In the Matter of JOY SILK MILLS, INC., *and* UNITED TEXTILE WORKERS OF AMERICA, A. F. L.

Case No. 10-CA-545.—Decided September 13, 1949

DECISION

AND

ORDER

On May 27, 1949, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent has also requested oral argument, which is hereby denied, because the record, in our opinion, adequately reflects the issues and the positions of the parties.

The Board [1] has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except insofar as they are inconsistent with the Decision and Order herein.

1. We agree with the Trial Examiner's finding that the Respondent has refused to recognize and bargain with the Union within the meaning of Section 8 (a) (5) of the Act.[2] However, we disagree with the Trial Examiner's findings that the refusal took place on and after October 12, 1948, and that until this date, the Respondent was acting in good faith in its dealings with the Union.

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[1] Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Murdock].

[2] Member Murdock concurs in finding the violation of Section 8 (a) (5) solely because he feels bound by the decisions of the Board in the *Cuffman Lumber* and *D. H. Holmes* cases cited in footnote 5.

As more fully set forth in the Intermediate Report, the Union represented a majority of the employees in the appropriate unit on September 24, 1948, when it made its initial request for recognition.[3] The Respondent refused the request, insisting that the Union prove its majority status in a Board-conducted election. The Union thereupon filed a representation petition with the Board. On September 30, at a conference attended by the Respondent's attorney, a field examiner of the Board, and the Union's spokesman, the Respondent's attorney indicated that Respondent would agree to a consent election if an investigation proved that the Respondent was subject to the Act's jurisdiction. On October 7, the Respondent gave its consent to an election which was held on October 19, 1948. However, beginning on October 12, and continuing until the election, the Respondent, as detailed in the Intermediate Report, engaged in acts of interference and coercion which made a free election impossible.

We have previously held that an employer may in good faith insist on a Board election as proof of the Union's majority but that it "unlawfully refuses to bargain if its insistence on such an election is motivated, not by any *bona fide* doubt as to the union's majority, but rather by a rejection of the collective bargaining principle or by a desire to gain time within which to undermine the union."[4] In cases of this type the question of whether an employer is acting in good or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct.

In the instant case, the Respondent engaged in unfair labor practices during the preelection period, the first of its illegal acts having occurred only 5 days after it agreed to a consent election and less than 3 weeks after the Union's initial bargaining request. Under these circumstances we find, contrary to the Trial Examiner, that the Respondent's insistence upon an election was not motivated by a good

[3] We agree with the Trial Examiner's conclusion that the telephone call from Jacobs to Gilbert on September 24, 1948, constituted a request to bargain. However, we disagree with the Trial Examiner's subsidiary finding to the effect that the request was not express or formal but rather implied or to be inferred from Jacobs' telephone conversation. According to Jacobs' version of the conversation which was credited by the Trial Examiner, Jacobs asked Gilbert if he was willing to recognize the Union as the bargaining representative of the production and maintenance employees, adding that the Union had been authorized by these employees to represent them. This testimony, in our opinion, clearly establishes that the bargaining demand of September 24, was express and we so find. In its brief, the Respondent contends that the Trial Examiner's credibility findings with respect to the telephone conversation between Jacobs and Gilbert on September 24, are unsupported by the record and moreover are without logic. We do not agree. Furthermore, the importance of observation of witnesses to any finding of their credibility is such that we will not overrule the credibility findings of Trial Examiners unless they are clearly erroneous. See *Matter of Minnesota Mining and Manufacturing Company*, 81 N. L. R. B. 557.

[4] *Matter of Artcraft Hosiery Company*, 78 N. L. R. B. 333.

faith doubt of the Union's majority.[5] On the contrary, we are convinced that the real reason the Respondent rejected the Union's request on September 24, was to gain time within which to undermine the Union's support. Accordingly, we find that a refusal took place on September 24, and from that time on, the Respondent refused to bargain collectively within the meaning of Section 8 (a) (5) of the Act as amended.

2. In its brief, the Respondent contends that a remedial order directing it to bargain with the Union, would deprive the Respondent of its right under Section 9 (c) (1) (b) of the Act to petition the Board for an election. This position is clearly untenable. We have found that on September 24 when the Union made its bargaining demand, it was the majority representative of the Respondent's employees in the appropriate unit. Having refused the Union's request in violation of the Act, the Respondent cannot now be heard to say that it entertains an honest doubt as to the Union's majority status, and that until an election is held, its duty to bargain is suspended.[6]

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Joy Silk Mills, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Textile Workers of America, A. F. L. as the exclusive representative of all production and maintenance employees employed by the Respondent at its Hartsville, South Carolina, plant, excluding clerical and office employees, guards, professional employees, and all supervisors as defined in the Act;

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[5] Under the Trial Examiner's theory of the case a refusal did not occur until October 12. In his view, only the events which preceded October 7, the time the Respondent agreed to a consent election were relevant to the issue of the Respondent's motive in insisting upon an election. As no unfair labor practices occurred during this period, the Trial Examiner concluded that the Respondent was acting in good faith when it refused the Union's initial request and sought an election. Turning then to the Respondent's unfair labor practices which began on October 12, the Trial Examiner found that this illegal conduct, standing alone, constituted a refusal to bargain because it demonstrated that whatever doubts [the Respondent] had previously entertained were no longer genuine, and that it sought to evade its obligation to recognize and to bargain with the Union. As our decision indicates, we do not subscribe to the Trial Examiner's theory of the issue under discussion. We are of the opinion that the unfair labor practices, because of their nature and timing, color the Respondent's intent on September 24, and support a finding that the doubt advanced on that day by the Respondent as the reason for refusing to bargain with the Union, was feigned and advanced in bad faith. See *Matter of The Cuffman Lumber Company, Inc.*, 82 N. L. R. B. 296; *Matter of D. H. Holmes, Ltd.*, 81 N. L. R. B. 753; *Matter of Georgia Twine and Cordage Company*, 76 N. L R. B. 84.

[6] See *Franks Bros. Company* v. *N. L. R. B.*, 321 U. S. 702; *Matter of People's Motor Express, Inc.*, 74 N. L. R. B., 1597; *Matter of The Cuffman Lumber Company*, 82 N. L. R. B. 296.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Textile Workers of America, A. F. L., or any other labor organization, 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 and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act as guaranteed by Section 7 thereof.

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

(a) Upon request, bargain collectively with United Textile Workers of America, A. F. L., as the exclusive representative of all its employees in the above-described unit with respect to wages, rates of pay, hours of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Hartsville, South Carolina, copies of the notice attached hereto and marked Appendix A.[7] Copies of said notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that

> WE WILL NOT refuse to bargain collectively with UNITED TEXTILE WORKERS OF AMERICA, A. F. L., as the exclusive representative of all employees in the appropriate unit described below.

[7] In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED TEXTILE WORKERS OF AMERICA, A. F. L., or any other labor organization, 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, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement, requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) 3 of the National Labor Relations Act.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees at our plant in Hartsville, South Carolina, excluding clerical and office employees and guards, professional employees and supervisors as defined in the Act.

All our employeess are free to become or remain members of this union, or any other labor organization.

JOY SILK MILLS, INC.,
Employer.

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Messrs. Thomas Marshall and *Milton O. Talent*, for the General Counsel.

Messrs. Henry J. Fox and *James F. Kenney* (Posner, Berge, Fox, and Arent), of Washington, D. C., for the Respondent.

Messrs. Joseph Jacobs, Dorsey Moseley, and *Gordon Finch*, of Atlanta, Ga., for the Union.

STATEMENT OF THE CASE

Upon a first amended charge filed October 29, 1948, by United Textile Workers of America, affiliated with American Federation of Labor, herein called the union, the General Counsel of the National Labor Relations Board [1] by the Regional Di-

[1] The General Counsel and his representatives are herein referred to as the General Counsel and the National Labor Relations Board as the Board.

rector for the Tenth Region (Atlanta, Georgia), issued a complaint dated February 24, 1949, against Joy Silk Mills, Inc., of Hartsville, South Carolina, herein called the respondent, alleging that the respondent had been engaging in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and the notice of hearing were duly served on the respondent and the union.

With respect to the unfair labor practices the complaint alleged in substance:

(1) That from on or about September 15, 1948, and since, the respondent, by its officers, agents, and employees (more particularly by President S. C. Gilbert, General Manager H. B. Southerland, Plant Superintendent Raymond B. Russell, and Fred Carpenter), and in violation of Section 8 (a) (1) of the Act, had interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 by the following acts committed, authorized, instigated, and acquiesced in by the respondent: (a) interrogating its employees about their union desires, sympathies, activities, and membership; (b) threatening and warning its employees to refrain from assisting, becoming members of, or remaining members of the union; (c) promising its employees promotions, better jobs, and similar benefits if they would refrain from assisting, becoming members of, or remaining members of the union; (d) spying upon and keeping under surveillance union members and the union activities of its employees; and (e) soliciting its employees to spy upon and keep under surveillance the union members, meetings, leaders, and activities, and to report to the respondent; and

(2) That respondent on or about September 23, 1948, and September 24, 1948, and thereafter, and in violation of Section 8 (a) (1) and (5) of the Act, refused to bargain collectively with the union, which since on or about September 16, 1948, represented a majority of respondent's employees in an appropriate unit, as the exclusive representative of the employees in such unit.

By its answer respondent admitted certain allegations of the complaint as to the nature of its business, as to the union's qualification as a labor organization, and as to the appropriateness of the alleged unit, but entered a general denial of the commission of any unfair labor practices.[2]

Pursuant to notice a hearing was held on March 22, 23, 24, and 25, 1949, in Hartsville, South Carolina, before the undersigned Trial Examiner designated by the Chief Trial Examiner. The General Counsel and the respondent were represented by counsel and the union by representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. As the hearing opened the General Counsel's motion was granted without objection to amend paragraph X of the complaint to include the name of William J. Outlaw as one of respondent's officers, agents, and employees by whom it had allegedly committed acts in violation of Section 8 (a) (1) of the Act.

At the conclusion of the case the General Counsel's motion to conform the pleadings of the evidence as to names and dates and such matters as concerned the record was granted without objection. The parties were afforded an opportunity to make oral argument and to file briefs and proposed findings of fact and conclusions of law. The parties waived oral argument. Briefs have been received from the General Counsel and the respondent.

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[2] Respondent filed simultaneously with its answer its motion for a more definite statement or bill of particulars, a portion of which motion was granted by the order of the Trial Examiner dated March 17, 1949. The General Counsel complied with said order by filing a bill of particulars as the hearing opened.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is and has been for many years a corporation duly organized under and existing by virtue of the laws of the State of South Carolina, with its principal office and place of business at Hartsville, where it is now and has been continuously engaged in the business of contracting with respect to the processing of yarn and thread, i. e., the twisting, throwing, and other processing of yarn and thread. In the course and conduct of its business operations for a period commencing January 1, 1948, and ending December 31, 1948, which period is representative of all times material herein, respondent received raw materials consisting principally of rayon and silk yarn valued in excess of $250,000, 100 percent of which value was purchased, delivered, and transported in interstate commerce from and through States other than the State of South Carolina, to its plant in Hartsville. During said period respondent processed finished products consisting principally of rayon and silk thread valued in excess of $250,000, 100 percent of which value was sold, shipped, and transported in interstate commerce to and through States other than the State of South Carolina, from its said plant.

Respondent conceded for the purposes of this proceeding that it is engaged in commerce within the meaning of the Act, and the undersigned finds that it is so engaged.

II. THE LABOR ORGANIZATION INVOLVED

United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of respondent.

III. THE UNFAIR LABOR PRACTICES

1. *The setting; the main events; the issues*

Respondent operated a small but modern plant located at Hartsville, South Carolina. It normally employed from 50 to 60 employees, divided among 3 shifts.[3] Its managing officers were S. C. Gilbert, president, and H. P. Southerland, general manager, and its plant superintendent was Raymond Russell. Respondent concedes that they and Wallie G. Cassidy, foreman, and Elsie Clyde McCaskill, forelady, were supervisors within the meaning of the Act.

Gilbert and Southerland occupied separate offices at the front of the plant building. A third office adjoining theirs and also adjoining the reception room or office lobby was occupied by K. F. (Fred) Carpenter, respondent's bookkeeper and sole clerical employee, whose status will later be discussed in detail. The main entrance into the offices and plant opened with the office lobby, adjacent to Carpenter's office, but the employees entered the plant by a separate door which opened into the canteen.

Concerted activities arose spontaneously among the employees on the afternoon of September 15, 1948, as a result of the displacement by respondent of head foreman, Zim Byrd, whom the employees on the first shift requested Gilbert to reinstate. When Gilbert did not adjust the grievance to their satisfaction, the employees began that evening the formation of a union. They obtained a

[3] The pay roll ending September 18, 1948, rontained the names of 52 employees. They were divided approximately as follows: 25 on first shift, 7 a. m. to 3 p. m.; 17 on second shift, 3 p. m. to 11 p. m.; and 10 on the third shift, 11 p. m. to 7 a. m.

supply of membership cards from the president of another of the union's locals and set about signing up members outside the plant as the third shift reported for work and as the second shift left.

The next morning the first shift (with possibly three or four exceptions) did not report for work but congregated outside the main entrance and continued the membership campaign. At Gilbert's request the leaders conferred with him in the plant around 9:30 a. m. They renewed their demand for the reinstatement of Byrd and added for the first time a demand for paid vacations. Gilbert agreed to neither, but in a discussion with a single leader (Bessie Chapman) thereafter, he promised that if the employees would immediately come back to work (it was then about noon) he would pay them for a full day's work and grant the request for paid vacations. The employees did not accept the offer, and the walk-out continued through the 16th and 17th (Thursday and Friday). Thirty-seven employees had signed membership cards through the 16th and one more signed on the 17th.

On Saturday, a nonwork day, Helen Watson and Bessie Chapman, two of the leaders, sent a message to Gilbert that the employees would report to work on Monday. On Sunday evening the leaders met Gilbert at the plant at his request to reach an understanding of the basis on which the employees would return to work. The employees' grievances were again fully discussed and Gilbert again promised paid vacations.[4]

Work was resumed on Monday, all shifts reporting as usual.

In the meantime the signed membership cards had been transmitted to the union's State Representative Earl R. Britton, and by him to its Southern Director Joseph Jacobs. On Friday morning, September 24, Jacobs called Gilbert long distance from Atlanta and made a demand (according to the General Counsel's contentions) for recognition and a request to bargain. When Gilbert did not immediately grant the demand or agree either to a consent election or a cross-check, Jacobs immediately filed a representation petition with the Board's Atlanta Regional Office.

In a conference held on September 30, respondent tentatively agreed to a consent election and all arrangements therefore were made. Its tentative consent was shortly made final and the election proceeded as per plan and without postponement on October 19. The union lost the election 32 votes to 16, 9 additional votes being challenged.

Evidence was offered by the General Counsel that on October 12, 18, and 19, respondent committed various unfair labor practices which interfered with the free choice of a bargaining representative. Respondent denied these.

On October 25, the union filed its protests and objections to the conduct of the election which were sustained in certain particulars by the Board's Regional Director, who on January 25, 1949, in his report thereon, ordered the election set aside and directed another election. However, on March 3, 1949, the union, with the approval of the Regional Director, withdrew its representation petition without prejudice.

The main issues presented by the evidence and argued by the briefs are (1) whether the respondent committed certain acts of interference, restraint, and coercion between September 15 and October 19, both inclusive;[5] (2) whether the union made a request to bargain either in the telephone call on September 24 or at the conference on September 30; and (3) whether the respondent refused to

[4] There was no discussion of recess periods, of rotation of shifts, of wages, or of the union.

[5] Involved here also are subsidiary issues whether certain of the acts were committed by respondent's supervisors or agents.

bargain on those dates or since. Other issues concern whether pre-trial preparations of respondent's counsel also constituted an unfair labor practice and whether a single admitted inquiry of an applicant for employment by respondent's plant superintendent since the election was coercive.

The evidence concerning alleged acts of interference, restraint, and coercion will be considered separately for the period prior to September 30 (when respondent consented to an election). For the period from September 30 to October 19, it will be considered in conjunction with the question of the alleged refusal to bargain, to which it relates.

2. *Alleged interference, restraint, and coercion prior to September 30*

It is difficult to relate the evidence to the particular acts which the General Counsel charges to the respondent during the period prior to September 30. The bill of particulars charges that Gilbert, on September 16, engaged in "interrogation" and on September 19 he "threatened and warned" employees, and that Carpenter, on September 15, also "threatened and warned" employees to refrain from assisting, becoming members of, or remaining members of the union.[6]

The evidence establishes none of these allegations. Gilbert was cross-examined on the point whether he inquired who was the "organizer" of the group during the conference on the 16th, but he and Southerland denied that he made any such inquiry and there is no evidence that he did so. Indeed, the evidence is not in conflict that throughout the conferences on September 15, 16, and 19, no reference was made by participants on either side to "union" or "union activities." There is also no evidence that Gilbert on September 19, made any threats or issued any warnings. Nor, even assuming the General Counsel intended to charge Gilbert with promising benefits to refrain from union activities, does the evidence sustain such a charge during the period now under consideration. It shows only that he partially acceded to the demands of his employees (made during their concerted activities) to the extent of agreeing to grant a paid vacation.[7]

The evidence similarly does not establish that Carpenter, on September 15, threatened and warned employees in connection with their union activities. It does establish that on that date he did learn of the nature of those activities (and through him the respondent did also).[8] Thus, on the night of September 15, the leaders in the movement to organize a union had gone to the plant and had begun signing up members as the third shift reported for work and as the second shift left. They operated mainly from Watson's car or Chapman's car parked on or near the parking lot in front of the plant. There is testimony that Elsie Clyde McCaskill (now conceded by respondent to be a supervisor) passed by and saw them on her way into the plant, but there is no evidence that she learned they were actually organizing a union at the time. A few moments later Carpenter came out of the plant and spoke to the group, inquiring what they were trying to do by keeping the girls from coming into the mill on the third shift and why they didn't go home and leave the second shift alone. There is no evidence that until Carpenter approached and put his inquiry he had any

[6] Allegations that Outlaw also engaged in interrogation on the 20th are disposed of *infra*, on the issue of Outlaw's status as a supervisor. There is no allegation in the pleadings and no contention in argument or briefs that any acts of Wallie G. Cassidy (admittedly a supervisor) or of Wilmouth (respondent's local attorney) constituted interference.

[7] Though the employees may, by gathering together to present their demands, have constituted themselves a "labor organization" within the meaning of the Act (*Matter of Gullett Gin Company, Inc.*, 83 N. L. R. B. 1, and cases cited in footnote 3), Gilbert's *granting* of a portion of their demands certainly cannot be said to have constituted *interference* with their rights to organize and to bargain collectively.

[8] Carpenter's status as respondent's agent is resolved *infra*, page 13.

knowledge that the employees were actually engaged in organizational activities, though it is found that Carpenter did then learn of the nature of their activities.

It is therefore concluded and found that respondent did not, during the period from September 15 to 30, both inclusive, engage in acts which constituted interference, restraint, and coercion.[9]

3. *The refusal to bargain; interference, restraint, and coercion*

a. The appropriate unit; the representation by the union of a majority therein

It was stipulated by the parties and is hereby found that all of the production and maintenance employees of the respondent at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

It is also found that on September 16, 1948, a majority of respondent's employees in said unit had designated and selected the union as their representative for the purposes of collective bargaining with the respondent. I therefore find that on September 16, 1948, the union represented a majority of respondent's employees in the appropriate unit, and that said majority continued to the time of the election on October 19. The question whether such representative status continued thereafter is disposed of in Section e, *infra.*

B. The requests to bargain

The events

Jacobs testified that on Friday morning, September 24, he called Gilbert from Atlanta, informed him he was calling to see whether the respondent would recognize the union as the collective bargaining agent for the production and maintenance employees at the plant because the union had been authorized to represent them. Gilbert replied that he wished an opportunity to consult his attorney and added that he thought the matter of union representation had been settled in the former election.[10] Jacobs explained that the earlier election was more than a year ago and in any event the union had a right to ask for collective bargaining rights at any time if the respondent did not object. Jacobs also explained that instead of having an election they might agree on a cross-check of the membership cards by some impartial person to determine whether the union in fact had a majority and if so they could stipulate for the union to be recognized. Gilbert stated he preferred to let the Board handle it, and Jacobs then inquired

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[9] The sharp issue which developed at the hearing as to whether respondent had knowledge prior to September 24 of the fact that the employees were organizing a union becomes an immaterial one in the light of this finding. However, it is found that respondent did obtain knowledge of that fact as a result of Carpenter's acts the night of the 15th, as well as through its supervisor, Wallie G. Cassidy to whom the General Counsel's witnesses attributed references to union activities. Indeed, with a plant and an organization as small as respondent's, it is difficult to imagine how respondent could have escaped knowledge of the nature of the employees' activities in view of the group activities on Wednesday night and on Thursday and Friday. See *N. L. R. B.* v. *Abbott Worsted Mills,* 127 F. 2d 438, 440 (C. A. 1); *Matter of Quest-Shon Mark Brassiere Company, Inc.,* 80 N. L. R. B. 175; *Matter of Firestone Tire and Rubber Company, etc.,* 62 N. L. R. B. 1316. The finding that it did have such knowledge is also supported by the inquiry of respondent's local counsel to Chapman on the 19th, while on respondent's business, "What's this I hear about a union?" Though General Counsel does not charge the respondent with responsibility for this inquiry, it clearly appears to have emanated from information which the attorney had received from the respondent.

[10] Which had been lost by the union, in October or November 1946.

his attitude as to consent election. Gilbert still indicated his preference for a regular routine handling of the matter by the Board, and Jacobs concluded by stating in that case he would proceed immediately by filing his petition.

Gilbert's testimony was that Jacobs told him only that he had enough employees to petition the Board for an election and would do so unless Gilbert would agree to a consent election; that he informed Jacobs that he preferred not to reach a decision until he got in touch with his attorney. He denied that Jacobs requested a conference for the purpose of bargaining, that Jacobs actually made any request or demand relating to bargaining, and that Jacobs or anyone else at any time ever requested him to bargain.

There is other evidence in the record which assists in resolving the foregoing conflict. Jacobs testified that in a conference on September 19, with Britton, he requested Britton to make a formal demand to bargain. Pursuant thereto Britton, on September 23, wrote Gilbert (mailing Jacobs a copy by air mail special delivery) as follows: [11]

> I have more than 30 percent of the employees of the Joy Silk Mills, Inc., who have signed cards authorizing the United Textile Workers of America to bargain for themselves under the Labor Management Relations Act of 1947. As a representative of the American Federation of Labor, the United Textile Workers of America, one of our affiliated International Unions, I am proceeding to petition the National Labor Relations Board to order an election in the plant of the Joy Silk Mill. Should you be willing to have a consent election, I believe it will be to the advantage of all concerned.
>
> May I have as early a reply as possible?

Jacobs testified that he received a copy of the letter on the evening of the 23rd, and recognizing it was not adequate as a formal demand for recognition as a bargaining agent, he called Gilbert the next morning for the purpose of perfecting such a demand.

If Gilbert's recollection of the conversation be accepted, Jacobs' call would appear to have been pointless and without purpose since Jacobs gave him no information which was not contained in Britton's letter nor any which Gilbert would not have obtained as a result of the filing of a petition with the Board. Significantly, Gilbert's version of Jacobs' conversation actually constitutes an approximate summary of Britton's letter; and the undersigned concludes that Gilbert's recollection of the details of the telephone call was faulty and that in attempting to testify thereto he may unconsciously have substituted his better recollection of the contents of the letter which remained in respondent's possession up to the time of the hearing. In view of Jacobs' position with the union and his obvious experience in such matters, it is inconceivable that he would have hastened to call Gilbert long distance to repeat only what was in Britton's letter, nor was there any reason why with 38 signed membership cards in his possession out of an estimated unit of 45 Jacobs would have hesitated to claim a majority instead of merely enough to petition for an election, as contended by Gilbert.

The undersigned therefore finds that the conversation was substantially as testified to by Jacobs.

Immediately following the conclusion of the call Jacobs prepared and filed with the Board's Regional Office in Atlanta, a representation petition which alleged among other things that 38 employees of a unit of 45 supported the petition, that the union had notified the employer of its claim that a question concerning

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[11] Incidentally, the evidence establishes that Gilbert did not actually receive the letter until after the call from Jacobs. Neither he nor Jacobs made any reference to the letter during the telephone conversation.

representation had arisen, and that the employer had failed to recognize the union. He also filed with the Board the 38 signed membership cards, all of which bore the following legend:

> I, the undersigned, an employee of Joy Silk Mills, Inc., hereby accept membership in the United Textile Workers of America, (AFL), and authorize its representatives to bargain for me in all matters pertaining to my wages, working conditions, Union obligations and all other conditions of employment.

Later in the afternoon Paul M. Patterson, field examiner of the Board, also called Gilbert and inquired whether he would agree to a consent election. Gilbert again refused, stating that he wished to consult his attorney first.

On September 30, Jacobs participated in a conference in respondent's office with Patterson, Southerland, and Henry J. Fox, respondent's attorney, to work out, if possible, arrangements for a consent election. Jacobs suggested to Fox that the union would be willing to agree to a cross-check of membership cards rather than an election. Fox declined the suggestion stating "There was a question of going into an election," [12] and that there was a question in his mind concerning interstate commerce and he wanted to check into it and give a written opinion. Later, near the end of the conference, Jacobs stated to Fox, "Of course, we could obviate all of this if we would set down and get a contract." There is no record that a reply was made. The foregoing findings are based on Jacobs' testimony.

Fox did not testify, but respondent offered Southerland's testimony and also offered in evidence Patterson's letter of October 1, 1948, which contained a summary from his notes made at the conference. Jacobs admitted that the account in the letter, though not in complete detail, was substantially correct. The letter corroborates Jacobs' offer of a cross-check and is not otherwise inconsistent with Jacobs' testimony. Nor is Southerland's testimony inconsistent with the foregoing findings. He did answer negatively a question whether either Jacobs or Patterson made any mention concerning a demand made by the union as to bargaining with the company; but that question clearly implied an express demand, and his denial must therefore be construed as a denial that any express mention or express demand was made. Jacobs' testimoney does not establish that he made any express request to bargain or that he referred to any previous demand.

The conference concluded with respondent having tentatively agreed to a consent election subject to Fox's satisfying himself and respondent on the question concerning commerce. Thereafter, upon receipt of his advice that the Board had jurisdiction, respondent signed the consent election agreement, and the election was held on October 19, under the arrangements which had been agreed upon in the conference.

Concluding findings

Respondent's contention is that no request to bargain was ever made on behalf of the union. Of course, if this were so the complaint that respondent has unlawfully refused to bargain cannot be sustained. *N. L. R. B.* v. *Columbian Enameling & Stamping Company, Inc.*, 306 U. S. 292, 297. If there were anything in the Act which required that a demand to bargain be express or formal (which there is not) [13] it must be held under the evidence above sum-

[12] The significance of this statement does not appear.

[13] Section 8 (a) (5) of the Act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a)."

marized that there was no demand to bargain. However, it is established by Board decisions that no formal demand is necessary,[14] and it also appears that a demand though not express may be inferred or implied from the circumstances of communicating to a respondent the fact that the union is the representative of a majority of the respondent's employees in an appropriate unit. *Matter of Unique Ventilation Company, Inc.*, 75 N. L. R. B. 325; *Matter of Prigg Boat Works*, 69 N. L. R. B. 97; *Matter of Van De Kamps Holland-Dutch Bakers, Inc.*, 56 N. L. R. B. 694, 707, 711.

The question therefore arises whether under the facts herein found, a request to bargain is to be implied or inferred from Jacobs' telephone conversation with Gilbert on September 24, and from his subsequent conversation with Fox during the conference on September 30.

It is clear that Jacobs made a demand for recognition since he informed Gilbert that the union had been authorized by the employees to represent them and he inquired whether the respondent would recognize the union as the collective bargaining agent of the unit consisting of the production and maintenance employees. Respondent's contention that at no time did Jacobs claim to represent a majority of the employees is rejected.[15] The claim of a majority is clearly implicit throughout the conversation. First, there was the statement that *the employees had authorized the union to represent them*, and this was followed by a request for recognition. Then there was reference to an election and Jacobs attempted to persuade Gilbert to agree to the alternative procedure of a cross-check of the membership cards to determine whether the union in fact had a majority. These circumstances clearly implied the union's assertion that it represented a majority of the employees in the unit.

Respondent also argues that the Britton letter, Jacobs' call and Patterson's call, considered together, demonstrate that what the union was seeking was a certification by the Board because of the many advantages which would accrue to a labor organization therefrom,[16] and that all of those communications sought only to induce respondent to consent to an election in order to expedite such certification. Certainly, there is no intimation in Jacobs' testimony that he was interested in certification merely for the sake of certification; indeed any such suggestion is negatived by his offer to consent to a cross-check [17] (which is of course outside the scope of the Board's present procedure in representation cases).

It is therefore concluded and found that the telephone call from Jacobs to Gilbert on September 24, constituted a request to bargain. It is similarly concluded and found that although Jacobs made no express demand to bargain at the September 30 conference, such a demand was clearly to be implied from his offer to Fox to agree to a cross-check in lieu of an election and his offer to "obviate all this" if the union could get a contract.

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[14] Telephone calls have been held sufficient under certain circumstances. *Matter of A. J. Showalter Company*, 64 N. L. R. B. 573, 576, footnote 1; *Matter of Van De Kamps Holland-Dutch Bakers, Inc.*, 56 N. L. R. B. 694, 711.

[15] Respondent's attempts to attach significance to Britton's claim in his letter of September 23 that cards had been signed by "more than 30 percent" of the employees. This was obviously intended to indicate that the union was able to qualify under the Board's administrative rule contained in Section 202.17 of its Statements of Procedures (12 Fed. Reg. 5651, as amended 13 Fed. Reg. 4871) for an investigation of its proposed representation petition. Furthermore, Jacobs explained that he made his call to Gilbert because he did not consider Britton's letter adequate as a formal demand for recognition as a bargaining agent.

[16] Citing *Matter of General Box Co.*, 82 N. L. R. B. 678, decided April 1, 1949.

[17] The reiteration of that offer at the September 30 conference, plus the suggestion to Fox that the election could be dispensed with if the union could get a contract, emphasizes this conclusion.

c. The alleged refusals to bargain on September 24 and 30

The General Counsel contends that Gilbert's insistence during the Jacobs telephone conversation on a "routine handling" of the union's proposed representation petition, his refusal to consent to an election, and his refusal to consent to a cross-check constituted a refusal to bargain because such position was not taken in good faith and because the respondent did not entertain a *bona fide* doubt as to the union's representation of a majority of the employees. A similar contention is made as to respondent's refusal at the September 30 conference to agree to a cross-check of membership cards in lieu of an election.

It is true, as the respondent points out, that an employer may in good faith insist upon a Board conducted election to establish the union's status as the collective bargaining representative; but the employer cannot in every case disregard a demand for recognition simply because the union can file or is filing a petition for an election. There are other ways of proving a majority, including an agreement for a cross-check. An employer is not bound to accept that method or any other specific method, but he must at least make a reply to a demand for recognition and a proposal to submit proof of majority status, or he must take some other action which will furnish a basis for evaluating his good faith.

The determination of good faith depends of course upon the facts of the particular case. Among factors which have been considered significant are the employer's resort to or abstinence from dilatory tactics, his willingness or unwillingness to consent to an election, the sequence of the events, and the lapse of time between the refusal and the commission of any unfair labor practices. It can generally be said that the evidence must show that the employer had already created an atmosphere of unfair labor practices at the time he declined to bargain or had immediately or shortly embarked upon such a course of unfair labor practices that it may reasonably be assumed he intended to frustrate collective bargaining at the time he refused to bargain. See *Matter of Artcraft Hosiery Co.*, 78 N. L. R. B. 333; *Matter of John Deere Plow Co.*, 82 N. L. R. B. 69.

In the present case the evidence establishes that though refusing to recognize the union until the representation question was settled by a Board election, respondent engaged in no dilatory tactics whatsoever but cooperated in disposing of the matter expeditiously by agreeing to a consent election. Respondent met with the Board's representative and Jacobs less than 1 week after the petition was filed and gave its consent to an election. Furthermore, the election was held less than 3 weeks after that meeting and less than 1 month after the union's original demand for recognition, without a single request for a delay or postponement.

Jacobs' call came a week after the peak of the earlier concerted activities and after the employees had voluntarily returned to work. And though it has been found that respondent had knowledge of the fact, during the week of September 15, that the employees were attempting to organize a union,[18] it committed no act of interference therewith. Indeed, the respondent might have assumed from the conference on the night of the 19th, and the return to work on Monday, that it had satisfactorily adjusted the employee grievances and that the employees had abandoned their efforts to organize a union.

Under these circumstances Gilbert could well have doubted Jacobs' claim of a majority and his right to demand recognition and could justifiably have indicated, in the light of the suddenness of the call and the apparent "high pressuring," that he wanted time to consult his attorney and would therefore prefer the

[18] It had no knowledge, however, of the extent to which the campaign had been successful.

case to follow "routine" Board procedure. Furthermore, Gilbert was under the misapprehension that the representation question had been settled in the earlier proceedings. Though Jacobs endeavored to correct that misapprehension, Gilbert was entitled, of course, to seek the verification of his counsel; and there is no indication from the evidence that his expressed wish to take the matter up with his counsel was motivated either by bad faith or by the desire to gain time to undermine the union's asserted majority.

Neither do the events at the September 30, conference establish a refusal to bargain. There, according to Patterson's account, concurred in by Jacobs, the atmosphere was one of the fullest cooperation. There the respondent readily gave its tentative agreement to a consent election, reserving only a brief opportunity for its counsel to clear up a "slight doubt" in his mind as to whether, because of a recent change in the nature of respondent's business, its operations still affected interstate commerce. Patterson's account, corroborates Jacobs' offer of a cross-check, but it also alludes to two reasons why respondent finally did not consent: respondent "tended to question" the authenticity of the cards, and although the examiner agreed to make the check if the company consented, the suggestion was not insisted upon because there was not then sufficient time available in which to have the check made.

Respondent thereafter promptly resolved its doubt on the commerce question and gave its final consent to the election prior to October 7.

It is concluded and found that the evidence does not establish that down to that time a refusal to bargain had occurred. The question remains whether such a refusal occurred as a result of respondent's subsequent acts, the evidence of which is now summarized.

d. Interference, restraint, and coercion

The events

Subsequent to the telephone call of September 24, Gilbert, acting on the advice of counsel, had immediately instructed respondent's supervisors not to question employees about the union or union activities, not to threaten or promise, not to spy on them in any manner, and not to have anything to say about their activities in the mill. On October 7, he posted a notice informing the employees of the election and of their right to vote freely therein. Those and the other statements in the notice plainly qualified as free speech.

Down to that time there is no evidence that respondent was at all concerned about the outcome of the election or that it had endeavored in any manner to interfere with the choice of a bargaining representative by its employees. However, there is evidence which indicates that some time between October 7 and October 12 respondent's attitude of impartiality and unconcern underwent a reversal. Such change is reflected in a series of acts and statements by respondent's managing officers, agents, and supervisors, the evidence of which is summarized under the name of respondent's representative to whom the particular acts are attributed:

(1) S. C. Gilbert

On October 12, 1948, the employees were separately assembled on each of the three shifts and read a lengthy written statement prepared by Gilbert. Similarly on October 18, two separate lengthy statements were read on each shift.[19] Though Southerland and Russell were present on all the occasions, Gilbert selected Carpenter to read the statements for him. Though the statements in the main

[19] On the second and third shifts the two statements were read as one.

clearly fall within the limits of permissible free speech certain portions are claimed by the General Counsel to constitute interference, restraint, and coercion. Specifically, objection was made to the following portions of the statement of October 12:

> (a) As soon as equipment for the canteen which has been ordered arrives, you will be given a rest period at the Company's expense so that you may eat your lunches and relax in comfort during your shift.
>
> (b) If our prices are too high, or if the quality of our service is insufficient, we lose customers. Similarly, if our wages are too high, we lose money and obviously couldn't stay in business. Thus, it is apparent that what we can pay is limited by factors beyond our control.
>
> (c) You will get no less or no more regardless of whether there is a union here. We will always do the best to the utmost of our ability.

The General Counsel also objects to the following portions of the first statement read on October 18:

> (a) We are giving you a paid vacation.
>
> (b) I want to tell you in all sincerity that no matter how the election goes the time will never come when you will have to join the union to keep your job in this Company or improve your working conditions or to have equal opportunities with anyone else.

The effect of these statements is considered under *Concluding Findings, infra*, this section.

Bessie Chapman testified that after the reading of the statements on the 18th, she question Gilbert about shift rotation, a subject not mentioned therein, and though he did not expressly promise rotation he stated that rotation would be started if a majority of the employees by a vote indicated their desire for it. Her testimony is corroborated by other witnesses, including Russell, who admitted telling Vonceil Holloman that Mr. Gilbert had promised a vote on shift rotation and so far as he knew the mill would be guided by the result.

(2) K. F. (Fred) Carpenter

Preliminary to summarizing the evidence of Carpenter's acts and statements, the issue of his status as respondent's agent will be resolved.

Carpenter was respondent's bookkeeper and timekeeper and one-man office force. He had no assistants, and no employees were subject to his supervision and direction. He had no authority to hire or fire or to recommend either. The General Counsel contends, however, that under the circumstances disclosed by the evidence Carpenter was respondent's agent, having been held out as such by respondent, and that respondent is responsible for the acts and statements attributed to him in the record.

The physical lay-out of the offices and plant and the evidence concerning the operation of a closely affiliated company, the Premier Knitting Mills, are of first significance. It has been shown that Carpenter occupied one of respondent's three offices, the other two of which were occupied by Gilbert and Southerland, respondent's managing officials. Indeed, respondent termed Carpenter's office its "general office" and kept in it, not only its ordinary books and pay-roll records, but also its corporate books and records.[20] Carpenter's office was im-

[20] Although Carpenter testified that the corporate stock book and minute book were kept in a private compartment of respondent's safe to which he did not have access, it seems clear that at least under the surface *indicia* of the arrangement Carpenter was occupying a position roughly corresponding to the office of secretary. Certainly, respondent maintained him in a position of apparent parity with its managing officers.

mediately adjacent to the reception room or office lobby into which the general public and all applicants for employment entered.

Under the physical arrangement, Carpenter met all callers at the plant whose business was either with Joy or with Premier Knitting Mills. Thus, the evidence shows that Premier itself occupied under a separate lease the rear portion of the building which housed Joy's offices and plant; that two doors opened from Joy's premises into Premier's; that the general public, including applicants for employment, customarily used Joy's main entrance which opened into its office lobby, and that Premier's employees used the canteen door entrance used by Joy's employees.

Premier's fiscal affairs were also closely interwoven with Joy's, the controlling stock interests being identical, and all except one director being the same. Though owning no stock in Joy, Carpenter owned 25 percent of the capital stock of Premier, Gilbert and Southerland also owning 25 percent each. Carpenter was president of Premier and in fact acted as its sole managing officer, though Gilbert was treasurer and Southerland was vice president. Premier's official corporate books and records were also kept in respondent's general office and in the same safe which contained respondent's.[21]

Carpenter also performed in the general office all necessary bookkeeping and clerical work on Premier's books and there met callers who had business with Premier, including applicants for employment. Indeed, only Carpenter had authority to hire and fire for Premier. That his authority so to act was known among respondent's employees is established by the testimony of Jean Longrie (not denied by Carpenter) that she accompanied her sister to a conference with Carpenter when the sister had applied to him for a job at Premier, and that she knew Carpenter was the one to ask for a job at Premier. Longrie also testified to observing Carpenter make frequent visits into the Premier plant.[22]

Under the foregoing circumstances, including the physical commingleme nt of accommodations, functions, and fiscal affairs, and the small size of the two establishments (Premier's operations were much smaller than Joy's), the undersigned concludes that respondent's employees had knowledge—indeed, could not escape knowledge—of Carpenter's official position with Premier. Certainly, their knowledge of his power to hire employees for Premier is conclusively established.

Here, then, was a situation in which Carpenter openly exercised not mere supervisory power, but complete managerial control over the affairs of a closely affiliated concern. He was maintained by respondent in an office comparable to those of its managing officers, and under at least surface conditions which otherwise reflected relative parity with them.

Respondent, therefore, placed Carpenter in a position where its employees had every reason to identify him with respondent's own management. That conclusion received support from Carpenter's occasional usurpation of managerial functions and from the use which respondent sometimes made of his services. Illustrative was Carpenter's attempt on the night of September 15 to prevent and terminate what he assumed was interference by Watson, Chapman, and others,

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[21] Carpenter explained again that such records were kept in a private compartment to which he did not have access. No explanation was offered of his failure of access to such records in the light of his position with Premier.

[22] Respondent attaches significance to the fact that Carpenter performed for the employees a number of "menial tasks" such as calling them to the telephone and delivering lunches to them and that he was familiarly called by his first name. However, under the physical and organizational set-up, such duties would necessarily have fallen to the occupant of the general offices. The informality of address was likewise without significance since Russell was similarly addressed; furthermore respondent's evidence establishes that relations between the management and the employees generally were on an informal basis.

with employees who were reporting for and leaving work. Carpenter did not deny the incident nor did he or any of respondent's officers attempt to explain or to justify his usurpation of managerial authority and functions on the occasion.

A further illustration was furnished by Carpenter's attempt to order or invite Moseley to leave the premises on the morning of the election (later referred to in more detail) and his identification of himself with management in the subsequent argument with Moseley outside the canteen.[23] Also of significance was Gilbert's selection of Carpenter as his spokesman in the reading of all three of his statements on all three of the shifts to the employees on October 12 and 18, above referred to. Though Southerland and Russell were both present on all the occasions and though at least the third shift was outside Carpenter's normal hours of duty, no explanation was offered why Carpenter was selected as Gilbert's mouthpiece.

On the evidence in the record as a whole it is concluded and found that respondent held Carpenter out to its employees as its agent, and indeed as a part of its managerial staff, and that to the extent that his acts and his statements to the employees are of a coercive nature they are attributable to respondent. That evidence is now summarized.

(a) *Bessie Chapman* testified that the morning of the election and before she voted Carpenter approached her and requested her to read a newspaper clipping,[24] and she complied. This provoked her to recite an old grievance against the company to which Carpenter replied, "Why, Bessie, I thought better of you" and then cursed the union. Carpenter also quoted Russell to the effect that she was as good an operator as respondent had and told her "you could better yourself down here if you would try." Carpenter concluded the conversation by saying, "I know I can't change your mind, there is no point in me standing here arguing with you," and "I see I can't do anything with you so I will talk with Henry O'Neal."

Carpenter's testimony does not substantially contradict Chapman's account.

(b) *Henry D. O'Neal* testified that in a conversation which he fixed uncertainly as the day before the election, Carpenter approached him at Chapman's machine and asked him, "You didn't tell me which way you were going to vote, for or against the union?"; that when he didn't reply Carpenter at first turned away but came back and asked "you like your job?"

Carpenter admitted having a conversation with O'Neal; that he inquired how O'Neal was getting along since his return to work [after a disciplinary lay-off]; that O'Neal responded that he was doing all right and then voluntarily stated his position as to the union, i. e., that he was trying to make the union people think that he was for the union because they were after him, but in reality he was not for it. Carpenter told him he did not think the employees had anything to gain by having a union and hoped he was not for it.

(c) *Jean Longrie* testified that the morning of the election Carpenter asked her to read the Pegler clipping previously referred to, and she did so, that it related to the president of the American Federation of Labor, and referred to the fact that he had been in prison or had taken money, that Carpenter then remarked that the union was being run by a bunch of crooks and that if the union

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[23] As illustrated by his statement that Moseley had no business "interfering with the operations of *our* plant," and that "before *we* will see the union come in here, *we* will burn the goddamned plant down." [Italics supplied.]

[24] The testimony of other witnesses, including Carpenter, establishes that the clipping was of the Westbrook Pegler column from the Charlotte Observer of October 19. Carpenter admitted that it was a distinctly unfavorable commentary on union leadership, being definitely uncomplimentary to some high union officials.

came in Mr. Gilbert probably would close down the mill and they would both be out of a job and he needed his.

Carpenter admitted asking Longrie to read the article, telling her it was another angle of the union question which possibly had not been presented. After she read it he told her he had found Joy a satisfactory place to work, that he liked it and "did not see any reason for or anything the employees would gain by having a union in the mill."

(d) *Edna Robbins* testified that the day before the election Carpenter came up to her machine and opened a conversation by stating that he was surprised that she was for the union, that her father (who worked elsewhere) was not a union man and that he didn't think she should be a union girl. She hadn't told Carpenter she was for the union and asked him how he knew. He said that rumors had been going around.

Carpenter admitted having a conversation "substantially along the line" of Robbins' testimony. He testified that having known Robbins' father for a long time he did not feel that *the father* would like such activities on the part of his daughter.

(e) *Robert Morris* testified that on the day of the election Carpenter came up to him in the plant and asked him how he was going to vote; that he replied that was his business and he would vote the way he wanted to. After a discussion regarding Morris' feelings towards Southerland and Gilbert, Carpenter told him, "Don't be going around telling people how to vote."

Carpenter did not testify in denial of Morris' testimony. Respondent did, however, confront Morris with a questionnaire he had filled out for its counsel during their trial preparations in which Morris had answered "No" to the following question:

> Have you at any time been questioned by Mr. Gilbert, Mr. Southerland, Mr. Russell, or Mr. Carpenter, concerning your union activities, membership, desires or sympathies: If so, what were the circumstances?

Morris admitted that he had interpreted the inquiry to include conversations concerning voting in the election, but claimed that he had gotten mixed up in answering the question. In his testimony, under oath on the stand, he steadfastly adhered, under cross-examination by respondent's counsel and by the Trial Examiner, to his testimony as above summarized, insisting that it was true.

(f) *Helen Watson* testified that on election day around 11 a. m.[25] Carpenter brought to her machine the Pegler clipping previously referred to. He first stated that he had talked to a good many of the girls and he couldn't seem to do much with them; that he knew it wasn't any use to talk to her but he wanted her to see the clipping. She read it, and after further conversation Carpenter referred to the Byrd incident and stated that if he were in Gilbert's place he would tell some of the employees they could quit if they wanted to. In the same conversation Carpenter told her that "in he office they were surprised to find she was the brains behind the union movement."

Carpenter's testimony included no denial of the foregoing testimony by Watson. He admitted showing her the clipping.

(g) *The election morning incident.* There is no substantial conflict in the evidence concerning this incident which was actually in two segments. The first occurred inside the canteen (the polls) before the opening of the polls, and the other immediately afterwards on the parking lot in front of the plant. Watson, Chapman, Moseley, Gordon Finch (another international representative of the

[25] The third shift voted from 7 to 7 : 30 a. m.; and the second shift from 2 : 30 to 3 p. m. and the first from 3 to 3 : 30 p. m.

union) and Carpenter testified to the occurrences in the canteen and Moseley, Finch, and Carpenter to those outside the plant.

The polls were scheduled to open at 6:45 a. m. and the election was being conducted by Rev. M. V. Shean (referred to throughout as Father Shean) as agent of the Board. Watson had been selected as the union's observer or representative, with Chapman as an alternate, and Carpenter as respondent's observer or representative. Watson met Moseley, Finch, Chapman, and Father Shean at the plant around 6:10 a.m. and in a few minutes Carpenter arrived and let them in the main entrance into the office lobby and they went on into the canteen. The canteen door (the normal employee entrance) had been locked in order to prevent first shift arrivals from interfering with third shift voting, but Moseley, who was there to inspect the voting premises for the union, had not understood the arrangement. In a few moments some of the first shift arrivals having rattled the doorknob, Moseley began inquiring why the door was locked, directing his inquiries to Father Shean. Carpenter heatedly intervened, exclaiming, "Moseley, who are you to tell anyone what to do? You have no damn right in here," taking off his glasses. Carpenter conceded that his remarks, though not an order, were in effect an invitation to leave the premises. Moseley endeavored to justify his presence and Father Shean intervened and broke up further exchanges.

Moseley and Finch immediately left the plant and went to their cars, but Carpenter followed them outside and renewed his argument. He stated that they should get into a decent profession since they were certainly not in one, that they "hadn't any damn business interfering with the operations of our plant" and that they were "just as red as Joe Stalin." After several minutes argument Carpenter also stated, "before we will see the union come in here we will burn the goddamned plant down and throw the key away and the employees here know that we will do it." Carpenter denied only making the last quoted statement. No employees heard the conversation outside the plant and there is no evidence that it was communicated to any of the employees either before or after the election. Watson and Chapman heard the conversation in the canteen.

It will be observed that Carpenter admitted many of the salient facts testified to by the General Counsel's witnesses and that he made no denial of other significant testimony. His unsupported denials of still other portions of such testimony is insufficient to overcome the weight of that of the several witnesses for the General Counsel, who testified to a series of separate but similar acts and statements, all immediately before the election, in which Carpenter was obviously attempting to influence the voting. It is significant also that Carpenter's actions closely paralleled those of Russell, which are next summarized. Cf. *Matter of Macon Textiles, Inc.*, 80 N. L. R. B. 1525. It is therefore, concluded and found that the happenings on the occasions above referred to were substantially as testified to by the witnesses for the General Counsel.

(3) Raymond Russell

(a) *Jean Longrie* testified that on the morning of the election Russell asked her why she had suddenly become interested in the union and she told him she had a right to be. After further conversation Russell added as he left her "I hope you are satisfied."

Russell testified that he did not recall a conversation with Longrie on that day.

(b) *Edna Robbins* testified that the day before the election she walked up to her machine where Russell was talking with Ruth Segars, that Russell then spoke to her saying she was on one side of the fence and that he was on the other and then proceeded to relate some of his experiences as a union member saying among other things that the union didn't do him any good and that all he did

was pay dues. On cross-examination as to the circumstances under which she had answered a questionnaire for respondent's counsel during their trial preparations, Robbins testified that she had answered all questions truthfully. However, no attempt was made to impeach her by confronting her with her questionnaire.

Russell denied making the statement attributed to him. He admitted the incident occurred but testified that he was talking with Segars as Robbins came down the aisle, that it was Segars whose remark was to the effect that Robbins was on the wrong side of the fence, and that he remarked, "Well, everybody has a right to their own opinion." Segars was not called as a witness.

(c) *Henry D. O'Neal* testified that the day after the union meeting at the grammar school (established by other evidence as Sunday, October 17) Russell told him "The way I understand it, you are for the union," and asked him what he thought or how he felt about the union; that he replied that he didn't know, but volunteered that he had gone to the union meeting at the school. Russell then asked him how many were there, and he replied 10 or 12. Russell then told him that if he found out anything more to let him know, and O'Neal agreed to do so.

Russell admitted that a conversation occurred at the time and place fixed by O'Neal but testified that it started by O'Neal volunteering the statement that he had gone to the union meeting and that there weren't many there; that Russell replied, "Is that right?", and that nothing further was said.

(d) *Gwendolyn Beasley* testified that on October 18, Russell questioned her about the union meeting at the school house on Sunday, asking how many were there, what the union promised, and whether the union could give the employees anything he couldn't. She told him she didn't go to the meeting and he wanted to know why. She told him she forgot about it and he said, "Well, there must not have been anybody there, every body I have spoken to said that nobody had been." During the same conversation Russell told her that if the union came in it would take away the relationship between the employees and the respondent, and that the employees would have [to] correspond with the mill through the union; that he was a union member once and never got anything out of it except paid dues.

Russell admitted that he had a conversation with Beasley at the time and place in question, but testified that his inquiry on the occasion was "Are you going to vote in the election tomorrow?", that when she gave an affirmative response he continued, "Well, I hope you have found out all the details because I hope everybody will find out and will find out the good and bad and will vote according to the dictates of their conscience." He added that he didn't approve of the union from his personal standpoint, but she wasn't to be guided by what he thought.

(e) *William Chapman* testified that a day or two before the election Russell asked him if he had made up his mind about the way he was going to vote. Chapman replied that he had, and Russell said he "hoped it was made up the right way." Russell also said that he had been in the union and didn't like it and didn't think it did any good and that "You can't leave the union to become a foreman." Russell added that he "had a raise coming up" for Chapman, but if the union came in it might delay it and he might not get it.

Russell testified that he had no recollection whatsoever of such a conversation.

(f) *Vonceil (Hendrix) Holloman* testified that she had more than one conversation with Russell a few days before the election but was unable to state the exact number. Insofar as pertinent to the issues her testimony as to the

conversations may be summarized as follows: Russell told her some of his experiences as a member of a union, said that it wasn't any good and that he wished she was on his side of the fence. He asked her if she went to the union meeting on Sunday night; he told her that if the employees voted for the union the union couldn't make them lose their jobs but that she might lose her shift [i. e. through rotation]; that the mill was giving the employees a vacation and the union couldn't say they would give it to them. On cross-examination she admitted that during all the conversations he informed her she could vote as she pleased and she added "then he told me [the union] didn't do him any good." She denied that she had asked Russell what would happen if the union came in and that she was afraid of losing her shift because of lack of seniority.

Russell testified to a single conversation with Holloman, his account being as follows: that Holloman herself brought up the subject of a shift rotation and inquired whether if the union came in she would be replaced by an employee with more seniority. He replied that he didn't know, but that Mr. Gilbert had promised a vote on shift rotation and so far as he knew the mill would be guided by the result.

(g) *Lois Gainey* testified that when interviewed on her application for a job in December 1948,[26] Russell told her he was going to need a few girls and would keep her in mind. Then he asked her what she thought of a textile union and she said she didn't know enough about unions to express her mind one way or the other. She was hired shortly thereafter. Russell did not testify to the incident. Respondent in its brief concedes that Gainey's testimony is accurate.

In most of the above instances Russell admitted the fact of a conversation, but in each case, according to his version, he avoided any statement of a coercive nature. He admitted expressing in some instances his personal views and his opinion as to the union. Russell testified that he had received instructions from Gilbert and from respondent's counsel not to threaten or interrogate employees or otherwise to pry into union activities, but that he was not informed what he could say about the union and that "I was advised that anything I said would be of my own personal opinion."

It will be seen that six employees testified to a series of separate incidents, all of the same general character, occurring on the day of the election or shortly prior thereto. Significant also is the fact that Russell's anti-union activity closely paralleled the course of action pursued by Carpenter. In view of all the circumstances it is concluded and found that Russell either misunderstood his instructions or chose to interpret them too literally, and that his testimony is inadequate to overcome the preponderant weight of the combined adverse testimony. It is therefore concluded and found that the incidents occurred substantially as testified to by the General Counsel's witnesses.

(4) H. P. Southerland

(a) *Jean Longrie* testified that shortly before the election Southerland talked with her in the shipping room and informed her that if he wanted to improve her job he could not do so without the consent of the union if the union came in.

Southerland denied that such a conversation occurred.

(b) *Minnie Lee Gainey* testified that on the night the Gilbert letters were read on her shift (October 18) Southerland asked her if she was going to vote for or against the union. She told him she didn't know. He then asked if Emma Gray Gainey (her sister-in-law) had told her how to vote and she replied, "Emma Gray hasn't told me what to do."

[26] For convenience this incident is treated here, together with the incidents which preceded the election.

Gainey was a very nervous witness and appeared to become easily confused even by relatively simple questions. Her testimony on cross-examination was somewhat confused as to the circumstances under which she had answered a questionnaire for respondent's counsel during trial preparations, and as to the manner in which she had answered question No. 15 thereon. That question read as follows:

> Have you at any time been questioned by Mr. Gilbert, Mr. Southerland, Mr. Russell, or Mr. Carpenter concerning your Union activities, membership, desires, or sympathies? If so, state what were the circumstances?

Gainey could not recall independently how she had answered the question, and when shown the questionnaire she could read only a portion of the answer, although other portions are legible. The first answer, "No," had been stricken out and below it the following answer appeared:

> On one occasion Mrs. Soughtherland as me "or you going to join the Union" I said I don't know, and nothing more was said by any of us.

Her answer, though varying somewhat from her testimony, does reflect an effort on her part (probably the best effort of which she was capable) to furnish respondent's counsel with the information they were seeking.

Southerland admitted the fact of a conversation, that it arose in the manner testified to by Gainey, but testified that his inquiry was whether she was "going to vote in the Union-Company election in the morning." Though he got no answer he continued "I hope you do" and added "Did Emma Gray tell you whether she was going to vote in the election or not?"

It is concluded and found that on the occasion in question Gainey was confused by and misunderstood the questions which Southerland put to her, and that Southerland's efforts and inquiries were limited to "getting out the vote" rather than attempting to influence it.

(5) William Outlaw

Outlaw is 19 years of age and had been in respondent's employ about 3 years. Originally he was a machine operator but later became (and remained) a machine fixer. In that job he repaired and adjusted machines, oiled machines, and sometimes operated machines. During September and October 1948, his assignment was in the twisting room on the second floor on the first shift. There are only three employees who operate the twisters on each shift. Outlaw's base pay is the same as that of all production employees, his only increases resulting from tenure. A large majority of the production and maintenance employees earn a higher rate than Outlaw because of longer tenure. He had no authority to hire or fire or to recommend either; he has never made reports to his supervisors because of the quality or quantity of the work of other employees and is not supposed to. He was solicited to join the union, though his vote was challenged by the union at the election.

General Counsel's contention that Outlaw was a supervisor was based mainly on testimony that Outlaw had on various occasions given orders to employees operating the twisters, had "directed" one or more of them to go down to vote in the election, and had "counted ends." The latter operation consisted of counting on the machines three times during his shift the ends of yarn which were not running and recording the count on a sheet of paper under the machine operator's name.

The preponderance of the evidence is clearly to the effect that respondent did not inaugurate the practice of counting ends until after the election and until after

the occurrence of the incidents in which Outlaw was allegedly involved. Furthermore, it is found that the function was purely a nondiscretionary one of keeping a production record, and that a similar function was performed in other departments by nonsupervisory employees.

Nor is the evidence as to the giving of orders adequate to establish that Outlaw had authority "responsibility to direct" other employees. The evidence does establish that on some occasions Russell used Outlaw to transmit directions to the twisters on the second floor.[27] Also, when it became necessary to shut a machine down for repairs Russell himself notified the operator to cease tending it and, after the repairs were made, that it was ready for her to resume tending it. The undersigned finds that the evidence as a whole does not support the testimony of the General Counsel's witnesses that Outlaw gave orders or that they took orders from him, certainly not in the sense that Russell had authority "responsibility to direct" them. Cf. amended decision *Matter of The Ohio Power Company*, 80 N. L. R. B. 1334.

Another significant consideration is that there was no apparent necessity in respondent's small organization for the creation of a supervisory position over three employees; indeed this would seem to have led to three separate supervisory posts—one for the three twisters on each shift. Such disproportion of supervisors over rank and file employees is a persuasive circumstance. *Matter of The Ohio Power Company, supra.*

The Board's recent decision in *Matter of Inman Mills*, 82 N. L. R. B. 735, affords *a fortiori* authority. There it was held that "section men" in a textile mill who did mechanical work only from 25 to 64 percent of their time, who were responsible for maintaining proper quantity and quality of production on the machines they supervised, and who received a 25 to 30 cent an hour differential over employees in their section, were not supervisors within the meaning of the Act.

It is concluded and found that Outlaw did not occupy supervisory status. It is therefore considered unnecessary to summarize the evidence of acts and statements attributed to him.

Concluding Findings

While many of the statements made by Gilbert, Carpenter, and Russell on the various occasions as above recounted fell within the bounds of permissible free speech, it is concluded and found that the following statements and inquiries were coercive:

(a) The announcement or promise of rest periods at respondent's expense, contained in the Gilbert statement of October 12, and Gilbert's promise after the reading of his statements on October 18, that he would start shift rotation if a majority of the employees voted for it.

The undersigned concludes and finds that said announcements and promises of benefits because of their significant timing were calculated directly to affect the decision of the employees on the issue of union representation. *Matter of Macon Textiles, Inc.*, 80 N. L. R. B. 1525; *Matter of Agar Packing & Provision Co.*, 81 N. L. R. B. 1262. Cf. *Matter of Craddock-Terry Shoe Corporation*, 82 N. L. R. B. 161; *Matter of Hinde & Dauch Paper Co.*, 78 N. L. R. B. 488. For the presentation of economic benefits to employees to have them forego collective bargaining is a form of pressure and compulsion no less telling in its effect on employees because

[27] Such occasions would necessarily have been infrequent since Outlaw's employment on the first shift was at a time when Russell was also in the plant, and the evidence shows that Russell made frequent visits to the twisting department.

benign. *Matter of Hudson Hosiery Company*, 72 N. L. R. B. 1434. Interference is no less interference because it is accomplished through allurement rather than coercion when it is employed to stem a tide of organization. *Western Cartridge Company* v. *N. L. R. B.*, 134 F. 2d 240 enfg, 44 N. L. R. B. 1, cert. denied 320 U. S. 746. This does not mean, of course, that an employer is foreclosed from announcing or granting economic benefits during a union's organizational campaign. What is unlawful under the Act is employer's granting or announcing such benefits (though previously determined upon *bona fide*) *for the purpose* of causing the employees to accept or reject a representative for collective bargaining. *Matter of Hudson Hosiery Company, supra.* It is found that the announcement or promise of paid rest periods was reasonably calculated to have that effect, and that respondent thereby engaged in interference, restraint, and coercion in violation of Section 8 (a) (1).

It is not found that Gilbert's reference to paid vacations was coercive since that benefit had been granted on the employees' demand during their earlier concerted activities and prior to the advent of the union's representatives and prior to any representation question.

The undersigned also rejects the General Counsel's contention that the other portions of the Gilbert statements (see page 13, *supra*) were of coercive effect because of an implied threat that the advent of the union would affect their wages adversely and an implied threat not to bargain with the union. It is found to the contrary that the statements in question do not imply such threats. Similarly, the statement from which the General Counsel implies that the respondent would not agree to a union shop is found not to constitute an anticipatory refusal to bargain concerning the union security issue as contended. Cf. *Matter of Tygart Sportswear Company*, 77 N. L. R. B. 613, and cases cited, footnote 2.

(b) The inquiries by Carpenter as to how employees would vote in the election and as to their union membership, views, and attitudes; his threat that Gilbert probably would close the mill if the Union came in; and his implied threat to O'Neal that his job would be affected by his vote (cf. *Matter of Atlantic Stages*, 78 N. L. R. B. 553).

It is not found that Carpenter's circulation of the anti-union clipping, his cursing of the union, or his vilification of union officers or representatives constituted coercion. *Matter of Union Screw Products Co.*, 78 N. L. R. B. 1107; *Matter of Kelco Corporation*, 79 N. L. R. B. 759; *Matter of Atlanta Broadcasting Co.*, 79 N. L. R. B. 626; *Matter of C. Pappas & Co., Inc.*, 82 N. L. R. B. 765; *Matter of U. S. Trailer Mfg. Co.*, 82 N. L. R. B. 112. Neither is it found that his implied invitation to Moseley to leave the voting premises was coercive, though made in the presence of two employees, nor his later statement to Moseley and Finch on the parking lot that "we will burn the plant down," etc. There is no evidence that the latter statement was communicated or intended to be communicated to the employees. *Matter of M. Snower & Company, etc.*, 83 N. L. R. B. 290, citing *Matter of Parkside Hotel*, 74 N. L. R. B. 809.[28]

(c) The inquiries by Russell as to employees' interest in, views toward, and membership in the union and as to how they intended to vote in the election; his inquiries as to union meetings and activities and his solicitation of employee assistance in obtaining such information; his implied threat that an employee would not receive a contemplated increase if the union came in; his implied threat that if an employee voted for the union, she would lose her

[28] But see *Matter of Arton Studio*, 74 N. L. R. B. 1158, 1163; and *Matter of Piedmont Wagon & Mfg. Co.*, 79 N. L. R. B. 967.

shift; and his questioning of an applicant for employment as to her union views.

It is not found that Russell's other statements were of a coercive effect nor that Southerland's remarks to Longrie were coercive.

It is therefore concluded and found that by the acts and statements set forth in paragraphs (a), (b), and (c), *supra*, respondent engaged in interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act.

e. The refusal to bargain; concluding findings

It has been found that the union made a request for recognition and a request to bargain. It has also been found that as a condition precedent to granting these requests, respondent was entitled in good faith to insist upon the establishment of the union's majority in the manner it selected. Having consented to an election, however, as the appropriate means of satisfying its doubts, respondent was under the correlative obligation to permit and to abide by its employees' free choice of a representative as it existed at the time of the union's request for recognition and not to attempt to defeat such choice by any form of interference, restraint, or coercion. *Matter of Prigg Boat Works*, 69 N. L. R. B. 97, 123. But respondent's acts of interference and coercion on October 12, 18, and 19, as herein found, demonstrated that whatever doubts it had previously entertained were no longer genuine, that it no longer had reason to believe the union's claim of a majority was untrue (cf. *Matter of John Deere Plow Co., of St. Louis*, 82 N. L. R. B. 69), and that it sought to evade its obligation to recognize and to bargain with the union.

If its good faith had continued, respondent would certainly have either refrained from such acts of interference or have notified the union that it would no longer insist on the consent election and that it was ready to bargain. For notwithstanding its initial *bona fides*, respondent could no longer be heard to say that it entertained an honest doubt as to the union's representative status after it set about the commission of acts which rendered impossible of fulfillment the very condition precedent which it had imposed i.e., the demonstration in a free election of the union's claim of a majority. Cf. *Matter of Consolidated Machine Tool Corp'n.*, 67 N. L. R. B. 737, enfd as modified, 163 F. 2nd 376 (C. A. 2); cert. den. 332 U. S. 824.

Under these circumstances the election result affords the respondent no defense (Cf. *Matter of D. H. Holmes Company, Ltd.*, 81 N. L. R. B. 753) since to the extent that the election showed a defection in the union's support, such defection was attributable to the respondent's unfair labor practices and is therefore not a bar to a remedial order in this case. (*Ibid*, and cases cited, footnote 11.) The clear majority which the union enjoyed as early as September 16, has therefore continued unabated; and it is found that the union has at all times since that date remained the exclusive bargaining representative of the employees in the appropriate unit.

It is concluded and found that by its said acts respondent on October 12, 18, and 19, 1948, and since, refused to bargain collectively with the union as the exclusive representative of its employees in an appropriate unit and thereby deprived its employees of the rights guaranteed by Section 7 of the Act.

4. *Trial preparations by respondent's counsel; interference, restraint, and coercion*

It was stipulated at the hearing that the complaint should be deemed amended to provide for findings on the question whether certain prehearing preparations

of respondent's counsel constituted violations of the Act. The facts were stipulated as follows:

Counsel for the respondent, on or about March 10 and 11, 1949, submitted a questionnaire to a substantial number of respondent's employees employed during the months of September and October 1948. Counsel prepared the questionnaire in the course of preparation and investigation of the facts alleged in the complaint. Before preparing the questionnaire respondent's counsel called the Board's Regional Director in Atlanta by telephone and informally requested the Chief Law Officer of the Region for a more definite statement of facts in order to prepare respondent's defense in the hearing. This request was refused whereupon respondent's counsel filed a motion for a more definite statement on the same basis and also filed its answer. The motion was referred to the Trial Examiner and was granted in part but the requested information was not furnished respondent under the Trial Examiner's order until the morning of March 22, 1949, at the start of the hearing.

The questionnaire was submitted to and answered by the employees of the respondent under the following circumstances:

They were interviewed in the canteen in groups of from four to eight employees on company time. Counsel introduced themselves by name to the employees and advised them that they represented the company as attorneys. They told the employees the purpose of the questionnaire which was to be given them was to enable counsel to prepare the company's defense in the hearing that was to take place on March 22. The employees were advised that the filling out of the questionnaire was completely voluntary and that there would be no reward, no promises, threats, or coercion of any kind connected with the filling out of the questionnaire. They were advised that they were free to leave the canteen at that point even before the questionnaires were handed to them. They were advised that they could omit the answer to any question or all of the questions after reading them over. They were asked not to answer any question if they didn't understand it thoroughly.

They were requested to ask counsel concerning the meaning of any words, phrases, or statements which were contained in the questionnaire that they did not understand. They were requested to answer each question truthfully if they answered it and to state the facts whether they thought them unfavorable to the company or not. They were requested not to compare answers to the questionnaire among themselves, to give independent answers in accordance with the facts as each understood them to be. They were requested not to answer questions by conjecture and to state only facts of which they were certain.

They were advised that they had a right to engage in union activities prior to the election, and for that matter at the present or any time in the future. They were also told that the company had no right to interfere with their union activities in any manner.

At that point the employees were asked whether all the foregoing statements were clear to each of them and whether any of them had any questions to ask concerning their rights in connection with the filling out of the questionnaire. Counsel then read each question aloud and asked each employee if the question was clear to him. Thereupon, each employee filled out his questionnaire independently and without assistance of counsel.

Each employee signed each page of the questionnaire and the certification at the end of the questionnaire to the effect that the answers were given voluntarily. The signature of each employee was witnessed by another employee who was present at the time the questionnaire was signed. Each employee was requested to read the questionnaire and his answers over again before finally giving the questionnaire to the respondent's counsel.

After the questionnaires were filled out each employee was again advised of the purpose of the questionnaire and asked whether he understood his answers thereto were voluntary. After the employees finished reading the questionnaire they were requested to ask other employees in their departments to come into the canteen in groups of four and five employees, and they were asked or told by the supervisors to go down to the canteen which they did.[29]

The questionnaire contained 28 questions including a number which the General Counsel and the union contended at the hearing were outside the scope of the issue framed by the pleadings, exceeded the permissible scope of trial preparations, and constituted an unfair labor practice.

The questions objected to were as follows:

5. Have you ever signed a card in connection with Union activities?

6. What was the nature of the card?

7. What did you consider to be the purpose of signing the card?

8. Did you consider yourself a member of the Union when you signed the card?

9. At the time you signed the card, did you pay any money for membership or other fees in the Union?

10. Did you agree to the future payment of any membership, initiation or other fees to the Union?

13. Did you terminate your connection with the Union at any time after you signed a card?

14. If so, for what reason did you terminate your connection with the Union?

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the Union to represent you and without any fear or threats as to your job and future with the Company, and without being influenced in any respect by promises of future benefits by the Company?

25. Did you consider that those speeches or the statements and notices posted on the bulletin board were threats or promises of benefits to influence your vote against the Union?

Respondent relies on the Board's decisions in the *Matter of N & W Overall Co., Inc.*, 51 N. L. R. B. 1016; *May Department Stores Co.*, 70 N. L. R. B. 94; and *F. W. Judge Optical Works, Inc.*, 78 N. L. R. B. 385. In the first two cases the Board held that an employer is privileged to interview employees for the purpose of discovering facts within the limits of the issues raised by a complaint, where the employer or its counsel does so for the purpose of preparing its case for trial and does not go beyond the necessities of such preparation to pry into matters of union membership, to discuss the nature or extent of union activities, to dissuade employees from joining or remaining members of a union, or otherwise to interfere with the statutory right of self-organization.

The main questions here are whether the information elicited was within the scope of the issues raised by the complaint, and if not whether the inquiries, under the circumstances in which they were made, constituted interference, restraint, and coercion.

It is true that the allegations of the complaint are along broad and general lines and that respondent's counsel was unable to procure from the Regional Director a voluntary particularization thereof. However, it seems clear that at least some of the questions to which the General Counsel objects were clearly

[29] There is no evidence that any of respondent's officers or supervisors were present during the interviews.

outside the scope of the material issues. This is particularly evident in those which sought information as to the payment of membership or other fees and as to any agreement to the future payment of such fees and as to those which probed only for such purely subjective matters as the employees' understanding of the purpose and of the effect of the cards, his reasons for terminating his connection with the union (if he had done so) and whether he had voted freely in the election.

It has been held that signing an application for membership implies authority to bargain [30] and that neither membership in nor payment of dues to a union is determinative of statutory authorization. *Consolidated Machine Tool Corporation* v. *N. L. R. B.*, 67 N. L. R. B. 737, 739; enforced 163 F. 2d 376; cert. den. 332 U. S. 824; and that the testimony of a signer as to his subjective state of mind at the time of signing cannot operate to overcome the effect of his overt action in having signed an application. *Ibid.*, and see *Matter of The Nubone Co., Inc.*, 62 N. L. R. B. 322; *Wright-Hibbard Industrial Electric Truck Co., Inc.*, 67 N. L. R. B. 897, 906; *Phillips Transfer Co.*, 69 N. L. R. B. 493. Under these holdings the inquiries sought evidence which was plainly extraneous to the issues.

The same is true as to the inquiry whether the employee had voted freely in the election without threats, fear, promises, etc., from the company. *Matter of Pure Oil Co.*, 73 N. L. R. B. 1, 3, and cases cited in footnote 4; *Matter of G. H. Hess, Inc.*, 82 N. L. R. B. 463; *Matter of Dixie Shirt Co.*, 79 N. L. R. B. 127. There is of course no issue in the present proceeding as to the validity of the election. That issue was one raised on the union's objections filed in the representation hearing and disposed of by the Regional Director on his order setting the election aside. No reason, therefore, appears for counsel's exploration or probing of the subjective state of the employees' minds at the time of voting.

Furthermore, the inquiries postulate the erroneous test whether the employee was in fact influenced by any of respondent's promises, threats, etc. The true test is, of course, not whether the employee actually felt intimidated or coerced but whether the employer engaged in conduct which it may reasonably be said tends to interfere with the free exercise of employee rights under the Act. *N. L. R. B.* v. *Ford Brothers*, 170 F. 2d 735 (C. A. 6) and cases there cited; and see *Matter of G. H. Hess, Inc.*, *supra*, and *Matter of Pure Oil Co.*, *supra*.

Aside from seeking evidence on immaterial issues, it is also noteworthy that an important distinction between the inquiries sustained by the Board in the cases cited by respondent [31] and those now presented, is that those which were upheld sought evidence of purely objective facts whereas the present inquiries are concerned chiefly with probing the employee's subjective state of mind.

What has already been said disposes of the point whether the inquiries under all of the circumstances constituted interference, restraint, and coercion. That they do is conclusively established by repeated Board and judicial decisions. The fact that the employees were fully advised that they were free to answer and of the purpose for which the inquiries were being put does not dissipate the clearly coercive nature of inquiries which explored their past, present, and future relations with their duly selected bargaining agent. See cases last above cited. It is therefore found and concluded that by the inclusion in the questionnaire of ques-

[30] It has been found that on two occasions the union offered to agree to a cross-check of its membership cards and that respondent declined both offers.

[31] The *Judge Optical Works* case is also distinguishable on the fact that the questionnaire was submitted to *former employees*.

tions Nos. 7, 8, 9, 10, 13, 14, 21, and 25, respondent engaged in interference, restraint, and coercion within the meaning of Section 8 (a) (1) of the Act.[32]

The effect of the unfair labor practices upon commerce

It is found that the activities of the respondent set out in Division III hereof, occurring in connection with the operations of the respondent described in Division I hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent Joy Silk Mills, Inc., has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act (61 Stat. 136), the undersigned will recommend that it cease and desist therefrom and that it take certain affirmative action in order to effectuate the purposes of the Act.

It having been found that from October 12, 1948, and thereafter respondent has refused to bargain collectively with United Textile Workers of America, AFL., as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with said union.

It having been found that the respondent has engaged in certain acts of interference, restraint, and coercion, it will be recommended that the respondent cease therefrom.

It has been found that the respondent engaged in a variety of unlawful acts which interfered with the free choice by its employees of their bargaining representative, and that such acts were resorted to for the deliberate purpose of enabling respondent to evade its obligation to bargain collectively with such representative in an election to which it had consented. Because of the respondent's unlawful conduct and the underlying purposes manifested thereby, the Trial Examiner is of the opinion and finds that there is a danger of the commission of other and additional unfair labor practices. Therefore, in order to effectuate the guarantees of Section 7 of the Act, it will be recommended that the respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization. See *May Department Stores* v. *N. L. R. B.*, 326 U. S. 376.

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

CONCLUSIONS OF LAW

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

2. All of respondent's production and maintenance employees at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, consti-

[32] In view of the allegation in the complaint that the union has continued to represent a majority of the employees in the unit, it is not found that the inclusion of questions 5 and 6 constituted interference or coercion.

Respondent's counsel impliedly conceded that questions 13 and 14 may have been improper, since after 7 employees had been interviewed, they struck those questions from the questionnaire.

tute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since September 16, 1948, United Textile Workers of America, AFL, has been and now is the representative of a majority of the employees of the respondent in the unit above described, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on or about October 12, 1948, and at all times thereafter to bargain collectively with United Textile Workers of America, AFL, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

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

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record of the case, the undersigned recommends that the Joy Silk Mills, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Textile Workers of America, AFL, as the exclusive representative of all its employees in the unit heretofore found appropriate with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Textile Workers of America, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with United Textile Workers of America, AFL, as the exclusive bargaining agent of all its employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its Hartsville, South Carolina, plant copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by respondent's representative, be posted by respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region (Atlanta, Georgia) in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps respondent has taken to comply herewith;

It is further recommended that unless, on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 27th day of May 1949.

GEORGE A. DOWNING,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees

WE WILL NOT refuse to bargain collectively with UNITED TEXTILE WORKERS OF AMERICA, AFL, as the exclusive representative of all employees in the appropriate unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED TEXTILE WORKERS OF AMERICA, AFL, or any other labor organization, 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.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described

herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees at our plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act.

All our employees are free to become or remain members of this union, or any other labor organization.

JOY SILK MILLS, INC.,
Employer.

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.