

In the Matter of THE BAYER COMPANY, INC., AND STERLING DRUG, INC.
and CHEMICAL & PHARMACEUTICAL WORKERS UNION LOCAL #23135,
A. F. L.

Case No. 2-C-5146.—Decided February 18, 1944

Mr. Martin I. Rose, for the Board.

Rogers, Hoge & Hills, by *Mr. Jerome L. Isaacs*, of New York City,
for the respondents.

Mr. John Brawn, of Albany, N. Y., for the Union.

Mr. John J. Conway, of Albany, N. Y., for the Associations; *Mr. Luther A. Moorehead*, of Troy, N. Y., for the Men's Association; and *Miss Grace Purrott*, of Rensselaer, N. Y., for the Women's Association.

Mr. Frederic B. Parkes, 2nd, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Chemical & Pharmaceutical Workers Union Local #23135, A. F. L., 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 complaint, dated September 20, 1943, against The Bayer Company, Inc., and Sterling Drug, Inc., Rensselaer, New York, herein individually called the respondent Bayer and the respondent Sterling, respectively, and sometimes collectively called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the Complaint, accompanied by notice of hearing, were duly served upon the respondents and the Union, and also upon Bayer Women Workers Association, Bayer Workers Association, and Bayer Workers' Association, herein individually called the Women's Association, the Men's Association, and the Successor Association, respectively, and sometimes collectively referred to herein as the Associations.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondents on or about April 29, 1937, and May 6, 1937, respectively, initiated, formed, sponsored, and promoted the Men's Association and the Women's Association, and on or about May 26, 1943, initiated, formed, sponsored, and promoted the Successor Association as successor to the Men's Association and the Women's Association; that since the respective dates to the present time, the respondents have dominated, contributed to the support of, and interfered with the administration of the respective Associations; that on or about June 14, 1943, the respondents discharged Hazel Taylor and have refused to reinstate her because she joined the Union and refused to join the Women's Association or the Successor Association; and that the respondents, from on or about January 1, 1942, to the present have (1) expressed disapproval of the Union; (2) interrogated their employees concerning their union affiliations; (3) urged, persuaded, and warned their employees to refrain from assisting, becoming members of, or remaining members of the Union; (4) urged, persuaded, and warned their employees to assist, become members of, or remain members of the Associations; (5) threatened their employees with discharge or other reprisals if they joined or assisted the Union or refused to join or assist the Associations; (6) discouraged membership in or assistance to the Union by discussing grievances with the Associations and individual employees and by refusing to discuss grievances with the Union; and (7) by the said activities, interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On October 5, 1943, the Associations filed with the Board individual petitions to intervene, which were duly granted on October 15, 1943. On October 5, 1943, the Associations also filed individual answers in which they denied that the respondents had dominated, contributed to the support of, and interfered with the administration of the Associations. On October 11, 1943, the respondents each filed an answer in which they denied all allegations of the complaint pertaining to the alleged unfair labor practices.

On October 28, 1943, the respondents, the Union, the Associations, and counsel for the Board entered into two stipulations¹ in settlement of the allegations in the complaint of violations of Section 8 (1) and (2) of the Act. The first stipulation is concerned with the facts regarding the application to the instant proceeding of the amendment to Department of Labor, Federal Security Agencies Appropriation Act

¹ These stipulations were signed by Rogers, Hoge & Hills, attorneys, for the respondents, by L. A. Moorehead for the Men's Association and the Successor Association, by Grace Purrott for the Women's Association, by John Braun for the Union, and by Martin I. Rose for the Board.

for the fiscal year 1943-1944, effective July 12, 1943,² it being agreed that the Board would first determine the question whether the proceeding was barred by the amendment, before acting on the stipulation concerning the merits. The first stipulation provides as follows:

Whereas, the parties hereto have simultaneously with the execution of this stipulation entered into another stipulation, copy of which is attached hereto and made a part hereof as Exhibit A;³ and,

Whereas, the parties desire to present to the Board for determination the question of whether it may proceed in this case, with respect to the said stipulation marked Exhibit A⁴ or the alleged violation of Section 8 (2) of the National Labor Relations Act in this proceeding in view of the rider attached to its current appropriations;

Now, therefore, the following facts are hereby stipulated and agreed with the same force and effect as if properly qualified witnesses were called before the Board and gave under oath sufficient and competent evidence as to each of the matters herein set out:

(1) On May 15, 1942, The Bayer Company, Inc. and Bayer Women Workers Association entered into the contract attached hereto and made a part hereof as Exhibit B.⁵

(2) On May 15, 1942, The Bayer Company, Inc. and the Bayer Workers Association entered into the contract attached hereto and made a part hereof as Exhibit C.⁶

(3) The contract attached hereto as Exhibit B⁷ expired by its terms on May 15, 1943.

(4) There is no contract, nor has there ever been any contract between The Bayer Company, Inc. or Sterling Drug, Inc. with the Bayer Workers' Association, which Association was formed on May 26, 1943.

² This amendment provides that "No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. *Provided*, That, hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested persons" Public Law 135 of the 78th Congress, Chapter 221, of the First Session, Title IV.

³ The second stipulation is hereinafter set forth in full in our Decision, rather than as an appendix or exhibit.

⁴ See footnote 3, *supra*.

⁵ We deem it unnecessary for the purpose of our Decision and Order to set forth the contract in full. The contract provides that it is to "become effective as of May 15, 1942 and . . . remain in force and effect for a period of one year from said date."

⁶ For the purpose of our Decision and Order, we also find it unnecessary to set forth the terms of this contract in full. The contract provides that it "shall become effective as of May 15, 1942, and shall be in full force and effect for a period of one year and thereafter from year to year unless either party gives the other sixty (60) days advance written notice of cancellation."

⁷ See footnote 5, *supra*.

(5) Under date of February 25, 1943, Sterling Drug, Inc. sent a letter to L. Moorehead, president, Bayer Workers Association, copy of which is attached hereto and made a part hereof as Exhibit D.⁸ Mr. L. Moorehead, president of Bayer Workers Association, received said letter February 26, 1943.

(6) Between on or about February 26, 1943 and on or about April 16, 1943 there were negotiations between Sterling Drug, Inc. and Bayer Workers Association and Bayer Women Workers Association with respect to proposed new contracts, but no new contracts were entered into.

(7) On April 16, 1943 representatives of the Sterling Drug, Inc., Bayer Women Workers Association, Bayer Workers Association and Chemical & Pharmaceutical Workers Union, A. F. of L., attended a conference at the New York office of the National Labor Relations Board, Second Region, concerning a petition filed by the Chemical & Pharmaceutical Workers Union under Section 9 (c) of the National Labor Relations Act, and at said conference, among other things, the status of the then existing contracts was discussed, a copy of the notes of the Field Examiner who conducted such conference being attached hereto and made a part hereof as Exhibit E.⁹

(8) On May 13, 1943 Sterling Drug, Inc. sent a letter to Bayer Workers Association, copy of which is annexed hereto and made a part hereof as Exhibit F,¹⁰ and said letter was received by Bayer Workers Association on May 14, 1943.

(9) On May 13, 1943 Sterling Drug, Inc. sent a letter to Bayer Women Workers Association, a copy of which is attached hereto and made a part hereof as Exhibit G,¹¹ and said letter was received by the Bayer Women Workers Association on May 14, 1943. On June 11, 1943, Sterling Drug, Inc., and The Bayer Co., Inc., received Exhibit G-1.¹²

(10) Attached hereto and made a part hereof as Exhibits H, I, J, and K are the charge, the first amended charge, second amended charge and third amended charge, filed by Chemical & Pharmaceutical Workers Union in the above proceeding, the

⁸ The letter is set forth as Appendix "A" to this Decision and Order.

⁹ We find it unnecessary for the purpose of our Decision and Order to set forth this document in full. According to the Field Examiner's notes, counsel for the respondent Sterling stated at this conference that "the Company now holds contracts with both the Men's and Women's Divisions of the Bayer Employees' Association and that these contracts expire on May 15, 1943." The Field Examiner's notes also showed that Morehead, president of the Men's Association, stated "There is the possibility of the Men's and Women's Division merging."

¹⁰ The letter is set forth as Appendix "B" to this Decision and Order.

¹¹ The letter is set forth as Appendix "C" to this Decision and Order.

¹² The letter is set forth as Appendix "D" to this Decision and Order.

dates of the filing of each of said charges appearing on the face of each charge.¹³

(11) The parties hereby agree that this stipulation is in lieu of any hearing on the question with respect to the rider and in lieu of motions by The Bayer Company, Inc., Sterling Drug, Inc. and Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association that this proceeding with respect to the alleged violation of Section 8 (2) of the Act is barred by reason of the rider attached to the Board's current appropriation.

(12) The parties agree that the above question is submitted on the facts stipulated herein for decision by the Board in such form and in such manner as the Board may deem appropriate and in connection therewith the Board may or may not make findings of fact or conclusions of law, the parties leaving these matters to the discretion of the Board. The parties waive a hearing and findings of fact and conclusions of law by the Trial Examiner.

(13) The entire agreement between the parties, except the stipulation referred to above, is contained within the terms of this stipulation, and there is no verbal understanding of any kind which varies, alters, or adds to this stipulation.

(14) This stipulation is subject to the approval of the National Labor Relations Board.

On December 3, 1943, the Board, acting pursuant to Article II, Section 36 (a) of National Labor Relations Board Rules and Regulations—Series 3, ordered that the proceeding be transferred to and continued before the Board. On December 3, 1943, the Board also issued an order that any of the parties might show cause to the Board, in writing, on or before December 18, 1943, why an order should not be entered herein in accordance with the stipulation of the parties. Pursuant thereto, on December 13, 16, and 18, 1943, respectively, the Associations, the respondents, and the Union filed statements which the Board has considered.

The respondents and the Associations contend that the Board is without jurisdiction by virtue of the amendment to the 1944 Appropriation Act, since the contracts with the Men's Association and the Women's Association were entered into on May 15, 1942, and the first charge was not filed until April 20, 1943, more than 3 months thereafter, when both contracts were still in effect. The Union in-

¹³ The original charge was filed by the Union on April 22, 1943, alleging violations of Section 8 (1), (2) as to the Men's and Women's Associations, and (3) of the Act. On June 17, 26, and September 10, 1943, respectively, the Union filed its first amended charge, second amended charge, and third amended charge, each alleging violations of Section 8 (1), (2) as to the Men's and Women's Associations and also as to the Successor Association, and (3) of the Act.

sists that the amendment to the Appropriation Act does not constitute a bar to this proceeding for the reason that there was "no contract in existence at all at the time the complaint was filed."

In view of the stipulations and the attached appendices, it is clear that the contracts with the Men's and Women's Associations were not renewed but expired on May 15, 1943. Indeed, the parties specifically stipulated that the contract of the Women's Association expired by its terms on May 15, 1943. Although the contract with the Men's Association contained an automatic renewal clause, we are of the opinion that this clause did not become operative and that the contract was not renewed. The letter, dated February 25, 1943, from the respondent Sterling to the Men's Association indicates that the respondent Sterling deemed it necessary that certain changes should be made in the contract, although agreeing that the old contract would serve as a satisfactory basis for discussion. There is no indication in this letter that the respondent Sterling intended that the contract be renewed; on the contrary, the intention seems clear that the contract should not be automatically renewed, and that the letter should accordingly serve to apprise the Association of the respondent Sterling's intent and to stop the renewal from taking place. According to the stipulation, negotiations for a new contract were immediately entered into by the respondent Sterling with both Men's and Women's Associations, following the letter of February 25, 1943. However, no agreement was reached.

The letter, dated May 13, 1943, from the respondent Sterling to the Men's Association, whereby the respondent Sterling unilaterally announced that it would observe certain provisions of the 1942 contract after May 15, 1943, indicates that the parties considered that the contract between them had not been renewed, since the clear purpose of the letter was to bridge a gap caused by the failure to renew the contract. The letter cannot be said to constitute a renewal of the contract; for its statements that "the terms of such contract would be *respected* by the Company until the execution of a new contract with a bargaining agent certified by the National Labor Relations Board," and that "the terms of such contract relating to wages, hours, vacations and other conditions of employment, with the exception of grievance procedure, will be carried over and *respected* after May 15, 1943," are plainly not words indicating the renewal of the contract for another year, but have meaning only because there was to be no renewal. Moreover, the identical letter was sent to the Women's Association, whose contract was stipulated to have expired on May 15, 1943.

Although the contracts with the Men's and Women's Associations were in existence at the time the original charges were filed, the

contracts expired by their terms, and the contractual relationship between the respondent Sterling and these Associations ceased 23 days after the filing of the charges. The Successor Association never had any contract with the respondents. On the dates the amended charges were filed and the complaint was issued, there were no contracts of any kind in effect. Under these circumstances, we are of the opinion that the amendment to the Appropriation Act is not a bar to this proceeding. The amendment was enacted for the "stated purpose of accomplishing stabilization of labor relations"¹⁴ during the war. The method selected was to render existing contracts between management and labor which had been in effect for 3 months or longer without charges being filed, immune to Board proceedings. The Comptroller General has ruled that Congress intended to that extent "to inhibit the Board from exercising its authority to determine the validity of agreements with company unions," and that the Board is accordingly prohibited from using its current appropriation in connection with "a complaint case under Section 8 (2) of the National Labor Relations Act where there is involved an agreement between management and labor which has been in existence for 3 months or longer without charges being filed with the Board."¹⁵ But where the agreement has expired, as in the instant case, as of the time the complaint issues, there is no agreement "involved," and there is no contractual relationship between management and labor to be preserved or stabilized. It would therefore be pointless to apply the restrictions of the amendment since to do so could not effectuate the legislative purpose.¹⁶

Upon the entire record, including the stipulation and the written statements of the parties on the order to show cause, we find that the amendment to the Board's 1944 Appropriation Act does not constitute a bar to this proceeding.

The second stipulation, disposing of the allegations of the complaint as to violations of Section 8 (1) and (2) of the Act, provides as follows:

Whereas, upon charges duly filed by Chemical & Pharmaceutical Workers Union, Local #23135, A. F. of L., hereinafter called the

¹⁴ Opinion of the Comptroller General of the United States, Oct. 21, 1943, 13 L. R. R. 236.

¹⁵ *Ibid.*, footnote 14.

¹⁶ Even if we were to disregard the stipulated fact that the contract with the Women's Association expired by its terms on May 15, 1943, and assume that the letters, dated May 13, 1943, from the respondent Sterling to the Men's Association and to the Women's Association operated to renew the contracts, the amendment would still be inapplicable. The contracts as renewed would actually constitute new contracts, since the letters changed the terms of the 1942 contracts in a very material respect by cancelling the procedure established thereby for the handling of grievances and by announcing a policy of dealing, in the future, "directly with the aggrieved employee and not through a representative, pending a National Labor Relations Board certification." Since new contracts entered into on May 13, 1943, would be subject to the original charges filed 21 days earlier by the Union, and since, in any event, amended charges were filed within 3 months thereafter, the terms of the amendment could not constitute a bar to this proceeding under this theory of the facts, even as to the Men's and Women's Associations.

Union, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Second Region, issued its complaint dated September 20, 1943 against The Bayer Company, Inc. and Sterling Drug, Inc., hereinafter called respondents, alleging violations by the Respondents of Sections 8 (1), (2) and (3) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act; and

Whereas, a copy of said complaint and notice of hearing thereon were duly served upon The Bayer Company, Inc. and Sterling Drug, Inc., the Union, and Bayer Workers' Association, Bayer Women Workers Association and Bayer Workers' Association; and

Whereas, all parties desire to prevent the interruption of production at the plant of the manufacture of essential war materials, and

Whereas, it is the desire of the parties hereto to dispose of the allegations contained in the charges and the complaint herein relating to the alleged violation of Section 8 (2) of the Act without further hearing thereon, and without further proceedings before the Board, and without prejudice to the rights of the parties with respect to the alleged violations of Section 8 (3) of the Act; and

Whereas, simultaneously with the execution of this stipulation the parties have entered into a separate stipulation presenting to the Board for determination the question of whether it may proceed with this proceeding in view of the rider attached to the Board's current appropriations;

It is therefore stipulated and agreed by and between the respective parties hereto as follows:

(1) Respondent, Sterling Drug, Inc., is and has been since April 9, 1932 a corporation duly organized under and existing by virtue of the laws of the State of Delaware.

(2) Respondent, The Bayer Company, Inc. was duly incorporated on or about July 3, 1913 under and by virtue of the laws of the State of New York, and Respondent, The Bayer Company, Inc. was a wholly owned and controlled subsidiary corporation of Respondent, Sterling Drug, Inc.

(3) Respondent, Sterling Drug, Inc., does maintain an office and place of business in the City of Rensselaer, County of Rensselaer, State of New York, hereinafter called the "Rensselaer Plant" and is now and has been since on or about January 1, 1943 continuously engaged at said plant in the manufacture, sale and distribution of drugs and related products.

(4) Between on or about June 3, 1913 and on or about December 31, 1942, the Respondent, The Bayer Company, Inc. owned and operated the aforesaid Rensselaer Plant and engaged in the business and operations described above in paragraph 3 of said Rensselaer Plant.

(5) On or about December 31, 1942, said Rensselaer Plant and the business, management and operations thereof were transferred to Respondent, Sterling Drug, Inc., and since said date Respondent, Sterling Drug, Inc. has continued such operations of the Rensselaer Plant and the business and management thereof, including the labor and labor relations policies as successor to Respondent, The Bayer Company, Inc.

(6) The principal materials purchased and issued in the operations of the said Rensselaer Plant have been and are raw chemicals and intermediates.

(7) During the period from January 1, 1943 to June 30, 1943, Respondent, Sterling Drug, Inc. purchased and used in the operations at said Rensselaer Plant such raw materials in excess of the value of one hundred thousand dollars of which approximately 75 per cent were shipped to said Rensselaer Plant from places outside the State of New York. During the period from January 1, 1943 to June 30, 1943, the sales value of finished products produced in the operations of said Rensselaer Plant were in excess of one hundred thousand dollars, of which approximately 90 per cent were shipped from said Rensselaer Plant to places outside the State of New York.

(8) During the yearly period ending December 31, 1942, Respondent, The Bayer Company, Inc. used in the operations of said Rensselaer Plant such raw materials of the value in excess of \$50,000, of which more than 50 per cent were shipped to said Rensselaer Plant from places outside the State of New York. During the yearly period ending December 31, 1942, the sales value of finished products produced in the operations of said Rensselaer Plant were in excess of \$50,000, of which more than 50 per cent were shipped from said Rensselaer Plant to places outside the State of New York.

(9) Respondent, Sterling Drug, Inc. concedes that it is engaged in interstate commerce within the meaning of the National Labor Relations Act.

(10) Respondent, The Bayer Company, Inc. concedes that prior to December 31, 1942, it was engaged in interstate commerce within the meaning of the National Labor Relations Act.

(11) The Union, Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association, are each

labor organizations within the meaning of Section 2, sub-division 5, of the Act.

(12) All parties hereto, and each of them, waive any and all rights to hearing or other proceedings by or before a Trial Examiner of the Board or the Board with respect to the allegations in the complaint pertaining to the alleged violation by the Respondents, The Bayer Company, Inc. and Sterling Drug, Inc. of Section 8 (2) of the Act, and each party waives its right to the making of findings of fact and conclusions of law by the Trial Examiner or the Board with respect to such allegations.

(13) It is understood and agreed that this stipulation pertains only to the allegations in the complaint which allege violation by the Respondents, The Bayer Company, Inc. and Sterling Drug, Inc. of Section 8 (2) of the Act, and that it is not intended that this stipulation shall in any manner affect the disposition by the Trial Examiner and the Board of the other allegations contained in the complaint.

(14) The third amended charge, the complaint, the notice of hearing, the answers of the Respondents, The Bayer Company, Inc. and Sterling Drug, Inc., the petitions to intervene, and the answers, of Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association, and the orders of the Trial Examiner permitting such intervention limited to interest, and this stipulation, shall constitute the entire record in this proceeding with respect to the alleged violation by the Respondents of Section 8 (2) of the Act.

(15) Upon the record aforementioned the Board may forthwith enter an order substantially in the following form:

Respondents, The Bayer Company, Inc. and Sterling Drug, Inc., their officers, agents, successors, and assigns shall:

(1) Cease and desist from:

(a) Dominating or interfering with the administration of Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association, or the formation or administration of any other labor organization of its employees, and from contributing financial or other support to The Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association, or any other labor organization of its employees;

(b) Recognizing Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association as the representative of any of its employees for the purpose of

dealing with Respondents concerning grievances, labor disputes, rates of pay, wages, hours of employment and other conditions of employment;

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

(2) Take the following affirmative action to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association as the representative of any of its employees concerning grievances, wages, hours of employment or other conditions of employment, and completely disestablish the Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association as such representative.

(b) Post immediately in conspicuous places on all its bulletin boards in their plant at Rensselaer, (sic) New York, and maintain for a period of at least thirty (30) days from the date of posting notices to its employees in the form set forth in Appendix A annexed hereto and make a part hereof.¹⁷

(c) Notify the Regional Director of the National Labor Relations Board for the Second Region within ten (10) days from the date of the order of the Board entered upon this stipulation of the steps Respondents have taken to comply with such order.

(16) Upon application by the Board any appropriate United States Circuit Court of Appeals may enter a decree enforcing the order of the Board substantially as above set forth. Notice of the filing of an application for the entry of such decree and the right to contest its entry are hereby expressly waived.

(17) Nothing contained herein shall be construed as an admission by the Respondents and Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association that Respondents and Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association have engaged in an unfair labor practice within the meaning of Section 8 (2) of the Act, as alleged in the complaint.

¹⁷ The notice is set forth as Appendix "E" to this Decision and Order.

(18) The entire agreement between the parties, except the stipulation referred to above, is contained within the terms of this stipulation, and there is no verbal understanding of any kind which varies, alters or adds to this stipulation.

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

On October 28, 1943, the respondents, the Union, and counsel for the Board entered into a third stipulation in settlement of the allegations of the complaint as to violations of Section 8 (1) and (3) of the Act. This stipulation provides as follows:

Whereas, upon charges duly filed by Chemical & Pharmaceutical Workers Union Local #23135, A. F. of L., hereinafter called the Union, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Second Region, issued its complaint dated September 20, 1943 against The Bayer Company, Inc. and Sterling Drug, Inc., hereinafter called respondents, alleging violation by the Respondents of Section 8 (1), (2) and (3) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act; and

Whereas, a copy of said complaint and notice of hearing thereon were duly served upon The Bayer Company, Inc. and Sterling Drug, Inc., the Union, and Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association; and

Whereas, the parties hereto and others, entered into a stipulation disposing of the allegations contained in the charges and the complaint herein relating to the alleged violations of Section 8 (2) of the National Labor Relations Act without prejudice to the rights of the parties with respect to the alleged violations of Section 8 (3) of said Act, and

Whereas, the parties hereto now desire to dispose of the remaining alleged violation of Section 8 (3) of said Act without the necessity of a hearing or further proceedings, and

Whereas, the parties agree that nothing contained herein shall be construed as an admission by the Respondents Sterling Drug, Inc. and The Bayer Company, Inc. that they have engaged in an unfair labor practice within the meaning of Section 8 (3) of the said Act as alleged in the charges heretofore filed by the Chemical & Pharmaceutical Workers Union Local #23135, A. F. L.

It is therefore stipulated and agreed as follows:

(1) Respondents Sterling Drug, Inc. and The Bayer Company, Inc. will not discourage membership in any labor organi-

zation of its employees by discharging them or by discriminating against them in any manner in regard to their hire and tenure of their employment or any term or condition of employment.

(2) Respondents Sterling Drug, Inc. and The Bayer Company, Inc. will not in any manner interfere (*sic*) with, restrain or coerce its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

(3) Respondents Sterling Drug, Inc. and The Bayer Company, Inc. will pay to Hazel Taylor the sum of Three hundred (\$300.) dollars in full settlement of any and all claims for any loss (*sic*) of pay she may have suffered by reason of alleged discrimination against her in regard to hire and tenure of employment, and any and all claims for reinstatement as an employee.

(4) Respondents Sterling Drug, Inc. and The Bayer Company, Inc. will post immediately in conspicuous places on all their bulletin boards in their plant in Rensselaer, New York and maintain for a period of thirty (30) days from the date of posting notice to its employees in the form set forth in Appendix A¹⁸ annexed hereto and made part hereof.

(5) Chemical & Pharmaceutical Workers Union Local #23135, A. F. L. hereby withdraws and requests leave of the Regional director for the Second Region of the National Labor Relations Board to withdraw so much of the said charges as allege violations of Section 8 (3) of the National Labor Relations Act upon compliance by the Respondents Sterling Drug, Inc. and The Bayer Company, Inc. with the terms of this stipulation.

(6) The entire agreement between the parties with respect to the alleged violation of Section 8 (3) is contained within the terms of this stipulation and there is no verbal understanding of any kind which varies, alters or adds to this stipulation.

(7) This stipulation is subject to the approval of the National Labor Relations Board and is to become effective immediately upon such approval.

The above stipulations are hereby approved and made part of the record in the case.

Upon the above stipulations and the entire record in the case, the Board makes the following:

¹⁸ The notice is set forth an Appendix "F" to this Decision and Order.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The Bayer Company, Inc., a New York corporation, was a wholly owned and controlled subsidiary corporation of Sterling Drug, Inc., a Delaware corporation. The respondent Sterling maintains an office and place of business at Rensselaer, New York, herein called the Rensselaer plant, and has been engaged since on or about January 1, 1943, in the manufacture, sale, and distribution of drugs and related products. Between June 3, 1913, and December 31, 1942, the respondent Bayer owned and operated the Rensselaer plant. However, on December 31, 1942, the Rensselaer plant and the business, management, and operations thereof were transferred to the respondent Sterling, which has thereafter continued the operations of the plant. The principal materials used in the operations of the Rensselaer plant are raw chemicals and intermediates. During the period from January 1, 1943, to June 30, 1943, the respondent Sterling purchased such raw materials valued in excess of \$100,000, of which approximately 75 percent was shipped to the Rensselaer plant from points outside the State of New York. During the same period, the respondent Sterling sold products valued in excess of \$100,000, of which approximately 90 percent was shipped to points outside the State of New York. During 1942, the respondent Bayer used raw materials valued in excess of \$50,000, of which more than 50 percent was shipped to the Rensselaer plant from points outside the State of New York. During 1942, the sales value of finished products manufactured by the respondent Bayer in the operation of the Rensselaer plant was in excess of \$50,000, of which more than 50 percent was shipped to points outside the State of New York.

The respondent Sterling concedes that it is engaged in interstate commerce within the meaning of the Act. The respondent Bayer admits that prior to December 31, 1942, it was engaged in commerce within the meaning of the Act.

ORDER

Upon the basis of the above findings of fact, the stipulations, 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 Bayer Company, Inc., and Sterling Drug, Inc., Rensselaer, New York, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Bayer Workers Association, Bayer Women Workers Association, and Bayer

Workers' Association, or the formation or administration of any other labor organization of their employees, and from contributing financial or other support to Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association, or any other labor organization of their employees;

(b) Recognizing Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

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

2. Take the following affirmative action:

(a) Withdraw and withhold all recognition from Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association and each of them as the representative of any of their employees concerning grievances, wages, hours of employment, or other conditions of employment, and completely disestablish Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association and each of them as such representative;

(b) Post immediately in conspicuous places on all their bulletin boards in their plant at Rensselaer, New York, and maintain for a period of at least thirty (30) days from the date of posting, notices to their employees in the form set forth in Appendix "E" attached hereto and made a part hereof;

(c) Notify the Regional Director of the National Labor Relations Board for the Second Region within ten (10) days from the date of this Order of the steps the respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that, after compliance by the respondents with the terms of the stipulation entered into in settlement of the allegations of violation of Section 8 (3) of the National Labor Relations Act and after the immediate posting in conspicuous places on all bulletin boards in the respondents' plant in Rensselaer, New York, for a period of at least thirty (30) days from the date of posting, of notices to their employees in the form set forth in Appendix "F" attached hereto and made a part hereof, the request of Chemical & Pharmaceutical Workers Union Local #23135, A. F. L., to withdraw its charges of violation of Section 8 (3) of the National Labor Relations Act be granted and the complaint be dismissed insofar as it

alleges that the respondents violated Section 8 (3) of the National Labor Relations Act.

APPENDIX "A"

FEBRUARY 25, 1943.

Mr. L. MOORHEAD, *President,*
Bayer Workers' Association, Rensselaer, N. Y.

DEAR MR. MOORHEAD:

As you know the current contract between the Bayer Workers' Association and the Management expires in May. We feel all fair-minded individuals will agree that this contract does furnish a reasonably satisfactory basis for cooperation between employees and the Management. Like all documents of its kind it can however be improved.

During the next few weeks will you and your colleagues kindly make notes of changes in the contract which would react to the benefit of the members of the Association?

It is suggested that all proposed changes be given very careful consideration so that we may prepare an effective, workable agreement fair to both parties.

Very truly yours,

THE BAYER COMPANY DIVISION.
Dr. A. E. SHERNDAL.
Dr. HAROLD L. HANSEN.

HLH/mw.
CC:

APPENDIX "B"

MAY 13, 1943.

THE BAYER COMPANY DIVISION,
Rensselaer, New York.

Attention Mr. L. Moorhead, Pres. Bayer Workers Association.

DEAR MR. MOORHEAD:

You have inquired whether the terms of our contract of May 15, 1942 will be continued after the expiration of such contract on May 15, 1943. At the recent conference in New York City before the National Labor Relations Board, it was understood that the terms of such contract would be respected by the Company until the execution of a new contract with a bargaining agent certified by the National Labor Relations Board. Our attorney has spoken to the National Labor Relations Board again about this matter, and we can advise you that the terms of such contract relating to wages, hours, vacations and other conditions of employment, with the exception of grievance procedure, will be carried over and respected after May 15, 1943.

As to grievance arising after the expiration date, the Company feels that it must deal directly with the Company feels that it must deal directly with the aggrieved employee and not through a representative, pending a National Labor Relations Board certification [sic].

Yours very truly,

THE BAYER COMPANY DIVISION.
H. L. HANSEN.

HLH:Vw.

APPENDIX "C"

MAY 13, 1943.

THE BAYER COMPANY DIVISION,
Rensselaer, New York.

Attention Miss Grace Purrott, Pres. Bayer Women Workers' Association

DEAR MISS PURROTT:

You have inquired whether the terms of our contract of May 15, 1942 will be continued after the expiration of such contract on May 15, 1943. At the recent conference in New York City before the National Labor Relations Board, it was understood that the terms of such contract would be respected by the Company until the execution of a new contract with a bargaining agent certified by the National Labor Relations Board. Our attorney has spoken to the National Labor Relations Board again about this matter, and we can advise you that the terms of such contract relating to wages, hours, vacations and other conditions of employment, with the exception of grievance procedure, will be carried over and respected after May 15, 1943.

As to grievance arising after the expiration date, the Company feels that it must deal directly with the Company feels that it must deal directly with the aggrieved employee and not through a representative, pending a National Labor Relations Board certification [sic].

Yours very truly,

THE BAYER COMPANY DIVISION.
H. L. HANSEN.

HLH:WW.

APPENDIX "D"

JUNE 10, 1943.

PLEASE TAKE NOTICE, that on the 25th day of May, 1943, a majority of the employees of the Bayer Co. Inc., met and adopted constitution of the Bayer Workers' Association. The Bayer Workers' Association is an organization composed of the men and women employees of the Bayer Co. Inc., exclusive of employees in a supervisory position or a salaried office employee.

This Constitution bears the signature and home address and the building in which the employee is employed of 633 members, all employees of the Bayer Company, Inc.

Pursuant to Article IV of said Constitution, an election was duly had wherein the members of the Bayer Workers' Association voted for ten members to the Board of Delegates which Board by the terms of the Constitution shall have the power to bargain collectively or otherwise deal with the company for the employees of the company. By the terms of the Constitution, the judges were selected to count and tabulate the same ballots cast in said election and under date of June 7th, 1943, the judges so selected certified that the following members of said Association received the greatest number of votes cast and were declared elected to the said Board of Delegates:

L. A. Moorhead	Grace Purrott
Marshall Buckbee	Gilbert Thomas
Clara Norton	Mildred Bushnell
Leonard McGuire	Joseph T. Shackey
Frank Cramer	Violet Kelsey

This Association has been advised by Mr. F. J. Barlow of the Bayer Co. Inc., that predicated from the general factory payroll for the week ending May 15, 1943, there were 912 employees of the Bayer Co. Inc. In addition to the 633 charter members of the Bayer Workers' Association, 43 additional employees have since joined this organization making a total of 676 employees of the Bayer Co. Inc. who have joined the Bayer Workers' Association. This is practically 75% of the total number of employees.

The notice of this organization is being sent to you for the purpose of furnishing you with the above information in order to put you on notice that the Bayer Workers' Association is now entitled to collectively bargain with you concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work or employment at the Bayer Company, Inc. If you desire to have the documentary evidence submitted to you as proof of the above statements, kindly notify me of the time, the place and the person to whom this proof should be submitted. I am writing you as the attorney for the said Bayer Workers' Association.

Respectfully Submitted,

(S) JOHN J. CONWAY,
Office and P. O. Address,
50 State Street, Albany, N. Y.

To: The General Manager, Bayer Co. Inc. Rensselaer.

APPENDIX "E"

To All Employees:

You are hereby notified, pursuant to an order of the National Labor Relations Board, that the Bayer Company, Inc. and Sterling Drug, Inc.:

(1) Hereby withdraw and withhold all recognition from Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association as the representative of any of its employees concerning grievances, wages, hours of employment, or other conditions of employment and completely disestablish the Bayer Workers Association, the Bayer Women Workers Association and the Bayer Workers' Association as such representative.

(2) Will not dominate or interfere with the administration of Bayer Workers Association, Bayer Women Workers Association, and Bayer Workers' Association, or the formation or administration of any other labor organization of its employees, and will not contribute financial or other support to The Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association, or any other labor organization of its employees.

(3) Will not recognize Bayer Workers Association, Bayer Women Workers Association and Bayer Workers' Association as the representative of any of its employees for the purpose of dealing with Respondents concerning grievances, labor disputes, rates of pay, wages, hours of employment and other conditions of employment.

(4) Will not in any manner interfere with, restrain or coerce its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively with representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

Dated, Rensselaer, New York -----, 1944.

THE BAYER COMPANY, INC.

STERLING DRUG, INC.

THE BAYER COMPANY DIVISION OF STERLING
DRUG, INC.

By: -----

APPENDIX "F"

To All Employees:

You are hereby notified that The Bayer Company Division of Sterling Drug, Inc.:

(1) Will not discourage membership in any labor organization of its employees by discharging them or by discriminating against them

in any manner in regard to their hire and tenure of their employment or any term or condition of employment.

(2) Will not in any manner interfere with, restrain or coerce its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

Dated: Rensselaer, New York, ----- 1944.

THE BAYER COMPANY, INC.

STERLING DRUG, INC.

THE BAYER COMPANY DIVISION OF STERLING
DRUG, INC.

By: -----