

In the Matter of LANE LIFEBOAT & DAVIT CORPORATION and UNITED CONSTRUCTION WORKERS, DIVISION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Case No. 2-C-4916.—Decided February 7, 1945

Mr. Martin I. Rose, for the Board.

Messrs. Walter J. Krolman and Jere F. Ryan, of Flushing, N. Y., and *Mr. David Feyer*, of New York City, for the respondent.

Messrs. Michael E. Rosenstein and Leon Zwicker, of New York City, for the Union.

Mr. Edward J. Filardi, of New York City, for the Association.

Mr. Gilbert V. Rosenberg, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon amended charges duly filed by United Construction Workers, Division of District 50, United Mine Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its amended complaint on October 7, 1944,¹ against Lane Lifeboat & Davit Corporation, Flushing, Long Island, New York, 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), (2), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the Amended Complaint and of Notice of Hearing thereon were duly served upon the respondent, the Union, and Lane Lifeboat & Davit Employees' Association, herein called the Association, a labor organization alleged in the Complaint to have been dominated and supported by the respondent.

With respect to the unfair labor practices, the amended complaint alleged in substance that the respondent (1) dominated and interfered with the formation and administration of the Association and con-

¹ The original Complaint was issued March 29, 1944.

tributed support to it; (2) discriminatorily discharged and refused to reinstate 11 named employees because of their union activity; (3) on or about September 25, 1942, and at all times thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the employees in a certain unit appropriate for the purposes of collective bargaining; and (4) by the foregoing and other specified acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Thereafter, the respondent filed its answer to the amended complaint, denying the commission of the unfair labor practices alleged therein.

Pursuant to notice, a hearing was held at New York City on October 24 and 31, 1944, before Melton Boyd, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the Union, and the Association were represented by counsel and participated in the hearing. At the outset of the hearing, the Board's attorney offered in evidence a settlement stipulation, executed by himself, the respondent, and the Union, disposing of all allegations in the amended complaint; subject to the approval of the Board, and providing for the immediate entry of a stipulated order by the Board and of a consent decree by an appropriate United States Circuit Court of Appeals. The Trial Examiner accepted the stipulation in evidence over the Association's objection. The attorney for the Board then rested; whereupon the respondent, the Union, and the Association were given an opportunity to introduce evidence bearing on the issues. Both the respondent and the Union elected not to offer additional evidence. The Association stated that it was not then prepared to produce its evidence and made a motion for a 2 weeks' continuance in order to prepare its defense. The Trial Examiner refused to grant the Association additional time to interview prospective witnesses in connection with its defense, but gave the Association assurance that if it commenced its case, a reasonable opportunity would be given the Association to produce specific witnesses who were not then present at the hearing. The Association, however, pressed its original motion. Upon the denial of said motion, the Association withdrew from the proceeding without adducing any proof. The hearing was then closed.

On November 17, 1944, in accordance with Article II, Section 36 (a) of National Labor Relations Board Rules and Regulations—Series 3, as amended, the proceeding was transferred to and continued before the Board for its consideration. On December 19, 1944, the Board issued an order, returnable on January 10, 1945,² requiring all parties to show cause why the afore-mentioned stipulation should not be ac-

² The order was originally returnable on January 4, 1945, but at the request of the Association, the return date was extended to January 10, 1945.

cepted and approved by the Board and to make a fully particularized and verified offer of proof as to such additional evidence, if any, which each party was prepared to adduce in support of its position. All parties responded to the order. The attorney for the Board and the Union urged approval of the stipulation; the respondent raised no objection; the Association objected to the acceptance of the stipulation and made an offer of proof. We have considered the Association's objections and offer of proof, which we accept as true, and for the reasons hereinafter set forth we are of the opinion that they raise no material issue requiring a further hearing.³

Under the circumstances, we are of the opinion that the stipulation should be, and it is hereby, accepted and approved, and the statement of facts agreed to therein are hereby adopted as the Board's subsidiary findings of fact. The stipulation provides as follows: ⁴

WHEREAS, upon charges and amended charges filed by United Construction Workers, Division of District 50, United Mine Workers of America, the National Labor Relations Board, by the Regional Director for the Second Region, New York, New York, issued its amended complaint dated October 7, 1944 against Lane Lifeboat & Davit Corporation alleging that Lane Lifeboat & Davit Corporation had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) (2) (3) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, and

WHEREAS, Respondent duly filed an answer to the complaint, and

WHEREAS, pursuant to notice of hearing duly served, a hearing was commenced on October 24, 1944 before a Trial Examiner duly designated by the Chief Trial Examiner, and

WHEREAS, the parties hereto desire to dispose of the allegations of the amended complaint herein (in furtherance of the war effort of the Respondent) without the necessity of holding further hearings or proceedings before the Board.

THE FOLLOWING FACTS ARE HEREBY STIPULATED AND AGREED AND may be introduced and received in evidence by and in behalf of the National Labor Relations Board or any party hereto:

I. (a) The term "Company" as hereinafter used means Lane Lifeboat & Davit Corporation.

(b) The term "Association" as hereinafter used means Lane Lifeboat & Davit Employees' Association.

³ Under the circumstances, it is clear, and we find, that the Trial Examiner's denial of the Association's motion for a continuance was not prejudicial error.

⁴ The many exhibits, which are referred to in the stipulation and made a part thereof, are not set forth herein.

(c) The term "supervisory employee" means employee of the Company with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

(d) The term "CIO" as hereinafter used means Industrial Union of Marine & Shipbuilding Workers of America, Local 102, affiliated with the Congress of Industrial Organizations, a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(e) The term "Union" as hereinafter used means United Construction Workers, Division of District 50, United Mine Workers of America. The Union and the Association are each labor organizations within the meaning of Section 2, subdivision 5 of the National Labor Relations Act.

2. The Company is and has been since 1932, a corporation duly organized under and existing by virtue of the laws of the State of New York.

3. The Company maintains and has maintained its principal office and place of business at foot of 40th Road, Flushing, Long Island, City of New York, State of New York, County of Queens, and a place of business at 518 Gardner Avenue, City of New York, State of New York, County of Kings, both hereinafter referred to as the New York Plant, and is now and has been for some time continuously engaged at said plant in the manufacture, sale and distribution of lifeboats, davits, ship equipment and related products.

4. The principal materials purchased and used by the Company in the operations of the said New York Plant have been and are lumber, galvanized steel sheets and bars.

5. During the yearly period immediately preceding the date of this stipulation, the Company purchased and used in the operations of said New York Plant such materials in excess of the value of \$50,000, of which approximately 50% was shipped to said New York Plant from places outside the State of New York. During the same period the sales value of finished products produced in the operations of said New York Plant were in excess of \$50,000, of which approximately 50% was shipped from said New York Plant to places outside the State of New York. All the Company's production is for the war effort.

6. The Company is and has been engaged in commerce within the meaning of the National Labor Relations Act.

7. In the spring of 1941 and shortly prior to on or about April 17, 1941, the CIO commenced a campaign to organize the employees of the Company and the Company had knowledge that such campaign was being conducted by the CIO.

8. On or about April 17, 1941, the president of the Company called a meeting of the Company's employees and told them that he could not afford to pay the employees the CIO wage scales, that such wage scales would put the Company out of business, that he would close the plant if the CIO came in and that the employees should form their own shop union. Supervisory employees attended this meeting. The shop superintendent of the Company, a supervisory employee, told employees at the meeting that he agreed with what the president of the Company said about the CIO and that it would be best for the employees to form their own organization. The meeting was held on company time and property.

9. Shortly after the meeting and on that day supervisory and clerical employees of the Company handed out to employees slips of paper and told employees to mark on the paper whether they wanted an inside or outside union. Then these slips of papers were collected by a clerical employee who took them into the Company's office. Shortly thereafter, a clerical employee announced to the employees that the vote had been in favor of an inside union. All of these events took place on company time and property with the knowledge and permission of the Company.

10. Between April 17, 1941 and April 21, 1941, notices were posted on the Company's bulletin boards stating that a meeting of employees would be held to form a shop union and these notices were posted on the Company's bulletin boards with the knowledge and permission of the Company. Such a meeting was held outside the plant on or about April 21, 1941. At this meeting the Association adopted a constitution and by-laws, copy of which is hereto annexed marked Exhibit 1.

11. On or about April 29, 1941, a petition in the form of Exhibit 2, hereto annexed, was circulated among the employees of the Company on company time and property with the knowledge and permission of the Company. On the night shift, a clerical employee, with the knowledge and permission of the Company, and on company time and property, called into the Company's office about 20 employees, showed them the petition, told them that the day shift employees had already signed, asked them to sign also, and employees did sign after they were assured by such clerical employee that it was all right. This occurred on Company time and property with the knowledge and permission of the Company.

12. On May 2, 1941, the Company and the Association entered into an agreement, copy of which is hereto annexed marked Exhibit 3.

13. On May 9, 1941, the CIO filed with the Second Regional office of the National Labor Relations Board a petition for in-

vestigation and certification of representatives (Case No. 2-C-2245) (Sic). Copy of such petition is hereto annexed marked Exhibit 4.

14. On May 8, 1941, the Company, the Association, and the CIO entered into an agreement in Case No. 2-R-2245. A copy of said agreement is annexed hereto marked Exhibit 5.

15. Pursuant to the agreement of May 8, 1941 (Exhibit 5) an election was held on May 14, 1941. The Regional Director for the Second Region issued her Report on Secret Ballot on May 16, 1941. Annexed hereto and marked Exhibit 6 is a copy of said Report on Secret Ballot. A copy of said report was timely received by the Company.

16. The CIO filed objections to said report on May 17, 1941 and said Regional Director issued her Report on Objections on September 12, 1941. Annexed hereto is a copy of said Report on Objections marked Exhibit 7. A copy of such report was timely received by the Company.

17. A second election was held on October 3, 1941. Said Regional Director issued her Second Report on Secret Ballot on December 8, 1941. Annexed hereto and marked Exhibit 8 is a copy of said Second Report on Secret Ballot. A copy of said Second Report on Secret Ballot was timely received by the Company.

18. The CIO filed objections to said Second Report on Secret Ballot on December 11, 1941. Said Regional Director issued her Report on Objections on December 17, 1941. Annexed hereto and marked Exhibit 9, is said Report on Objections dated December 17, 1941, and a copy thereof was timely received by the Company.

19. At all times between on or about May 8, 1941 and on or about December 17, 1941, the Company enforced the contract with the Association dated May 2, 1941, and required as a condition of employment with the Company that employees become or remain members of the Association in good standing and the Company discharged or threatened with discharge employees who did not remain members in good standing of the Association.

20. On February 28, 1942, the Company and the Association entered into an agreement, copy of which is hereto annexed marked Exhibit 10.

21. On or about September 24, 1942, the employees whose names appear on the petition for special meeting, copy of which is annexed hereto marked Exhibit 11, signed such petition. Notice of a special meeting of the Association to be held on September 25, 1942 was posted on the Company's bulletin board and copy of such notice is annexed hereto marked Exhibit 12.

22. On or about September 25, 1942, the special meeting of the Association was held outside the plant and more than two-thirds of the Company's employees and members of the Association attended. At such meeting, the membership of the Association voted unanimously to dissolve the Association.

23. On or about September 26, 1942, the Company received by registered mail a letter stating that the Association had been dissolved by unanimous vote of the membership at a meeting held on or about September 25, 1942.

24. Subsequent to on or about September 25, 1942, the lawyer for the Association and some employees collected dues for the Association and told employees that they would be discharged if they did not pay dues to the Association. This collection of dues occurred on Company time and property with the knowledge and permission of the Company.

25. On or about October 20, 1942, the Company notified its employees that in order to be eligible for certain retroactive wage increases it was necessary to be a member in good standing of the Association and granted such increases only to employees qualified for such increases who were members in good standing of the Association.

26. In about the summer of 1943, the Company permitted the Association to install Pepsi-Cola vending machines in the plant. Such machines were placed in the plant by the Pepsi-Cola Company and pursuant to arrangement, the Association received a percentage of the profits derived therefrom. The Company has permitted such machines to remain and they still do remain in the plant. Since the operation of these machines in the plant, and up to the present time, the Association has derived a profit therefrom. At all times since their installation, the Company has permitted the machines to remain in the plant without charge to the Association, with knowledge that all moneys received by the Association would be retained and still is retained by the Association. The profit received by the Association from such machines has been substantial in amount.

27. On or about February 29, 1944, the Company and the Association entered into an agreement, copy of which is hereto annexed, marked Exhibit 13.

28. The Company did on or about the respective dates listed alongside each name, discharge those employees employed at its New York Plant whose names are set forth in Exhibit 14, annexed hereto, for the reason that they joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or because

they refused to join or assist or remain members of the Association.

29. All production and maintenance employees of the Company employed at its New York Plant, exclusive of auxiliary military guards, office and clerical employees, technical engineering and drafting employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, sub-division (b) of the National Labor Relations Act.

30. At all times since on or about September 25, 1942 the Union has been the representative for the purposes of collective bargaining, of a majority of the employees in the aforesaid appropriate unit and, by virtue of Section 9, sub-division (a) of the National Labor Relations Act has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

31. On or about September 25, 1942 and at all times thereafter the Company did, after demand at said times, refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in Paragraph 29.

32. In addition to the aforementioned stipulation of facts, it is further stipulated and agreed that the Company hereby withdraws its answer to the amended complaint herein.

33. It is further stipulated and agreed that upon this stipulation, or any part thereof, and the proceedings herein or any of them, an order may be entered by the National Labor Relations Board in the form hereto annexed and marked Exhibit 15.

34. It is further stipulated and agreed that any appropriate United States Circuit Court of Appeals may, upon application by the National Labor Relations Board, enter a decree substantially enforcing the Order of the said Board entered upon this stipulation or any part thereof and the proceedings herein, and the parties hereto hereby expressly waive all rights to contest the entry of such decree and all rights to receive notice of the filing by the said Board of an application for the entry of such decree.

35. This stipulation contains the entire agreement of the parties and there is no verbal agreement which varies, alters, or modifies this stipulation.

36. Nothing herein shall be taken to require respondent to vary those wages, hours, seniority and other such substantive features of its relations with its employees which respondent has estab-

lished in performance of any contract or revision, extension, renewal, or modification thereof.

37. This stipulation is subject to the approval of the National Labor Relations Board and shall become effective immediately upon such approval.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Lane Lifeboat & Davit Corporation, a New York corporation, is engaged exclusively in production for the war effort at its plant at Flushing, Long Island, New York, manufacturing, selling, and distributing lifeboats, davits, ship equipment, and related products. During the 12-month period immediately preceding October 30, 1944, the respondent purchased for use at its plant, materials valued in excess of \$50,000, of which approximately 50 percent was shipped to it from points outside the State of New York. During the same period, the respondent sold finished products valued in excess of \$50,000, of which approximately 50 percent was 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 LABOR ORGANIZATIONS INVOLVED

Lane Lifeboat & Davit Employees' Association and United Construction Workers, Division of District 50, United Mine Workers of America, are labor organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Domination and support of the Association*

Upon consideration of the stipulated facts, we find that the respondent dominated and interfered with the formation and administration of the Association and contributed financial and other support thereto, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the agreements entered into between the respondent and the Association, and the contractual relationship existing thereunder, have been and are a means of utilizing an employer-dominated organization to frustrate the exercise by the respondent's employees of the rights guaranteed in Section 7 of the Act. For the foregoing reasons and because said contracts, which condition employment with

the respondent upon membership in the dominated Association, were not made in compliance with the proviso of Section 8 (3) of the Act, we find that the contracts are illegal and should be given no effect.

With respect to the issue of domination, the Association alleged in its offer of proof that it is a militant union and that it has obtained many valuable benefits for the employees from the respondent. This allegation does not rebut the stipulated facts upon which our findings of domination and support are based or otherwise constitute a valid defense to said findings.⁵

B. *The discriminatory discharges*

• We find, as admitted by the respondent in the stipulation, that the respondent discharged Stephen Meringer, John Rean, Leonard Saladino, Joseph Pacelli, and Joseph Ambrosino on or about October 20, 1942, Felix Dzikowski, William Munda, Frederick Spielman, and John Gilmartin on or about October 22, 1942, and Arthur Masonheimer and John Helly on or about October 23, 1942, because they joined or assisted the Union or because they refused to join or to remain members of the Association. We further find that the respondent thereby discriminated in regard to the hire and tenure of employment of the above-named employees, encouraged membership in the Association, discouraged membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. *The refusal to bargain*

1. The appropriate unit

The respondent and the Union stipulated, and we find, that all production and maintenance employees at the respondent's New York plant, excluding auxiliary military guards, office and clerical employees, technical engineering and drafting employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

As set forth in the stipulation, we find that at all times since on or about September 25, 1942, the Union has been, and now is, the duly

⁵ See *N. L. R. B. v. Newport News Shipbuilding & Drydock Co.*, 308 U. S. 241; *N. L. R. B. v. Link-Belt Company*, 311 U. S. 584; *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), aff'd 312 U. S. 660; and *International Association of Machinists v. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), aff'd 311 U. S. 72.

designated representative of a majority of employees in the appropriate unit and, pursuant to Section 9 (a) of the Act, has been, and now is, the exclusive representative of all the employees in such unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

With respect to the issue of majority representation by the Union, the Association admittedly had no information concerning the Union's majority status on September 25, 1942, the date on which the respondent refused to bargain with the Union, as found below, but offered to prove that subsequent thereto there had been a substantial labor turn-over at the respondent's plant as well as an increase in personnel and that the Association now represents a majority of the respondent's employees. While this offer of proof goes beyond the scope of the Association's interest in the proceeding, which is limited to the issue of domination, we nevertheless have considered it. We find that the existence of unremedied unfair labor practices precluded the employees from exercising a free choice in the selection of a new bargaining agent and contributed to any loss of majority which the Union may have sustained after September 25, 1942, the date of the refusal to bargain. We, accordingly, find no merit in the Association's contention.⁶

3. The refusal to bargain

The respondent admits in the stipulation, and we find, that on or about September 25, 1942, and at all times thereafter, the respondent refused, upon request, to bargain collectively with the Union as the exclusive representative of its employees in said appropriate unit with respect to rates of pay, wages, hours of work, and other conditions of employment. We further find that the respondent 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

We find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent set forth 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 certain unfair labor practices, we shall order it to cease and desist therefrom and to

⁶ See *Franks Bros. Co v N L R B*, 321 U. S. 702; and *Matter of Karp Metal Products Co., Inc.*, 51 N. L. R. B. 621.

take the affirmative action agreed upon in the stipulation, which we find will effectuate the policies of the Act.⁷

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

CONCLUSIONS OF LAW

1. Lane Lifeboat & Davit Employees' Association and United Construction Workers, Division of District 50, United Mine Workers of America, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Lane Lifeboat & Davit Employees' Association, and contributing financial and other support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of the 11 employees named above, thereby encouraging membership in Lane Lifeboat & Davit Employees' Association and discouraging membership in United Construction Workers, Division of District 50, United Mine Workers of America, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. All production and maintenance employees at the respondent's New York plant, excluding auxiliary military guards, office and clerical employees, technical engineering and drafting employees, foremen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. United Construction Workers, Division of District 50, United Mine Workers of America, was on or about September 25, 1942, and at all times thereafter has been, the exclusive representative of all employees in such unit, within the meaning of Section 9 (a) of the Act.

6. By refusing to bargain collectively with United Construction Workers, Division of District 50, United Mine Workers of America, as the exclusive representative of its employees in said appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

⁷ As previously stated, even accepting as true the Association's contention that since the date of the refusal to bargain the Union has not maintained its majority status, we find, for the reasons stated in our Supplemental Findings in *Matter of Karp Metal Products Co., Inc.*, 51 N. L. R. B. 621, 623-626, that it will effectuate the policies of the Act to require the respondent to bargain collectively with the Union.

7. 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.

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

ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and 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, Lane Lifeboat & Davit Corporation, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of Lane Lifeboat & Davit Employees' Association, or any other labor organization of its employees, and from contributing support to Lane Lifeboat & Davit Employees' Association, or any other labor organization of its employees;

(b) Giving effect to any and all contracts, supplements thereto or modifications thereof, with Lane Lifeboat & Davit Employees' Association;

(c) Refusing to bargain collectively with United Construction Workers, Division of District 50, United Mine Workers of America, as the exclusive representative of all its production and maintenance employees employed at its plants at Foot of 40th Road, Flushing, Long Island, New York City, and at 518 Gardner Avenue, Brooklyn, New York City, exclusive of auxiliary military guards, office and clerical employees, technical engineering and drafting employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively to recommend such action;

(d) Discouraging membership in United Construction Workers, Division of District 50, United Mine Workers of America, or any other labor organization of its employees, by laying off, discharging, refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(e) 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 Construction Workers, Division of District 50, United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the pur-

poses 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 National Labor Relations Act:

(a) Withdraw all recognition from Lane Lifeboat & Davit Employees' Association as the representative of any of its employees for the purposes 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 Lane Lifeboat & Davit Employees' Association as such representative;

(b) Upon request, bargain collectively, in good faith, with United Construction Workers, Division of District 50, United Mine Workers of America, as the exclusive representative of all its production and maintenance employees employed at its plants at Foot of 40th Road, Flushing, Long Island, New York City and at 518 Gardner Avenue, Brooklyn, New York City, exclusive of auxiliary military guards, office and clerical employees, technical engineering and drafting employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(c) Offer to Stephen Meringer and William Munda, upon application by them within 40 days after their discharge from the armed forces of the United States, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(d) Offer to John Rean, Leonard Saladino, Joseph Pacelli, Joseph Ambrosino, Felix Dzikowski, Frederick Spielman, John Gilmartin, Arthur Masonheimer, and John Helly, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges;

(e) Make whole Stephen Meringer and William Munda for any loss of earnings they may have suffered by reason of the respondent's discrimination against them, by immediate payment to them of a sum of money equal to the amounts they would normally have earned as wages during the periods (1) between the date of their discharge by the respondent and the date of their induction into the military service, and (2) between the date 5 days after their timely application (as provided in paragraph 2 (c) above) and the date of offer of reinstatement, less their net earnings during each of those periods;

(f) Make whole John Rean, Leonard Saladino, Joseph Pacelli, Joseph Ambrosino, Felix Dzikowski, Frederick Spielman, John Gilmartin, Arthur Masonheimer, and John Helly for any loss of earnings they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount of which normally would have earned as wages

from the date of the respondent's discrimination against him to the date of the offer of reinstatement, less his net earnings during such period;

(g) Post immediately in conspicuous places throughout its plants at Foot of 40th Road, Flushing, Long Island, New York City, and 518 Gardner Avenue, Brooklyn, New York City, for a period of 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 paragraphs 1 (a), (b), (c), (d), and (e) of this Order; (2) that the respondent will take the affirmative action set out in paragraphs 2 (a), (b), (c), (d), (e), and (f); and (3) that the respondent's employees are free to become or remain members of United Construction Workers, Division of District 50, United Mine Workers of America, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(h) 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.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.