

In the Matter of BOTANY WORSTED MILLS *and* TEXTILE WORKERS
ORGANIZING COMMITTEE

Case No. C-216.—Decided December 1, 1937

Woolen and Worsted Industry—Interference, Restraint or Coercion: engendering fear of loss of employment for union membership and activity; maintaining or encouraging surveillance of employees in the exercise of their right to join or assist a labor organization; questioning, threatening, and instructing employees in respect to the exercise of their right to join or assist a labor organization; interrogating prospective witnesses concerning their testimony under the Act—*Discrimination:* discharge—*Reinstatement Ordered:* despite employment since discharge as union organizer at substantially equivalent compensation—*Back Pay:* disallowed in accordance with desire of person named in complaint.

Mr. Victor A. Pascal, for the Board.

Putney, Twombly & Hall, by *Mr. Louis H. Hall* and *Mr. Frederic R. Sanborn*, of New York City, for the respondent.

Mr. Sidney L. Cahn, of New York City, and *Mr. Ben Goodkin*, of Passaic, N. J., for the T. W. O. C.

Mr. Millard L. Midonick, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 7, 1937, Textile Workers Organizing Committee, herein called the T. W. O. C. or the Union, filed a charge with the Regional Director for the Second Region (New York City) alleging that Botany Worsted Mills, Passaic, New Jersey, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 6, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the Act, in that it had discriminatorily discharged and refused to reinstate its employee, Joseph Peidl, on

May 1, 1937, for the reason that he joined and assisted the T. W. O. C. and engaged with other employees in concerted activities for their mutual aid and protection.

Prior to the hearing, the respondent filed an answer to the complaint denying that Joseph Peidl had been discharged for the reasons stated above. The answer affirmatively alleged that the cause of the discharge had been Peidl's neglect of his duties and his interference with the performance by other employees of their duty by approaching fellow employees during working hours and urging them to join the T. W. O. C.; that these activities of Peidl continued despite warning that such activities must be confined to time outside working hours; that the respondent could rightfully discharge any employee for violating the duty to devote to the service of the respondent the time for which he was paid. The answer further denied the jurisdiction of the Board as a legal conclusion while admitting certain facts, set forth in Section I below, relative to the respondent and its business.

Pursuant to the notice, duly served on the parties, a hearing was held in Passaic, New Jersey, on July 15 and 16, 1937, before Frank Bloom, the Trial Examiner duly designated by the Board. The Board, the respondent, and the T. W. O. C. were represented by counsel and participated in the hearing.

At the hearing, pursuant to notice of motion to amend served on the parties, counsel for the Board moved to amend the complaint to add a further allegation that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), in that the respondent prevented and is preventing its employees from joining the T. W. O. C. by having the activities of those of its employees who are interested in the Union, spied upon and watched. The motion was granted by the Trial Examiner after counsel for the respondent had waived insufficiency of notice in point of time. The allegations added to the complaint by the amendment were denied by a supplemental answer. At the conclusion of the hearing, a motion by counsel for the Board to conform the pleadings to the proof was granted. A motion to accept the admissions contained in the respondent's answer, verified July 12, 1937, as part of the Board's case, was also granted. At the conclusion of the Board's case and again at the conclusion of the hearing, counsel for the respondent made five motions to dismiss the complaint, four on the grounds of the lack or insufficiency of evidence to sustain the allegations of the complaint, and one on the ground that it did not appear that the respondent was engaged in interstate commerce, and that therefore the respondent was not subject to the Act and to the jurisdiction of the Board. Rulings on the five motions to dismiss having been reserved at the hearing, said motions were subsequently denied in the Intermediate Report.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded the parties. The parties were granted a reasonable period for oral argument at the close of the hearing, and they were afforded a reasonable opportunity to file briefs. Oral argument was presented by counsel for the Board and for the respondent. Thereafter, briefs were submitted by counsel for the Board, the respondent, and the T. W. O. C.

On August 11, 1937, the Trial Examiner duly filed his Intermediate Report in which he denied the motions of the respondent to dismiss the proceedings. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act, by spying upon and watching its employees, and by discharging and refusing to reinstate Joseph Peidl. He further found that, by discharging and refusing to reinstate Joseph Peidl for the reason that he joined and assisted the T. W. O. C., the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (3) and Section 2 (6) and (7) of the Act. The Trial Examiner recommended that the respondent cease and desist from its unfair labor practices and, in addition, offer reinstatement to Joseph Peidl. The respondent thereafter, on August 21, 1937, filed exceptions to the Intermediate Report, taking exceptions to the Trial Examiner's rulings in the course of the hearing upon its motions and objections as well as to the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the introduction of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. We have further considered the exceptions to the Intermediate Report and find no merit in them.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Botany Worsted Mills, is a corporation organized and existing since 1889 under the laws of New Jersey. Its principal office and place of business is located in Passaic, New Jersey, where it owns and operates a mill. The respondent engages in the manufacture and sale of woolen and worsted textiles for its own account, and it also processes or combs raw materials for the account of customers. It was testified by the respondent's assistant secretary that commission-combing is done for persons or firms outside the State of New Jersey, and that he had no knowledge concerning whether such work was performed by the respondent for firms within the State of

New Jersey. The respondent maintains a showroom in New York City where orders are taken on the basis of samples there displayed, subject to confirmation at the Passaic office. A sales office is also maintained in Chicago, Illinois, where the respondent's representatives procure the same form and type of orders subject to confirmation at the Passaic office.

The finished products turned out at the Passaic mill, mainly worsted and woolen goods, yarns and neckties, are made principally from wool. Wool is generally shipped by sellers to the respondent's mill in Passaic, New Jersey, from Massachusetts, Pennsylvania, Maryland, and West Virginia. In some instances, the sellers of wool cause shipments of wool consigned to their order from wool-growing states, principally Texas, New Mexico, California, Oregon, Washington, Idaho, Nevada, Montana, and Wyoming, to be diverted *en route* and delivered to the respondent at Passaic. All of the respondent's raw wool comes to it in these ways.¹ Other raw materials, such as rayon, silk, and cotton, enter into the respondent's products only "to a very small extent." Sellers of such materials ship them to the Passaic mill principally from New York, New Jersey, Delaware, Ohio, Massachusetts, Connecticut, and Vermont, and occasionally small quantities are shipped from other states.² In its answer, verified July 12, 1937, the respondent admits the following:

It is the fact that the greater part of its raw materials used in the spinning of yarn and in the manufacture of woolen and worsted goods do not originate in the State of New Jersey and therefore must be transported in interstate commerce from and through various states of the United States other than the State of New Jersey to the plant of the respondent at Passaic, New Jersey.³

At least 90 per cent of the products manufactured by the respondent at its mill in Passaic are shipped to purchasers who are located in states other than the State of New Jersey. In the great majority of cases, the goods are shipped to purchasers located in the State of New York, but in varying small quantities, shipments go to all the states of the Union. Railroad shipments of the respondent's products are made f. o. b. Passaic over the Erie Railroad and the Delaware, Lackawanna & Western Railroad and are routed by these carriers over such connecting railroads as are necessary for the commodities to reach their destinations.

These facts are not disputed by the respondent. Indeed, in its answer it admits:

¹ Board's Exhibit A.

² Board's Exhibit A.

³ Respondent's Answer, paragraph 2.

The greater portion of the product of respondent's plant at Passaic, New Jersey including yarn and woolen and worsted goods, is ultimately transported in interstate commerce from the respondent's plant in Passaic, New Jersey to and through other states of the United States.⁴

The respondent nevertheless maintains that its business is not interstate in character, and that the Board, therefore, has no jurisdiction for the reason that:

No sales of the respondent's product are consummated in any other state than the State of New Jersey and title to such merchandise sold by the respondent passes to the respective purchasers thereof in the State of New Jersey, except that respondent does ship merchandise into the State of California from which local deliveries are made, the total volume of such deliveries being less than 2½ per cent of all its sales and deliveries.⁵

It is clear from the record that approximately 90 per cent of the respondent's products are delivered to either of two interstate carriers for immediate shipment to purchasers located in states other than the State of New Jersey. It is wholly immaterial, therefore, that upon delivery of the goods to such a carrier for the purpose of an immediate interstate movement, the title in the subjects of the interstate movement may pass to the purchasers before the goods have left the State of New Jersey by virtue of the fact that they are sold f. o. b. the point of such delivery to the carrier. The operations of a manufacturing concern may affect interstate commerce whether it causes its product to be transported in interstate commerce by a carrier which is its own agent or the agent of the consignee.

II. THE UNION

Textile Workers Organizing Committee has been constituted by the Committee for Industrial Organization, by an agreement to which United Textile Workers of America was a party, as an unincorporated sub-committee to organize textile workers throughout the United States for the purpose of engaging in collective bargaining with employers. In 1936, United Textile Workers of America authorized the T. W. O. C. to conduct nation-wide organizational activities in its behalf and under its constitution. Since early April 1937, the local office of the T. W. O. C. has been soliciting the employees of the respondent and those of other textile mills in the vicinity of Passaic to enter the membership of the T. W. O. C., and a substantial number of such workers were members by the time of the hearing in this proceeding. The members of the T. W. O. C. among the employees of the respondent were, at the time of the hearing, en-

⁴ Respondent's Answer, paragraph 3

⁵ Respondent's Answer, paragraph 2, as amended at the hearing (Record, pp 7-8).

rolled directly in the national organization since no charter for a local union had as yet been applied for.

We find the T. W. O. C. to be a labor organization.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The T. W. O. C. entered the respondent's plant during the early part of April 1937. Organizers for the Union have since conducted an active campaign to enroll members among the employees. The respondent did not permit these activities to go unnoticed. Employees were bluntly intimidated by questionings and warnings regarding union activities and union membership. They were coerced more subtly by surveillance and the consequent fear of detection.

1. On or about April 25, 1937, Joseph Peidl, named in the complaint as discriminatorily discharged, was asked by one of his foremen whether he belonged to the "C. I. O.," the organization with which the T. W. O. C. is affiliated. Another employee testified that he was called into the office of the assistant head of his department and warned that his interest in the "C. I. O." was known, as were his public speeches on behalf of that Union, and that he was being closely watched by the respondent's "Labor Board". Some time later in May or in June 1937, officials of the respondent questioned one of Peidl's friends about Peidl's rate of compensation for signing up new members for the Union. As late as July 9, 1937, one week prior to the hearing, a foreman questioned two employees, whom he observed signing a petition for wage increases, concerning their membership in the "C. I. O." Moreover, William Nagy, an employee, testified that he was approached in the plant three days before the hearing in this case by Monroe Kestler, one of the foremen, and asked if he intended to testify at the hearing and whether for the respondent or for Joseph Peidl, his fellow employee named in the complaint. While we do not wish to circumscribe the privilege of a respondent to engage in reasonable methods of preparing a case which it has pending before the Board, there is no intimation in Kestler's subsequent testimony or in the remainder of the record to indicate that Kestler was acting for the respondent's counsel rather than in pursuance of a plan to intimidate the prospective witness.

At the hearing, the respondent made no attempt to contradict or refute the testimony of the witnesses establishing the facts as to the unfair labor practices thus far set forth.

By these activities, the respondent has seized upon a powerful and destructive weapon. Its effect is to create immediate, personal fear of the loss of employment in present and prospective members of

the Union, and it obviously constitutes, therefore, flagrant and unlawful interference, restraint, and coercion of employees.⁶ It is not necessary, as the respondent contends in its brief, to prove directly that the effect of these practices has been to intimidate; we can make no other inference but that such tactics have had and are likely to continue to have the desired effect, and we will therefore order the respondent to cease and desist.

2. Testimony concerning espionage in the respondent's plant reveals more insidious tactics. Toward the latter part of April 1937, one Frank Pieczarka, an employee of the respondent who testified that he disliked unions, was seen by a witness quietly observing a transaction in which the witness returned to Peidl an executed application for membership in the Union. According to Pieczarka's own testimony, he sought out Henry F. Remig, an official in charge of the personnel department, in his office a few hours later to report having "caught him (Peidl) signing up the men" in the plant. When questioned whether or not it was part of his duties to relay such information about his fellow employees, Pieczarka first answered in the negative; he then corrected himself, stating that it was part of his duties; that he passed such information on because he felt an obligation upon himself to keep the management informed of the Union activities observed by him; that Remig "is the General Manager" and if "there is anything wrong everybody goes up to him." Shortly after this incident, Pieczarka approached Peidl in the plant and requested to be signed up as a member of the Union. Subsequently, on May 1, 1937, at 3:00 A. M., Nagy overheard a conversation between George Leightle, a foreman, and Pieczarka, in which the latter was asked if Peidl had attempted to sign him up. Pieczarka replied in the affirmative. Thereupon Leightle said, "That is all Mr. Belli wants to know".⁷

Assuming that the respondent gave Pieczarka no explicit instructions with regard to spying upon union activities, we would nevertheless condemn as interference, restraint, and coercion, the authorization for and encouragement of systematic espionage implicit in the respondent's readiness to listen to information about organization which should not concern it.

Upon the foregoing findings, and upon other facts hereinafter set forth, we conclude that the respondent, by persistent questioning, by threats both express and implied, and by espionage, has sought to check the organizational activities of its employees, and by these means it has interfered with, restrained and coerced its employees in the exercise of their rights to self-organization, to form, join, and assist a labor organization. This conclusion is reinforced by the

⁶ *Matter of Greensboro Lumber Company and Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 629

⁷ Belli is the assistant head of the combing department.

circumstances leading to the discharge of Joseph Peidl, next to be discussed, who is alleged in the complaint to have been discriminatorily discharged.

B. *The discharge*

Joseph Peidl had been employed by the respondent since February 13, 1935, as a noil trucker. The events leading up to his discharge can be listed chronologically as follows: On April 15, 1937, shortly after the commencement of organizational activities by the T. W. O. C. in the respondent's plant, Peidl joined the Union. By April 26, 1937, if not before, the respondent knew of Peidl's membership in the Union and of his active participation in soliciting other employees to join. Nothing further occurred until May 1, 1937, at about 3:00 A. M., when Nagy overheard the conversation, previously described, between George Leightle, a foreman, and Pieczarka, in which the latter was asked if Peidl had attempted to sign him up. Upon Pieczarka's reply in the affirmative, Leightle said, "That is all Mr. Belli wants to know." When Peidl came to work that morning, he was told by his superior, Mr. Fiori, head of the combing department, that he was transferred to another department of the plant. About 1:45 in the afternoon, just prior to quitting time, he was told by Kestler to report to Fiori. Fiori told him not to return to work until sent for; that he did not know the reason for the discharge since it was ordered by Remig, the head of the personnel department.

Peidl then went to Remig for an explanation. He testified at the hearing as follows:

I approached Mr. Remig and I told him I was Joseph Peidl. He said, "I know". I said, "Mr. Remig, why am I being laid off? I am not accustomed to being told to stay home and having no explanation." He said, "Don't you know?" I said, "I think I know". He said, "Well." I said, "It is account of the C. I. O." He said, "How many did you sign up in the plant, and where are they?" I told him. He also asked me who they were. I said "I don't know who they are. I didn't sign up many".

Remig subsequently testified:

The reason I gave him was for using company time for other purposes than the time for which the company paid him.

Q. (By the Trial Examiner.) Is that the complete answer?

A. Well, it was preceded by other conversation.

Q. Tell us the whole conversation. Tell us what you said to him and what he said to you.

A. Mr. Peidl on his way out from the mill, about 2 o'clock, approached me with reference to his being out on call, as it was expressed. He mentioned the fact that he presumed it was because he was a member of the C. I. O. I told him that that was

not the reason. As far as he belonged to any organization was concerned, that did not concern us nor did we even care about or question that. The conversation brought out from me the information that it was the fact that he was using company time for other purposes which was the basis of his discharge.

In the brief on behalf of the respondent, it is stated:

Briefly, Botany justified Peidl's discharge on the ground that he had violated a rule of his employer by engaging in organizing work and propaganda within the employer's premises within the eight hours' time for which his employer was paying him.

We take the flat position that an employer can hire men for eight hours, and instruct them to sit at a desk, fold their hands, and not speak. If they violate their instructions and the conditions of their employment, he can lawfully discharge them. It is no defense to say that, despite his instructions, some "brooding omnipresence" not explicit in the Wagner Act permitted them so to talk.

The employer can forbid all conversation. He can forbid discussions concerning religion—or politics—or labor unions.

Certainly he can prohibit the men from using the time that he pays for to solicit membership, get membership cards signed, and returned to the organizer—all on the company's time, *and to the serious neglect of the employee's work.*⁸

In response to so clear an assertion in behalf of the respondent, we interpret the intent of Congress as embodied in the Act to be this, that inasmuch as by Section 8 (3) it is made an unfair labor practice to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment, it is therefore an unfair labor practice so to discriminate whether or not the discharge is attributed to a violation of known company rules or "conditions of . . . employment." Discrimination involves an intent to distinguish in the treatment of employees on the basis of union affiliations or activities, thereby encouraging or discouraging membership in a labor organization, and it is immaterial whether this be done by the means of discriminatory company rules, or of the discriminatory application of non-discriminatory rules, or in the absence of any rule.

The respondent urges that Peidl was lawfully discharged for violating an alleged regulation prohibiting employees from engaging in any activities outside the scope of their employment during the eight consecutive hours of each shift. It is clear from the record that at various irregular and informal periods during each working

⁸ Memorandum on Behalf of Respondent, pp. 1, 17.

day, there are 15 to 30 minute intervals for most of the men during which time they do not actively work. Because of the nature of the processes of wool manufacture, there are often such periods of enforced inactivity while employees await supplies, while machines receive minor repairs and attention, and while machines run automatically. During such intervals in this plant, the employees would congregate in small groups and eat lunch and engage in discussions of baseball, fishing, and other topics. There was a substantial amount of uncontradicted testimony that it is a common practice for a large majority of the employees to sell, during such inactive periods, tickets for various lotteries, Irish Sweepstakes, and raffles, tickets for dances and basketball games, chances for "numbers" games, and to solicit contributions for Christmas baskets and flood relief. This condition of affairs was known to many of the foremen. In fact, it appears from the evidence that the foremen were as active in such matters as the non-supervisory employees. These widespread and recurrent activities were all outside of the duties for which the employees were hired, and substantial amounts of time were consumed thereby. And yet, according to Remig, no employee has been discharged for such activities over the period of several years during which he has supervised the personnel department. It is obvious that so long as their efficiency was not impaired, the management did nothing to prevent the employees from so using the time not taken up with active duties. We conclude, therefore, that the alleged rule against outside activities, nowhere to be found in writing and never enforced except in Peidl's case, is not a bona fide regulation of the respondent but merely a screen erected to divert attention from its real motive.

In their brief, counsel for the respondent emphasizes that Peidl's union activities on the respondent's time caused "the serious neglect of the employee's work".⁹ Peidl testified that he was never reprimanded for inefficiency or told that he was loafing on the job. He further testified as to his own efficiency and the method by which he was able to perform his duties with dispatch. In this respect, Peidl's testimony was uniformly supported by the workers in the combing department whose materials it was his job to remove and cart away, and by workers in the willowing and press room to which Peidl trucked the materials for baling. The testimony of Kestler, one of Peidl's foremen, was to the opposite effect, that during March 1937, Kestler thought Peidl "seemed to be loafing on the job", and neglecting his duties by "standing around and talking to people." Although Kestler testified this neglect "was a daily occurrence," nevertheless by Kestler's own previous testimony, his last rebuke to Peidl on this score occurred a month prior to Peidl's discharge. And although Kestler testified that he received similar complaints from his assist-

⁹ Memorandum on Behalf of the Respondent, p. 17.

ant, Leightle, the respondent did not call Leightle to testify at the hearing.

It is apparent from the record that the true reason for Peidl's discharge was not the alleged neglect of his work. Kestler, the foreman, testified that although he instructed Peidl to refrain from talking to other employees and to refrain from signing them up on company time, he nevertheless did not instruct the other employees of the alleged rules governing taking part in discussions during working hours. At that time, the intention of the respondent appears to have been to single Peidl out for the purpose either of halting his activities, or, if unsuccessful in that, to have a basis for his discharge. Peidl did not cease his organizational activities. Thereupon, and shortly before the discharge, a conversation took place between Pieczarka and Leightle, the foreman, in which Pieczarka reported that Peidl had tried to sign him up in the plant. This conversation referred to an incident when Pieczarka approached Peidl and requested to be signed up. These occurrences clearly indicate that the respondent was looking for an incident, to which to attribute a discharge, entirely unrelated to the manner in which Peidl did his work. This is further borne out by Pieczarka's own testimony to the effect that, subsequent to the discharge, one of the foremen told him that "the fellow from the press room (Peidl) got fired for signing up the people to the C. I. O." Similarly, in the interview immediately following the discharge, Remig, the supervisor of personnel, sought to ascertain from Peidl the number and identity of those whom he had signed up for the T. W. O. C. By this it is evident that the respondent's interest lay principally in the subject matter of Peidl's private activities on company time rather than in the effect of such private activities on the quality of Peidl's work. Moreover, Peidl's discharge was sought and brought about by high officials of the respondent. Remig, who supervised the personnel department, admitted that he knew nothing of the manner in which Peidl did his work, and it seems unlikely that Remig's superior, the General Manager of the plant from whom the order for Peidl's discharge originated, was better informed.¹⁰

¹⁰ Remig testified in part as follows:

Q (By Mr. Pascal) Mr. Remig, are you the one that ordered Mr. Peidl discharged?

A No, sir

Q. Who ordered him discharged?

A. It is a question I took up with the General Manager.

Q Who is the General Manager?

A. Mr. F. R. Edington.

Q. Who gave the order that Mr. Peidl be discharged?

A. I took the question up with Mr. Edington.

Q. And Mr. Edington gave the order?

A. Yes, sir.

Q You knew nothing about whether this man is efficient or a bad worker?

A. No, sir.

So much of the evidence relating to Peidl's alleged neglect of duty as is conflicting is to be weighed in the light of the respondent's animus toward the T. W. O. C. We further take into consideration the findings of the Trial Examiner, who from his observation of the demeanor of the witnesses had the opportunity to form a trustworthy opinion of their credibility. We are convinced that Peidl performed his services with reasonable efficiency and competency, and we conclude, therefore, that inefficiency was not the reason motivating the respondent in discharging him.

We are similarly convinced from all the evidence that Peidl, in conversing with or soliciting other employees, did so in such a way as not to interfere with their efficiency, and that therefore such alleged interference was not the motivating cause of his discharge.

Finally, the respondent argues that since several other men in the plant, whom it knows to be members of the Union, are still employed, the discharge of Peidl cannot be attributed to his union affiliation. We are convinced that the respondent's basis for distinction in its discharge was between Peidl, whom it feared as an active organizer, and the others, who appear to have been passive members.

To recapitulate, we have found that the respondent's employees are necessarily inactive during several periods of each working day, that Peidl during such periods has engaged in organizational activities on behalf of the T. W. O. C., that by so doing Peidl has not in any manner neglected his work or caused others so to do, that during inactive periods within the working day the respondent's employees in general have engaged extensively in various activities without the scope of their employment but unconnected with the Union, that the respondent has taken no steps to prevent outside activities unconnected with the Union while at the same time it warned Peidl to cease outside activities on behalf of the Union and then discharged him for refusing to comply. We conclude, therefore, that the respondent's alleged rule prohibiting outside activities during working hours, although in itself unobjectionable and within the lawful power of the respondent to adopt and enforce, was either non-existent or a dead letter and was invoked and applied to Peidl in a discriminatory fashion. Peidl was discharged not for outside activities but for outside activities in behalf of the T. W. O. C. Other employees, engaging freely in activities outside the scope of their employment, but not in behalf of a labor organization, were not discharged. We find that Peidl's discharge was intended as a further warning to other employees that their interests would best be served by refraining from joining, or by severing their affiliations with, the Union. We conclude also that such discharge was motivated by a desire to prevent further active organ-

izational activities by Peidl, and it was intended also by the respondent as a warning to other Union members not to engage in similar activities.

We conclude, therefore, that the respondent has discriminated in regard to the hire and tenure of employment of Joseph Peidl to discourage membership in the T. W. O. C. We further conclude that by this conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

The work of Joseph Peidl having ceased as a result of an unfair labor practice, he retained his status as an employee of the respondent within the meaning of Section 2 (3) of the Act. Although from the time of his discharge to the date of the hearing he was being employed by the T. W. O. C. as a full time organizer, and at a salary substantially equal to that which he had been receiving from the respondent,¹¹ we nevertheless find, partly on the ground of his desire for reinstatement to the employ of the respondent, that he has not obtained any other regular and substantially equivalent employment so as to terminate his status as an employee of the respondent, within the meaning of Section 2 (3) of the Act.

IV. THE EFFECT OF THE 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.

THE REMEDY

In addition to an order to cease and desist from its unfair labor practices, we shall affirmatively require the respondent to offer reinstatement to Joseph Peidl. Although he is entitled to back pay from the date of the discriminatory discharge, less any amounts earned by him during such period, we will not order the respondent to pay the small sum involved in view of the fact that it was indicated at the hearing that Peidl does not desire this remedy.

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:

¹¹ Peidl's salary from the respondent had been \$20.40 per week; his salary from the T. W. O. C. has been \$20.00 per week.

1. Textile Workers Organizing Committee is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Joseph Peidl, has discouraged and is discouraging membership in the T. W. O. C. and has thus engaged in and is engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

3. Joseph Peidl was at the time of his discharge by the respondent, and has been at all times since, an employee of the respondent, within the meaning of Section 2 (3) of the Act.

4. The respondent, by spying upon, questioning, threatening and instructing its employees with respect to membership in and the manner and extent of their activities on behalf of the T. W. O. C., and by the conduct set forth in paragraph 2 above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) thereof.

5. 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 findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Botany Worsted Mills, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Discouraging membership in Textile Workers Organizing Committee, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment;

b. In any manner maintaining or encouraging surveillance of its employees in the exercise of their right to join or assist Textile Workers Organizing Committee, or any other labor organization of its employees;

c. Questioning, threatening, or instructing its employees in respect to the exercise of their right to join or assist Textile Workers Organizing Committee, or any other labor organization of its employees;

d. In any manner interfering with, restraining, or coercing its employees in the exercise of their 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 activi-

ties, for the purposes of collective bargaining or other mutual aid or protection.

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

a. Offer to Joseph Peidl immediate and full reinstatement to his former position, without prejudice to his seniority or other rights and privileges;

b. Post immediately notices in conspicuous places where they will be observed by the respondent's employees, stating: (1) that the respondent will cease and desist as aforesaid; (2) that such notices will remain posted for a period of thirty (30) consecutive days from the date of posting;

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