In the Matter of E. J. ANDERSON D/B/A ANDERSON MANUFACTURING COMPANY *and* UNITED BROTHERHOOD OF WELDORS, CUTTERS & HELPERS OF AMERICA, LOCAL No. 15

Case No. 14-C-897.—Decided October 30, 1944

DECISION

AND

ORDER

Upon a complaint issued pursuant to charges filed by United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, herein called the Union, against E. J. Anderson, doing business as Anderson Manufacturing Company, St. Louis, Missouri, herein called the respondent, a hearing was held before a Trial Examiner in St. Louis, Missouri, on April 13, 1944, in which the Board, the respondent, and the Union participated by their representatives. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On June 29, 1944, the Trial Examiner issued his Intermediate Report, a copy of which is attached hereto, in which he found that the respondent had engaged in unfair labor practices. Thereafter, the respondent filed exceptions to the Intermediate Report.

The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and order hereinafter set forth.

1. The Trial Examiner found that the respondent violated Section 8 (1) of the Act by eliciting from his employees affidavits stating that they did not intend to vote for the Union in the consent election conducted a few days prior thereto, and that they did not wish to be represented by the Union. We do not agree with this finding. It is true that an employer's conduct in questioning employees, and in requesting that they execute affidavits as to how they voted or intended to vote in an election conducted to determine their collective bargaining representative, or as to their present choice of such a representative, is clearly proscribed by the Act. However, in our opinion, the

record herein, while disclosing some suspicious circumstances, falls short of establishing that the respondent in fact engaged in such conduct.

2. We agree with the Trial Examiner's conclusion that the respondent, by refusing to bargain with the Union on November 30, 1943, and thereafter, engaged in unfair labor practices, within the meaning of Section 8 (5) of the Act. The respondent admits that he has refused to bargain with the Union, but contends, by way of defense, that, by reason of the execution of certain affidavits referred to below, the Union does not, and did not at any time, represent a majority of his employees. We do not agree with this contention.

At the consent election held on November 9, 1943, a majority of the employees in the appropriate unit voted in favor of the Union. Thereafter, on November 12, 6 of the 10 employees who had voted in the election executed affidavits in which each of them stated that "it was his intention to vote [in the consent election] against being represented by the [Union]; that he does not recall whether he marked the ballot 'yes' or 'no', but, nevertheless, did not then, and does not now, want to be represented by said union." On November 15, the Regional Director issued his Report on the Election, in which he found that the Union had been designated by a majority of the employees in the agreed upon unit as the exclusive bargaining representative. On November 18, 1943, the respondent, on the basis of the affidavits described above, filed objections to the Election Report and the conduct of the election. The Regional Director overruled the objections on the ground that they had not been filed within 5 days after the closing of the polls, as provided in the consent election agreement. The respondent contests the validity of this ruling on the ground that the Rules and Regulations of the Board in effect at the time of the election permitted the filing of objections within 5 days after the issuance of an election report. However, as noted in the Intermediate Report, this provision related only to elections directed by the Board.[1] Since the respondent has offered no reason for his failure to file his objections within the time prescribed in the consent election agreement, to which he was a party, we agree with the Trial Examiner that the Regional Director's ruling was not arbitrary or capricious and should therefore not be disturbed.[2] Quite aside from this consideration, however, and assuming, *arguendo*, that the respondent's objections had been timely, we are of the opinion that, in the absence of special circumstances,[3] the results

[1] As already indicated, the election involved herein was held pursuant to a consent election agreement executed by the parties.

[2] See *Matter of Capitol Greyhound Lines, et al*, 49 N. L. R. B. 156, enf'd, 140 F. (2d) 754 (C. C. A. 6); *Matter of Aetna Fire Brick Company*, 56 N. L. R. B. 849.

[3] Although the respondent alleged, in his objections to the Election Report and to the conduct of the election, that "the employees voting in said election were confused as to how to mark their ballots in order to express their preference between the Union and no

of an election should be regarded as conclusive evidence of the employees' desires at the time of the election, and employees will not be heard to say that they did not intend to vote as they did. As for the statements contained in the affidavits, which were executed by a majority of the employees in the agreed upon unit 3 days after the election, that they did not wish to be represented by the Union, we have consistently held [4] that, in the absence of special circumstances, a certification of representatives, to which the Regional Director's determination of representatives in the present case is equivalent, must be honored for a reasonable period, even though there has been a repudiation of the certified union by a majority of the employees in the appropriate unit. Nor are we inclined to recognize a repudiation of a representative selected at a secret election, which is established solely through the medium of a petition publicly circulated. As recognized by us in *Matter of The Century Oxford Manufacturing Corporation, supra:*

> When employees have expressed their considered opinions by a method [a secret election] which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique. Clearly this petition, subject to all the infirmities of a public poll, falls short of this standard.

We therefore find, as did the Trial Examiner, that the Union was on November 9, 1943, and at all times thereafter has been, the exclusive bargaining representative of all the employees in the appropriate unit.

3. We agree with the Trial Examiner's conclusion that the respondent's letter of November 7, 1943, to his employees, was violative of Section 8 (1) of the Act. Although the letter, standing alone, does not appear to be coercive, or to exceed the bounds of free speech permitted an employer,[5] it clearly indicated the respondent's desire to bargain individually with his employees, rather than collectively through a representative. Approximately 3 weeks later, the respondent, as found above, refused to bargain with the Union, which was the duly selected representative of his employees, and thereby engaged in conduct which interfered with, restrained, and coerced his employees in the exercise of their rights under the Act. The letter thus became an integral part of the respondent's conduct in attempting to defeat the Union's efforts at collective bargaining and by unlawful

union," he offered no evidence to support his contention. So far as the record shows, the election was conducted in the customary manner, and the authorized observers certified that the counting and tabulating of the ballots were fair and accurate and that the secrecy of the ballot was maintained

[4] *Matter of The Century Oxford Manufacturing Corporation*, 47 N. L R B 835, enf'd, 140 F. (2d) 541 (C. C. A. 2), cert. den , 65 S Ct 40 ; *Matter of Appalachian Electric Power Company*, 47 N L. R B 821, enf'd as mod , 140 F (2d) 217 (C C A 4)

[5] See *N. L R B.* v *Virginia Electric & Power Co* , 314 U S 469 ; *N L. R. B.* v *American Tube Bending Co* , 134 F (2d) 993 (C C A. 2), cert. den., 320 U S. 768.

means to discourage the employees from joining or remaining members of the Union.[6] Viewed in the light of the respondent's subsequent conduct, the letter therefore interfered with, restrained, and coerced his employees, within the meaning of Section 8 (1) of the Act, and we so find.[7] We do not agree with the respondent's contention that "if the letter, when written, was protected by the First Amendment of the Constitution, it remains so protected for all time." It is apparent that an employer's statement, considered in isolation, may be given one interpretation by the employees when made, but may be construed by them quite differently when viewed later in the light of other unlawful statements or acts.[8]

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, E. J. Anderson, doing business as Anderson Manufacturing Company, St. Louis, Missouri, and his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively, in respect to rates of pay, wages, hours of employment, and other conditions of employment, with United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, as the exclusive representative of all his production and maintenance employees, excluding office and clerical employees, and foremen and all other supervisory employees having authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Upon request bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment,

[6] Cf *Matter of Kentucky Utilities Company*, 58 N. L. R. B 335.

[7] See *N L R B v Virginia Electric & Power Co*, *supra*.

[8] Cf *N L R B v M E Blatt Co*, 143 F (2d) 268 (C. C A. 3); *Reliance Manufacturing Company* v. *N. L. R B*, 142 F (2d) 761 (C. C .A. 7).

with United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, as the exclusive representative of all his production and maintenance employees, excluding office and clerical employees, and foremen and all other supervisory employees having authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees;

(b) Post immediately in conspicuous places at his plant in St. Louis, Missouri, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to his employees, stating: (1) that the respondent will not engage in the conduct from which he is ordered to cease and desist in paragraphs 1 (a) and (b) 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 Fourteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Miss Helen Humphrey, for the Board

Cobbs, Logan, Roos & Armstrong, by *Mr. George P. Logan*, of St. Louis, Mo, for the respondent.

Mr. Thomas M. Conway, of St. Louis, Mo, for the Union.

STATEMENT OF THE CASE

Upon an amended charge filed on March 20, 1944, by United Brotherhood of Weldors, Cutters & Helpers of America, Local No 15, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated March 21, 1944, against E. J. Anderson, doing business as Anderson Manufacturing 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 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent (1) on or about November 7, 1943, and thereafter, disparaged and expressed disapproval of the Union, and warned his employees against joining or assisting it and against voting for the Union in an election conducted by the Board; (2) interrogated his employees concerning the Union and with regard to their voting in the election; (3) at all times since November 15, and particularly on November 30, 1943, has refused to bargain collectively with the Union although the Union had been designated as collective bargaining agent by a majority of the respondent's employees in an appropriate bargaining unit, and (4) by the acts described above has interfered with, restrained, and coerced his employees in the exercise of their rights guaranteed in Section 7 of the Act.

On April 13, 1944, the respondent filed an answer admitting some of the allegations of the complaint, but denying that he had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on April 13, 1944, at St. Louis, Missouri, 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 an organizer. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the close of the hearing the undersigned granted a motion by counsel for the Board to conform the complaint to the proof, and advised the parties that they might argue orally before, and might request the privilege of filing briefs with, the undersigned. No request to file a brief was made. Counsel for the Board and for the respondent participated in oral argument.

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

E. J. Anderson is an individual doing business as Anderson Manufacturing Company, and having his office and place of business at St Louis, Missouri, where he performs welding operations upon motor truck parts furnished him by McCabe Powers Auto Body Company, herein called McCabe. McCabe is a Missouri corporation having its principal office and place of business in St. Louis, Missouri, where it is engaged in the building of motor truck bodies. Since March 1, 1942, McCabe has caused to be purchased and delivered to its place of business in St. Louis, Missouri, sheet metal, lumber, electric wiring, hardware, and other materials valued in excess of $1,200,000, of which approximately 70 percent in value was transported to it from outside the State of Missouri. During this period McCabe has had as its sole customer the armed forces of the United States, which deliver to McCabe motor truck chassis upon which McCabe builds truck bodies. From March 1, 1942, the value of the truck bodies so built by McCabe amounted to more than $2,500,000. During the six months immediately prior to the hearing the respondent performed welding operations for McCabe for which it has received approximately $54,000.

II. THE LABOR ORGANIZATION INVOLVED

United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, is a labor organization admitting to membership employees of the respondent. It is unaffiliated with any national labor organization.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit and representation by the Union of a majority therein*

On October 30, 1943, the respondent and the Union entered into an agreement for a consent election in which it was agreed that all production and maintenance employees of the respondent, "excluding foremen and all other supervisory employees with the authority to hire, promote, discharge, discipline, or other-

wise effect changes in the status of employees, office and clerical employees," constituted an appropriate bargaining unit. Pursuant to this agreement, the Board held an election on November 9, 1943. On November 15 the Regional Director issued his report on the election, in which he found that 6 of the 10 valid votes counted were cast for the Union and 4 were cast against the Union, that no objections to the conduct of the election or to a determination of representatives based on the results thereof had been filed within the prescribed period,[1] and that the Union had therefore been designated as the exclusive bargaining representative of the employees within the appropriate unit.

The unit alleged in the complaint to be appropriate for the purposes of collective bargaining is the unit which the respondent and the Union agreed was appropriate in the consent election agreement referred to above

The undersigned finds that all production and maintenance employees of the respondent, excluding foremen and all other supervisory employess with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, and excluding office and clerical employees, at all times material herein constituted a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization, and to collective bargaining and otherwise effectuates the policies of the Act.

B. *The refusal to bargain; other acts of interference, restraint, and coercion*

After the result of the election of November 9 had been announced,[2] showing that the Union had won by a vote of 6 to 4, some of the employees in the appropriate unit took an informal poll among themselves and concluded that the Union had, in effect, lost the election by a vote of 6 to 4. Several of them then approached Anderson and told him, in substance, that they questioned the accuracy of the result as announced by the Regional Director. Anderson thereupon telephoned George Logan, the respondent's attorney,[3] told him that 6 employees claimed that they had voted or intended to vote against the Union, and asked Logan what could be done about the matter. Logan instructed the respondent to ask the employees in question if they would be willing to sign affidavits setting forth their contentions. The respondent did so, and advised Logan that the employees were willing. Logan prepared a form of affivadit and Kramer, an office associate of Logan, took several copies to the respondent's

[1] The agreement provided that any objections should be filed within five days after closing of the polls. On November 18, 9 days after the closing of the polls, and 3 days after the issuance of the Regional Director's report, the respondent filed objections contending, in substance, that the Regional Director had not properly explained the ballot to the voters, and that a majority of them had "through mistake" voted for the Union. The respondent made no attempt at the hearing to substantiate this contention The Regional Director, on November 20, rejected the respondent's objections as not having been filed within the period agreed upon.

[2] On November 9, when the counting of the ballots had been completed, the Regional Director, in conformity with the Board's practice, issued a Certification of Counting and Tabulating of Ballots, announcing the result of the election, which was signed by watchers representing the Board, the Union, and the respondent. Those signing the certification stated that the counting and tabulating were fairly and accurately done, and that the secrecy of the ballot was maintained.

[3] The finding as to this and the following conversation is based upon the testimony of both Anderson and Logan.

place of business, where, on November 12, he obtained the signatures of 6 employees.[4]

Six days later, on November 18, Logan filed the respondent's objections to the election report with the Regional Director, and the latter, as has been stated, rejected them as not having been filed in time. It does not appear why the respondent, who, on November 12, had in his possession the affidavits on which he predicated his objections, waited until November 18 to file the latter. On November 22, Logan wrote the Regional Director contending that the respondent was entitled by the Board's Rules and Regulations to file objections within 5 days after the issuance of the Regional Director's Election Report, in this case by November 20. The Regional Director replied on November 23, rejecting this contention. Thereupon, Logan advised the respondent to refuse to bargain with the Union, stating that this was "the only way the question (i. e. whether the Rules and Regulations or the consent election agreement was governing) could be brought to the attention" of the Board. The respondent admits that on November 30, in accordance with Logan's instructions, he refused to discuss the provisions of a proposed contract submitted to him by the Union, and that he has continued to refuse to bargain with the Union.

Conclusions

The undersigned finds without merit the respondent's contention that the filing of objections to the results of the election of November 9 was timely. Section 19, Article III, of the Board's Rules and Regulations, Series 2, as amended,[5] the section relied upon by the respondent, is applicable only to elections ordered by the Board as the result of a hearing upon a question concerning representation. It has no relevance to an election conducted pursuant to a voluntary agreement of the parties. The parties to such an agreement may, as they did here, agree upon some other period for the filing of objections. Moreover, the respondent under the election agreement here, had from November 12, the day when the affidavits were obtained, until November 14, in which to file his objections to the election. He did not do so within this period, and advanced no explanation

[4] The affidavit, all copies of which were dated August 12, was in the following form:

STATE OF MISSOURI,
City of St. Louis, ss:

AFFIDAVIT

Personally appeared before me, _____, who being duly sworn, and under oath made affidavit that he was one of the employees of Anderson Manufacturing Company who was eligible to vote, and did vote, in an election conducted by the National Labor Relations Board at the plant of the company on November 9, 1943.

That this affidavit further states that it was his intention to vote *against* (emphasis in original) being represented by the United Brotherhood of Welders (sic) and Cutters; that he does not recall whether he marked the ballot "yes" or "no", but, nevertheless, did not then, and does not now, want to be represented by said Union.

Further affiant saith not

_____

Subscribed and sworn to before me, this ____ day of November, 1943

_____,
Notary Public.

[5] This section reads as follows: "Where the Board determines that a secret ballot should be taken, it shall direct such ballot to be conducted by a duly designated agent upon such terms as it may specify. Upon the conclusion of such ballot the agent conducting the ballot shall prepare an Election Report containing a tally of the ballots, his rulings, if any, upon challenged ballots, and his findings and recommendations, which he shall cause to be served upon the parties. Within five days thereafter the parties may file with the agent conducting the ballot an original and three copies of Objections to the conduct of the ballot or the Election Report. Copies thereof shall be served upon each of the other parties."

of his failure in this respect It is clear from the above, and the undersigned finds, that the Regional Director was not arbitrary or capricious in rejecting objections filed thereafter.[6]

The respondent's action in eliciting from his employees affidavits that they "intended" to vote against the Union and that they did not want the Union to represent them, were calculated to destroy the secrecy of the election ballot, and were coercive.

The respondent, by refusing to bargain collectively with the Union, and by eliciting affidavits from his employees as to how they intended to vote in the election, interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

On November 7, 1943, two days prior to the election, the respondent handed the employees in the appropriate unit copies of a letter [7] in many respects similar

[6] *See: Aetna Fire Brick Company* and *United Construction Workers, Division of United Mine Workers of America, District 50*, 56 N L. R B. 849. *Capitol Greyhound Lines, etc.*, and *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 1299, A F of L.*, 49 N. L. R B. 156, aff'd. 140 F. (2d) 754, (C. C. A. 6).

[7] The letter reads as follows :

GREETINGS TO ALL EMPLOYEES :

The Constitution gives everyone the right of free speech. The United States Supreme Court has held that this right applies to questions involving unionism and that the employer may present his views to his employees.

So that no question may arise as to whether I have abused this privilege, I have written out which I am going to say and am giving you this copy I hope you will take it home with you and consider the things I have said, along with your wife and other members of your family

I am giving the same word to each of the ten employees who are eligible to vote at the election to be held, according to notices now posted in the plant, on November 9, 1943

It is a rather important election for me, and I believe also for you.

I have had no experience dealing with labor organizations representing my employees As you know, I have dealt with everyone individually, man to man and face to face This office of mine is always open to you, and I feel that I know you well enough to take a definite interest, personally, in any problems you may have. I do not know the stranger who might come in to speak for you—probably you don't know him very well either Personally, I prefer to go on as we have; nevertheless you have a perfect right to join any labor organization you wish. Certainly I am not going to "discriminate" in any fashion or manner against any man who joins a Union. In a small shop like this, it just doesn't seem necessary, nor likely to result in a benefit to you or to me.

Every man, of course, is interested in wages in these days of high cost of living. You are now being paid from $1 00 to $1 10 per hour. What wages can be paid are controlled by the National War Labor Board The rates for welders, as found by the 7th Regional War Labor Board, and officially published October 20, 1943, in this area, are as follows.

	Cents		*Cents*
Spot Welders	70	Welders "B"	80
Welders "C"	70	Welders "A"	90

There is no law which permits the War Labor Board to grant any higher wage just because a man has joined a Union.

As to other working conditions, there is no reason why you men cannot get from me anything any stranger can get

Get this clear, too No man has to join a Union to work at this shop. No law requires it. However, if you do join a Union, and the Union demands it, the National War Labor Board might order a compulsory Union maintenance clause which will require you to stay in the Union, pay dues, possibly pay fines and assessments for the life of the Union contract, even though you may not like the Union management or methods and would want very much to get out.

to the letter which the court in the American Tube Bending case[8] held not to be violative of the Act, in the absence of circumstances "other than the letter and speech together with the occasion—a coming election—on which they were uttered." Here, however, the respondent, as has been found, elicited affidavits from his employees as to how they intended to vote in the election, and refused to bargain with the Union after the employees had chosen it as their bargaining representative. Both of these acts were in violation of the promise contained in his letter of November 7 to "accept the action of the majority as correct", and reveal the letter to have been something more than a mere expression of the respondent's views. The letter, when considered in the light of the respondent's whole course of conduct of which it was a part, was coercive, and interfered with, restrained, and coerced the respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act.[9]

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 his operations as 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, it will be recommended that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of his employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

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

Do not forget that people who manage or work for International Unions are in it as a business. They are presumably interested in you and your welfare—but they are also interested in your monthly dues.

Obviously, you should join a Union if you think they can do for you and get for you, from me, more than you can alone; that is, enough to justify what it will cost you. If you are not sure of this, then it would seem just as obvious that you should not.

Bear in mind this election gives you a chance to make your final decision without anyone at your elbow arguing or persuading you The election is by secret ballot. No one can know how you vote Whether or not you have signed a membership card or application card or signified your intention of joining, it does not affect your right to vote just as you wish. You are free now to make your decision. Later you may not be.

Finally, I would ask that you be sure to vote. The determination of whether we have a Union organization coming between you and me is to be by a majority of those who vote; and not by a majority of those who are eligible to vote. Unless you do vote, your failure to do so may bring about a result you do not want.

Whatever the outcome, like good Americans have been doing for over 150 years, we will both accept the action of the majority as correct and continue to be friends as we have before.

[8] *N. L. R. B.* v. *American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), setting aside 44 N. L. R. B. 121, cert. den. 320 U. S. 768.

[9] See: *N. L. R. B.* v. *M. E. Blatt Company*, 143 F. (2d) 268 (C. C. A. 3), enforcing 38 N. L. R. B. 1210, and 47 N. L. R. B. 1055; *Matter of Van Raalte Company, Inc.* and *Textile Workers Union of America, C. I. O.* 55 N. L. R. B. 146, and *Matter of Peter J. Schweitzer, Inc.* and *American Federation of Labor*, 54 N. L. R. B. 813.

CONCLUSIONS OF LAW

1. United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent, excluding foremen and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, office and clerical employees, at all material times herein constituted, and now constitute, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, was on November 9, 1943, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on November 30, 1943, and at all times thereafter, to bargain collectively with United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, as the exclusive bargaining representative of all his employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing his 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.

6 The aforesaid 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 above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, E. J. Anderson d/b/a Anderson Manufacturing Company, St. Louis, Missouri, his agents, successors, and assigns, shall:

1 Cease and desist from:

(a) Refusing to bargain collectively with United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, as the exclusive representative of all production and maintenance employees of the respondent, excluding foremen and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, office and clerical employees;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Brotherhood of Weldors, Cutters & Helpers of America, Local No 15, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with United Brotherhood of Weldors, Cutters & Helpers of America, Local No. 15, as the exclusive representative of all production and maintenance employees of the respondent excluding foremen and all other supervsiory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, office and clerical employees;

(b) Post immediately in conspicuous places in his St. Louis, Missouri, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to his employees stating (1) that the respondent will not engage in any conduct from which it is recommended that he cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative actions set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from 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 the Regional Director in writing that he 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—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, 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. 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 for the Fourteenth Region (St. Louis, Missouri). 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.

HORACE A RUCKEL,
Trial Examiner.

Dated June 29, 1944.