

In the Matter of BAILEY METER COMPANY *and* MECHANICS EDUCATIONAL SOCIETY OF AMERICA (CUA)

Case No. 8-C-1465.—Decided November 18, 1943

DECISION

AND

ORDER

On September 27, 1943, the Trial Examiner 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 from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Oral argument, in which only the respondent participated, was held before the Board in Washington, D. C., on November 4, 1943. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's brief and exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the exceptions and qualifications noted below:

1. The Trial Examiner found, and we agree, that the respondent engaged in a course of conduct violative of Section 8 (1) of the Act. As part of this conduct the Trial Examiner considered the statement of Superintendent Sutherland to employee Baldwin, about 4 days before the election of February 3, 1943, that "working" in the plant would not be as pleasant if the Union should win the election, and the statement of Foreman Whitely to employees Ferraiuolo and Chekemian, on the occasion of their inquiry several days after the election as to why they had not received wage increases, that they had "stuck out" their necks. We find that Superintendent Sutherland's statement before the election constituted a direct threat of economic reprisals should the employees disregard the respondent's wishes and vote for the Union; and that Foreman Whitely's statement, after the Union had lost the election, indicated that such reprisals were being

effected for past activity in behalf of the Union, and would continue to be effected against employees engaging in further attempts at self-organization. These coercive statements, coupled with the respondent's other acts and conduct, as set forth in the Intermediate Report and adopted herein, demonstrate clearly the coercive nature of the respondent's whole course of conduct.

2. Contrary to the Trial Examiner, we find that Works Manager Barnes' refusal, after the Union had lost the election, to entertain the request of the committee of employees to establish a grievance procedure for members of the Union only, and his further refusal to discuss grievances with a committee other than one composed only of employees of the respondent, did not constitute an attempt by the respondent "to induce its employees to forego further efforts to secure unionization"; nor, in our view of the case, do we deem it necessary to consider and make any finding with respect to Foreman Zappala's remarks to employee Hunter, made in response to the latter's inquiry of Zappala.

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 respondent, Bailey Meter Company, Cleveland, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Post immediately in conspicuous places in the respondent's plant at Cleveland, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

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

INTERMEDIATE REPORT

Mr. John A. Hull, Jr., for the Board.

Spieth, Taggart, Spring & Annat, by *Mr. L. C. Spieth* and *Mr. Paul H. Keough*, of Cleveland, Ohio, for the respondent.

Messrs: William L. Brooker and William Bullock, of Cleveland, Ohio, for the Union.

STATEMENT OF THE CASE

Upon amended charge duly filed on June 14, 1943, by Mechanics Educational Society of America (CUA), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint, dated August 2, 1943, against Bailey Meter Company, Cleveland, Ohio, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent had interfered with, restrained, and coerced its employees by: (1) questioning its employees with respect to their union membership, and ordering and directing its employees to engage in espionage among their fellow employees; (2) warning its employees that selection of the Union as their collective bargaining representative would be detrimental to them, and making derogatory and disparaging remarks about the Union; (3) urging, persuading, and warning its employees to vote against the Union in a consent election conducted by the Board on February 3, 1943; (4) promising wage increases to its employees prior to the election and attributing the failure of certain employees to receive promised wage increases to their union membership and activity; (5) attempting to discourage membership in or activity on behalf of the Union after the said consent election by ridiculing and deriding the Union and its members; and (6) questioning employees as to whether they had talked with and given sworn statement to agents of the Board.

On August 17, 1943, the respondent filed its answer¹ in which it denied that it had engaged in the unfair labor practices alleged, and in addition set forth certain affirmative averments by way of defense.²

Pursuant to notice, a hearing was held at Cleveland, Ohio, on August 19 and 20, 1943, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its attorney and its representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing, the respondent moved to dismiss the complaint with respect to allegations of unfair labor practices committed prior to the consent election conducted by the Board on February 3, 1943. The motion was denied. At the close of the Board's case and at the conclusion of the hearing, the respondent renewed the motion to dismiss which it had made at the commencement of the hearing and further moved to dismiss the remaining allegations of the complaint. Rulings on these motions were reserved. The motions are hereby denied. At the conclusion of the Board's case and again at the conclusion of the

¹ Counsel for the Board conceded at the hearing that no question was being raised with respect to the time within which the answer had been filed.

² The respondent pleaded by way of affirmative defense that the Board was estopped from proceeding in the present case by reason of the fact that certain of the acts alleged in the complaint as unfair labor practices had occurred prior to the consent election conducted by the Board on February 3, 1943, and that no objections based thereon had been filed in connection with the certification of the result of said election.

hearing, counsel for the Board moved to conform the complaint to the evidence adduced at the hearing, insofar as formal matters were concerned. At the conclusion of the case, respondent made a similar motion with respect to the answer. These motions were granted. The parties were granted an opportunity, which they waived, to present oral argument before the undersigned at the close of the hearing. All parties were afforded an opportunity of filing briefs with the undersigned. On August 27, 1943, the respondent filed a brief with the Trial Examiner. Neither the Board nor the Union filed a brief.

On September 3, 1943, counsel for the Board and for the respondent entered into a stipulation to correct certain errors in the transcript of testimony. On September 8, 1943, the undersigned issued an order directing that the corrections be made pursuant to the foregoing stipulation.

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

Bailey Meter Company, a Delaware corporation having its principal office and place of business in Cleveland, Ohio, is engaged in the manufacture, distribution, and sale of meters and automatic control apparatus for power plants, industrial plants, and ships. All of the respondent's stock is owned or controlled by Babcock & Wilcox Company, New York City, and General Electric Company, Schenectady, New York. During the year 1942, raw materials³ purchased by the respondent were valued in excess of \$200,000, and approximately 40 percent of such raw materials were secured from points outside the State of Ohio. During the same period, the respondent's sales of its finished products amounted to a sum in excess of \$3,000,000, and approximately 90 percent of such finished products were shipped to points outside the State of Ohio.⁴ The respondent is engaged almost entirely in war work. It employs a total of approximately 450 persons. The respondent admitted at the hearing that it was engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Mechanics Educational Society of America, affiliated with Confederated Unions of America, is a labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Chronology of events

On January 21, 1943, the Union filed a Petition for Investigation and Certification of Representatives in the Regional Office of the Board located in Cleveland, Ohio.⁵ On January 27, the respondent and the Union entered into a consent election agreement. Pursuant to the agreement, an election was held on February 3, 1943, and the report on the results of the election was issued by the Regional Director on February 8. The report showed that the Union lost the

³ Such raw materials include iron, steel, brass, monel, nickel aluminum, and mercury.

⁴ The foregoing facts are based on a stipulation entered into at the hearing between counsel for the respondent and for the Board.

⁵ Regional Case No. 8-R-1027.

election by a vote of 204 to 184. Thereafter, the Union initiated proceedings in this case upon filing charges, as above noted.⁶

B. *Interference, restraint, and coercion*

1. The activities of Superintendent Sutherland

About 3 weeks before the election Carl Sutherland, Factory Superintendent, approached employee Martin Stamp while the latter was at work and told him that the "dagoes and niggers" were organizing a union in the plant, that if he were Stamp he would not join, and that the Union had nothing to offer him, especially since he was an apprentice. About 1 week before the election, Sutherland again approached Stamp while he was at work, advised him not to vote for the Union, and asked him if he was a member and if he knew whether other apprentices had joined.⁷

Approximately 2 weeks before the election,⁸ Sutherland called apprentice Robert Ponsart to his office. There, in the presence of Foremen Gordon David and Arthur Wandersleben, Sutherland asked Ponsart how he stood in the Union, stated that he was going to try to get an increase for the apprentices soon, further stated that there were about 11 apprentices whose votes would mean quite a bit either way, and told Ponsart, "Well, of course you know how to vote."⁹

A week or two before the election, employees Frances Ferraiuolo and Florence Chekemian were called to the office of Sutherland who told them that he had

⁶ The respondent in its answer at the hearing and in its brief filed with the undersigned contends that the Board is estopped from considering such of the unfair labor practices as are alleged in the complaint to have occurred prior to the election on the ground that no objections with respect to the unfair labor practices so alleged were filed within the 5-day period following the election, as provided in the Board's Rules and Regulations, Article III, Section 10. This contention is without merit. It fails to recognize the distinction between the administrative discretion vested in the Board to issue rules and regulations with respect to procedural matters, as provided in Section 6 (a) of the Act, and the exclusive jurisdiction conferred upon the Board to prevent the commission of unfair labor practices, as set forth in Section 10 (a) of the Act. See *Amalgamated Utility Workers v. Consolidated Edison Company of New York, et al.*, 309 U. S. 261; *Magnolia Petroleum Company v. N. L. R. B.*, 115 F. (2d) 1007 (C. C. A. 10); *N. L. R. B. v. McKesson & Robbins, Inc., et al.*, 121 F. (2d) 84 App. D. C.

⁷ The above findings are based upon the credible testimony of Stamp Sutherland admitted having conversations with Stamp about the Union on the occasions in question, but denied having made any of the remarks attributed to him by Stamp except his reference to the fact that the Union would be of no benefit to the apprentices. In view of Sutherland's partial admissions, the Trial Examiner does not accept as true either his denials or his testimony that Stamp asked his opinion of the Union.

⁸ In its brief the respondent points to the fact that the Union did not file its petition in the representation proceeding until January 21 and that notice thereof was not served upon the respondent until January 25, and takes the position that Ponsart was mistaken in testifying that the conversation in Sutherland's office occurred 2 weeks before the election of February 3, because at that time the respondent had no way of knowing that an election was to be held. The undersigned does not agree with this contention. Ponsart testified that the conversation in question occurred "approximately" 2 weeks before the election and did not attempt to fix the time with certainty.

⁹ Sutherland, David, and Wandersleben each denied that any such meeting occurred, as Ponsart had testified about. David admitted, however, being present in Sutherland's office about the middle of January when Ponsart was also present; and Sutherland admitted having talked to Ponsart about the Union on several occasions, but denied having made the remarks attributed to him by the employee beyond saying that the apprentices would not benefit by the Union. Ponsart never became a member of the Union. In view of Sutherland's admissions, in view of the fact that Sutherland and David made other anti-Union statements to employees, as noted hereinafter, and in view of the respondent's continuous attempts to defeat the Union, the undersigned does not credit the denials of Sutherland, David, and Wandersleben.

heard they were dissatisfied with their wages and working conditions, that if they had grievances they should tell him about them, and that as they went along they would get wage increases.

About 4 days before the election, Sutherland stopped George Baldwin, an apprentice, as the latter was passing his office, and told him that the Union would not help the apprentices, that the Union would cause hard feelings between himself and the employees, and that working in the plant would not be as pleasant if the Union should win the election. During this conversation, Sutherland asked Baldwin if he would speak to the other apprentices and let him know how they felt about the Union.¹⁰

Shortly before February 18, 1943, Sutherland told employee Edward Haspadura that he had worked in many shops, that he had been in unions before; and that he did not see where a union would do any good for the employees.¹¹ A week or two after the election, after Haspadura had begun to wear a Union steward's button, Sutherland came to him, flipped the button on the employee's collar, and asked how much he would take for it, at the same time drawing some coins from his pocket. The employee replied that the superintendent did not have enough money to buy it, whereupon Sutherland declared that he could get a bushel of them for \$5.¹²

Two or three weeks after the election, Florence Chekemian made out an affidavit concerning the events in this case for an agent of the Board. A week or two thereafter, Sutherland informed her that he knew of the existence of the affidavit, stated that apparently she was not satisfied with the way the company was run, and asked her why she had made it out.¹³

2. The activities of Foremen Whitley, David and Zappala

Several days after the election, employees Ferraiuolo and Chekemian approached their foreman, William Whitley, and asked why they had not received wage increases since other employees in the department had. Whitley replied that they had "stuck out" their necks. When Chekemian observed that "the Union didn't go through," Whitley replied that they might try again. Ferraiuolo was active in the affairs of the Union and Chekemian's name, as a member of the union shop committee, was printed on handbills which were circulated by the Union about the plant.¹⁴

¹⁰ These findings are based upon the credible testimony of Baldwin, who was not a member of the Union, was reluctant to testify, and did so under subpoena by the Board. Sutherland made the same admissions and denials concerning Baldwin's testimony as he had as to the testimony of Stamp and Ponsart. Sutherland's denials are not credited by the undersigned.

¹¹ Sutherland's version of the above incident, the finding as to which is based upon the credible testimony of Haspadura, was that he told one of the apprentices that from previous experience in other factories he had understood that the union "as a rule left the apprentices alone, that they didn't try to get them in as members." The undersigned is not convinced by, nor does he credit, Sutherland's explanation.

¹² Sutherland admitted that the above conversation occurred substantially as Haspadura testified, except that he denied having said that \$5 would buy a bushel of union buttons. Sutherland's denial is not credited by the undersigned, in view of his admissions and his manifest antipathy to the Union, as herein noted.

¹³ Sutherland denied Chekemian's testimony as to this incident. The undersigned does not credit his denial.

¹⁴ Whitley admitted that Ferraiuolo and Chekemian spoke to him with reference to securing wage increases, as they had testified, but denied their further testimony to the effect that he had stated that they had stuck their necks out or that he had said that the Union might come back again. Both Ferraiuolo and Chekemian impressed the undersigned as credible and truthful witnesses. The undersigned finds that Whitley's denials are not entitled to credence.

About a week before the election, Foreman Gordon David asked employee Robert Ponsart how the latter stood in the Union and if Al Gazelle, a member of the union shop committee, had talked to him about the Union. In April 1943, Ponsart, while at work, wore a shirt on the back of which were the initials of the Union. During the morning, David approached him and said, "Well, I see you have the shirt now. Now you are going to walk out on the boys." As noted above, Ponsart was not a member of the Union. David denied Ponsart's testimony concerning the first conversation, and explained that on the second occasion he merely asked Ponsart whether he was getting a shirt out of the boys. The undersigned does not credit David's denial of the first conversation or his explanation of the second.

According to the uncontradicted testimony of employee Lorraine Hunter, about 3 or 4 weeks before the election, she asked her foreman, Ross Zappala, what he thought about the Union. Hunter testified that the respondent's plant was the first factory in which she had ever worked, that she did not know whether a union would be desirable in a factory, and that she therefore asked Zappala about it. Zappala told Hunter that the respondent had gotten along for more than 20 years without any union, that he did not see why they could not continue to do so, but that the employer should not be allowed to tell the employees whether or not they should vote for a union. At the conclusion of the conversation, Zappala patted Hunter on the shoulder and stated, "We know you will do the right thing."

3. The Meeting with Works Manager Barnes

On February 18, 1943, employees Peter Haspadura, Edward Haspadura, and Dan Fulganzi met with Frederick Barnes, works manager, and Mercia Sagin, assistant personnel director of the respondent. The two Haspaduras and Fulganzi comprised a committee of the Union which had been established for the purpose of obtaining a grievance procedure for union members. Barnes refused to recognize the committee and refused to establish a grievance procedure. He told the employees that he believed that he could do more good as far as wage increases were concerned than any one; that there was no Union in the plant, since the Union had lost the election; and he compared the election to a ball game, stating that one team is bound to lose, and that when it walks off the field without any hard feelings and forgets about the whole thing. Barnes also told the employees that there had only been about 30 members present at the last meeting of the Union,³⁵ and that he had been present at a meeting in the offices of the Board at which the union representative had in his possession a packet of union membership cards, that Barnes at that time had in his pocket a stack of cards containing the names of employees proposed to receive wage increases, and that the number of cards in Barnes' possession was twice the number of union membership cards.³⁶

³⁵ The union meeting referred to had occurred about 2 weeks previously.

³⁶ The above findings are based on the testimony of Peter Haspadura, which was corroborated by Edward Haspadura. Barnes testified that he had stated that he was willing to discuss grievances so long as the committee was limited only to employees of the respondent. He admitted that he refused to establish a grievance procedure for union members, and that he had compared the election to a ball game, but he denied that he had said anything about "walking off the field" or that he had said that there was no union because it had lost the election, or that he could do more good with respect to wage increases than any one. Barnes also admitted saying that the number of cards providing wage increases for the employees each pay day was as great or greater than the number of union membership cards, and testified that he could not recall whether he had referred to the number of persons who had attended the last union meeting.

CONCLUSIONS

The record in this case contains cogent and convincing evidence that the respondent was antagonistic to the Union, and that it demonstrated its antagonism in unmistakable terms to its employees.

Sutherland, superintendent of the respondent, was the leading figure and most ardent advocate in the respondent's campaign to defeat the Union. But Foremen Zappala, David and Whitley, before the election, and Works Manager Barnes, after the election, also made efforts to discourage the respondent's employees in their efforts to attain self-organization.

Sutherland, by his own admission, informed the employees that the Union would be of no benefit to them. His interrogation of Stamp, Ponsart, and Baldwin as to their membership in the Union; his questioning of Stamp and Baldwin as to the union membership of the other apprentices; and his attempt to induce Baldwin to inquire as to the attitude and affiliations of the other apprentices constituted a clear attempt to secure information as to the union affiliations of the employees and the relative strength of the Union prior to the election.

Other statements on the part of Sutherland were made for the purpose and were calculated to have the effect of discouraging union membership, as shown by his undenied statement to Ferraiuolo and Chekemian shortly prior to the election that they would receive wage increases; his remarks in derogation of the Union and his expressions that the Union had nothing to offer the employees made to Stamp, Ponsart, Baldwin,¹⁷ and Edward Haspadura; his interrogation of Chekemian with respect to the affidavit she had made out for an agent of the Board; and his obviously derogatory remarks to Edward Haspadura concerning the union button worn by that employee.

Of similar purpose and effect were the statements of Foreman David in questioning Ponsart about his union membership and about conversations Al Gazelle may have had with Ponsart about the Union, and David's statement to Ponsart concerning the shirt which the latter received from the Union, "Now you are going to walk out on the boys," thereby implying that Ponsart was breaking faith with the non-union employees in the plant.

Illustrative of the respondent's anti-union animus and its intention of continuing in its efforts to discourage the employees from union affiliation, even after the election, were the statements of Foreman Whitley to Ferraiuolo and

Notes of the meeting with the committee were taken under Barnes' supervision. The respondent did not offer these notes in evidence, nor did it call Sagin, who was present at the meeting, as a witness. In view of these facts and of Barnes' partial admissions as to what he stated at this meeting, the undersigned does not credit his denials.

¹⁷ In its brief, the respondent points out that Sutherland "expressed certain views of his own in reference to the union" in the course of his conversation with Baldwin. In recounting the details of Sutherland's conversation, Baldwin testified that Sutherland pointed out the disadvantages of the Union for apprentices, and then "expressed one or two views of his own" with respect to the feeling which would exist between the respondent and the employees, if the Union should win the election. The fact that some of the anti-union statements made on this occasion by Sutherland purported to be personal expressions of opinion did not relieve his statements as a whole of their coercive effect. Certainly, Sutherland's attempt in this conversation to induce Baldwin to speak to his fellow apprentices about the Union and report to Sutherland how they felt about it could not be regarded as an expression of personal opinion. Moreover, any doubt as to the effect of Sutherland's statements is dissipated by the following testimony of Baldwin on cross-examination by counsel for the respondent:

Q. Then, in his talk with you, he was not urging you not to join the Union?

A. He was advising against it. He was not telling me how to vote. He was just advising me what the best policy would be.

Q. You just said that he told you it was a matter for you to decide?

A. That is right, but he tried to influence me towards a decision.

Chekemian to the effect that they had jeopardized their chances to secure wage increases because of their union membership and activities.

Zappala's statement to Hunter that, "We know you will do the right thing," after he had told her that the respondent had gotten along for more than 20 years without a union, and that he did not see why they could not continue to do so was a clear and unmistakable indication that the respondent wished Zappala to vote against the Union. Nor was the coercive effect of Zappala's statements dissipated by the qualified declaration that the employer should not be allowed to tell the employees whether or not they should vote for a union, after he had already expressed the respondent's preference for a continuation of non-union relations.¹⁸

The meeting after the election between Works Manager Barnes, Assistant Director of Personnel Sagin, and the grievance committee of the Union constitutes additional evidence of the respondent's attempts to induce its employees to forego further efforts to secure unionization. Barnes' statements that no union existed at the respondent's plant, and his reference to the election as being similar in effect to a ball game where the losing side forgets about the whole thing were unmistakable indications that the employees should reconcile themselves to the fact that it would be useless to continue any further attempts to affiliate with the Union. The respondent's position in this respect was emphasized by the refusal of Barnes to discuss grievances with a committee other than one composed only of employees of the respondent and his refusal to entertain the committee's request to establish a grievance procedure for members of the Union alone. Barnes' reference to the fact that only 30 members had attended the last meeting of the Union, and his further reference to the fact that the number of cards concerning wage increases for the employees which the respondent considered each pay day exceeded the total number of union membership cards which Barnes had seen in the offices of the Board were intended to convey the idea that the Union had lost its support and had but a small following among the employees, and that the continued efforts of its adherents were futile. His statement that he could do more good than anyone as far as wage increases were concerned was obviously designed to inform the employees that the Union was ineffectual and that Barnes, as representative of the respondent, could alone secure for them an increase in wages.

It is clear that the respondent engaged in a conscious and calculated effort to defeat the Union and to discourage its employees from becoming or remaining members of the Union, and that its activities constituted a "whole course of conduct"¹⁹ designed to effectuate its purpose. The undersigned finds that by the

¹⁸ The respondent in its brief contends that Hunter's testimony lends no support to the allegations in the complaint by reason of the fact that Hunter approached Zappala voluntarily. The mere fact that an employee requests a representative of management to express his opinion or to tender advice about a union does not justify such representative, under the guise of asserted expressions of opinion, from making statements for the purpose and reasonably calculated to have the effect of discouraging union membership. See *Matter of Norman H. Stone, et al. and International Printing Pressmen and Assistants' Union, Box and Carton Local #415*, 33 N. L. R. B. 1014 and cases therein cited, enforced as modified in other respects. *N. L. R. B. v. Stone*, 125 F. (2d) 752 (C. C. A. 7). The exercise of self-restraint required of employers by the Act is not relaxed, but is indeed increased, under such circumstances. An employer, if he is acting in good faith in such a situation, will clearly inform the employee that he cannot give him the advice or guidance requested and that the employee must seek an answer to his problem elsewhere. Moreover, Zappala's statements did not occur, nor can they properly be considered, as an isolated incident. Under the circumstances shown in this record, they were made, and are to be regarded, as an integral part of the respondent's entire campaign to defeat the Union in its attempt to enlist the support of the employees.

¹⁹ *N. L. R. B. v. Virginia Electric and Power Company* 314 U. S. 469.

above-described activities, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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. Mechanics Educational Society of America (CUA) is a labor organization within the meaning of section 2 (5) of the Act.

2. 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 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Bailey Meter Company, Cleveland, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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

(a) Post immediately in conspicuous places in its plant at Cleveland, Ohio, and keep posted for at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations;

(b) File with the Regional Director for the Eighth Region in writing, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the National

Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

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 ten (10) 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 after the date of the order transferring the case to the Board.

DAVID KARASICK

Trial Examiner

Dated September 27, 1943.