In the Matter of REGAL SHIRT COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA

*Case No. C-250.—Decided December 16, 1937*

*Shirt Manufacturing Industry—Interference, Restraint, or Coercion:* surveillance of union meetings; intimidation of union organizer; attempts by violence to force union organizers to leave town; by public officials and members of civic organization; expressed opposition to labor organization; threats of retaliatory action; threat to close plant unless organization cease; shut-down of plant—*Discrimination:* closing plant to discourage membership in Union—*Company Dominated Union:* domination and interference with formation and administration of; active solicitation of members for permitted during working hours but denied to petitioning union; disestablished as agency for collective bargaining—*Back Pay:* awarded for period plant closed.

*Mr. Jacob Blum* and *Mr. Reeves R. Hilton*, for the Board.

*Mr. Philip Newman*, of Philadelphia, Pa., and *Hamilton & McNeill*, of Morehead City, N. C., for the respondent.

*Mr. S. G. Lippman*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

On June 8, 1937, W. I. Smith, an organizer for Amalgamated Clothing Workers of America, herein called the Amalgamated, filed with the Regional Director for the Fifth Region (Baltimore, Maryland), a charge alleging that Regal Shirt Company, Morehead City, North Carolina, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 9, 1937, the National Labor Relations Board, herein called the Board, issued its complaint against the respondent, alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. In substance the complaint alleged that the respondent, by threats to close and move its plant, and by the subsequent actual closing of the plant for an indefinite period, had intimidated and coerced its employees in the exercise of rights guaranteed to them

in Section 7 of the Act. The complaint also alleged that the respondent through its officers, agents, and employees, and through local business men and city officials, specifically through the mayor of Morehead City, and a local organization of business men known as the City Builders, had promoted and engaged in the formation of a labor organization of the employees of the respondent, had interfered with the administration of said organization, and had encouraged membership therein. It was further alleged that the plant had closed because of the membership of a substantial number of the respondent's employees in the Amalgamated, and that the closing had the purpose and effect of discouraging membership in the Amalgamated and concerted activity by the employees for the purposes of collective bargaining and other mutual aid and protection.

On July 22, 1937, the respondent filed its answer denying that it was engaged in interstate commerce within the meaning of the Act; and denying that it had engaged in the alleged unfair labor practices; and averring that the closing of the plant was caused by business considerations and not influenced by any labor organization or labor activities among its employees.

Pursuant to a notice duly issued and served by the Regional Director upon the respondent and the Amalgamated, a hearing was held in Morehead City, North Carolina, on July 22, 1937, before William H. Griffin, the Trial Examiner duly designated by the Board. At the hearing the respondent was represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded the parties.

On September 18, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in the unfair practices alleged in the complaint and recommended that the respondent cease and desist from such unfair labor practices, and withdraw all recognition from the Regal Employees Association, Inc. Exceptions to the Intermediate Report, and a brief in support thereof, were filed by the respondent. The respondent's request for oral argument was granted by the Board, but the request was subsequently withdrawn.

On November 10, 1937, pursuant to Section 10 (b) of the Act and Article II, Section 7, of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board issued an amendment to the complaint. The amendment in substance alleged that the closing of the respondent's plant on May 10 was, in addition to being an unfair labor practice within the meaning of Section 8 (1), an unfair labor practice within the meaning of Section 8 (3). On November 13, 1937, the respondent filed its answer to the amendment, denying that the closing on May 10 constituted an unfair labor practice within the meaning of Section 8 (3). On November 11, 1937, the respondent petitioned for leave to introduce additional evidence

in support of its answer and in connection with its petition stated the nature of the evidence intended to be introduced. The Board hereby denies the petition on the ground that the evidence sought to be introduced relates to no new issue but merely to the question of the purpose of the closing of the plant on May 10, as to which the respondent has already had full opportunity to introduce evidence at the original hearing.

Various objections to the introduction of evidence were made during the course of this hearing by counsel for the respective parties. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

## Findings of Fact

### I. THE RESPONDENT AND ITS BUSINESS

The respondent is a Pennsylvania corporation engaged in the manufacture, sale, and distribution of men's and boys' shirts. The respondent operates a plant at Morehead City, North Carolina, and operates a general sales office and storeroom in Philadelphia, Pennsylvania. It employs approximately 154 employees at its plant in Morehead City.

In its manufacturing operations the respondent uses cotton prints, threads, linings, starch, paper boxes, buttons, and other miscellaneous materials. Ninety per cent of the raw material comes from outside the State of North Carolina, being shipped to the respondent's plant by rail and truck. The finished products of the respondent's plant are shipped to the Philadelphia storeroom ready for sale. These products are sold mainly through salesmen who travel through various states, other than North Carolina, and solicit orders from retailers and jobbers. The principal part of the Company's sales are made in Pennsylvania, Massachusetts, New York, New Jersey, the District of Columbia, and in practically all the other Middle Atlantic States.

The respondent leases the factory it occupies from a corporation, the Morehead City Builders, herein called the City Builders, organized by local business men who subscribed the funds necessary to purchase a lot and erect a factory for the respondent's occupancy. The rental is $1 per annum under a five-year lease. The respondent has the option of a renewal for an additional five-year period on the same terms.

### II. THE UNION

Amalgamated Clothing Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It

admits to membership all workers employed in the men's clothing industry, excluding clerical and supervisory employees.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Interference, restraint, and coercion.*

About May 2, 1937, Herbert Windfield and Leonard Rice, organizers for the Amalgamated, discussed with several of the respondent's employees the benefits of organizing a union. A meeting was decided upon and set for May 4, 1937, at the home of one of the workers. From 20 to 25 of the respondent's employees attended the meeting. Jackson, the general manager of the respondent, observed the attendance from his automobile parked nearby. Jackson testified that he was on his way home and noticed automobiles belonging to his employees, but had no idea what was going on.

On the evening of May 5, the Amalgamated organizers were in Morehead City awaiting the arrival of W. I. Smith, a third organizer for the Amalgamated. They were accosted by Dowdy, the president of the City Builders, who posed as a detective and searched the organizers for weapons. Dowdy took them to the mayor, who had with him a group of local citizens and a uniformed police officer. Asked their business in Morehead City, the organizers stated they were authorized to organize the employees of the Regal Shirt Factory. The mayor replied, "We are not going to have any organization." Then Dowdy proceeded to assault one of the organizers. Given thirty minutes to leave town or go to jail, they left. The following afternoon, however, they returned and joined W. I. Smith.

On May 5, Dowdy, the president, and Pitman, the secretary of the Morehead City Builders, met several employees who had attended the Amalgamated meeting and asked them to call on Jackson, saying they were sure he would give the employees raises if they refrained from joining the Union. Pitman said he had been to see Jackson, and would go back and tell him the employees were coming down. These employees called on Jackson the following day, May 6, and were told that he would not recognize a union, and further, that he would move the plant before doing so.

On May 6, a half hour before closing, W. I. Smith stationed himself outside the plant, and prepared to distribute handbills. He was observed by Jackson. Soon after, a group of citizens, including the mayor and Dowdy, arrived. Smith informed the mayor that he was there to organize the plant. The mayor replied that it was his business to see that the factory was not organized, and added, according to Smith, " 'We built our factory here, and we intend to

run it without any outside interference'." When Smith started to distribute the handbills, Dowdy assaulted him.

The occurrence outside the factory was followed by an Amalgamated meeting late that afternoon attended by from 60 to 70 employees. At this meeting practically all of the employees present signed application cards for membership in the Amalgamated. These signatures were subsequently supplemented by those of other employees.

The same morning Jackson had invited the employees to attend a meeting in the plant immediately after working hours. Arrangements for the meeting were made that morning by the mayor and Jackson. Jackson was present at the meeting and introduced the mayor. The mayor and local citizens addressed the employees trying to dissuade them from joining the Amalgamated, stating that if the employees joined the Union, the factory would immediately move out of town.

When the employees reported for work on May 10, they found the factory closed, and a notice posted that it was closed for an indefinite period. Jackson testified that, prior to the first appearance of the organizers, the factory was operating 40 per cent below normal, with a reduced personnel and pay roll, and that practically no raw material was on hand for manufacturing needs. Jackson stated that this retardation of production was caused by poor workmanship and an oversupply of merchandise, and was directly responsible for the May 10 shut-down. This testimony was contradicted by employees who stated that they had work on hand, and by the mayor who testified that Jackson gave him the impression that the factory closed to prevent violence.

About May 10, 1937, Stanley Woodland, a prominent citizen, who is openly and violently opposed to labor unions, was present at a meeting of employees after the factory had closed. At this meeting Woodland stated that prominent citizens were convinced that the respondent would leave town if the Union became organized.

Soon after the plant closed, when the employees returned to the factory for their checks, they noticed that the machines in the most conspicuous positions were being moved, creating the impression that dismantling had actually begun.

About May 18, 1937, the factory reopened temporarily for the purpose of completing some work on hand. Subsequently, the factory reopened on a permanent basis. It appears that practically all employees returned to work.

### B. *The Association*

Shortly after the closing on May 10, active steps were taken to organize an unaffiliated local union. The mayor and Woodland,

assisted by Miss Nelson, who is in charge of the respondent's office work, and Miss Gilgo, who is employed as a floor walker and a teacher, were active in the formation of the local union. The organizational appeal was that if the C. I. O. organized a union, the factory would remain closed.

The day pay checks were distributed, after the closing, Miss Nelson appeared at the factory with two typewritten sheets, one to be signed by employees who wished to form a local union, and one to be signed by employees who were in favor of the Amalgamated. The latter sheet bore a caption which read that those who signed this paper signed away their rights to work, and closed the door of the factory. She took a position near the pay window and solicited signatures.

On May 18 printed notices were mailed to all employees, calling a meeting for May 21 at the Municipal Building. This meeting was summoned by the mayor who had the notices printed at his own expense and delivered to Miss Nelson for addressing. The purpose of the meeting was to formally organize the local union. After this meeting a second meeting was held on May 25, at which 69 of the 75 or 80 employees present signed application cards for membership. At the instance and expense of Woodland the organization was incorporated as the Regal Employees Association, Inc., herein called the Association.

Subsequently, Woodland prepared a proposal for an agreement between the respondent and the Association containing a provision regarding a scale of wages, which he submitted to Jackson for signature. Without any prior negotiations respecting its provisions, and without any serious attempt to ascertain whether the Association represented a majority of the respondent's employees, Jackson signed the agreement. The agreement was then submitted to the respondent's officers in Philadelphia for approval. The officers submitted a revised draft. The revised document recognized the Association as the exclusive bargaining agency of its employees, but was totally devoid of any provision relating to a scale of wages, or to working hours, or to other conditions of employment. Upon the recommendation of Woodland it was signed by the representatives of the Association. Jackson testified that following the signing of the agreement, he negotiated orally with the Association, which negotiations resulted in a general ten per cent increase in wages.

On July 14, a meeting of all the employees was called by the president of the Association and was held in the plant during working hours. This meeting had been authorized by Jackson, who ordered the machinery in the plant stopped while the meeting was being held. The purpose of the meeting was to read the charter of the Association and the agreement with the respondent.

IV. CONCLUSIONS IN RESPECT TO THE UNFAIR LABOR PRACTICES

The members of the City Builders had a substantial financial stake in the operation of the respondent's plant. While the legal relationship existing between the City Builders and the respondent was that of landlord and tenant, in practical operation the parties were joint venturers. The City Builders contributed the use of the factory building in return for the increased business which would flow to its members through the operation of the factory.

Thus the impelling motive for the assaults on the organizers and the hostile attitude displayed toward the Amalgamated by the mayor and leading members of the City Builders, was the fear that the factory would close and move elsewhere if the Amalgamated organized the employees. This fear was engendered and encouraged by the respondent's officers through such acts as Jackson's statement to the group of employees on May 6, and the dismantling of machinery after the shut-down on May 10. Again, at the meeting of the factory employees and local citizens addressed by the mayor on May 6, Jackson lent credence to such fear by his failure to disclaim the mayor's statements, and fostered and encouraged this fear by his presence and acquiescence. The respondent's conduct interfered with, restrained, or coerced its employees in the exercise of rights guaranteed in section 7 of the Act.

In view of the respondent's threats to its employees to move the plant, the fear inculcated in the citizens that the plant would close if the C. I. O. organized the employees, the shut-down in spite of unfinished work on hand, and the subsequent temporary reopening for the purpose of completing the unfinished work, we are compelled to the conclusion that the shut-down on May 10, 1937, was motivated by a desire to discourage Amalgamated activities. The failure of the plant to continue operations after the temporary reopening was, however, caused by the legitimate business considerations. We find that the closing of the plant interfered with the organization of the employees, and we find that respondent has discriminated against its employees in regard to hire and tenure of employment, thereby discouraging membership in a labor organization.

The Association was the creature of the mayor and the City Builders who were impelled by fear that the factory would move if the Amalgamated organized the employees. It was their desire to form a labor organization that would be amenable to the respondents, and would at the same time have the effect of keeping a legitimate labor union out of Morehead City. In *Matter of Ansin Shoe Manufacturing Company* and *Shoe Workers' Protective Union, Local No. 80*, we stated with reference to Section 8 (2): "Its object is to protect the rights of employees from being hamstrung by an organization which has grown up in response to the will and the purposes of the employer,

an organization which would not be, in the sense of Section 7, an organization of the employees' choice. The workers may be aware of their employer's antipathy to union organization and seek to propitiate him by acceptable conduct. This may be unavoidable. But the employer can be prevented from engaging in overt activity calculated to produce that result. If labor organizations are to be truly representative of the employees' interest, as was the intention of Congress as embodied in this Act, the words 'dominate and interfere with the formation of any labor organization' must be broadly interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even indirectly, some organization which he considers favorable to his interests."[1] The respondent actively encouraged membership in the Association by permitting a meeting to be held in its plant, during working hours, and further showing its approval by ordering the current of the plant shut off during the meeting. The summary manner in which the agreement between the Association and the respondent was made, confirms the conclusion that the Association is nothing but a tool of the respondent. We find that the respondent dominated or interfered with the formation or administration of the Regal Employees Association, Inc.

### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the respondent set forth in Sections III and IV above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to disputes burdening and obstructing commerce and the free flow of commerce.

## The Remedy

Because of the respondent's unfair labor practice in closing the plant on May 10, resulting in a loss of pay to its employees from that date to May 18, we will order the respondent to compensate in full all of its employees who were locked out on May 10, 1937, at the rates of pay or wages which they had been earning prior to May 10, 1937, to the date of the temporary reopening on May 18, 1937, less any amount earned by them during such period.

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. Amalgamated Clothing Workers of America and Regal Employees Association, Inc., are labor organizations, within the meaning of Section 2 (5) of the Act.

[1] 1 N. L. R. B. 929.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join, and assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection, as 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.

3. The respondent, by dominating and interfering with the formation and administration of Regal Employees Association, Inc., and by otherwise lending support to it, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. The respondent, by shutting down its plant on May 10, 1937, has discriminated in regard to hire and tenure of employment of its employees and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

## ORDER

On the basis of the foregoing 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, Regal Shirt Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

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

(b). From dominating or interfering with the formation or administration of, or lending support to, Regal Employees Association, Inc., or any other labor organization of its employees;

(c). From in any manner discriminating in regard to hire or tenure of employment of any of its employees in order to discourage membership in the Amalgamated Clothing Workers of America or any other labor organization of its employees.

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

(a). Withdraw all recognition from Regal Employees Association, Inc., as the representative of its employees for the purpose of col-

lective bargaining with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment; and completely disestablish Regal Employees Association, Inc., as such representative;

(b). Make whole all the employees for any loss of pay they have suffered by reason of the closing of the factory on May 10, 1937, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from May 10, 1937 to May 18, 1937, less the amount, if any, which each has earned during said period;

(c). Post notices in conspicuous places in its place of business, stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that Regal Employees Association, Inc., is disestablished as representative of any of its employees for the purpose of collective bargaining with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

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