

IN THE MATTER OF ALASKA JUNEAU GOLD MINING COMPANY and
INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,
LOCAL NO. 203

Case No. C-91.—Decided July 21, 1936

Mining Industry—Jurisdiction of Board in Territories—Strike: interference with right to; intervention by police and military—*Boycott—Interference, Restraint or Coercion:* during strike: initiating and fostering "back to work" movement; initiating election among strikers on question of returning to work; refusal to recognize representatives; insistence upon proportional representation; by public officials; by local ordinance—*Employee Representation Plan:* form and operation—*Company-Dominated Union:* domination and interference with formation and administration; financial and other support; discrimination in favor of in employment, benefits, and privileges; disestablished as agency for collective bargaining—*Employee Status:* during strike—*Discrimination:* requiring strikers to make individual applications for reemployment; non-reinstatement following strike—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; displacement of employees hired during or following strike—*Back Pay:* awarded.

Mr. E. J. Eagen for the Board.

Bayley & Croson, by *Mr. Carl E. Croson*, of Seattle, Wash., for respondent.

Mr. Ora L. Wilson, of Spokane, Wash., for the Union.

Mr. Joseph Rosenfarb, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon charges duly filed by International Union of Mine, Mill and Smelter Workers, Local 203, hereinafter called the Union, the National Labor Relations Board, hereinafter called the Board, by Charles W. Hope, Regional Director for the Nineteenth Region, issued its complaint dated February 7, 1936, against the Alaska Juneau Gold Mining Company, Juneau, Alaska, hereinafter called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union on February 12, 1936.

The complaint alleges that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. Demand for a bill of particulars was

made by counsel for the respondent on February 24, 1936, and the same was furnished on March 9, 1936. The respondent filed its answer to the complaint on February 24, 1936, objecting to the hearing on the ground of the unconstitutionality of the Act. Without waiving its constitutional objections, the respondent answered further by denying *inter alia* that it committed the unfair labor practices alleged in the complaint.

Pursuant to the notice, the hearing was conducted by the Regional Director for the Nineteenth Region, as Trial Examiner duly designated by the Board, from March 12 to 21, 1936, inclusive, in Juneau, Alaska. The respondent, the Union and the Board were represented by counsel and participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the Board made several motions to amend the paragraph of the complaint containing the names of the employees alleged to have been discriminated against. The motions were granted. Motion was made by counsel for respondent to amend paragraph 1, Section (b) of the answer which reads: "That the said National Labor Relations Act is unconstitutional in that it deprives the said Alaska Juneau Gold Mining Company of its property without due process of law," to, "That the said National Labor Relations Act is unconstitutional in that it deprives the said Alaska Juneau Gold Mining Company and its employees of liberty and property without due process of law." The motion was denied. Counsel for the Board rested on March 16, 1936. New issues were raised by questions from the Trial Examiner, and counsel for the Board moved to reopen the case. No objection was made, and the motion was granted. No oral arguments were made and no briefs were filed although opportunity to do so was granted. All of the Trial Examiner's rulings on motions are hereby affirmed.

Thereafter, the Trial Examiner filed an Intermediate Report in accordance with Article II, Section 30 of National Labor Relations Board Rules and Regulations—Series 1. The Intermediate Report was duly served upon the parties. The Trial Examiner found that the respondent had committed unfair labor practices within the meaning of Section 8, subdivisions (1), (2), (3) and (5) and recommended that the respondent cease and desist from such unfair labor practices, and reinstate the employees discriminated against to their former positions. Exceptions to the Intermediate Report were duly filed by the respondent.

On May 19, 1936, counsel for the respondent and a representative of the Union made oral arguments before the Board in Washington, D. C.

Upon the entire record in the case, including the pleadings, the stenographic report of the hearing, the documentary and other evidence offered and received at the hearing, and the Intermediate Report and exceptions thereto, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent is and has been since February 17, 1897, a corporation organized and existing under the laws of the State of West Virginia. It is engaged in the mining, milling, sale and distribution of gold, and in development operations. It has its mines and works in and near the vicinity of Juneau, Alaska, with its principal office in San Francisco, California. The capital stock of the respondent consists of 1,500,000 shares of common stock at \$10 per share, making a total capital of \$15,000,000. The common stock is listed on the New York Stock Exchange. Approximately \$6,000,000 in dividends have been paid since 1931. From 1893 to 1934, over \$42,000,000 in gross value, mostly gold, was recovered by the respondent from its mines. About \$18,000,000 in wages have been paid since the respondent started operations. Since 1934 there has been a 16 $\frac{2}{3}$ per cent increase in the wages of the respondent's employees, while the price of the respondent's output increased 70 per cent.

The respondent has 277 claims which cover 4,470 acres. It owns patented mining claims and mill-sites, together with all property, facilities, and equipment capable of treating ore at the sustained rate of 12,000 tons per day and consisting of mills, power plants, transmission lines, dams, ditches, flume and pipe lines, repair shops and equipment, haulage ways and equipment, wharves and warehouses, together with various accommodation buildings and equipment, all located at or near Juneau, Alaska. In the matter of tonnage of crude ore the respondent is the largest gold mining enterprise in the United States. Approximately 84 per cent of the gold is recovered at the mill in Juneau, Alaska, and is shipped in the form of gold bricks to the Federal Assay Office at Seattle, Washington. The respondent ships the concentrates containing the remainder of the gold, together with silver and lead, from its properties in Juneau, Alaska, to the American Smelting and Refining Company at Selby, California. Steel, lumber, powder, carbide, various machines, bolts and nuts are purchased by the respondent in various states of the United States, the purchases in the eastern part of the United States being shipped to the respondent by boat through the Panama Canal.

The aforesaid operations of the respondent constitute trade, traffic and commerce within the Territory of Alaska and between it and the several States of the United States.

II. THE BACKGROUND OF THE LABOR DISPUTE

The Union is a labor organization which became affiliated with the American Federation of Labor on July 12, 1935. Prior to that date, it was known as the Alaska Mine Workers Union, Local No. 1, which had been organized in the spring of 1934. The first officers were L. C. Keith, president, A. J. Nygren, vice-president, and Cyril Zuboff, secretary. It had 600 charter members, and shortly after its organization, by admission of the respondent,¹ its membership consisted of a majority of the employees of the respondent.

In May, 1934, a committee of the Union met with L. H. Metzgar, general superintendent of the respondent, and conducted negotiations concerning recognition of the Union, wages and hours. These negotiations culminated in the reduction of the seven-day week to a six-day week and in wage increases of 50 cents per day on June 1st, and 35 cents per day on July 1, 1934, which were supposed to make the total weekly wages equal to that which existed prior to the change. The respondent also agreed that it would recognize the Union committee as representing the members of the Union.

By July, 1934, a faction in the Union had become dissatisfied with the alleged lack of aggressiveness on the part of its president in dealing with the respondent. As a result, Keith, the president, resigned. A. J. Nygren, the vice-president, succeeded him as president and Niel L. Heared became secretary.

Intermittent negotiations with the respondent continued, the principal demands of the Union being recognition as the sole bargaining agency for all of the employees and a closed shop. The respondent objected to both demands, and exhibited signs of a growing disinclination to bargain collectively with the Union and an impatience with Nygren. On October 11, 1934, a vote was taken by the Union whether to resort to a strike because of the respondent's refusal to accede to the demands of the Union. Two hundred and ninety seven voted against the strike and 84 in favor. Dissatisfaction with the leadership of the Union again developed at this time among a certain group of employees headed by Keith and some defections from the ranks occurred in the next few months.

After the strike vote of October 11, 1934, a movement grew up among the members of the Union to give greater power to the board of trustees of the Union in calling strikes. At a regular meeting on December 10, 1934, with over 200 members present, the Union voted to revise Section 6 of the by-laws of the Union to read:

“Whenever the board of trustees is delegated to take demands to the company, it shall have supreme power to arbitrate and

¹ Board Exhibit No 3.

otherwise determine ways and means of coming to an agreement. This shall include the power to call a strike.”

On January 14, 1935, the minutes of the meeting held by the Union on December 10, 1934, were read and accepted.

III. THE STRIKE

The undercurrent of resentment among the members of the Union against the denial by the respondent of the Union's demands concerning collective bargaining and other matters, came to the surface in May, 1935, when demands to be presented to the respondent were formulated. These demands were in the form of a proposed written agreement between the respondent and the Union and included, principally, recognition of the Union as the sole collective bargaining agency, a closed shop, wage increases, improvement of labor conditions, and medical aid to workers. On May 12, 1935, the Union met to vote concerning the presentation of the demands. It was decided to take a vote to authorize the board of trustees to present the demands to the respondent, with power, as provided in the by-laws, to call a strike if the demands were refused. Three hundred and thirty eight voted for the presentation of the demands and 32 against. On May 17 the Union presented the demands to the respondent at a conference with Metzgar. Time to consider them was requested and given to Metzgar. On May 22, the Union committee was handed a written answer by Metzgar dated May 20, which was a categorical refusal of all demands of the Union. Concerning the demands for collective bargaining, the answer stated:

“We wish at this time to reiterate our statement of policy made to a ‘Committee of Employees’ about one year ago, namely, that in discussing labor matters with any committee, that committee would be considered as representing only such number of employees as they actually did represent. And further, that the right was reserved to discuss matters of this nature with any other committee or with any individual employee whenever in our opinion such discussion or conference was advisable.”

Since the respondent offered no counter proposal and no inclination to compromise on any of the demands, the trustees called a strike on May 22, 1935, beginning with the 11 p.m. shift. There were 887 employees at the time of the strike, 46 of whom were foremen, watchmen, power plant employees and clerical personnel. Although the Union at the time had 523 members in good standing, all the employees of the respondent, with the exception of the few men necessary for maintenance purposes, went out on strike. Operations in the mine and mill of the respondent were completely shut down, and the business of the respondent came to a standstill.

Soon after the commencement of the strike, a back-to-work movement began on the part of a group of employees, with Ted Danielson, Jack Finley, James Lynam, Jesse Payne, Walter Keisel and Red Soloviess as the leaders. In the early part of June they held a few conferences with Metzgar about returning to work, and according to the testimony of Metzgar and that of others in behalf of the respondent, Metzgar advised them to ascertain the sentiment of the strikers. Petitions for that purpose were circulated among the strikers, and meetings were held. About June 4, 1935, a meeting of the City Council of Juneau was held in response to a petition of strikers and citizens of Juneau to take a vote among the strikers to find out how many wished to return to work. Ted Danielson and others talked in favor of such a vote, while Union officials opposed the intervention of the city authorities, terming such intervention an attempt to break the strike. H. L. Faulkner, city attorney and president of the Territorial Board of Education, who had had a few conferences with Metzgar about the back-to-work movement, had prepared in advance a resolution favoring the taking of such a vote. In this, he claimed to have acted as a private citizen and not as a city official. The resolution passed and balloting took place on June 13, 1935, in the City Hall, the judges, appointed by Mayor Goldstein, being J. J. Connors, Collector of Customs, Allen Shattuck, insurance broker, and John Jones, manager of a hardware store. Ballots were mailed to every employee whose name appeared on the respondent's payroll on May 22, 1935, the day the strike began, the respondent furnishing the judges with the payroll and signature cards. The Union boycotted the voting. Four hundred and sixty one voted to return to work and three voted against. Fifty two additional ballots were received after the polls closed, and 48 ballots were spoiled. According to Mayor Goldstein, the city paid for the expense of the voting.

Further meetings for the purpose of inducing the men to return to work were held thereafter, and were advertised in advance in the Daily Alaska Empire, a local newspaper. An important meeting was the one held on June 19 with Ed Kirchofer as chairman. The meeting was addressed by Ted Danielson and Faulkner, who vividly described the hardships to the respondent wrought by the strike and urged the men to return to work. Faulkner had previously found himself called upon to warn Union pickets not to picket certain places. Similar daily meetings advertised in advance were held the next few days. At a meeting on June 22 it was decided to form the Juneau Mine Workers' Association, hereafter called the Association, to band together those who wished to return to work and membership cards for the Association were passed among

the men. The Association was formed on June 27, and a constitution was adopted. The main features of the constitution are that membership in the Association is limited to those in the employ of the respondent, and that a proposal for a strike vote or for the presentation of demands must originate in a special committee, must be posted for two weeks in advance, and must obtain a two-thirds majority of the membership. Danielson was elected president, Finley, vice-president, and Lynam, secretary of the Association. Ed Kirchofer became president of the Association in December, 1935. These were the men who had been active from the first in urging the men to go back to work. They first called themselves the Mine Workers Benefit Committeemen, and under that name advertised meetings in the local paper. It appears from the testimony of Finley that at the time of the hearing the advertisements had not yet been paid for.

On June 13, the same day on which the men voted in the City Hall, the respondent caused to be posted the following notice:

"1. The conditions of employment will be posted on the bulletin boards but no agreement with any labor organization will be signed.

"2. We will meet the employees' representatives on grievances and complaints.

"3. Each committee will be recognized as representing that number of employees they actually do represent; and their grievances or complaints will be considered in accordance with the number of employees they represent.

"4. Members of a committee must be selected by free choice of the group they represent and must be chosen by vote without coercion or intimidation.

"5. No committee will be recognized as the exclusive bargaining agency for all the employees.

"6. In the event of a discussion of matters of interest to, and affecting all employees, each group will be given representation, in accordance with the size of the group. If there be more than one group represented in a general committee, each sub-committee shall have a membership on the general committee pro rata to the number of men each member represents.

"7. There will be not (*sic*) general discrimination against employees because of their labor affiliations; nor any other unfair or unjust reasons; but the company must reserve the right to exercise sufficient discrimination in such matters to protect the majority.

"8. The employer's obligations are clearly understood and its responsibilities are established. Organizations of employees can

rightly be required to observe the same ethical and moral responsibilities even though they are not specifically prescribed by statute. In this connection, if grievances or complaints are submitted to the Company, we shall expect that a full discussion of the same will be permitted by all employees, and before any strike or walkout is called by any committee or any group, it will be done only upon a vote of a majority of all employees, and after all have been given an opportunity to express their own choice, unmolested and without coercion."

About this time a meeting of the Union was addressed by Metzgar, Mahoney, United States marshal, and Dewey Knight, an immigration official, who was acting as mediator. In their presence the Union men voted against taking another ballot on the question of calling off the strike.

On June 21, a so-called police protection resolution was passed by the city council empowering the mayor to appoint as many special policemen as necessary, impressing every resident of Juneau into service on the police force if called upon. It further provided that it was unlawful for anyone to interfere with the men desiring to register or return to work by shouting, cheering, intimidation, insult, or for more than five men to assemble in one place. It provided for fine and imprisonment for violations. Faulkner drew up the resolution.

On June 22, 1935, the respondent caused a notice to appear in the Daily Alaska Empire, inviting all employees to make individual applications for work on June 24, and all others to make application beginning June 26. On June 24 the men desiring to register formed in squad formation and started marching toward the office of the respondent. Danielson and Finley, active in the move to return to work, were in the line of march. About 50 special policemen and other enforcement officers escorted the marchers. When these approached the picket line near the registration hall a riot took place. As a result, several Union men in the picket line were arrested and indicted. In the winter of 1935 those Union men who were tried were freed by a jury, a fact which evoked a severe attack by Faulkner in an anonymous letter dated December 17, 1935, published in the Alaska Press.

On June 25, the day following the so-called riot, Faulkner, in company with one Pullin, manager of the Electric Light & Power Co., owned by the respondent, drove down the street as far as the respondent's office and attempted to get the strikers to disperse, calling attention to the resolution which the city council had passed on June 21.

Pursuant to some informal conferences between Union and non-Union men, a meeting was held shortly after June 24, attended by both Union and Association men, presided over by Nygren. At this meeting a joint committee was selected to call on Metzgar to request that the opening of the mine, which had been scheduled for July 5, 1935, be postponed in order to give the non-Union employees an opportunity to go before the board of trustees of the Union and prevail upon them to take a vote on the question of returning to work. When the committee called upon Metzgar on July 1 he refused to postpone the date of the opening of the mine. Apparently he was convinced that he had succeeded in breaking the strike.

On July 5, 1935, the mine reopened under police protection.

IV. THE UNFAIR LABOR PRACTICES

During the rest of July, United States Deputy Marshals accompanied the men to and from work. Eighty four watchmen were employed throughout the shut-down. On July 5, 426 old men returned to work, making the total crew 510. According to evidence in behalf of the respondent, the number of men working showed a steady increase, and since July 20, 1935, a full crew has been working in the mine.

By the latter part of July, 1935, the freight of the respondent was tied up because of the refusal of the Juneau local of the International Longshoremen's Association to handle it. Ted Danielson testified that during the first week of August he read that George Cox, the president of the Juneau longshoremen's local, had gone to Seattle to induce the longshoremen there to boycott the respondent's freight. Thereupon, he went to Faulkner and offered to go to Seattle to present the respondent's case. Faulkner approved of the plan. Danielson obtained permission from Metzgar, and with a round-trip ticket and expense money furnished by Faulkner, went to Seattle for five weeks.

In September, 1935, a committee of the Union composed of Nygren, Mike Juras and George Coles of the International Mine, Mill and Smelter Workers, called upon Metzgar and offered to call off the strike if the respondent would agree to reinstate the strikers without discrimination. Metzgar reiterated the position of the respondent as outlined in the statement published on June 13, emphasizing that the men would be rehired only on individual applications when they were needed and that about 40 of the strikers would under no condition be rehired. He refused to name those whom the respondent would refuse to reinstate. Similar overtures were made by the Union thereafter, but they had the same result.

The final effort was made in January, 1936, when the Union made the same offer it had made in September, and Metzgar gave the same reply.

A. *Interference with union activities*

The strikers involved in this case remained employees of the respondent after the calling of the strike. The National Labor Relations Act makes no distinction based on the issues involved in labor disputes. An "employee" under Section 2, subdivision (3) of the Act includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice". The respondent therefore owed a duty to the striking employees to refrain from interfering with the rights which are guaranteed to them in Section 7 of the Act. This duty was violated by the respondent after July 5, 1935, when the Act became effective, in the answers it made to the Union committees in September, 1935, and in January, 1936, when it reaffirmed the policy declared in the notice of June 13. For the respondent to have announced that "no agreement with any labor organization will be signed", "No committee will be recognized as the exclusive bargaining agency for all the employees", and to have insisted that it will consider for reemployment only those making individual applications when this was not made necessary by exigencies of work, constituted a clear attempt on its part to eliminate the Union as a factor by depriving it of its legitimate functions as a labor organization. It is of the essence of the right of workers to organize for the purpose of bargaining collectively that they should be represented by labor organizations in dealing with employers, and that their labor organizations be recognized and dealt with as exclusive bargaining agencies if they represent a majority of the employees. For an employer to deny to his employees these legitimate objectives of labor organization is to frustrate their right to self-organization. The respondent was therefore interfering with, coercing, and restraining its employees in their right to organize for the purpose of collective bargaining.

Although the employees of the respondent walked out *en masse* when the strike was called on May 22, 1935, and although a majority of the employees of the respondent were members of the Union at that time, the evidence fails to show that the Union represented a majority in September, 1935, and January, 1936, the dates on which the Union attempted to bargain after July 5, 1935, the effective date of the Act. However, in view of our finding that the respondent's position during the strike constituted a violation of the right of the employees to organize without interference for the purpose of

collective bargaining, we do not find it necessary to decide whether the respondent refused to bargain collectively with representatives of its striking employees.

B. Domination by respondent of Juneau Mine Workers Association

There can be little doubt that the formation of the Association was of benefit to the respondent. It was part and parcel of the movement to break the strike. By admission of those active in its formation it was initiated to unite those strikers wishing to return to work. Association membership cards were passed at meetings called to advance the cause of the return to work movement. Danielson, Finley, Kirchofer, and the others who were active in the movement were also active in the organization of the Association and became its officers. It is admitted, moreover, that Metzgar engaged in numerous conferences with them soon after the strike was called.

In evaluating the connection between the respondent and the Association, the omnipresent figure of Mr. Faulkner must be taken into account. It was he who assisted the movement to return to work in its incipiency; it was he who brought to bear the full weight of the authorities on the side of those seeking to break the strike; it was he who drew up the resolution calling for a vote on the question of returning to work; it was he who drafted the Police Protection Resolution; it was he who addressed the workers at the Association meeting and urged them to go back to work; it was he who warned pickets to disperse; it was he who paid the fare and expenses of Danielson, first president of the Association, to Seattle; it was he who wrote the anonymous letter condemning the jury for acquitting the strikers charged with rioting; and in all this by his own admission he did not act in his capacity as city attorney. And, admittedly, he was in frequent conferences with Metzgar after the strike was called. Indeed, so universally did the idea gain acceptance that Faulkner was acting in behalf of the respondent that when Danielson wanted to make the trip to Seattle to present the respondent's case before the longshoremen, he did not go to Metzgar but broached the proposition first to Faulkner.

Such activity by Faulkner is entirely incompatible with the respondent's claim that he was in no way connected with the respondent. Faulkner acted as attorney for the respondent in at least one business matter. He was also registered and appeared as lobbyist for the respondent in the territorial legislature. With such active cooperation among Faulkner, the officers of the Association, and the city authorities, which resulted in the formation of the Asso-

ciation, it is not surprising that the respondent could afford to indicate outward indifference and unconcern. Active undisguised participation in the formation of the Association could not better serve its purpose. Its passive aloofness could at least serve to camouflage its subtle guidance of the moves. We are not, however, rendered powerless by the legerdemain of the respondent. What it could not do openly and directly it could not accomplish clandestinely and indirectly. It is not difficult to see through the surface of the respondent's conduct to the actualities of the situation. The respondent dominated and interfered with the formation of the Association.

After the Association was formed the umbilical connection between it and the respondent was not severed. The respondent did not fail to show it a benign countenance. Members of the Association who had struck were not denied employment by the respondent, although, as hereafter related, employees who remained loyal to the Union were shut out. The Association was permitted to post its notices on the company bulletin board, although the same privilege had been denied to the Union. According to Laverne Wilson, a reporter on the Daily Alaska Empire, Danielson told him in November, 1935, that the respondent was to donate a recreation hall to the Association. Finally, Danielson's trip to Seattle, with expenses paid, on business which was really the respondent's, was a hint of unmistakable meaning that members of the Association were in the good graces of the respondent and that there was an identity of interest between the respondent and the Association.

That in dominating the formation and the administration of the Association, the respondent has no cause for disappointment is shown by the fact that the Association never made any demands on the respondent.

We find that the respondent has dominated and interfered with the formation and administration of the Juneau Mine Workers Association and has contributed support to it.

C. Discrimination in regard to hire

The strike is still in progress. However, the various forms of economic compulsion soon visited upon the strikers—stoppage of credit in the food stores and evictions—were not long in taking effect. The necessitous circumstances of the strikers have caused many of them to drift back to work. Some of them were refused reinstatement by the respondent.

Gottfried Isaak worked for the respondent for six years doing mucking and blasting chutes. His work was never criticized. He applied for work on July 14 or 15, and was acceptable to the mine

foreman; but was told by Metzgar to look for a job elsewhere because he was too active in Union affairs. He is a Union man and served on the picket line.

Alvah J. Gillis worked for the respondent for ten months as repairman on a coarse crusher at the mill. He served in the army and belongs to the Union. He applied for work during the latter part of July and again at a later time, and was refused both times.

John Beukers, a member of the Union, served on the picket line. He applied for work sometime in the middle of July and was refused reinstatement. He is one of the men identified by Metzgar on the witness stand as belonging to the group of 40 that would not be taken back by the respondent under any condition. The reason assigned by Metzgar at the hearing is that he talked wildly and is unsafe.

Leonard Ball worked for the respondent since 1934 as stationary engineer. There were no complaints about his work. He applied for work on July 27, and a few days later was told by Metzgar that his application for work came too late. He is one of the 40 men whom the respondent refuses to take back. Metzgar claims the reason for the refusal was that Ball was irresponsible and irrational in his talk. Many men were hired by the respondent after Ball's application was made, even though they were not former employees.

Arley Mullins worked for the respondent since 1933 in various capacities—mucking, skip and bulldozing. He is a Union man and served on the picket line. He applied for work about July 1, 1935, but was never called back to work. A foreman, Eske Eskeson, informed him that he made a mistake in not applying on June 24 when the general registration first took place. Former employees and non-employees were hired by the respondent after Mullins applied.

Jack Romer worked for the respondent for eight years off and on. His job was that of a bulldozer. He was very active in Union affairs and was seen on the picket line by Faulkner. In June he was asked to join the Association by Eskeson and was informed that Metzgar instructed them to organize it. He applied for work on October 24, but was told by Riendeau, a foreman, that it was no use for him or for the rest of the Union men to attempt to get their jobs back or to try to get a job anywhere in the vicinity of Juneau.

Mentur Peterson worked on the conveyors of waste dump. There had never been any complaint about his work. He is an active Union man and served on the picket line. During the riot of June 24, he was arrested and spent six weeks in jail before he was able to get bail. According to his testimony the respondent induced the business men of the community not to bail out strikers. He applied for

his job in September, 1935; but foreman Beistline was evasive about his chances of getting his job back.

Edward Rennie worked for the respondent as bulldozer. He has served in the Canadian army and was an active Union man. He was arrested on June 24 during the riots, was in jail until July 13, and was acquitted by the jury. He applied for work on July 15, at which time he was told by McLean, the foreman in charge of applications, that there was no chance for him to get his job back.

John James Dempsey worked for the the respondent for a year and a half running a hoist in the mine. He was sick when the strike was called. He was an active Union man. When he applied for work July 13, Metzgar told him he should have applied before, and that the reason he did not do so was that he favored the Union. He was never given his job back. Metzgar testified that he had no record of Dempsey applying for a job.

Melvin Carlson worked for the respondent since 1926 on the line crew. He is a member of the Union. He was considered a good worker. On June 23, his foreman, Nordling, asked him to return to work. Nevertheless, the application he made on July 14 or 15, was not acted upon favorably.

Leonard M. Hartsoch worked for the respondent as bulldozer. He was sick for two days before the strike was called. He is an active Union man and served on the picket line. Economic need finally forced him to apply for work on December 10, but his application was not favorably acted upon.

Bill Taroff worked for the respondent as bulldoze boss. He served in the United States Army and was an active member of the Union. He applied for work on August 12 or 13. He was identified by Metzgar as one of the 40 men whom the respondent would not reinstate for the reason that his reputation was bad and that he was unable to get along with the rest of the workers. This was denied by Taroff, who testified that during the seven years that he worked for the respondent he was always on good terms with his fellow employees.

Alex Kuproff worked for the respondent for four years. His work was that of bulldozing. He was an active Union man and served on the picket line. He applied for work on August 14, but was not accepted.

Sam Scott worked for the respondent as bulldozer, was a good worker, an active Union man, and served on the picket line. He applied for work August 10 or 15, but was not returned to his job.

Frank B. Pakator worked for the respondent as bulldozer and mucker. He had served in the United States Army. He is an active Union man and was on the picket line. He applied for work on July 16, but without success. He was identified by Metzgar as one

of the 40 whom the respondent would not reinstate, for the reason that he was prone to have minor accidents. The respondent introduced no evidence in support of this contention.

That lack of work could not be a reason for the failure of the respondent to rehire the above-mentioned employees is shown by the fact that during the period these employees were applying for work, many new persons were being hired and many old employees were being reinstated.

Another group of employees discriminated against by the respondent were those whom Metzgar named on the stand as belonging to the group of about 40 who would not be taken back by the respondent under any circumstances. The cases of Ball, Beukers, Pakator and Bill Taroff we have already considered among those who have made applications to return to work, and we have seen the tenuousness of the charges against them: Others named by Metzgar in the group of 40 were *Alex Borof*, *Ivan Diboff*, *George Hamoff*, *Dan Kelly*, *George D. Kudonoff*, and *Alex Taroff*. Metzgar claimed the men were communists, according to information received by him from immigration authorities whom he refused to name. Others named by Metzgar, and the reasons he gave, were *Roman Ellers*, because he has dodged the immigration authorities, and is not careful with statements made on the witness stand (Ellers testified that in the early part of June he saw Metzgar's car parked in front of Kirchofer's home); *Rex Herman*, because he is employed elsewhere; *Cliff Matthews*, because he works irregularly; *Walter Otis*, because he did not accept the first opportunity to go back to work; *Frank Percich*, because he drinks excessively; *Joe Prpich*, because he works elsewhere and is not in the vicinity of Juneau; *Emil Rundich*, because he runs a business of his own; and *A. J. Nygren*, "not because of his union activities, but because of his arrogance and abuse of authority that he has had, and the abuse of the privilege he has had of using a small newspaper."

The claims made by Metzgar were denied by those employees who testified. The record does not sustain any of the charges, even though it be assumed for the purposes of the record that they are relevant. The charges can only be regarded as a means of deflecting attention from the real reason for the discriminations, that is, Union membership and activities. This is the only proper inference to be drawn from the oft repeated and well considered position of the respondent, which it first announced on June 13, 1935:

"There will be not general discrimination against employees because of their labor affiliations nor any other unfair or unjust reasons; but the company must reserve the right to exercise sufficient discrimination in such *matters* to protect the majority."

Obviously, the word "matters" refers to "labor affiliations" in the previous clause. In the case of Nygren, the alleged arrogance and abuse of authority which rendered him taboo as far as the respondent was concerned could refer only to his record as president of the Union.²

It is true that the 14 employees last discussed did not make application for reinstatement. However, Metzgar's own testimony makes it apparent that had they done so, their fate would have been the same as that of the other active Union men who did apply. In any event, the discrimination against them became final when Metzgar testified; thereafter, it was clear that applications on their part would be of no avail.

We conclude that by refusing to reinstate those employees who made applications to return to work, and by stating that certain other employees would not be reinstated, the respondent discriminated in regard to the hire and tenure of employment of all such employees, and thereby discouraged membership in the labor organization known as International Union of Mine, Mill and Smelter Workers, Local 203, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Furthermore, the respondent discriminated against the remainder of the striking employees in regard to the hire and tenure of employment of all such employees, thereby discouraging membership in the labor organization known as International Union of Mine, Mill and Smelter Workers, Local 203. From June 13, 1935, when the respondent published its conditions for reemployment, the continuance of the strike was due entirely to the position of the respondent. Its insistence upon individual applications, we have seen, was an unfair labor practice, and was perpetrated against all of the strikers directly. Likewise, the announced intent to discriminate plus the fact that the identity of those to be discriminated against was not disclosed until the hearing in this case several months later rendered the respondent's discrimination an unfair labor practice against all of the strikers. Were it not for this position of the respondent the strike might have been settled on or before July 5, 1935, or shortly thereafter. The Union's offer of settlement in September, 1935, lends great likelihood to this probability. The respondent cannot deny that its conduct precluded that possibility. The striking employees are therefore entitled to reinstatement even if employees hired by respondent for the first time on or since July 5, 1935, have to be dismissed. (See *In the Matter of Columbian Enameling and Stamping Co. and Enameling and Stamping Mill Employees Union, No. 19694, Case No. C-14,*

² See, *infra*, footnote 3, pp 141-143

decided February 14, 1936, 1 N. L. R. B. 181.) In addition to those already enumerated, the striking employees are: Sam Adams, Denni Biondi, Nathan R. Carroll, C. W. Cristoffel, Wm. J. Fullerton, Nick Gassett, Ernest Giovanetti, Emil Hietala, John R. James, Andrew Kilbonen, Alex Kordach, Karl Karlson, Mike Kitoff, Toivo Kiukko, Peter J. Ludwig, Frank Maerhofer, Chris Markikis, Alex Misoff, Nick Petievich, Macrus A. Bacon, Jim Burnett, Charles Crozier, John Eldemar, Chas. W. Erickson, John Furuness, Andy Gibson, John E. Guerrero, Frank Hansen, Herman Hoglund, John Jurachich, Pete Kangas, Bob Kitnich, Frank Luyckfassel, Sam Mazoff, Vasily Pavloff, Pasqual Algoso, Gus Adams, Frank Barlow, Pete Carson, John Covich, Pete Felstrom, Alex Gibson, Tom Gatin, Chris Huber, (Paul) Pal Jovich, N. O. Kupoff, A. C. Karginoff, A. T. Kupoff, Ben Lowell, Rad Metrovich, Jim Nicolo, Roy Poloff, Albert Peterson, Martin Antonsen, Ed Anderson, Anton Covick, Joe Collier, Sam Elstead, Gus Fadeef, Bill Gogoff, Nick Giatros, John Hansen, Tom Hill, Mike Juras, Bernard Larsen, J. T. Lancaster, Geo. Matukin, Ed. Maki, Torres Ness, Juan Perlas, Ali Radovich, Einar Runquist, Oliver Sarnisto, Carl Stallard, Harry Datoff, Crisanto Sarabia, Harry Tamoff, Sam Tatroff, Geo. Zuskoff, John Nedkow, John Rogoski, Roscoe Richards, Waino Seppanen, Marco Dapsevich, Sam Dapsevich, Mike Gasoff, Lorenzo Tellorinen, Frank Varlin, Eli Yevich, Jack Howell, W. A. Rasmussen, Nick Romonoff, Bill Sagoff, Marco Savovich, Steve Sepkoff, M. B. Dragnich, Mike Divyak, Brigideo Gomez, Jack Turkovich, Henry Tally, Osvald Varness, William Young, Gust A. Tsoustes, Pete Sopho, Harry Scott, Sven Saren, August Smith, F. F. Davis, Ivan Zaloff, Alex Daroff, G. Mationg, Melvin Carlson.

D. *The respondent's position*

The position of the respondent is that the strike was not "ethical" and "legal" because it was for a closed shop, and because it was not voted upon by the membership of the Union according to the rules of the American Federation of Labor, but was forced upon the membership by the officers through manipulation. The respondent claims, therefore, that it was justified in its subsequent conduct, more particularly in discrimination against Nygren, because of its desire to protect its employees. Were it not for the fact that this position has been reiterated time and again by the respondent and its counsel *

* "At that time the company was fully aware of the fact that a majority of its employees were opposed to a strike. This information was brought to the officials of the company by many employees, although the company at the time the strike was called has no direct proof of the actual number who were against the strike. The mine was

with a self assurance and certitude which brook no contradiction we would not consider it worthy of discussion.

A strike for a closed shop is not illegal; employees striking for such an end are as fully entitled to the benefits of the Act as are all other striking employees.

The evidence does not substantiate the respondent's position that the officers of the Union forced the strike by manipulation. The change in the by-laws of the Union giving the board of trustees a right to call a strike was effected by orderly procedure. A vote of the membership was taken on how to submit the demands to the respondent, authorizing the calling of the strike in the manner followed by the board of trustees. Finally the unanimity with which the employees obeyed the strike call demonstrates the hollowness of the respondent's argument.

But in any case the respondent has no right to pass judgment on what occurred at Union meetings. It is neither the business of the Board nor of an employer to inquire into the manner in which labor organizations conduct their internal affairs. The right to

closed and the company took no steps to interfere one way or the other." (Bd. Ex. No. 3, p. 4.)

* * * * *

"Mr. Croson Which was a matter of common knowledge, and which was a matter that was a fact generally known, which we have alleged in our answer, and if I can show that these officers abused their power given them by the Union in forcing this strike upon this Union, as it now appears,—which strike was called within a few hours after Mr. Metzgar's response, and that there was a definite design and intention to get a strike and close the place up unless they got the closed shop,—if I can prove that I think I have made a very good case out for the Respondent, and also shown why these individuals should not be employed,—

"It is my belief that when this matter comes into the courts, that our courts are going to say that men, even in labor unions, must proceed on an orderly ethical line according to the established order in the Union, and according to law, and that a man who precipitates or participates in an illegal or unlawful strike, and uses his power to pervert the will of the majority, cannot force his employer to re-employ him. I want the Supreme Court of the United States to pass upon that question, and I want my record to be in such shape that when it comes up to the court, the courts will be able to tell you whether or not that is the law"

* * * * *

"Now, I am going to proceed along another line which is for the purpose of laying the foundation for testimony that I propose to show, that we have the right to discriminate against this man in his re-employment, which is one of the charges we are facing, by reason of his set determination and policy as president of the organization—

"Trial Examiner Hope. Just a minute You may proceed.

"Mr. Croson (Continuing)—by reason of his set determinate policy as president of the organization, headed for strike under his leadership. I am sure Your Honor will remember the flourish with which counsel turned him over to us as a discrimination witness I think I have the right to show, and if permitted to do so, we will show why we do not wish to take him back into our employ, because of the determined policy which he has shown,—

"Trial Examiner Hope. Are you prepared to show that Mr Nygren was inefficient in his work, incompetent, or disloyal?

"Mr. Croson. I think this was the greatest kind of disloyalty, not that he was president of the union, not that he acted as president of the union, but that he took the union power which he had, as president, operating hand and glove with his secretary,

self-organization and to bargain collectively must be free from interference with and restraint of any kind by the employer. This right would be a sham and a mockery were the manner of its exercise subject to the approval or disapproval of the employer. The desire, pretended or real, of the employer to protect his employees against the dire consequences envisaged as flowing from the exercise of such right cannot serve as a justification for an inquiry by the employer into the internal affairs of labor organizations. Nor can the fact that a Union may not conduct its affairs in perfect parliamentary fashion give the employer any justification for violating the Act.

The respondent, by the acts above set forth, has interfered with, restrained and coerced its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

Mr. Herd, and that their policy was not to handle union matters and submit such important matters as a strike back to the membership or give the membership any opportunity to be heard on the strike matter, but that they, among themselves, so manipulated the matter, with a set and determined policy from a period immediately following October 11, 1934, when the membership at large had voted down the strike 297 to 84, that the power be placed in their hands giving them the power to call the strike, and that the strike was called and forced upon the membership through their manipulation. That, in my mind, is great disloyalty to any organization,—not that he is president of the union

“Trial Examiner Hope, Can you disassociate the two?”

“Mr Croson. Yes. I might put it this way. You may be a member of the Presbyterian Church and you may use that membership in a way that is violative of all the principles of the Presbyterian Church membership, and in a way that society will look upon you as not deserving of that membership, and not entitled to the respect it should deserve.

“In this question we have before us, if the question of strike had been submitted by this board under the guidance of this man back to the membership, and the body had been permitted to vote upon it, I would not be here today faced with these complaints. They may have voted against me, but it would have been a regular strike called, which is a different situation.

“I am opposing the re-employment of this man on the basis of the way in which he exercised his power, not because he was president of the union, but because of the way in which he abused his power not only from the standpoint of the many members of the union who were in good standing. They were not stool pigeons; they are walking right straight out and telling you who they are. They were opposing the high handed methods by this man and his cohort. I am saying that we should not be expected to put back in our ranks a man who has so abused his power”

* * * * *

“7 There will be not general discrimination against employees because of their labor affiliations; nor any other unfair or unjust reasons; but the company must reserve the right to exercise sufficient discrimination in such matters to protect the majority.

“8. The employer's obligations are clearly understood and its responsibilities are established. Organizations of employees can rightly be required to observe the same ethical and moral responsibilities even though they are not specifically prescribed by statute. In this connection, if grievances of complaints are submitted to the Company, we shall expect that a full discussion of the same will be permitted by all employees, and before any strike or walkout is called by any committee or any group, it will be done only upon a vote of a majority of all employees, and after all have been given an opportunity to express their own choice, unmolested and without coercion.” (Bd. Ex. No. 3C.)

V. EFFECT OF THE UNFAIR LABOR PRACTICES

The strike, the continuance of which at least was due to the aforesaid acts of the respondent, caused a complete shutdown of its mine and mill from May 22 to July 5, 1935, during which period its shipments were at first curtailed and later completely stopped. Even after the mine reopened on July 5, 1935, and operations started, the business of the respondent suffered direct and intentional obstruction which still continues. The longshoremen in Alaska belonging to the International Longshoremen's Association, in sympathy with the striking employees of the respondent, have refused to handle the incoming and outgoing freight of the respondent, and have caused frequent tie-ups of its shipments since July 5, 1935. Likewise longshoremen in the States have for the same reason intermittently refused to handle the freight of the respondent with consequent interference with the flow of its shipments. In fact, so complete became the tie-up and so ill did it portend for the future of the respondent's business, that the president of the Association, Danielson, went to Seattle in an effort to avoid the boycott against it.

We therefore find that the aforesaid acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. International Union of Mine, Mill and Smelter Workers, Local No. 203, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. Juneau Mine Workers Association is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
3. By its domination and interference with the formation and administration of the Juneau Mine Workers Association, and by contributing financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.
4. By the acts of discrimination against International Union of Mine, Mill and Smelter Workers, Local No. 203, set forth in Section IV. A. of this decision, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.
5. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in the labor organization known as International Union of Mine, Mill and

Smelter Workers, Local No. 203, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

6. By all of the acts set forth in these conclusions of law, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders the respondent, Alaska Juneau Gold Mining Company, and its officers and agents, to:

1. Cease and desist from:

(a) Discouraging membership in Local No. 203 of International Union of Mine, Mill and Smelter Workers or any other labor organization of its employees, or encouraging membership in the Juneau Mine Workers Association or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment;

(b) Dominating or interfering with the administration of the Juneau Mine Workers Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Juneau Mine Workers Association or any other labor organization of its employees, except that nothing in this paragraph shall prohibit the respondent from permitting its employees to confer with it during working hours without loss of time or pay;

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

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

(a) Offer to Gottfried Isaak, Alvah J. Gillis, John Benkers, Leonard Ball, Arley Mullins, Jack Romer, Mentur Peterson, Ed-

ward Reviere, John James Dempsey, Melvin Carlson, Leonard M. Hartsoch, Bill Taroff, Alex Kuproff, Sam Scott and Frank B. Pakator, who made application to return to work, and to each and every one of them, immediate and full reinstatement to their former positions, with all rights and privileges previously enjoyed, and make whole said employees for any losses of pay they have suffered by reason of the failure to reinstate them, by payment to each of them, respectively, a sum equal to that which each would normally have earned as wages during the period from the date of his failure to be reinstated to the date of such offer of reinstatement, less the amount earned by each of them, respectively, during such period;

(b) Offer to Alex Borof, Ivan Diboff, George Hamoff, Dan Kelly, George D. Kudonoff, Alex Toroff, Roman Ellers, Rex Herman, Cliff Matthews, Walter Otis, Frank Percich, Joe Prpich, Emil Rundich and A. J. Nygren, against whom the respondent admits discrimination but who have not made application to return to work, and to each and every one of them, immediate and full reinstatement to their former positions with all rights and privileges previously enjoyed, and make whole said employees for any losses of pay they have suffered by reason of their failure to be reinstated by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages during the period from the date on which the hearing in this case was closed to the date of such offer of reinstatement, less the amount earned by each of them, respectively, during such period;

(c) Offer reinstatement to the remainder of its employees who were employed on May 22, 1935, who struck on that date, and who have not since received regular and substantially equivalent employment elsewhere, where the positions held by such employees on May 22, 1935, are now filled by persons who were hired for the first time on July 5, 1935, or thereafter, and place all other employees who were employed by the respondent on May 22, 1935, who struck on that date, and who have not since received regular and substantially equivalent employment elsewhere, on a list to be offered employment if and when their labor is needed;

(d) Withdraw all recognition from the Juneau Mine Workers Association, as representative of its employees, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(e) Prohibit the use of its bulletin boards for posting of notices by the Juneau Mine Workers' Association or any other labor organization of its employees unless free and unconditional privileges as to the use thereof shall be equally extended to International Union

of Mine, Mill and Smelter Workers, Local No. 203, and to any other labor organization of its employees;

(f) Post notices in conspicuous places in its mines and mills, stating (1) that the Juneau Mine Workers Association is so dis-established, and that the respondent will refrain from any recognition thereof; (2) that the respondent will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

3. The complaint that the respondent violated Section 8, subdivision (5) of the Act is hereby dismissed.