

In the Matter of AMERICAN LAUNDRY MACHINERY COMPANY and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (C. I. O.)

In the Matter of AMERICAN LAUNDRY MACHINERY COMPANY and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (C. I. O.)

Case No. 3-C-677 and R-5475 respectively.—Decided July 4, 1944

Mr. Peter J. Crotty, for the Board.

Peck, Shaffer & Williams, by *Mr. Floyd C. Williams*, of Cincinnati, Ohio, *Mr. Charles S. Wilcox*, *Mr. John D. Sullivan*, and *Mr. Charles D. Mercer*, of Rochester, N. Y., for the respondent.

Mr. Sidney H. Greenberg, of Syracuse, N. Y., for the Union.

Mr. Samuel Croog, of Rochester, N. Y., for the Unaffiliated Employees.

Mr. Marcel Mallet-Prevost, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Pursuant to a petition duly filed by United Electrical, Radio & Machine Workers of America (C. I. O.), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees at the Rochester, New York, plant of American Laundry Machinery Company, herein called the respondent, and pursuant to hearing held thereon, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Election on June 30, 1943,¹ to determine whether certain of the employees of the respondent desired to be represented by the Union for the purposes of collective bargaining. On July 28, 1943, pursuant to the aforesaid Direction of Election, an election by secret ballot was conducted by the Regional Director for the Third Region (Buffalo, New York); among the production and maintenance employees of the respondent at its above-mentioned plant, excluding employees engaged in supervisory, clerical, and certain other specified types of work.²

¹ *Matter of American Laundry Machinery Company*, 50 N. L. R. B. 995.

² 50 N. L. R. B. 995, 997.

57 N. L. R. B., No. 6.

On July 30, 1943, the Regional Director issued an Election Report stating that a majority of those employees had voted against the Union.³ Thereafter, on August 5, 1943, the Union filed objections to the election, alleging that the respondent had engaged in unfair labor practices which had affected the election.

On August 6, 1943, the Union filed a charge, alleging that the respondent had violated Section 8 (1) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, by its conduct at the Rochester, New York, plant. On September 20, 1943, the Board issued an order directing that a hearing be held on the Objections to the election, and on September 22, the Board issued a further order directing the consolidation of the representation proceeding with the unfair labor practice proceeding in conformity with Article II, Section 36 (b), and Article III, Section 12 (c) (2), of National Labor Relations Board Rules and Regulations—Series 2, as amended. On October 19, 1943, the Board, by the Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. Copies of the complaint, the charge, and Notice of Hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that from on or about June 30 to July 29, 1943, the respondent discouraged membership in the Union by (1) threatening to discharge union adherents if the Union won the election to be held on July 28, 1943, (2) disparaging the Union, (3) issuing statements and making speeches designed to defeat the Union in the election, (4) causing or permitting the formation, and supporting the activities, of a group of employees whose purpose was to defeat the Union, and (5) causing or permitting a mock funeral to be conducted following the election, to symbolize the Union's defeat; and that by such conduct the respondent engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

The respondent filed an answer on November 15, 1943, admitting that it is engaged in interstate-commerce but denying the allegations of the complaint that it had engaged in unfair labor practices. Unaffiliated Employees of American Laundry Machinery Company, hereinafter sometimes called the Intervenor, having filed a petition to

³ The substance of the Regional Director's Report is as follows:

Approximate number of eligible voters.....	719
Total ballots cast.....	690
Total ballots challenged.....	65
Total void ballots.....	1
Total valid votes counted.....	624
Votes cast for the Union.....	230
Votes cast against the Union.....	394

intervene in the proceedings, which was granted on November 5, 1943, filed an answer on November 15, denying that it had been formed or assisted by the respondent.

Pursuant to notice, a hearing on the consolidated cases was held at Rochester, New York, on November 15 and 16, 1943, before Horace A. Ruckel, Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the respondent, the Union, and the Intervenor were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the close of the Board's case counsel for the respondent and the Intervenor moved for the dismissal of the allegations of the complaint, severally, and as a whole. The Trial Examiner granted the motion to dismiss the allegation that the respondent threatened to discharge known adherents of the Union if the Union won the election, and denied the other motions. At the close of the hearing counsel for the respondent and the Intervenor moved to dismiss the remaining allegations of the complaint. The Trial Examiner reserved ruling upon these motions and thereafter denied the motions in his Intermediate Report. Rulings on other motions and on the admissibility of evidence were made by the Trial Examiner during the course of the hearing. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the close of the hearing, the parties were given an opportunity to present oral argument to, and file briefs with, the Trial Examiner. None of the parties made oral argument. Counsel for the respondent filed a brief with the Trial Examiner on December 2, 1943.

On December 31, 1943, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent, the Intervenor, and the Union. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist from the unfair labor practices found and take certain affirmative action designed to effectuate the policies of the Act. He recommended further that the allegations of the complaint that the respondent caused or permitted the formation of, and assisted or supported, the Intervenor, be dismissed. Thereafter the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument, in which the respondent and the Union participated, was had before the Board at Washington, D. C., on May 23, 1944.

The Board has considered the exceptions, brief, and oral argument, and, insofar as they are inconsistent with the findings of fact, conclu-

sions of law, and order, set forth below, finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

American Laundry Machinery Company, an Ohio corporation authorized to do business in the State of New York, is engaged at its plant in Rochester, New York, in the manufacture of laundry machinery and castings. During the 12 months ending April 30, 1943, the respondent's operations at said plant entailed the use of raw materials valued at approximately \$1,088,000, of which about 80 percent in value was shipped to the respondent from outside the State of New York; during the same period the respondent manufactured products valued at approximately \$4,316,000, of which about 78 percent in value was shipped to points outside the State. At the time of the hearing the respondent's business operations with respect to total production and the interstate shipments of raw materials and finished products, were substantially the same as they were during the period noted above.

The respondent admits that it is engaged in commerce within the meaning of the Act.⁴

II. THE ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The incidents which gave rise to the charges in this case center around a Board election held at the respondent's Rochester plant on July 28, 1943. To view the occurrences in their true light, however, it is necessary to consider the setting in which they took place. In an earlier proceeding against the respondent,⁵ which arose upon charges also filed by the Union, we found that the respondent, during the year 1942, had engaged in surveillance of union meetings, had made statements expressing the respondent's disapproval of the Union, had discharged four employees because of their affiliation with the Union, and had thereby violated Section 8 (1) and (3) of

⁴ These findings are based upon stipulations between the respondent and the Board.

⁵ *Matter of American Laundry Machinery Company*, 45 N. L. R. B. 355.

the Act. Accordingly, we ordered the respondent to cease and desist from the unfair labor practices found, to offer reinstatement with back pay to the employees discriminated against, and to post appropriate notices. At the time of the election in the instant case on July 28, 1943, the respondent had taken no steps to comply with our order.⁶

The Union conducted an organizing campaign among the respondent's employees during the spring and early summer of 1943, and on April 20 filed with the Board's Regional Director a petition for investigation and certification of representatives. While the Union's organizing campaign was under way a group of non-supervisory employees, who were opposed to the Union, crystalized employee opposition to the Union by gathering together some 40 employees into a loosely organized group, sometimes referred to herein as the Intervenor and variously known to the employees as the "Unaffiliated Employees," the "Workers' Group," or the "Workers' Committee." With the declared purpose of defeating the Union in the election, the Intervenor, supported by contributions of its members, held a number of meetings and published and distributed among the respondent's employees two issues of a paper entitled "The Workers' Voice," which was composed principally of articles attacking the Union and praising the existing status of employer-employee relations at the respondent's plant. The second issue of the paper, dated July 23, stated that the Intervenor would, "dissolve and consider its work finished after the election of July 28." Shortly before the day of the election the Intervenor distributed "Vote No" buttons among the employees in competition with the Union's distribution of "Vote U. E." buttons.⁷

B. *Interference, restraint, and coercion*

1. Interrogations concerning employees' union affiliation, anti-union statements, and threats of reprisals

During the 3 or 4 weeks preceding the election certain of the respondent's supervisory employees questioned their subordinates as to why they had joined the Union, disparaged the Union, and threatened that economic reprisals might follow if the Union won the election.

⁶ The matter was at that time pending decision by the United States Circuit Court of Appeals for the Second Circuit upon the Board's petition for enforcement of its order. Subsequently, on October 29, 1943, the Court enforced the Board's order in full *N L R B v American Laundry Machinery Co.*, 138 F. (2d) 887, enforcing 45 N. L. R. B. 355.

⁷ While we agree with the Trial Examiner that the evidence fails to sustain the allegations of the complaint that the respondent caused or permitted the formation of, and assisted and supported the Intervenor, we find, upon the basis of the entire record, that the respondent was aware of, and sympathetic to, the aim and purpose of the Intervenor to defeat the Union in the election.

Thus, Phillipson, foreman of the machine shop, asked employee Grant,⁸ while the latter was working at his machine, why he had joined the Union. When Grant replied that he "knew the benefits of a union" and joined "to help the boys get a little more money," Foreman Phillipson declared that "the C. I. O. is headed by a bunch of radicals" and that "learners" like Grant "could not get any more money because they were on apprenticeship, and would stay on as long as he (Phillipson) said so," that "the only way they could get off would be by his O. K., and that would be the only way they could get more money." Phillipson then went to the employee working at the machine adjacent to Grant's; asked him, "Why did you sign a union card?"; and conversed further with that employee for 15 minutes or more. Bruno Kanorowski, Sr., foreman of the cleaning department, according to the credible and uncontradicted testimony of his subordinate, employee Wojcik, asked Wojcik on at least one occasion in the plant and on another occasion outside the plant, "Why do we want a Union when people who employ us are good to us? They give us everything we want." On July 24, 4 days before the election, Lusink, plant engineer and assistant to the plant superintendent, summoned to his office Baker, a clerk and tool crib attendant. Baker testified credibly that Lusink then asked him if he knew that he was "out on a limb" inasmuch as the Union had requested a bargaining unit which excluded Baker because of his clerical duties. When Baker protested that his clerical duties should not exclude him from the unit but that, on the contrary, his duties as tool crib attendant were sufficient to bring him within the unit, Lusink replied that he (Lusink) could "prove" Baker was a clerk and that "if you are proven a clerk, you can't use the Union as a bargaining agent or a representative." Lusink added that "if you are upheld as a tool crib attendant, and we can't make a clerk charge stick . . . I can see to it that is all you do, is tool crib attending."⁹ Declaring that Baker was well-liked around the plant and "had muffed a very good opportunity in the Company" by joining the Union, Lusink asked Baker why he had joined. When Baker replied that he had joined "for more money," Lusink said that the Union had signed Baker up simply to "use" him; that it wanted his vote, had taken his money, and, by shaping the unit to exclude clerical workers, had "dropped" him. When Baker asked if Lusink thought his vote would "turn the tide," Lusink replied, "No, . . . but your influence can."¹⁰

⁸ Our findings with respect to this incident are based upon the uncontradicted testimony of Grant, which we credit, as did the Trial Examiner.

⁹ Although Lusink testified that Baker spent nearly 90 percent of his time on clerical work, Baker testified, and we find, that his time was divided about evenly between clerical work and the manual work of handling tools as tool crib attendant.

¹⁰ Lusink testified that he called Baker to his office because he had heard that Baker was blaming the respondent for the absence of his name from the list of eligible voters, and that he wanted to "clear" Baker's mind on the matter. Lusink denied stating that Baker had

2. The letter and speech of Vice-President Kreuter

On July 26, 2 days before the election, V. C. Kreuter, the respondent's vice president, sent a copy of the following letter to each of the respondent's employees:

To Each Employee of the "American Family":

I am taking this opportunity of writing a personal letter to each of you because it concerns each one of us who is connected with the American Laundry Machinery Company.

As most of you know, next Wednesday, July 28th; will be an important day for all of us for on that day an election is to be held and if there are any matters not quite clear in your mind, I hope this letter will explain some of them at least.

This election will be held under direction of a representative of the National Labor Relations Board so as to determine whether all of you will have for your exclusive bargaining agent the United Electrical, Radio and Machine Workers of America, C. I. O., with the exclusive right to represent you in matters regarding wages, working conditions and hours or whether you want to continue doing as you have been in the past, namely—discussing your own problems individually and directly with the Company.

This election will be by secret ballot and as nearly as possible will be conducted like our town and city elections.

NO ONE CAN KNOW, BY ANY MEANS, HOW YOU VOTE

The outcome of the election will be determined by a majority of those voting, which means that if more than half of those voting, choose the union, the union has the say for all employees eligible to vote. This is different from a majority of those entitled to vote, so **BE SURE TO VOTE** so that the election will really show your wishes, and remember that if you do not vote it is the same as letting someone else decide who will represent you. A failure to vote is almost the same as a vote for the choice you do not want.

Some of you may wonder if your preference as expressed at any time in the past must govern how you vote on Wednesday. What you may have done in the past does not apply in this election. This election is by *secret ballot* so that you can record your

"muffed" an opportunity or that the Union had sought to "use" him, but admitted the substance of the other remarks attributed to him by Baker. We find, as did the Trial Examiner, that Lusink made the statements attributed to him by Baker. Although Lusink's statement to the effect that the Union wanted to "use" Baker simply to get his vote and his money is somewhat inconsistent with his statement that the Union had "dropped" him from the unit, it is clear, and we find, that the purpose of Lusink's remarks as a whole was to cause Baker to become dissatisfied with the Union and to persuade him to use his influence against it in the coming election.

vote as to how you feel today, without fear or favor. You have the right to vote in accordance with your own desires regardless of whether or not you belong to any group, or whether or not you signed an application card, authorization, are a member of the union or anything else. *You have the right at this election to vote any way you like and no one will know or can know how you vote.*

We have never believed in, or paid, sub-standard wages, and we know our rates are equal to or above those paid in this area for equal work. We intend to continue this policy.

This is an important election. For many of us it is the most important one we have ever voted. It bears directly on your welfare and the welfare of those dependent on you (your family).

To what kind of leadership are you going to entrust your future?

(1) Is it unselfish or is it not?

(2) Is it interested in your personal, individual welfare, or is it self seeking?

(3) On the basis of its record, is it open and above board and dependable, or don't you know?

These are but a few of the questions you should think about and talk over at home before voting.

This Company expects to remain in business for many years to come, therefore it seeks to maintain a continuance of the harmonious and cooperative relationship that has existed between management and its employees in the past, and it also expects the same character of relationship to prevail between the employees who work side by side each day, regardless of whether one holds membership or does not hold membership in any society, club, church or organization.

In the past your company has tried to play the game with all the cards on the table, and for the best interests of all concerned. Whatever the election on Wednesday decides, your company will still continue to play the game, knowing that the best interests of the American Laundry Machinery Company and its employees are identical.

SO I URGE YOU MOST EARNESTLY TO VOTE ON WEDNESDAY

On July 27, the day before the election, the employees were ordered to stop their work shortly before noon and were gathered together on the assembly floor of the plant where Vice-President Kreuter addressed them as follows:

Some of you have asked that I call you together to explain the election which will be held tomorrow. On the bulletin boards

are notices of the election, and also a notice which describes employees' rights under the National Labor Relations Act, and also describes unfair labor practices. I am reading this talk so that there can be no question of what I have said to you.

The notice of election describes how it shall be conducted. The check lists are just like voting lists at regular political elections. As you come up to the polling place you will find a representative of the National Labor Relations Board, the Company, and the C. I. O. with these check lists, and you will be asked to give your name and clock number so that you may be checked off the list when you have voted. The representative of the Labor Relations Board will give you a ballot which you will take to one of the voting booths where you will mark it in complete privacy and then you will deposit it in the ballot box provided for the election. This box will remain unopened until the polls are finally closed. You will notice that there are little squares, sometimes called boxes, on the ballot. Your choice will be made by marking an "X" in the square to represent your wishes. You can, therefore, see that the election will be conducted in a fair and impartial manner, and will give you absolute freedom to express your choice without any coercion.

No person applying for a position with this company has ever been asked as to his membership or non-membership in any society, club, church or organization. Members of labor unions and persons who are not members are employed without any discrimination whatsoever, and so long as I am connected with the management of this company this policy will continue.

What then is the issue, and why are we having an election tomorrow? It all boils down to this. Can the C. I. O. get more for you than you can get in any other way? What you will get will not depend on what the C. I. O. demands. You—especially those of you who have been connected with us for some time—know that it has always been our policy to do the best we could for you in wages, hours and working conditions. We intend to continue this policy in the future regardless of the outcome of the election, and we can do no more, regardless of that outcome.

We want every employee to feel that he may present his own complaints, suggestions, grievances or personal problems direct to the management or its representatives and be assured of fair and equitable treatment. There should be no need for any of our employees to pay anyone to present his problems so as to have those problems promptly and fairly adjusted. Every employee is protected in his job by his ability to do the work required of him, with due consideration being given to length of service. As

the older employees know, it has been our policy to offer opportunity for promotion based on merit to those already in our employ preferable to looking elsewhere for men to fill the higher jobs. Many of our employees have already been advanced to supervisory jobs.

When it comes to the final analysis, fellows, you are voting on who you want to have for your leader. You have to ask yourselves whether or not outsiders can do more for you than you have been able to do heretofore for yourselves. You also must ask yourself why it is that total strangers all of a sudden become so interested in your welfare? Who are they? And what have they done? Where do they come from? What experiences have they had in our line? And what more can they do for you than you already have done for yourself? You have to ask yourself whether the management of the company that built this factory, that bought material, that bought machinery and that provided these jobs, you have to ask yourself, I say, whether or not this management is best for you in the long run. You have to decide whether your interests and the company's are the same, or whether your interests and those of the C. I. O. are the same. In other words, fellows, it boils right down to this. Is your status under my leadership something that you can improve by choosing someone else for your leader?

Now this has been going on for more than a year, and the matter is coming up for a decision on Wednesday. When it's all over we don't want any question as to how all of us feel. Americans, ever since the Declaration of Independence, and even before that, have settled questions like this by going to the polls, and voting secretly exactly as they wished. Let's make this election really represent the choice of everyone. Remember that unless you vote, your failure to do so may bring about a result that you would not like to have. It takes one more than half of all those voting to decide.

I expect the employees to be right and fair toward the company and I can assure you that we shall do right and be fair toward every employee.

So I urge you most earnestly to vote tomorrow.

To sum up fellows: First: Vote. Second: Be assured of my continued personal goodwill.

3. The mock funeral

As noted above, the Union lost the election on July 28. Between the end of the day shift at 7:30 p. m. on that day and the commencement of the day shift at 7:30 a. m. on the following day, July 29, there was installed near the machine of employee Highmoor, the

Union's steward in the machine shop, a complete funeral setting, including an imitation coffin, candles, kneeling bench, cross, and wreath, symbolizing the defeat of the Union. When Highmoor arrived at work on the morning of July 29, he found all the lights out except a soft light playing on a dummy corpse which reposed in the coffin. At the head of the coffin appeared the inscription, "C. I. O. Dead and Gone." The plant's portable public address device had been placed nearby and was pouring forth orthodox funeral music. About a hundred employees were gathered around Highmoor's machine during working hours observing the antic display. According to Highmoor's uncontradicted and credible testimony, the music was shut off at about 10 a. m. upon a prior order of Foreman Phillipson and the coffin was removed soon after noon, by which time "Everybody in the shop had been there to see it."¹¹

4. Conclusions

The respondent has engaged in a coercive course of conduct designed to discourage its employees from becoming or remaining members of the Union or from designating the Union as their bargaining representative, and particularly to defeat the Union in the election of July 28, 1943.

Foreman Phillipson's questioning of Grant and another employee, during working hours, as to why they had joined the Union, his disparagement of the Union as being headed by a "bunch of radicals," and his warning that apprentices like Grant "could not get any more money [by bringing in the Union] because they were on apprenticeship, and would stay on as long as he (Phillipson) said so," were calculated to discourage the employees from joining or voting for the Union. By his remarks he implied that the respondent was opposed to the Union and that, if the apprentices voted for the Union and the Union won the election, they would risk the penalty of being kept on apprenticeship longer than they would if the Union lost the election. Similarly, Foreman Kanorowski's conduct in asking employee Wojcik why he had joined the Union, at the same time declaring to Wojcik that the respondent was "good" to the employees and gave them everything they wanted, indicated that collective bargaining through the Union would accomplish nothing, and was calculated to intimidate and coerce the employees in the choice of a bargaining representative. The respondent's coercive tactics are more graphically illustrated by Plant Engineer Lusink's efforts to turn employee Baker against the Union. Lusink called Baker to his office allegedly to "clear his mind" of the notion that the respondent was responsible for Baker's name having been excluded from the list of eligible voters in the

¹¹ A second coffin had been set up in the foundry which opened off of a court adjacent to the machine shop. Both coffins appear to have been removed at the same time.

coming election. Lusink placed the blame for Baker's exclusion upon the Union's request that clerical workers be excluded from the bargaining unit. When Baker pointed out to Lusink, however, that his work as tool crib attendant qualified him as a manual worker, Lusink declared that the respondent would insist that Baker be classified as a clerk and threatened reprisals against Baker by declaring that, if Baker succeeded in persuading to the contrary the Board agents conducting the election and thus gained admission to the unit, the respondent would thereafter deprive him of whatever clerical duties he had. Lusink attempted to persuade Baker, by innuendo and by threat, to abandon the Union and indeed to work against it in the election, as is apparent from the remarks discussed above and from Lusink's further statements to the effect that the Union had sought merely to "use" Baker, that he was now "out on a limb" since the Union had dropped him, that he had "muffed a very good chance" with the respondent by joining the Union, and finally that Baker's "influence" could "turn the tide" against the Union in the coming election.

The respondent's contention that it did not violate the Act by the above-described statements of its supervisory employees because the employees were not in fact coerced, is without merit. The respondent's test would put a premium on the severity and flagrancy of its conduct. Obviously the test is not whether the employer's conduct achieved a desired result. Such statements have a coercive effect in view of their nature and the authority of the person making them. Moreover, as we stated in an earlier decision, "employees themselves are not always aware of the subtleties and congeries of facts which may influence their activities." *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813. Significant in this connection is the testimony of employee Grant that "I felt he [Foreman Phillipson] was trying to change my mind for me." We find that the statements of supervisory employees Phillipson, Kanorowski, Sr., and Lusink, reviewed above, constitute interference, restraint, and coercion on the part of the respondent in violation of Section 8 (1) of the Act.

On the eve of the election the respondent addressed its employees in a letter and speech similar to those appearing in *Matter of American Tube Bending Co. Inc.*¹² However, unlike the latter case where the Second Circuit Court of Appeals pointed out that the record did not contain "anything else," the letter and speech in the instant case followed upon the heels of the coercive conduct of the respondent's supervisory employees, and were uttered in an atmosphere of hostility to the Union generated by an active employee group and of

¹² 44 N. L. R. B. 121, 124-129, set aside in *N. L. R. B. v. American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), cert. den. 320 U. S. 768.

unremedied unfair labor practices against the Union (coercion, surveillance, and discriminatory discharges), the effects of which had not been dissipated because of the respondent's failure to comply with the Board's then outstanding order. These circumstances, together with the mock funeral by which the respondent ridiculed and discouraged membership in the Union after it had lost the election, form the context in which we must consider whether the letter and speech are violative of the Act or, as the respondent contends, are privileged as free speech.¹³

After explaining the election procedure, the letter in effect invited union members to turn against the Union by stressing the fact that they did not have to adhere to their prior choice and no one would know how they voted. The letter then proceeded to sow in the employees' minds the seeds of suspicion and dissension by questioning the Union's leadership, sincerity, motives, and good faith. The closing appeal for a continuance of the past "harmonious and cooperative relationship" was in effect a plea for the rejection of the Union and the maintenance of the status quo through individual bargaining.

This theme was again stressed and elaborated in Vice-President Kreuter's speech in which he presented the election issue as a contest between the respondent and the Union for the allegiance of the employees. The burden of the speech was that there was no need for the Union; that the Union could accomplish no more through collective bargaining than the employees had accomplished through individual dealings; that the interests of the Union were opposed to the interests of the respondent; and that the employees' welfare would best be promoted by siding with the respondent. The closing declaration that he expected the employees "to be right and fair toward the Company" was not only an appeal for votes for the Company as opposed to the Union, but also an intimation that, in the respondent's view, voting for the Union was synonymous with disloyalty to the respondent.

As we have already noted, the respondent had in the past thwarted the employees' efforts to establish the Union as their bargaining representative by engaging in a coercive course of conduct, including surveillance, and by economic reprisals against certain union members. The respondent had failed to remedy these unfair labor practices and thereby failed to give the employees some assurance against their

¹³ See *N. L. R. B. v. Virginia Electric Power Co.*, 314 U. S. 469, 477; *N. L. R. B. v. American Tube Bending Co.*, *supra*; *N. L. R. B. v. M. E. Blatt Co.* 143 F. (2d) 268 (C. C. A. 3); decided June 9, 1944

Contrary to the respondent's contention, the unfair labor practices which remained unremedied because of the respondent's failure to comply with our earlier order against it, are proper matters for our consideration in this connection. See *M. E. Blatt Co.* case, *supra*.

recurrence. Following the Board's Direction of Election, the respondent, through its supervisory employees, again embarked on a similar course of conduct. The employees were made aware of the respondent's continued opposition to the Union. Indeed, such opposition had already found favor with a group of employees who were actively campaigning to defeat the Union. In these circumstances we believe that the respondent's appeals in its letter and speech carried at least an intimation that by voting for the Union and thereby overriding the respondent's will at the polls, the employees would risk incurring the displeasure of the respondent and inciting it to some unfavorable action against them. Upon consideration of the respondent's entire course of conduct, we find that the respondent's letter and speech preceding the election were not privileged as free speech but constituted interference, restraint, and coercion in violation of Section 8 (1) of the Act.

We find also that the respondent, by acquiescing in the mock funeral held at the plant on the day following the defeat of the Union in the election, ridiculed and belittled the Union, and discouraged membership therein, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) of the Act.¹⁴

Accordingly, we find that by the statements of Phillipson, Kanorowski, Sr., and Lusink; by the letter and speech preceding the election of July 28, 1943; and by ridiculing and discouraging membership in the Union through the mock funeral held at the plant after the election, the respondent engaged in a course of conduct which interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We find further that, since the respondent engaged in unfair labor practices prior to the election of July 28, 1943, the election was not an expression of the will of an uncoerced majority of the employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

¹⁴The respondent contends that the mock funeral was "horseplay indulged in in good humor and accepted in the same way." Even if true, this contention does not alter the impropriety of the respondent's conduct. Interference, restraint, and coercion are no less violative of the Act because they are exercised through the medium of sardonic humor.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. We shall also require the respondent to notify each of its employees by mail that the respondent will not in any manner interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

VI. THE PETITION

Since we have found that the respondent has by its unfair labor practices interfered with the free choice of representatives by its employees at the election of July 28, 1943, we shall set the election aside. When we are advised by the Regional Director that the time is appropriate, we shall direct that a new election be held among the respondent's production and maintenance employees at its Rochester, New York, plant.

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

CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.
2. 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.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, American Laundry Machinery Company, Rochester, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America, affiliated with the

Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Mail to all its employees notices stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(b) Post immediately in conspicuous places throughout the respondent's plant at Rochester, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

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

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent caused or permitted the formation of, and assisted or supported the Unaffiliated Employees of the American Laundry Company, be, and it hereby is, dismissed.

AND IT IS FURTHER ORDERED that the election held on July 28, 1943, among the employees of the respondent at its Rochester, New York, plant be, and it hereby is, set aside.