

In the Matter of MONTGOMERY WARD AND COMPANY, INCORPORATED, A
CORPORATION and UNITED MAIL ORDER AND RETAIL WORKERS OF
AMERICA

Case No. C-217.—Decided January 26, 1938

General Merchandising Mail Order Business—Interference, Restraint or Coercion: propaganda against Union, anti-union statements; expressed opposition to Union—*Company-Dominated Union:* domination and interference with administration of; sponsoring and fostering growth of; activities of supervisory employees on behalf of—*Discrimination:* discharge; refusal to hire because of union membership—*Strike—Remstatement Ordered:* employee discharged for union activity; placement of person refused employment on preferential list for employment—*Back Pay:* awarded.

Mr. Paul F. Broderick and *Mr. Henry H. Foster, Jr.*, for the Board.

Mr. Henry N. Ess, Mr. John Barr, and *Mr. Carl Enggas,* of Kansas City, Mo., for the respondent.

Woodruff & Gard, by *Mr. W. F. Woodruff* and *Mr. Spencer A. Gard,* of Kansas City, Mo., for U. W. E.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by United Mail Order and Retail Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by George O. Pratt, Regional Director for the Seventeenth Region (Kansas City, Missouri), issued and duly served its complaint dated June 16, 1937, against Montgomery Ward & Co., Incorporated,¹ Chicago, Illinois, herein called the respondent, alleging that the respondent, at its Kansas City, Missouri, plant, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National

¹ Incorrectly designated in the complaint as Montgomery Ward and Company, Incorporated, a Corporation.

Labor Relations Act, 49 Stat. 449, herein called the Act. On June 22, 1937, the respondent filed its answer to the complaint in which it admitted that it is engaged in interstate commerce, but denied that it had engaged in or was engaging in the unfair labor practices alleged in the complaint. At the same time the respondent filed a motion to dismiss the complaint and a motion to make the complaint more definite and certain.

Pursuant to notice, a hearing was held in Kansas City, Missouri, from June 24 to July 9, 1937, before James C. Paradise, the Trial Examiner duly designated by the Board. The Board, the respondent, and The Union of Ward Employees, herein called the U. W. E., whose motion to intervene was granted by the Trial Examiner, were represented by counsel.² Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing, the respondent renewed its motions to dismiss the complaint and to make the complaint more definite and certain, both of which were denied by the Trial Examiner. On July 3, 1937, during the course of the hearing, counsel for the Board moved to amend the complaint in various particulars and to include an allegation with respect to the discriminatory refusal of the respondent to employ Charles E. Hooper. This motion was granted by the Trial Examiner over the objection of the respondent, which was afforded opportunity to interpose an answer to the complaint as amended.

On August 10, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in and was engaging in the unfair practices alleged in the complaint, as amended, except in so far as it alleged that the respondent had refused to employ Charles E. Hooper because of his union membership. He recommended that Robert Green, alleged to have been discriminatorily discharged, be reinstated, and that the U. W. E. be disestablished as a collective bargaining agency.

Thereafter the respondent and the U. W. E. each filed exceptions to the Intermediate Report and to various rulings of the Trial Examiner. In addition, the U. W. E. filed a brief, which the Board has considered. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the exceptions to the Intermediate Report and finds them to be without merit. The

²The U. W. E. is alleged in the complaint to be a company-dominated union within the meaning of Section 8 (2) of the Act. A motion to intervene made by counsel for The Union of Ward Retail Employees was denied by the Trial Examiner, and this latter union did not participate in the hearing.

Board departs from the Trial Examiner's finding that Charles E. Hooper was not discriminatorily refused employment.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a corporation organized under the laws of Illinois on November 21, 1919, maintains its principal executive offices in Chicago, Illinois. It conducts a general merchandising business through the media of nine mail order houses and over 400 retail stores. The mail order houses, located respectively in Chicago, Illinois; Kansas City, Missouri; Fort Worth, Texas; Portland, Oregon; St. Paul, Minnesota; Oakland, California; Baltimore, Maryland; Denver, Colorado; and Albany, New York, sell directly to consumers, through catalogues, a wide variety and selection of clothing, dry goods, furniture, home furnishings, hardware, plumbing, heating, farm equipment and supplies, building materials, jewelry, musical instruments, tires and automobile accessories, electrical supplies, books, stationery, drugs, cosmetics, and sporting goods. The retail stores, located throughout the country, handle the same general lines of merchandise but limit their sales to over-the-counter transactions. In addition to its mail order houses and retail stores, the respondent also operates several factories for the manufacture of paint, varnish, fencing, and farm equipment.

The Kansas City plant of the respondent, with which this proceeding is concerned, occupies an eight story building and is the second largest of all of the respondent's plants with respect to floor space. The building is divided functionally into two parts: the mail order house, occupying six floors, and the retail store, occupying the first two floors.

The mail order house was aptly described by its manager as a mechanism created by the respondent to facilitate the distribution of products—a conduit for merchandise from sources of supply to the consumer. Merchandise is received from thousands of manufacturers located in various states of the United States and in foreign countries. It is estimated that approximately 80 per cent of such merchandise is shipped from sources outside the State of Missouri. Products received at the mail order house are inventoried and shipped out on order, in many instances without disturbing the original packages in which they were received.

The mail order house supplies merchandise to about 65 retail stores of the respondent located in Nebraska, Kansas, Oklahoma, Arkansas, Missouri, and Iowa. In addition, it sells merchandise

directly to consumers within a region embraced by these States, and on occasion to consumers located outside of this region. The net sales of the Kansas City mail order house in 1936 were between \$16,000,000 and \$17,000,000, covering between 4,000,000 and 5,000,000 orders. In the conduct of its normal operations it requires the services of approximately 2,000 employees.

The Kansas City retail store, although occupying the same building as the mail order house, is operated as a separate and distinct unit, having no connection either in personnel or in management with the mail order house. It receives approximately 80 per cent of its merchandise from original sources of supply, all located outside the State of Missouri. The remaining 20 per cent of its stock is produced from the Kansas City mail order house. Most of the sales of the retail store are made to consumers in Missouri, although on occasion shipments are made outside the state. The retail store normally operates with approximately 265 employees.

II. THE ORGANIZATIONS INVOLVED

United Mail Order and Retail Workers of America is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the employees of both the Kansas City mail order house and the Kansas City retail store of the respondent. The record does not disclose whether membership is limited to these employees.

The Union of Ward Employees is likewise a labor organization but is not affiliated with any other organization. Its membership is open and limited to the employees of the respondent's Kansas City mail order house, except supervisory employees and employees who are members of any other labor organization.

III. THE UNFAIR LABOR PRACTICES

A. *The formation of the U. W. E.*

A description of the personnel organization of the respondent's Kansas City mail order house is essential to a complete understanding of the events that occurred at this plant. The mail order house is under the direct supervision of the house manager, who is responsible only to the executive officers of the respondent at Chicago. Under the house manager are the principal executive employees: the superintendent of operations, the assistant superintendent of operations, the superintendent of merchandise, and the personnel manager. Mail order house operations are carried on through approximately 20 departments, each under the supervision of either a department head, an operating supervisor, or a division superintendent.

Operations in the departments are further divided among approximately 70 supervisors, each of whom is responsible for the work of from six to 45 employees in his unit. Supervisors have no authority to hire or discharge. The record is clear, however, that they exercise substantial authority over their subordinates.

Considering those who testified or were mentioned during the hearing as typical, supervisors are old and trusted employees who have been employed by the respondent for periods of from seven to 22 years. They receive a minimum of 36 cents per hour compared with the basic wage of 31 cents paid to their subordinates. Each supervisor is responsible for the work of his unit and for the maintenance of discipline. In cases of unsatisfactory work or conduct within the unit, the supervisor may initiate disciplinary action by reporting it to the department head. In addition to his supervisory duties, the supervisor also performs the same tasks as his subordinates.

Despite the attempt of the respondent to minimize the authority of the supervisors, the record indicates that they are relied upon by department heads for the maintenance of efficiency and discipline in their units in the same manner as the house manager relies upon the department heads for the proper conduct of their departments. We conclude from the evidence that the supervisors employed in the mail order house not only have the authority normally delegated to supervisory employees, but they are also considered as supervisory employees by the clerks, stenographers, and other employees under their supervision.

Prior to April 1937 the respondent's employees in the Kansas City plant were unorganized, and no union activity had taken place. Early in April the Union commenced an organizing drive, and from the latter part of April through May it held mass meetings at almost weekly intervals. Officers were elected, conditions of employment and grievances against the management were discussed, and committees designated to negotiate with the management. The record discloses that by the first week in May the Union had attracted the support of a considerable number of employees of both the mail order house and the retail store. Its literature and membership buttons were in evidence throughout the plant, and its organization activities had not yet met with opposition from the respondent.

On about May 1, 1937, William Carl Weaver, the house manager of the mail order house, called a meeting of department heads, operating supervisors, and division superintendents, and read to them a letter which he had received from the executive office in Chicago. The letter drew attention to the decision of the United States Supreme Court upholding the constitutionality of the National Labor Relations Act and expressed the intention of the respondent "to observe the letter

and spirit of this law.”³ A day or two later Weaver called a second meeting of this same group, stated that a Union handbill had been found on a bulletin board in the plant, and advised the group that the bulletin boards were for company business only and that any notices not pertaining thereto were to be removed at once. There is also testimony that Weaver further advised those present to maintain a neutral attitude toward Union activity.

That the respondent, however, was merely paying lip-service to the observance of the Act is unmistakably revealed by subsequent events. During the first week in May, Ernest R. Thompson, an operating supervisor, was summoned to Weaver’s office to a conference with Weaver, L. K. Bye, superintendent of operations, and Bullock, an assistant to the operating superintendent, who is associated with the Chicago offices of the respondent. According to Thompson, Bullock stated that wages had been increased to the extent that stockholders were receiving a small return on the profits of the respondent; that he expected the employees to continue without organizing under the C. I. O.; and that C. I. O. officials were not reputable and were acting for their own financial interests, and not in the interests of the workers.

Thompson had been employed by the respondent for 22 years, and, at the time of the hearing was a supervisory employee. He was not a member of any labor organization, and the fact that his testimony was wholly inimical to his own interests gives it added weight. This testimony was not contradicted and was circumstantially corroborated by Ralph Person, a division superintendent, called as a witness for the respondent.

Person also was called to Weaver’s office early in May for an individual conference with Weaver and Bullock. Although he denied that Bullock made any statements of the character Thompson testified to, he admitted that the C. I. O. was discussed. Bullock further stated, according to Person, “that the leaders of the C. I. O. had been causing quite a bit of trouble around the country and that he hoped that we wouldn’t have the same situation that had been in other places.” Person testified that “several of the boys told me they were also called in” for individual conferences. It is also significant that Bullock was not called as a witness to deny these statements attributed to him.

In view of the fact that two meetings with department heads had been called during the same week, at which the management expressed its position with respect to labor organizations, no reason is apparent, nor was any offered by the respondent, for these individual conferences, admittedly on the same subject. It is obvious that the statements made by Bullock to Thompson and Person were not conducive

³ Respondent’s Exhibit No. 3

to the maintenance of the "neutral" attitude which the respondent was allegedly seeking to promote. Indeed, from the activities which followed, it is apparent that the respondent's protestations of "neutrality" were designed to camouflage its active opposition to Union organization.

According to Joe Collins, its self-styled author, the idea of the U. W. E. was conceived on May 6, 1937. Collins had been employed by the respondent as an engineer for about six years. He was characterized by several witnesses as the assistant to the chief engineer, and by George L. Osborne, the personnel manager, as the senior in the engineering department. Harry Staley, another engineer, testified that Collins issued orders to the engineers in the absence of the chief engineer.

Collins' testimony regarding the organization of the U. W. E. is undisputed. His principal reason for organizing was the desire to keep the Union out. Although he had no objection to the specific aims of the Union, in his own words, "I didn't want outsiders bargaining for what I would want." On May 7, having obtained and read a copy of the Act, he decided that the assistance of an attorney was necessary. He thereupon consulted the superintendent of the company for which he had worked before he was employed by the respondent and asked him to recommend an attorney who "didn't have a lot of political entanglements, a lot of labor entanglements, and in particular one that had never represented Montgomery Ward & Company in any law suit."

On the following day Collins started active organization work in the plant by calling several employees, including supervisors, from their work to his office in the engine room. Each person was summoned separately, questioned regarding his attitude toward the Union, and invited to attend a meeting at Collins' home on the evening of May 9. No action was taken on that evening, and another meeting was called the following evening at the home of Clara Sharp, a supervisor.

The meeting of May 10 was attended by some 15 employees, including Clara Sharp, Erma Pace, secretary to the superintendent of merchandise; Ruth Walsh, a supervisor; Charles H. Nichols, a junior rebuyer; Grace Johnson, a supervisor; Floyd Smith, chief electrician in the shipping department, and Joe Collins. Minutes were taken by Miss Pace and a petition previously prepared by Woodruff & Gard, the attorneys recommended to Collins, was signed by the employees present who agreed to act as an organizing committee for "The Union of Ward Employees of Kansas City, Missouri." Smith was elected president, Nichols, vice-president, Erma Pace, secretary, and Collins, treasurer.

On the evening of May 12, a meeting of the organizing committee was called at the home of Ethel Brown in order to arrange for an open meeting of the U. W. E. The position of Ethel Brown is deserving of particular notice in view of the important role played by her in the organization of the U. W. E. Characterized by the respondent as a supervisor, she was employed in the mail order house, and at the time of the hearing, held the position of head timekeeper, having supervision of the timekeeping unit. Prior to 1933 she had handled the employment and personnel work in the mail order house. There can be no doubt that Ethel Brown held a responsible managerial position with the respondent, and the evidence clearly indicates that she was identified with the management by the employees.

The minutes of the meeting of May 12 contained verbatim reports submitted by the organizers. "Jessie Rinehart said they were watched. However it was understood that Grace (Johnson) had an office in the club and that she could be absent whenever she felt she should . . . Albert Favon—I have run up against the supervisors—three and they are all afraid of their jobs. I held a meeting this morning. I went into the Preparation Room and Mrs. Wright called her people together and I made a speech." The meeting was concluded with a speech by Collins who advised: "Let us be on the alert for any resistance on the part of the Company to our efforts to organize. The Wagner Act allows them to protect their own properties from our efforts and insist that we do not solicit on Company time. (We will solicit on Company time in a mild way.)" In view of the fact that this meeting was held in the home of the head timekeeper, that the speaker was Joe Collins, and that the audience included Erma Pace and several supervisors, the excerpts from the minutes of the meeting are unquestionably naive.⁴

It is evident that from the outset and through every step of its organization, the U. W. E. anticipated that it would be charged with company domination and that it took elaborate precautions to meet the charge. Minutes of all the meetings were submitted to the attorneys for legal approval. Organizing petitions were prepared by the attorneys. A copy of the handbills advertising the open meeting of May 14 was submitted to the attorneys, as were the "pertinent questions and answers" distributed at that meeting. Two speeches made at that meeting were carefully written out and edited in advance, "so that they might not be misinterpreted nor cause a mis-

⁴ Erma Pace, who stated that she and the other organizers were loyal employees, testified that she did not believe that the management would be pleased with her organization activities. On being questioned with reference to the minutes, she stated that she did not consider the violations of company rules mentioned in the minutes to be acts of disloyalty.

understanding of what we were about," and a stenographic record was ordered made of the questions and answers asked and given from the floor, allegedly because it was anticipated that an attempt would be made "to befog the issues." The demands submitted to the management on May 21, powers of attorney mailed to the employees after May 21, notices of the meeting of June 21, and the permanent constitution of the U. W. E. adopted at that meeting were all either prepared by or received the approval of the attorneys. These facts are significant, not because the seeking of legal advice is reprehensible, but because they indicated that the organizers required assurances of the legal propriety of each and every one of their activities. The evidence clearly indicates a consciousness on the part of the organizers that their activities were not as "legal" as they would have this Board believe.

The atmosphere of secrecy and of conflict with the management sought to be created by the engine room conferences of May 8 and by the minutes of the meeting of May 12 was completely at variance with U. W. E. activities which were being openly carried on throughout the mail order house. Ethel Brown, other supervisors, and some of the department heads were promoting the cause of the U. W. E. so openly and notoriously that it could only have been done with the consent, if not at the request, of the respondent. Testimony concerning the activities of these supervisory employees was uncontradicted, and in many cases corroborated by the respondent's witnesses.

Commencing on May 11, Ethel Brown held a series of meetings in the recreation hall, many of them during working hours, which were attended by substantial numbers of employees. She told the employees that although they had never felt the need for a union, since an outside organization had stepped in, a few "old timers" had gotten together to form an employees' union; and that after the U. W. E. had secured a membership of 51 per cent of the employees and had been recognized by the respondent, demands would be discussed. Mrs. Brown also held numerous meetings in the various departments before, during, and after working hours, the employees being summoned from their work by their supervisors for the purpose of attending. Petitions were available for signature in her office during working hours, and members of the organizing committee went to her office to sign additional petitions, to discuss organization problems, to obtain American flag pins which had been adopted as the emblem of the U. W. E., and to turn in funds which they had collected.⁵

⁵ The funds collected by the U. W. E. in the form of 25 cent membership fees, were kept in the safe in the cashier's office of the plant.

The origin of the mailing list used by the U. W. E. was not directly established. Each of the respondent's witnesses who was questioned professed ignorance as to its origin. Joe Collins admitted that Ethel Brown told him that she had obtained a list of the mail order house employees. Of the organizers, she alone had access to the personnel records of the mail order house, and it is reasonable to conclude that she prepared the mailing list from the respondent's files.

In addition to her active organization work, Mrs. Brown, with Joe Collins, was designated as the committee to present the demands of the U. W. E. to the management, and she was also a member of the committee which prepared the permanent constitution and by-laws.

A rehearsal of the activities of each of the other supervisors who promoted the U. W. E. would be repetitious. These activities were not denied by the respondent and were substantially admitted by the supervisors who testified, including Clara Sharp, Ruth Walsh, Georgia Gilley, Grace Johnson, and Theresa Wells, Irene Nichols, a junior supervisor under Mrs. Main, supervisor in the index department, testified that Mrs. Main requested her and three other junior supervisors under her, to obtain members for the U. W. E., and that Mrs. Main notified the girls in her department of Ethel Brown's meetings in the recreation room. Beulah Ogg, another junior supervisor, corroborated Miss Nichols' testimony. She further testified that Mrs. Main had said that the respondent would rather have a union of its own than an outside union. Patricia Brittenstein and Dorothy Wallace testified that they had been advised to attend a meeting in the recreation room by Mrs. Short, their acting supervisor. Ruby Jones testified to receiving similar advice from her supervisor, Mrs. Wells. None of this testimony was controverted by the respondent. Georgia Gilley admitted telling Dorothy Hovak and Virginia Phillips, after the plant had closed, that it would not open "under the C. I. O.," although she modified her admission by testifying that she made the statement as her "own opinion."

In addition to the supervisors, others whose interests were close to those of the management were also active in promoting the U. W. E. Burnham King, an express clerk, testified that Westphal, the wage incentive director (efficiency expert), noticed his Union button and said, "Well, you fellows keep on and you will have it so nobody will have a job." Westphal further said that he did not believe that the respondent would sign a contract with the Union. This testimony is uncontradicted. James Brady, a division superintendent, used the telephone on the desk of an employee, Mary Louise Zimmerman, to order additional flag pins. Erma Pace, in addition to

her other activities, had petitions available in her office and admitted that many employees came up to sign them. Ernest Waite, a clerk in Weaver's office, was likewise active. He told a fellow employee, Maud Livingston, to join the U. W. E. if she wanted to keep her job. After the strike, called by the Union on May 25, Waite visited Miss Livingston at her home and told her that the plant would remain closed unless 65 per cent of the employees joined the U. W. E.

It is clear that the widespread activities of the supervisors and other confidential employees must inevitably have affected the employees' freedom of choice. The testimony of Ruth Walsh is eloquent:

Q. Now, Mrs. Walsh, why did you consider it an act of loyalty to you that the girls who worked with you should join the union?

A. Well, I just thought it would show—as long as I was one of the organizers and everything—we had started together and we always stuck together, the people that was under me, and I just took it for granted that they would be for me.

Q. You took it for granted that the people that worked under you would be for whatever you were with?

A. Yes. I was really surprised that they weren't.

During the period of organization activity for the U. W. E. in the mail order house, similar activity was being carried on by supervisory employees in the retail store. H. P. Gibson, assistant manager of the retail store, testified that he, like Weaver, had received instructions from the Chicago office to observe the provisions of the National Labor Relations Act. Yet the organization of a union among the retail store employees paralleled the organization of the U. W. E.

Three witnesses, Johanna Smith, Pearl Aldridge, and Thelma Finter, all employees in the retail store, testified that early in May they were asked to attend a meeting of employees at a tea room near the plant. Miss Smith attended at the request of Mrs. Boon, the time-keeper in the retail store, and Miss Aldridge and Miss Finter, at the request of Walter Carlton, the supervisor of the hardware department. Among the fifty employees present were Mrs. Boon and Mrs. Bolar, head of the credit department. Stevenson, head of the sporting goods department, presided.

Johanna Smith's testimony, corroborated by Thelma Finter, was not contradicted by the respondent:

He (Stevenson) said, "I don't believe in Unions. I don't like Unions. I never belonged to but one Union in my life, the I. W. W., but we are here at the request of the management, to organize a company union. I think we have waited too long, but sign the paper as you pass out." And Mrs. Boone hopped up and said, "Collect a quarter because that makes it binding."

James B. Hutsell, a shipping clerk in the retail store, who had also attended this meeting at the request of Mrs. Boon, had the following conversation with Stevenson several weeks later:

Well I went over in Mr. Stevenson's department to get some merchandise . . . I asked him how everything was coming and he said it was coming all right. I said "Steve, tell me where the union originated. Tell me when it was started and who started it." And he said "I will tell you, we got orders from the company to start a company union, and here we are."

This testimony remained uncontradicted by the respondent. There is also uncontradicted testimony that Mrs. Boon solicited Paul Warner, an employee, to join the retail employees' union; that Claude Nichols employed in the receiving department, was likewise solicited by Hickey, head of the automobile accessories department. The evidence also shows that American flag pins used as the insignia of the U. W. E. were also distributed in the retail store, and that the fee (25 cents) for joining the unions in both the retail store and the mail order house was the same.

The respondent submitted testimony to prove that it took a neutral position; that its department heads were told of the respondent's desire to observe the requirements of the Act; that it frowned equally upon the activities of both unions on company time and property; and that several supervisors were reprimanded by their department heads. This testimony is unconvincing. No effort was ever made to curb the activities of Ethel Brown; not one of the supervisors was actually disciplined for the admittedly persistent and flagrant violations of the respondent's rules; and with but a single exception, no supervisor was ever reported by a department head to the manager. It is inconceivable, in the face of its protestations of neutrality, that the respondent did not know of the activities of its supervisors until the latter part of May, when the Union complained to Weaver.

The respondent also attempted to prove that the Union carried on widespread activities similar to those of the U. W. E. during working hours. The overwhelming weight of evidence proves, however, that except in a few isolated cases, no open solicitation of members for the Union occurred during working hours; that Union activity consisted of dropping handbills advertising its meetings on the stairs, placing them on the belts and in the tubes used for communications between departments, and, after the Union had been denied the use of the bulletin boards, of pinning the handbills on the walls over drinking fountains. The record further shows that Union handbills found in the plant were promptly delivered to department heads and consigned to waste paper baskets. Although both unions were discussed throughout the plant, the Union held no meetings either in the recreation room or elsewhere in the plant. The contention

that the two unions carried on comparable activities is not borne out by the record.

Any doubt that the respondent sponsored, encouraged and fostered the U. W. E. is completely dispelled in the light of the events of the morning of May 21. On May 19, a committee designated by the Union conferred with Weaver regarding the discharge of Robert Green⁶ and the activities of the supervisors in promoting the U. W. E. in the plant. Following this conference, Weaver summoned his department heads and told them of the Union complaint regarding the activities of supervisors. In the words of Osborne, the personnel manager, "he was very insistent that department heads carry the information back to supervisors that it must be stopped." On May 20, Weaver issued a bulletin to the employees requesting "that all activities which relate solely to your own problems be carried on outside of working hours so that the efficiency and progress of the work of the Company will not be affected." The bulletin further advised that "all outside activities are purely voluntary on your part."⁷ This bulletin could not be couched in milder terms. In any event, neither the admonitions of department heads nor the bulletin itself had any effect upon the plans made for announcing the success of the U. W. E. The inference is inescapable that had the respondent actually practiced its mild preachments, the activities of the supervisors, even at that late date, would have been curtailed.

On the evening of May 20 meetings of the organizing committee of the U. W. E. were held in the homes of Clara Sharp and Ethel Brown. Plans were made for the announcement in every department in the plant that the U. W. E. claimed a majority of the employees, and for the simultaneous distribution of the "demands" of the U. W. E.⁸ The signal for the distribution of demands and for the announcement was to be a dimming of the lights throughout the plant. While this action was to take place in the plant, Joe Collins and Ethel Brown were to present the U. W. E. demands to Weaver. Clearly, the supervisors and others concerned would not have organized this comprehensive plan in direct violation of orders issued that same day unless they had received assurances, either express or implied, that no serious consequences would follow.

On the morning of May 21, approximately 25 employees met in the engine room and received the demands and final instructions. At 11:00 a. m., Harry Staley, an engineer who had volunteered to give the signal, attempted to dim the lights. Instead, the lights went out entirely throughout the plant, and the continuous communication belts stopped. During the four or five minutes required to re-light the plant and while the plant remained in virtual darkness, various

⁶ The discharge is considered below.

⁷ Board's Exhibit No. 5

⁸ "What the Union of Ward Employees is Demanding for You." Board's Exhibit No. 8

employees, including Clara Sharp, Ruth Walsh, Grace Johnson and Lois Sykes, supervisors, and Thomas McCarty, foreman of the mail order house jewelry department, distributed the demands and announced that the U. W. E. had been victorious in obtaining the memberships of 51 per cent of all the employees.⁹

At the moment the lights went out, Collins and Mrs. Brown were presenting the demands to Weaver. Weaver arose, excused himself, and left his office. Collins testified that he could hear applause outside Weaver's office. Weaver returned in several minutes, did not mention the occurrence, and gave no indication that he was in any way affected by this flagrant and wholesale violation of instructions which he had given to the department heads less than 48 hours earlier and of the bulletin he had issued the day before. It is evident that the entire affair had his tacit, if not his express, consent. It is equally clear that the department heads were no more alarmed. The few disciplinary measures that followed took the form of reprimands by department heads to supervisors. The complacency with which the management received an event which plunged the plant into darkness and effected the complete stoppage of work of over 2,000 employees emphasizes its attitude of indifference or approval.

During the conference, Weaver was presented with the membership cards of the U. W. E. On the following day Collins and Mrs. Brown again conferred with Weaver and demanded recognition of the U. W. E. Weaver replied that the Union had also demanded recognition. Thereupon Collins stated that he would file a petition with the Board, and he advised Weaver that such action would precipitate a strike.

On May 24 a committee of the Union met with Weaver and demanded recognition, claiming a majority of the plant. Weaver refused, and following a vote of Union members, a strike was called on May 25, 1937, which was still in effect at the time of the hearing. The plant was completely shut down from the beginning of the strike.

We find that the respondent dominated and interfered with the formation of the U. W. E. in May 1937 and at all times thereafter dominated and interfered with its administration and contributed support to it; that by the activities above set forth, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discharge of Robert Green

Robert Green, at the time of his discharge on May 6, 1937, was a stock counter working from 42 to 48 hours per week in the mail

⁹ There is also some evidence that these "demands" were likewise distributed in the retail store where the lights were also extinguished during this period of time

order house. Prior to his employment by the respondent on November 5, 1936, Green had been employed by the Federal Reserve Bank for seven years and by an insurance company for about six months. His employment record was excellent, and it was conceded by the respondent that he was an exceptional employee. Starting at 31 cents per hour, in the short space of six months Green had received three increases in wages, and at the time of his discharge he was earning 45 cents per hour. In addition, he received a weekly bonus which varied between 26 cents and three dollars.

On about May 1, Green called at Osborne's office and asked him for a promotion. Osborne complimented him on his excellent record, and during the course of the conversation they discussed the fact that Green's wife was also employed in the plant. Osborne stated that the management had found it necessary to transfer Mrs. Green from the timekeeping to the time payment department because of a rule that an employee's time sheet could not be computed by a relative. On May 3 Green was interviewed by a group merchandiser, and on May 4 he was told by Patton, superintendent of merchandise, that he would be given an opportunity for promotion as soon as an opening occurred.

On the evening of the same day Green attended a Union meeting became a member, and made an impassioned speech in which he bitterly took the management to task for its treatment of the employees. The speech was enthusiastically received and caused much comment throughout the plant on May 5, his fellow employees jokingly nicknaming him "Bill" Green. On May 6 Osborne called Green to his office and told him he was not to be promoted, but was being discharged because of misstatements that he had made on November 5, 1936, in his application for employment.

Osborne testified that two misstatements by Green formed the basis for his discharge: he had listed his wife and child as dependents, whereas he should not have listed his wife as a dependent and should have listed his child as semi-dependent; and he had failed to state that his wife was employed in the plant. That these misstatements were alleged solely to cover the true reason for Green's discharge is revealed in the testimony of Osborne alone.

The following definition of dependents appears on the reverse side of the application form filled out by Green:¹⁰

The following persons shall be conclusively presumed to be totally dependent for support upon an employee in the following order:

The wife upon the husband legally liable for her support.

A husband mentally or physically incapacitated, upon the wife.

¹⁰ Respondent's Exhibit No. 2.

Natural or adopted children, legitimate or illegitimate, under the age of 18 years or over that age, if physically or mentally incapacitated from wage earning and dependent upon the employee with whom he or she is living.

Osborne admitted that he did not know when a husband was legally liable for the support of his wife under the laws of Missouri, but nevertheless insisted that Green had made a deliberate misstatement in listing his wife and child as dependents. Osborne's contention is obviously without merit.

Similarly, Green's failure to state that his wife worked in the plant was wholly immaterial. At the time Green was employed there was no rule in effect that relatives could not be employed. It cannot therefore be said that he would not have been employed if he had revealed his wife's employment. Osborne admitted that he had known that Mrs. Green was employed in the plant. He also knew of dozens of other cases of relatives working in the plant. Indeed, Osborne himself had a sister working in the retail store and a brother-in-law in the mail order house. However, he contended that in his opinion this misstatement rendered Green untrustworthy, despite Green's exceptional record.

Osborne admittedly knew of Green's Union speech at the time of the discharge. This Board does not attempt to interpret employers' rules or pass upon their reasonableness. The only issue with which we are concerned is whether Green had been discharged because of his Union activity, and whether the respondent would have invoked its rule had Green not made the speech on May 4. Clearly, an immaterial misstatement and a misstatement caused by the failure of a layman to understand the legal significance of the word "dependent" did not move the respondent to discharge Green. From all the evidence we find that Green was discharged because of his activities on behalf of the Union.

Green was not gainfully employed between the time of his discharge and the date of the hearing. During this period, and before the strike of May 25, 1937, the Union requested Weaver to reinstate him on several occasions. Although Weaver is reported to have stated that he would investigate the case, no action was taken to reinstate Green.

C. The refusal to hire Charles E. Hooper

For about three weeks prior to May 20, 1937, Charles E. Hooper had been irregularly employed as an extra in the hardware department of the retail store. Having been hired on previous occasions by Mrs. Boon, the timekeeper, he applied to her for employment on May 20. Mrs. Boon sent him to Robert H. Elliott, a floor supervisor to see whether any work was available. Hooper testified that Elliott

asked him which Union he belonged to, "Company or C. I. O." When he told Elliott that he was a member of the C. I. O., Elliott stated, "I am sorry but I can't use you. I am not hiring any C. I. O.'s, and I am not going to have them around." This testimony was corroborated by J. E. Phelps who overheard the conversation and who testified he warned Elliott that he was exposing himself to a fine by making such statements. Phelps was not an employee of the respondent. He was a member of a union affiliated with the Steel Workers Organizing Committee and he was familiar with the Act. He and Hooper at once went to the Regional Office of the Board and filed a statement of the occurrence.

Although Elliott denied making the statements attributed to him by Hooper and Phelps, he testified that he had mentioned the "labor trouble" at the Ford plant in Kansas City, and had stated, "I personally don't think much of unions." Elliott's denials are unconvincing, and the testimony of Hooper and Phelps takes on added significance in view of the surrounding circumstances.

Elliott testified that he did not have the authority to hire. It cannot be denied, however, that he did have the authority to employ Hooper on the morning of May 20. According to his further testimony, he told Hooper, after surveying the activity in the hardware department, that there was no work available. He thus clearly implied that had there been work, he could have employed Hooper.

From the entire record of this occurrence, however, and from the testimony of Hooper and Phelps, we are satisfied that Hooper was denied employment, even before Elliott knew whether or not work was available. Elliott's own testimony shows that he had the authority to hire Hooper, and we conclude that Hooper was refused employment because of his union membership.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

As we have indicated above, the strike called by the Union on May 25, 1937, effected a complete stoppage of operations in both the mail order house and the retail store. At the time of the hearing the strike was still in effect and the business of the respondent had not been resumed. 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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent has dominated and interfered with the formation and administration of the U. W. E. and has con-

tributed support to it. By such domination and interference the respondent has prevented the free exercise of its employees' right to self-organization and collective bargaining. In order to restore to the employees the full measure of their rights guaranteed under the Act, we shall order the respondent to withdraw all recognition from the U. W. E. and disestablish it as representative 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.

We have found that the respondent discharged Robert Green because of his activities as a Union member. Since the discharge constituted an unfair labor practice, he is entitled to reinstatement together with back pay. The respondent's plant was completely shut down on May 25, 1937, and was not reopened at least at the time of the hearing in this case. Green is therefore entitled to receive back wages from May 6, 1937, the date of his discharge, to May 25, 1937, the date that the plant was shut down, and from the date that the mail order house resumed operations until such time as the respondent shall offer him reinstatement to his former position.

We have found that Charles E. Hooper was refused employment by the respondent because of his union membership and that such refusal constituted an unfair labor practice within the meaning of the Act. Such refusal had the effect and will necessarily have the effect of discouraging membership in the Union and thereby infringing upon the rights of its employees to self-organization and collective bargaining. To restore to its employees these rights and to guarantee to Hooper the cessation of such discrimination, we shall order the respondent to place Hooper on a preferential list of employees to be called for temporary employment and to offer him such employment when work of the nature he had previously been engaged in for the respondent is available.

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. United Mail Order and Retail Workers of America is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The Union of Ward Employees is a labor organization, within the meaning of Section 2 (5) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Robert Green and Charles E. Hooper, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By its domination and interference with the formation and administration of The Union of Ward Employees, and by contributing support to said Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforementioned 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, Montgomery Ward & Co., Incorporated, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining, or coercing its employees at its Kansas City, Missouri, plant, in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) From in any manner discouraging membership in United Mail Order and Retail Workers of America or any other labor organization of its employees at its Kansas City, Missouri, plant, by discharging, refusing to reinstate, refusing to hire, or otherwise discriminating against its employees and those seeking employment in regard to hire or tenure of employment, or any term or condition of employment;

(c) From in any manner dominating or interfering with the administration of The Union of Ward Employees or any other labor organization of its employees at its Kansas City, Missouri, plant, and from contributing support to The Union of Ward Employees or to any other labor organization of its employees at said plant.

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

(a) Offer to Robert Green immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges.

(b) Make whole said Robert Green for any losses of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of such offer of reinstatement.

(c) Place Charles E. Hooper upon a preferential list for temporary employment in work of the nature he had previously done for the respondent, and offer to said Charles E. Hooper such employment when work of such nature is available;

(d) Withdraw all recognition from The Union of Ward Employees as representative of its employees for the purpose of dealing with the respondent at its Kansas City, Missouri, mail order house, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish The Union of Ward Employees as such representative;

(e) Immediately post notices in conspicuous places throughout its Kansas City, Missouri, mail order house and retail store, and maintain such notices for a period of thirty (30) consecutive days, stating: (1) that the respondent will cease and desist as aforesaid, and (2) that the respondent will withdraw all recognition from The Union of Ward Employees as the representative of any of its employees for the purpose of dealing with the respondent at its Kansas City, Missouri, mail order house concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that The Union of Ward Employees is disestablished as such representative;

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