

In the Matter of CATING ROPE WORKS, INC. and TEXTILE WORKERS
ORGANIZING COMMITTEE, C. I. O.

Case No. C-236.—Decided January 21, 1938

Rope Manufacturing Industry—Interference, Restraint, or Coercion: anti-union statements; sponsorship of internal organization; initiating and fostering company-dominated organization of employees; expressed opposition to labor organization; engendering fear of loss of employment for union membership and activity—*Collective Bargaining:* refusal to negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees—*Company-Dominated Unions:* sponsorship, domination, and interference with formation and administration; support of; organization and domination by supervisory employees; soliciting and encouraging membership during working hours; disestablished as agency for collective bargaining—*Individual Contracts of Employment:* with labor organization assisted and fostered by unfair labor practices, not representing free choice of employees, void; respondent ordered to cease and desist giving effect thereto—*Discrimination:* discharge; charges of, as to one employee, dismissed—*Strikes—Reinstatement Ordered:* upon application for reinstatement of employees who struck because of unfair labor practices.

Mr. John T. McCann and *Mr. Lester Levin*, for the Board.

Fitzpatrick & Bell, by *Mr. Bernard H. Fitzpatrick* and *Mr. William J. Bell*, of New York City, for the respondent.

Mr. Sidney L. Cahn, of New York City, for the Union.

Miss Anne E. Freeling, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Textile Workers Organizing Committee, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint, dated July 20, 1937, against Cating Rope Works, Inc.,¹ Maspeth, Long Island, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor

¹ Incorrectly designated as Cating Rope Works in the charges.

Relations Act, 49 Stat. 449, herein called the Act. The complaint and an accompanying notice of a hearing to be held in New York City on July 29, 1937, were duly served upon the respondent and the Union.

On July 26, 1937, the respondent filed an answer to the complaint, in which, in substance, it alleged that the Act was unconstitutional and denied most of the allegations of the complaint, admitting, however, those concerning its incorporation and business.

Pursuant to the notice, a hearing was held in New York City on July 29, 30, 31, August 2 and 3, 1937, before James C. Paradise, 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 all the parties.

At the close of the Board's case, the attorney for the Board moved to conform the pleadings to the proof adduced at the hearing. This motion was granted by the Trial Examiner. At the opening and close of the hearing, and at various times during the hearing, counsel for the respondent moved to dismiss the complaint. The Trial Examiner denied these motions, reserving decision, however, on the question whether Ruth Hildebrandt was discharged for union activities. During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 30, 1937, the Trial Examiner filed an Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce in violation of the Act as alleged in the complaint, but recommending that so much of the complaint as relates to the discharge of Ruth Hildebrandt be dismissed. On September 17, 1937, the respondent filed exceptions to the Intermediate Report and requested an opportunity to argue the exceptions before the Board. Pursuant to notice, a hearing was held before the Board on October 5, 1937, in Washington, District of Columbia, for the purpose of such oral argument. Only counsel for the respondent participated. Counsel for the Union filed a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Cating Rope Works, Inc., is a New York corporation having its principal office and place of business in Maspeth, New York, where it is engaged in the manufacture, sale, and distribution:

of rope and rope products for agricultural, maritime, and industrial use. William B. Cating and his son, William C. Cating, are the president and vice-president, respectively. The respondent employs approximately 58 employees, exclusive of clerical employees, and has a total annual pay roll of about \$26,000. It advertises by means of circulars which it mails to its customers throughout the country. The respondent's principal customers are located in Louisiana, Alabama, Pennsylvania, Rhode Island, and Florida, and include, in addition, the United States War Department and Coast Guard Service.

The respondent purchases all of its necessary raw materials from outside the United States. These materials, which include manila and sisal hems, are purchased from the Philippine Islands, Java, Mexico, and East Africa, and are brought to the plant by steamer and truck. Approximately 50 per cent of the respondent's finished products are shipped outside the State of New York by truck, railroad, and steamer. In 1936 the respondent purchased 2,297,938 pounds of various raw materials, having a value of \$159,527.54, all of which was imported from outside the United States. The respondent's gross sales for the year 1936 amounted to 1,471,670 pounds, having a value of \$192,961.88, of which \$95,526.22 worth was shipped to points outside of New York.

The respondent admits that it is engaged in interstate commerce.

II. THE UNION

Textile Workers Organizing Committee is a labor organization, affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees of the respondent, exclusive of clerical and supervisory employees.

III. THE UNFAIR LABOR PRACTICES

A. *Background of organization of the respondent's employees*

On or about June 4, 1937, several of the respondent's employees, including Joseph Carini and Ruth Hildebrandt, began to talk to the other employees about the advisability of joining a union. On June 11, these employees went to an office of the Committee for Industrial Organization, signed tentative application cards for membership in the Union, and requested that the Union send an organizer to the respondent's plant. Meetings were held at a hall in Maspeth on the evenings of June 17 and 18 which were addressed by Union organizers. By the close of the second meeting, 52 employees of the respondent had become members of the Union. A Shop Committee was elected at the second meeting, of which Carini was made chairman.

B. Interference, restraint, and coercion

On or about June 17, 1937, William C. Cating discussed with Kenneth Crossman, superintendent of the plant, the organization activities of his employees, and instructed Crossman to keep him informed about these activities. To this end Crossman, in turn, enlisted the services of Thompson Schuler, a supervisory employee. Later on the same day, but still during working hours, there was a conference in the respondent's office, attended by both of the Catings, Crossman, Schuler, two of the Lay brothers, all three of whom are supervisory employees, and several "loyal" employees, at which the union question was discussed. Thereafter those present at the conference went among the employees, as they had been instructed by the Catings to do, repeating the arguments advanced at the conference as to the advantages of a company union, chief among which were the elimination of dues and assessments and the assurance that no one who joined such a union would be discharged. Following closely upon this missionary work, a meeting of all the employees was held in the plant that afternoon, which was addressed by William C. Cating. The meeting subsequently moved outside the plant, where it was addressed by a Union organizer, who came in response to a telephone call from one of the employees. In addition to Schuler and the Lay brothers, a stenographer was present at the outside meeting, who took notes of the proceedings, and refused to leave even after Carini accused her of being a "boss's stooge." She had been sent to the meeting by the respondent at the request of Schuler and an employee named Gordon Williams. Schuler urged the formation of a company union. However, when those present finally took a vote, a decided majority indicated their preference for the Union.

Schuler, meanwhile, had been attempting to dissuade Carini from continuing his activities on behalf of the Union, but was unsuccessful. Schuler then became a member of the Union. He was elected to the Shop Committee despite the protestations of several employees that he was a foreman, a charge which he denied. He reported to the respondent what took place at the Union meetings. The respondent was thus able to maintain surveillance over union activities.

The respondent had stated to the "loyal" employees, and to the assembled workers at the June 17 meeting, and stated again at another meeting of all its workers held on June 21, that one of its reasons for refusing to recognize any C. I. O. union was the fact that it would have shipping difficulties because the American Federation of Labor unions controlled the docks and the shipping companies. The respondent suggested to its employees that it would be advisable to ascertain what advantages an A. F. of L. union might have over a C. I. O. union. Accordingly, about June 21, Schuler

telephoned A. F. of L. headquarters, and, at his suggestion, representatives of the A. F. of L. called at the plant and talked to Schuler and to one of the Catings, who invited them to return to the plant later to address the employees. However, before returning, they learned from some of the employees that the Union had already organized a majority of the plant. They did not return and thereafter apparently made no effort to organize the respondent's employees.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced 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 activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

C. The respondent's formation and domination of a labor organization

1. The first "Collective Bargaining Committee"

On June 21, 1937, Bernard Herman, one of the Union organizers, telephoned to the respondent and requested a conference for the purpose of negotiating a collective agreement. He was told that the respondent needed time to examine its books in order to ascertain how large a wage increase it could afford to grant. An appointment was made for June 23 at 3:00 P. M.

Apparently immediately after this telephone conversation, a meeting of all the employees was called by the respondent. Both of the Catings addressed the employees, warning them to proceed with great caution in taking a step so serious as joining a union. The employees were told that in the more than 70 years the respondent had been in business its employees had never organized a union, and that, if they now wanted to do so, they should first consider the desirability of their own company union, or the possible advantages of an A. F. of L. union. The following morning, June 22, William C. Cating called on L. L. Balleisen, Industrial Secretary of the Brooklyn Chamber of Commerce, of which the respondent is not a member, to seek his advice about the formation of a union. Balleisen explained his method which, in substantially the same form, has appeared in numerous cases before the Board, in which Balleisen, acting in the interest of the employer, has given counsel which has resulted in deliberate violations of the Act. Balleisen gave the respondent the forms he had used in organizing other company-dominated unions.²

²The Balleisen system of organizing company-dominated unions is described and discussed in *Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292, and in *Matter of Metropolitan Engineering Corporation*, 4 N. L. R. B. 542.

That afternoon the respondent called another meeting of all the employees, at which the Catings reiterated the sentiments, expressed by them on previous occasions and repeated by William C. Cating on the stand at the hearing, that the C. I. O. was an irresponsible organization and that, rather than deal with it, the respondent would close the plant down for six months; that it would not sign a contract with any outside union; that it would never have a closed shop in the plant; that it did not want any union organizers sitting around with their feet on a desk, smoking big black cigars, and collecting dues from its employees; and that they ought to have their own company union and thus eliminate dues and assessments. William C. Cating then read aloud a "Statement to Our Employees,"^a the nature of which is best indicated by the following excerpts:

We would be pleased to bargain collectively with a committee of your fellow workers of your own choosing, provided a majority of our employees so desire. If you elect and choose such a committee, we would be glad to negotiate and enter into a written contract with this Committee on your behalf, and with each one of you individually.

* * * * *

While the Company is willing to enter into a written contract with its own employees, it has come to the conclusion that it will not sign a contract with any union or have a closed shop in its plant. It will not have a closed shop because the Company, after due deliberation, has come to the conclusion that a contract with outsiders and a closed shop would be against the best interests of both the Company and the workers. The Wagner Act does not require the employer to have a closed shop nor to sign a contract with a union, nor to agree to any terms the Union may ask. The Act simply makes it a duty of the employer to negotiate and confer with a duly accredited representative of a majority of its employees. This we are always willing to do.

The type of contract that we would negotiate with a committee of your fellow workers would contain the rate of pay, the number of hours of work, no lockouts, no strikes, and the peaceful settlement of all disputes by mediation between ourselves, and, if we cannot agree, by arbitration. All of these conditions, if satisfactory to both sides, would then be incorporated into a written contract that we would like to have with our employees. This type of contract will insure lasting peace and eliminate industrial warfare. * * *

^a Board Exhibit No. 4.

This contract will contain the following points for you people:

1. 10% increase in pay * * *.
2. Time and a half for overtime.
3. Nine holidays a year * * *.
4. Seniority rights.

This Statement is in the form prepared by Balleisen, with the addition of the paragraph containing the specific provisions of the respondent's offer. After it had been read aloud, mimeographed copies were distributed to the employees by Schuler and Williams. William C. Cating then produced another Balleisen document in the form of a letter of authorization addressed to the respondent for signature by the employees.⁴ This letter read as follows:

We, the undersigned employees of the Cating Rope Company, hereby notify you that we have this day elected five⁵ of our fellow workers as our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management.

You are also notified that we have not given this authority to any other group, organization or individual, and no one else is authorized to represent us in collective bargaining.

William C. Cating told his workers he hoped they would all sign this letter so that he would be in a position to tell Herman that the Union did not represent a majority of the employees and therefore could not be recognized as their bargaining agency. Then, after assuring the employees that as soon as a "Collective Bargaining Committee" had been elected he would enter into negotiations with it, he left the meeting. However, several of the supervisory employees remained and urged the reluctant employees to sign. Schuler and Williams were especially active in this respect, Williams, in fact, being the first to sign. The Statement and letter, and the respondent's actions in connection therewith, were obviously calculated to, and did, coerce and intimidate the respondent's employees. Practically all the employees present, including Carini, signed the letter. Several employees testified that they signed through fear of losing their jobs, and because they were convinced that the respondent would never recognize the Union.

Carini and Schuler then called a meeting to order for the election of a "Collective Bargaining Committee". Carini was nominated for chairman, but before he could be elected Schuler suggested that an older, more responsible person be chosen, whereupon he was nomi-

⁴ Respondent Exhibit No. 1.

⁵ The Committee, when elected, had six members.

nated and elected. Carini was elected a member of the Committee. In accordance with the respondent's suggestion, the Committee went at once to the office to commence negotiations. However, the respondent again found an examination of the books to be necessary; so the Committee was told to come back four days later, on June 26.

When this was reported to the employees, they expressed their dissatisfaction so vehemently that the Committee called on the respondent again the following day, Wednesday, June 23. The respondent made substantially the same offer as was contained in the Statement, except seniority rights, the Committee's requests for a 15 per cent raise and a week's vacation with pay being refused. Carini said the Committee could reach no decision until it had consulted with the employees. The conference thereupon ended at 11:30.

A meeting of all the employees in the day shift was held in the plant at 12:00. The employees were so dissatisfied with the terms they had been offered that they did not return to work when the lunch-hour ended. The meeting moved out of the plant to the street, accompanied by the respondent's stenographer, who took notes of the proceedings. The night-shift workers arrived about 2:10, and joined the meeting. When Herman arrived at 2:15 to keep his appointment with the respondent, he found all the workers on the street outside the plant. While discussing the situation with them, Herman announced that he wanted any foremen or stooges present to leave, whereupon the Lay brothers took their departure. Schuler, however, remained, and, despite the fact that he was a member of the Union, continued to urge the employees to adhere to the company union plan which had been foisted upon them. It was finally agreed that a vote should be taken. An overwhelming majority indicated a preference for the Union. The assembled employees then authorized Herman and the Union Shop Committee to continue to represent them. The first "Collective Bargaining Committee" never functioned again.

Herman and the Committee went in to keep the appointment with the respondent. However, the respondent, as set forth in Section III-E-3 below, refused to deal with Herman and the Shop Committee as the representative of its employees. When Herman and the Shop Committee reported this to the employees, they voted to strike. The ensuing strike brought all business operations to a standstill. As it continued, the respondent, instead of dealing with the Union, approached the employees individually, seeking their return. William C. Cating and Fitzpatrick spoke to several of them, urging them to return to work and to forget the Union. Cating made personal visits to the homes of employees and showed them a list of those who were ostensibly going to return on July 19. The respondent thus

influenced a large number of employees to return to work, and the strike was broken. A number of employees who were not in when the respondent visited their homes, or who stated that they chose to remain on strike, received letters⁶ dated July 19 requesting them to return to work. Approximately 43 employees returned to work on July 19.

2. The second "Collective Bargaining Committee"

On the morning of July 19, Gordon Williams informed an employee named William Walters that Walters was chairman, and informed four other employees that they were members, of a new "Collective Bargaining Committee", and gave Walters a list of "demands" to be submitted to the respondent. It is clear, and in fact the respondent concedes, that the employees did not choose this Committee. Nor did the employees have any voice in determining what the "demands" should be.

The Committee proceeded at once to a conference with the two Catings, Crossman, and Bernard Fitzpatrick, the respondent's attorney. The Committee participated in the conference only to the extent that Walters read his list of demands. The respondent then repeated its previous offer, except for a flat \$2.00 increase instead of the 10 per cent. After the conference the Committee discussed with a small group of workers individually the terms offered by the respondent. The Committee then reported back that the employees were satisfied.

On the following day, July 20, all the employees were called to the office, where they were given individual contracts,⁷ which they were told to take home, read, and return by mail in the envelopes supplied for the purpose. Although the Statement and letter of authorization had indicated that the respondent would be willing to negotiate a collective contract *or* individual contracts, it was clearly indicated by his subsequent actions, and in fact William C. Cating testified at the hearing, that he had never really intended to negotiate any other than individual contracts with his employees.

That there was no real bargaining in any sense of the term is clearly evident. There were several vital provisions in the contracts to which even the hand-picked Committee had not agreed. Until he read portions of the contract while on the stand at the hearing, Walters was of the belief that the contracts provide for the maintenance of discipline by suspension for a maximum period of two weeks, for arbitration in the event of suspension or discharge, for the installation of a piece-rate system, and for seniority rights. The contracts,

⁶ Board Exhibit No. 6

⁷ Board Exhibit Nos 7 and 9

in fact, provide that the employer may maintain discipline by suspension, without specifying any time limit, and that such suspension may be submitted to arbitration "if the employer so choose"; makes no provision for arbitration in case of discharge; provides that "the Company may at its election install a piece-work basis of operation in any department"; and does not provide seniority rights. On the contrary, it is expressly provided that the respondent may, during slack periods, lay off any employee. The contracts also contain a provision that grievances may be presented "through the committee by which this agreement was negotiated", naming the members thereof, which indicates that the respondent contemplated that this Committee should continue to function.

Some of the employees who were dissatisfied with the contracts decided to go on strike again. The following testimony of one of the employees is indicative of their reaction to the contracts:

* * * We come out of the building after we received the contract. And Mr. Cating saw my brother and I marching on the picket line and he stopped his car in the middle of the street and asked us what is the reason for staying out again.

He said; "Come up in my office and I will straighten it out."

I said, "Once I am out here I will stay down, because I don't want to get fooled again."

Several of these recalcitrant employees received new contracts⁸ in the mail, accompanied by letters⁹ stating that there had been an error, and offering them a slightly increased wage rate. Other employees received letters¹⁰ dated July 22 asking why their signed contracts had not yet been received, and suggesting that "if the conditions are not satisfactory, please come in and discuss the matter or discuss it with our attorney, Mr. Fitzpatrick * * *."

Approximately 40 employees, including foremen, signed and returned their contracts.¹¹ Some, though they could read a little, could not read enough to understand the contracts. The employees who had not returned to work on the 19th continued to picket the plant. Many of those who had returned quit after working a day or two, some because of the picket line, others because of dissatisfaction with their proposed contracts. The attitude of the members of the "Collective Bargaining Committee" is illustrated by the fact that only one of the members went out on strike, and by Walters' testimony that he had joined the Union, accepted money, sandwiches, and cigarettes from it during the strike, but considered his membership terminated, although he had never given the Union any notice to

⁸ Board Exhibit No. 10.

⁹ Board Exhibit No. 11.

¹⁰ Board Exhibit No. 8.

¹¹ Respondent Exhibit Nos. 4 and 5.

that effect, because, "to tell you the truth I was never in favor of the C. I. O." Also of interest in this connection is the circumstance that Williams received five cents more per hour than any other hourly-paid employee, which fact did not appear on the face of his contract. And Schuler, who was not a member of the Committee, but who had in various ways aided the respondent's efforts to form a company-dominated union, was rewarded by being given the highest salary of all the weekly-paid employees.

This second "Collective Bargaining Committee" may be looked upon as an outgrowth or continuation of the first. One is tainted with the illegality of the other. They are both part of a plan, devised by Balleisen and the respondent, to circumvent the respondent's duty to bargain collectively with the Union. We find that the respondent's instigation and sponsorship of the two "Collective Bargaining Committees," and all its activities in connection therewith, constitute domination and interference with the formation and administration of a labor organization or plan of its employees. The respondent encouraged and, in fact, ordered these Committees to confer with it, and to call meetings of all the employees, in the plant during working hours; furnished for their use its stenographer and its office; and bore all the expenses incurred for mimeographing the various forms supposedly issued by the Committees, for postage, or otherwise, thereby contributing its financial support to a labor organization. The nature and purpose of the respondent's conduct is emphasized by the fact that its activity in connection with these Committees followed so closely after the respondent had been approached for the purpose of collective bargaining by the Union organizer, representing a clear majority of its employees as we find below, whom the respondent had obviously put off upon a false pretext in order to have an opportunity to undermine and dissipate the Union's strength.

D. The respondent's refusal to bargain collectively with the Union

1. The appropriate unit

The complaint alleges, and the respondent agrees that all the employees of the respondent, exclusive of clerical and supervisory employees, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act. All such employees are eligible to membership in the Union. The only dispute is as to who are supervisory employees. The only employee whose supervisory authority is conceded by the respondent is the superintendent of the plant, Crossman. However, although other employees are paid on an hourly or piece-rate basis, Schuler and the three Lay brothers, in addition to Crossman, are paid a weekly

salary. And although they assist to some extent in the production and maintenance work, they also give orders and instructions to the other employees, keep their production records, and criticize their work. The Board finds that their duties are supervisory in nature and they should therefore be excluded from the appropriate unit.

We find that the respondent's employees, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purpose of collective bargaining and that such unit insures to the respondent's employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the employees in the appropriate unit

On June 18, 1937, 52 of the respondent's employees had joined the Union. By June 23 the Union had signed up practically every employee in the plant, excepting clerical and supervisory employees. The Union put in evidence a list¹² of the names of its members in lieu of its signed application cards. The respondent conceded the authenticity of the signatures on the cards, that the names on the list were the names that appeared on the cards, and that those signing the cards were employees of the respondent as of the date of signing.

We find that on June 18, the Union was the duly designated representative of a majority of the employees in the appropriate unit: Any subsequent change of designation to either of the Collective Bargaining Committees was the result of the respondent's unfair labor practices, and not an expression of free choice on the part of the employees. We, therefore, give no weight to such change, and hold that the Union remained the designated representative of the majority. By virtue of Section 9 (a) of the Act, it was, and is, therefore, the exclusive representative of all the employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

When Herman and the Shop Committee arrived to confer with the respondent on the afternoon of June 23, both of the Catings and Crossman were present. Fitzpatrick arrived shortly after the conference began in response to a telephone call from the respondent. Herman stated that he represented not only a majority, but practically every production and maintenance worker in the plant. He expressed the hope that the matter might be speedily settled in order that the em-

¹² Board Exhibit No 5.

ployees could return to work that same afternoon. But the respondent replied that Herman's authority to represent its employees had been superseded by the "letter of authorization" that the employees had signed. Herman pointed out that, even if that document were valid, three members of the Union's Shop Committee were also members of the respondent's Collective Bargaining Committee, and that he and the Shop Committee had just been designated by the employees as their collective bargaining agency. To all his arguments the respondent replied that rather than deal with a C. I. O. union or have a closed shop, it would prefer to close the plant down for six months. The conference ended on this note, the respondent flatly refusing to bargain collectively with the Union as the representative of its employees.

We find that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees.

E. The discharge of Ruth Hildebrandt

Ruth Hildebrandt was employed by the respondent from September 1935 to June 14, 1937. Beginning on June 4, she sought to interest the respondent's women employees in unionization. On June 11, she was one of the group of respondent's employees who went to union headquarters, signed application cards, and requested that an organizer be sent to the respondent's plant. She was discharged three days later.

The respondent gave as the reason for her discharge the number of accidents she had sustained. She had three accidents in 1936. Although she lost no time and collected no compensation as a result of these accidents, she did require medical attention. On May 21, 1937, a representative of the State Insurance Fund notified the respondent that because of the large number of accidents which had occurred in the respondent's plant in 1936, the State Fund was considering raising the respondent's insurance rate 25 per cent. The representative specifically criticized *Ruth Hildebrandt's* record, the nature of her accidents indicating that they were due to carelessness. On June 10, she had another accident requiring medical attention. She was discharged four days later.

Ruth Hildebrandt's case is not free from doubt. However, upon the whole record, the Board is of the opinion that the undue proportion of seemingly careless accidents she had sustained, rather than union membership or activity, was the cause of her discharge. We accordingly find that the respondent, in the case of *Ruth Hildebrandt*, did not discriminate in regard to hire and tenure of employment for the purpose of discouraging membership in a labor organization. The allegations of the complaint with respect to *Ruth Hildebrandt* will therefore be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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, commerce, and transportation among the several States and with foreign countries, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The actions of the respondent described in Section III above culminated in strikes on June 23 and July 20, 1937.¹³ Both of these strikes were called to protest against the respondent's interference with, restraint, and coercion of its employees in the exercise of their rights guaranteed in Section 7 of the Act. The June 23 strike was called to protest also against the respondent's refusal to bargain collectively with the Union. The first strike resulted in a complete cessation of operations. Although some of the striking employees returned to work on July 19, the plant was still not operated with its full complement of workers. Those employees who had not returned to work continued to picket the plant and are still out on strike. Hence the first strike, although partially broken, never really ended, and is, therefore, a current labor dispute. Those employees who were induced to return to work on July 19, but who went out on strike again within a day or two as a result of the respondent's continued unfair labor practices, are also still out on strike, and are, therefore, also engaged in a current labor dispute. Since the strikes were caused by the respondent's unfair labor practices, the respondent is under a duty to restore the status quo which existed prior to the commission of the unlawful acts. The respondent must, therefore, upon application, offer to its employees who went on strike on June 23 or July 20, 1937, or thereafter, reinstatement to their former positions, without prejudice to their seniority and other rights or privileges, dismissing, if necessary, employees hired since July 20, 1937.

Since both of the "Collective Bargaining Committees" were assisted by the respondent's unfair labor practices, and did not represent the free choice of the employees, the Union, which had been designated by a majority of the respondent's employees in an appropriate unit, continued to be the duly authorized representative of the respondent's employees, and we shall order that the respondent, upon request, bargain collectively with it. The individual contracts discussed un-

¹³ These strikes might be considered as one continuing labor dispute or as two separate labor disputes. In this case the result would be the same.

der Section III-C-2 above, which were "negotiated" with the second "Collective Bargaining Committee," are void. We shall therefore order the respondent to give them no effect. We shall also order the respondent to withdraw all recognition from both of the organizations named "Collective Bargaining Committee" and disestablish such organizations as representative of its employees for the purpose of collective bargaining.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

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

2. The two "Collective Bargaining Committees" are labor organizations within the meaning of Section 2 (5) of the Act.

3. All of the employees of the respondent, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. Textile Workers Organizing Committee, C. I. O., was on June 18, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purpose of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. The respondent, by refusing to bargain collectively with Textile Workers Organizing Committee, C. I. O., has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. The respondent, by its domination and interference with the formation and administration of the two "Collective Bargaining Committees", and by contributing financial and other support thereto, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

7. The respondent, by interfering with, restraining, and 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 activities, for the purpose of collective bargaining or other mutual aid or protection, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

9. The respondent, by discharging Ruth Hildebrandt, has not engaged in an unfair labor practice, within the meaning of Section 8 (3) 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 the respondent, Cating Rope Works, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) 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 activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) Refusing to bargain collectively with Textile Workers Organizing Committee, C. I. O., as the exclusive representative of all its employees, exclusive of clerical and supervisory employees;

(c) In any manner dominating or interfering with the administration of the second "Collective Bargaining Committee" or with the formation and administration of any other labor organization of its employees, and from contributing financial or other support to said Committee or to any other labor organization of its employees; and

(d) Attempting to enter into individual contracts of employment with its employees, or in any manner giving effect to such individual contracts heretofore entered into.

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

(a) Withdraw all recognition from both of the organizations called "Collective Bargaining Committee", by whatever name now known, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish such organizations as such representative;

(b) Upon application, offer to those employees who went on strike on June 23 or July 20, 1937, or thereafter, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since July 20, 1937, to perform the work of such employees;

(c) Make whole all employees who went on strike on June 23 or July 20, 1937, or thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2 (b) herein, by payment to each of them, respec-

tively, of a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Post immediately notices to its employees in conspicuous places throughout its place of business, stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that the "Collective Bargaining Committees" are disestablished as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and that the respondent will refrain from any recognition thereof; (3) that the respondent's employees are free to join or assist any labor organization for the purpose of collective bargaining with the respondent; and (4) that the respondent will, upon request, bargain with Textile Workers Organizing Committee, C. I. O., as the representative of all its employees, exclusive of clerical and supervisory employees;

(e) Maintain such notices for a period of at least thirty (30) consecutive days from the date of posting; and

(f) 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.

And it is further ordered that the allegations of the complaint with respect to the discharge of Ruth Hildebrandt be, and they hereby are, dismissed.