937, the day before Miller's discharge, he and Petrie were in Miller's store at a time when Miller was on the porch talking to another man. On Saturday morning, May 29, Petrie and Fagg came to Weatherly's working place and this conversation followed:

Wasn't you down at Taylor Miller's store last night?

Yes.

Do you know what Taylor Miller and that fellow had to say? I was on the inside and they were outside.

I want you guys to know that if you start organizing around here you can all go back to the farm, because we will shut this mine down before they can organize here.

Jack Whitfield was present during this conversation.

Sometime between the last of May, 1937 and the first of June, Weatherly was warned by Fagg that if he didn't quit hanging around Taylor Miller's store he "would be put on the list."

Taylor Miller averaged \$120.41 per month during March and April, 1937. He has operated his store since his discharge, but he also did this while he was working for the respondent.

Matthew Jennings Bryan Filden. M. J. B. Filden had been with the respondent for six years. For the last ten months of employment with the respondent, he operated the drums. The drum which is at the top of an incline has two cables wound around it, and it is equipped with brakes. It is used to let cars down the incline to a place under the tippie and to pull the cars back again. Filden had joined the Union on May 28, 1937, at Taylor Miller's house, which was just in back of Miller's store. He testified that Roscoe Petrie and Roy Sexton, known as a "snitch", saw him leave. The next morning, May 29, 1937, he was discharged, for having his drum cables too hot. Taylor Miller was discharged on the same day.

There was some testimony as to Filden's letting the cars down the incline too fast and pulling them up too fast, and that the former involved some danger to the men working at the tippie. But Filden testified that he was encouraged by the Whitfields to "shoot the coal over the mountain". His fast operation of the drums evoked praise from the Whitfields. Ed Woods and Charlie Campbell testified that Filden was a good drum man.

The evidence, especially when considered with the evidence relating to Taylor Miller, indicates that the real motive for Filden's discharge was that he was a Union man.

Filden's average monthly earnings for March and April, 1937, were \$196.87.

Jess Killion. Jess Killion, a motor man, had worked for the respondent for two years. At a Union "speaking" on May 30, 1937 he was nominated for the position of president of the Local. He declined the nomination because he was not married and was afraid he would do something wrong. One of the Whitfields who was attending the meeting, was standing close to him at the time.

The next day, May 31, 1937 Roscoe Petrie said to him "Jess, get your damned belongings and get off that motor, you are fired". Killion asked if he was being fired for turning a trip of cars loose and Petrie told him that that was not the reason. When Killion again asked, Petrie said "I got a right to fire who I please, I won't ask Turnblazer (president of District 19) or nobody else."

Witnesses for the Company testified that Killion had turned three empty cars loose in one of the working places and had caused the

cars to wreck on a switch. One of the witnesses for the Company, Booker T. Yarbaugh, said he had seen Killion pull the pin. However, Gaither Bell, the coupler on the train of cars, said he was the one who had uncoupled the empties, though he claimed it was done at Killion's order. There was much confusion among the witnesses as to whether the motorman or the coupler is in charge of the train. Killion testified that the motor was pushing the cars into the working place at the time, that the coupler is in charge of coupling and uncoupling cars, and that he did not tell Bell to uncouple the cars.

Cars often jumped the track in this mine. The fact that Killion was discharged the day after he was nominated as president of the Local, and the fact that no investigation was made of the cause of these cars jumping the track, although it is clear that Killion may not have been at fault, leads to the belief that this incident was seized upon as an excuse to discharge one who was considered prominent in the Union.

His average monthly earnings during his last three months of employment were \$125.21.

Estel Brock. Estel Brock had been with the respondent for 18 months. He joined the Union on May 14, 1937. On May 16, he became sick with the mumps and was away from work until June 1. When he came back to work, Petrie told him it was reported that he had joined the United Mine Workers. Brock admitted doing this before he got the mumps. Petrie then said, ". . . get your damn tools and go to the house, and if I need you any more I will send for you." Since that incident, new men have been hired, but Brock has not been recalled. This cast doubt upon the contention of the respondent that Brock's place had been practically worked out, and that there was no place for him. It is significant that the day after Brock was fired, Jim Cooper heard Petrie say, "I knew he was mixed up with the union men and I do not want any union man up here, and I want to get rid of them." When Ed Howard, a fellow employee, asked Petrie to give Estel his job back, Petrie started talking about the Union.

Brock's average monthly earnings during March and April, 1937, were \$112.32.

Dock Carnahan. Carnahan had been with the Company almost two years. On May 31, he went to a union meeting, and joined the Union that day. One of the Whitfields was present at the meeting.

The following day George Whitfield came into his working place and said "You ain't scaled your God damned top this morning and you have loaded your God damned car without any timbering done; you can get your God damned tools and get out, you ain't got no God damned safety timbers." Carnahan said that, although he had no timber in front of his car, he was working on the side of the

car and had three timbers across the break. One of the witnesses for the Company admitted that Carnahan had three "protection" timbers up, but pointed out that the safety timbers were lacking. George Whitfield testified that Carnahan was a very careless man. Carnahan had been fired in February for leaving a stick of powder around. The rule in the mine is that the safety timbers must be up and the top must be scaled.

Although the case is not free from doubt, the evidence does not permit a finding that Carnahan was discharged for union activity. The allegations of the complaint with respect to the discharge of Dock Carnahan will be dismissed.

Clarence Lloyd. Clarence Lloyd joined the Union on May 29, 1937. He stopped working for the respondent on June 1, 1937. As he was going to work on June 1, 1937, he met John Fagg, who said "There goes a man that laid off to get to join the union." Lloyd answered that he had laid off because his buddies didn't go to work with him. Fagg then said "You'll have to take the bottom all day for nothing."

It was customary for coal loaders to take bottom in their rooms and the entry to their rooms gratuitously, but not to take bottom outside of their rooms without being compensated. Lloyd said the bottom he was asked to take was four or five feet outside of his room and extended for 100 feet. Lloyd told Petrie that if a track man were sent to help take the track off, he would help take the bottom. Track men have special tools to take the track up. After waiting a long while for a track man, Lloyd sent word that they couldn't take the track alone. Word was sent back that if they didn't want to take the bottom, they should take their tools out. Taking out tools signifies that work for the respondent has ended.

His earnings during the last two months averaged \$84.27 a month. He has earned \$35 since his discharge.

Howard Lloyd. Howard Lloyd had worked for the respondent since January 7, 1936. In August, 1936, he quit and was off for two months. He got his job back by promising Petrie that he would vote in the local elections. He joined the Union on May 15, 1937.

On June 4, 1937, Lloyd went to a union meeting. On the way there he stopped and talked to Claus Dalton, the motor boss, and they walked to the meeting together. The next day Lloyd was discharged. The respondent adduced no evidence at the hearing to explain the discharge.

His average monthly earnings for April and May amounted to \$69.05. He has earned \$2.50 since his discharge.

Jack Ricketts. Jack Ricketts had worked for the respondent for 18 months. Before working for the respondent he had worked at

another place steadily for nine years. He joined the Union on June 1, 1937. Two of the Whitfields saw him at the union meeting on the highway. On June 5, 1937, Petrie entered his working place, looked in his car and said "Jack, you are loading dirt. Get your tools and get out of here."

Will Farmer, a witness for the respondent, said that he cleaned about three to five shovelfulls of dirt from Ricketts' car. He was, however, uncertain of the time of this occurrence. Even assuming that this was at the time of the discharge, Farmer said that the soft dirt could not stop the tipple, and that when one is shoveling in soft bottom, some dirt is bound to get into the car.

His average monthly earnings for April and May, 1937, amounted to \$84.66.

Verda Patterson. Patterson related the incident of June 9th, when George Whitfield read the yellow dog petition and stated "I am not going to exactly discharge them, but I am going to see that their demand is granted." Then followed the events previously described.

Patterson went in on the man-trip to get his tools. When Petrie saw the tools piled up, he said "What does this mean." Patterson answered "I guess I am one of the bunch this morning, Pete." Petrie asked, "You ain't joined the Union, have you?" Patterson said, "I have," and Petrie then said nothing further.

His average monthly earnings for April and May amounted to \$123.14. He has worked at Black Mountain since July 17, 1937, and has made \$23, but he prefers work at Kitts.

James Williams. James Williams, a coal loader, had been with the respondent since January 2, 1936. He joined the Union on May 15, 1937.

He was on the inside when George Whitfield was speaking outside, on June 9, 1937, with respect to the yellow dog petition. At about 8:30 or 9:00 A. M., Roscoe Petrie came in and asked him if he belonged to the Union. When Williams answered that he did, Petrie said: "Get your tools, get out of here and don't load another block of coal."

The respondent adduced no evidence to explain the discharge.

Williams' earnings for April and May, 1937, averaged \$60.40 a month. He has earned \$25 since his discharge.

Jack West. Jack West joined the Union on June 8, 1937. On the same day, he had refused to sign the yellow dog petition. The next day, Petrie came to his working place and asked him why he hadn't signed. When West answered, "I got me a union card yesterday evening instead of signing that paper," Petrie said, "You can get your damm tools and get out."

The respondent adduced no evidence to explain the discharge.

His average monthly earnings for his last two months of employment amounted to \$90.64. Since his discharge, he has made \$5 picking berries.

Dillard Wilder. Dillard Wilder had been with the respondent for 18 months. He joined the Union on June 8, 1937.

On June 9, 1937, after George Whitfield had made his speech on the yellow dog petition, Wilder walked up to Whitfield and said "George, I am a union man, I joined the Union." Whitfield gave him a notice for his time right then. The respondent adduced no evidence to explain the discharge.

His average monthly earnings for April and May, 1937 amounted to \$103.33.

Ernest Weatherly. On June 9, 1937, after George Whitfield had made his speech about the yellow dog petition, Ernest told Whitfield he belonged to the Union. He was given an order for his time.

Weatherly's average monthly earnings during his last two months of employment were \$147.31.

Ancil Miller. Ancil Miller went up to George Whitfield after the latter's speech and told him he was a union man and asked Whitfield what he was going to do. Whitfield said "Why, you heard what was said," and wrote Miller an order for his time.

His average monthly earnings during his last two months of employment amounted to \$87.83.

Howard Harris. Howard Harris joined the Union on May 31, 1937. On June 9, 1937, after Whitfield had spoken about the yellow dog petition, Harris went up to Whitfield and told him that he was a Union man. When Whitfield wrote him an order for his time, Harris asked if his work had been satisfactory. Whitfield replied, "It has been but maybe the Union can do more for you than I can."

His average monthly earnings during his last two months of employment amounted to \$138.80.

Walter Hopkins. Hopkins joined the Union on May 14, 1937. On June 9, 1937 Petrie sent him to a working place where Hopkins would have had to move from 20 to 25 cars of gob (rock and dirt) and would have had to work for nothing for about a week. This appears to have been in a section of the mine that became known to the Union men as "Turnblazers Home" because Union men were assigned to work in it either as a punishment or a means of forcing them to quit. Hopkins testified that when Petrie assigned him to the place he had asked Petrie whether there would be any pay for removal of the rock. Petrie answered "No, if you don't want that get your tools and get outside on the road". Petrie then said that that was where he was putting all the Union men.

R. L. Bolton, a witness for the respondent, testified that he and his son cleaned up the place to which Hopkins had been assigned.

He stated that he made \$6.12 a day working in that place.

Hopkins had been a coal loader for 21 years. It appears unlikely that he would be unable to analyze a place as a good working place or a bad one, and that he would refuse to work on a good place. The fact that the incident occurred on June 9, 1937, a day on which there were a great many discharges of and discriminations against union members, gives further reason for belief in the truth of his story.

He earned \$73.68 in May 1937.

Earl Crabtree. Earl Crabtree had been working for the respondent since January 7, 1936. He joined the Union on May 31, 1937. After George Whitfield's talk on the yellow dog petition, Crabtree went up to where three more fellows were getting orders for their time. Whitfield looked up and said "Do you want one?" Crabtree said, "I do".

His average monthly earnings for April and May 1937 amounted to \$120.45. He has earned \$3 since his discharge.

Randolph Bledsoe. Randolph Bledsoe had worked for respondent for about three and one-half years. He joined the Union on May 29, 1937. On June 7, 1937 Lawrence Hensley, a machine man, brought around the yellow dog petition, saying, "Here is a paper I want you fellows to sign." Bledsoe refused.

On June 9, 1937, Petrie came up to where Bledsoe was working and announced, "All you fellows in here didn't sign that company union and have Union cards in your pockets, get your tools and get out. You automatically fired yourselves." Bledsoe took his tools and left the mine. His average monthly earnings during his last two months of employment amounted to \$108.45.

Kelley Wright. On June 9, 1937, Petrie told Kelley Wright what had gone on outside the mine. Petrie then said that he had heard that Kelley was a Union man. When Kelley said that he was, Petrie said, "If I was you I would be man enough to go out like the rest of the men had done." Kelley promised to do so when he finished loading the car. He then ran after Petrie, and told him that he had not yet joined the Union. Petrie let him continue with his work.

It was the general rule that the Company would hold the money if a man quit or was discharged, apparently until the Company houses were vacated.² June 10 was pay day and Wright was trying to delay until then. On June 10, Wright got his pay and then joined the Union. On June 11, Kelley told Petrie that he had joined the Union. Petrie said that the men refused to work with Union men, that they couldn't afford to lose a bunch of men on account of one

² The reasons for holding the money appear not from Wright's testimony, but from the testimony of other men.

man. Wright then said there was nothing he could do except to go out, and he did so.

His average monthly earning for his last two months of employment amounted to \$95.34.

Robert Humphleet and *Ernest Duncan*. Ernest Duncan had worked for the respondent for two years. Robert Humphleet had been working for the respondent since February or March, 1936. These two men worked together. They had joined the Union on June 7, 1937. On June 11, 1937 they attended a meeting at the Union hall. Roscoe Petrie was parked by the road as they came by on their way home. They were discharged on the next morning, June 12, 1937.

Prior to their joining the Union, they had caught Roscoe Petrie going through Humphleet's jacket, on the pretense of looking for liquor. On that occasion, Petrie had pulled out a paper from the jacket pocket, which turned out to be an envelope containing some aspirin tablets. Petrie appears to have been looking for union cards. A few minutes after this incident he started questioning Humphleet as to whether the man he was working with was affiliated with the Union.

On June 12, 1937, they had been working for about ten minutes when Petrie came in and discharged them both for not pulling loose slate on the face of the coal. Humphleet called three men over to look at the rock which he had not pulled.

This rock was sticking out over the face of the coal for about six inches. Hilton, one of these men, testified that the place was in working order. Henry Hall, another of respondent's witnesses, stated that it is usual for a miner to overlook loose rock in the ceiling. He stated he had seen men fired for not pulling loose rock from the ceiling, but that men had also not been fired for that offense.

Duncan's average monthly earnings for April and May, 1937, amounted to \$131.70. He has earned \$2 since his discharge. Humphleet's average monthly earnings over the same period were \$130.03.

Ester Saylor, also called *Estill Saylor*. Saylor had been working for the respondent since May 25, 1937. He joined the Union on June 7, 1937. On Friday, June 11, 1937, he went to a Union meeting.

On Saturday, the 12th, he was ill with dysentery, for which he had a doctor's certificate. That evening he went to town and met Roscoe Petrie, who said, "I am going to give you this (sic) time for not working a rush place." When Saylor pleaded that he had been ill, Petrie said that he didn't care and that he knew Saylor belonged to the Union. It was testified to by other witnesses that Petrie had been watching the Union meeting of June 11, 1937.

Saylor thinks he averaged from three to four dollars a day while working; he had not received a statement, and respondent's exhibit does not show anything except his earnings for May 1, 1937, as \$7.78.

Milford Dugger. Milford Dugger had been working with the Company steadily for three years. He joined the Union on June 6, 1937. On the same day he had a hemorrhoid. He told Petrie if he didn't get better that day he would have to lay off. He went to a doctor that evening, and stopped at Taylor Miller's store on the way back. There, Jerry North was inducing people to sign the yellow dog petition. The men asked North if there was any danger and North said they had taken the paper to the G-men, who had said it was all right. Some men signed and some refused. When North asked Dugger why he had refused, Dugger said that he was a Union man and that, furthermore, he didn't know that North was a boss of any kind. North said "I am not a boss. Me and Val Dunn and Jerry North are appointed to look after this business." After North had said he didn't think Dugger would sign up with the "red neck" bunch, he stated with regard to the paper "It is just a petition that the miners got up and the Company got up and the miners are signing." When Dugger again refused to sign, North said, "You might as well pack your suitcase and down the road you travel." Dugger replied "You seem to know about it" and North answered "I got orders from headquarters right across the road" (apparently referring to the main office). North then asked Dugger about Dugger's stepson, Ed Turner. Dugger said, "You need not bother for sending for him, for he sure will not sign that." North said, "Well, all right then. You are both up against it."

Dugger's further testimony was as follows:

A. Well, so I went home that day and was disabled to work all over that week, so I moved off out to the store on Saturday, June the 12th, and I met Val Dunn and Jerry North out there. Val says, "Dugger," he says, "Come around here. I want to see you a minute." I says, "All right." So he and Jerry North went around the store and sat down beside a car. He says, "What is the matter with you, Dugger?" He says, "You gone crazy?" I says, "What do you mean?" He says, "Taking off after these red necks, this evening." I says, "United Mine Workers of America?" He says, "Yes." I says, "No, I have just begun to come to my senses." He says, "Well," he says, "Do you want to go back to work?" I says, "Yes, sir, I do." He says, "Well, tear up that card and you go back to work a Monday." So those fellows came crowding around me, around the store. I shook my head and I backed off and I said, "I'll see you fellows later." So I walked off from them and went home. So Monday morning I went back on the hill, me and my son, Ed Turner.

Dugger testified that on Monday, June 14, 1937, he and Ed Turner went back to work. George Whitfield came up, looking angry and said "Dugger, I gave your place away four or five days ago, haven't got any other place for you."

It is significant that, although Dugger quoted conversations with or in the presence of North, Dunn, Anderson, and Bill Jackson, none of these men was called upon to refute Dugger's testimony.

His average monthly earnings for his last two months of employment amounted to \$95.42.

Herman Minton. Herman Minton had worked for the respondent for about ten months. He joined the Union on June 3, 1937. He testified that Roscoe Petrie watched the road and watched people going to Union meetings, and that Petrie saw men attending a meeting between the time he joined the Union and the time he was discharged.

On June 15, 1937, Petrie stopped the place where Minton was working because the bottom was heaving badly. Minton was then assigned to "Turnblazer's Home." He quit when Petrie told him he would not be paid for removing the rock, which he estimated to be from three to five days' work.

His average monthly earnings for April and May, 1937, amounted to \$78.30.

Robert Miller. Robert Miller had been with the respondent for four years. He joined the Union on May 10, 1937. On or about June 1, 1937, Jerry North tried to get him to sign the yellow dog petition. When he refused, North said, "Well, you are a good man, but you won't be here long if you don't sign."

Miller was sick from June 4 to June 15, 1937, reporting his illness to the respondent. When he went back to work, he was told that his place had been given away and that there was no work for him.

His average monthly earnings for April and May, 1937, amounted to \$57.38.

Cleve Crider. Cleve Crider had been working with the respondent since February 20, 1934. He went to a union meeting on June 11, 1937, and on the way back ran into Roscoe Petrie at the forks of the bridge. On June 12, 1937, he became ill. He didn't go to work again until Tuesday, June 15. He had worked an hour, when Petrie came in and fired him for having laid off on a rush place.

His average monthly earnings for April and May, 1937, amounted to \$82.56.

Lawrence Dugger. Lawrence Dugger had joined the Union on June 8, 1937. Between June 8 and June 15, he attended Union meetings. At that time, he laid off for about eight days, and when he returned to work George Whitfield told him that he had given his place away.

The allegations of the complaint with respect to the discharge of Lawrence Dugger will be dismissed.

Roscoe Carroll. Roscoe Carroll had worked for the respondent since November, 1935. He joined the Union on June 7, 1937. He had signed and then scratched his name off the yellow dog petition.

On June 15, 1937, he had worked a day cleaning up a place. Then Petrie and Fagg came through and said they would have to change him. They assigned him to a place in "three-main head" that was so dangerous he refused to go in.

His average monthly earnings for his last two months of employment amounted to \$74.34.

Fred Hill. Fred Hill had worked for the respondent off and on for two years. He joined the Union on June 4, 1937. On the morning of June 16, 1937, Petrie and Fagg came to his working place and asked him if he belonged to the Union. When he said that he did, they said, "You know that these men don't want to work with a union man." Carroll replied, "I'd heard that they did." Petrie then said, "You can go out and maybe Jack Miller can clear your money for you."

His average earnings for his last two months of employment amounted to \$66.53.

Benjamin Wells. Benjamin Wells had worked for the respondent for 18 months. He joined the Union on June 4, 1937. On June 15, 1937, the union field organizer held a meeting on the railroad opposite the colored quarters and Wells attended that meeting. Early the next morning Fagg and Petrie came to his working place and asked if he had attended the union meeting. When Wells said that he had, he was asked if he had joined the Union. When he admitted having done so, they asked him if he knew any other men who belonged to the Union. He said he did not. The conversation then continued as follows: "Don't you know that the men don't want to work with no union man?" "Well, fire me then." "No, get your tools and get out, we ain't going to have no union men here." "Well, write an order for my time." "Go to the office and tell them you quit."

E. Lemar, a witness for the respondent, testified that Wells was discharged by Petrie for working in loose rock. Lemar also testified with respect to Humphleet, saying that the latter had not removed loose slate from the face of the coal.

Neither Petrie nor Fagg were called upon to refute Wells' testimony. His testimony was clear and straight-forward, and indicates that Wells was a credible witness. Wells' average monthly earnings for his last two months of employment were \$93.51.

Corey Hood. Corey Hood had been with the respondent for fifteen months. He joined the Union on May 26, 1937.

On June 16, 1937, Petrie came to his working place and asked him when he joined the Union. Hood said that he had joined about two or three weeks before. When Petrie asked who induced Hood to join, Hood replied, "I joined of my own free will." Petrie then said, "Well, I am going to move you this morning of my own free will. Get your tools and go to three hill and tell Fagg to put you to work and tell Turnblazer that I run these mines." When Hood went to Fagg, Fagg started talking about the Union generally. The conversation then continued as follows:

Don't you know these fellows don't want to work with you men calling them scabs, they can't afford to do that.

I don't do that.

Don't you know this company ain't going to have no union.

Don't you know they would shut down before they would do it?

Then Fagg took Hood to a place in three main heading. Corey Hood estimated that there were twenty tons of rock there and about two or three cars of coal. Fagg said that Hood would not be paid for removing the rock. Fagg agreed that there was very little coal and said "two more of your brothers will be around here in the morning." Hood refused to work at that place.

Hood's monthly average during his last two months of employment was \$106.24. He has earned \$1.29 since he stopped working for the respondent.

Thomas Lynch. Thomas Lynch had been working for the respondent for 11 months. On June 1, 1937, Petrie came up to him and said, "I got a clear report on you. I learned you joined the Union." When Lynch admitted it, Petrie said, "You know they don't want to work no union man down here," and then proceeded to take Lynch out of his working place and told John Fagg, the cut boss, to "take him on down three main heading and put him down there with the rest of the union men." When Lynch saw the place to which he was now being assigned, a place full of slate and slumps, he said he didn't want to work there because he couldn't make anything. Lynch estimated that the new assignment involved a month's free work.

When he again remonstrated at being changed from his good working place to this one, Fagg said, "Well, if you don't want to work down here, you know what you have to do, you have to give up your tools." Lynch left the mine, and when asked by George Whitfield what he was doing, told George of the incident. George asked for his name and check number and gave him an order for his time.

Lynch's average monthly earnings for his last two months of employment were \$66.71.

L. E. Hill, Malcolm Hill, and Howard Hill. L. E. Hill had worked for respondent for eight or ten years. He joined the Union on June 7, 1937 and stopped working after June 12, 1937. Neither he nor his three sons would sign the yellow dog petition. On June 12, they had worked their place out. They were transferred to another place, which the track man said wasn't yet ready to work. When they came back on the 16th, Fagg told them their place would take three or four days to fix. The Hills left their tools in the shop, after George Whitfield had said they would not be in his way. They came back on Monday, June 21, and asked John Fagg if their place was ready. Fagg said he would see Petrie. Petrie then stated that they had brought their tools out and quit, although their tools had been in the shop all the time. They then brought the tools out.

Howard Hill, a son of L. E. Hill, who had been with the respondent for six or seven years, told substantially the same story. He did not leave his tools in the shop, however.

Malcolm Hill, a son of L. E. Hill, had joined the Union on June 5, 1937. He had signed up several people in the mine. One boy who had been signed up showed his card to everyone; the card had Malcolm Hill's name on it. Malcolm's testimony was substantially the same as that of his father and brother.

Witnesses for the respondent stated that the Hills told them they were quitting until they got a better place. One of these witnesses, G. C. Dalton, was one of the men who carried the yellow dog petition around. He admitted being the possessor of several guns, and his very obvious eagerness to testify favorably for the respondent indicates that little credence can be placed upon his testimony. Another of the witnesses, Goodson, testified to the same effect. Goodson also testified to damaging conversations with Omer Simpson and Kermit Sargent, two of the men whose names appear on the petition. W. F. Wells, another of the witnesses, testified as to what the Hills told them. W. F. Wells testified also as to damaging conversations with Kermit Sargent, and Clarence Lloyd, two of the men whose names appear on the complaint.

In balancing the conflicting stories, the choice is between the straightforward testimony of the Hills and the stories of the witnesses for the respondent. Because belief in the latter must rest on an assumption that several of the men named in the complaint were decidedly loose-tongued, and that each of respondent's witnesses happened to be the confidante of several of the workers named in the complaint, the Board is of the opinion that belief in the story of the Hills is more reasonable.

Malcolm Hill's average monthly earnings during his last two months of employment were \$99.76. For the same period L. E. Hill's average monthly earnings were \$101.83 and Howard Hill's monthly average \$85.17.

Herman Helton and Sewell Hurst. Herman Helton had been with the respondent from August, 1936, to June 28, 1937. Sewell Hurst worked for the respondent from March 10 to June 28, 1937. Both joined the Union on June 12, 1937.

Helton went to a union meeting on June 25. Petrie, in a car, drove up and down two or three times and could not have avoided seeing Helton. Jerry North presented the yellow dog petition to Hurst, and Hurst refused to sign.

On June 26, 1937, Petrie came to the working place of Helton and Hurst, and told them they weren't going to get that working place. He told them Fagg would tell them where they were to work. When they went to Fagg, he said, "Well, I don't know. What's the matter with you fellows." Helton told him that they belonged to the Union. Fagg then took them to "Turnblazer's Home." Fagg didn't know if anything would be paid for removal of the rock. They estimated that it would take about a month to clean up the rock. Helton and Hurst decided to come back on Monday, June 28, 1937, and see Petrie. At that time, Petrie told them that if they didn't want to move the rock for nothing, they could get their tools. Helton and Hurst then left.

Helton testified that his old working place was given to two new men, one of whom had been with the respondent for only three days.

Hurst averaged \$108.58 in April and May, 1937. Helton made \$117.92 in May.

Jim Cooper. Jim Cooper had worked for the respondent for six months. About June 21, 1937, Petrie asked him if he belonged to the Union. Cooper told Petrie that he had joined.

Petrie then took him out of his working place, which had not been worked out, and sent Cooper to "three main," "Turnblazer's Home." Another man was put in Cooper's old place.

As Cooper was walking over to "three main," he met Fagg, who asked him where he was going. Fagg said, "Over there with the rest of the boys? . . . Well, I've got two more union men, I am going to send over there. You'll have company when you get there. There's two there already." Fagg then told him that nothing would be paid for the necessary removal of rock. Cooper testified that it would take a month or more to clean up the place as Fagg directed. He refused to work there. His average earnings for May and June, 1937 were \$113.60.

Allen Garner and Charles Clawson. Charles Clawson had been with the respondent for twelve years. Allen Garner had been with

the respondent since September, 1935. Garner joined the Union on June 10, 1937. On about June 21, 1937, he admitted to Fagg that he had joined the Union. Clawson joined the Union on June 12, 1937. Willie Mason, known as a "snidge"³ was with him when he left the church to go to join the Union.

Clawson testified that he had worked his place and was put in with Allen Garner in a poor place, where, on some days, they wouldn't be given a car. On the morning of June 29, 1937, Fagg told them that Petrie wanted to see them. Petrie showed them a place in three main heading where it would take ten or fifteen days to get to the coal. When they demurred at working in that place, both Garner and Clawson were given orders for their time.

Garner averaged \$124.37 in April and May, 1937. He has made \$5 since June 29, 1937, the day when he stopped working. Clawson made \$132.71 in May, 1937.

Arnold Smith. Arnold Smith had worked for the respondent since January 1, 1934. He was a coal loader except for the last three months of his employment, during which time he was a coupler. Smith joined the Union on June 30, 1937, and was discharged on July 1, 1937. On June 30, Bill Whitfield, Charlie Anderson, and Roscoe Petrie saw Smith, Taylor Miller and Howard Harris follow a union sound truck.

The next day, at about 10:30 A. M., Roscoe Petrie discharged Smith for not lining up the switch with the main line. It appears that failure to do so might lead to a collision of coal cars. Because the possibility was not too great (ordinarily only one motor was present on a line), the men had not been too careful to line up the switches when they drove the motor and cars into an entry, especially if they intended to stay only a few minutes. Roy Sexton, the motorman for whom Smith was coupler, testified, as a witness for the respondent, that Petrie said, when he discharged Smith, "Arnold, I am going to let you go, it is too dangerous to leave those switches open and I have got to start firing them, if I don't will (sic) get somebody killed."

There was conflicting testimony as to whether the coupler or the motorman was responsible for lining up the switches. Sexton testified, however, that the function of lining the switches might depend on whether the train of cars was being pushed in or pulled in by the motor. It is reasonable to believe that the function was allocated according to convenience. Sexton had been a motorman for three years. Smith had been a coupler for three weeks. On the occasion now being discussed, there was just a motor, with no cars, so that Sexton could have noted the oversight. That an inexperienced man

³ Clearly referring to one who reveals to the employer the activities of a fellow employee.

should have been summarily discharged, while an experienced man who was in a position to correct the oversight or to direct the other man, was not blamed in any way, is indicative that the incident was being exploited for the purpose of discharging a man who had joined the Union the day before. It is significant that the statements of the witnesses for the respondent, called upon with respect to Smith's claim, as to the responsibility of lining the switches being exclusively the coupler's, are not entirely consistent with the testimony of those of the respondent's witnesses who were called upon to refute Jess Killion. In the latter case they said that the coupler was at all times subject to the orders of the motorman. It is significant, too, that one of respondent's witnesses, Black, a motorman with respondent for four years, stated that he did not know of an instance of a man being fired at the Kitts mine for leaving a switch unlined, although he knew of other occasions on which the switch had not been lined with the main line.

Smith made \$129.30 in March and \$76.00 in April, his average for the two months being \$102.65. He has made \$5 since his discharge.

Jim Collins. Jim Collins had worked for the respondent for about four years. On July 2, 1937, George Whitfield came into his working place and said, "Jim, I will have to fire you, you will have to hunt you another job, I heard you belonged to the union . . . We can't have no trouble between the men for two or three union men. . . . Before I will take a union man back after he is fired, I will shut these mines down and go to a farm." Collins then said, "Well, give me an order to show you fired me," and Whitfield did so.

In the absence of satisfactory explanation for the discharge, George Whitfield's denial of the conversation, without more, is not sufficient to refute the fact of discriminatory discharge.

In his last two months of employment, Collins averaged \$117.57.

Lee Roy Cole. Lee Roy Cole had been working steadily for the respondent since October or November, 1936. Roscoe Petrie and George Whitfield saw him at a union "speaking" the last day of May, 1937. He joined the Union on July 2, 1937, and was discharged without explanation on July 3, 1937. The respondent adduced no evidence to explain the discharge.

His earnings for April and May, 1937, averaged \$117.05. He has made \$6 or \$8 since the discharge.

Charles Hurley and A. P. Hurley. Charles Hurley had worked for the respondent for about seven months and A. P. Hurley had worked for respondent for four and one-half to five years, off and on. They both joined the Union on June 7, 1937.

Shortly before they joined the Union, they were approached by Foster Lees, who presented the yellow dog petition to them and told them that if they didn't sign, it meant their job. They signed.

A. P. Hurley then reconsidered the matter over the week-end and on Monday, he took his signature off the petition. Charles Hurley had also erased his signature.

On or about June 23, Petrie asked each of the Hurleys if he belonged to the Union and received an affirmative answer in each case. Petrie argued for awhile and left. About a week later, George Whitfield came around and insisted on discussing the Union with A. P. Hurley. On this occasion, Whitfield went into a diatribe against the Union.

On July 4, 1937, one Jack Ellick, who was quite intoxicated at the time, went through Charles Hurley's yard, a way he does not usually take, went over to A. P. Hurley's house, and started a fight with A. P. Hurley. After a while, Charles Hurley went over. The fight created a scene and Ed, George, and Jack Whitfield came up. George Whitfield told Ellick he would be all right after he got a little sleep, and started to take Ellick home. He told A. P. Hurley he wanted to see him and his brother when he got back. George Whitfield returned in about thirty minutes and said to the Hurleys, "I am going to have to fire you boys." When asked for the reason, he said, "Well, one thing, the men don't want to work with you." "Oh, why don't the men want to work with me and my brother?" "Well, because you all joined the union, the United Mine Workers, and they refused to work with you." A. P. Hurley stated that no one had ever refused to work with him. The reasons for the discharge as stated on A. P. Hurley's discharge slips were "causing resentment among men."

It appears that the fight was in no way the fault of the Hurleys and that in fact Charles Hurley was not a participant until it had been going on for some while. Ellick was intoxicated and was on the property of the Hurleys. The incident furnished an excuse for discharging the Hurleys.

The average monthly earnings for the last two months of employment of A. P. Hurley were \$110.20, and of Charles Hurley were \$106.79.

Ed and Earl Howard. Ed Howard and Earl Howard, his son, worked for the respondent from March 3, 1937, to July 14, 1937.

When the Howards came to the mine on July 14, 1937, they saw the banner already referred to hanging over the drift mouth. The banner had writing on it to the effect that "they" were called yellow dogs and scabs but were in reality 100 per cent Americans, and refused to work with union men. Jerry North made a speech and said that they refused to work with union men, and that they were going to carry the banner down the hollow, through the camp, and back to town, and that they would also refuse to work with anyone who failed to march behind the banner. Then Preacher Groomster made

his speech, and George Whitfield ordered the mine closed. The march then started. The Howards did not march.

When the men came back, Ed Howard told Jerry North that he wanted them to consider his case, that he wanted to be a neutral and was neither union nor non-union. North told him to be back at four in the afternoon.

At the meeting in the afternoon, Jerry North read off the names of the men who had not signed the yellow dog petition. When Ed Howard's name was called, he stepped forward and said that he desired to be a Christian man, and that he couldn't lie to his conscience. He asked the meeting to take a vote as to whether they desired to work with him. They took a vote and only four voted against him. A second vote was held, and only a few men voted against him.

Then Bill Woods began to say that this preacher was no better than any other preacher that had signed the yellow dog contract, and that they would let him sign it or go down the road. At a third vote, the vote was even. Then Jerry North, a fellow with North, and Bill Woods began to curse and swear and told everyone they would have another chance. They called on everyone to raise their hands, and everyone, including the women and children who were present, did.

North, Bill Woods, and John Fagg were intoxicated at the meeting. Earl Howard's story is the same.

During May and June, 1937, Ed Howard's monthly average was \$78.18 and Earl Howard's was \$78.19.

Robert Hill. Robert Hill and his father, I. T. Hill, who was not named in the complaint, refused to sign the yellow dog petition on July 14, 1937, during the speeches and marching. They went to work the next morning. George Whitfield then stopped the man trip and said to the Hills, "You fellows are not going to work, them men don't want to work with you." Ed Whitfield said, "These men don't want to work with you."

Robert Hill had been working for the respondent since June 7, 1937. From June 7 to the end of the month, Robert Hill made \$70.63.

Elmer Reedy. Elmer Reedy worked for the respondent from May 6, 1937 to July 14, 1937. He has been a member of the Union since March 30, 1937. When he came to work on July 14, he saw the sign over the driftmouth and was told that there was going to be a "yellow-dog strike". Claus Dalton said that all who did not march would be fired. Reedy did not march.

After George Whitfield had ordered the shop and the substation to be shut down, he said that all men who had union cards or had not signed the yellow dog paper would be fired. Reedy was afraid of being beaten if he went to work, and did not try to go back.

His average monthly earnings for May and June, 1937 were \$80.42.

J. D. Parker. J. D. Parker had worked for the respondent for about five weeks when he was discharged on July 14, 1937. He joined the Union on June 23, 1937. On July 14, he saw Petrie come up, laughing, and order the men to get to work. He then saw Jerry North come up and say to Petrie that a strike was being called and that the men would not work with those who had not signed the yellow dog paper.

Parker saw Fagg counting out Fred Wilson's time. Parker said, "Are you counting out men's time for not signing a yellow dog paper? I haven't signed it, and I am not going to." Fagg said, "George, what about writing this fellow's time out?" George Whitfield said, "Write all their time out. Give every damn one of them their time together. We got to get these men back to work." Reedy's time was then written out.

Reedy earned \$54.59 in three weeks in June 1937.

Ed Woods. Ed Woods had worked for the respondent for six and one-half years. He was a screen man at the tipple. He joined the Union on May 10, 1937. He had never signed the yellow dog petition. On July 14, 1937, when the yellow dog strike took place, Ed Woods was not interested, and went back to his house.

Before going back he had heard Claus Dalton say, "You boys are too God damned little to sign this paper, you will get on a farm." Woods said to Dalton, "All right, thank you very much."

The next day he and Charlie Campbell were told by John Herman, the tipple boss, that he would have to send them back because the men refused to work with union men. Herman then wrote out an order for Woods' time.

Woods' average monthly earnings for May and June, 1937 were \$114.89.

Charlie Campbell. Charlie Campbell had worked for the respondent for three and one-half years. He was a coupler on the rope, at the tipple. He joined the Union on June 10, 1937.

On July 14, 1937, someone said to him that 250 men were striking because of 12 union men. When he reported for work on the 15th, Herman told him that he had no job that morning, that a man had been put in his place. When Campbell asked why he was being fired, Herman said, "The men refuse to work with union men."

His average monthly earnings for his last two months of employment amounted to \$102.12.

Homer Byrd. Homer Byrd had been working for the respondent since June 10, 1933. He joined the Union on June 14, 1937.

Byrd testified that on July 14, 1937, George Whitfield ordered the shop and the substation closed, saying that there was a strike that day.

Byrd did not march in the parade, nor did he sign the yellow dog petition. On July 15, he was discharged by George Whitfield. When he asked for a reason, Whitfield said that the men refused to work with him. "In other words," Byrd said, "for not signing that paper and joining and belonging to the United Mine Workers?" Whitfield said, "That's it" and then told him that the order for his time was waiting for him at the office.

During May and June 1937, Byrd's average monthly earnings were \$78.98.

Fred Roe. Fred Roe worked for the respondent from December, 1936 to July 15, 1937. He joined the Union on June 23, 1937.

Roe did not march in the July 14, yellow dog strike parade. On July 15, he reported for work. He and three other men were waiting for the man-trip. The other men kept away from these four. When the motors were brought out, George Whitfield got up on top of a motor and said "Boys, we have got two or three men here and we ain't going to let them work and tear this mine up here and keep us out of work." Roe said, "If you call that fair, I want an order for my time." Ed Whitfield then said, "We don't have to give you any order for your time. You fellows ain't nothing but trouble makers. You fellows ain't even going inside and get your tools." Roe left.

Roe was on a salaried basis. During May and June 1937, he averaged \$139.00 per month.

E. A. Chandler. Except for a 30 day period in 1936, E. A. Chandler had been working steadily for the respondent since November, 1934. Chandler joined the Union on June 6, 1937. He stopped working for the respondent on July 15, 1937.

On July 14, 1937, when the yellow dog petition was circulated, Chandler told Roscoe Petrie, "I didn't come here to sign papers, I came here to load coal. If I can't work, give me an order for my time." Roscoe did not at that time give him an order for his time. On the next day, Ed Whitfield gave a talk in which he said "Ain't no four or five United Mine Workers going to keep all these men from working. You boys (the designation included Chandler) get off the hill." Chandler asked for an order for his time. Ed said, "You damn fool, you don't get no order. When you get out of the house you will get a settlement."

Chandler averaged \$138.12 a month during his last two months of employment.

C. P. Parker. C. P. Parker had worked for the respondent for fourteen years, off and on, building and repairing cars in the shop. He joined the union on July 14, 1937.

Val Dunn asked him to sign the yellow dog paper. Parker said he would study it. About July 13, 1937, Jerry North said to him, "Parker, you're a damn good man, hate to see you leave here, but if you don't sign this paper you know what it means." On the morning of July 15, 1937, George Whitfield discharged him without giving any explanation. The respondent presented no evidence at the hearing to explain the discharge.

During May and June, 1937, Parker's monthly average was \$97.02.

John Green. John Green had been working for the respondent for fifteen months when he was discharged on July 19, 1937. He joined the union sometime in July, 1937. He signed the yellow dog petition because he felt that would insure him his job.

On Monday, July 19, 1937, he went to work as usual. Claus Dalton got on a car and said "All you Yellow Dogs get up this way, up in the drift at the mouth of the mine." Then he said, "There are two men in our ranks this morning that don't belong here and that is John Green and Carl Reedy. We know definitely John Green does belong to the union but we don't know about Carl Reedy." Roscoe Petrie and George Whitfield were present at the time Green asked Whitfield for an order for his time.

Green's average monthly earnings during his last two months of employment amounted to \$115.64.

William Disney. William Disney had been with the respondent since May 7, 1937. He was a track man. He joined the union on July 16, 1937.

On about July 6, 1937, he was injured. While he was unable to work, the yellow dog parade took place and men who had not signed the yellow dog petition were read out of the respondent company. The petition had been presented to Disney three times and he had failed to sign it.

Disney went back to work on the morning of July 19. That morning there was a "speaking." Preacher Groomster and Claus Dalton said there were some men there who had not signed the petition and mentioned John Green and Carl Reedy specifically. Disney then spoke to Roscoe Petrie about getting Disney's tools. Petrie said he didn't care anything about the tools, but he wanted Disney to get out of the way.

Disney's average monthly earnings during May and June, 1937, amounted to \$129.20.

Charlie Killion and George Griffith. On Friday, February 19, 1937, which was not a "run day" at the Kitts mine, Killion and Griffith and Milford Dugger went to Virginia. Dugger testified that he and Griffith just went to see the country. Killion went to look for a job. The Virginia mines are considered "union fields."

When they returned to work on Monday (they had missed no work, since Saturday was also an off day) they were not given any more work. Killion testified that Petrie fired him for "going into union fields on union speakings." Killion testified, that he told the respondent that he "figured on quitting" and that he would give another man eight days, if that other man took his place while he was gone. Walters, the motor boss testified that Killion gave orders to get another man to take his place and that Killion said that that would be his last week.

Jim Cooper testified that Petrie, when talking about the Union, pointed out what Griffith and Killion had gotten into by going into the union fields.

Killion had been with the respondent from 12 to 14 years. Griffith had been with the respondent from five to six years. Neither missed a day of work by this week end trip. Their discharge under such circumstances is highly suspicious and appears to have been part of the respondent's anti-union campaign.

The average monthly earnings of George Griffith during the last two months of employment were \$145.28.

The average monthly earnings of Charlie Killion during the last two months of employment were \$146.17.

William Walker. William Walker was with the respondent for five years. His father-in-law, a union organizer, visited him. Roscoe Petrie made inquiries about the father-in-law. A letter to the father-in-law from Turnblazer, postmarked May 14, 1937, was not delivered until May 29, 1937. Mason, the postmaster at Kitts, also gives out the scrip for the respondent. When Walker called for his mail every day, during the period from May 14 to May 29, Mason would say that there was no union mail that day.

Witnesses for the respondent testified that Walker quit because he did not like to work on the night shift. Walker says that on May 15, 1937, he was transferred to a very bad working place on three main head and when he said he couldn't work in that place, Bill McNally, the night boss, discharged him.

The Board finds that William Walker was discharged in order to discourage membership in the United Mine Workers.

His average monthly earnings during the last two months of employment were \$69.45.

Frank Fannin. Frank Fannin had worked for the respondent for nine months when he was discharged on May 21, 1937. He had joined the union on May 11, 1937.

On May 20, 1937, he was going around getting contributions for coal for the home of one of the men who was sick. Ray Gross, a deputy sheriff, did not allow him to go through Golden Ash, saying

"Well, you sure can't take it through this place. His daddy is an organizer for the United Mine Workers." However, A. F. Whitfield, Jr. contributed a quarter to the collection.

Fannin was discharged the next morning. The boss told him the discharge was for ordering a car back and not loading it, and Petrie told him he was discharged for leaving early in the night time.

Fannin was described by McNally, the night boss, as "what I call a careless man and I discharged him, for he would sleep around in the mines, and he would leave his dirt for day men to load, and would order cars back and would not load them, and walked out and that was against the rules and I discharged him."

Fannin's employment record shows that for the two year period before he worked at Kitts, he was with four companies, staying with none for any great length of time. He admitted getting drunk about once a month, although he denied that he was ever drunk on the job.

The allegations of the complaint with respect to the discharge of Frank Fannin are hereby dismissed.

John Osborne. Osborne had worked for the respondent for four months. He joined the Union on May 15, 1937. He stopped working for the respondent on May 21. He refused to take bottom (remove dirt which was pushed up from the floor by the weight of the mountain) in the main room. The testimony was confused as to whether coal loaders had to take bottom at places other than their own working place. But Osborne was assigned to the taking of the bottom several days before he joined the union.

The allegations of the complaint with respect to the discharge of John Osborne are hereby dismissed.

Kermit Sargent. Kermit Sargent quit on May 26, 1937 when he was asked to take bottom at a place that was not his working place. This was usually the track man's rather than the coal loader's work. Sargent stated, however, that it would have taken him only an hour to do this work.

Sargent did join the Union on May 15, 1937. It is not clear, however, that he was discharged for union activity.

The allegations of the complaint with respect to the discharge of Kermit Sargent are hereby dismissed.

Omer Simpson. Simpson had worked for the respondent for eighteen months. He joined the union on May 15, 1937. On May 28, 1937,⁴ he and his buddy, Sargent, were asked to take bottom about 250 feet from his working place. He refused and was not given any cars as a result. He asked for his time. It is not clear that he was discharged for union activity.

⁴ Either Simpson or Sargent is wrong as to the date.

The allegations of the complaint with respect to the discharge of Omer Simpson, are hereby dismissed.

Except in those cases where it has been indicated that the allegations of the complaint were to be dismissed, the Board finds that the men were discharged because of union affiliation, activities, and associations, and that by such discharges the respondent has discriminated in regard to hire and tenure of employment, and has thereby discouraged membership in a labor organization, The United Mine Workers of America.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and 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 case, the Board makes the following conclusions of law:

1. The United Mine Workers of America is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The persons listed in Appendix A were, at the time of their discharges and at all times thereafter, employees of the respondent within the meaning of Section 2 (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 (1) of the Act.

4. The respondent, by discriminating against the persons listed in Appendix A in regard to hire and tenure of employment and terms and conditions of employment, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The respondent has not engaged in an unfair labor practice within the meaning of Section 8 (2) of the Act.

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

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Clover

Fork Coal Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from discouraging membership in United Mine Workers of America or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or discriminating in the assignment of working places to its employees, or in any other manner discriminating in regard to the hire or tenure of employment or any term or condition of employment of any of its employees;

2. Cease and desist from contributing to, cooperating with, or assisting, through membership therein or otherwise, the Harlan County Coal Operators Association or any other organization engaged in 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

3. Cease and desist from (a) maintaining surveillance of or employing any manner of espionage for the purpose of ascertaining and investigating the activities of United Mine Workers of America and of the activities of its employees in connection with such organization or any other labor organization; (b) indicating to its employees the respondent's attitude and desires with respect to the relationship of its employees to any particular labor organization, or indicating to its employees the respondent's judgment of union organizers or particular labor organizations; (c) threatening to close its mine if its employees join with any labor organization; (d) expressing to its employees its approval of anti-union sentiment or activities; and (e) 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 or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

4. 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 immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees listed in Appendix A for any loss of pay they have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment, by payment, respectively, of a sum of money equal to that which each would have earned as wages during the period from the date of such discrimina-

tion to the date of the offer of reinstatement, less any amount each has earned during that period;

(c) Post immediately notices to its employees in conspicuous places in and about the mine and at the tippie stating: (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least sixty (60) consecutive days from the date of posting;

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

And it is further ordered that the complaint be, and it hereby is, dismissed with respect to the discharge of the persons listed in Appendix B, and in so far as it alleges that the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

APPENDIX A

Randolph Bledsoe	Robert Humphleet
Estel Brock	A. P. Hurley
Homer Byrd	Charles Hurley
Charlie Campbell	Sewell Hurst
Roscoe Carroll	Charlie Killion
E. A. Chandler	Jess Killion
Charles Clawson	Clarence Lloyd
Lee Roy Cole	Howard Lloyd
Jim Collins	Thomas Lynch
Jim Cooper	Ancil Miller
Earl Crabtree	Robert Miller
Cleve Crider	Taylor Miller
William Disney	Herman Minton
Milford Dugger	C. P. Parker
Ernest Duncan	J. D. Parker
Matthew Jennings Bryan Filden	Verda Patterson
Allen Garner	Elmer Reedy
John Green	Jack Ricketts
George Griffith	Fred Roe
Howard Harris	Charles Russell
Herman Helton	Ester Saylor
Fred Hill	Arnold Smith
Howard Hill	William Walker
L. E. Hill	Ernest Weatherly
Malcolm Hill	Benjamin Wells
Robert Hill	Jack West
Corey Hood	Dillard Wilder
Walter Hopkins	James Williams
Earl Howard	Ed Woods
Ed Howard	Kelley Wright

APPENDIX B

Cliva Ausmus	Lawrence Dugger
Danier Burt	Frank Fannin
Charles Carmichael	Carl Flannigan
Dock Carnahan	Curtis Freeman
Bill Collins	Earl Hughes
John Crabtree	Hiram Minton
Milford Crabtree	Willie Norfleet
Clyde Daugherty	John Osborne
Charles Delph	Kermit Sargent
Roscoe Delph	Omer Simpson
Walter Dermis	