

Zenith Radio Corporation and Thelma Reed and Cornelia Banks and Earnestine Franklin, and James Payne, and Reinaldo Rodriguez and Bertha Mae Bynum. Cases 13-CA-9108, 13-CA-9119, 13-CA-9121, 13-CA-9121-2, and 13-CA-9121-3

November 27, 1970

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND BROWN

On June 11, 1970, Eugene E. Dixon issued his Decision 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 attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and the General Counsel filed limited exceptions to the Decision, and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Zenith Radio Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

ORDER

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

EUGENE E. DIXON, Trial Examiner: This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard at Chicago, Illinois, on March 3-5, 1970.

The consolidated complaint was dated December 17, 1969, and was based on duly served individual charges filed May 7 (Case 13-CA-9108); May 12 (Case 13-CA-9119); May 12 (Case 13-CA-9121); May 13 (Case 13-CA-9121-2); and May 13, 1969 (Case 13-CA-9121-3). The complaint, issued by the Regional Director for Region 13 (Chicago, Illinois) on behalf of the General Counsel of the National Labor Relations Board, herein the General Counsel and the Board, alleged that Respondent, Zenith Radio Corporation, had interfered with, restrained, and coerced its employees by suspending certain of the Charging Parties for various lengths of time for engaging in protected concerted activity in violation of Section 8(a)(1) of the Act.

In its duly filed answer Respondent denied the commission of any unfair labor practices.

No opposition to the General Counsel's motions to correct the transcript having been filed the motions are hereby granted.

Upon the entire record and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

At all times material Respondent has been a corporation duly organized under and existing by virtue of the laws of the State of Delaware and licensed to do business in and by the State of Illinois. At all times material Respondent has maintained its offices and production facilities in Chicago, Illinois, where it is and has been engaged in the manufacture of radios, television receivers, and related radionic products. During the past calendar or fiscal year, a representative period, Respondent in the course and conduct of its business operations at Chicago, Illinois, manufactured, sold, and distributed products having a gross value in excess of \$1 million of which products valued in excess of \$50,000 were sold and shipped from its Chicago, Illinois, place of business directly to points of the United States outside the State of Illinois. Respondent now is and at all times material has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

For many years prior to April 22, 1968, Independent Radionic Workers of America (IRWA herein) was recognized by Respondent as collective-bargaining agent of its production and maintenance employees. As of April 22, 1968, Respondent and IRWA were operating under a collective-bargaining agreement effective from July 1, 1965, through June 30, 1968. On April 22, 1968, International Brotherhood of Electrical Workers, AFL-CIO (IBEW herein), filed a representation petition (Case 13-RC-11555) seeking to replace the IRWA as the bargaining agent of the production and maintenance employees. On May 27, 1968, a stipulation for a consent election was entered into by the two unions and Respondent. Pursuant to this stipulation, a Board election was conducted on June 20, 1968, with the incumbent IRWA receiving the majority of the votes cast. Timely objections were filed by the IBEW which on

September 10, 1968, the Regional Director recommended be overruled. Upon duly filed objections by the IBEW the Board on October 14, 1968, ordered a hearing on the objections which hearing was held during October, November, and December, 1968.

In the meantime on or about December 15, 1968 (the collective-bargaining agreement between Respondent and the IRWA having expired on July 1), Respondent granted a 5-percent retroactive wage increase covering the period July 1 to December 1, 1968. On February 14,¹ 1969, the two unions and Respondent enter into a stipulation that the June 20 election be set aside and that a new election be held on April 2, 1969. The rerun election was held as scheduled and IRWA again received a majority of the votes. On April 9, IBEW filed objections based on alleged improprieties involving the custody and counting of the ballots. On April 10, Respondent informed the employees over the public address system that it expected an early Board decision on the IBEW exceptions and hoped for early negotiations for a "new contract and higher wages" and voiced appreciation for the employees' "continued patience and understanding."

On April 11, Respondent heard many rumors that there would be a walkout at either 10 or 11 a.m. At this time Respondent (having consulted the Regional Office of the Board and having received no determination as to the resolution of the IBEW objections) decided to announce a 5-percent retroactive payment to all employees for the period from December 1, 1968, to April 14, 1969, and a 5-percent prospective wage increase effective April 14, 1969, which announcement was made over the public address system to the employees at approximately 10:15 a.m.² According to the credited testimony of James Payne the employees "started booing as soon as the announcement was made."

Many employees at plant 2 had walked out before the announcement and after the announcement many employees of plants 1 and 6 (including Payne) walked off the job. At 11:48 a.m. Respondent announced over the public address system that because so many people had walked out they could no longer continue to operate and thus decided to close all plants immediately. Employees were requested to return to work at the usual time on the following Monday.

After leaving the plant a large number of the striking employees marched from plant 2 to the IBEW offices where they were joined by employees from the other plants and where they demonstrated. From the IBEW hall the employees then marched to a position outside the administrative offices of plant 6. The employees were accompanied by several IRWA representatives and many employees carried IRWA signs used during the election campaign. In front of the administration office building the employees demonstrated demanding more money. According to the undenied and credited testimony of Thelma Reed who had also walked out, the crowd outside was saying, "We want 10 percent. We don't want 5."

Several IRWA representatives including President Berg, Financial Secretary Wojek, Treasurer Higgs, Director Grandinetti, and Vice President Weil asked permission to meet with management representatives. This permission was granted and the union representatives proceeded to meet with Respondent's officials. According to the credited testimony of Berg when Respondent's president, Sam Kaplan, asked Berg if he was negotiating for the employees Berg replied that he "was definitely not negotiating . . . just communicating their demands, what the people were hollering about out on the street" and he proceeded to tell Kaplan "exactly what they wanted, they wanted 10 percent and they wanted it now." Both Kaplan and Berg agreed that in the absence of a certification they were in no position to negotiate. Kaplan also asked Berg if the Union was responsible for the walkouts and Berg said it was not. When Kaplan asked if the Union would assist in getting the employees back to work, Berg replied that it would.

On Monday, April 14, Respondent's plants opened on schedule. Hundreds of employees congregated outside of plants 1, 2, and 6 but only a small percentage of employees came in to work. As a result, at 8:30 a.m. Respondent announced over the public address system that since there were not enough employees to operate, all plants would be closed immediately and employees were asked to check their radios for instructions on when to return to work.

As for the scene outside, according to Reed's further credited testimony, there were police guards keeping people away from the entrance of the plant and the crowd was "screaming and hollering '10 percent.'" Finally a company official came out and addressed the employees. In the meantime one of the police officers, apparently relaying a message from management, told the crowd that the Company did not know what it was yelling about and suggested that representatives be appointed to go in and tell the Company what the employees wanted. Pursuant to this suggestion Reed was designated by acclamation and at her request two others were also designated to accompany Reed.

In the plant this *ad hoc* committee informed the Company that the employees wanted a 10-percent raise. The Company indicated it would consider the employees' demands and told Reed and the committee to bring representatives from the other plants the next day at which time it would discuss the matter with them. When the employee committee appeared the following morning it was told that in view of the fact that the IRWA had been certified as the bargaining agent of the employees the day before the Company could not now talk to them and that they should take their demands to the Union.

After reporting the Company's position to the employees outside they went to the union headquarters where the committee (now joined by James Payne at the suggestion of someone in the crowd) attempted to see IRWA President Berg for the purpose of requesting a meeting of the union membership. In this request the committee was unsuccessful.³ After the unsuccessful session with the

¹ From here on all dates will be in 1969 unless otherwise noted

² In addition to the oral announcement of the retroactive and prospective 5-percent wage increase, Respondent also notified the employees of the wage action by letter dated April 11

³ According to Reed's testimony Berg refused to talk to the committee Payne testified that Berg talked to them but refused to call a membership meeting

Union Payne indicated that he could arrange a meeting place for the employees at the First Congregational Church through its pastor, Mayo Loving. This he did and the employees subsequently met there several times.

As soon as the Board certified IRWA the Company immediately mailed to its employees the following letter:

Dear Zenith Employee:

Good news! The National Labor Relations Board has finally certified your official bargaining agent. It is the IRWA.

Zenith and the IRWA have agreed to begin bargaining at once for a new contract. These negotiations will include bargaining for a wage increase *in addition to* the 5% announced on Monday, April 14. The 5% lump sum payment for the period from December 1, 1968 to April 14, 1969 will be mailed to you sometime next week.

The IRWA joins with us in urging all employees to return to work on Thursday, April 17, at the regular starting time, so that new contract negotiations can begin. The first bargaining meeting is scheduled for Thursday, April 17.

To repeat:

The IRWA and Zenith urge you to report for work Thursday, April 17 at the regular starting time.

Bargaining for a wage increase over and above the 5% can then begin.

The Company assures you that it will dedicate its full efforts to arrive at a fair settlement at the earliest possible time.

Sincerely,

S. Kaplan
President

Late in the day of April 15 IRWA and company officials met and discussed resumption of operations and on the next day, April 16 (the plant still closed), met for a preliminary negotiation session. On April 17, while many employees returned to work (attendance being poorest in plant 6) at Respondent's urging in newspaper advertisements⁴ others congregated outside the plants. Reed arrived at the plant at about 7 a.m. The employees told her that they had been waiting for her and asked her if they were going to work or stay out. She said it was up to "what the crowd wants to do." The suggestion was made: "Stay out until we get our 10 percent." So Reed got up on a car and told the employees, ". . . everybody stay out until we get 10 percent." To the employees who had gone in to work, a welcoming comment was read over the public address system announcing that negotiations would continue and outside another announcement was read indicating that contract negotiations were in progress and that the Company was "anxious and willing to come to a settlement as soon as possible."

As promised, a negotiation meeting was held on April 17. At this meeting both the Company and the Union voiced their desire and purpose to reach an early agreement. According to the direct testimony of Frederick Hedblom,

⁴ The ads, signed by Zenith only, stated in part:

The bargaining will include a wage increase on top of the 5% increase which became effective Monday, April 14. We repeat: The IRWA and

Respondent's vice president in charge of production and one of the Company's spokesmen, in this meeting he referred to the fact that for months they had been operating under "most of the provisions" of the expired contract that they "had agreed to before to operate in a status quo manner" and asked if the Union "would agree with the Company that there would be no work stoppages or wild cat strikes or anything else of an untoward nature which would interfere with a peaceful and a rapid conclusion to the negotiations. . . ." According to Hedblom's further direct testimony the Union gave "assurances . . . there would be no work stoppages or any interference to bringing these negotiations to any early conclusion." On cross-examination Hedblom testified that the Union had indicated that "it was not the intention of the Union to exercise its economic powers unless the Company and the Union were not making any progress and reached an impasse."

Earl Page, Respondent's director of labor relations, substantially corroborated Hedblom testifying that Hedblom had "made a statement to the effect that the Company was interested in completing negotiations and arriving at an agreement as expeditiously as possible and . . . asked the Union for their assurance that they would bargain in good faith and that there would be no interruptions in work and that the status quo with respect to the observance of the contract would be maintained during the negotiations as it had been during the past several months." Page further testified that the Union's spokesman and attorney, Leon Roselle, "replied that this arrangement would be agreeable with the Union, they would be willing to continue the status quo which had been in effect and that so long as reasonable progress was made in the negotiations, there would be no interruptions of work, work stoppages so far as the Union could control."

IRWA President Berg testified for both the General Counsel and the Respondent. As a witness for the General Counsel he testified that at no time between April 15 when the IRWA was certified and May 2 when a new contract was agreed upon did the Union agree to a no-strike commitment. As a witness for Respondent he testified that at the termination of the contract on July 1, 1968 there was an understanding between the Union and Respondent "that the contract would remain status quo." He also testified first that he could not recall a-y request for assurance from the Union of a no-strike commitment during negotiations and then testified that during the April 15-May 2 period no specific mention was made of continuing in effect the no-strike provision of the old contract.

On April 18 Respondent's plants reopened and attendance was improved. But Respondent heard rumors of a proposed walkout. At 10:50 a.m. Respondent read the following announcement to its employees:

Good morning! Again I want to welcome all of you and thank you for being on the job. A few words about negotiations— the bargaining committees of the Union and the Company met for several hours yesterday

Zenith urge you to report for work Thursday, April 17, at the regular starting time—so so negotiations for your wage increase can begin.

afternoon and we are off to a good start bargaining for higher wages and other benefits. Both sides agreed to work as hard and as many hours as necessary to reach agreement on a new contract for you at the earliest moment. We are meeting again today and other meetings will be held over the weekend. Attendance is almost back to normal at all plants. And I'm sure that you are as glad about this as we are. We have heard that a few employees plan to leave sometime today if anyone asks you to leave, it can only be for some selfish reason of his own. Both the Union and the Company request that you pay no attention to any request like that, but that you continue to perform your job as you have been doing because work stoppages can only slow down the bargaining. We will continue with regular schedules everyday. Again thank you for your excellent cooperation. We will see all of you on Monday. Thank You.

On April 18 Edwin Schroeder, Respondent's equal employment officer, talked to employee James Payne and Reverend Loving. In this meeting Payne and Loving (together with employee Santos Perez) were assured by the company officials that there would be no reprisals against the employees "if they would return to work." Schroeder told Loving (as spokesman for the visitors) that the Company did not know what the employees wanted. Loving said his information was that they wanted a 10-percent increase. Schroeder said that the Company "would love to give it to them, but it was up to the Union" Subsequently on two occasions once on the parking lot at the plant and later that evening at his church Loving conveyed to the employees Schroeder's assurances that there would be no reprisals for their work stoppage.

Negotiations continued on April 19 and 20. On April 21 attendance was near normal for a Monday. Over the public address system Respondent read the following communication:

Good morning! We're happy to see so many of you in the plants this morning. The attendance is about normal and it looks like this [sic] attempts by a handful of selfish people to persuade you not to come to work are about over and we're rapidly getting back to our regular schedules.

The Company and the Union have had five bargaining sessions so far. We met for long hours on Saturday and again on Sunday as we told you we would. We are meeting again today. Good progress is being made and both the Union and the Company look forward to an early settlement of all issues. Thank You.

On the same day, April 21, the Company also mailed to its employees the following communication:

Our records indicate that you have been absent from work for at least 3 days without authorization. Further unauthorized absence of this kind will not be condoned by the Company. We urge you not to repeat any such action which may affect your employment status. . . .

On the morning of April 21 the Union handbilled the employees as they came to work reviewing the negotiation developments to date and pointing out that the Union had

asked Respondent for "the biggest money package" in its 30-year history and asking for the employees' "cooperation and patience." The communication also admonished the employees not to "listen to any false rumors" and stated that "your IRWA officers and directors pledge to you that they will following our IRWA constitution which requires that the IRWA membership must ratify and approve any settlement reached before it can be put into effect."

Sometime on April 21, Reed, Payne, and other representatives of the employees met with the IRWA officials and presented a list of things they wanted negotiated: (1) a 10-percent increase retroactive to July 1968; (2) a cost-of-living clause; and (3) the term of the contract. According to Reed's testimony, Berg said that the employees' demands seemed fair but that the Company would not negotiate with the employees on strike. He told them to go back to work and that he would go in and demand all that they were requesting.

The committee agreed to go back on April 23 indicating that they would continue their strike on the 22d because on that date there was a stockholders' meeting scheduled and they wanted the opportunity to let the stockholders know how they had been treated. Berg thereupon told the committee that if they went back on the 23d he would present their demands to the Company and if the Company did not agree by Friday, the 25th, the Union would back the employees in a strike.⁵ Outside the union hall, Reed reported the results of the meeting with the union officials to the employees there congregated. She did this from the top of an automobile with the aid of a policeman's bull horn. She told them that Berg had assured them that if they did not have their "demands by Friday at 11 o'clock . . . he would back a walkout." When the employees wanted to know if Berg had specifically so indicated Reed had one of the other committee members assure them that such was the fact. The employees then wanted to know if they were to go back to work the following day and Reed said, "No, we are going to picket the stockholders' meeting tomorrow and everybody will return to work on Wednesday." The stockholders' meeting was picketed and during the picketing the following handbill was passed out:

RONNIE BERG PROMISED 10% ACROSS THE BOARD RETROACTIVE BY FRIDAY BEFORE NEGOTIATIONS WE ARE STILL FIGHTING FOR OUR RIGHTS (10% ACROSS THE BOARD) WE HAVE BEEN PROMISED BY RONNIE BERG THAT HE WILL DEMAND THIS 10% WITH THE SUPPORT OF THE PEOPLE (THE MEMBERS OF THE UNION BEHIND HIM).

WE WILL HAVE A GENERAL MEETING OF ZENITH WORKERS TUESDAY AT 5:00 P.M. AT FIRST CONGREGATIONAL CHURCH OF CHICAGO, ON THE CORNER OF ASHLAND AND WASHINGTON BOULEVARDS APRIL 22, 1969.

As between Berg and Reed, I credit Reed's testimony here at least to the extent that Berg, whether he volunteered it or acquiesced to the dictates of the committee, made a commitment to them to back a strike if the employees' demands were not met by 11 a.m., April 25. Reed's so

⁵ Berg testified that he told Reed that the Union at that time wanted the people to go back to work and to "continue negotiations, until we get to a

point of total impasse and then we would take economic action if necessary, which would mean a strike "

indicating to the employees right after the meeting with Berg, the verification of it by another committee member, and reiteration of it in a handbill to the employees the following day lend strong support to its authenticity — the impression I got of it when I heard the two witnesses testify.

On April 23 attendance was normal. There were no gatherings or demonstrations outside the plant. Many employees were given warning notices as indicated above on or about this date. Another announcement was read to the employees over the public address system on April 23 which stated in part that “the Company has made a very substantial counter-offer to the Union covering wages, fringes, and contract provisions. Good progress is being made at the bargaining table and we look forward to a settlement of all issues soon.”

On April 24 Respondent gave IRWA its “final offer” in the bargaining session of that date. That afternoon, Respondent began elaborate preparations for a strike the next day. Thus, Robert MacGregor, then production superintendent of building 5 in plant 1, attended a meeting on the afternoon of the 24th in the office of Plant Manager Frank Dederá. He was told that “there had been continuous rumors concerning disturbances that were meant to incite a walkout, and these were centered at plant No. 6” Dederá’s office was designated “rumor central” for plant 1, and security personnel briefed management on how to deal with “incidents meant to provoke a walkout . . . that would involve a violation of criminal law,” and it was indicated that police would be on hand if needed, and that “Crusade of Mercy” and “Green Cross of Safety” badges would be available for identification of supervisors.

On the morning of April 25 IRWA passed out a handbill to the employees as they came to work containing a summary of the Company’s offer of the previous day. The Company’s offer included a 10-percent wage increase retroactive to January 1, 1969, rather than July 1, 1968, and contained no cost-of-living clause whatsoever.

On the morning of April 25 additional rumors of a proposed walkout at 11 a.m. reached Respondent. Earlier the following handbill had been passed out to employees as they arrived at work:

On Monday, April 21, the Union President Ronnie Berg promised Zenith workers that if by 11:00 a.m. today he has not gotten a ten 10% across the board cash raise retroactive to 7-1-68 to 6-30-69 he will support a walkout and back the Zenith workers.

The company has offered us much less than this. So now is the time when *all Zenith plants* are going to stand together for what we demand as a fair cash raise in our pay checks. Unless we hear an announcement from the company that this ten 10% raise has been granted we will walk out.

⁶ According to Payne’s testimony, about April 17 he and his co-committee members began calling themselves “The Zenith Workers” or “The Concerned Zenith Workers.”

⁷ There is a conflict between Rodriguez’s testimony and Respondent’s as to whether or not Rodriguez was standing in an aisle encouraging people to walk out by shouting, “Out, out, out,” and as a result was arrested

The Zenith Workers⁶

Thank you for your cooperation

Thelma Reed, James Payne, and Union Steward Bertha Bynum came to work at plant 6 on the morning of April 25 as did Earnestine Franklin, Reinaldo Rodriguez, and Cornelia Banks at plant 1. During her break Reed unsuccessfully tried to get in touch with Union President Berg or some of the union directors to find out what to do about the 11 o’clock strike deadline. At 11 a.m. employees from the final assembly area in plant 6 came through the plant yelling, “We walking out.” By noon about half of the employees at plant 6 and about 15 percent of plant 1 had walked out. Among them were Payne, Reed, Franklin, Bynum, and Banks. Shortly after noon Rodriguez also left the plant in the custody of the police.⁷ Notwithstanding that over a thousand employees walked out on the 25th, all plants continued to operate.

After leaving the plants the strikers gathered in front of the IRWA hall. Berg came out and addressed the crowd telling the employees that the Company had “gone against and double crossed (him) and made an announcement that (he) had not authorized and that he was going back in and negotiate . . .”⁸ Berg promised to call the group at the church but he did not do so.

In the afternoon of the 25th the Company announced over the public address system that in a current meeting with the Union it had agreed with the Union to pay 4 hours of reporting time for those who had reported to work the previous Monday.

All employees returned to work on Monday, April 28. A petition was circulated by Payne and others for a union meeting. The IRWA distributed a negotiation report to employees on the 28th as they came to work. Among other things the report stated that unless the bargaining committee could see that it would be able to reach an acceptable agreement very soon it would “request the membership to authorize strike action.” On or about April 29 the following communication was given by Respondent to employees who participated in the April 25 walkout:

Company records indicate that on April 25, 1969 you left your job during working hours without permission.

The Company is in the process of investigating the circumstances of your case to determine whether disciplinary action is necessary. . . .

Between April 28 and May 1 negotiation meetings were held daily. On May 2 a negotiation report by the IRWA was handed out to the employees as they came to work. In it reference was made to the complete outline of what the Company called its “final offer” that the Union had distributed to the employees the previous Friday (April 25) and to the Union’s report of April 28 in which they had indicated that the bargaining committee’s position that it would recommend acceptance of a contract providing that the Company’s offer was improved to include a cost-of-living wage reopener and “certain additional wage and

because of this conduct and his refusal to leave. I credit Respondent’s version.

⁸ He was referring to an announcement that the Company had made over the PA system before 11 a.m. to the effect that the expected strike was not authorized by the Union.

vacation improvements as well as some other adjustments." The communication also stated:

Last Monday your bargaining committee told you if we found we are unable to reach an acceptable agreement very soon we would request membership authorization to authorize the IRWA bargaining committee to call for a strike if the bargaining committee thinks it is necessary to do so.

We are scheduling a meeting for this purpose on Thursday, May 8, 1969 at Ferrara Manor, 5609 W. North Ave., Chicago, Illinois where a secret ballot of the membership will be taken in accordance with the provisions of the IRWA constitution.

On May 2 a negotiation meeting was held and agreement reached on a new contract. On or about May 4 IRWA initiated a mail ballot referendum on ratification of the new contract. Thereupon Payne, Rodriguez, and Franklin as well as others handbilled the employees at the plant entrances (in full view of supervisors coming to work) asking employees not to sign and return the mail ballots and announcing a meeting at the church on May 6 when an attorney would be present to explain the contract. Apparently simultaneously with the foregoing handbilling the above employees also were circulating a petition for a union meeting and on May 8 when they had secured over 3,000 signatures it was duly presented at the union office. On May 5 the IRWA handbilled employees concerning the new agreement. Among other things this report stated that the agreement could not go into effect until ratified by the membership.

On May 8 a letter from an attorney representing a group of the striking employees was hand delivered to Respondent. This letter indicated that the law firm had been retained by IRWA members in their effort to stop the Union's mail ballot referendum on the contract until after a membership meeting petitioned for by some 3,200 IRWA members had taken place.

Between May 5 and 9 further negotiation meetings were held concerning contract language. On May 9 Respondent informed the IRWA that it was going to discipline 16 of the employees (including Payne, Franklin, Rodriguez, and Bynum) for participating in the April 25 walkout. Accordingly Payne and Franklin were suspended for 5 days on May 9, Bynum for 2 weeks on May 12, and Rodriguez for 5 days on May 13. Cornelia Banks had already been suspended for 3 days on April 28, also in part, for her walkout on April 25.

In the afternoon of May 12 Respondent was informed by the IRWA that the new contract had been ratified. Final wording of the contract was agreed on May 13 and during the afternoon of May 13 a short announcement was read over the public address system concerning when the new wage rates would be reflected in the employees' paychecks.

Contentions and Conclusions

The key question here is whether the strike of April 25 for which the Charging Parties were suspended was or was not activity protected by the Act. Respondent contends that it

⁹ As pointed out by the General Counsel, as for these two communications constituting a warning of possible discipline, they can be viewed as simply restating the rule of *N.L.R.B. v. Mackay Radio and*

was not protected because, it claims, it was in violation of a no-strike commitment made to the Company by the duly designated bargaining agent of the employees. Respondent further contends that even if it be found that the Union had not made a no-strike commitment, the strike was by a minority of the employees and was not sanctioned or authorized by the Union and thus was not protected under the rule of *N.L.R.B. v. Draper Corporation*, 145 F.2d F.2d 199 (C.A. 4, 1944).

The General Counsel's position is that there was no binding no-strike commitment in effect and that the walkout was protected even though it may not have been authorized by the Union. The General Counsel as an alternative theory further contends that even if it be found that the strike itself was unprotected activity, Respondent in effect was using it as a pretext to punish the suspended employees for attempting to get a union meeting and for other permissible concerted activity.

I believe that the walkout was protected activity and find first that no binding no-strike commitment had been made by the Union. As shown by the testimony of Earl Page (Respondent's director of labor relations) when Vice President Hedblom on April 17 asked union assurance that there would be no work stoppages to interfere with a rapid conclusion to the negotiations, the Union's attorney replied that there would be no work stoppages "so long as reasonable progress was made in negotiations" and then only "so far as the Union could control." This, in my opinion, was not a binding no-strike commitment. Nor do I believe that Respondent at the time really believed that it had such a commitment. If it did, it seems to me that somewhere in the numerous announcements and communications with the employees touching on the question of strikes and walkouts some mention of the commitment would have been made. Not even in the two communications regarding unauthorized absences (including the strike at issue) were there any such allusions.⁹

The General Counsel makes a very persuasive argument to the effect that *Draper* and subsequent cases do not make illegal all unauthorized minority strikes and that where such a strike is not in derogation of the bargaining agent and the demands it is pursuing in negotiations (as he claims the facts here show) it is protected under the Act.

It is unnecessary to pass upon the General Counsel's contention because in my opinion the credited evidence here clearly shows that the walkout of April 25 was authorized by the Union and thus takes the matter out of the reach of the *Draper* rule. As shown, I have credited Reed's testimony that Union President Berg promised that if the employees' demands, particularly the 10-percent retroactive increase to July 1, 1968 (which, so far as the uncontroverted evidence shows, was being vigorously advanced by the Union in negotiations), were not agreed to by 11 a.m. on April 25, the Union would back a strike. Regardless what position Berg may have been taking in this connection in the negotiations with Respondent, it seems to

Telegraph Co., 304 U.S. 333. "that economic strikers may be replaced and thereby have their employment status affected."

me that the employees were entitled to rely on Berg's assurance to back a strike if the deadline was not met¹⁰ (particularly in the absence of a binding no-strike commitment by the Union) and that Respondent, even if it in good faith believed that the strike was unauthorized, thus had no right to suspend the employees and in so doing interfered with, restrained, and coerced them in the exercise of rights protected by the Act and thus violated Section 8(a)(1) of the Act. I so find.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with the operation of 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 thereof.

IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent suspended Cornelia Banks for 3 days on April 28, Earnestine Franklin for 5 days on May 9, James Payne for 5 days on May 9, Reinaldo Rodriguez for 5 days on May 13, and Bertha Mae Bynum for 2 weeks on May 12 for engaging in activity protected by the Act, I shall recommend that Respondent be ordered to make them whole for any loss of earnings they may have suffered by payment to them of a sum of money equal to the amount they normally would have earned as wages during their suspensions less net earnings during said periods including interest as held in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

I shall also recommend that Respondent preserve and, upon request, make available to the Board payroll and all other records necessary to facilitate the determinations of the amounts due under this Recommended Order.

In the circumstances of this case I do not believe that a Board order is called for. Accordingly I shall recommend only that Respondent be ordered to cease and desist from infringing in any like or related manner upon the rights guaranteed employees by Section 7 of the Act. Nor do I believe that any more notice to the employees of the disposition herein is needed than the usual posting requirement.

Upon the basis of the foregoing findings of fact and upon the entire record in the case I make the following:

CONCLUSIONS OF LAW

1. Zenith Radio Corporation is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. Said unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that Zenith Radio Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from suspending employees for engaging in protected concerted activities for the purpose of collective bargaining or other mutual aid and protection in connection with their wages, hours, or working conditions, and in any other like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in concerted activities for such purposes.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Make Cornelia Banks, Earnestine Franklin, James Payne, Reinaldo Rodriguez, and Bertha Mae Bynum whole for loss of pay they may have suffered by reason of their illegal suspensions as provided in the section entitled "The Remedy;"

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, and all other records relevant to a determination of the amount of backpay due under the terms of this Recommended Order.

(c) Post at its plants in Chicago, Illinois, copies of the Attached notice marked "Appendix."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 13, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and he maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify said Regional Director, in writing, within 20 days from receipt of this Decision, what steps Respondent has taken to comply herewith.¹²

¹⁰ The evidence clearly shows that the deadline was not met.

¹¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

¹² In the event this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director for Region 13, in writing, within 10 days from receipt of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their right to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, pertaining to their wages, hours, or working conditions, by suspending them for engaging in such activities or in any like or related manner interfering with their rights under the Act.

WE WILL make whole Cornelia Banks, Earnestine Franklin, James Payne, Reinaldo Rodriguez, and Bertha Mae Bynum by paying them the amount of

money they would have earned from us during their illegal suspensions by us.

		ZENITH RADIO CORPORATION (Employer)	
Dated	By	(Representative)	(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312-353-7572.