

In the Matter of THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY *and* AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY INSURANCE AGENTS UNION #23230 (AFL)

In the Matter of THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY *and* AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY AGENTS UNION #23286 (AFL)

In the Matter of THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY *and* INDUSTRIAL INSURANCE AGENTS UNION, LOCAL 65, UOPWA-CIO

In the Matter of THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY *and* AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY INSURANCE AGENTS UNION (AFL)

Cases Nos. 8-C-1409, 8-C-1449, 8-C-1555 and 8-C-1544, respectively.—Decided May 25, 1944

DECISION

AND

ORDER

On February 2, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon the request of the respondent and pursuant to notice, a hearing was held before the Board in Washington, D. C., on April 20, 1944, for the purpose of oral argument. The respondent was represented by counsel and participated in the hearing. The Union did not appear.

The Board has considered the Intermediate Report, the exceptions and brief filed by the respondent, and the entire record in the case, and

hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified below:

1. In his Intermediate Report the Trial Examiner failed to state, with respect to the business of the respondent, the following, which we find to be true: On December 31, 1942, the respondent owned preferred stocks of industrial corporations, valued at \$10,686,191. Approximately 10 percent of such preferred industrial stocks, acquired by the respondent in 1942, was purchased from brokers outside the State of Ohio and was delivered to the respondent in Ohio. During the year 1942, the respondent purchased supplies and equipment valued at approximately \$167,407, of which approximately 8 percent was purchased outside Ohio. Approximately 12 percent of the equipment and supplies purchased in Ohio was shipped by the respondent to its offices in other States.¹

2. In his Intermediate Report the Trial Examiner found that the agents who testified stated that they had never been advised, prior to the early part of 1943, of an intention of the respondent to change their status from that of "agent" to "trustee." We find, on the contrary, that the agents who testified became aware in 1942, of the respondent's change in nomenclature describing such persons as "trustees" rather than as "agents."

3. The Trial Examiner has set forth in his Intermediate Report certain facts which indicate that the relationship existing between the respondent and its so-called "agents" or "trustees" is that of employer and employee for the purposes of the Act. In addition thereto, we find that the following statements, omitted from the Intermediate Report, are true and that they lend further support to the Trial Examiner's conclusion as to the nature of the existing relationship. To facilitate the sale of insurance and collection of premiums, the respondent supplies desk space, telephone service, mail and stenographic service to the agents, and all forms and advertising material.² The agents are required by the respondent's managers to report regularly to their district offices for staff meetings, where they receive "pep talks" and lectures on selling techniques.³ The agents may not employ an assistant or substitute.⁴ Agents take vacations, subject to

¹ The Intermediate Report inadvertently states that the respondent's holdings of non-farm mortgages total \$8,000,000. The correct figure is \$68,000,000.

² Indeed the agents are prohibited from advertising on their own behalf, unless permission is first secured from the respondent.

³ Agents called as Board witnesses testified that they were required to attend morning meetings. Although Williams, president of the respondent, testified that he has issued orders that such meetings were to be stopped, he admitted that they might still be taking place without his knowledge. We credit the testimony of the Board witnesses.

⁴ This limitation, according to witnesses for both the respondent and the Board, is due to State statutes requiring licensing of all insurance agents through the employing company. Thus, a Board witness testified that under the law of Ohio, an agent could not hire an assistant; that in order to do so he would have to be a broker. Williams, president of the respondent, testified that *the company* must apply for the licenses for its agents. Clearly, therefore, the matter of employment of assistants for its agents rests with the respondent and not with the agents.

permission granted by the respondent, the length of the vacation depending upon years of service. While on vacation the agent's duties are assumed by his immediate superior, an assistant manager in the employ of the respondent, and all commissions on collections made and on new insurance sold during the agent's vacation are credited to the agent. Agents must file reports at the respondent's district office on Wednesday of each week. On such occasions the respondent requires the agents to be present at the office to enable the manager to discuss matters pertaining to the reports with them, and the agents are assisted in the preparation of their reports by the respondent's clerical staff. Agents must account for and transmit to the respondent all monies collected by them at regular specified intervals, and may not withhold their commissions. They receive regular weekly pay checks each Saturday. The respondent admits having discharged six agents because of their activities on behalf of the Union. We find that all the indicia of the relationship set forth in the Intermediate Report, as well as those set forth above, were existent prior to the adoption by the respondent of the alleged trust arrangement with its agents, and that at least substantially all such indicia have continued to exist to the present time. We find that the respondent's collectors and insurance salesmen involved herein, whether properly designated as agents or trustees, were employees within the meaning of the Act before the adoption of the alleged trust arrangement and that this relationship has not been materially changed at any time thereafter.⁵ We do not, therefore, consider it material whether or not an agent signed any of the "trust agreements" or whether he was originally employed before or after any said "trust agreement" was introduced as a personal practice by the respondent.

4. In his Intermediate Report the Trial Examiner failed to state, with respect to the unfair labor practices of the respondent, the following facts, admitted by the respondent and which we find to be true: The respondent suggested to various of its agents that they should resign from the A. F. L.; threatened to close its Cleveland West District Office if the A. F. L. was successful; reprimanded agents in its Pittsburgh offices for having attended C. I. O. meetings; advised its agents in its Pittsburgh offices that unions have no place in the insurance business and that if they wish to advance in the business, they should oppose unions; and instructed persons at its Pittsburgh offices to attend C. I. O. meetings and to report back the names of agents who attended the meetings. By these acts and statements, in addition to the acts and statements of the respondent set forth in the Intermediate Report, the respondent has interfered with, restrained, and

⁵ See *National Labor Relations Board v. Hearst Publications, et al.*, 322 U S 111, decided April 24, 1944.

coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

ORDER

Upon the entire record in the case, and pursuant to section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Western and Southern Life Insurance Company, and its officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in American Federation of Industrial and Ordinary Insurance Agents Union or in any branch or local thereof, or in Industrial Insurance Agents Union, Local 65, UOPWA-CIO, or any other labor organization, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other 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 through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Carl R. Hall, David Levy, and Joseph Koren, without prejudice to their seniority or other rights or privileges, full and immediate reinstatement to their former or substantially equivalent positions, dismissing, transferring, or otherwise disposing of, if necessary, all employees who since the several discriminatory discharges of said persons, have been hired, transferred to, or otherwise placed in the positions to which said employees are entitled;

(b) Make whole Carl R. Hall, David Levy, Joseph Koren, G. B. Millisor, Richard P. O'Neil, and the estate of Fred J. Hager, deceased, for any loss of pay they may have suffered as a result of the respondent's discrimination, in the manner set forth in the Section of the Intermediate Report entitled "The remedy";

(c) Post immediately in conspicuous places in each of the district offices maintained by the respondent and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all agents, trustees, and other employees, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's agents,

trustees, and other employees are free to remain or become members of American Federation of Industrial and Ordinary Insurance Agents Union and any of its branches or locals, or the Industrial Agents Union, Local 65, UOPWA-CIO, or any other labor organization, and that the respondent will not discriminate against any agent, trustee, or other employee because of membership or activity in those organizations or any of them;

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

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

INTERMEDIATE REPORT

John A. Hull, Jr., Esq., of Cleveland, Ohio, for the Board.

George L. Russ, of Washington, D. C., for the A. F. L.

Charles G. Heisel, of Pittsburgh, Pa., for the C. I. O.

William C. Willging, Esq., of Cincinnati, Ohio, for the respondent.

Webb I. Vorys, Esq., and *John M. Rankin, Esq.*, of Vorys, Sater, Seymour and Pease, of Columbus, Ohio, for the respondent.

STATEMENT OF THE CASE

On February 9, 1943, American Federation of Industrial and Ordinary Insurance Agents Union #23286; herein called A. F. L. Union 23286, filed a charge with the Regional Director for the Eighth Region (Cleveland, Ohio) of the National Labor Relations Board, herein called the Board, charging that The Western and Southern Life Insurance Company, herein called the respondent, at its offices in Zanesville, Ohio, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, which charge carried Case Number 8-C-1449. On March 25, 1943, American Federation of Industrial and Ordinary Insurance Agents Union #23230, herein called A. F. L. Union #23230¹ filed an amended charge with the Regional Director of the Board at Cleveland, Ohio, charging that the respondent, at its offices in Cleveland, Ohio, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) of the Act, which amended charge carried Case Number 8-C-1409. On May 13, 1943, the Board duly entered its order consolidating the two above cases. On October 8, 1942, the Industrial Insurance Agents Union, Local 65, UOPWA-CIO, herein referred to as C. I. O. filed a charge with the Regional Director for the Sixth Region at Indianapolis, Indiana, charging that the respondent, at its office in Pittsburgh, Pennsylvania, had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. This case was subsequently transferred to the Eighth Region and given Case No. 8-C-1555. On September 14, 1943, the Board duly entered an order consolidating Case

¹ For all general purposes, the various locals involved herein that are affiliated with A. F. of L. will be referred to as A. F. of L. unless more specific descriptions are indicated.

No 8-C-1555 with the two cases formerly consolidated under the order of May 13, 1943. Upon the charges and amended charge thus filed, the National Labor Relations Board, by its Regional Director for the Eighth Region, issued its consolidated complaint dated September 29, 1943, and hereinafter referred to as the complaint, alleging that the respondent, at its offices in Cleveland, Ohio, Zanesville, Ohio, and Pittsburgh, Pennsylvania, had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the complaint and the respective charges and the amended charge, accompanied by notice of hearing thereon were duly served upon the respondent and upon the respective organizations of the A. F. of L. and C. I. O. above named.

With respect to unfair labor practices, the complaint alleges in substance that, from May 1941 in the Pittsburgh office, and from August 1942 in the Cleveland, Lakewood, and Zanesville, Ohio, offices, the respondent has advised its agents that the respective unions are failures and could achieve nothing for its agents; that at a meeting of its agents in Cleveland, the respondent stated the A. F. of L. was composed of racketeers and interested only in the collection of dues and that the respondent would not tolerate any union; that the respondent suggested to its agents that they resign from the Union and threatened the abolishment of certain of its offices if the Union should successfully organize the agents within such offices; that it suggested to certain of its agents that they should resign from their positions with the respondent; that it advised its agents not to participate in any election held by the Board for the purpose of determining a bargaining representative; that it threatened its agents at its Pittsburgh office with discharge because of their membership in the CIO and urged the agents to oppose the activities of any union if they desired to progress in the insurance business; that it accused its agents who might be members of or active in the CIO, of disloyalty to the respondent; that the respondent engaged in espionage of the CIO meetings of the agents in the Pittsburgh office; that it advised its agents of the Pittsburgh office that the respondent opposed their membership in any union and in the CIO in particular, that in addition to the foregoing, the respondent, on designated dates between September 30, 1942, and March 24, 1943, discharged and, with one exception refused to rehire five named agents employed at either the Cleveland offices, the Zanesville office, or the Pittsburgh office, because of their activity on behalf of the A. F. of L. in the Ohio offices and of the CIO in the Pittsburgh office; and that one of the agents thus discharged on March 24, 1943, was subsequently reinstated on July 19, 1943.

The answer of the respondent to the complaint admits all the allegations which are descriptive of the character and extent of the business done by the respondent but denies that it is engaged in commerce within the meaning of Section 2 (6) of the Act. It further admits that the A. F. of L. and C. I. O. are labor organizations within the meaning of Section 2 (5) of the Act and specifically admits each and every of the allegations describing the alleged unfair labor practices recited in the complaint but denies that the persons referred to in said paragraph as agents, were at any time mentioned in the complaint or are at the present time, its employees within the meaning of Section 2 (3) of the Act; and affirmatively alleges that the respondent is not subject to the jurisdiction of the Act within its commerce provisions, that the persons referred to as agents were not at the times mentioned in the complaint, and are not now employees of the respondent within the meaning of the Act, and that because

of such facts, the respondent has been guilty of no unfair labor practices within the meaning of the Act.²

Pursuant to notice, a hearing on the consolidated complaint was held on November 4 and 5, 1943, at Cleveland, Ohio, before R. N. Denham, the undersigned duly designated Trial Examiner. The Board and the respondent were represented by counsel. Both the A. F. of L. and the C. I. O. appeared by their respective official representatives. All parties participated in the hearing where full opportunity was afforded them to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the conclusion of the taking of all testimony, a motion of counsel for the Board to conform all pleadings to the proof was granted without objection and made applicable only to the correction of dates, names, and other minor details, not affecting the issues. Oral argument at the conclusion of the taking of evidence was waived by all parties. Briefs have been received from counsel for the Board and for the respondent.

Upon an amended charge, filed by American Federation of Industrial and Ordinary Insurance Agents Union, A. F. of L., with the Regional Director for the Eighth Region of the Board, charging that the respondent at its office in Warren, Ohio, had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) of the Act, the Board, by its Regional Director for the Eighth Region, issued its complaint, dated October 25, 1943, and amended on November 27, 1943, alleging that the respondent at its office in Warren, Ohio, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the complaint and charge, together with a notice of hearing thereon, and later, of the amended complaint, were duly served upon the respondent and the charging union.

In respect to unfair labor practices, the amended complaint alleges in substance that prior to the issuance thereof the respondent had interfered with the rights of its employees guaranteed to them in Section 7 of the Act by interrogating them with reference to their membership or activity in behalf of the Union, by ordering them to resign their membership and offices in the Union, and by making derogatory remarks concerning the Union and that on May 29, 1943, the respondent discharged one Joseph Koren because of his membership in the Union, and to discourage membership in the Union.

Thereafter, and after the conclusion of the hearing held before the undersigned at Cleveland, Ohio, on November 4 and 5, 1943, the respondent and counsel for the Board entered into a stipulation whereby the respondent waived a hearing on the issues raised in the amended complaint last above referred to, and agreed

² All the allegations of the complaint describing the alleged unfair labor practices are contained in paragraphs 4 and 5 of the consolidated complaint. The truth of these allegations is admitted in the answer of the respondent. During the hearing a stipulation signed by the respondent was filed as Board's Exhibit 3 and reads as follows:

Respondent concedes and stipulates that, if the respondent is subject to the jurisdiction of the Act and if the persons referred to as agents in paragraphs 4 and 5 of the complaint were and are employees of the respondent within Section 2 (3) of the Act, then the acts alleged in paragraphs 4 and 5 of the complaint and admitted in paragraphs 4 and 5 of the answer constitute unfair labor practices within the meaning of Section 8 (1) of the Act and the acts alleged in paragraph 5 of the complaint and admitted in paragraph 5 of the answer constitute unfair labor practices within the meaning of Section 8 (3) of the Act; the respondent further waives any right which it may have to contest, either before the Board or any Court of the United States, that which is herein expressly conceded and stipulated. But respondent expressly reserves all other rights, including the right to contest any finding of fact or conclusions of law that the respondent is subject to the jurisdiction of the Act and that the persons referred to in paragraphs 4 and 5 of the complaint were and are employees of the respondent within Section 2 (3) of the Act.

that the issues raised by such amended complaint are in substance the same issues that were raised in the consolidated complaint upon which the hearing of November 4 and 5 was held, and further agreed that such issues shall be determined on the basis of the evidence and stipulations introduced at the hearing of November 4 and 5, 1943, above referred to, with the same force and effect as if this case had originally been consolidated with the others involved in the original hearing. The stipulation further provided that the Board may issue an order consolidating this case, which bears the number 8-C-1544, with the other cases originally consolidated in the order dated September 29, 1943, and that the record in the preceding consolidated case may be reopened to receive further evidence, which shall consist of the pleadings, stipulations and other formal papers making up the record in Case Number 8-C-1544.

In addition to the foregoing, the Company and counsel for the Board further stipulated that the only issue involved in Case Number 8-C-1544, other than that of jurisdiction arising from the "commerce" question above referred to is whether Joseph Koren was an employee of the respondent on May 29, 1943, and that if he was such an employee, then the acts alleged in the amended complaint in Case No. 8-C-1544 as unfair labor practices do, in fact, constitute unfair labor practices by the respondent, within the meaning of Section 8 (1) and (3), of the Act.

Upon completion of the stipulations above referred to, the respondent filed its answer to the amended complaint with the Chief Trial Examiner, wherein the respondent admits all the facts alleged in the complaint except the jurisdiction of the Board, but affirmatively alleges that at none of the times alleged in the complaint was Koren an employee of the respondent and that for that reason, it has engaged in no unfair labor practice within the meaning of the Act.

On December 18, 1943, the Board entered its order directing that Case No. 8-C-1544 be consolidated with the other cases heretofore referred to, pursuant to the provisions of the above stipulations, and that the record be opened for the purpose of receiving in evidence the pleadings, the stipulations, and other formal documents making up the record in Case No. 8-C-1544, and further directing that the Trial Examiner prepare an Intermediate Report on the cases as so consolidated.

Pursuant to the order of consolidation above referred to, the complaint, with charge and notice of hearing, and the amended complaint, in Case No. 8-C-1544, the stipulations heretofore referred to, bearing date December 6, 1943, and the answer of the respondent in such case, are now received in evidence as a part of the record of the consolidated cases, and will hereafter be considered in conjunction with all the other pleadings, stipulations and record made in the cases under consideration at the hearing of November 4 and 5, 1943, held at Cleveland, Ohio, before the undersigned as Trial Examiner, with the same force and effect as if the issues of said Case No. 8-C-1544 had then actually been before the Trial Examiner for hearing and consideration and the arguments of counsel and the briefs submitted in connection with the issues considered at the hearing of November 4 and 5, 1943, will be here considered as likewise applicable to the issues raised in Case Number 8-C-1544.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted into evidence, and upon the entire record herein made, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Western and Southern Life Insurance Company is and since February 23, 1888, has been an Ohio corporation engaged as a stock company, as distinguished

from a mutual company, in the business of issuing policies of insurance on the lives of its policyholders on a nonparticipating basis. It has a present paid up capital of \$25,000,000, and maintains its home office and principal place of business at Cincinnati, Ohio. It is not affiliated with or subsidiary to any other insurance corporation. The business of the respondent is carried on in eight States of the United States in which it had in force, in 1942, a total of 3,034,009 policies of industrial and ordinary insurance covering the lives of approximately 2,233,000 persons and representing a total insurance of approximately \$1,173,678,440. Slightly less than 50 percent of the number of policies and policyholders are in the State of Ohio, the remainder being distributed in varying percentages among the seven other States in which the respondent does business. On December 31, 1942, the respondent's assets represented the sum of \$221,087,825.71 and consisted of cash, United States Government bonds or bonds guaranteed by the United States, bonds of political subdivisions of the United States, preferred stocks in miscellaneous industrial companies whose stocks are listed on the New York Stock Exchange, real estate in 11 States, valued at \$13,511,536.97, mortgages totaling \$69,752,448.46 secured by real estate located in 22 States of the United States, of which, slightly more than \$1,400,000 is represented by farm mortgages and slightly over \$8,000,000 by loans on non-farm properties; other items include ground rents and loans to policyholders of more than \$8,100,000. Respondent maintains 208 separate bank accounts in 11 States of the United States with balances varying from nominal sums to amounts exceeding \$128,000, except in the State of Ohio, where it maintains 105 bank accounts in which the total balances exceed \$1,129,000. All the securities owned by the Company are kept at its home office in Cincinnati, except \$100,000 par value, of bonds on deposit with the State of Ohio pursuant to a requirement of the laws of that State. The terms and conditions of the various policies of insurance offered by the Company are fixed by the officers at the home office in Cincinnati, subject to the supervision of the respondent's Board of Directors. All applications for insurance and all matters pertaining to insurance in force are acted upon at the home office in Cincinnati. All policies are issued at the home office after which they are forwarded to the various offices serving the respective applicants, from which they are delivered to such applicants in the State of Ohio and elsewhere. During the year 1942 the respondent paid out slightly more than \$13,000,000 to claimants or beneficiaries under life insurance policies issued, approximately 53 percent of which was paid to claimants or beneficiaries residing in the State of Ohio and the rest to claimants or beneficiaries residing in other States. The respondent has 157 district and other offices located in various States of the United States, in which there are employed 376 managers and associate managers, and 1,546 other persons, denominated by the Company as "trustees," who solicit applications of insurance for the Company and make collections on policies in force. More than half of these are located in Kentucky, West Virginia, Pennsylvania, Michigan, Missouri, Indiana, and Illinois. In 1942 the respondent expended in excess of \$167,000 for furniture, fixtures, mechanical equipment, printing, and stenographic supplies, of which approximately 20 percent was for use and was used in States other than Ohio. In the conduct of its business the respondent uses the facilities of the United States mail and the currently available telephone, telegraph and express services between its various offices and its home office, in connection with which it expended, in 1942, approximately \$144,818.38. During the same period it expended in excess of \$80,000 for traveling expenses, of which over \$30,000 was for travel expenses of managers and assistant managers within the respective States in which their offices are located.

All the facts above recited are derived from stipulations signed by all the parties and entered in the record herein. On the basis of these facts the respondent

ent denies that it is engaged in commerce within the meaning of the Act. This contention is dealt with later in this report.³

II THE ORGANIZATIONS INVOLVED

American Federation of Industrial and Ordinary Insurance Agents Union #23230 (A. F. L.), American Federation of Industrial and Ordinary Insurance Agents Union #23236 (A. F. L.), American Federation of Industrial and Ordinary Insurance Agents Union (A. F. L.), and Industrial Insurance Agents Union, Local 65. IOPWA-CIO are labor organizations admitting to membership the employees of the respondent who are engaged in the distribution and sale of insurance policies issued by the respondent and the collection of premiums thereon.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The factual findings*

It is the contention of the respondent that the persons referred to in the consolidated complaints as the agents or employees of the respondent are not in fact such employees within the meaning of the Act, but that they and each of them, at all times pertinent to the issues herein, have been, and now are, independent operators conducting their own insurance business although dealing exclusively in and with life insurance policies written by the respondent.⁴ The following findings, which are based upon the pleadings and stipulations herein, are therefore made subject to the foregoing contention which will be disposed of in a subsequent portion of this report.

It is alleged in the consolidated complaints, admitted in the answers, and herein found that the respondent, through its officers and agents, and the supervisory employees of its various district offices, from a date in August 1942 in its Cleveland, Lakewood and Zanesville, Ohio, District Offices, from a date in May 1941 in its Pittsburgh, Pennsylvania, District Offices, and from a date in February 1943, in its Warren, Ohio, District Office, to the present time, acting with the knowledge of, and under the actual direction of, and specifically on the orders of the respondent, has done or caused to be done the following acts and things with respect to those persons who solicit applications for insurance policies of respondent and who make collections on respondent's insurance policies in and about its District Offices in the cities of Zanesville, Lakewood, Warren and Cleveland, Ohio, and Pittsburgh, Pennsylvania, hereinafter referred to as agents, to wit: Advised its agents at its Cleveland West Office that the A. F. L. was a failure and that it would not achieve anything for its agents; called a meeting of its agents at its Cleveland North District Office and at such meeting advised the said agents that the A. F. L. was composed of racketeers and was interested only in dues money which it could collect, and that insurance agents should not be organized in unions; advised its agents at its Cleveland South Office that all the A. F. L. was interested in was dues which the A. F. L. could collect from re-

³ The stipulation concerning the business of the respondent contains extensive statistics showing the ratios of the respondent's business, assets and holdings to the combined business and assets of all insurance companies in the United States, and similarly the ratios of its various classes of assets to all property of similar character in the United States. In its brief, the respondent lays stress on these figures on the theory that they represent so small a portion of the whole as to be inconsequential. This theory was effectively disposed of by the United States Supreme Court in the *Famblatt* case, contrary to the respondent's contention and need not be further dwelt on here. *National Labor Relations Board v Benjamin Famblatt, et al*, 306 U. S. 601.

⁴ For purposes of uniformity, these men will be referred to throughout this report as agents

spondent's agents and that the respondent would not tolerate the A. F. L. or any unions, and advised the said agents not to attend meetings of the A. F. L.; assembled the agents of its Cleveland South District Office, and, before said assembled agents, referred to the Act in a derogatory manner; questioned individual agents at its Cleveland West District Office about their activities on behalf of the A. F. L., and threatened to discharge some of its said agents; suggested to various of its agents at its Cleveland West District Office that they should resign from the A. F. L. and advised these said agents that, if the A. F. L. was successful, the respondent would abolish the said Cleveland West District Office and arrange for policyholders to pay their premiums by the United States mails; questioned certain of its agents who work out of the respondent's Cleveland North District Office about their activities on behalf of the A. F. L. and about their affiliation with the A. F. L.; suggested to various of its agents, who were members of the A. F. L., at its Cleveland West District Office, at its Cleveland South District Office, and at its Lakewood District Office that such agents should resign their positions with the respondent; assembled and advised its agents who work out of the Cleveland West District Office that a Board election would shortly be held and that it was to the best interest of the said agents not to participate in or have anything to do with said election; assembled its agents who work out of its Cleveland North District Office and advised said agents that a Board election would shortly be held and that it was to the best interest of the said agents not to participate in or have anything to do with said election; interrogated certain of its agents who work out of the Cleveland South District Office about their membership in the A. F. L. and advised said agents that a Board election was to be held shortly and that they were not to participate in or have anything to do with said election; advised certain of its agents who work out of its Zanesville District Office that the A. F. L. should not organize its agents, that its agents at its Zanesville District Office should discourage rather than encourage the A. F. L., and that said agents should not become members of or remain members of the A. F. L.; inquired of its agents at its Pittsburgh offices regarding their membership and activities in the C. I. O.; reprimanded its agents at its Pittsburgh offices for attending meetings of the C. I. O.; threatened discharge of its agents at its Pittsburgh offices because of their membership in the C. I. O.; promised promotions to its agents at its Pittsburgh offices if they would cease their C. I. O. activities; advised its agents at its Pittsburgh offices that the C. I. O. in particular and unions in general had no place in the insurance business and that if the agents wished to progress in the business, they should oppose the activities of unions; accused its agents at its Pittsburgh offices of disloyalty to respondent and respondent's supervisors because of their membership and activities in the C. I. O.; advised its agents at its Pittsburgh offices that the C. I. O. in particular and unions in general could do no good for the agents; instructed certain persons at its Pittsburgh offices to attend meetings of the C. I. O. for the purposes of reporting back to respondent the names of the agents who attended the meetings; advised its agents at its Pittsburgh offices that the respondent did not want to see a union at its Pittsburgh offices; advised its agents at its Pittsburgh offices that if the C. I. O. came in and was successful in organizing the agents, the respondent would call its policyholders and have them come to the office to pay their premiums, thus reducing the number of agents needed; expressed derogatory remarks to its agents at its Pittsburgh offices about the C. I. O. and persons active in organizing the agents into the C. I. O.; advised, urged, and warned its agents at its Pittsburgh offices to refrain from membership in the C. I. O.; and advised the agents at its Pittsburgh offices of respondent's opposition to their joining the C. I. O., in particular

and unions in general, and at its office in Warren, Ohio, questioned its agents as to the activities of the Union; advised them that representation by an "outsider" would not benefit them; ordered its agents to resign their respective offices in the Union; urged the other agents to withdraw from the Union; called a meeting of its agents where it questioned each of them concerning his union membership and advised them the Union would not benefit them and advised its new agents not to join the Union.

The respondent discharged various of its aforesaid agents hereinafter listed, who worked in the District Office as hereinafter indicated, on or about the dates set forth, and has at all times since refused to reinstate such agents to their former positions with the respondent with the exception of G. B. Millisor, hereinafter mentioned, who was so reinstated on the 19th day of July 1943.

Carl R. Hall, Zanesville District Office.....	January	13, 1943.
David Levy, Cleveland South District Office.....	March	24, 1943.
G. B. Millisor, Cleveland North District Office.....	March	24, 1943.
Fred J. Hager, Lakewood District Office.....	March	24, 1943.
Richard P. O'Neil, Pittsburgh East Office.....	September	30, 1942.
Joseph Koren, Warren, Ohio, Office.....	May	29, 1943.

The respondent discharged its said above-mentioned agents, Carl R. Hall, David Levy, G. B. Millisor, Fred J. Hager, and Joseph Koren after it became aware that they were members of the A. F. L. and were active on its behalf, and except as noted, has failed and refused to reinstate them to their former positions with respondent, because of their membership in and activity in behalf of the A. F. L. The said Fred J. Hager is now deceased and G. B. Millisor was reinstated on July 19, 1943, but otherwise the respondent continues to refuse to reinstate the said Hall, Levy, and Koren, for the reasons aforesaid.

The respondent discharged its said above-mentioned agent, Richard P. O'Neil, after it became aware that he was a member of the C. I. O. and was active on its behalf and because of his membership in and activity on behalf of the C. I. O. and at all times since has failed and refused to reinstate the said O'Neil to his former position with the respondent because of his membership in and activity in behalf of the C. I. O.⁵

Since the foregoing is constituted of admitted facts but subject to a determination of the jurisdiction of the Board, ultimate findings as to whether unfair labor practices have been engaged will be made at the conclusion of the findings on the jurisdictional questions involved.

B. The jurisdictional question involved

Since the respondent has admitted all the factual allegations of the complaint except that such facts confer jurisdiction on the Board, there are only two questions to be resolved. (1) Is commerce, as the same is defined by the Act, affected by the facts pleaded, admitted by stipulation or answer, and found as facts; and (2) are the "agents" or "Trustees" of the respondent, "employees" within the meaning of the Act, or are they "independent contractors" as claimed by the respondent. Able and comprehensive briefs on these questions have been submitted by counsel for the respondent and counsel for the Board.

1. Is commerce affected:

Except in minor detail that has no bearing here, the business of the respondent varies from that of other insurance companies who issue both industrial and

⁵ The foregoing findings are derived and, in the main quoted from paragraphs 4 and 5 of the consolidated complaints, as admitted by the respondent in its answers.

"ordinary" policies, only in volume. This respondent stands twenty-second among the insurance companies of the United States in order of value of assets.

In considering a similar question in the case of *John Hancock Mutual Insurance Company*, 26 N L R. B 1024-1029, the Board had occasion to review the character and extent of the business transacted by that Company and the distribution of its assets and investments, as well as the general effect of the operation of the business upon the free flow of capital and credit in the commercial life of the United States, and the effect upon the economic structure of the United States which would result from an interruption or termination by the Company of the transaction of its business and the conduct of its affairs along the lines usually and normally followed by insurance companies, and found that that Company was within the jurisdiction of the Board. Although the investments that made up the Company's assets were somewhat more spread out by the *John Hancock Mutual Insurance Company* than is the case here, and covered classifications of securities not found in the respondent's portfolio, the fundamental principal remains the same. It is a fact that the respondent owns no railroad or railroad equipment bonds, public utilities bonds, industrial corporation bonds, preferred stocks of utilities companies, or common stocks of industrial or public utility companies, but it is the owner of in excess of \$10,000,000 in value of the preferred stocks of various industrial companies, holds mortgage loans on real estate in 22 States to the extent of more than \$69,000,000, and is the owner of real estate in 11 States, to the extent of more than \$13,500,000 in value. It has provided a substantial market for securities which play a large part in the industrial and credit structure of business throughout the country and, by its widely distributed mortgage funds, has contributed heavily to the flow of credit between the various States as one of the principal functions of its business. On the broad basis of its chief functions, the activities of the respondent cannot fail to have an effect on commerce.⁶ On the other hand, its operational activities in the day to day conduct of its business have an effect on commerce which, in numerous similar cases, have been found to be such as to bring an employer within the jurisdiction of the Board.⁷

The respondent, in analysing the conduct of its fiscal affairs, lays great stress on a distinction between the concern that invests its funds and the one, such as a bank, that deals in credit as a commodity. So far as a distinction between these classes and the effect of their respective credits on commerce is concerned, it is only one of degree of coverage and velocity of the flow. All these appear to have been considered by the Board in the *John Hancock* case. Paraphrasing the language of that decision, which, in the main, is appropriately applicable here, the nature and extent of facilities, which insurance companies afford to the commercial life of the nation are so well known as to require neither proof nor discussion. They perform a "distinguished public service * * * through wide distribution of funds under a program of diversified investment."

⁶ In its brief, the respondent has urged as precedent for its position, a long line of decisions of the Supreme Court of the United States defining interstate commerce. None of them is applicable here. Here the question of whether the respondent is engaged in interstate commerce may be ignored. The fundamental question is whether the business of the respondent affects commerce. If it does, the jurisdiction of the Board is just as real as if the respondent admittedly were engaged in interstate commerce.

⁷ As has been heretofore noted, in 1942, the respondent spent approximately \$144,000 for postage, telephone, telegraph, and express services in the conduct of its business, and during the same year expended approximately \$80,000 for travel expenses of which approximately \$30,000 was for travel expenses of managers and assistant managers within the States in which their respective offices are located.

While it is a fact that funds of the instant Company are not invested in the bonds and common stock securities of public utility corporations or industrial corporations in general, its investments in the preferred stocks of industrial corporations and in mortgages distributed through a large number of the States is considerable. Its assets may represent only $\frac{2}{3}$ of 1 percent of the combined assets of all life insurance companies as is pointed out in its brief, but its investment in the preferred stocks of the industrial corporations of the country whose securities are listed on the New York stock exchange, its large real estate holdings, and its very substantial investment in mortgage loans throughout the United States, represent a contribution to the nation's commercial and industrial system which, if disturbed, would seriously affect the economic structure of that system at those points in the various States of the United States where its investments touch, and could hardly avoid also having its repercussions on the more than 2,000,000 holders of the respondents policies which have been sold and distributed throughout the 8 States in which the respondent does business. The withdrawal from the money market of these investments would seriously impair that free flow of capital and credit which is essential to the commercial life of the United States. There is no merit to the contention that the activities of the respondent do not affect commerce within the meaning of the Act. It is accordingly found that the operations of the respondent have a close, intimate, and substantial relationship to trade, traffic and commerce among the several States and that the operations of the respondent are within the jurisdiction conferred on the Board by the Act.

2. Status of Agents (Trustees)

The respondent is exclusively a life insurance company writing various types of what is known as "ordinary" insurance, which term applies to policies of \$1,000 or more with premiums computed on an annual basis and payable annually semi-annually or quarterly, and "industrial" insurance, which is written in smaller amounts and on which the premiums are computed and paid on a weekly basis.⁸ The respondent has no agents soliciting exclusively one class or the other of these policies. All of them are primarily industrial insurance agents and premium collectors covering a fixed "debit," with the solicitation and sale of ordinary insurance as something of an incident to their regular industrial business. Approximately 60 percent of the respondent's business consists of industrial insurance.

Prior to February 1941, all agents of the respondent worked under a standard contract of employment called "Agents Agreement," generally corresponding to similar agreements utilized by other companies in the United States writing industrial insurance, which the Board has heretofore found created the relationship of employer and employee.⁹

In the cases involving this type of contract and its performance which have previously been considered by the Board, and in the case of the respondent, at least prior to February 1941, the functional operations of the agent follow substantially the same pattern, with unsequential variations: (1) He is assigned a "debit," consisting of all the industrial or "weekly premium" accounts of the Company then in force within a given geographical area; (2) He is not permitted to solicit industrial insurance outside the geographical limits of his debit nor is any other agent of the same Company permitted to solicit such

⁸ Both types of policies now provide for "paid-up insurance," "loan values," "extended insurance" and many of the other features formerly common only to "ordinary" insurance.

⁹ See *Sun Life Ins. Co of America*, 15 N. L. R. B. 817, *John Hancock Life Ins. Co.*, 26 N. L. R. B. 1024; *Life Ins. Co of Virginia*, 29 N. L. R. B. 246; *Supreme Liberty Life Ins. Co.*, 32 N. L. R. B. 92; *Metropolitan Life Ins. Co.*, 43 N. L. R. B. 962.

business within the debit; (3) He is permitted to solicit "ordinary" insurance any place he may be able to find a prospect; (4) He is required to service his debit at all times and to devote his entire working time to the maintenance of his debit and the solicitation of ordinary insurance, with the debit, however, taking precedence; (5) Each account in the debit must be canvassed each week for the collection of premiums, and lapses and arrears must be offset by new business, with credit being given to the agent only for the amount that new business exceeds lapses and arrears; (6) He must account for his collections each day or as near daily as is possible and must make a detailed account for each item on his debit on a fixed day in each week; (7) His compensation is in the form of commissions on his collections and on net new business written. In some instances he is given a guaranteed minimum weekly advance on payment;¹⁰ (8) He works as one of a group of from 5 to 7 men under a supervisor or assistant manager who periodically goes with him on his round of the debit and audits his accounts by checking his debit record against the receipts held by the policyholders; (9) His debit may be changed in any manner the Company sees fit; (10) He may be moved from debit to debit at the will of the employer; (11) He is under the supervision and direction of the District Manager and his Assistant Manager in whose group he works and is subject to discharge the same as any ordinary employees.¹¹ Such, in substance, is the status of the industrial insurance agent who "runs" a debit under the usual "Agents Agreement" and such was his status with the respondent under the "Agents Agreement" above referred. His is a functional part of the business of the Company whom he represents and is the source of practically all the industrial insurance written by his Company. While he works alone in making his rounds, he is coached in the District Office and by hand books furnished by the Company as to his approach to policyholders and to prospects. His work is wholly salesmanship and is subject in large measure to the control and right of the Company as to the manner and mode of execution of his duties insofar as such is possible as to an employee making weekly coverage of a large territory.¹² The respondent does not seriously contend that prior to February 1941, the relation between itself and its agents was not that of employer and employee, or, as the respondent prefers to put it,—master and servant. It does contend, however, that in February 1941, the status changed as the result of crystallization of a program of change which had been in gradual process for a number of years.

The standard "Agents Agreement" in force as to all agents of the respondent up to February 1941 contained the following provisions.

1. The agent agrees to abide by all instructions, rules and regulations issued or to be issued by the Company.
2. The agent agrees to devote his time exclusively to the business of the Company.
3. The agent agrees to canvass each day for new business.
4. The agent agrees to collect weekly premiums promptly and regularly each week.

¹⁰ In the instant case all compensation was in the form of commission without advances or guarantees. Cf. *Supreme Liberty Life Insurance Co., supra*.

¹¹ Ordinarily the District Manager does not have the absolute power to either hire or discharge, although he may recommend such action and may suspend an agent in an emergency such as the discovery of fraud or dishonesty. Usually the actual hiring and discharging is done on orders from the Home Office. The District Manager is, however, responsible for the agent's performance of his duties, directs him administratively and usually is paid an over-riding commission on the business done by the agent. The Supervisor or Assistant Manager is responsible to the District Manager for the men on his "staff" and he, too, receives an over-riding commission on the business done by them.

¹² Cf. *Supreme Liberty Life Ins. Co., supra*.

5. The agent agrees to make weekly reports of all policies that are 4 weeks past due.
6. (This paragraph is a general description of a weekly debit)
7. The agent agrees to turn in daily all collections made.
8. (This paragraph fixes the rate of commission on a sliding scale, based on size of debit.)
9. (These provisions fix commissions on new business, based on excess of
10. } new business over lapsed policies.)
11. (This provision penalizes agent for lapses when they exceed new business and deprive him of commission until the deficiency is restored)
12. (Has to do with a 4-week period at the start of a new debit assignment when lapses are not charged against him, and charges him with lapses occurring 4 weeks after he relinquishes his debit.)
13. The agent's employment may be terminated on one week's notice.
- 14-20. (These are administrative in character and not of interest here.)
21. The agent agrees to forfeit all earned commissions which are payable at future dates, in the event he resigns or is dismissed.

In February 1941 the respondent adopted a new form of contract which, it maintains, transformed the agent employees into "trustee" independent contractors.³³ Although this contract was never submitted to the agents then working under the standard Agents Agreement and was never signed by any of them, but was used only in hiring new agents, it contained a somewhat different method of computing commissions, which was automatically applied to the commission accounts of the old agents. It was never exhibited to the old agents and, as far as the record reflects, none of them ever knew its contents or agreed to it. On that score, C. F. Williams, respondent's president, testified that the new contract was offered to all the old employees and that all accepted it, not by signing it or in any other formal manner, but by accepting the commissions computed on the new scale provided for in the new contract. Williams further testified, however, that copies of the new contract were never submitted to the old agents, nor were copies posted in the various offices or otherwise made available to the agents, but that on his visits to the offices in early 1941, he had a copy with him and,

³³ The February 1941 contract began with the following recital :

The Company hereby transfers IN TRUST to the Trustee its Ordinary and Weekly Premium debit No ----- consisting on this date of \$----- weekly premiums and \$----- of ordinary insurance.

The Trustee hereby admits and declares that he holds said debit in trust for this Company under the following terms and conditions —

and, in conjunction with a supplemental agreement concurrently executed, provides :

1. The trustee will collect the weekly premiums promptly and regularly each week. (Cf Agents Agreement, Par. 4)
2. The trustee will remit daily all collections made (Cf Agents Agreement, Par 7)
3. The trustee will conserve all policies in his debit to the best of his ability. (Cf. Agents Agreement, Par 2)
4. The trustee will abide by the regulations of the Company (Cf. Agents Agreement, Par 1)
5. The trustee will report weekly, all policies that are 4 weeks past due. (Cf Agents Agreement, Par. 5)
6. (Rates of commission are described) (Cf Agents Agreement, Par. 8)
7. (The debits are described and defined) (Cf. Agents Agreement, Par 6)
8. Contract may be terminated on one week's notice by either party. (Cf Agents Agreement, Par 13)
9. The trustee will devote all his time to the business of servicing his debit and the ordinary insurance assigned to him or to soliciting new business. (Cf. Agents Agreement, Pars 2 and 3)
10. The remaining sections cover in substance the same provisions as set out in Pars 9, 10, and 14 to 20 of the old "Agents Agreement."

in talking to the assembled agents at each office, told them about the contract, explained that it was designed to set the men up in business for themselves, and advised them that each agent could take advantage of it if he wished. Those of the agents who testified, stated they had never seen the February contract and had never been advised, up to early 1943, of an intention of the respondent to change their status from "agent" to "trustee." Admittedly, none of them ever signed or otherwise agreed to accept it. Under such circumstances it does not become necessary to resolve the question of whether Williams did, in fact, tell the old agents that the new contract was available to them if they desired it.

Williams testified at length as to the reasons for adopting the "trustee" contract, which boils down to the theory that he desired to make the men feel they had a personal "stake" in the business they were handling, that they were in business for themselves in the handling of their debts and that they were secure from change or dismissal as long as they maintained their business at a reasonable standard; that by doing this, he was of the opinion that the personnel of the agent staff could be improved, the cost of doing business could be reduced, the earnings of the individual agents could be increased, and the quality of business handled could be raised. Although Williams modestly did not mention it, the corollary to these improvements would reflect itself in increased earnings by the Company¹⁴. At no time, however, did he indicate that the Company has ever had any intention of relinquishing complete title to and control of any of the business covered by the debit accounts or the ordinary insurance making up the *res* of the purported trust.

It was quickly discovered that Williams' announcement that the new contract was designed to "put the men in business for themselves," was not consistent with the provision for arbitrary termination of the "trust" by the Company on 1-week's notice. As a result, in August 1941, a modified form was substituted, which was substantially the same as the February contract except that:—(a) the Company reserved the right to change its rules and regulations from time to time and the trustee agreed to abide by them as so changed; (b) the contract was automatically terminated by death of the trustee, by dishonesty or fraud on the part of the trustee, or by failure to comply with Company's regulations; and, (c) the trustee could resign on 1-week's notice and the Company could terminate the agreement only on 4-weeks' notice when the trustee's insurance account fell below that of the average account in the trustee's district.

In September 1942, another contract was introduced which was substantially the same as the preceding one except that, as to termination by the Company for cause, it provided for 4-weeks' notice to the trustee of a deficient condition of his account and allowed the Company to terminate it only after failure to correct the deficiency.

The foregoing constitute what are referred to herein as the early "trust" agreements. It is admitted by the respondent that none of them was circulated among the agents, posted in the offices, or otherwise brought to the agents' attention, other than by such general remarks concerning them as may have been made by Williams at the regional meetings of the agents.

After February 1941, there was no change of any character in the functional operations of the agents or their relations to the Company or the District Man-

¹⁴ Some comparative statistics placed in evidence reflect a substantial improvement in the records of the agents beginning 1941, which may be attributed either to the improvement over the past few years in the economic condition, as a class, of those for whom industrial insurance is designed, or to the efficacy of Williams' theory, or to both. In any event the operations have reflected very substantial earnings for the Company. In 1942 the insurance outstanding totaled \$1,173,678,440. During that year, claims paid to beneficiaries under outstanding insurance totaled \$13,113,800.94. Net earnings after all operating charges, but before reserves required by law, were \$17,617,714.38.

agers or Supervisors They continued to function precisely as they had in the past So far as the contracts are concerned, a comparison reveals that the only fundamental difference between the early trust arguments and the old Agents Agreement is the absence of the forfeiture clause above-noted as Par. 21 of the old contract,¹⁵ and the later clauses pertaining to termination.

In December 1942 the respondent rewrote the "Trust Agreement" and, beginning in January 1943, had it executed by every agent in its employ. This agreement with a single amendment hereinafter noted, is still being used and begins with the following recital:

The Company hereby conveys in trust to the trustee its insurance account No. _____, consisting on this date of weekly premium accounts of \$_____ and Ordinary Premium accounts of \$_____, together with such further insurance as may subsequently be added to the account, the weekly premium collection book, outstanding Ordinary premium receipts, and all other necessary forms and data.

and thereafter provides, in substance, that:

- 1 Trustee agrees to devote his full working time to the "account."
- 2 Trustee agrees to make all collections promptly when due.
- 3 Trustee agrees to immediately deposit all collections with the Company
4. Trustee agrees to maintain his account on a basis at least equal to the average of the lower one-half of accounts in his territory.
- 5 The trustee agrees to do nothing that may be construed as lessening the respect or good will that the Company enjoys in his community
6. The Company agrees to pay to the trustee each week a straight commission on new industrial and ordinary business as per a schedule attached to the agreement, but computes new industrial business, as in previous contracts, on the basis of excess of new business over lapsed business
7. The agreement may be terminated only by death, resignation, or fraud or dishonesty by the trustee; by failure of trustee to bring his account up to the standard stated, after 4 weeks notice or by violation of the terms of the agreement by the trustee.
8. The Company reserves the right to modify or wholly withdraw commission on ordinary insurance written or special commissions on industrial insurance, with an additional provision that the company's decision or interpretation of the preceding provisions "shall be final at all times."
- 9 The trustee forfeits all interest in commissions on business written but which normally would become payable at a future date, upon termination of the agreement for any cause.

In May 1943, the foregoing agreement was amended by eliminating the right of the Company to modify or withdraw the commission provision or to have final determination of the interpretation of the terms of the agreement as set out in Paragraph 8 above.

Although the new schedule of commissions had automatically gone into effect the previous year as to all agents, it was not until January, 1943, that the respondent's proposal to transform all the agents into "trustees" was brought home to them in concrete form, and it was not until then that any of those affected by this proceeding signed any agreement that superseded their old "Agents Agreement."

Under the contentions of the respondent, the alleged trusteeships of the agents at the present time do not arise out of implied trusts or in any other indirect

¹⁵ This apparently was an oversight since it is now included in the contracts that were introduced in December 1942 and which, with some changes, are now in effect.

manner, but are the result of the execution in January 1943, and subsequently, of the December 1942 agreement last above described. As to the trustee status of the agents prior to the execution of the December 1942 agreement form, it is the contention of the respondent that the trust relation came into existence when the agents accepted commissions computed on the scale contained in the various early "trust" agreements.

It is uncontroverted that none of the agents here involved, ever affirmatively agreed to any of the terms of the early "Trust" agreements. It is conceded that the new commission scale was applied to all agents automatically and notwithstanding their failure to request it, in the same manner that liberalizing clauses in policies are automatically applied to all outstanding policies which did not originally contain them. And it is admitted that the early agreements were never submitted to the old agents or posted to allow the agents to familiarize themselves with their terms. Under such circumstances, the untenability of the respondent's position with reference to the trustee status of the agents prior to their execution of the December 1942 contract is obvious. A trust of the character claimed by the respondent to have existed prior to January 1943 cannot be created by the unilateral action of the *cestui que* trust and without the knowledge, consent or acceptance of the designated trustee. Acceptance, either actual or implied is an essential. No such acceptance is found here. The respondent relies on the creation of this trustee status as the foundation for the "independent contractor" status, which it claims for the agents. But an employee enjoys certain rights, privileges and immunities which an independent contractor does not have. He may not be deprived of those rights, privileges and immunities by being transformed into an independent contractor without his knowledge or consent and merely by the process of some unilateral action of his employer to which the employee does not subscribe. In this respect the employee had no part in the creation of any trusts under the early agreements, and he cannot be affected by such unilateral action. His acceptance of the unsolicited change of wage base cannot create such a trust. It is therefore found that under no circumstances was the employee status of any of the agents here involved changed prior to the execution by them, in January 1943 and thereafter, of the agreement herein described as the December 1942 agreement.¹⁶

On the basis of the foregoing finding, the cases of Richard P. O'Neil and Carl R. Hall must be disposed of before proceeding with the current "Trust Agreement."

On September 30, 1942, Richard P. O'Neil, who had been employed by the respondent since December 1939 as an agent under the old standard form of Agents Agreement, was discharged. At the time, he was employed at the Pittsburgh, Pennsylvania, Office, and had not entered into any of the early "trust agreements" heretofore described.

Under the pleadings, his discharge admittedly was because of his activities on behalf of the C. I. O. and to discourage membership in the C. I. O. It has heretofore been found that at the time of O'Neil's discharge, those agents who operated under the old standard Agents Agreement, were employees within the meaning of the Act. It is now found that O'Neil was such an employee at the time of his discharge above noted.

¹⁶ In view of the foregoing finding and the basis on which it is made, it is not deemed necessary to dwell on the fact that between February 1941 and January 1943, there was no material change in the functional operations of the agents. The office procedure was unchanged except that, to conserve gasoline, the agents were not required to report at the District Office each morning before going to their territory, but were expected to turn in collections each day after completing their rounds. The accounting routine remained the same and there was no change in supervision. These circumstances only serve to emphasize the fact that no change in the actual status of the agents either took place or was regarded by the respondent as having taken place.

On January 9, 1943, Carl R. Hall, who had been employed as an agent under the old standard form of Agents Agreement since 1922 and was then so employed at the respondent's office in Zanesville, Ohio, was notified of the termination of his employment subject to final accounting on January 13, 1943. On that date he returned to the Zanesville office and rendered his final account whereupon his employment formally came to a close. He had not executed any of the early "trust agreements" and did not execute the December 1942 agreement. The first time he saw a copy of the December 1942 agreement was on January 16, 1943, when he returned to the office to get his final pay. While there, he glanced over the form as it was being studied by one of the other agents. As in the case of O'Neil, Hall's discharge by the respondent admittedly was because of his connection with the A. F. of L., and to discourage membership in the A. F. of L. For the reasons heretofore set out, it is found that at the time of his notice of discharge on January 9, 1943, and his formal discharge on January 13, 1943, Hall was an employee of the respondent, within the meaning of the Act.

Since it has been found that O'Neil and Hall, at the time of their respective discharges were employees of the respondent within the meaning of the Act, on the basis of the pleadings and admissions of the respondent, it is found that Richard P. O'Neil and Carl R. Hall, employees of the respondent, were discharged from their employments by the respondent on September 30, 1942 and January 13, 1943, respectively, because of their respective activities on behalf of the CIO and AFL, and to discourage membership in said unions, and that thereby the respondent has interfered with the exercise by its employees of the rights guaranteed in Section 7 of the Act.

The status of David Levy, G. B. Millisor, Fred J. Heger and Joseph Koren, all of whom were agents of long standing who executed the December 1942 "trust agreement," presents the question which is the basic issue of this case. The respondent contends that the effect of the trust agreement was to take them out of the "employee" class and convert them into independent contractors. Much space in the record and in respondent's brief is devoted to the development by Williams of a higher degree of efficiency among his agents by broadening their freedom of action, enlarging their territories, and removing certain compulsory daily attendances at office meetings, pep talks and the like, and by instilling in them the thought they were in business for themselves. The language of the respondent's brief when dealing with this and the various changes in the manner of carrying on the business that led up to the February 1941 and subsequent contracts, is as follows:

Many other changes were made, all directed toward making the agent his "own boss" and putting him "in business for himself," free from the control of the Company and its managers, so that by the beginning of 1941 the solicitors of the respondent had achieved an independent status which was unlike that of any other industrial solicitor in the field. Since that time they have received additional benefits and their independent status has been enlarged. Their relationship with the respondent company is now and has been since the beginning of 1941, precisely the same as that of an ordinary life insurance agent.

There is no question that Williams' efforts, extending back to 1930, to improve the quality, morale and performance of his agents were founded on sound psychology and proven principles of human behavior. He definitely allowed his agents more and more freedom of action in covering their territories and as the quality and abilities of his agents, as a class, improved, either by better selection or through maturity growing out of experience, he relaxed the close supervision that had been necessary in the early days. But he never relinquished control.

or right of control over them in the performance of their duties. All who testified as to the manner in which their duties were performed stated that there has been no appreciable change in the functional operation of the District Office from the Agent's standpoint, or in the functional operations of the agent in his relations to the District Office, since prior to 1941. Daily morning staff meetings, with required attendance, have generally been suspended in most offices, primarily to conserve gasoline since every agent finds an automobile essential to his work and cannot afford to use gasoline to drive to the office every morning and then back to his territory and again to the office to report in with his collections. There is also some testimony by Williams that where circumstances warrant, agents are not required to turn in their collections at the office each day but are allowed to deposit them in a designated convenient bank to the credit of the company. While Williams' testimony could be construed to mean that the agent's time is his own to do with as he liked, he qualified this by calling attention to the fact that no agent could effectively cover his debit and solicit new business without devoting his entire working day to it. It is not controverted that since the daily morning conferences are not now mandatory, there is no fixed hour when an agent must begin the tour of his debit or conduct his solicitation for new business. The respondent does not fix the agents' hours of work. Thus, some agents find it easier and more effective to make their collection and solicitation calls in the afternoons and evenings and act accordingly, but both the agents and company representatives agree that the agent has a full time job which does not permit other outside regular business interests.

There is little conflict in the factual testimony of any of the witnesses. But upon the basis of Williams' testimony, plus the provisions of the trust agreement, the respondent contends that it no longer exercises an employer's control over the physical conduct of the solicitor in the manner and means of doing the work, and that, having contracted away the right to control, the mere fact that the company reserves the right to change, inspect and supervise to the extent necessary to produce the result intended by the contract, does not lessen the independent contractor status of the agent. In furtherance of their position the respondent contends that the following facts establish the independence of the agents:

1. Their sole compensation is a commission based upon the business they do, with no basic salary or guaranteed minimum.
2. They have no fixed hours of work.
3. They are not assigned any particular list of prospects whom they are required to see at any given time, nor are they given any other special assignments to see, other than those on their debit, whom they are required to cover each week under the contract.
4. Respondent could not and does not control the physical conduct of the agent as to manner, method, or time of making collections, so long as he makes them each week. Likewise it could not and does not control the manner, method or time of making solicitation of new business.
5. The agent furnishes his own transportation facilities.
6. The agent sells both industrial and ordinary insurance; the former in a territory restricted to his debit; the latter on an unrestricted basis.
7. All agents are required to be licensed by the State.
8. The trustees own the legal title to the debits and ordinary life insurance accounts. This is a substantial title since, (a) the geographical area of the debit cannot be increased or decreased; (b) his rights pertaining to industrial insurance within that area are exclusive so far as other agents of the company are concerned; (c) he receives full commission on business written in or collections made in his debit, whether by himself or another; (d) he cannot be moved to another debit.

In the opinion of the writer, the foregoing, even if it embraced all the factors of the relationship, which it does not, is insufficient to represent a change-over from the employee status that existed before the trust agreement, to that of an independent contractor, after the agreements were signed. With the exception of subitems (a) and (d) of Item 8, the conditions enumerated do not reflect anything that did not exist prior to the trust agreement. Subitems (a) and (d) of Item 8 are not set out in the contract. These "rights" are not contractual rights; the most that can be said of them is that they flow from the interpretation put on the contract by the respondent.

After the trust agreement was signed, the mechanics of carrying on the operation remained the same as they had been under the old Agents Agreement. The District Manager was still the supervisor of the operations of the District Office and all who worked in it, whether they were Superintendents (Assistant Managers) agents or ordinary clerical employees; he remained equally responsible to the Home Office for their performance and he still received an over-riding commission on the business done by the agents. The Superintendents, or Assistant Managers, still retained their groups or "staffs" of agents who worked under their respective leaderships and who were directly responsible to them. They, too, continued to receive an over-riding commission on the business done by the agents on their respective "staffs." Collections still were turned in in full each day as made. Weekly detailed accounts of the condition of each debit continued to be made each Wednesday on the same forms formerly used. Periodic inspections or audits of each debit were still made by the various Assistant Managers, and the agents were still penalized by the forfeiture of commissions on renewal premiums and other items earned but payable in the future, if their connection with the company should be terminated for any reason.

The contract resulted in little, if any, increase of freedom of action by the agents and, as will be later noted, actually deprived the respondent of control only to the extent that it may have given up its former unlimited right to increase or decrease the debit or transfer the agent from debit to debit as it saw fit. It is true the contract created an *apparent* stability for the agent and granted him an apparent security for as long as he maintained his debit at a prescribed level of productivity. This is the only thing it purported to give him that he had not always had before. If, as has been found, he was an "employee" before the signing of the trust agreement, the granting of this semblance of security by agreeing not to disturb him in his job so long as he kept his work up to prescribed standards, does not, as a matter of law, convert him into an independent contractor.

On the subject of right of control of the agent by the respondent after the signing of the contract, the record indicates that the respondent at no time intended to relinquish its full control over the conduct of the agent and that it drafted the trust agreement in terms to preserve such control. One of the undertakings of the agent as set out in the agreement is.— "to do nothing that may be construed as lessening the respect or good will that the Company enjoys in his community." Such a provision may be limitless in its application when, as here, such application rests exclusively in the company. It is at liberty to use almost any pretext to invoke this provision, and, under it, exercise its old right to discharge without limitation. With this provision a part of the agreement, the apparent independence and security of the "trustee" becomes a fool's paradise. The following letter, dated July 14, 1943, and addressed by the respondent to one of its trustees, is illustrative and requires no comment:—

We are advised your wife is employed by a competing life insurance company in the same territory as yourself, the company in question doing an

Ordinary and Weekly Premium insurance business exactly the same as this company.

In our opinion this lessens the respect that this Company enjoys in your community by your wife's employment with this competing company. Your interest is continually divided between the two companies and you could not give your full working time to conserving and further improving your insurance account with this Company. Therefore, unless your wife immediately resigns her connection with the other company, it will be necessary for you to resign from this Company. Otherwise, we shall be compelled to final your account beginning week of July 19, 1943 for the violation of the terms of your trust agreement.

We trust you will at once correct this impossible situation which you know, if it prevailed when you applied for a Trusteeship, would have prevented your entering into a trust agreement with the Company.¹⁷

The foregoing has been directed, in the main, to the factual relationships between the respondent and its agents, viewed in the light of the respondent's narrow concept of the meaning of the word "employee," which measures the relationship by the degree of control exercised by the "master," and it is found that even on the basis claimed by the respondent, there has been no change in the status of the agents from that occupied by them as employees before the first of the so-called "trust agreements" was conceived early in 1941.

From the broader aspect, the respondent's position is even less tenable. These agents are full-time workers engaged exclusively on the production and maintenance of the respondent's business, under rules and regulations promulgated by the respondent to which they must conform or forfeit their employment. They are a uniform, integrated, and clearly identified group making up the production personnel of the respondent. Without them, the respondent could not function and without their production, it could not exist. Under such circumstances, regardless of whatever freedom of action they may enjoy in the performance of their duties, it is the writer's opinion that they come within the contemplation of the Act. In the decisions of the courts, there is much conflict in distinguishing between "servants" and "independent contractors." An examination of these authorities reveals, however, that in practically every instance the conflict arises where the distinction is required to be made in order to allocate some form of right or liability at common law or under the various Workmen's Compensation Acts. The exception, and the case on which respondent places its chief reliance, is *Hearst Publications, Inc. et al v. N. L. R. B.* 136 Fed (2d) 608 (C. C. A. 9), in which the court took the same general position with reference to the use of the word "employee" as is here contended for by the respondent. In that case, however, the Supreme Court of the United States has granted the Board's petition for a writ of certiorari in order to review the question. It is still an open question. The Board's Decision in the *Hearst Publications* case, and its reasoning as developed in that Decision and in the petition for writ of certiorari, remain the law on this question by which the writer must be governed and in which he completely concurs.

The word "employee" is not a common law term and when it has been used in statutes without particularized definition, it has not been treated by the courts as a word of definite content. Nor has it been treated by Congress as

¹⁷ Because it does not seem to be necessary to a determination of the issues involved, the sufficiency of the "trust agreement" as a medium for creating a trust is not dwelt upon, although it is the opinion of the writer that it wholly fails to create any trust or to define any relationship between the respondent and its agent that differs from the ordinary fiduciary relationship that has always existed between them

a word of art having a definite meaning. The courts lay emphasis upon the necessity for appraisal of the purposes as a whole, of Congress, in analyzing the meaning of clauses or sections of the legislation under consideration. To ignore such purposes by giving to a word or clause a meaning that leads to absurd or futile results, obviously is unjustifiable. On this subject, the Supreme Court has said: "Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one" plainly at variance with the policy of the legislation as a whole "this Court has followed that purpose rather than the literal words."¹⁸

The National Labor Relations Act is not bottomed on the common law, but arises from a broader concept of the principle of economic stability, which looks to uninterrupted commerce between the states. The narrow contention of the respondent that the jurisdiction of the Board turns on a close definition of the word "employee" as found in the dictionaries or in some of the court decisions, has something of a counterpart in the *Kiddie Kover* case,¹⁹ in which Judge Simon observed:

This contention, however, ignores the essential nature of regulatory statutes of the class here considered, and the scope and purpose of administrative orders made in exercise of powers conferred by such legislation. They are to implement a public social or economic policy not primarily concerned with private rights, and through remedies not only unknown to the common law but often in derogation of it

The stated purposes of the Act and the policies of the United States, in terms of cause and effect, are clearly set out in Section I of the Act, and the Board is charged with the duty of effectuating them:

To eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association . . . for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The constitutional foundation of the Act is the protection of commerce, and its purpose is the removal of certain kinds of obstructions to the free flow of commerce. The cause of the obstructions which the Act deals with, and which it is designed to eliminate, is labor disputes which interrupt or have a disruptive effect upon businesses that are engaged in interstate commerce or whose operations have an effect upon interstate commerce. The business of the respondent has an effect upon commerce. It is within the jurisdiction of the Board. The agents who, as a class, are involved herein, constitute practically the sole production workers of the respondent. There can be no serious question but that a dispute between the agents, as a class, and the respondent, which should result in a cessation by the agents of the performance of their normal functions, would effectively paralyze the business of the respondent and result in precisely the situation which it is the purpose of the National Labor Relations Act to avoid. Such being the purpose of the Act, the applicability of the word "employees" becomes obvious.

These agents are "workers" such as are referred to in Section I of the Act, devoting their energies exclusively to the business of the respondent. They do not enjoy full freedom to divide their efforts between the business of the respondent and any other interest they may see fit, nor are they independent to the ex-

¹⁸ *United States v. American Trucking Assn.* 310 U. S. 469.

¹⁹ *N. L. R. B. v. Arthur J. Collen, et al.*, 105 Fed. 27, 179 (C. C. A. 6).

tent that they may employ assistants to help in fulfilling any of the conditions of the contracts they have signed. Aside from a certain amount of liberty in selecting the hours of the day when they shall work and in arriving at a technique of approach to the policyholders or prospective policyholders, which is always a matter of individual salesmanship, they have little liberty as to how they shall carry on their business, and are bound to comply with such rules and regulations as may be imposed by the respondent. They are dependent upon their relationship with the respondent for their entire livelihood, and are committed to spend their entire working time on the respondent's business. Whether they are called "independent contractors" or otherwise by the respondent, notwithstanding there might be a question as to the respondent's liability at common law for acts done by them that are incident to their work, the Act clearly contemplates that workers standing in such a relationship to their employers shall be entitled to associate themselves for their mutual aid and protection and for the purpose of bargaining collectively concerning the terms and conditions of their employment.

It is accordingly found that, in conformity with the policies of the United States and the expressed purposes of the National Labor Relations Act, the agents of the respondent, regardless of whatever contracts may have been individually entered into between the respondent and such agents, are "employees" within the meaning of the Act, and the respondent, by discharging David Levy, G. B. Millisor, and Fred J. Hager on March 24, 1943 and by discharging Joseph Koren on May 29, 1943, because of their respective activities on behalf of the A. F. of L., and to discourage membership in the A. F. of L., has interfered with the exercise by its employees of the rights guaranteed in Section 7 of the Act.

Having found that the agents are, and at all times pertinent herein, were employees of the respondent within the meaning of the Act, it is now found that the respondent, by its disparaging remarks to its agents concerning the A. F. of L., and the C. I. O.; by advising its agents that they should not be organized in unions, that the respondent would not tolerate unions among them, that they should not attend union meetings, and that they would be discharged if they became members of the A. F. of L., or the C. I. O.; by questioning its agents concerning their activities on behalf of either of the unions; by urging its agents not to participate in a Board election; by promising its agents promotions if they should cease their union activities and by accusing its agents of disloyalty because of their membership and activities in either of the unions, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

It having been found that the respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It will be recommended that the respondent offer full and immediate reinstatement in their former or substantially equivalent positions, without loss of seniority, earned commissions, renewals or other rights or privileges, to Carl R.

Hall, David Levy, and Joseph Koren. No recommendation will be made with reference to the reinstatement of Richard P. O'Neil in view of a stipulation filed herein that the said O'Neil does not desire reinstatement with the respondent and that the sum of \$125.00 will make him whole for any loss of money he may have suffered by reason of the termination of his status with the respondent, for the period from the date of such termination to the date when he secured permanent employment elsewhere. Nor is any recommendation made with reference to reinstatement of Fred J. Hager, who has died since his discriminatory discharge. Likewise, no recommendation with reference to reinstatement will be made concerning G. L. Millisor who was reinstated on July 19, 1943, and who is presently employed by the respondent.

It will also be recommended that the respondent make whole the said Carl R. Hall, David Levy, and Joseph Koren, for any loss of pay they may have suffered by reason of their respective discharges, by paying to each of them a sum of money equal to the amount he normally would have earned in his regular employment with the respondent from the date of discharge to the date of the offer of reinstatement, less their respective net earnings²⁰ during said period. It will be recommended that the respondent make whole the said Richard P. O'Neil for any loss of pay he may have suffered by reason of his discharge by the respondent, by payment to him of the agreed sum of \$125.00. It will likewise be recommended that the respondent make whole the said G. B. Millisor for any loss of pay he may have suffered by reason of his discharge on March 24, 1943, by payment to him of a sum of money equal to the amount he normally would have earned in his regular employment with the respondent from the date of his discharge above noted to the date of his reinstatement on July 19, 1943, less his net earnings during said period. And it will be recommended that the respondent make whole the estate of Fred J. Hager, deceased, for any loss of pay he may have suffered by reason of his discharge from the employment of the respondent on March 24, 1943, by the payment to the administrator or executor of the said estate of Fred J. Hager, deceased, or to such other person as may be designated by the Court having jurisdiction over the administration of such estate, a sum of money equal to the amount he normally would have earned in his regular employment with the respondent from the date of his discharge to the time preceding his death when he became wholly incapacitated for the performance of his duties as an agent of the respondent.

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

CONCLUSIONS OF LAW

1. American Federation of Industrial and Ordinary Insurance Agents Union #23230 (A. F. L.); American Federation of Industrial and Ordinary Insurance Agents Union #23286 (A. F. L.); American Federation of Industrial and Ordinary Agents Union (A. F. L.), and Industrial Insurance Agents Union, Local 65, UOPWA-CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

²⁰ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, S. N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

2. The respondent, The Western and Southern Life Insurance Company, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. The agents of the respondent are employees within the meaning of Section 2 (3) of the Act.

4. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Carl R Hall, David Levy, G. B. Millisor, Fred J. Hager, Richard P. O'Neil and Joseph Koren, and thereby discouraging membership in the organizations referred to in paragraph 1 above, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

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

RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondents, its officers, supervisory representatives and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in American Federation of Industrial and Ordinary Insurance Agents Union or in any branch or local thereof, or in Industrial Insurance Agents Union, Local 65, UOPWA-CIO, or any other labor organization, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other 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 through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Offer to Carl R. Hall, David Levy, and Joseph Koren, without prejudice to their seniority or other rights or privileges full and immediate reinstatement to their former or substantially equivalent positions, dismissing, transferring, or otherwise disposing of, if necessary, all employees who since the several discriminatory discharges of said persons, have been hired, transferred to, or otherwise placed in the positions to which said employees are entitled

(b) Make whole the said Carl R. Hall, David Levy, and Joseph Koren, together with G B Millisor, Richard P. O'Neil, and the estate of Fred J. Hager for any loss of pay suffered as a result of the respondent's discrimination, in the manner set forth in the Section above, entitled "The remedy."

(c) Post immediately in conspicuous places in each of the district offices maintained by the respondent and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all agents, trustees, and other employees, (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; (3) and that the respondent's agents, trustees and other employees are free to remain or become

members of American Federation of Industrial and Ordinary Insurance Agent's Union and of any of its branches or locals or the Industrial Insurance Agent's Union, Local 65, UOPWA-CIO, or any other labor organization, and that the respondent will not discriminate against any agents, trustees or other employees because of membership in these organizations or any of them.

(d) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the Regional Director for the Eighth Region in writing that it will comply with the foregoing recommendations the National Labor Relations Board issue an order requiring the respondent to take such action.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions, to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

R. N. DENHAM,
Trial Examiner.

Dated February 2, 1944.