In the Matter of CARLISLE LUMBER COMPANY *and* LUMBER & SAWMILL WORKERS' UNION, LOCAL 2511, ONALASKA, WASHINGTON *and* ASSOCIATED EMPLOYEES OF ONALASKA, INC., INTERVENER

Case No. C-93.—Decided September 26, 1936

Lumber Industry—Interference, Restraint or Coercion: interference with organizational activity; attempt to bribe union leaders—*Strike:* provoked by employer's refusal to recognize and negotiate with union—*Boycott—Employee Status:* during strike—*Discrimination:* notice to strikers of termination of employment; requiring strikers to make individual applications for reinstatement; non-reinstatement following strike—*Condition of Employment:* non-membership in union—*"Yellow Dog" Contract—Unit Appropriate for Collective Bargaining:* community of interest; functional coherence—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to meet or negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees; employer's duty, as affected by strike, by majority rule—*Company-Dominated Union:* domination and interference with formation and administration; financial or other support; soliciting membership in; coercion to join; discrimination in favor of in benefits and privileges; check-off agreement with; recognition as exclusive representative of employees; disestablished as agency for collective bargaining—*Reinstatement Ordered, Strikers:* discrimination in reemployment; displacement of employees hired during strike—*Back Pay:* awarded.

Mr. E. J. Eagen for the Board.

Mr. Theodore B. Bruener, of Aberdeen, Wash., and *Mr. Charles H. Paul*, of Longview, Wash., for respondent.

Mr. J. O. Davies, of Centralia, Wash., for the Union.

Mr. C. D. Cunningham, of Centralia, Wash., for Associated Employees of Onalaska, Inc., Intervener.

Mr. Frederick P. Mett, of counsel to the Board.

DECISION

STATEMENT OF CASE

On January 16, 1936, Local No. 2511 of the Lumber & Sawmill Workers' Union, hereinafter called the Union, through its president, Ed Corbett, filed with the Regional Director for the Nineteenth Region a charge that the Carlisle Lumber Company, Onalaska, Washington, hereafter called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, approved July 5, 1935,

hereinafter called the Act. On the same day the National Labor Relations Board, hereinafter called the Board, issued its complaint against the respondent, said complaint being signed by the Regional Director for the Nineteenth Region, and alleging that the respondent had committed 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 Act. In respect to the unfair labor practices, the complaint in substance alleged that:

1. The respondent had at all times since July 5, 1935, refused to bargain collectively with the Union as the exclusive representative of all of the respondent's employees in a unit appropriate for the purposes of collective bargaining, in violation of Section 8, subdivision (5) of the Act.

2. The respondent had discriminated against its employees in regard to hire and tenure of employment and terms and conditions of employment by requiring a great number of its employees to sign "yellow dog" contracts and by refusing to reemploy others of its employees for the reason that they refused to sign such "yellow dog" contracts, all in order to discourage membership in the Union, in violation of Section 8, subdivision (3) of the Act.

3. The respondent had organized, and since November 29, 1935, had dominated and interfered with the administration of a labor organization of its employees known as Associated Employees of Onalaska, Incorporated, and had contributed financial support thereto, in violation of Section 8, subdivision (2) of the Act.

4. The respondent had, by its violation of Section 8, subdivisions (2) and (3), interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and had thereby engaged in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

The complaint and accompanying notice of hearing were duly served upon the respondent. The respondent failed to file an answer to the Board's complaint within the allotted time. At the hearing, the Trial Examiner ruled that unless the respondent did file an answer it would be declared in default. The respondent took exceptions to this ruling, but after leave granted for the purpose, and without waiving its rights, it filed its answer on April 8, 1936. By its answer the respondent denied that it was engaged in interstate commerce; admitted that it had, since July 5, 1935, refused to bargain collectively with the Union, but alleged that the Union had not since that date been the representative for the purposes of collective bargaining of a majority of its employees; denied that it had discriminated against its employees in any manner; denied that it had organized Associated Employees of Onalaska, Incorporated; and

further denied that it had dominated or interfered with the administration of that organization.

The hearing was originally scheduled for February 3, 1936. However, the respondent having commenced court proceedings to enjoin the Board, the hearing was duly continued from time to time pending the outcome of said proceedings, to April 7, 1936. Beginning on that day, Harry Hazel, duly designated by the Board as Trial Examiner, conducted a hearing at Chehalis, Washington. The Board, the respondent, the Union, the Newaukum Valley Railroad Company, which had been made a party to the complaint, hereinafter called the Railroad, and Associated Employees of Onalaska, Incorporated, each appeared by counsel. Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

At the outset of the proceedings, Associated Employees of Onalaska, Incorporated, hereinafter called Associated Employees, filed with the Trial Examiner its petition in intervention. In its petition it alleged its corporate character and purposes; alleged that its membership of approximately 362 consisted solely of employees of the respondent and the Railroad; alleged that the respondent and the Railroad constituted a unit appropriate for the purposes of collective bargaining; alleged that it was and had been for some time the exclusive representative for the purposes of collective bargaining of the majority of all of the employees in the said unit; alleged that no officer, agent, employee, or employees of the respondent or the Railroad had ever interfered with, dominated, controlled, or had ever attempted to dominate and control it in any manner whatsoever; and prayed that it be designated as the exclusive representative for the purposes of collective bargaining of all of the employees of the respondent and the Railroad, and that relief to the Union be denied in so far as the Union's demands affected the rights of Associated Employees. The Board in its answer to the petition in intervention admitted all the allegations of the petition with respect to the corporate existence of the respondent, the Railroad, and Associated Employees, but denied each and every other allegation contained therein. Subject to its stipulation to limit its evidence solely to such matters which affected its rights, Associated Employees was allowed to participate in the hearing.

At the opening of the hearing counsel for the Board moved to eliminate the Railroad as a party respondent, for the reason that said Railroad was a tap line railroad and subject to the Railway Labor Act.[1] This motion was granted by the Trial Examiner.

[1] 45 U. S. C. A. Sec. 151, *et seq.*

Before the taking of any testimony, the respondent by its counsel challenged the jurisdiction of the Board, the Regional Director, the Trial Examiner and the attorneys in the proceeding, and moved that the complaint against it be dismissed for the reasons that neither the respondent nor any of its employees was engaged in interstate commerce; that neither the logging nor the manufacturing operations of the respondent, nor the unfair labor practices alleged in the complaint directly affected interstate commerce; that because of these facts the Act did not apply to the respondent; and that if the Act did apply to the respondent it was palpably unconstitutional and void, being in violation of the Fifth, Ninth, and Tenth Amendments to, and Section 8 of Article I, and Sections 1 and 2 of Article III of, the Constitution of the United States. This motion was denied by the Trial Examiner, and the respondent excepted. When the Board rested its case, the respondent again challenged the Board's jurisdiction and again moved for a dismissal of the complaint on the same grounds upon which its previous motion to dismiss had been predicated. At the close of all the testimony the respondent renewed its previous motion for dismissal of the complaint. The Trial Examiner reserved his ruling on both of these motions for dismissal.

On May 4, 1936, the Trial Examiner duly filed with the Regional Director an Intermediate Report in accordance with Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series I, as amended, in which he denied the motions to dismiss, and denied the relief requested by Associated Employees. He found 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 Act. On May 8, 1936, the Trial Examiner duly filed with the Regional Director an amendment to the Intermediate Report, modifying thereby certain recommendations made by him in the Intermediate Report. Thereafter the respondent and Associated Employees filed with the Board statements of exceptions to the Intermediate Report and the amendment thereto.

The Trial Examiner's ruling with respect to the necessity of the respondent's filing an answer to the Board's complaint must be and is hereby reversed. However, the ruling was not prejudicial to the respondent's case. All other rulings made by the Trial Examiner on motions and on objections to the introduction of evidence are hereby affirmed. The exceptions of the respondent and Associated Employees to the Intermediate Report and to the amendment thereto are hereby overruled.

Upon the entire record in the case, the stenographic report of the hearing and all the evidence, including oral testimony and other

evidence offered and received, and the Intermediate Report, the amendment and the exceptions thereto, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent is a corporation organized under the laws of the State of Washington, having its principal place of business in Onalaska, Lewis County, State of Washington. The respondent is engaged in the general logging, sawmill and mill business, in the cutting of timber into logs, in the sawing and milling of logs into shingles and lumber, and in the sale and distribution of such products.

All of the respondent's logging and milling operations are carried on within Lewis County, in the State of Washington. Most of the logs which the respondent manufactures into lumber, timber and shingles at its sawmill and shingle mill in Onalaska, come from its extensive timber holdings adjacent to Onalaska where its logging operations are carried on. Some of the logs used by the respondent are purchased from other logging companies and truck loggers in the immediate vicinity of Onalaska. The logs cut by the respondent's employees in its woods are transported from the place of felling to a point just north of Onalaska by means of a logging railroad entirely owned and operated by the respondent. At that point the loaded cars are spotted by the respondent's logging Railroad, and are from there hauled to the respondent's sawmill by the Railroad, the respondent paying the Railroad for such services according to a tariff approved by the Interstate Commerce Commission. At the mill these logs are dumped into a pond by the Railroad, where they are graded and sorted and from there sent into the mill. The quantity and type of logs cut and brought to the pond and from there taken into the mill to be manufactured into lumber, timber and shingles by the respondent, is determined in a great measure by the sales orders which it has on hand.

The respondent's sawmill has a daily capacity of over 250,000 feet and is one of the largest sawmills in the Pacific Northwest. It is one of the few sawmills in the Northwest specially equipped to cut large size timbers. The respondent's shingle mill has a daily capacity of about 200,000. In all of its operations the respondent employs on the average about 400 men, inclusive of its clerical and office staff of about 45.

During 1934 the respondent produced 38,559,061 feet of lumber at an average of 208,568 feet per eight-hour shift; in 1935 it produced 34,483,381 feet at an average of 193,184 feet per eight-hour

shift. For the year 1934 the respondent's lumber sales, including sales of shingles, approximated $700,000; for the year 1935 such sales approximated $515,000. During 1934, 1935 and the first three months of 1936 its inventory of lumber on hand has varied between 9,000,000 and 15,000,000 feet. Even though the respondent keeps such a large inventory of lumber of all types and grades,[2] 80 per cent of its daily production is milled and shipped in response to orders on hand.

Orders for shipments of lumber come to the respondent at Onalaska by telephone and telegraph. The town of Onalaska, being a company town, has its own private telephone system owned and operated by the respondent. This private telephone system connects the respondent with the railroad depot at Navapine; thus the telegraph operator on duty at that depot, who is jointly employed by the four transcontinental railroad systems whose tracks run through Navapine, can immediately communicate telegraphic messages to the respondent by phone. No telegraphic wire extends into Onalaska so that all of the respondent's messages must first go to Navapine and from there be phoned by private telephone to it. After phoning a telegraphic message to the respondent the operator confirms the message by sending a written copy to the respondent by means of the Railroad. These messages very frequently refer to sales of respondent's products and come to it from all parts of the country.

Following the receipt of orders for lumber the respondent proceeds to fill such orders by drawing from its stock as well as by special cutting and manufacturing; most of the orders are filled in the latter manner. When the manufactured lumber is ready for shipment it is loaded by the respondent's employees on railroad cars which are then weighed and sealed and taken by the Railroad over its ten and one-half mile track from the respondent's plant at Onalaska to Navapine.

The Railroad is a common carrier. Its stock is owned by the respondent and its officers are the same as those of the respondent. Its offices are located in the respondent's general office building in Onalaska. The Railroad owns only three items of rolling stock; it is supplied with flatcars by the four transcontinental railroads, namely, the Great Northern, the Union Pacific, the Northern Pacific and the Chicago, Milwaukee, St. Paul and Pacific.

Most of the shipments over the Railroad from Onalaska consist of carload lots of the respondent's lumber. The lumber is billed at Onalaska via Navapine to the ultimate destination. Each shipment is accompanied by a waybill, a record of which is made by the station

[2] The respondent does not carry any large timbers in stock. These are cut only to order.

agents of the four transcontinental railroads at Navapine. At Navapine the loaded cars are spotted by the Railroad on its tracks and are from there hauled onto the transcontinental lines by the freight engines of the transcontinental railroads. From Navapine these loaded cars are then taken through the channels of intrastate, interstate and foreign commerce.

Ninety per cent of the manufactured lumber is shipped from Onalaska by the respondent to points outside the State of Washington. Board Exhibit No. 35 reveals that out of a total shipment of 861 carloads of lumber from the respondent's plant between the months of August, 1935, and February, 1936, inclusive, 776 carloads went to places in the United States outside the State of Washington, eight carloads went to docks in the State of Washington to be loaded on boats for shipment to foreign countries, and 77 carloads were delivered to points within the State of Washington. The respondent's foreign shipments, about 10 per cent of its entire production, consist mainly of large timbers. Rarely does the respondent ship its products freight prepaid; however, there are occasions when it does so at the request of its customers.

The respondent in its operations at times calls on the Railroad for services other than those mentioned above. For example, the Railroad has at times upon request taken its locomotive into the respondent's woods for fire-fighting purposes, and at times the crew of the Railroad has upon request worked in various other capacities for the respondent. Conversely, the Railroad calls upon the respondent from time to time for the services of its employees. The respondent's employees have been at times used by the Railroad for work on its roadbed.

The foregoing operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States, and between the State of Washington and foreign countries.

II. THE RESPONDENT'S LABOR RELATIONS

A. *The dispute between the Loyal Legion of Loggers and Lumbermen and the Union*

At about the time the National Industrial Recovery Act became effective in June, 1933, the respondent's manager introduced among its employees a local branch of an organization known as the Loyal Legion of Loggers and Lumbermen, hereinafter referred to as the 4L's. A considerable number of the respondent's employees joined the local of the 4L's, and at one time 251 of the respondent's employees were members.

The 4L's was the only labor organization among the respondent's employees until about February, 1934. At that time a group of the respondent's employees organized Lumber & Sawmill Workers' Union, Local 19280, a labor organization, directly affiliated with the American Federation of Labor, hereinafter called the Union.[3] This organization received its charter from the parent organization on March 19, 1934.

From the very beginning the respondent showed its antipathy toward this "outside" organization among its employees. E. T. Riley, the former president of the Union, testified: "They (the respondent) handicapped us in organizing so that if anyone wished to withdraw from the company union that had been established, known as the 4L's, he would be severely mistreated, which caused many of our men to carry two cards, one with the 4L's and one with the Union . . ." This attitude of the respondent toward the Union had its origin in the fear that it would be unable to dominate the "outside" labor organization, the Union, should it once get the upper hand and displace the company-dominated union, the 4L's. As far as the respondent was concerned, the 4L's was a desirable labor organization to deal with. The constitution and by-laws[4] of the 4L's gave the respondent unlimited power over the determination of its policies by permitting the respondent to be one of its employer members, and by providing for employer participation in meetings of the group. The constitution and by-laws of the 4L's further provided for payment of dues by the respondent as well as by its employee members, and for Boards of Directors composed of equal numbers of representatives of employees and of employers. In contrast to the 4L's, the Union was a completely independent outside labor organization, absolutely free from any employer domination whatsoever. Nothing more need be said to explain the respondent's antagonistic attitude toward the Union.

Although the respondent was antagonistic toward the Union, the organization grew very rapidly, so that by December, 1934, it numbered among its members more than 50 per cent of the respondent's employees. From the very beginning the lines between the 4L's and the Union became drawn, giving rise to a most hostile attitude on the part of the members of each of these organizations toward the members of the other. Each organization staunchly contended that it had the exclusive right to bargain collectively with the respondent on

[3] During April, 1935, this organization became affiliated with the United Brotherhood of Carpenters and Joiners of America, which is in turn affiliated with the American Federation of Labor At that time Lumber and Sawmill Workers' Union Local 19280 became Lumber and Sawmill Workers' Union Local 2511, a labor organization, and the membership of Local 19280 became the membership of Local 2511 Both organizations are hereinafter referred to as the Union.

[4] Board Exhibit No 61.

behalf of all of the respondent's employees. Confident of their ability to prove to the respondent that their organization represented a majority of its employees, the officers of the Union asked the respondent to meet with them as representatives of the majority of its employees. The respondent refused this request, whereupon the officers of the Union requested the old National Labor Relations Board [5] to hold an election among the respondent's employees for the purpose of determining which organization was entitled to bargain collectively with the respondent. An election was conducted, and 206 of the respondent's employees, a majority of the total, voted. One hundred and ninety-one votes were cast for the Union, 12 for the 4L's and three ballots were declared void.

B. *The respondent's early refusals to recognize and bargain collectively with the Union*

Shortly after being notified of the results of the election, the Union wrote to the respondent and requested that the Union be given the privilege of bargaining with it for all of its employees with respect to a proposed working agreement. On January 23, 1935, through its president, W. A. Carlisle, the respondent replied to this letter, stating, "* * * suggest you present such plan to Mr. K. L. Carlisle, Vice-President and Assistant Manager, as I am leaving for the east to be absent three or four weeks." [6] On several occasions shortly thereafter, E. T. Riley, then the president of the Union, met Kenneth Carlisle, the respondent's vice-president, and asked him when the respondent would meet with the Union, only to be told on each occasion that since W. A. Carlisle, the respondent's president, was out of town no meeting could be arranged. During the latter part of January, 1935, however, a committee of the Union succeeded in meeting with Kenneth Carlisle. At this meeting, after the committee had been made to understand that Kenneth Carlisle, in the absence of W. A. Carlisle, had no authority to act on anything that might come up, the terms of the proposed working agreement [7] were discussed in great detail by the parties. The agreement provided for a minimum wage of 50 cents per hour, a six-hour day, and the recognition by the respondent of the Union as the exclusive collective bargaining agency for all of the respondent's employees. Having examined the agreement, Kenneth Carlisle stated that not one provision thereof was fair to the respondent, that the respondent would not under any circumstances agree to

[5] Created by executive order of the President, dated June 29, 1934, pursuant to the authority vested in him under Title I of the National Industrial Recovery Act (Ch. 90, 48 Stat. 195, Title 15, U. S C., sec. 701) and under joint resolution approved June 19, 1934 (Public Res. 44, 73rd Cong.).

[6] Respondent's Exhibit No. 16.

[7] Respondent's Exhibit No. 17.

any of its terms, and that the respondent would not sever its relations with the 4L's in order to deal with the Union because the 4L's had always treated the respondent fairly. The meeting ended in failure.

Early in February, 1935, Poore, an employee in the respondent's logging operations and a member of the Union, was discharged by the respondent, allegedly without cause. On February 18, the Union wrote [8] to the respondent with respect to this discharge but received no reply. On April 8, 1935, the Union again sent a letter [9] to the respondent with respect to this same matter, asking the respondent to meet with its committee to discuss the problem. Shortly thereafter a meeting was held. At this meeting nothing, however, was accomplished with respect to Poore's reinstatement, the meeting breaking up because of unfounded accusations made by one of the respondent's officers.

During March, 1935, a committee of the Union met with Kenneth Carlisle to discuss certain grievances which the Union had with respect to living costs in Onalaska, a company town controlled by the respondent. This meeting also ended in failure after Kenneth Carlisle announced that in the absence of W. A. Carlisle he could do nothing with respect to grievances.

During the latter part of March, 1935, the American Federation of Labor held a convention of its members in the northwest sawmill industry. This convention drew up an agreement which was to be presented to the employers in the sawmill industry. In the event that the employers refused to sign the agreement a strike was to be called for May 6, 1935. During the last days of March, 1935, the Union wrote to the respondent and asked for a meeting at which the terms of the new agreement could be discussed and agreed upon, and the strike at the respondent's plant be avoided. No meeting in response to this request was held, however, until May 1, 1935.

On May 1, 1935, the Union representatives met with the respondent. At this time Kenneth Carlisle again stated that it was too bad that W. A. Carlisle was "too busy with other things" to attend, but that, however, he, Kenneth, would be glad to listen to what they had to say. After a lengthy discussion of the terms of the new proposed working agreement,[10] formulated along the lines of the agreement drawn up at the American Federation of Labor convention, and containing again provisions with respect to a minimum wage, a six-hour day, and the withdrawal of recognition of the 4L's as a bargaining agency by the respondent, Kenneth Carlisle repeated his remarks made at the meeting of January, 1935, to the effect that

[8] Respondent's Exhibit No. 18.
[9] Union's Exhibit No. 7.
[10] Respondent's Exhibit No. 19.

nothing in the proposed agreement pleased him, that the respondent would never sever its connection with the 4L's, and that as far as the respondent was concerned the 4L's would be the only organization dealt with. During this meeting Mr. W. A. Carlisle and Joe Clyde, the respondent's mill superintendent, were in an adjoining room, leaning against a door with their ears pricked, listening to the conversation which took place between the committee and Kenneth Carlisle.

The aforementioned unsuccessful attempts to meet with and bargain collectively with the respondent were motivated by a sincere desire on the part of the Union to arrive at an agreement with the respondent respecting the Union's demands.[11] The respondent, however, did not prefer to settle its differences with the Union, nor did it have at any time a sincere intention of settling its differences or of perfecting an agreement with the Union. Even though the respondent through its officers met with the Union at various times, the meetings were not attended by such officers with a sincerity of purpose, but rather with a desire to conceal the respondent's actual refusal to bargain. The respondent has not made any efforts to justify the foregoing refusals to meet with the Union to settle its differences and to arrive at an agreement. It claims only that the Union did not represent a majority of its employees.

The respondent cannot contend as it does that the Union did not represent a majority of its employees and that therefore it was justified in not dealing with the Union. As early as December 19, 1934, the Union had proved itself, through the election held by the old National Labor Relations Board, to be the labor organization entitled to bargain exclusively with the respondent for all of its employees. After the holding of that election the membership of the respondent's employees in the Union steadily increased so that by May 1, 1935, it numbered about 263. Whereas the Union was experiencing an increase in its membership during this period, the only other labor organization among the respondent's employees, the 4L's, was experiencing a rapid decrease in its membership, so that by May 1, 1935, its membership among the respondent's employees was very small.

C. *The strike of May 3, 1935, and the early attempts to settle it*

The Union, unable to come to an agreement with the respondent through the ordinary and practicable channels of collective bargain-

[11] In addition to demanding a six-hour day, a minimum wage of 50 cents per hour, and that it be recognized and dealt with as the exclusive collective bargaining agency of all of the respondent's employees, the Union was asking for reductions in rents on "company houses", reduction in the rate charged for electricity, and use of the respondent's bulletin boards, which had always been used by the 4L's.

ing, because of the respondent's stubborn determination not to deal with it in a sincere effort to reach an agreement, resorted to a strike, hoping that by the use of this economic weapon the respondent would be forced to bargain collectively with it. Under ordinary circumstances this strike would have taken place on May 6, 1935, in accordance with the plans laid down by the American Federation of Labor convention. The respondent being well aware of the plans laid down by this convention and realizing that its plant would be involved in this strike because it had refused to come to an agreement with the Union, determined to take the offensive by locking out the Union membership on May 5, 1935. Word of this determination reached the officials of the Union and the day of the strike was immediately advanced to May 3, 1935.

At 10:00 A. M. on May 3, 1935, while the respondent's sawmill was operating at full speed with a working force of 217 men,[12] in order to manufacture as much lumber as possible before the strike became effective, all of the members of the Union working that day, 160 in number, walked out on strike, leaving the respondent with only a small crew to man its operations.[13] By 12:00 o'clock so many other employees had walked out that the respondent had to close down its plant.

This strike, which is still in progress, could have been prevented by the respondent had it but recognized the Union as the exclusive representative for the purpose of collective bargaining of all its employees. E. T. Riley, the former president of the Union and its chief representative, testified that recognition of the Union would have prevented the strike without the respondent's acceding to any other of the Union's demands, "because then we would have had an opportunity to negotiate the other demands while we were working."

Hopeful that the strike might be settled in a short time, the Union immediately wrote [14] to the respondent on May 4, 1935, the day following the commencement of the strike, stating that it was "willing and ready to furnish men for the maintenance of water and light plants, fire-fighting and any hazardous condition which may arise"; and that if the respondent at any time wished to confer with the Union, all

[12] Although the respondent's actual working force numbered only 217 men on May 3, 1935, it had a great many more employees who were not working on that day Respondent's Exhibit No. 60 indicates that respondent's employees numbered 344 on May 3, 1935. The respondent, however, admitted that the exhibit included only the names of those of its employees who were actually working on May 1, 2 and 3, and did not include any of its shingle mill employees nor any other of its employees who had been temporarily laid off during the latter part of April, 1935.

[13] Some 103 other members of the Union who were employees of the respondent but not at work on that day went out on strike at about the same time In addition, seven other members of the Union who were employees of the Railroad went out on strike as well.

[14] Union's Exhibit No. 6

that it had to do was to call the Union hall. The respondent did not choose to accept the Union's offer to supply men, but instead hired members of the nearly defunct 4L's organization for emergency purposes, and verbally notified the Union that its operations had closed down indefinitely and that therefore there was nothing about which to negotiate with the Union.[15] Thus the Union was again balked in its efforts to meet with the respondent.

On June 25, 1935, while the strike was in full progress, and while the strikers were engaging in extensive picketing, the respondent by public notice to its employees announced that it had closed all of its payrolls "which discharges all of our former employees, excepting those now employed."

III. THE UNFAIR LABOR PRACTICES

A. *The respondent's refusal to bargain collectively with the Union*

On July 5, 1935, the Act became effective. Its passage by Congress and signature by the President inspired the Union to write[16] to the respondent as follows on July 6:

> "Due to the fact that the Wagner Bill has been passed by the House of Congress, and signed by the President, we feel that a settlement of differences can be brought about by arbitration.
>
> "The Lumber and Sawmill Workers Union, Local 2511 of Onalaska is ready and willing to meet with you for the purpose of arbitration, at any time it is convenient for you."

On July 8, the respondent, by its president, W. A. Carlisle, answered this letter as follows:[17]

> "We have your letter of July 6th asking for a conference for the purpose of arbitration.
>
> "As previously advised by public notice, our properties have been closed indefinitely, all our former employees discharged, hence we have no differences to arbitrate."

On August 5, 1935, the respondent resumed operations. Its workers on that day numbered 109 old employees and 65 new employees. Twenty-two of the old employees who returned to work were former members of the Union who had renounced their Union affiliation in order to get back their jobs. Early in the morning of

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[15] On May 6, 1935, the respondent confirmed this verbal notification by a public notice to all of its employees, stating that its operations had closed down indefinitely and that if any of its employees desired to remain in the company houses they could do so by paying their monthly rents in advance or else consider the notice as a legal notice to vacate.

[16] Respondent's Exhibit No. 22

[17] Respondent's Exhibit No. 23.

that day, while the respondent's mill was surrounded by Union pickets, the Union representatives again attempted to meet with the respondent. E. T. Riley, the Union's representative, testified as follows with respect to his conversation with Kenneth Carlisle at that time: "I asked him in preference to the turmoil, whether we could not get together with the Regional Board,[18] and Mr. Kenneth Carlisle said, 'Absolutely not. As far as we are concerned, you are absolutely out.'" Kenneth Carlisle also said that arbitration of any kind was out of the question.

On August 8, 1935, Riley contacted Regional Director Hope and Father Thompson in Olympia, Washington. At Riley's request, they attempted to arrange a meeting between the respondent and the Union committee. On August 10 the respondent, through its sales manager, Frank Brandemeier, informed Director Hope and Father Thompson that the respondent would meet the Union committee if the committee did not include Riley. They promised that the committee would not include Riley. On the same day the Union chose a new committee, excluding Riley. However, later in the day Brandemeier called Riley and told him that the respondent would not meet with the new committee as it had promised, since there was nothing about which to negotiate. Brandemeier at that time ridiculed the entire Union organization and offered Riley a job in Seattle at a huge salary provided he would desert the Union. Riley refused.

After August 10, 1935, the Union representatives made no further efforts to meet with the respondent because they felt such efforts would prove useless and hopeless. There is no dispute about the fact that the respondent has refused to bargain collectively with the Union on all of the aforementioned occasions after July 5, 1935. The respondent readily admits this fact by its answer, Paragraph X of which reads: "This answering respondent further admits that since July 5, 1935, and up to the present time it has refused to bargain collectively with Lumber and Sawmill Workers' Union Local 2511."

Was the respondent bound to recognize and bargain collectively with the Union after July 5, 1935? Without question, the Act made it the respondent's legal duty to do so. Section 8, subsection (5) of the Act declares that a refusal by an employer to bargain collectively with the representatives of his employees constitutes an unfair labor practice. Section 9 (b) of the Act reads in part as follows:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit

[18] There is no question that Mr. Riley by using the term, "Regional Board", meant the Regional Director. His confusion results from the fact that under the old National Labor Relations Board a Regional Board acted in the territory now under the Regional Director of the Nineteenth Region.

appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The respondent contends that at the time of the first refusal to bargain collectively with the Union after July 5, 1935, it had no employees to whom it owed this duty to bargain collectively, since it had discharged all of its employees several weeks before. This attempted discharge took place subsequent to the date of the strike. The respondent by its notice of discharge sought to alter its legal relationship to these employees. This it was powerless to do under the Act, without their consent. Section 2, subsection (3) of the Act reads in part:

"The term 'employee' shall include any employee, . . . and shall include 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 and who has not obtained any other regular and substantially equivalent employment . . ."

Under Section 2, of subsection (3) of the Act an employee whose work has ceased as a consequence of or in connection with a labor dispute retains his employee status as long as such labor dispute remains current and as long as he has not obtained regular and substantially equivalent employment.

That the strike, which began on May 3, 1935, and which is still in progress, was a current labor dispute at the time of the aforementioned refusals to bargain collectively cannot be questioned. The respondent was constantly reminded of its currency by the Union pickets who unceasingly picketed its plant at Onalaska.

Striking employees retain their employee status during the currency of the labor dispute. By so holding we reaffirm what we have said with respect to the status of striking employees in other cases.[19] Thus it is clear that the 263 members of the Union who went on strike on May 3, 1935, and thereafter, were still employees of the respondent at the time of the aforementioned refusals to bargain collectively.

These 263 striking members of the Union had been engaged in various operations in and about the respondent's Onalaska plant consisting of respondent's sawmill, shingle mill, yard and pond, as

[19] *In the Matter of Columbian Enameling and Stamping Co and Enameling & Stamping Mill Employees Union No. 19694*, Case No. C-14, decided February 14, 1936 (1 N L. R. B 181); *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 (*supra*, p. 125).

well as in its logging operations. These operations constitute a unit appropriate for the purposes of collective bargaining. That these 263 members of the Union had designated the Union as their representative for the purposes of collective bargaining in that unit is not questioned. It is clear that these 263 members of the Union represented the majority of the respondent's employees in the said unit on all of the aforementioned occasions after July 5, 1935.[20]

We conclude that on all of the aforementioned occasions after July 5, 1935, the respondent refused to bargain collectively with the Union as the representative of its employees.

B. *The respondent's discrimination against its employees*

After the strike had been in progress for about two months, Joe Clyde, the respondent's mill superintendent, Frank Brandemeier, the respondent's sales manager, and others, conceived a plan whereby the respondent's plant could be reopened without any further labor trouble. According to this plan the respondent's old employees were to be contacted by Clyde and several of his foremen, for the express purpose of getting these men to come back to work. Clyde testified that since experience had proved that the 4L's and the Union could never get along side by side in the respondent's mill, it was to be explained to the employees that their return to work could be made effective only upon the renouncement of all affiliation with either of the organizations. Clyde further testified that by getting the men to come back under such terms it would be much easier to start another more satisfactory labor organization "within" the respondent's mill after it had resumed its operations.

In accordance with the "theory" of this plan Clyde and his foremen saw a great many men and solicited their return to the respondent's mill. However, only a few Union men were solicited. Each man who expressed his desire to return was immediately sent to Brandemeier's office, there formally to sign with Brandemeier's assistance an application for work. This application, which a great many men signed and under the terms of which they returned to work on August 5, 1935, and thereafter, read in part as follows:

[20] When the respondent's operations shut down on May 3, 1935, its employees numbered slightly more than 344, 263 of whom were members of the Union. The status of these employees being unchanged at all times after July 5, 1935, it is evident that the Union represented the overwhelming majority of the respondent's employees after that date. This was true even after August 5, 1935, when the respondent in its operations employed quite a number of new employees in addition to some of its old employees. By that time the membership in the Union had increased to 326 (exclusive of those 22 Union men who returned to work). The Union's majority was thus so great that even though some of the strikers had at these times obtained employment elsewhere, it is clear that the Union still represented a majority of the employees.

"If employed by the above company (Carlisle Lumber Company) I agree: To at any and all times respond to any call for the protection of the property of said company by fire or otherwise; to faithfully perform the duties of the position for which I apply to the best of my ability and to at all times hold the interest of the company uppermost in my thoughts and efforts. *To renounce any and all affiliation with any labor organization.*" [21] [Italics ours.]

Any one who refused to sign an application with the above clause was refused employment by Brandemeier. Martin Jacobsen, a member of the Union who applied for work with the respondent during the latter part of July, testified that upon being interviewed by Brandemeier for a job he was told that it would be necessary to sign one of the applications, and that unless he did that he would never work for the respondent. Jacobsen refused to sign the application and was refused employment. Ralph Delano and Joe Quinn, also members of the Union and employees of the respondent, were also turned down by Brandemeier because they refused to sign this "yellow dog" application.

On July 29, 1935, with a great many of these signed applications in its possession, each containing the "yellow dog" clause above quoted, the respondent posted the following notice [22] on its bulletin boards:

"GENERAL NOTICE

"ONALASKA, WASHINGTON,
"*July 29, 1935.*

"We have been approached by a committee representing a large number of our former employees, urging us to resume operations and agreeing on a satisfactory wage basis. Application cards have been signed by over 260 men through the efforts of this employee committee.

"We have repeatedly stated that all departments have been closed down indefinitely, but with the assurance of this group of applicants of their loyal and efficient service, we have consented to resume operations, and will start the mill plant on Monday, August 5th.

"*The opportunity is hereby given for all former employees to sign application cards on the same basis and conditions by July 31st, after which date unfilled jobs will be assigned to other applicants.* [Italics ours.]

[21] Union's Exhibit No. 12.
[22] Union's Exhibit No. 11.

"Those occupying our houses August 1st who have not signed an application card or who do not qualify to return to work, will be subject to eviction proceedings which were started July 1st.

"CARLISLE LUMBER COMPANY,
"By W. A. CARLISLE,
"General Notice #7 *President and General Manager.*"

The phrase in paragraph three of this notice reading, "on the same basis and conditions", can have but one meaning. The respondent was giving all of its former employees who had not as yet signed up for work on July 29, 1935, an opportunity to make application for work if they agreed "to renounce any and all affiliation with any labor organization". Although quite a number of its employees jumped at the opportunity to get back their jobs with the respondent under such conditions, only 22 members of the Union thought it fit to renounce their affiliations with the Union in order to get back their positions.

By this notice of July 29, 1935, the respondent addressed itself directly to its employees who were members of the Union. By that notice it sought to satisfy its moral obligations toward these Union members and at the same time to exert economic pressure upon them to return to work before it went out to hire outside strikebreakers to man its operations. From the Union's prior attitude of determination to fight for its rights, the respondent well knew that the offer of a job to its employee members of the Union under the terms and conditions set forth in the "yellow dog" application would not be accepted. Further evidence of this fact can be found in the respondent's failure to solicit the Union men to return to work. Although Clyde, the respondent's mill superintendent, was engaged in soliciting the respondent's employees to return to work, he tactfully managed to avoid soliciting any members of the Union. Both before and after July 29, 1935, the members of the Union knew that the only way in which they could get back their jobs was by renouncing their affiliation with the Union, the respondent having made clear its attitude with respect to the rehiring of its employees through the activities of Clyde and his foremen, and Brandemeier. The announcement of this "yellow dog" policy by the respondent through Clyde and Brandemeier, followed by the respondent's notice of July 29, 1935, offering jobs to its employees who were members of the Union only if they agreed "to renounce any and all affiliations with any labor organizations", must under all the circumstances be regarded as a definite refusal to take back these employees as they were, i. e., with their Union status. Most of the members of the Union made no formal application to go to work. They knew that

such application for work would be turned down unless they signed the "yellow dog" application. To say that because they have not made application to go to work they were not refused employment would be to place a penalty upon them for not doing what they knew would have proved fruitless in the doing. The respondent's illegal conduct in publishing the aforesaid notice precluded all possibility of employment and relieved them of the necessity of making a formal application. Nor is it an answer to say that they were striking, and would not have applied in any event. That was for them to decide. Furthermore, under the Act an employee cannot be required to renounce his union affiliation as a condition of employment.

By announcing its "yellow dog" policy not to hire any of its employees unless they renounced all affiliations with labor organizations, and by soliciting and requiring its employees to sign applications for work whereby they agreed to renounce all affiliations with labor organizations, the respondent has discriminated against these employees with regard to terms or conditions of employment. By refusing to employ the members of the Union for the reason that they refused to renounce their Union affiliation the respondent has discriminated against these of its employees with regard to hire and tenure of employment. By all of such acts, the respondent has discouraged membership in the Union, and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[23]

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[23] The last paragraph of the respondent's notice of July 29, 1935, reads as follows:

"Those occupying our houses August 1st who have not signed an application card or who do not qualify to return to work, will be subject to eviction proceedings which were started July 1st."

The respondent's ownership of the entire town of Onalaska including the houses in which its employees live, places the shelter of these employees and their families at its mercy By its notice of July 29, 1935, containing the above paragraph, the respondent sought to make the most of its economic control over its employees. At that time these employees were in the midst of destitution, having for months failed to receive their weekly checks as a result of the strike and shut-down caused by the respondent's refusal to bargain collectively with the Union. Eviction from their homes would have meant a removal from Onalaska to a distant town, since Onalaska offered no shelter or employment other than that under the respondent's control. With the knowledge that the economic welfare and destiny of its employees rested solely in its hands, and knowing that it could make it extremely uncomfortable for its employees not to act in accordance with its offer, it proceeded to publish its notice. In the opinion of the Board this notice, especially the last paragraph thereof, constitutes a flagrant violation of the rights guaranteed to the employees of the respondent by Section 7 of the Act. In this case, where the respondent has brought its employees to an out-of-the-way company town where the only shelter and means of livelihood are controlled by the respondent, the notice above mentioned was calculated to and did exert violent coercion upon the respondent's employees The only purpose of this economic coercion was to break the individual employee's desire for union organization and representation, and to make him return to work a traitor to his principles A graver disrespect for the rights of its employees to self-organization and to form, join or assist labor organizations, as evidenced by the respondent's notice of July 29, 1935, can hardly be imagined. The flagrancy of the respondent's violation of Section 8, subsection (1) by its publica-

The respondent's contention that it did not initiate the use of the "yellow dog" applications under which the men went to work, that these applications were signed voluntarily by the men, and that therefore its hands were clean with respect to the whole matter, has no merit. The facts are undisputable that Clyde and Brandemeier were both executives of the respondent; that they were both drawing a salary from the respondent during the time that their services were not needed in their regular jobs due to the shut-down; that during this period these two men using the respondent's offices and stationery assisted the respondent's employees in signing these applications; that the respondent knew of and acquiesced in the signing of these applications by its employees; that the respondent itself, by its notice of July 29, 1935, made it clear that it was in favor of the use of these "yellow dog" applications and thereby offered its employees their jobs only if they signed such applications. Kenneth Carlisle himself admitted that the respondent required these "yellow dog" applications to be signed up to August 5, 1935. In the face of the foregoing facts the respondent cannot seriously contend that it had clean hands with respect to the "yellow dog" applications. The respondent not only initiated the use of the "yellow dog" contracts, but perpetuated their use as well. It cannot be said that the respondent's employees who signed these contracts did so voluntarily. They were forced to sign them in order to get back their jobs and to prevent eviction of themselves and their families. Accepting employment under the terms of those contracts while in the midst of poverty and destitution and facing eviction from their homes unless they did sign, the employees cannot be said to have signed these contracts voluntarily. In any event, the use by employers of such contracts is prohibited by the Act even though employees enter into them "voluntarily."

With respect to the above findings of fact regarding the respondent's refusal to bargain collectively and its use of the "yellow dog" contracts, it is important at this point to discuss an action brought against the Union and its officers and members by the respondent, which action was commenced in the Superior Court for the State of Washington for the County of Lewis on August 12, 1935.

In its complaint [24] in this action the respondent in substance alleged that it had reopened its plant on August 5, 1935, with 51 per cent of its old employees, that on that day, as well as on the days following, the members of the Union had interfered with the operation of its mill by committing acts of violence against and by otherwise interfering

tion of the aforementioned notice, warrants the Board in here expressing its opinion in the matter even though no separate allegation of a violation of Section 8, subsection (1) by virtue of such publication has been set forth in the complaint

[24] Board Exhibit No. 3–3.

with its employees, and by picketing and trespassing upon its property, and prayed that the Union and its officers, members, and agents be enjoined from interfering in any manner whatsoever with its employees, from picketing, and from interfering in any other manner whatsoever with the operation of its mill.

After a hearing duly held in this matter the Superior Court of the State of Washington for Lewis County, by Judge C. A. Studebaker, issued its opinion [25] on August 21, 1935. In its opinion the Court, after summarizing the laws of the State of Washington to the effect that workers shall be free from the interference, restraint, or coercion of their employers in matters of self-organization or any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, that contracts whereby the employee agrees not to join, become, or remain a member of any labor organization are contrary to the public policy of that State, that workers have the right to strike and picket, and that no court shall have the power in any labor dispute to issue a restraining order to any employer "who has failed to make every reasonable effort to settle such dispute either by negotiation, or with the aid of any available governmental machinery of mediation, or voluntary arbitration", stated that the Carlisle Lumber Company, the respondent here, has since the time of closing its plant made little or no effort to arbitrate or compromise the dispute between it and the Union, and has acted contrary to the public policy of the State of Washington by requiring its employees to sign "yellow dog" contracts. With respect to this conduct of the Carlisle Lumber Company, the Court specifically remarked as follows:

> "Now the plaintiff (Carlisle Lumber Company) here frankly admits that in order to get the crew that is now working, it, the plaintiff company, through its employees caused some of the old working men and other new working men coming in, to sign an agreement either to withdraw from this union, or not to join a union. This was not in compliance with the law and the legislature said that such agreements were against the public policy of this state.
>
> "Nor can I find that the company has made 'every reasonable effort to arbitrate or settle this dispute'. In fact the company has done very little if anything, and Mr. Kenneth Carlisle, speaking for the company, frankly states that in his opinion nothing can be done."

The Court having found that the respondent had not complied with the laws of the State of Washington and that it therefore was not entitled to a restraining order, refused to grant such an order,

[25] Board Exhibit No. 3–4.

but held the cause open pending further developments. On September 17, 1935, another hearing was held in this action on the Union's motion to dismiss the case. In its supplemental opinion [26] the Court again called attention to the fact that the respondent had not made any effort to settle the dispute since its beginning, and added that since the respondent had made no efforts to settle the dispute since the time of the first hearing, the case stood as it did at that time. The Court further remarked:

> ". . . But we find that not only the legislature of the State of Washington has passed such laws, but that Congress itself has passed almost identical laws. Each of those bodies, that is the legislature, and the Congress, recite the reasons for those laws and the reasons are the terrific conditions existing throughout the nation. Each of those bodies has said that such laws are necessary and vital to the perpetuity of the nation and to the peace and quietude of the people. But the company here, the plaintiff, says they won't recognize those laws; they won't follow them at all; they will make no effort to do anything concerning those laws . . . If all employers of men in the nation would take the same attitude and pursue it this nation could not long continue as a nation. The action of the company here, the plaintiff, has been coercive and arbitrary aside from refusing to follow the law . . ."

In dismissing the case the Court stated that since the Carlisle Lumber Company had come into court with unclean hands and as a wrongdoer, it could not expect equitable relief.

Here we have the opinion of an independent court sitting in judgment in a case involving the same issues of fact as are presented in the present case before the Board. It is significant that with respect to those issues, we have come to the same conclusions, the court on its own hearings, the Board on its own independent hearings and records.

C. *The respondent's domination of Associated Employees*

Immediately after the respondent's plant reopened on August 5, 1935, a movement was started to put into effect Clyde's plan with respect to the creation of a new labor organization among the respondent's employees. Since all of the respondent's employees had been informed of the nature of this plan by Clyde and others during the time that the respondent solicited its employees to return to work, and since all of these employees were told that the "yellow

[26] Board Exhibit No. 3–5.

dog" contract which they were being asked to sign would facilitate the carrying out of the objectives of this plan, the creation of the new labor organization came as an expected event. After a few preliminary meetings this new organization, Associated Employees, was formed. Its articles of organization were filed on November 29, 1935, and its by-laws became effective on December 10, 1935, the day of the first meeting held by the intervener. The articles of incorporation set forth among the purposes of Associated Employees the statement that it was created to bargain collectively with the respondent and the Railroad.[27]

Shortly thereafter, Associated Employees supplied itself with application cards [28] and a membership drive was carried on. With respect to the solicitation of members for this newly-created labor organization the record shows that Baker Carlisle, one of the respondent's officers, distributed these application cards among the respondent's employees and told them that unless they signed them their jobs would be taken away and given to other people who would sign them. Further testimony in the record shows that two men were dismissed by the respondent for the reason that they refused to sign an application card for membership in Associated Employees. All but a few of the respondent's employees signed application cards, such signature sufficing to make these employees members of Associated Employees.[29]

By signing an application card for membership in Associated Employees each employee authorized the respondent to deduct from his pay check the monthly dues incident to such membership. The respondent admits that it has since January, 1936, collected these dues for Associated Employees through regular deductions from the pay checks of its members.

The first meeting of Associated Employees following its organization was held in the respondent's club house. Various committees of Associated Employees have from time to time met in this same club house.[30] The respondent's officers have at times attended and participated in these meetings. Dingess, one of the respondent's officers, on one occasion gratuitously gave his services to Associated Employees in the preparation of news articles for publication. Such

[27] The respondent recognizes Associated Employees as the exclusive bargaining agency of all of its employees and has at times bargained with it over trivial matters. Although the respondent resumed its operations on August 5, 1935, on a lower basic wage scale than was in existence on May 3, 1935, when its mill shut down, Associated Employees has not made any efforts to have that wage scale increased through collective bargaining. Collective bargaining between the respondent and Associated Employees has so far concerned itself only with the "dryness of lunches", and the "7 day week" of the power plant employees.

[28] Intervener's Exhibit No. 5.

[29] In January, 1936, the employees of the Railroad also joined Associated Employees.

[30] Use of this club house had also been allowed to the 4L's, but never to the Union.

news articles pertaining to the respondent's business history later appeared in news organs under the title, "Articles concerning conditions at Onalaska in the past, present and future. Articles written by the Associated Employees of Onalaska".

Notices of meetings of Associated Employees are posted on the respondent's bulletin boards alongside the notices issuing from the respondent. Notices of elections of Associated Employees and instructions for voting are run off on the respondent's mimeograph, and are distributed by the respondent in its pay envelopes. The respondent has never charged Associated Employees for the use of the mimeograph machine.

The early announcement by Clyde and Brandemeier that a company union would be created after the plant reopened, the activities of Baker Carlisle, another of the respondent's officers, with respect to the solicitation of members for Associated Employees, the clause in the membership application blank giving the respondent the authority to deduct monthly dues from pay checks of the members of Associated Employees, the presence of the officers of the respondent at the meetings of Associated Employees, the distribution by the respondent of the election notices and instructions, could have no other effect upon the employees than to identify the creation, the perpetuation and the administration of Associated Employees with the respondent. It is not unreasonable to say under such circumstances that the respondent's employees joined Associated Employees and remained members of that organization in order not to incur the respondent's disfavor. It is at least evident that such circumstances are calculated to take away the freedom of choice of an employee with respect to the joining of labor organizations.

From the aforementioned facts it is clear that the respondent has not only been instrumental in creating Associated Employees and in persuading its employees to become members thereof, but by its many gratuitous services and privileges has fostered and continued its existence. We therefore find that the respondent has dominated and interfered with the formation and administration of Associated Employees and has contributed support to it, and that by such acts, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The relief prayed for by Associated Employees in its petition in intervention must accordingly be denied.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

In the past, strikes and lockouts, resulting from unfair labor practices, in sawmills and logging camps, have had a disastrous effect on

commerce. Board Exhibit No. 52, under the title, "Strikes and Lockouts in Sawmills and Logging Camps in 1934, and in January to July inclusive, 1935 by Major Issues Involved", and prepared by the United States Department of Labor, Bureau of Labor Statistics, reveals that during the year 1934 and the first seven months of the year 1935, 25 strikes and lockouts took place in the sawmills and logging camps of the country. These strikes and lockouts involved the identical issues involved in the strike in the present case. These bitter labor controversies involved 41,681 men and resulted in a total of 1,497,156 man-days of idleness. The enormous economic loss incident to strikes and lockouts resulting from unfair labor practices, the same as those involved in this case, and the resultant disastrous effects on commerce are made apparent by the foregoing statistics.

The strike in the present case has given rise not only to extensive picketing of the respondent's sawmill and its products, but also to an effective nation-wide boycott of the respondent's products burdening commerce, and to physical obstructions to interstate and foreign commerce as well.

During the early months of this strike the Union engaged in peaceful picketing of the respondent's mill and the county roads leading through Onalaska. When the respondent reopened its mill and resumed its operations on August 5, 1935, the picketing resulted in violence between the striking pickets and the newly-employed strikebreakers. This violence steadily grew in intensity, necessitating the intervention of the Washington State Police on August 9, 1935, to maintain law and order and to prevent the destruction of property. The entrenchment [31] of the State Police at Onalaska with the consequent placing of limitations on the Union's rights to picket the respondent's plant, resulted in the striking Union resorting to other methods to inform the public of the unfairness of the respondent toward organized labor, and to thus impede the operations of the respondent.

Having decided to conduct a nation-wide boycott against the respondent, the Union at first endeavored to persuade the union men working on the various transcontinental railroads not to handle any of the products which were being shipped from the respondent's mill. These endeavors, however, proved fruitless since the union men on the railroads refused to cooperate. Following such refusal to cooperate, the Union petitioned the Twin Cities Central Labor Council, Centralia, Washington, to put the respondent's products on the unfair list. This body responded by immediately passing a

[31] During their stay at Onalaska on this occasion and again in February and March, 1936, the State Policemen whose job it was to maintain law and order and who in addition assumed the duty of molesting the pickets and strikers; and of breaking up the strike, were fed and housed by the respondent in its hotel without charge.

resolution [32] putting the respondent's products on the unfair list.[33] Copies of this resolution were sent to central labor bodies throughout the West, the Midwest and the East. Thereafter the Union cooperated with the Twin Cities Central Labor Council in checking the destinations of the lumber shipped from the respondent's mill. Having thus obtained the names and addresses of the consignees, the Twin Cities Central Labor Council sent letters to all the central labor bodies in the vicinity of these consignees setting forth therein the fact that the respondent's lumber was "hot" and "unfair" and urging them to persuade their members to refrain from handling such lumber. In addition, the Twin Cities Central Labor Council, by letter, notified each consignee that such lumber was unfair to organized labor and urged him to refrain from buying any more lumber from the respondent, until the respondent had satisfactorily settled its difficulties with the Union. As a result of these activities of the Twin Cities Central Labor Council, various labor organizations throughout the United States refused to handle the respondent's lumber, and shipments of such lumber were consequently tied up for days at a time.

During the latter part of September, 1935, the Union and an agent of the United Brotherhood of Carpenters and Joiners of America met with the business agent of the union at the Dornbecker Manufacturing Company [34] in Portland, Oregon. The Dornbecker union agreed to cooperate fully in the boycott and as a result shipments of lumber from the respondent to the Dornbecker Manufacturing Company soon "tapered off to nothing".

At a later date a Mr. Chapman, an exporter at Portland, Oregon, and a large purchaser of lumber from the respondent, was persuaded by a Union representative to refrain from buying any more lumber from the respondent. A check of the shipments of lumber by the respondent shortly thereafter revealed that no more lumber was being shipped to Chapman.

The longshoremen engaged in the unloading of cars and the loading of ships on the Pacific Coast have from the very beginning, at the request of the Union and the Twin Cities Central Labor Council, refused to handle any of the lumber shipped from the respondent's mill. Whereas about 10 per cent of all of the respondent's lumber was shipped to foreign countries before the strike, the shipment of respondent's lumber in foreign commerce has ceased entirely

[32] Union's Exhibit No 13

[33] The placing of an employer on the unfair list serves as a notification to all union men to withdraw their patronage from that employer.

[34] Dornbecker Manufacturing Company has in the past purchased vast quantities of lumber from the respondent and was up to the time mentioned herein one of the respondent's biggest customers

since the strike because of the impossibility of getting such lumber loaded onto ships. Recently, on one occasion, a foreign shipment of the respondent's lumber was "smuggled" through the longshoremen by mingling such lumber with lumber which originated in another sawmill. The mingling of this lumber involved great expense and delay.

In December, 1935, the respondent shipped four cars of lumber to a firm of exporters in Olympia, Washington. This shipment, destined for a foreign country, was traced by members of the Union and picketed at the docks at Olympia. The longshoremen seeing that this lumber was "unfair" refused to load it on board the vessel on which space had been arranged for it by the exporters. Again, later in December, 1935, another shipment of seven cars of lumber also destined for a foreign country was shipped by the respondent to the same firm of exporters at Tacoma. This shipment experienced the same fate as the shipment to Olympia. Having missed their ships, these shipments had to be stored by the exporter at Tacoma at great delay and expense. These shipments were released by the Union for shipment during January, 1936, only after the firm of exporters had made an agreement with the Union. This agreement [35] provided in substance that in consideration of the release of these cars of lumber the firm of exporters agreed not to buy nor attempt to buy any more lumber from the respondent; that the firm would write the respondent notifying it of its position; that the firm would post a bond of $500 to be forfeited by it if it at any time purchased or attempted to purchase any lumber from the respondent; and that the firm would contribute $100 to the kitchen fund of the Union. Thereafter the firm canceled all its orders with the respondent.

In February, 1936, the respondent still having made no effort to settle its differences with the Union, the Union decided to exert its efforts at blocking shipments of lumber from the respondent's plant at a point closer to the respondent's mill. On February 25, 1936, the Union established a picket line on the Railroad, at a point below Navapine but above the storage tracks of that Railroad where the main tracks of the Railroad are crossed by the road leading to Navapine. These pickets, some of whom wore placards reading, "Carlisle Lumber Company is Unfair to Organized Labor", were placed at that point to notify the train crews of the railroads and the public passing along the highway of the fact that a strike was being carried on against the respondent, in the hope that the train crews would refuse to handle the respondent's lumber. During that day a freight engine of one of the transcontinental lines,

[35] Union's Exhibit No. 31.

seeking to back empty cars onto the storage tracks of the Railroad, was prevented from so doing by the pickets, some of whom walked back and forth across the railroad tracks, and others of whom were standing on the tracks. One of the members of the Washington State Police who was present and watched the activities of these pickets, along with the Prosecuting Attorney of Lewis County, tried unsuccessfully to clear the tracks for this freight train by shooting off several gas bombs into the midst of the pickets. Thus unable to get through the picket lines to drop off its empties, the freight train had to withdraw and return to the tracks of the transcontinental lines.

Between February 25, 1936, and March 2, 1936, by maintaining its pickets at the aforementioned point on the Railroad as well as on the transcontinental lines at a point in Navapine where such lines are crossed by the county highway, the Union was successful in tying up between 40 and 50 carloads of the respondent's lumber. The presence of the Union pickets on the tracks of these lines at all hours of the day and night during this period prevented the freight engines of the transcontinental lines from moving onto the tracks of the Railroad where the cars containing lumber had been placed ready for pick-up by these engines. The picketing of these railroads during this period was effective not only in tying up interstate shipments of lumber from the respondent's plant but in preventing materials from being shipped to the respondent as well.

From the foregoing it is clear that the strike involved in the present case, resulting from and perpetuated by unfair labor practices committed by the respondent toward its employees, was effective not only in cutting down the amount of respondent's lumber flowing in interstate and foreign commerce, but in giving rise to physical obstructions to interstate and foreign commerce as well.

The close relationship between the respondent and the Railroad, the latter being owned by the former, and both being managed and operated by identical officers, along with the organization of the Union to include not only the employees of the respondent but those of the Railroad as well, were factors instrumental in producing another burdening effect on commerce in the present case. At the time of the strike the Union numbered among its members seven employees of the Railroad. These seven employees of the Railroad had grievances against the Railroad identical in kind to those had by their fellow members against the respondent. When the Union went out on strike against the respondent these seven employees of the Railroad went out on strike against their employer in sympathy with their fellow members. This they might not have done so readily had they not been so organized and had the respondent's

officers not been so closely identified with those of the Railroad. Since the Railroad employed only about 14 men the crippling effect upon it caused by the walkout of seven of its employees is clearly evident. This peculiar organization of the Union to include not only the respondent's employees but those of the Railroad as well, tends to lead to and has lead to strikes on the Railroad, whenever a strike such as the present one arising out of unfair labor practices takes place against the respondent, thus directly burdening and obstructing commerce.

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

The Remedy

Having found that the respondent has engaged in various unfair labor practices, appropriate relief which will effectuate the policies of the Act must be given. What we said with respect to the relief to be given in a similar case, *In the Matter of Columbian Enameling & Stamping Company and Enameling & Stamping Mill Employees Union No. 19694*, Case No. C–14, decided February 14, 1936 (1 N. L. R. B. 181, 198), is particularly applicable here. In that case we said:

> ". . . It would be futile simply to order the respondent to bargain with the union since the plant now has its full quota of men and the process of collective bargaining would yield little comfort to those who are not employed; nor do we know whether the union now represents a majority. Under these circumstances we must restore, as far as possible, the situation existing prior to the violation of the Act, in order that the process of collective bargaining, which was interrupted, may be continued."

A great number of the members of the Union who were employed by the respondent at the time of the strike and who went out on strike are still unemployed by the respondent or at regular and substantially equivalent employment elsewhere, while on the other hand there are at present employed by the respondent a number of individuals who were not so employed at the time of the strike on May 3, 1935.

The Union's purpose in desiring to meet with the respondent after July 6, 1935, on August 5, 1935, and on August 10, 1935, was to settle the strike and to put its members, who were employees of the respondent, back to work.

> ". . . It does not lie in the mouth of the respondent to say that this result would not necessarily have followed. The law

imposed a duty to bargain under these circumstances because that result might have followed. It is respondent's conduct which has precluded that possibility . . ." (*In the Matter of Columbian Enameling and Stamping Company. Ibid.*)

Following our action in the *Columbian* case we shall order the respondent to offer reinstatement to members of the Union and its other employees who struck on May 3, 1935, and thereafter and whose positions are now filled by persons who were hired on or after July 8, 1935, the first date after the effective date of the Act on which the respondent refused to bargain collectively.

We have found that the respondent has created Associated Employees, which it has fostered and is still fostering among its employees and which it recognizes as the exclusive bargaining agency of all of its employees. In order that the Union may obtain the fullest protection in the exercise of the rights guaranteed by the Act, and in order that the respondent's employees who are at present members of Associated Employees may freely exercise their right to choose their own representatives for the purpose of collective bargaining, we shall order the respondent to affirmatively withdraw all recognition from Associated Employees as an agency of its employees for the purposes of collective bargaining. In *In the Matter of Wheeling Steel Corporation and The Amalgamated Association of Iron, Steel and Tin Workers of North America et al.*, Case No. C–3, decided May 12, 1936 (1 N. L. R. B. 699, 710), with respect to the relief to be granted the employees of the Wheeling Steel Corporation from the interference and domination by that corporation of labor organizations in its plant known as Departmental and General Councils, we stated:

"Simply to order the respondent (Wheeling Steel Corporation) to cease supporting and interfering with the Councils would not set free the employee's impulse to seek the organization which would most effectively represent him. We cannot completely eliminate the force which the respondent's power exerts upon the employee. But the Councils will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen the Council as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these compulsions. Consequently the respondent must affirmatively withdraw recognition from the Departmental and General Councils, as organizations,

for the purpose of collective bargaining upon behalf of its employees."

With respect to the respondent's discrimination against its employees with regard to hire and tenure of employment, and terms and conditions of employment resulting from the respondent's conduct set forth above under IIIB, to simply order the respondent to cease and desist from so conducting itself would not fully effectuate the policies of the Act. At present a great number of the respondent's employees are working for it under the terms of a "yellow dog" contract. As to these employees, in order to fully effectuate the policies of the Act, we shall order the respondent personally to inform in writing each and every one of its employees who has entered into such a "yellow dog" contract with it, that such contract constitutes a violation of the National Labor Relations Act and that it is therefore obliged to discontinue such contract as a term or condition of employment and to desist from in any manner enforcing or attempting to enforce such contract. We shall further order the respondent to post notices in conspicuous places about its various operations stating that the "yellow dog" contracts of employment entered into between it and some of its employees are in violation of the National Labor Relations Act and that it will no longer offer, solicit, enter into, continue, enforce or attempt to enforce such contracts with its employees. Furthermore, the respondent's discrimination against the members of the Union, commencing with the publication of its notice of July 29, 1935, thereafter making it impossible for its employees who were members of the Union to return to work, has resulted in an untold loss of wages. In order to fully effectuate the policies of the Act, this loss of wages to the members of the Union, which resulted directly from the respondent's illegal conduct in publishing the aforesaid notice and in further pursuing its discriminatory "yellow dog" policy, must be restored. We shall therefore hereinafter order the respondent to make whole those members of the Union for any loss of wages they have suffered in consequence of the aforesaid illegal conduct of the respondent.

Conclusions of Law

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

1. Lumber & Sawmill Workers' Union, Local 2511, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. Associated Employees of Onalaska, Incorporated, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. The respondent's Onalaska plant, including its milling and shipping operations, along with its logging operations, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. By virtue of Section 9 (a) of the Act, Lumber & Sawmill Workers' Union, Local 2511, having been selected as their representative by a majority of the employees in an appropriate unit, has at all times since July 5, 1935, been the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

5. By its refusal to bargain collectively with the Union as the representative of its employees on or about July 8, 1935, on August 5, 1935, and on August 10, 1935, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

6. By discriminating against its employees in regard to hire and tenure of employment and terms and conditions of employment to discourage membership in the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. By dominating and interfering with the formation and administration of Associated Employees of Onalaska, Incorporated, and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

8. By interfering with, restraining and coercing its employees in the exercise of their rights 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 and other mutual aid and protection, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

9. 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

On the basis of the above 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 that the respondent, Carlisle Lumber Company, its officers and agents, shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to

form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) From discouraging membership in Lumber & Sawmill Workers' Union, Local 2511, or any other labor organization of its employees, or encouraging membership in Associated Employees of Onalaska, Incorporated, or any other labor organization of its employees, by discriminating against employees in regard to hire or tenure of employment or any term or condition of employment;

(c) From dominating or interfering with the administration of Associated Employees of Onalaska, Incorporated, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Associated Employees of Onalaska, Incorporated, 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;

(d) From refusing to bargain collectively with the Lumber & Sawmill Workers' Union, Local 2511, as the exclusive representative of all of its employees, excluding office and clerical workers, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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

(a) Offer reinstatement to its employees who were employed on May 3, 1935, who struck on that date or thereafter, and who have not since received regular and substantially equivalent employment elsewhere, where the positions held by such employees on May 3, 1935, are now filled by persons who were hired for the first time on July 8, 1935, or thereafter, and place all other employees who were employed by the respondent on May 3, 1935, who struck on that date or thereafter, 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 before any new employees are hired;

(b) Make whole its employees who were employed on May 3, 1935, who struck on that date or thereafter, and who were members of the Union on July 29, 1935, the day of the respondent's first act of discrimination against all of the members of the Union, for any losses of pay they have suffered by reason of such discrimination, by payment to each of them a sum equal to that which each would normally have earned as wages during the period from July 29, 1935, to the date of respondent's offer of reinstatement, less the amount earned by each of them during such period;

(c) Upon request, bargain collectively with Lumber & Sawmill Workers' Union, Local 2511, as the exclusive representative of all of its employees, excluding office and clerical workers, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Withdraw all recognition from Associated Employees of Onalaska, Incorporated, as the representative of its employees for the purposes of dealing with the respondent concerning grievances, wages, rates of pay, hours of employment, or conditions of work;

(e) Personally inform each and every one of its employees who has entered into a "yellow dog" contract with it, that such contract constitutes a violation of the National Labor Relations Act, and that it is therefore obliged to discontinue such contract as a term or condition of employment, and to desist from in any manner enforcing or attempting to enforce such contract;

(f) Post notices in conspicuous places about its various operations stating (1) that Associated Employees of Onalaska, Incorporated, is disestablished as the representative of its employees for the purpose of collective bargaining and that it will refrain from any recognition thereof; (2) that the "yellow dog" contracts of employment entered into between it and some of its employees are in violation of the National Labor Relations Act, and that it will no longer offer, solicit, enter into, continue, enforce or attempt to enforce such contracts with its employees; (3) that it will cease and desist in the manner aforesaid; and (4) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Order.