

In the Matter of C. A. REED COMPANY *and* DISTRICT No. 50, UNITED  
MINE WORKERS OF AMERICA

*Case No. 4-C-1323.—Decided October 30, 1943*

DECISION

AND

ORDER

On September 17, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint, and recommending that the complaint herein be dismissed, as set forth in the copy of the Intermediate Report annexed hereto. No exceptions to the Intermediate Report have been filed, and no request has been made for oral argument before the Board. The Board has considered the Intermediate Report and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exception:

The Trial Examiner has found, and we agree, that McKay, Tallman and Robbins do not occupy supervisory positions and that the respondent is not responsible for their activities in connection with the formation of the Association. In reaching this conclusion, we take into account the fact that the Board's agents and District 50, in the consent election agreement, included McKay, Robbins, and Tallman among the employees eligible to vote in the election, but we do not thereby decide that this of itself and under other circumstances would absolve the employer from responsibility for the union activities of the employees in question.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint issued herein against the respondent, C. A. Reed Company, Williamsport, Pennsylvania, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*Mr. Eugene M. Purver*, for the Board.

*Mr. Joseph C. Gallagher*, of Pittsburgh, Pa. for District 50.

*Condor, Youngman & Gibson, Esqs.*, of Williamsport, Pa., by *Mr. John C. Youngman*, for the respondent.

*Mr. Joseph M. McNerney*, of Williamsport, Pa., for the Association.

#### STATEMENT OF THE CASE

Upon a charge duly filed on April 16, 1943, by District No. 50, United Mine Workers of America, herein called District 50, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated July 6, 1943, against C. A. Reed Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notices of hearing thereon, were duly served upon the respondent, District 50, and Crepe Paper Workers Association of Williamsport, Pennsylvania,<sup>1</sup> herein called the Association.

With respect to the unfair labor practices, the complaint alleges in substance that: (1) the respondent (a) engaged in surveillance of certain of its employees who were actively engaged in behalf of District 50; (b) ridiculed and maligned District 50; (c) discriminated against John Carey and deprived him of privileges previously accorded him, because of his activities on behalf of District 50; and (2) the respondent, commencing in January 1943 and continuing down to the date of the issuance of this complaint, caused to be formed, interfered with, and dominated the formation and administration of the Association.

On or about July 10, 1943, the respondent filed its answer in which it admits certain facts as to its corporate organization and the nature of its business, but denies that it engaged in any of the unfair labor practices alleged in the complaint. The answer avers that in its relations with the Association, the respondent acting in compliance with Section 9 (a) of the Act, merely dealt with the Association as a group of employees who were presenting grievances.

Pursuant to notice, a hearing was held in Williamsport, Pennsylvania, on August 12, 13 and 14, 1943, before the undersigned, Charles E. Persons, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Association were represented by counsel, and District 50 by a union official. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties.

At the opening of the hearing, the Association moved to intervene. This motion was granted without objection, such intervention being limited to participation in matters which affect the intervenor. At the close of the Board's presentation in chief, the respondent moved to dismiss the complaint as a whole, and as to specified paragraphs, for failure of proof. The Association joined in this motion as to the paragraphs with which it had concern. These motions

<sup>1</sup> The complaint carries the name The Crepe Paper Workers Association of the C. A. Reed Company. The record corrects this as here stated.

were denied. At the close of the hearing, the respondent and the Association renewed these motions. They were taken under advisement, and are at this time, after consideration of the record, granted to the extent indicated by the findings, conclusions and recommendations set forth below. The Board moved to conform its pleadings to the proof as to names, spellings, and addresses. This motion was granted without objection. At the conclusion of the hearing, the parties were notified that they might participate in oral argument before the undersigned. All parties waived oral argument. The parties were duly advised that they had the privilege of presenting briefs for the consideration of the Trial Examiner. The respondent presented such a brief on or about August 25, 1943.

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 COMPANY<sup>2</sup>

C. A. Reed Company is a corporation organized in 1925 under the laws of the State of Delaware. It maintains its principal office and plant at Williamsport, Pennsylvania, where it manufactures, sells and distributes crepe paper, paper napkins, covers, plates, and cups, and rayon parachutes. The principal raw materials purchased by the respondent for use in its business are cardboard, semi-crepe paper, tissue paper, dyes, glue and rayon fabrics. During the year ending April 30, 1943, the respondent purchased approximately \$1,367,000 worth of such raw materials, of which about 85 percent were shipped to it from sources outside the State of Pennsylvania. During the same period the respondent produced approximately \$3,043,000 worth of finished products. Of these approximately 85 percent were shipped from its plant in Williamsport to points outside the State of Pennsylvania. The respondent admits that it is engaged in interstate commerce within the meaning of the Act.

##### II. THE ORGANIZATIONS INVOLVED

District No. 50, United Mine Workers of America, and its Local No. 12,286, are labor organizations admitting to membership employees of the respondent. Crepe Paper Workers Association of Williamsport, Pennsylvania, is an unaffiliated organization whose membership is confined to employees of the respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background

The record reflects no union activity in the respondent's plant before July or August of 1942. At that time District 50 began an organizational campaign. On November 16, 1942, two representatives of District 50: Peter J. Schneider and one Higgins, met with the respondent's Board of Directors. John C. Youngman, counsel of record for the respondent, was present. The union representatives complained that respondent's foremen had intimidated some of the employees. They requested that a notice be posted on the respondent's bulletin board assuring the employees that "they had the right to choose their own union and choose who they wanted to represent them in the union."<sup>3</sup>

<sup>2</sup> These findings are based on a stipulation of the parties incorporated in the record, and on allegations in the complaint admitted by respondent in its answer.

<sup>3</sup> Quoted from the testimony of A. H. Stockwell, vice president and treasurer for the respondent.

The Board of Directors acceded to this request. A notice was composed by Youngman in conformance to the union representatives' expressed wishes, immediately typed and posted. It read as follows:

NOTICE TO EMPLOYEES OF C. A. REED CO.

Under the Wagner Labor Act, you have the right to self organization, to form, join or assist labor organizations and to bargain collectively through representatives of your own choosing. The question of whether an employee shall or shall not join a union is up to that individual employee.

(Signed) C. A. REED Co.,  
C. A. Reed,  
*President.*

On the same day the respondent's supervisory employees were called together in the company office.<sup>4</sup> Passages from the Act were read to them and they were positively instructed not to interfere in union activities. A. H. Stockwell, vice president and treasurer of the respondent, testified regarding the instructions then given as follows:

We discussed with them the importance of not interfering at all with any of the union activities. That they were to keep out of it and not even answer any questions, and if anything came up about questions that needed to be answered they were to take it up with us in the office.

Q. In other words, the foremen were instructed to keep their mouths shut?

A. That is right.<sup>5</sup>

Night Foreman Robert Hutchinson was not present at the meeting. However he, as well as Harold Fisher, who was promoted to be foreman about January 1, 1943, were given similar instructions by Superintendent Edward G. Knights. Their testimony at the hearing clearly indicated that they had apprehended and remembered the instructions transmitted.<sup>6</sup> Testimony given by other foremen who were present, clearly indicates that this order had been effectively transmitted.

On January 6, 1943, the respondent and District 50, under the supervision of agents from the Board's 4th Regional Office, entered into an Agreement for a Consent Election. The parties agreed upon a definition for an appropriate unit. An eligibility list based upon the respondent's pay roll for January '4,

<sup>4</sup> The parties stipulated that those present were: Foremen James Smith, R. J. Mingle, Freeman Stroup, A. D. Logue, Floyd Bartlett, Sherman Bricker, William Snyder, Robert Cummings, Ralph Chamberlain, and Conrad Woerner; Assistant Foreman Joseph Havilck; and Ethel A. Tallman, Margaret A. Smith and Harold Fisher, whom the respondent did not consider to be either foremen or assistant foremen. Tallman is listed on the January 4, 1942, pay roll as a supervisor, Margaret Smith as a floorlady and Fisher as foreman of the cup department. It is in evidence that Fisher's elevation to foreman was subsequent to this foremen's meeting.

<sup>5</sup> Superintendent Knights corroborated this testimony.

<sup>6</sup> Hutchinson's testimony on this matter reads as follows:

I was not present at that meeting but I knew there had been a meeting, and I went to our superintendent when I came in that night and asked him what it was all about, and he gave me the substance of what it was. He told me that I shouldn't discriminate in any way, not talk for or against the union, inside the shop or outside.

Fisher's testimony was of similar import:

Well, right after I had been appointed foreman in the cup department Mr. Knights came to me and told me that I should understand that I should not take no part in any union activity, and not to discuss it with any of the help or participate in any of the union activities at all.

1943, was drawn up. The listing of those "not eligible to vote" indicates that respondent's officials, foremen, assistant foremen, employees in the Planning Department, the sales force and clerical employees were excluded from the appropriate unit. The election was held on January 20. Of the 531 employees eligible to vote, 488 cast ballots. Ten were challenged, and one ballot was void. Of the 477 ballots counted, 194 were cast for District 50 and 283 against. No objections were filed to the Regional Director's report of this election result.

*B. The alleged domination and interference with the formation and administration of the Association*

The complaint alleges that the respondent did:

(a) In or about January, February and March 1943, assist in the formation of the Association;

(b) Extend unlimited time and unlimited use of the plant facilities during working hours to representatives of the Association in order to solicit membership therein;

(c) Permit the circularization of a petition for the formation of the Association during working hours and on respondent's property;

(d) Accord to the Association recognition as exclusive bargaining agent without requiring proof of designation by a majority of respondent's employees while denying same to the Union.

These allegations are hereinafter discussed seriatim.

(a) The only basis for the Board's charge that the respondent assisted in the formation of the Association is found in the attempt to prove that certain employees influential in its formation were supervisory in character. The earliest activity leading to the formation of the Association occurred very soon after the consent election. Doren Wilson, a die block cutter, in conference with George Strunk,<sup>7</sup> a napkin machine operator, and Barton Lorah,<sup>8</sup> an order checker, decided that "rather than to pay anything to any outside interests, we would rather have an Association of our own." As Wilson testified, these employees "developed it from then on." They were joined by Joseph S. Johnston, a printer, and Ethel A. Tallman. Tallman arranged that the group meet with Joseph M. McNerney, counsel of record for the Association in this proceeding. In addition to those named, Henderson Robbins, who "serves and supervises a conveyer line," was present. McNerney's services were retained. Under McNerney's advice it was decided to circulate a petition to determine the strength of sentiment in favor of an independent organization and to hold a public meeting at the Court House on February 4, 1943.

Those present at McNerney's office gave notice of this initial meeting "by word of mouth." At the meeting James R. MacKay,<sup>9</sup> who is listed on the respondent's pay roll of January 4, 1943, as a laborer, gave the opening address. He had been invited to do so by Tallman. A considerable number of memberships were secured. Officers were elected. Johnston became president; Lorah, vice president, and Lovdie Welsh, who is the only employee listed in the respondent's Art Department, became secretary-treasurer. A grievance committee composed of Tallman, Wilson and Robbins was also elected. Bylaws were later printed which provided for monthly meetings of the Association.<sup>10</sup> An initiation fee of one dollar and annual dues of the same amount were established.

<sup>7</sup> Strunk's name is at times erroneously reported in the transcript as Strump.

<sup>8</sup> Sometimes carried in the transcript as Lohr.

<sup>9</sup> Sometimes incorrectly reported as McCay in the transcript.

<sup>10</sup> Such meetings were held in Wilson's dance studio.

The Board contends that Tallman, Robbins and MacKay are supervisory employees and that their activities, in connection with the promotion of the Association are ascribable to the respondent. During the campaign for membership in District 50, both Tallman and Robbins were solicited to join that organization. The three employees are all on the eligible list set up for the consent election. All three voted. MacKay's vote was challenged by the watcher for District 50.

MacKay, who had been employed by the respondent for not quite 9 years, leads the "bull gang" which loads and unloads trucks and cars, handles heavy paper rolls, and cartons and places them in their appropriate storage rooms in the plant. He has one, two, or three assistants, as the work in hand makes necessary and he directs them while at work. MacKay is at all times engaged in physical labor himself. His pay exceeds that of his assistants by a "very small difference." He has no authority to hire or to discharge or to recommend such action. The work which he directs requires considerable physical strength and, at times, he suggests to Superintendent Knights that men assigned are not husky enough for work on the "bull gang." MacKay was not summoned for the foremen's meeting on November 16, 1942.

Tallman has been in the employ of the respondent for 23 years. As supervisor, she gives out and collects the work of a group of about 10 employees who work on favors. She assigns jobs, keeps track of the work in hand and is responsible for its orderly completion. She works under the supervision of Foreman A. D. Logue, who exercises all authority to hire or discharge the workers and hears complaints about the character of the work assigned. There is also an instructor, Ruth Eddinger,<sup>11</sup> who directs the employees in the accomplishment of their various tasks and inspects the finished work. When the giving out and collection of work does not require all of Tallman's attention, she works on the favors. She may be so employed in slack times for several hours a day. She is paid 57 cents an hour. The employees under her supervision work at piece rates and under the Federal Fair Labor Practices Act are guaranteed 40 cents an hour. As stated above, Tallman attended the foremen's meeting on November 16, 1942. She did so on a telephoned direction which she understood was transmitted by a girl in the office. Later Knights told her that her attendance was not necessary and the direction given her was a mistake.<sup>12</sup> Tallman has no authority to employ or to discharge or to make recommendations affecting employment or discharges. However, she is in duty bound under her assignment to report to her superiors "any incompetency or wrong attitude." Superintendent Knights testified that he might consult her as the person best informed, in regard to the capabilities of persons in her group.

Robbins' duties in servicing and supervising the conveyor line on the second floor require him to report a half hour earlier than the group of 10 or more employees for whom he provides materials and removes finished work. He gives these employees work and "tells them what to do."<sup>13</sup> But he has no authority over their employment status beyond reporting to Foreman R. L. Miller, in case a given employee seems unfitted for work on the conveyer, that he "don't think the girl will ever make out." Stockwell characterized Robbins as a "servicer." He described his duties as follows: "He brings work to the girls, gets them labels and wrappers, and all that sort of thing, and keeps them supplied with materials." Robbins is paid 73 cents an hour. The employees on the conveyor line

<sup>11</sup> Incorrectly recorded in the transcript as Ruth Ettinger.

<sup>12</sup> Tallman so testified. Knights testified that he did not remember giving her this explanation. However, he further stated, "I would say, if she testified to that, I did."

<sup>13</sup> Robbins so testified.

are piece workers and have the same guaranteed hourly wage as the Tallman group. Robbins was not called to the foremen's meeting on November 16, 1942.

Under this description of the duties of MacKay, Tallman and Robbins the undersigned concludes and finds that each of them does not have "authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action."<sup>14</sup> It is accordingly found that their duties are not supervisory in character and that their acts in connection with the formation of the Association are not ascribable to the respondent.

Further the undersigned finds that action of representatives of District 50 and of the respondent in making an agreement for a consent election, with the active cooperation and approval of agents of the Board, has significance here. The parties agreed upon an eligibility list which included MacKay, Tallman and Robbins. The respondent contends that District 50 and the Board are bound by such action.<sup>15</sup> It is the Board's established practice to effectuate agreements in the formulation of which its agents have participated providing these agreements are not breached by subsequent unfair labor practices on the part of the respondent.<sup>16</sup> As appears in the recommendation herein the undersigned finds that the respondent has not invalidated the agreement by such acts. Under circumstances somewhat similar to those in the instant proceeding, the Board recently said:

On May 7, 1941, a representative of the Board affirmed the understanding between the Union and the respondents and permitted shift foremen to vote in the consent election held on that date . . . We agree . . . that the shift foremen are, clearly supervisory employees whose interference with the self organization of subordinate employees is attributable to the respondents . . . Since the respondents' failure to maintain neutrality in this respect was due in substantial measure to the advice and agreement of a Board agent, we are of the opinion that it would not effectuate the policies of the Act, to make findings of violation of the Act, or to issue an order against the respondents, based upon the conduct of the shift foremen. . . .<sup>17</sup>

By accepting MacKay, Robbins and Tallman as eligible voters for the consent election, the Board and District 50 recognized their right to participate in union activities. Their leadership in the formation and administration of the Association thereafter may not be assailed.

(b) Proven instances of the solicitation of memberships in the Association during work time are few in number. James Burkholder, a mechanic whose duties took him throughout the plant, testified that "around February" 1943 he saw Wilson near the Motto Paster machine on the third floor. Wilson

<sup>14</sup> See *Matter of Boston Edison Company and Utility Workers Organizing Committee, C. I O Local 224*, R. 4988-9, 51 N. L. R. B. 118.

<sup>15</sup> In Knights' testimony, he was asked whether in his estimation the question of Tallman's supervisory status was settled by setting up the eligibility list and answered: "It had been considered and agreed on at that time." In presenting a motion to dismiss the complaint, counsel for the respondent said:

. . . The persons who formed the Association were not supervisory employees, and even if they were, the union, District 50, would be estopped from complaining about it, since they actively represented that they were not supervisory employees in agreeing that they should vote and in having similar classes of employees, such as Calvert and McCabe become active for District 50 and were permitted to vote.

<sup>16</sup> See *Matter of Shenandoah-Dives Mining Company and International Union of Mine, Mill & Smelter Workers Local No. 26*, 11 N. L. R. B. 885, and *Godchaux Sugars Inc., and Sugar Mill Workers' Union, Locals No. 21177, and No. 2188 A. F. L.*, 12 N. L. R. B. 568

<sup>17</sup> *Matter of Armour Fertilizer Works Inc et al and International Union of Mine, Mill & Smelter Workers, CIO*, 46 N. L. R. B. 629.

collected a dollar from a girl employee and gave her a "slip of paper." She refused to let Burkholder see this paper on his request. Another girl employee showed him a receipt reading "Received one dollar," and signed by Wilson. Burkholder could identify neither of these employees. However, he testified that the second employee on showing her receipt told him: "They were paying for the Union." Wilson operates a dance studio. He testified that while in the plant, employees whose children attended his classes, frequently gave him money to cover his fees. On such occasions he gave them a receipt. In view of the indefiniteness of Burkholder's testimony and the complete lack of direct proof as to the character of the payment made by the first unidentified girl employee, the undersigned credits the explanation given by Wilson.

Matthew A. McCabe, an electrician and president of District 50's local No. 12,286 in the respondent's plant, testified that on February 19, 1943, he saw an employee, identified as Caroline Padvona, supervisor of hat making and style machines, give Wilson during work hours a number of bills and a little black book which "looked like a receipt book." McCabe assumed that this incident represented the transmission of Association dues. As McCabe testified: "I just got sore because I saw they [Association members] were allowed to do things that we were not allowed to do." He protested to Assistant Foreman Havilick, who said nothing to McCabe. However, Havilick's testimony is that he questioned Padvona after McCabe had left, and was told that the money "was [war] savings money or stamp money." Padvona was collector of such funds in the hat department and had turned over to Wilson, monies resulting from the Thursday, February 18, pay day collection. It is in evidence that the handling of such matters in work time was regarded as legitimate. After considering the evidence, the undersigned credits the testimony of Havilick and finds that McCabe was mistaken in inferring that Padvona was collecting Association dues.

"On another occasion, in February 1943, McCabe saw Betty Fry, a desk girl in the cup department, hand Winnetta Fox, an order checker, a book "that looked like a receipt book." McCabe inferred that these employees were transacting Association business and called Foreman Harold Fisher's attention to the matter. McCabe testified that "he [Fisher] didn't say anything. He just walked away and let it go at that." Fisher testified that he kept silence because he had been instructed to do so by Superintendent Knights. However, he later questioned Fry who explained that Fox gave her a "credit union book to take downstairs and get checked, when I go down the next time." When Fisher persisted asking: "you are sure it wasn't no union activities?" Fry showed him the credit union book. On this evidence the undersigned concludes and finds that McCabe was mistaken in his inference that Fry and Fox were transacting Association business.

Again on February 17, 1943, between 3:30 and 3:35 McCabe, as he testified, was shown by Charles Greenabaum,<sup>28</sup> an elevator operator, a receipt for Association initiation fees, signed by Tallman. McCabe was able to fix the time with great exactitude, because he made a note of the occurrence at the time. Since Greenabaum told McCabe he had "just joined," McCabe concluded that he had been solicited during work time. Tallman testified, however, that Carl Renninger, a storekeeper, had given her Greenabaum's dollar during the noon hour, asking that she hand in the money that night. Tallman did so and next day gave Renninger a receipt, signed by herself, made out to Greenabaum. In these circumstances, the undersigned finds no proof either that Greenabaum was solicited or that he paid money to the Association, during work time.

<sup>28</sup> At the time of the hearing Greenabaum had left his employment with the respondent. He was not called as a witness.

· Hobert Bricker, who operates a crepe paper machine, and has been in the employ of the respondent for over 20 years, testified that in "the fore part of May" 1942, Lorah "came up to [his] machine" and had a conversation with him. Bricker fixed the time as between 8 and 8:30 in the morning, i. e., during work hours. Lorah inquired if Bricker "cared to become a member of the Paper Workers Association." Bricker asked if "the company had any objections to an organization of that kind." Lorah assured him they had not and showed a letter with the signature C. A. Reed, "stating that they [the respondent] were granting vacations with pay." The letter was headed: "To the Crepe Paper Worker's Association of the C. A. Reed Company." The details of a plan for vacations were set forth, and it was stated that approval by the War Labor Board must be secured before the plan became operative. Lorah was in the hearing room during Bricker's testimony but was not called to the stand. The undersigned accordingly credits the testimony of Bricker. Although Foreman R. J. Mingle was in the crepe department during this conversation and Knights passed through, neither of these supervisors was in a position to overhear the conversation or to observe what took place between Bricker and Lorah. The conversation lasted "probably ten minutes."

Burkholder testified that Robbins said to him during working hours: "We are going to have to form a company union. We will get a petition and bring it around to sign." Burkholder further testified that during the lunch period, Robbins "asked me if I wanted to sign it, [the petition] to form a company union." Since Robbins' testimony only denied that he had ever asked Burkholder to join the Association and signing the petition did not establish membership, the undersigned credits Burkholder's testimony. Floyd Blair, a napkin printer, gave uncontradicted testimony that Robbins asked him to join the Association. Blair fixed the time as "about six weeks after the election" and during working hours. Robbins assured Blair that Knights were favorable to the Association.

The record makes clear that employees in the respondent's plant exercised an unusual measure of freedom of movement and actions. Reasonably brief conversations between employees were not ordinarily interfered with by the supervisors. Under such circumstances these three instances of solicitation for the Association shown to have occurred during working hours, but not within the observation of supervisors, do not involve the respondent in Association activities. Moreover, several uncontroverted instances of solicitation in favor of District 50 during working hours, which the undersigned credits, and finds it unnecessary to set forth, were entered on the record.<sup>19</sup> Respondent's officials, Knights and Stockwell, and various of its supervisors testified positively that their treatment of the advocates of District 50 and of the Association was exactly similar and guided by the instructions given to the foremen on November 16, 1942. Under these circumstances, the undersigned finds no evidence in the record which supports the Board's allegation that the respondent extended "unlimited time and unlimited use of its plant facilities during working hours to representatives of the Association in order to solicit membership therein." He finds that the respondent maintained an attitude of neutrality, and that the treatment of the contending unions was impartial.

<sup>19</sup> Carey admitted that he had "talked union there on the company property and the company time." It is further in evidence that Carey on two occasions, during work time, solicited the membership of Walter Pacacha.

(c) The Association's petition, so called, is a 10-page, legal backed, securely bound document.<sup>20</sup> Competent testimony, credited by the undersigned, states that it was never unbound and circulated as separate sheets. It contains the signatures, with addresses, of over 250 employees of the respondent. Both Robbins and Tallman testified that the petition was never circulated in work hours.<sup>21</sup> Evidence to the contrary, for the most part, rests on inferences. Thus McCabe testified that he saw Fry have what "looked like several pieces of type writer paper." Fry, in work hours and with these papers in hand, took five or six individual employees into that rest room. McCabe admitted that he did not see the papers clearly and that it "might have been anything." Later McCabe saw Tallman talking with Robbins both before and after dinner. On the second occasion, during work time, Robbins took "several sheets of paper" that "looked very similar to the papers Miss Betty Fry had" and talked to girls on the conveyor line. McCabe did not overhear these conversations and admitted that "they may have been talking about anything at all." On being asked, McCabe testified that he did not notice a legal back on the papers. Burkholder also testified that both Wilson and Robbins had "one of these petitions" during February about 2 weeks after the election. Burkholder described the petition as a piece of paper about 2 feet in length, "that had four leaves on it" some of which were turned back. He further testified that, while Wilson had it, he "saw a couple of women signing it." The time was fixed as during work hours around 10 o'clock. Burkholder admitted that he did not overhear the conversation between Wilson and the two women employees, and stated "the only thing I know it looked like the other paper."

Blair testified that he saw Tallman, 3 or 4 weeks after the election, give Robbins "three or four sheets of paper." After lunch Robbins talked to Ralph Shirey, a machine operator. Blair saw Shirey write on the sheets. Later Robbins took the paper and "talked to the girls on the scallop press." Blair could not identify these employees beyond stating that the first name of one was "Lib." When asked: "Have you any idea what those papers were?" Blair answered: "Only that the girls said that he was trying to sign them up for the Association."

Tallman testified relative to her conversations with Robbins:

I never went down to talk to him for Association business. I did go down when his wife would ask me to give him a message, or I went down for materials on the floor, and he would come to the door, and if I had anything to tell him, any message, that was the conversation.

Robbins corroborated this testimony.

Wilson's testimony contains an adequate explanation, credited by the undersigned, concerning the papers which he and others were seen circulating. His testimony was as follows:

I have gone around the factory, in different parts of the factory, sometimes four or five or six times the day through, and on this paper I have the girls

<sup>20</sup> This document reads as follows:

We the undersigned, employees of the C. A. Reed Company of Williamsport, Pennsylvania by signing our names hereon express our desire to form an Association for the purpose of joining ourselves together so that we may have unity of thoughts and action as a group in matters pertaining to our working conditions, wages, and labor relations generally with our employer. The adding of a signature hereto is a voluntary act and any signer if he so desires, may withdraw from the Association either before it is formed or after it is formed.

<sup>21</sup> This is corroborated by Burkholder's testimony that Robbins asked him to sign the petition during the lunch hour.

write to the boys who have left the factory for the service. Sometimes they write their names and say, "Hello, Jack," or something, and sign their names. That happens very often.

Wilson further explained that these service men's letters were circulated throughout the plant. They began as three or four loose sheets of paper about 15 inches long. The number of pages was increased as the length of the messages required. The undersigned finds no proof in the record to substantiate the Board's allegation that the respondent permitted the circulation of the Association's petition during working hours and on respondent's property.

(d) The Board relies on two matters to substantiate its allegation that the respondent recognized the Association as exclusive bargaining agent without requiring proof of designation by a majority of respondent's employees. First, the respondent notified the Association Grievance Committee of its decision as to vacations soon after April 13, 1943, while the employees generally were not notified until June 7, 1943. Second, the Association committee did not negotiate for their members only but sought concessions applicable to all employees.

The first contact between the respondent and the Association was by a letter dated March 18, 1943, which McNerney wrote under instructions from the Association. He informed the respondent of the existence of the Association and further stated:

The membership of the Association is made up of employees of the Company; its purpose is to protect the interests of employees in the matter of wages, hours of working, safety, sanitation, and other working conditions.

On March 24 McNerney wrote again asking an appointment on March 25 for representatives of the Association "for the purpose of bringing up certain matters concerning their employment with your company." Three conferences were held on dates between March 25 and April 13 not exactly fixed in the record. The members of the grievance committee, Tallman, Wilson, and Robbins, represented the Association. Stockwell and Knights<sup>22</sup> for the respondent met with them.

At an Association meeting on March 22, 1943, as the minutes of the meeting record, the grievance committee was instructed to present these matters:

1. Vacation to all employees who have worked at C. A. Reed for six months or over . . .
2. Notification of employees by foremen of the prospect for work on the following day. Anyone presenting themselves for work and receiving none should be given three hours pay or work equivalent to that pay.
3. Seniority rights Older employees should be given preference in replacement jobs over newer employees. They should be given at least a month to adjust themselves to new conditions.<sup>23</sup>

All participants in the three conferences were called as witnesses in the hearing. All agreed in testifying, and the undersigned finds, that the respondent did not recognize the Association as exclusive bargaining agent for its employees during the conferences. It will be noted that McNerney's letters did not advance claims of majority membership. Stockwell inquired as to the extent of the Association membership and was told "it was something like 240 or 260." Since the consent election eligibility list carried 531 names the number stated did not

<sup>22</sup> These two officials had been appointed by the respondent's Board of Directors to deal with District 50 at a time when the respondent anticipated that that union would win the consent election. On receipt of the Association's letters, President C. A. Reed asked them to meet with that organization's representatives

<sup>23</sup> Quoted in part only.

represent a majority. It is clear that the Association representatives never claimed a majority.

Stockwell's testimony as to the basis on which the discussions were carried on is as follows:

When they came in to discuss some of the grievances they had, I emphasized quickly and promptly that we could not recognize them as the sole bargaining agency for all the employees in the factory. They would have to get permission to have a vote, and up to that time we just considered them ordinary employees that had certain grievances that they wanted to have corrected.

Each of the matters advanced by the Association was discussed at the conferences. The respondent took definite action, however, only on the first request. The Association had asked for a schedule of vacations as follows:

Six months, to one year, three days with pay; one year to five years, one week with pay; five years and over, two weeks with pay.

After discussion and consideration the respondent sent the following statement to each member of the grievance committee:<sup>24</sup>

TO THE CREPE PAPER WORKERS ASSOCIATION OF THE C. A. REED COMPANY

The Board of Directors of the C. A. Reed Company have approved the following plan for vacations with pay for our employees. Eligibility for vacation will be determined on the basis of employment ending April 30 in any year.

Vacation Plan

	<i>Employees</i>
1 to 3 years.....	101—3 days or 24 hours.
3 to 10 years.....	129—1 week or 40 hrs.
10 years and over.....	86—2 weeks or 80 hrs.
	—
Total employees.....	316

Approval of this plan by the National War Labor Board must be obtained in order to make it operative.

This approval has been requested by letter April 13, 1943.

Approved by the Board of Directors.

C. A. REED,  
*President.*

On June 7, 1943, a bulletin was posted, addressed "To Our Employees" and stating:

We have received word from the National War Labor Board that our request for vacations with pay for factory employees, . . . has been approved as of April 30, 1943.

After detailing the plan as above, the bulletin concludes with the statement:

Within the next few days a schedule showing those who are entitled to vacations will be available for each employee.

In the issue of the plant paper REEDer for June 15, 1943, which is given to all employees, appeared a statement relative to vacations. Like the bulletin, this news item made no mention of the Association.

<sup>24</sup>This is the statement used by Lorah in soliciting members for the Association as discussed above.

Respondent's action in these matters followed advice from its counsel of record. He had been asked generally what the respondent's "rights and duties [were] with respect to an independent union in your factory representing a minority of your employees, or in any event an independent union not certified as representing a majority of your employees." The respondent was warned that the union must be in fact independent and not "a Company union." The final paragraphs of the letter read as follows:

So long as this independent union has not been certified to represent all of your employees, you are not required to bargain with it but you are required to receive from any individual employee or group of employees grievances.

Any agreement which you might make with the independent union shall not be binding upon employees who are not members of the independent union. You would be required to extend to all of your employees the benefits which you grant unto the members of the independent union.

While the Association representatives were received as a group presenting grievances, they regarded themselves, as the statement of their demands indicates, as seeking concessions for all the employees. Moreover, Robbins, at least, understood that all three of their demands were granted. He testified positively as to seniority rights that they were presently in effect in the plant. As to pay for employees who reported and found no work he testified that the employees would get this but added, "I don't believe we have had any cases like that." Robbins' understanding is reflected in the Association's minutes for April 2, 1943, which state that employees reporting and finding no work were to be given "four hours pay or work equivalent" and that the seniority rights demand had been accepted by the respondent. Stockwell's testimony gives some support to this understanding. When asked: "Did you do anything about the seniority request?" he answered: "We have never posted any notice on it, but we have had it under consideration, just how to handle it." Regarding the pay-for-no-work grievance he testified as follows:

Well, we had a sort of practice at times that some of our employees would come in the factory in the morning and there wouldn't be any work for them, and the Company wouldn't pay them, and this grievance committee asked if there could be some correction made on this matter, and we said we would give it some consideration. I don't know if that has been corrected as yet, although there isn't anybody being sent home and, not paid. We generally keep them working.

On this statement of facts the undersigned concludes and finds that the respondent in its relation with the Association did not recognize it as the exclusive bargaining representative of the employees. While the vacations granted were extended to all employees this action was not only in accord with the advice given by its attorney, but was dictated by practical considerations of plant administration. Manifestly employees of equal lengths of service could not be granted or denied vacation with pay on the basis of their membership or non-membership in the Association.

More doubt attaches to the act of the respondent in giving advance notice to the Association on April 13, 1943, when its Board of Directors decided to grant vacations with pay. The letters sent to the members of the Association's grievance committee, found their way into the hands of advocates of the Association and became effective talking points in the solicitation of membership. McCabe gave uncontroverted testimony, credited by the undersigned, that he first learned of the vacation plan when shown copies of this letter by Betty Fry

in the cup department and by Florence Fritz, a checker in the parachute department. Stockwell and Knights in their testimony disclaimed any intent to harm District 50 or benefit the Association by their action. The respondent contends that "the only proper thing to do was to inform those who had presented the grievances" of the action taken.<sup>25</sup> The action taken was explained as affording desirable protection in case the ruling of the War Labor Board was unfavorable. After the favorable decision of that agency, the vacation plan was published to all employees on the respondent's bulletin board and a notice printed in the REEDer on June 15, 1943. These announcements simply stated that the respondent had determined to grant vacations on a specified schedule and gave no credit to the Association. The undersigned finds the correctness of the respondent's procedure in sending advance notice to the Association agents addressed to the Association at large, not free from doubt. After consideration of the entire record, he does not find in this incident proof of the allegations in the complaint.

After considering all evidence in the record bearing upon the issue, the undersigned finds that the respondent did not dominate and interfere with the formation and administration of the Association and recommends that so much of the complaint as concerns this allegation, be dismissed.

*C. Alleged acts of interference, restraint, and coercion*

Burkholder testified that about a week before the consent election he saw four or five cards carrying the word "NO" on Foreman Stroup's desk. These cards had been worn by employees of the second and third floor who were opposed to District 50. They were made of two kinds of paper stock used in respondent's operations in Stroup's department. Burkholder who had been called to the vicinity of Stroup's desk to repair a machine testified that he saw Stroup "bumping his fist" on the cards "as though he was pasting them." Burkholder reported the occurrence to McCabe on the same day during work hours. Foreman Stroup was called as a witness by the respondent and testified in a straightforward, credible manner. He stated that on complaint that the wearing of the "No" badges in the plant constituted discrimination against District 50, Superintendent Knights ordered him to see that they were gathered up. Stroup did so. On inspecting his department later he found "two or three or four or five" of the badges on the tables. He placed these on his desk for a day and then threw them in the scrap box. The cards were gathered up on the same day that they appeared in numbers. Stroup testified, and the undersigned credits his statement, that he knew nothing about the manufacture of the cards. The undersigned finds the contention of the Board that the respondent incurred responsibility for the "No" cards through acts of Foreman Stroup to be without merit.

Blair testified that during the week before the election he wore his District 50 button in the plant. About 3 days before the consent election he wore in the plant a ribbon with the word "Committee" printed on it. About 10 minutes after he went to work Blair observed Foreman Miller and Assistant Foreman Llewellyn Winner standing about 6 or 8 feet from his machine. Blair testified that he heard Miller say to Winner: "I see Blair is wearing one of those damn things." Miller specifically denied that such a conversation took place, and insisted that he had at all times obeyed the instructions given him at the foremen's meeting of November 16, 1942. He quoted the instruction in part as "to keep my mouth absolutely shut on anything I heard or said [saw]." Winner testified that he had seen Blair wear the committee ribbon. However, he also specifically denied

<sup>25</sup> See respondent's brief page 13.

that Miller made the remark which Blair ascribed to him. Winner also displayed accurate knowledge of the instructions given on November 16. After considering the evidence, the demeanor of the witnesses and the entire record, the undersigned credits the testimony of Miller and Winner.

Blair further testified that on the same shift, i. e., from 4 to 12 p. m., he had a conversation with Night Foreman Hutchinson as follows:

He asked me what I thought it was going to get me by joining the union and I told him what we were trying to accomplish and he said he guessed that is about all he better say, because he was not allowed to talk about the union . . . He said that wages were frozen, and he didn't see what good it would do to try to get the union.

Hutchinson specifically denied having made each of the statements quoted above. However, he admitted that on one occasion when he was looking at Blair's ribbon, Blair said: "Well, what do you think about it?" Hutchinson then said: "Well, I am not allowed to say anything." Without resolving this conflict of testimony, the undersigned sees in this incident evaluated at its worst, no more than an isolated instance of violation by a supervisory official of positive instructions, the import of which the official admittedly had in mind. He finds no proof here that the respondent was responsible for an effort "to ridicule and malign the Union."

The complaint alleged that the respondent did in and about January, February, March, and April 1943, spy upon and engage in surveillance of certain of its employees who were actively engaged on behalf of District 50. The only evidence to support this allegation is found in testimony by John Carey, a crepe paper collator and shipping room employee. Carey joined District 50 in mid-September 1942, and thereafter wore a union button in the plant and was active in District 50's campaign. He was elected vice president of the local, was a member of the District 50 committee when the consent election agreement was worked out, and served as a watcher for District 50 at the election. He testified that he had customarily left the shipping room without getting permission until about a week before the election. At that time his foreman, William Snyder, instructed Carey to ask for permission before leaving the floor. Three or four days before the election Carey had occasion to go to the fourth floor for some crepe paper. As Carey admitted, the paper was "needed immediately." When he reached the crepe paper department on the fourth floor, Foreman James Smith told him that Snyder had called on the phone to inquire if he (Carey) had arrived. Both Smith and Snyder corroborated Carey's testimony in substance. Snyder explained: "Now this particular time I was waiting on a certain kind of goods that I had sent him for, and he stayed overtime, and I called to see what became of him." After considering the evidence the undersigned finds no significance in this incident beyond the execution of normal administrative routine.

Carey testified, and the Board alleged, that he had been discriminated against after the consent election in the distribution of overtime. When confronted with the respondent's overtime records, Carey admitted that he had been mistaken in his testimony. The Board during the hearing agreed that there was no discrimination on Carey as to overtime.<sup>20</sup>

<sup>20</sup> The record reads:

Mr. YOUNGMAN: "Well, will the Board agree that there was no discrimination on Carey as to overtime?"

Mr. PURVER: "Yes."

Carey further testified that just before the election he was subjected to an unusual measure of supervision and restricted in his freedom of action to a discriminatory degree. Carey's testimony, in point here, reads as follows:

Before the election I was made to stay right there, but prior to that if anybody would come along I would be allowed to talk to them or walk over and talk to somebody that was working on something else, but just before the election I was told to stay and talk to nobody, and when they stopped to talk to me Mr. Snyder was right there to see that I didn't talk to them, and if I was some place else he would come over to me and tell me to get back where I belonged.

Foreman Snyder specifically denied that he had so treated Carey. He admitted that "there had been a little hearsay—just a little remark passed," about Carey's union affiliation. Snyder denied, however, that he had made any effort to prevent Carey from engaging in legitimate union activities. The undersigned, after considering the evidence, and the demeanor of the witnesses, and remembering in this connection Carey's admission,<sup>27</sup> that he talked union on company time, finds no proof in this incident that Carey was discriminatorily treated.

Carey testified also that in contrast with his work before the consent election when he was exclusively occupied in collating crepe, he had been required after the election to perform various onerous tasks. His testimony reads as follows: "Well, whenever there was odd jobs to be done around there, I was placed on them, whether it was heavy or whether it was light . . . I was required to band export orders and work on the shipping floor and unload trucks and load them and collate the other orders and stuff around the shipping room." He added, in response to a question, that he was also required to sweep the floor. His foreman, Snyder, denied that any change had been made in his duties, saying, "He practically done the same thing." Snyder testified that each of the employees was expected "if we slowed up a little" to do any kind of work including sweeping the floors. Carey was reemployed in September 1942 after a period of absence from the respondent's plant. Since the holiday season is a period of heavy movement of orders succeeded by a relatively slack season after New Years, it is normal to expect some readjustment of job assignments in the shipping room during January. The undersigned credits the testimony of Foreman Snyder and finds no discriminatory treatment of Carey because of his union membership and activity.

After consideration of the record, the undersigned recommends that so much of the complaint as alleges that the respondent was guilty of acts of interference, restraint, and coercion, be dismissed.

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. The operations of the respondent, C. A. Reed Company, occur in commerce, within the meaning of Section 2 (6) of the Act.

<sup>27</sup> Carey under cross-examination testified:

Q. Now you were very active at that time [just prior to the election] on the part of the union, were you not?

A. I was.

Q. Now you would not deny, would you, that you talked union there on the company property and the company time, would you?

A. No, I wouldn't deny that I talked it.

2. District No. 50, United Mine Workers of America, its Local No. 12,286, and Crepe Paper Workers Association of Williamsport, Pennsylvania, are labor organization within the meaning of Section 2 (5) of the Act.

3. The respondent has not interfered with, restrained, or coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) of the Act.

4. The respondent has not dominated or interfered with the formation or administration of Crepe Paper Workers Association of Williamsport, Pennsylvania, or contributed financial or other support to it, within the meaning of Section 8 (2) of the Act.

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the Board's complaint issued under date of July 6, 1943, be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2, as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report 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 four copies of a brief in support thereof. As further provided in said Section 33, 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 the order transferring the case to the Board.

CHARLES E. PERSONS,  
*Trial Examiner.*

Dated September 17, 1943.