

In the Matter of JOHN S. DOANE COMPANY *and* DISTILLERY, RECTIFY-  
ING & WINE WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL  
No. 8, A. F. OF L.

*Case No. 1-C-2449.—Decided October 4, 1945*

DECISION  
AND  
ORDER

On March 8, 1945, 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 attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. On August 17, 1945, the Board heard oral argument at Washington, D. C. The respondent and the Union participated in the oral argument. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications and additions:

1. While the respondent concedes that the Board has jurisdiction in this proceeding, the respondent urges the Board not to exercise its power in view of the fact that the respondent, a liquor distributor, sells all its merchandise locally within the State of Massachusetts and in view of the further fact that the State of Massachusetts possesses labor relations machinery similar to the National Labor Relations Act and the National Labor Relations Board. We find no merit in this contention. While in other cases, we might, as a matter of comity, refuse to exercise our authority, this is not such a case since under Section 10 (b) of the Massachusetts State Labor Relations Act, in effect at the time of the issuance of the complaint herein, the Massachusetts State Labor Relations Board had no jurisdiction over unfair labor practices subject to the National Labor Relations Act.<sup>1</sup>

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<sup>1</sup> General Laws of the State of Massachusetts, Acts of 1938, Chapter 345. Section 10 (b) thereof provides: "This chapter [the Act] shall not be deemed applicable to any unfair labor practice subject to the National Labor Relations Act."

2. We agree with the Trial Examiner that the respondent refused to bargain with the Union within the meaning of Section 8 (5) of the Act. Concededly, the Union represented 7 of the respondent's wholesale liquor salesmen on August 11, 1944, the date on which the Union made its first demand for recognition as the exclusive bargaining representative of such employees. Concededly, also, on that day, and for some time prior thereto, there were no more than 12 wholesale liquor salesmen employed by the respondent and actually engaged in selling its merchandise. As a defense to the allegation of unlawful refusal to bargain, the respondent contends that 7 "new" wholesale liquor salesmen had been hired by the respondent prior to August 11, 1944, and that, therefore, the Union did not represent a majority because the 7 "new" salesmen should be counted in determining whether the Union then represented a majority. Among other things, as set forth in the Intermediate Report, the respondent's dealings with each of the "new" salesmen, prior to the Union's recognition demand, were limited to a single interview, during which there was no mention of method or amount of compensation, territory or accounts to be assigned, or allocation of merchandise. It was not until August 17, 1944, after 3 conferences had been held between union representatives and officials of the respondent, that any of the "new" salesmen obtained liquor salesmen's licenses, as required by State law, and none of them began to sell merchandise before August 28. Considering the entire record, we agree with the Trial Examiner's finding that, at least prior to August 17, 1944, none of the "new" salesmen were employees of the respondent, and that between August 11 and August 17, 1944, the Union represented a majority of the respondent's wholesale liquor salesmen.

3. As a further defense to the allegation of unlawful refusal to bargain, the respondent asserts that, even if the "new" salesmen were not employees of the respondent at the time of the demand for recognition, the respondent, in refusing to bargain, was motivated by a bona fide doubt as to the Union's majority status, and, therefore, the respondent's request that the Union first obtain a certification was a legal and proper attitude to assume. As indicative of its doubt as to the Union's majority status, the respondent relies upon the testimony of its attorney, David Burstein, which we credit, as did the Trial Examiner, that, during the afternoon conference on August 14, 1944, he stated that the respondent "had agreed to take on a number of additional salesmen and that these men might be entitled to be heard." It also appears that at that conference, and again on August 21, the respondent requested the Union to obtain certification. Were the record limited to the foregoing evidence, the respondent's conduct might well be said to have been dictated by a bona fide doubt as to the Union's majority status. However, there is evidence in the record indicating that the respondent's refusal to bargain stemmed from a desire to defeat its

employees' efforts to bargain collectively and that, in insisting that the Union obtain certification, the respondent was not acting in good faith.

Although Plant Manager Milton Doling testified that he had personally hired 7 additional salesmen on or about August 2, 1944,<sup>2</sup> he made no reference to additional personnel on August 11, when, at the first conference, the Union asserted that it had attained majority status by virtue of the union adherence of 7 of the respondent's 12 salesmen. Again, during the morning conference on August 14, the "new" salesmen were not mentioned, although Manager Doling was present. During the lengthy afternoon conference on August 14, despite the fact that the respondent's attorney mentioned the "new" salesmen, neither Doling nor President Garfinkle made any reference to them. Rather, the respondent's officials urged, as their reasons for not according recognition, a number of entirely different reasons, such as, the appropriateness of the unit sought, the necessity of consulting the respondent's third director, and the jurisdiction of the National Labor Relations Board. Thus, it appears that, during these conferences, the Union's status as majority representative was not, as now urged, a substantial factor which motivated the respondent in withholding recognition from the Union. Moreover, during subsequent conferences on August 18 between Union Representative Louis Blender and President Garfinkle, and on August 19 between Union Representatives Blender and A. Herbert Barenboim and Garfinkle, President Garfinkle set forth in detail the reasons why he believed a union contract would prejudice the respondent's business and, according to the record, made no mention whatever of additional salesmen. Indeed, in a memorandum, signed by the respondent on August 21, 1944, and delivered to the Union, the respondent recognized that its complement of 12 wholesale liquor salesmen as of August 11 was appropriate for the purposes of collective bargaining.<sup>3</sup>

In addition, a number of unfair labor practices committed by the respondent's officials persuade us that the respondent acted in bad faith at the time it raised the question of formal certification proceedings, and shed further light upon the real reason underlying the respondent's refusal to bargain. According to testimony of employees Gatton Romani, Philip Berman, and Ralph Stone, contradicted by Manager Doling and employee Robert Oster, but which we credit, Doling stated, at a salesmen's meeting in February 1944, that the respondent did not want the union among its employees and that,

<sup>2</sup> If Doling's testimony were true, there would have been 19 employees in the appropriate unit on or about August 11, 1944.

<sup>3</sup> It was the respondent's contention that it executed the memorandum for the purpose of avoiding a strike and that the memorandum was intended to apply only in the event of certification proceedings. Nevertheless, its recognition of the appropriateness of the unit is inconsistent with its defense of a bona fide doubt.

if necessary, he could sell all its merchandise by telephone. While we do not find this statement to be an unfair labor practice,<sup>4</sup> we deem it indicative of the respondent's hostility toward union activity among its employees and its rejection of the principle of collective bargaining. On August 12 and 13, 1944, immediately following the Union's initial demand for recognition, Doling, despite his promise to the Union not to discuss union affairs with any of the salesmen, questioned five employees as to their union membership. On August 21, President Garfinkle received the union members in his hotel suite so that they might hear from his own lips the reason why the respondent would not bargain collectively with the Union. In explaining why he considered unionization harmful to the respondent's business, he told the employees that distribution franchises of the respondent might be jeopardized in the event of union recognition because of opposition to the Union by the Schenley Company, the respondent's major supplier of merchandise. Garfinkle also told the employees that the respondent had succeeded in obtaining certain franchises although another liquor distributing company had failed to obtain similar franchises because it employed union labor. Finally, during the course of the subsequent strike to compel union recognition, the respondent's officials engaged in further unfair labor practices. As set forth in the Intermediate Report, on at least five occasions during the strike, beginning on the first day thereof, Manager Doling threatened the strikers with economic reprisals, saying that he would "see to it" that they never worked in the liquor business again; ridiculed the Union, saying that it would never "get you a living"; and called the strikers "a bunch of dogs." On another occasion, Manager Doling and President Garfinkle sought to persuade Stone, a striker, to return to work. When Stone conditioned his return upon union recognition, Garfinkle replied, "that is something you will never have."

In view of the entire record in the case, and particularly the unfair labor practices committed by the respondent's officials within the meaning of Section 8 (1) of the Act, we are persuaded, as was the Trial Examiner, and we find that, in its refusal to bargain with the Union on August 11, 1944, and thereafter, the respondent was motivated by a desire to frustrate collective bargaining by its employees and thereby refused to bargain within the meaning of Section 8 (5) of the Act.<sup>5</sup>

<sup>4</sup> This incident is not within the scope of the complaint herein since it alleges that the respondent commenced its unfair labor practices on or about August 11, 1944.

<sup>5</sup> On October 16, 1944, in the face of the Union's demand for exclusive recognition, the respondent entered into a contract with three striking employees individually, and thereby induced them to abandon the strike and to return to work. By the execution of the contract with such individual employees under the existing circumstances, the respondent further refused to bargain, and thereby interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act.

4. The Trial Examiner failed to find in his Intermediate Report, that, by Manager Doling's conduct on August 12 and 13, 1944, in interrogating employees Robert Oster, Frederick Brodney, Philip Berman, Gatton Romani, and Ralph Stone, regarding their union membership, the respondent violated Section 8 (1) of the Act. We so find.

5. On April 4, 1944, the respondent filed with the Board a motion for leave to file an annexed affidavit of Manager Doling, dated March 31, 1945, stating that, subsequent to the date of the hearing herein, the respondent had employed 5 additional wholesale liquor salesmen, making a total of 20, and that thereafter, 2 such salesmen had quit its employ, 1 of them being a member of the Union. The motion is hereby granted and the affidavit is hereby made a part of the record in the case.

Presumably, the respondent's purpose in filing the affidavit is to urge upon us that, since there has been an expansion in the unit for which the Union originally sought recognition as exclusive bargaining representative and since there is no showing of a present union majority in the expanded unit, the Trial Examiner's recommendation that the respondent be ordered to bargain with the Union ought not be adopted. However, the record is silent as to how many, if any, of the salesmen hired subsequent to the hearing have become union members. In any event, assuming that the Union has not increased its numerical strength in the appropriate unit and has, in fact, lost the majority status which it had at the time of the respondent's unlawful refusal to bargain, we perceive no valid reason for departing from our usual remedial order. We have repeatedly held that the unlawful refusal of an employer to bargain collectively with its employees' chosen representatives tends to disrupt the employees' morale, to deter their organizational activities, and to discourage their membership in and adherence to labor organizations. For these reasons, a requirement that a numerical majority be maintained during delays incident to hearings in unfair labor practice proceedings such as this, would permit employers to profit from their own wrongful refusal to bargain and to defeat the purposes of the Act.<sup>6</sup> Under the circumstances, we find that the Union's previously established majority status has not been impaired because any loss in such status was caused by the respondent's unfair labor practices. In accordance with the Trial Examiner's recommendation and to effectuate the purposes of the Act, we shall order that the respondent bargain collectively with the Union, upon request.<sup>7</sup>

<sup>6</sup> See, for example, *Franks Bros. Co. v. N. L. R. B.*, 321 U. S. 702, aff'g 137 F. (2d) 989 (C. C. A. 1), enf'g 44 N. L. R. B. 898, *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318

<sup>7</sup> See our Supplemental Decision in *Matter of Karp Metal Products Co., Inc.*, 51 N. L. R. B. 621.

## 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, John S. Doane Company, Boston, Massachusetts, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Distillery, Rectifying & Wine Workers' International Union of America, Local No. 8, A. F. of L., as the exclusive representative of all its licensed wholesale liquor salesmen, employed at its Boston, Massachusetts, establishment, exclusive of supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Giving effect to its contract of October 16, 1944, with Robert I. Oster, Murray P. Roth, and Philip Berman, affecting their compensation, working conditions, or other conditions of employment, or to any modification, continuation, extension, or renewal thereof;

(c) In any other 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 Distillery, Rectifying & Wine Workers' International Union of America, Local No. 8, A. F. of L., 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) Upon request, bargain collectively with Distillery, Rectifying & Wine Workers' International Union of America, Local No. 8, A. F. of L., as the exclusive representative of all its employees in the appropriate unit set forth in paragraph 1 (a) of this Order, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Give separate written notice in the form and language of Appendix "A"<sup>8</sup> attached to the Intermediate Report herein, and duly signed by the respondent's representative, to employees Robert I. Oster, Murray P. Roth, and Philip Berman, that the contract of October 16, 1944, or any modification, continuation, extension, or renewal thereof, will not in any manner be enforced or attempted to be enforced; and that no employee is expected by virtue of such contract

<sup>8</sup> Said notice, however, shall be, and it hereby is, amended by striking therefrom the words "Recommendations of a Trial Examiner," and substituting in lieu thereof the words "A Decision and Order of the National Labor Relations Board."

to deal with the respondent individually with respect to his compensation, working conditions, or other conditions of employment;

(c) Post at its establishment at Boston, Massachusetts, copies of the notice attached to the Intermediate Report herein, marked Appendix "B."<sup>9</sup> Copies of said notice, to be furnished by the Regional Director of the First Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

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

#### INTERMEDIATE REPORT

*John W. Coddaine, Jr., Esq.*, for the Board.

*Hale & Don*, by *David Burstein, Esq.*; of Boston, Mass., for the respondent.

*Louis J. Blender, Esq.*, and *A Herbert Barenbom, Esq.*, of Boston, Mass., for the Union.

#### STATEMENT OF THE CASE

Upon an amended charge duly filed on November 18, 1944, by Distillery, Rectifying & Wine Workers' International Union of America, Local No. 8, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint, dated November 20, 1944, against John S. Doane Company, herein called 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 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance (1) that on August 11, 1944, and thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees within an appropriate bargaining unit, although the Union represented a majority of the employees in said unit; (2) that the respondent questioned its employees regarding their union membership; (3) made derogatory and disparaging statements regarding the Union; (4) solicited its employees to resign from the Union; (5) attempted to persuade its employees to abandon a strike called by the Union; and (6) dealt and negotiated with its employees on matters affecting their

<sup>9</sup> Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "Recommendations Of A Trial Examiner" and substituting in lieu thereof the words, "A Decision and Order."

employment when it knew that the Union was the exclusive representative of its employees for the purposes of collective bargaining, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 2, 1944, the respondent filed its answer in which it denied the jurisdiction of the Board in the matter; denied that the Union represented a majority of its employees in a unit appropriate for the purposes of collective bargaining; and denied that it committed any of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on December 11 to 16, inclusive, 1944, at Boston, Massachusetts, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent and the Union were all represented by counsel. 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 hearing, counsel for the Board moved to conform the complaint to the proof with respect to formal matters. A similar motion was made by counsel for the respondent with respect to the answer. Both motions were granted without objection. The parties were afforded an opportunity to argue orally on the record and to file briefs with the undersigned. All the parties stated they did not care to argue orally, and that they would file briefs with the undersigned.

Briefs were filed with the undersigned by the attorney for the Board and the attorney for the respondent. Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent John S. Doane Company, is a Massachusetts corporation, licensed to sell and distribute alcoholic beverages within the State of Massachusetts. The respondent has its place of business in Boston, Massachusetts, and conducts both a wholesale and retail business on the same premises. The wholesale and retail business are kept separated. The respondent has operated its business since November 1943. During the first 8 months of 1944 the respondent purchased alcoholic beverages totaling \$1,297,209.56. On this amount, \$1,234,908.94 represents purchases of goods shipped to the respondent from points outside the State of Massachusetts. During the same period of time the wholesale sales of the respondent amounted to \$1,386,193.84 and its retail sales amounted to \$218,193.17. No sales were made outside the State of Massachusetts.

The respondent maintains a warehouse in Boston, through which pass all the beverages it sells. None of the merchandise sold by the respondent is shipped to its customers directly by its suppliers.

The respondent is engaged in commerce within the meaning of the Act.<sup>1</sup>

##### II. THE ORGANIZATION INVOLVED

Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor, is a labor organization which admits employees of the respondent to membership.

<sup>1</sup> See *Bradford Dyeing Ass'n*, 310 U. S. 210; *Matter of Jones & Laughlin Steel Corp.*, 301 U. S. 1.

## III. THE UNFAIR LABOR PRACTICES

A. Chronology of events;<sup>2</sup> interference, restraint, and coercion

The Union began to organize the respondent's wholesale liquor salesmen sometime in June 1944. On August 11, 1944, the Union's representatives, Louis J. Blender and A. Herbert Barenboim, called at the respondent's place of business and met Milton Doling, its vice president and manager. The Union's representatives handed Doling a letter in which the Union stated that it represented a majority of the respondent's wholesale liquor salesmen. The Union's representatives then requested immediate negotiation of an agreement. Doling asked why the Union's letter was delivered in this manner and not sent through regular mail; to which the Union's representatives replied that they did not trust Doling because they were of the opinion that he had interfered with employees' attempts at organization at another liquor concern where Doling had been the manager. Doling denied the accusation and stated that he had no authority to act on the Union's request and that the matter must be referred to the respondent's president who was presently in New York City but who would be in Boston the following Monday, August 14. The Union's representatives informed Doling that 7 of the respondent's wholesale liquor salesmen had joined the Union and then obtained Doling's promise that he would not approach any of the Company's employees with any questions regarding their union affiliations. The parties agreed to another meeting on August 14.

On August 11 during the time the Union's representatives were meeting with Doling, 6 of the respondent's employees, who were members of the Union, remained at the Union's office, the seventh being ill in a hospital at the time; none of these men called on their customers or did any work for the Company from August 11 until after August 22 as hereinafter related.

On August 12 and 13, Doling personally spoke to two of the respondent's wholesale liquor salesmen who were members of the Union and asked them if they were members of the Union and spoke over the telephone to three other such Union members and similarly asked if they were members of the Union; the telephone conversations consisting merely of Doling's question and the answer given by the employees.

On Monday, August 14, 1944, the Union's representatives called at the respondent's office and met with Doling and Henry Garfinkle, the respondent's president. The Union's representatives told Garfinkle that they represented seven of the respondent's wholesale liquor salesmen and demanded immediate recognition of the Union and the negotiation of a contract. Garfinkle refused to recognize the Union and asked for time to confer with certain undisclosed individuals in New York City. The Union's representatives also told Garfinkle that they did not trust Doling and that the respondent's employees who were union members were waiting at the Union's office pending the negotiations. They further informed Garfinkle that unless the Union were granted immediate recognition, the respondent's establishment would be struck and picketed. Garfinkle asked the Union's representatives to accompany him to the respondent's attorney's office for a further conference and accordingly Doling, Garfinkle, Blender and Barenboim, proceeded to the office of the respondent's attorney where a conference of several hours duration took place; during this conference the Union's representatives again stated that the Union represented seven of the respondent's wholesale liquor salesmen, demanded recognition of

<sup>2</sup> The findings in this section of the report are based upon mutually corroborative and admitted testimony, except as otherwise indicated.

the Union and the negotiation of a contract. Garfinkle told the Union's representatives that he would not negotiate with the Union until he had conferred with certain undisclosed individuals in New York City; that he doubted whether the Union represented the respondent's employees; and argued that the respondent also employed retail salesmen, warehousemen and office employees. He stated that Doling was also a licensed liquor salesman and demanded that the Union obtain certification from either the Massachusetts Labor Board or the Board. The Union's representatives pointed out that the Union accepted only wholesale liquor salesmen to membership and stated that Doling had broken his agreement with the Union by inquiring into the Union affiliation of the respondent's employees between August 11 and the present meeting. The respondent's attorney, in the course of the argument, stated that the respondent had employed additional wholesale liquor salesmen, but the respondent's officials, Garfinkle and Doling, did not press this point.<sup>3</sup> The conference adjourned with an agreement to meet later in the afternoon. At the afternoon meeting it was agreed to meet again on August 17.

On August 17, the Union's representatives were advised by telephone that Garfinkle would not be in Boston until the next day. On the next day Blender met with Garfinkle who then informed him that the respondent would not recognize the Union and gave as his reason among other things that the distilling company from which the respondent obtained the major portion of its merchandise objected to his recognizing the Union. Garfinkle then suggested that the Union first organize the other Boston liquor dealers who handled the same brands of liquor as did the respondent and that thereafter the respondent would recognize the deal with the Union.

The two men agreed to meet again the next day, and accordingly on the morning of August 19, Blender and Barenboim met with Garfinkle. At this meeting the Union's representatives again insisted upon recognition, Garfinkle again stated that he would not recognize the Union and gave as his reason his fear of reprisals by the distilling company which supplied the respondent with the major portion of its merchandise, in the event the respondent did recognize the Union. August 19 fell on a Saturday; the following Monday, (August 21), Blender called Garfinkle by telephone and asked if he would meet with all the respondent's wholesale liquor salesmen who were union members. Garfinkle agreed and a short time thereafter the Union's representatives, Blender and Barenboim, and six of the respondent's liquor salesmen, met with Garfinkle and Doling in Garfinkle's hotel suite. The Union's representatives informed Garfinkle and Doling that the seventh member of the Union was still in the hospital. Garfinkle gave his reason for not recognizing the Union, as being the objections raised by the distiller supplying the respondent with the major portion of its merchandise and pointed out that the respondent had been able to secure distribution rights for a new brand of liquor but that a competitor which employed "Union" salesmen had not been able to do so. He then asked the union members to return to work and attend a meeting of all distributors and salesmen of the Schenley liquor products to be held the next day. This meeting was referred to as the "Three Feathers" meeting and will hereinafter be so referred to. The Union's members insisted on some written instrument for their protection and a memorandum was dictated by Barenboim, which Garfinkle stated he would submit to the respondent's attorney and to other undisclosed individuals and would thereafter mail to the Union that

<sup>3</sup> In describing the above conference, the attorney for the respondent testified: "There were few strong silent men in that room."

same day. The Union received this memorandum<sup>4</sup> the next morning, the memorandum containing some slight changes made by the respondent and on that day, August 22, 1944, the union members attended the Three Feathers meeting.

As previously stated herein, none of the respondent's employees who were members of the Union had called on their customers; did any work for the respondent or in any way attended to any of the respondent's business between August 11, 1944 and August 22, 1944

On September 5, 1944, the Union's representative called Garfinkle by phone and requested that the respondent discuss the signing of a contract with the Union, the respondent refused to do so and the Union struck and picketed the respondent's premises the same day. The strike continued until November 9, 1944.

On several occasions during the course of the strike, Doling approached Ralph Stone, one of the strikers and an active picket, while he was engaged in picketing, and asked him what he was striking for and told him that he was foolish for striking. On one occasion Doling told Stone that the Union would never get him a living and that as a married man he should return to work and on another occasion he remarked to him, "A fat chance you will have of getting another job somewhere else," and later he told Stone that he had just one day's time to quit the strike and return to work. On another occasion during the course of the strike, Doling and Garfinkle met Stone in a nearby restaurant and urged him to return to work and upon Stone's remark that the Union was striking for a contract, Garfinkle told Stone that the Union would never get a contract from the respondent.

Sometime during the course of the strike Doling said to Philip Berman, one of the strikers who was at the time engaged in picketing, "You are just a bunch of dogs. You are out on the street where you belong," after which he went on to say "You will never work in the liquor business again I will see to that personally "

On October 6, 1944, Robert Oster, one of the strikers, discussed with some of the others the possibility of negotiating a settlement of the strike with the respondent. Oster then discussed the matter with the Union's representative who informed him in the presence of the other striking employees, that the Union could not prevent the men from returning to work, but that any negotiations Oster would enter into with the respondent would be strictly a personal matter and that Oster could not represent the Union; that the Union would not grant him any authority to negotiate any settlement with the respondent.

Oster entered into negotiations with the respondent and an agreement was drawn. During the final stages of the negotiation, the respondent was repre-

#### MEMORANDUM

It is the policy of this Company that any members of the Wholesale Liquor Salesmen's Union who are employed by this Company as liquor salesmen are in no way to be interfered with in their membership with the Union or discriminated against in their tenure or type of employment with the Company or the amount of goods that will be allotted to them by reason of their membership in the Union. *The twelve men employed in and on the Company's payroll as of August 11, 1944 in the capacity of wholesale liquor salesmen, or if any of them cease to be employed by the Company such salesmen as may be employed to take their places, shall be the only persons granted the right to act by vote or otherwise in any question of certification of the representative of all wholesale liquor salesmen of the Company for the purpose of collective bargaining in the event that at any time in the future it becomes necessary to certify a bargaining representative for the wholesale liquor salesmen. The Company reserves the right to hire such additional salesmen as it sees fit. [Italics supplied ]*

sent by its attorney who suggested some of the language of the agreement.<sup>5</sup> On October 16, three of the respondent's striking employees signed the agreement and returned to work<sup>6</sup>

## B. The refusal to bargain collectively

### 1. The appropriate unit

The Union contends that a unit appropriate for the purposes of collective bargaining consists of all of the respondent's licensed wholesale liquor salesmen excluding, however, all supervisory employees.

The respondent contends that the appropriate unit consists of all of the respondent's employees or, in any event, all of the employees in its wholesale department.

The respondent conducts both a wholesale and retail liquor business on the same premises. The two branches of its business are kept entirely separate. The retail department sells liquor over the counter and obtains its merchandise by purchase from the wholesale department.

The wholesale department maintains a warehouse from which all merchandise is shipped. As above stated, the wholesale department's accounts and monies are

OCTOBER 16, 1944.

JOHN S. DOANE COMPANY  
645 Atlantic Avenue  
Boston, Massachusetts

GENTLEMEN: This is in reply to your suggestions made to Robert Oster whom we requested to see you on our behalf, that we return to work pending decision of our disputes.

We are willing to return to work on the following conditions:

(1) A commission of 4% will be paid for all merchandise sold to the accounts assigned to the undersigned, to become effective as of October 1, 1944.

(2) The accounts and territory serviced by the undersigned as of September 2, 1944, will continue to be serviced by them.

(3) A commission will be paid on all merchandise sold and delivered to the respective accounts of the undersigned during the period while they were on strike, to the undersigned.

(4) The said undersigned will receive an equal distribution of all liquor purchased by the said Company for the wholesale trade unless the said liquor is allocated by the distiller or distributor.

(5) The said Company agrees not to have any more house accounts than it is servicing at present but will make an equitable distribution of any further accounts among all the wholesale liquor salesmen.

(6) Copies of invoices or commission statements will be issued to the said undersigned weekly.

(7) A uniform contract between each of the undersigned and the Company will be drawn and executed as soon as legally possible, which contract will have incorporated therein the hereinabove mentioned provisions, said contract to be in full force and effect for a period of twelve months from the date of the execution of the same with the added provision that it shall automatically renew itself for the further term of one year in its entirety pending negotiation for a new contract.

(8) That the undersigned will notify the said Company the name and address of the person whom we shall appoint to represent us in the execution of the foregoing contract.

Very truly yours,

(S) ROBERT J. OSTER.

(S) MURRAY P. ROTH.

(S) PHILIP BERMAN.

The said John S Doane Company hereby assents to and accepts the provisions and conditions herein contained.

(S) MILTON DOLING,  
V. P. & Treas.,

<sup>6</sup> As heretofore set out the strike ended November 9, 1944.

kept separate from the retail department's, there being two bank accounts and two sets of books. The management of the two departments is the same.

The retail department, at all times material herein, employed four retail liquor salesmen. The retail department also employs three cashiers.

The wholesale department employs salesmen who solicit orders in certain fixed territories assigned to them by the respondent. They do no selling on the premises. The laws of the State of Massachusetts require that a wholesale liquor salesman obtain and hold a license from the State, and obtain and hold a transportation permit which grants the right to carry and transport samples of liquor. Wholesale liquor salesmen are paid a commission on their sales. Retail salesmen are paid salaries. No license is required of retail liquor salesmen by the State of Massachusetts.

The respondent at all times material herein employed three warehousemen and one truck driver and employed an office force consisting of five girls. The record is silent as to whether or not the office force served both departments.

The Union is divided into four departments or branches: (1) A display division, which admits to membership individuals engaged in the advertising activities conducted by the liquor industry; (2) Distillery workers; (3) Beer salesmen; and (4) Wholesale liquor salesmen. The wholesale liquor salesmen division of the Union admits to membership only wholesale liquor salesmen who solicit sales off the employer's premises and who hold licenses as wholesale liquor salesmen from the State of Massachusetts. The wholesale liquor division does not admit to membership any retail liquor clerks or salesmen. Throughout the area surrounding Boston, in which the Union holds its membership, the Union is under contract with various wholesale liquor establishments for wholesale liquor salesmen; these contracts recognize a unit consisting of licensed wholesale liquor salesmen only. In the Boston area, the Board has certified units as appropriate for the purposes of collective bargaining, consisting of wholesale liquor salesmen only.<sup>7</sup>

The respondent holds periodic salesmen's meetings at which attendance is required of all its wholesale liquor salesmen. The retail liquor clerks do not attend these meetings.

The record is clear that the respondent's wholesale liquor salesmen constitute a homogeneous group functioning separately and apart from its other employees and having a clear diversity of working conditions and interests.

The undersigned finds on the entire record that the licensed wholesale liquor salesmen employed by the respondent in its Boston establishment, excluding, however, all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of wholesale liquor salesmen, or to effectively recommend such action, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, and hours of employment, or other conditions of employment and that said unit assures the licensed wholesale liquor salesmen employed by the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

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

On August 11, 1944, the day the Union first informed the respondent that it represented a majority of its wholesale liquor salesmen and requested recognition as such representative, the respondent had 12 wholesale liquor salesmen in its employ actively engaged in selling its merchandise. At its first meeting

<sup>7</sup> See *New England Grocery Supply Company*, 55 N. L. R. B. 334; *Standard Wholesale Company*, 47 N. L. R. B. 920.

with the respondent's vice president, Doling, the Union informed Doling that 7 of the respondent's wholesale liquor salesmen were members of the Union and obtained Doling's promise that he would not speak to any of the respondent's employees regarding their union membership until after August 14, the date set for the next meeting between the parties. It is admitted by the respondent that on August 13 Doling by personal contact and telephone conversation questioned at least 5 of the union members regarding their union affiliation.

On August 14, 1944, in its meetings with the respondent, the Union again informed the respondent that 7 of its wholesale liquor salesmen were members of the Union and further informed the respondent that none of these men were working pending the outcome of the negotiations between the respondent and the Union. During the August 14 conferences, the respondent advanced arguments against immediate recognition and insisted that the Union obtain certification from either the Massachusetts Labor Board or the Board, and although the respondent's attorney did state that the Company had hired additional wholesale liquor salesmen, the officials of the respondent did not press this point but sought to expand the unit by insisting that all the employees of the Company, meaning its retail salesmen and its vice president as well as its wholesale liquor salesmen be included within the unit.

On August 21, the respondent met with all its employee members of the Union, save one who was ill, and at that time entered into the agreement with them previously referred to herein and asked them to attend the Three Feathers meeting. At this meeting (August 21) the respondent informed the union members that it had obtained a franchise to sell another brand of liquor and would employ additional salesmen and that it could not recognize the Union. On August 22 at the Three Feathers meeting, the Union members were first introduced to the respondent's newly employed wholesale liquor salesmen.

Milton Doling testified that in late July and early August 1944, before the Union made its first demand for recognition, he had employed seven additional salesmen. Of these only four were still in the employ of the respondent at the time of the hearing; the others having either quit or been discharged and not replaced. These four "new" wholesale liquor salesmen testified that they had been employed prior to August 11.

Herman Karl testified that on August 2, 1944, he was a Second Lieutenant in the United States Army but that he had been discharged effective as of August 15, 1944, and was on furlough waiting his discharge papers, but still subject to Army regulation and discipline and drawing pay, he was required to wear his uniform until officially discharged as a member of the armed forces and he continued to wear his uniform until August 23. Karl testified that he was aware that he could not engage in any civilian activity until he received his discharge and that he did not receive his discharge until August 18, 1944. Karl testified that on August 2 he called on Doling at the respondent's office and asked for employment as a liquor salesman. Doling asked if he had an automobile and on learning that Karl's automobile was registered in Florida, advised him to obtain Massachusetts registration. Karl did not obtain the Massachusetts registration until August 31. Doling told Karl to come in and see him on August 15, the date he expected his discharge. Between August 2 and August 17 he (Karl) did not see Doling. At his first meeting with Doling, Karl did not discuss with Doling the rate of pay he would receive, whether he would be paid a salary or receive a commission on his sales, nor was he told the territory that would be assigned to him. On August 22, Karl attended the Three Feathers meeting, at this meeting he was still in uniform. On August 25, Karl was given a check payable to the Massachusetts Alcoholic Beverage Control Commission and told to call at the Commission's office and obtain the license required by

the State for a wholesale liquor salesman. He obtained the license, but the transportation permit, which would enable him to transport and carry samples was not issued to him until August 31 because his automobile was registered in Florida. On August 25 Karl attended a meeting of the respondent's newly employed wholesale liquor salesmen, at which meeting merchandise was allocated to him and his territory assigned. He called on trade and sold merchandise on and after August 28.

At the time he applied for employment Karl was not acquainted with Doling and had never before been employed in the liquor industry. The record shows that his original interview with Doling was brief.

Wilbur H. Eisenmann testified that on August 2, 1944, he called at the respondent's office in search of employment as a wholesale liquor salesman; there met Milton Doling and after a conversation lasting for a period he estimated to be from 10 minutes to three quarters of an hour in length, he was employed. At that time he was not acquainted with Doling and had no experience whatever in the liquor business. During the initial interview the questions of territory Eisenmann was to cover and the remuneration or basis of remuneration for his services were not discussed. Following this interview Eisenmann made several calls on Doling, during the course of which he was told that he could begin actively selling liquor only after certain new merchandise was received. Eisenmann testified that on August 17 he happened into the respondent's office<sup>\*</sup> and was given a check for \$11 and told to call on the Massachusetts Alcoholic Beverage Control Commission and obtain a license as a wholesale liquor salesman and a transportation permit.

On August 22 Eisenmann attended the Three Feathers meeting previously referred to and on August 25 he attended a meeting of all the "new" salesmen and was allocated merchandise and his territory was assigned to him. Eisenmann received commission checks for merchandise sold by him during August after August 25.

William Weiss testified that on or about July 4, 1944, he was introduced to Milton Doling and asked him for employment as a wholesale liquor salesman. Doling employed him as a salesman at that time but told him that there would be no merchandise to sell until the end of August. Weiss attended the Three Feathers meeting on August 22 and the meeting of the "new" salesmen on August 25. He obtained his license from the Massachusetts Alcoholic Beverage Control Commission on August 18, although he first made application for it on August 17, having been given a check to cover the fee by the respondent on that date. Weiss made no attempt to sell merchandise until after September 1, 1944. Weiss testified that at the time he first met Doling and was employed by him he (Weiss) was employed at the Boston Navy Yard and continued in such employment until August 28, 1944.

Eugene Dwyer testified that he called on Milton Doling at the respondent's office sometime during the first week in August, having been sent there by friends. At that time he was not acquainted with Doling and had no previous experience as a liquor salesman. He asked for employment as a wholesale liquor salesman and was so employed by Doling at their first meeting. Doling told him that he could start selling sometime during the last week in August, at least not later than September 1. Dwyer testified that he called Doling by telephone and was told to come in sometime around August 15 to apply for his license. He called at the respondent's office on August 17, was given a check for \$11 and told to apply for his license and transportation permit. Dwyer attended the

<sup>\*</sup> Eisenmann testified "I was getting a shine and I said I will go over and see Milton Doling."

Three Feathers meetings and the meeting of the "new" salesmen. Dwyer made no sales during August. Dwyer testified that he did not know the rate of pay he was to receive until sometime after his first interview with Doling.

Although the respondent did not so specifically admit at the hearing, it states in its brief filed with the undersigned:

The company admits that on August 11th and until sometime after the strike began when Brodney and Glazer resigned, the Union represented seven wholesale liquor salesmen. This the company has always admitted, and never disputed. It is further admitted that on August 11th and until on or about August 25th there were only twelve wholesale liquor salesmen employed by the company who were then actually soliciting business, but the company contends that there had been hired in July and during the first week of August seven other salesmen, and that these salesmen were employees of the company entitled to be considered in the selection of a bargaining agent for all the wholesale salesmen.

It is significant that in his first meeting with the Union's representatives Doling, who was familiar with labor relations practices, advanced no claim that the respondent had more than 12 wholesale liquor salesmen in its employ and did not challenge the Union's claim to a majority on the basis that it represented only 7 of its employees. In the August 14 meetings both at the respondent's office and at the offices of the respondent's attorney, although all phases of the situation were discussed at length and apparently with considerable heat, the claim that additional salesmen were on the Company's pay roll at the time was advanced only by the respondent's attorney and was not at all pressed by the respondent's officials, instead, the respondent sought to expand the unit by including within it its retail clerks, its warehouse employees and its vice president.

It is also significant that on August 14 the respondent argued strenuously for delay, called other union officials by long distance telephone and asked them to talk to the Union's representative in his efforts to obtain delay, and at the same time insisted that the Union seek certification.

It is further significant that although the respondent's president agreed to meet with the union officials on August 17, he did not do so but delayed the meeting until August 18 and at that time told them he could not recognize the Union because of the opposition of the distilling company which was his principal source of supply and repeated this same statement to the six union members with whom he met on August 21, and at the same time made the statement to the union members that there were additional wholesale liquor salesmen on the Company's pay roll entitled to representation, yet, despite its claim that additional men were entitled to representation within the unit, the respondent entered into an agreement with the Union members in which it fixed the unit as the 12 and closed with the statement "The Company reserves the right to hire such additional salesmen as it sees fit." The undersigned is mindful that 7 of the respondent's wholesale liquor salesmen joined the Union and that from the date the Union first sought recognition, these men were, in fact, striking for recognition of the Union and that the respondent employed 7 additional salesmen. The respondent contends that these 7 additional salesmen were employed before August 11, yet no licenses which would permit them to sell merchandise were procured for them until August 17, the date that the respondent had agreed to meet with the Union and did not do so.

The testimony of the four "new" salesmen claimed by the respondent to have been hired prior to August 11, follows a similar pattern. Each testified that he was employed sometime prior to August 11; that he had never meet Doling

prior to the initial interview; that he had no previous experience in the liquor business; that he was hired after a brief interview; that at the interview the question of compensation and sales territory was not mentioned.

Realistically, it seems improbable that on a single brief interview, an experienced executive such as Doling would employ total strangers who had no experience, to engage in a competitive enterprise, in which part of the work is the collection of money away from the respondent's premises.

None of these men could legally sell the respondent's merchandise without obtaining a license from the State, and the first licenses were not obtained until August 17 as above related.

Eisenmann testified that he was not called to the respondent's office on August 17. Dwyer testified that nobody instructed him to come to the respondent's office on August 17. Weiss testified that although he obtained his license on August 18, he first went to the Commission on August 17, having come to the respondent's office without being called on August 17. All four of the men testified that they received allocations of merchandise and assignments of territory at a meeting attended by the "new" salesmen on August 25 and had sold no merchandise prior to that date.

Although it is true that the testimony of Doling, Karll, Eisenmann, Weiss and Dwyer to the effect that the four last named individuals were employed by the respondent prior to August 11, is entirely uncontradicted and the undersigned is persuaded from the entire record that these men were interviewed on or about the time they state they first met Doling, the undersigned is not at all persuaded that the interviews ended in a definite offer and acceptance of employment; too many salient and ordinarily necessary factors to employment were not covered or even discussed in these interviews and in no event did the employer-employee relationship become fixed and definite until at least August 17, 1944, the date the licenses were first procured.

The record discloses that licenses for wholesale liquor salesmen are issued to salesmen to represent a specific employer, that the employer pays the fee, and the license itself is issued at the request of the employer and immediately upon application. Irrespective of when these salesmen were originally interviewed, they could not represent the respondent or take orders for merchandise until their licenses were issued. The undersigned is convinced from the entire record that these salesmen were not employees of the respondent prior to their obtaining licenses.

On August 11, 1944, when the Union first informed the respondent that it represented its employees, the Union obtained Doling's promise not to question the respondent's employees regarding their union affiliation. Doling promptly broke this agreement and inquired into the union membership of at least five of the Union's members among respondent's wholesale salesmen. On August 14 the respondent argued for delay, advancing various reasons for delay, and refused to recognize and deal with the Union. At that time the respondent had knowledge that the Union represented seven of its employees and that these employees were in fact already on strike to enforce recognition of the Union. In view of this knowledge the respondent clearly was not acting in good faith in seeking delay. The respondent's lack of good faith is further shown on August 18 when he again refused to recognize the Union, advancing a specious reason for his refusal with full knowledge that on the previous day the respondent had already obtained licenses for new employees who cannot be considered other than strikebreakers hired by the respondent for the sole purpose of either replacing its present striking employees or destroying the Union's majority. The respondent's bad faith is again shown on August 22

when it entered into the memorandum agreement with its union employees in which it fixed a unit of 12 wholesale liquor salesmen as an appropriate unit

The undersigned accordingly finds, on the entire record that at all times material after August 11, 1944, the Union was the duly designated representative of the respondent's employees in the aforesaid appropriate unit and that by virtue of Section 9 (a) of the Act the Union was at all times material herein the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

### 3. The refusal to bargain

The record is clear that on August 11, 1944, when it first requested recognition by the respondent the Union represented a majority of the respondent's employees in an appropriate unit, and again on August 14 at the time the Union met with the respondent and its attorney it also represented the same majority.

Between August 11 and August 14, the respondent embarked on a course of unfair labor practices designed to destroy the Union's majority, to deny the Union recognition and to prevent its employees from enjoying the fruits of collective bargaining.

The continued insistence by the respondent that recognition of the Union be delayed and the various arguments advanced by it for such delay; its refusal to recognize the Union and bargain with the Union; coupled with its pointing out to its union employees that the respondent, a non-union concern, was able to obtain merchandise while a competitor whose employees were organized could not obtain merchandise; and further coupled with Doling's action between August 11 and August 14 to show the respondent's bad faith in its relations with the Union. The entire attitude of the respondent in the August 14 conferences with the Union clearly shows that the respondent's sole effort was directed to obtain delay. The record is clear that the respondent refused to bargain with the Union at a time when it was aware that the Union represented a majority of its employees within an appropriate unit.

The undersigned accordingly finds that on August 11, 1944, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### C Concluding findings

The record is clear that the Union was in fact on strike on and after August 11 and that the respondent was fully aware of this and knew the extent of the Union's membership. The respondent then agreed to meet with the Union's representatives on August 17. The meeting was not held but was postponed to August 18, on which date the respondent instead of negotiating with the Union, merely renewed its former refusal to recognize the Union and flatly refused to negotiate. It seems highly significant to the undersigned that on August 17 the day that the respondent should have met with the Union, at least three of the four "new" employees by coincidence visited the respondent's office and on that day obtained their licenses as wholesale liquor salesmen. It seems highly significant that seven "new" men had, according to the respondent's testimony, been hired prior to the Union's request for recognition, and that seven members of the respondent's sales force had joined the Union and were in fact on strike at the time these seven "new" men first obtained licenses permitting them to sell merchandise for the respondent. As previously stated herein, the undersigned is not convinced and does not credit the testimony of

either Doling, Karll, Eisenmann, Weiss and Dwyer as to the date they were first employed.

The undersigned finds that Milton Doling's activities and statements made to employees on the picket line and the statements of both Doling and Garfinkle to the effect that the Union would never obtain a contract were clearly threats of economic reprisal.

The undersigned finds that by Doling's statement to Ralph Stone to the effect that he was foolish for striking; that the Union would not get him a living; that he had a "fat chance" of getting a job elsewhere; Doling's statements to Philip Berman to the effect that the Union's members were "just a bunch of dogs," and that he (Doling) would see to it that Berman would never work in the liquor business again; Garfinkle's statement to Stone to the effect that the Union would never get a contract and Garfinkle's statement to the Union members to the effect that a certain competitor employing union labor could not obtain certain merchandise while the respondent could obtain such merchandise, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act

The respondent negotiated an individual contract on wages and conditions of employment with Robert Oster, one of its striking employees, who in turn induced other of the respondent's striking employees to join him in signing this contract with the respondent.

The Board sought to show that Oster in negotiating the contract above referred to, was acting as an agent for the respondent, while the respondent sought to show that Oster represented the Union. The record does not support either contention.

The record is clear that this contract was negotiated for the purpose of defeating the Union, destroying its majority and circumventing recognition of the Union by the respondent. The undersigned finds on the entire record that the respondent negotiated individual contracts relating to their employment with certain of its employees for the sole purpose of destroying the Union's majority and forestalling collective bargaining with the Union. It has been well settled that a contract obtained as the result of an unfair labor practice may not be used as the basis of advantage to the violator of the Act nor of disadvantage to the employee, the undersigned therefore finds on the entire record that the contract negotiated by the respondent with individual employees through Robert Oster, one of its employees, is invalid and of no force and effect and will recommend that the contract be declared void except that the avoidance of the contract shall be without prejudice to the employees of any advantage that they may have acquired therein regarding their rates of pay, hours, working conditions and other conditions of employment.<sup>9</sup>

#### 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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Since it has been found that the respondent has engaged in and is engaging in certain unfair labor practices, it will be recommended that he cease and desist

<sup>9</sup> See *Matter of J. I. Case Co. v. N. L. R. B.*, reported 11 L. R. R. 17; *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350.

therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act. It having been found that the respondent has refused to bargain collectively with the Union, it will hereafter be recommended by the undersigned that the respondent, upon request, bargain collectively with the Union.

It having been found that the contract entered into by the respondent with certain of its employees as individuals because such contract was for the purpose of forestalling collective bargaining with the Union at a time when the Union was the duly designated sole collective bargaining agent of an appropriate unit of the respondent's employees, and was the fruit of the unfair labor practices of the respondent, therefore the undersigned will recommend that the respondent cease and desist from performing, or giving effect to such contract. Nothing herein, however, shall be deemed to give the respondent the right to withdraw or abandon those wages, hours, security or other substantive features of its relationship with its employees themselves which the respondent may have established in the performance of the contract.

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. Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All the licensed, wholesale liquor salesmen, excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, employed by the respondent in its Boston, Massachusetts, establishment, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor, was on August 11, 1944, and at all times thereafter has been and is now the exclusive representative of all the employees of the respondent in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on August 11, 1944, and at all times thereafter, to bargain collectively with Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with American Federation of Labor, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) 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 labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, John S. Doane Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor, as the exclusive representative of all its licensed wholesale liquor salesmen, exclusive of supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, employed by the respondent in its Boston, Massachusetts, establishment;

(b) In any other manner interfering with, restraining, or coercing its employees in their right to self-organization, to form and assist labor organizations, to join or assist Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor or any other labor organization, 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;

(c) Giving effect to the contract it entered into with Robert I. Oster, Murray P. Roth, and Philip Berman, affecting their compensation, working conditions, or other conditions of employment, or any modification, continuation, extension, or renewal thereof.

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

(a) Upon request bargain collectively with Distillery, Rectifying & Wine Workers International Union of America, Local No. 8, affiliated with the American Federation of Labor as the exclusive representative of all the licensed wholesale liquor salesmen, exclusive of supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, employed by the respondent in its Boston, Massachusetts, establishment;

(b) Give separate written notice in the form and language of Appendix A attached hereto, and duly signed by the respondent's representative to Robert Oster, Murray P. Roth, and Philip Berman, that contract of October 16, 1944, or any modification, continuation, extension or renewal thereof will not in any manner be enforced or attempted to be enforced; that the employee is not expected by virtue of such contract to deal with the respondent individually in respect to his compensation, working conditions or other conditions of employment and that such discontinuance of the contract is without prejudice to the assertion of any rights the employee may have acquired under such contract;

(c) Post at its establishment at Boston, Massachusetts, copies of the notice attached hereto, marked "Appendix B." Copies of said notice, to be furnished by the Regional Director of the First Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) File with the Regional Director for the First Region, on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, 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 within ten (10) days from the date of the order transferring the case to the Board.

LOUIS PLOST,  
*Trial Examiner*

Dated March 8, 1945.

APPENDIX A

To: ROBERT OSTER  
MURRAY P. ROTH  
PHILIP BERMAN

Date ----- 1945.  
BOSTON, MASSACHUSETTS

You are hereby notified that pursuant to the Recommendations of a Trial Examiner, in the matter of John S. Doane Company and Distillery, Rectifying & Wine Workers International Union of America, Local No. 8 (A. F. of L.), Case No. 1-C-2449, we will not in any manner enforce or attempt to enforce the contract entered into on October 16, 1944 between ourselves (John S. Doane Company) and Robert Oster, Murray P. Roth, and Philip Berman, or any modification, continuation, extension or renewal thereof, and that you are not expected by virtue of said contract to deal with us individually in respect to your compensation, working conditions, or other conditions of employment and that the discontinuance of the said contract is without prejudice to the assertion of any rights you may have acquired thereunder.

(S) JOHN S. DOANE CO.,

By-----  
(Official Title)

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Distillery, Rectifying & Wine Workers International Union of America, Local No. 8 (A. F. L.), 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. All our employees are free to become or remain members of this union, or any other labor organization.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such

understanding in a signed agreement. The bargaining unit is: all licensed wholesale liquor salesmen, exclusive of supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, employed by John S. Doane Company, at its Boston, Massachusetts, establishment.

We will, cease and desist from giving any effect to the contract entered into between us and Robert I. Oster, Murray P. Roth, and Philip Berman, affecting their compensation, working conditions, or other conditions of employment, or any modification, continuation, extension or renewal thereof.

JOHN S. DOANE COMPANY,

By-----  
(Representative) (Title)

Dated-----

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