

In the Matter of NEPTUNE METER COMPANY *and* UNITED ELECTRICAL,  
RADIO & MACHINE WORKERS OF AMERICA, C. I. O.

*Case No. 2-C-5445.—Decided October 21, 1944*

DECISION

AND

ORDER

On September 6, 1944, 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 therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. None of the parties has filed exceptions to the Intermediate Report, or briefs, or requested a hearing before the Board for the purpose of oral argument.

The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Neptune Meter Company, Long Island City, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of Employees' Representative Organization, or any other labor organization of its employees, and from contributing support to Employees' Representative Organization, or any other labor organization of its employees;

(b) Giving effect to any and all contracts, supplements thereto or modifications thereof, with Employees' Representative Organization;

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form

labor organizations, to join or assist United Electrical, Radio and Machine Workers of America, affiliated with the C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, or 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) Withdraw all recognition from Employees' Representative Organization, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Employees' Representative Organization as such representative;

(b) Post immediately in conspicuous places throughout its plant at Long Island City, New York, and maintain for at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

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

#### INTERMEDIATE REPORT

*Messrs. Leon Novak and Martin Rose, for the Board.*

*Messrs. Simpson, Thacher, and Bartlett, by Mr Edward L Coffey, of New York, New York, for the respondent.*

*Mr. Frank Schemer, and Mr Sidney Gilbert, both of New York, New York, for the Union.*

*Mr. Alexander Landi, of New York, New York, for the Intervenor.*

#### STATEMENT OF THE CASE

Upon a charge duly filed on March 1, 1944, by United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York, New York), issued its complaint on June 8, 1944, against Neptune Meter Company, Long Island City, New York, herein called the respondent, alleging that the respondent had engaged and was engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the charge, together with notice of hearing thereon, were duly served upon the respondent, the Union, and Employees' Representative Organization, herein called ERO, a labor organization in the plant alleged to be existing in violation of the Act.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) on or about January 1, 1920, initiated, formed, sponsored, and promoted a labor organization known as Congress of Neptune Meter Company, herein called the Congress; and (2) on or about August 1, 1935, initiated, formed, sponsored, and promoted a labor organization known as the ERO, being the successor to the Congress, and since the formation of the Congress and ERO, dominated, contributed to the support of, and interfered with the administration of both organizations. The respondent's answer admits the allegations of the complaint as to the corporate existence of the respondent and the nature, character, and extent of the business transacted by it, and certain allegations with respect to the Congress and ERO, but denies the commission of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on July 10, 11, and 12, 1944, at New York, New York, before Howard Myers, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. At the opening of the hearing, ERO moved to intervene. The motion was granted without objection. No answer was filed by ERO. The Board, the respondent, and the Union were represented by counsel; ERO by its president. All parties participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the conclusion of the Board's case the respondent's counsel moved to dismiss the complaint for lack of proof. The motion was denied. At the conclusion of the ERO case and again at the conclusion of the entire case, the respondent's counsel renewed his motion to dismiss the complaint for lack of proof. Decision thereon was reserved. The motion is hereby denied. The motion by Board's counsel to conform the complaint to the proof and the motion by respondent's counsel to conform the answer to the proof were granted without objection. Oral argument, in which all parties except the Union participated was heard at the conclusion of the taking of the evidence and is part of the record. The parties were granted leave until July 22, to file briefs with the undersigned. A brief has been received from the respondent's counsel.

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

#### FINDINGS OF FACT

##### I THE BUSINESS OF THE RESPONDENT

Neptune Meter Company is a New Jersey Corporation having its principal office at New York, New York, and its plant at Long Island City, New York, where it is engaged in the manufacture, sale, and distribution of liquid meters and certain war materials. During the year ending March 13, 1944, the respondent purchased raw materials valued in excess of one million dollars, of which approximately fifty percent was shipped to its plant from points outside the State of New York. During the same period, the respondent's sales of finished products amounted to more than one million dollars, fifty percent of which were shipped from its plant to points outside the State of New York. The respondent concedes that it is engaged in commerce within the meaning of the Act.

##### II THE ORGANIZATIONS INVOLVED

United Electrical, Radio and Machine Workers of America, affiliated with the Congress of Industrial Organizations, and Employees' Representative Organization are labor organizations admitting to membership employees of the respondent. Congress of Neptune Meter Company was a labor organization admitting to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Domination of, interference with, and support of the Congress and ERO; interference, restraint, and coercion*

## 1. Events prior to July 5, 1935

There is no evidence of the existence of any labor organization in the plant prior to 1919. In the early part of that year, the respondent's officials called all the employees together. At this meeting, Mr. John Leitch advised the employees to organize a union of their own.<sup>1</sup> After the employees had signified that they were in accord with Leitch's suggestion, he formed a labor organization among the respondent's employees and called it Congress of Neptune Meter Company. Leitch then prepared the constitution and by-laws under which the Congress functioned. For his services the respondent paid him \$5,000.

The Congress, in brief, consisted of a House of Representatives, Senate, and Cabinet. The House was composed of representatives of nonsupervisory employees. The Senate was composed of representatives of the foremen and other supervisory employees. The Cabinet was composed of representatives of the directors and officers of the respondent. The constitution provided that representatives of the House should be elected annually by and from among the nonsupervisory employees of the various departments, American citizens, at least 21 years of age,<sup>2</sup> employed by the respondent for a continuous period of at least six months immediately prior to their election, and that they should be deemed to have vacated office upon being transferred from one department to another or upon severance of connection with the respondent. Membership in the Senate required the recommendation of the Cabinet and a majority vote of the Senate. The executive power of the Congress was vested in the Cabinet. The Constitution could not be amended except with the approval of the Cabinet. Membership in the Congress was automatic. Furthermore, membership did not carry with it the obligation to pay initiation fees or membership dues and, in fact, none were asked or paid. The constitution did not provide for meetings of the membership. In fact, no meetings of the membership were ever held.

The representatives elected to the House, and not the employees, selected the officers of the House which consisted of president, vice-president, secretary, and sergeant-at-arms. The president appointed the personnel of the various committees. The most important committee, in fact the House's governing body, was the Ways and Means Committee. This committee met jointly with the Senate Ways and Means Committee to iron out differences between the houses and to expedite the passage of bills. Whenever the House passed a bill, it could not become effective without the concurrence of the Senate and the approval of the Cabinet. The bills passed by the House pertained mainly to matters concerning grievances, wage disputes, rates of pay, hours of employment, and other conditions of employment.

The representatives were not only paid by the respondent for the time spent attending meetings of joint House-Senate committees and meetings of the House, but also for other time used in connection with the business of the Congress. All meetings and other business of the Congress were conducted on the respondent's premises, with the respondent's permission. Elections of representatives were conducted on company time and property with the knowledge and consent of the respondent. The respondent permitted the use of its printing and mimeographing machine and supplied the necessary paper and other equipment

<sup>1</sup> Leitch was not an employee or an official of the respondent

<sup>2</sup> Female representatives had to be at least 18 years of age.

necessary for the preparation of ballots and the minutes of meetings. Likewise the respondent permitted the posting of notices of meetings, copies of the minutes of the various meetings, and other Congress notices on its bulletin boards. By these and in other ways the respondent contributed support to and interfered with the administration of the Congress.

At the hearing, respondent's counsel conceded that the respondent's connection with the Congress was a violation of the Act.<sup>3</sup> Of course, such violations could begin only with the time the Act became effective on July 5, 1935. It was understood at the hearing, moreover, that evidence concerning events preceding July 5, 1935, would be admitted only as showing background circumstances relevant to the unfair labor practices which were alleged in the complaint. Accordingly, the undersigned does not find that the incidents recited above which took place prior to the effective date of the Act were unfair labor practices, but does find that they are indicative of the respondent's attitude prior to the effective date of the Act and cast light upon its motives in connection with the activities alleged in the complaint.<sup>4</sup>

## 2. Events subsequent to July 5, 1935

On August 1, 1935, the respondent's then vice-president and manager, Mr. A. H. Rickett appeared at a meeting of the House and, after reading certain sections of the Act to the representatives present, made the following statement:

The National Labor Relations Board has the right when the question arises to ascertain whether the representatives dealing with the employer are truly representatives of the majority of the people, and is also empowered to supervise an election thereof. Due to the ruling that an employer has no right to contribute financial or other support to an organization, Industrial Democracy, as it has been in practice since 1919, is therefore discontinued. The SENATE will now become a Foreman's Meeting. The employees have a perfect right, if they so desire, to continue the representative plan as it is now being carried on; the representatives dealing directly with the Management on any question or grievance, etc. If the majority of employees so desire, they can continue this representative plan and the Company will allow them to meet in the regular meeting room once every two weeks and on the Company's time. This, however, is to be decided upon by the majority of the employees.

As a further explanation of the above, I am having posted on the Bulletin Boards some printed questions and answers on the Wagner Bill. Should any employee or group of employees not understand the explanation, as given, if he or they will so notify me I will be only too glad to have them come to my office or I go to their departments any day during lunch hour and answer their questions.<sup>5</sup>

The "questions and answers" referred to by Rickett clearly indicated to the employees that the respondent was not desirous of abandoning the Congress but wanted that organization to revise its structure in order to comply with the

<sup>3</sup> Were it not that the complaint alleged that in August 1935, the ERO became the successor to the Congress, it would have been unnecessary to go into detail with reference to the latter, the concession of respondent's counsel and other admissions of sponsorship, support, domination of, and interference with the Congress being sufficient.

<sup>4</sup> Cf. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241.

<sup>5</sup> Copies of the minutes of the August 1 meeting, which contained the quoted portion of Rickett's speech, was posted on the respondent's bulletin boards located throughout the plant. In fact, copies of the minutes of all meetings of the House, and later of the ERO, were likewise posted on the bulletin boards. The respondent permitted such posting. The respondent also allowed the ERO to post notice of meetings, election notices, and other similar notices.

Act's provisions. The above quoted statement of Rickett conveyed that impression in no uncertain terms. The representatives so accommodated the respondent. The representatives and the officers did not resign their positions. They became the organizing committee of the ERO. The following is an excerpt from the minutes of the meeting of the House on August 26, 1935:

There was a resolution passed to have a secret ballot passed throughout the shop, with the following questions:

1. Are you satisfied with the present form of Representation?

Yes

No

2. Or, do you wish to join some Labor Organization?

Yes

No

3. Are you satisfied with your present Representative?

Yes

No

If dissatisfied with any Representative write his name and put NO after it.

Shortly thereafter the above questions were submitted to the employees. The representatives of the House distributed ballots among the employees during working hours.<sup>6</sup> After marking their ballots the employees were directed to deposit them in the ballot boxes which were in the office of respondent's personnel manager. The tally sheet of the balloting shows that question #1 received 525 "Yes" votes against 26 "No" and that question #2 received 468 "No" votes against 56 "Yes". The tally sheet also shows that all but four representatives of the House were satisfactory to the employees.<sup>7</sup> On September 9, the president of the House appointed a committee to draft a constitution. The committee prepared a constitution which was adopted by the representatives. The members were not given an opportunity to consider, adopt, or approve the constitution. The following only was submitted to the members:<sup>8</sup>

#### PREAMBLE

We, the employees of the NEPTUNE METER COMPANY, recognize the necessity of establishing closer affiliations; and to this end, we pledge ourselves to labor unitedly in behalf of the principles herein set forth; to perpetuate the permanency of a concrete organization which shall have for its object the uplift of all mankind and more particularly the wealth producers, believing as we do that our individual craft efforts are no longer sufficient to afford us the protection necessary to our success.

#### PLATFORM

We recognize seven questions of general character:

1. A minimum rate of wages per hour.
2. Maximum of eight hours to constitute a day's work.
3. Maximum of forty hours to constitute a week's work.
4. Rate of pay for overtime, Sundays & holidays included, shall be time and a half.

<sup>6</sup> The respondent permitted the representative to use the respondent's time to distribute the ballots and likewise permitted the employees to cast their ballots on company time.

<sup>7</sup> Membership was automatic; that is, all non-supervisory employees were considered to be members of the ERO.

<sup>8</sup> At that time there were 24 House representatives.

5. Standard starting and stopping time.
6. Method of handling grievances.
7. Abolishing of relay system.

The constitution of the ERO, in the main, is substantially the same as the constitution of the Congress, except that all references to participation therein by the respondent were deleted. It is sufficient to say here that the basis of the Congress constitution was not materially altered. The ERO constitution, so far as here material, in substance included the following: The offices of president, vice-president, secretary-treasurer, sergeant-at-arms, and 2 representatives from each department<sup>9</sup> were established;<sup>10</sup> eligibility to these positions was limited to employees who were 21 years of age or over, American citizens or who had applied for citizenship papers. Representatives forfeited office upon severance of connection with respondent or by transfer to a department other than the one he represented. Like the constitution of the Congress, the ERO constitution does not provide for meetings of the membership or for the payment of dues or initiation fees. In fact, there were never any membership meetings. Neither were dues or fees asked or received. Moreover, the respondent permitted ERO to hold meetings on company time and property. ERO representatives were not only paid by the respondent for the time spent attending meetings but also for other time used in connection with the business of ERO. All meetings and other business of the Congress were conducted on company time and property with the knowledge and consent of the respondent. In fact, Ricketts suggested that the employees might do so, in his speech at the August 1 meeting, hereinabove discussed. Elections of representatives were conducted on company time and property, with the respondent's consent. The respondent also permitted ERO to use the respondent's printing and mimeographing machine without charge and the respondent supplied the necessary paper and other equipment necessary for the preparation of ballots and the minutes of meetings. The respondent permitted the ERO to post whatever notices it desired on the respondent's bulletin boards. The ERO and the respondent entered into a contract covering wages, hours, working conditions and other conditions of employment in 1937, and a new contract was negotiated and signed by the ERO and the respondent each year thereafter until 1944; the last contract being dated January 1, 1944 and expiring by its own terms December 31, 1944.

### 3. Concluding findings

The respondent originated the Congress. It permitted organizational and other meetings to be held in the plant. The representatives, officers, and members were paid by the respondent for the time spent by them at Congress meetings. The structure of the Congress indicated the respondent's control through the joint House-Senate Ways and Means Committee. The employees were limited in their free choice of representatives. Membership, which was automatic, conferred only the right to vote in an annual election of representatives. Officers were elected by the representatives and not by the members. Direct control over the functioning of the organization was effected, not only through the management representatives, but also by the respondent's power to unseat any elected representative by transferring him to another department of the plant or discharging him. Finally, since there was no provision for dues or other form of

<sup>9</sup> In some instances, several small departments were consolidated and the consolidated department elected 2 representatives.

<sup>10</sup> The constitution is silent as to when and how these offices were to be filled. The record before outlined in the constitution of the Congress was followed.

self-financing, the respondent was in a position to assure its domination over the Congress by subsidizing it. This it did by permitting Congress meetings and other business to be transacted on company time and property and by paying the officers, representatives, and members for time spent on Congress business. The entire record indicates that the Congress was formed, existed, and functioned only through the respondent's control, participation, financial support, and sufferance. In short, the Congress was typical of a management device which flourished prior to the enactment of the Act as a substitute for collective bargaining, and which has repeatedly and consistently been held by the courts to be in violation of the Act.<sup>11</sup>

Under these circumstances, the duty of the respondent was plain. In commenting upon similar cases decided by the Supreme Court.<sup>12</sup> Judge Learned Hand in *Western Union Telegraph Company v. N. L. R. B.*<sup>13</sup> said:

The theory on which the Supreme Court went, as we understand it, was that an unaffiliated union, known for long to be favored by the employer, carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent. It cannot remain such until measures are taken completely to disabuse the employees of any belief that they will win the employer's approval if they remain in it, or incur his displeasure if they leave.

The respondent's duty in connection with the formation of another organization at the time the Congress was being dissolved was also plain. As the Court said in the *Western Union* case, an "absolute and public cleavage between the old and new" was necessary. In the *Westinghouse Electric* case,<sup>14</sup> Judge Learned Hand, commenting on the disestablishment order in the *Newport News* case, *supra*, said:

The reason for this was that, although the new union would be lawful, if freely formed, it had in fact arisen out of the earlier organization, and the company had done nothing to mark the separation between the two, and publicly to deprive the successor of the advantage of its apparently continued favor. \* \* \*

The employees at large had not been advised that the company was wholly indifferent whether they joined the new union, and that, as it might, and probably did, appear to be a successor of the old, the separation should have been made plain, and with it the discontinuance of any continued countenance from the employer. The theory is that in cases such as this, where an unaffiliated union seems to the employees at large to have evolved out of an earlier joint organization of employer and employees, the Board may take it as datum, in the absence of satisfactory evidence to the contrary, that the employees will suppose that the company approves the new, as it did the old, and that their choice is for that reason not as free as the statute demands.

Here the respondent did nothing to "disabuse the employees" of their belief. It not only made no "public cleavage" but, in other ways, conveyed exactly the

<sup>11</sup> Cf. *N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 244; *N. L. R. B. v. Baldwin Locomotive Works*, 128 F. (2d) 39, 48 (C. C. A. 3); *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641, 644-665 (App. D. C.); *Bethlehem Shipbuilding Corp. v. N. L. R. B.*, 114 F. (2d) 930, 936-937 (C. C. A. 1); cert. dismissed on motion of Petitioner, 312 U. S. 710, *N. L. R. B. v. American Rolling Mill Co.*, 126 F. (2d) 38, 40-41 (C. C. A. 6), *N. L. R. B. v. Swift & Co.*, 108 F. (2d) 988, 999 (C. C. A. 7).

<sup>12</sup> *N. L. R. B. v. Greyhound Lines*, *supra*; *N. L. R. B. v. Newport News Shipbuilding Company*, *supra*; and *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 461.

<sup>13</sup> 113 F. (2d) 992 (C. C. A. 2).

<sup>14</sup> *Westinghouse Electric Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), *aff'd per curiam* 312 U. S. 660.

opposite impression. The process of transition from the Congress to the ERO was effected by employees who had previously demonstrated their willingness to submit to the respondent's wishes in this connection. The significance of the duplication of personnel coupled with substantial continuity of existence was noted by the Court in *International Association of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App D C.) aff'd 311 U. S. 72, as indicative of continued domination.<sup>15</sup> The constitution adopted by the representatives (the Congress officers and committeemen) provided the ERO with an operating structure essentially identical with that of its predecessor, the Congress. Like the Congress, the ERO bases its selection of representatives on departments; provides for forfeiture of the office of representative upon transfer from one department to another, or upon termination of employment with the respondent. In the proceeding herein, not only was there no interval in the transfer of allegiance, no "line of fracture", but there was an actual overlapping between the dissolution of the Congress on the one hand and the formation of the ERO on the other. The respondent not only failed to disassociate itself from the Congress, but encouraged and assisted in its revision. Elections of officers and representatives were permitted on company time and property. Assistance was also furnished in other ways more fully set forth above.

The respondent and the ERO maintained that the ERO was a militant organization, free from company domination or interference, and for that reason the ERO should not be disestablished. It is true that at times the ERO did act independently of the respondent and for the benefit of its members. The fact that the ERO achieved a certain measure of success cannot, and does not, free the ERO from its illegal taint<sup>16</sup>. The effects of the respondent's support have not been dissipated and the ERO has continued to operate as a bar to the freedom of self-organization guaranteed by the Act.<sup>17</sup>

The undersigned finds that the respondent, by the above-described course of conduct, has dominated and interfered with the formation and administration of Congress of Neptune Meter Company and Employees' Representative Organization and has contributed support thereto, and by these acts has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 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

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designated to effectuate the policies of the Act.

The undersigned has found that the respondent has dominated and interfered with the formation and administration of the Congress and its successor, the

<sup>15</sup> See also *Texas Co v. N. L. R. B.*, 119 F. (2d) 23 (C. C. A. 7).

<sup>16</sup> *Corning Glass Works v. N. L. R. B.*, 118 F. (2d) 625 (C. C. A. 2).

<sup>17</sup> *N. L. R. B. v. Newport News Shipbuilding*, *supra*; *N. L. R. B. v. Lunk-Belt Company*, 311 U. S. 584; *Westinghouse Electric v. N. L. R. B.*, *supra*; *International Assn. of Machinists v. N. L. R. B.*, *supra*.

ERO, and has contributed support thereto. Since the Congress as such has been dissolved and there appears to be no likelihood of its reestablishment, no order will be herein recommended specifically directed against it. The effect and consequences of the respondent's domination, interference with, and support of the ERO, as well as the continued recognition of the ERO as the bargaining representative of its employees, constitute a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. Because of the respondent's illegal conduct, the ERO is incapable of serving the respondent's employees as a genuine collective bargaining agency. Moreover, the continued recognition of the ERO would be obstructive of the free exercise by the employees of the rights guaranteed to them by the Act. Accordingly, it will be recommended that the respondent disestablish and withdraw all recognition from the ERO as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

It is clear that the respondent's contract of January 1, 1944, with the ERO constituted and was part of the unfair labor practices. It will therefore be recommended that the respondent cease and desist from giving effect thereto. Nothing herein shall be taken to require the respondent to vary those wages, hours, seniority, and other such substantive features of its relations with the employees themselves which the respondent has established in performance of the said contract, or any revision, extension, renewal, modification, thereof.

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

#### CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, and Employees' Representative Organization are labor organizations, and Congress of Neptune Meter Company was a labor organization within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Congress of Neptune Meter Company and Employees' Representative Organization and by contributing support thereto, the respondent has engaged in and, as to the ERO, is engaging in, unfair labor practices within the meaning of Section 8 (2) of the Act.

3. 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.

4. 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, Neptune Meter Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of Employees' Representative Organization, or any other labor organization of its employees, and from contributing support to Employees' Representative Organization, or any other labor organization of its employees;

(b) Giving effect to any and all contracts, supplements thereto or modifications thereof, with Employees' Representative Organization;

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

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

(a) Withdraw all recognition from Employees' Representative Organization, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Employees' Representative Organization as such representative;

(b) Post immediately in conspicuous places throughout its plant at Long Island City, New York, and maintain for at least sixty (60) consecutive days from the date of posting, notices stating that the respondent will not engage in the conduct from which it has been recommended that it cease and desist in paragraph 1 (a), (b), and (c) of these recommendations; (2) that it will take the affirmative action set forth in paragraph 2 (a) of these recommendations; and (3) that its employees are free to become or remain members of United Electrical, Radio & Machine Workers of America, or any other labor organization, and that the respondent will not discriminate against any employee because of membership in such organization;

(c) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied 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 3, as amended, effective November 26, 1943, any party or counsel for the Board 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, Room 4000, 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 objectives) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. 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 within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,  
*Trial Examiner.*

Dated September 6, 1944.