

In the Matter of **GLOBE MAIL SERVICE, INC. and BOOKKEEPERS,  
STENOGRAPHERS AND ACCOUNTANTS UNION, LOCAL 12646**

*Case No. C-148.—Decided March 10, 1937*

*Mailing and Distributing Service—Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action; discrediting union; propaganda against union; interference with organizational activity; distributing anti-union statements among employees; attempts to persuade employees not to join or to resign from union; attempts to secure disclosure of identity of union members; intimidating union officers and members; during strike—soliciting individual strikers to return to work—*Discrimination:* discharge—*Unit Appropriate for Collective Bargaining:* functional coherence; eligibility for membership in only organization among employees—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to meet and negotiate with representatives; employer's duty as affected by majority rule, by strike—*Strike:* provoked by employer's unfair labor practices—*Employee Status:* during strike—*Strike-Breakers:* employed—*Reinstatement Ordered, Non-Strikers—Back Pay:* awarded—*Reinstatement Ordered, Strikers:* strike provoked by employer's violation of law; displacement of employees hired during strike.

*Mr. David A. Moscovitz* for the Board.

*Mr. Norman W. Arnheim*, of New York City, for respondent.

*Mr. Sidney Elliott Cohn* and *Mr. Samuel Cohen*, of New York City, for the Union.

*Mr. Joseph Rosenfarb*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Upon charges duly filed by Bookkeepers, Stenographers and Accountants Union, Local 12646, hereinafter called the Union, the National Labor Relations Board, hereinafter called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region, issued its complaint dated November 28, 1936, against the Globe Mail Service, Inc., New York, N. Y., hereinafter called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

The complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter

called the Act. On December 4, 1936, the respondent filed its answer to the complaint, denying each and every allegation of the complaint with reference to the business of the respondent and further denying that it had engaged in the alleged unfair labor practices.

Pursuant to the notice, a hearing was held in New York City on December 7 to 12, inclusive, and December 21 and 22, 1936, before Donald Wakefield Smith, a member of the Board, as Trial Examiner duly designated by the Board. The Board, the Union and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. Evidence was first introduced at the hearing bearing upon the question whether the Board had jurisdiction in the case. At the conclusion of the testimony on this point, counsel for the respondent moved that the proceedings be discontinued and the complaint dismissed on the ground that the Act is unconstitutional, being in violation of the Fifth and Tenth Amendments of the Constitution of the United States, and on the further ground that the Act does not apply to the respondent. The motion was denied. All of the Trial Examiner's rulings on motions are hereby affirmed.

Thereafter the case was transferred to and continued before the Board, pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended. Counsel for the Union and for the respondent filed briefs with the Board, and on January 6, 1937, made oral arguments before the Board in Washington, D. C.

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

### FINDINGS OF FACT

#### I. THE RESPONDENT AND ITS BUSINESS

The respondent is, and has been since September, 1922, a corporation organized and existing under the laws of the State of New York, having its principal office and place of business in the City, County, and State of New York. Charles E. Whitehouse, Jr., is the president and owner of a majority of the stock of the respondent, and is in complete charge of its operations.

The respondent is engaged in the distribution and quantity mailing of advertising matter, periodicals, and merchandise samples. Its service consists of the compiling and maintenance of mailing lists, and addressing, filing, zoning, distributing, and mailing matter given to it by its various customers to be forwarded to addresses of its cus-

tomers located throughout the United States. It does not compose or print the advertising matter that it handles. It is engaged solely in mailing and distribution.<sup>1</sup> It receives most of its orders from firms having either headquarters or branch offices in New York City, many of its customers being nationally known firms doing business on a nation-wide scale.<sup>2</sup> Its business is solicited personally by salesmen and by direct advertising.

The operations of the respondent are geared on the one hand to the orders of its customers and on the other hand to meet the mail schedules and regulations of the post office and the express companies. The order usually states the time within which the work is to be completed. The business of the respondent is departmentalized according to the operations involved. Its sales department receives the order; then, upon receipt of the mailing matter from the customer or, upon the customer's order, from the printer, it is taken care of in the automatic addressing department, folding department, mailing department, and shipping department as the particular order may require. The work of the employees in the same department and between departments is closely interrelated. There is also much interchange of employees between the various departments. Most of the distribution done by the respondent is through the postal service, with some being accomplished by freight and through express companies. Mailing matter is folded, inserted in envelopes or wrapped, and addressed. It is then sorted according to cities and states, an operation which is called zoning. The matter is then placed in mail sacks and loaded by employees of the shipping department on trucks belonging to and operated by the respondent, which haul and deliver the matter to the post office. There employees of the respondent un-

<sup>1</sup> In a circular issued by the respondent and describing its service (Bd. Exh. No. 2) the respondent declares that "We do not write copy nor are we printers. But we will gladly refer prospective users of such service to specialists whom we can recommend through personal contact. We number many printers and agencies among our clients."

<sup>2</sup> The circular to which reference has already been made (Bd. Exh. No. 2) contains the following list of customers, which the respondent claims is not complete: Polo Magazine, Time Magazine, News-Week, Inc., Skouras Theatres, Prentice-Hall, Inc., Tiffany & Company, The Texas Company, E. R. Squibb & Sons, United States News, The American Weekly, The Conde Nast Press, Radio City Music Hall, The American Mercury, MacFadden Publications, The MacMillan Company, J. P. Morgan & Company, Life Publishing Company, Knott Hotels Corporation, American Legion Monthly, Erwin, Wasey & Company, Daniel Starch & Associates, Colonial Radio Corporation, Johns-Manville Corporation, Curtiss-Wright Corporation, Lead Industries Association, General Motors Corporation, Underwriters Trust Company, Eastern Pharmacal Company, Doubleday Doran & Company, Eugenics Publishing Company, Park & Tilford Company, Inc., Westinghouse X-Ray Company, New York Telephone Company, American Pharmacal Company, National Prohibition Association, Columbia Broadcasting System, E. Griffiths Hughes & Company, Colgate-Palmolive-Peet Company, McGraw Hill Publishing Company, Chilean Nitrate Sales Corporation, James F. Newcomb & Company, Inc., Robert E. Ramsey Organization, Inc., International Magazine Corporation, Metropolitan Life Insurance Company, National Association of Book Publishers, American Society of Mechanical Engineers, American Agricultural & Chemical Company, Pacific Coast Borax Company—20 Mule Team Borax, United Air Conditioning Sales Corp., Robert Collier, Inc.—Specialist in Direct Mail Selling, RKO Theatres—De Luxe, Neighborhood and suburban theatres.

load the sacks on to the platform. Zoning is an essential part of the respondent's operations, because it facilitates shipment and is a requirement for obtaining certain favorable rates on quantity mailing. In order to facilitate mailing further, the respondent has various methods of stamping the matter which it handles—by pre-cancellation machines, postage meters, and stamp printing.

About 20 per cent of the business of the respondent consists of preparation, maintenance, and distribution of mailing lists and other matter, which are placed at the disposal of its customers. The rest of the matter handled by the respondent is mailed or shipped. The preponderant part of the matter which is ultimately mailed is distributed or mailed directly by the respondent; the rest, after it is folded, inserted in envelopes or wrapped, addressed, zoned, and in many instances placed in mail sacks, is returned to the customers and ultimately reaches the mails directly through the latter. Ninety-five per cent of the matter distributed directly by the respondent is destined to points outside of the State of New York.

The respondent claims to be the largest mail service firm in New York<sup>3</sup> and is one of the largest of its kind in the United States. It occupies the fifth, sixth, and seventh floors at 148 West 23rd Street in New York City. It has about 100 permanent employees and a fluctuating number of a few hundred extra employees. It handles approximately 25,000,000 pieces of mail a year, and its yearly gross income is about \$200,000.

The operations of the respondent consist in acting as mail agent in arranging for transportation of mail matter in interstate commerce, and in launching such matter in interstate transportation. These operations are in and about the current of interstate commerce, and so interwoven with interstate transportation as to be part of interstate transportation. The employees of the respondent are directly engaged in such operations.

The aforesaid operations of the respondent constitute trade, traffic, transportation, and commerce among the several States.

## II. THE UNFAIR LABOR PRACTICES

### A. *The labor dispute*

The genesis of the labor dispute is to be found in the dissatisfaction of the employees with the wage and hour situation obtaining in the plant of the respondent. Before the strike on September 29, 1936, some of the employees were working on a piece rate basis while the majority were paid on an hourly scale. Several factors entered into the determination of the wages of the employees. The first was

<sup>3</sup> Board Exhibit No. 2.

the bond plan. The respondent issued bonds which were distributed among its employees. Solicitation among the employees for subscriptions to bonds was pressed by the respondent, and payment for the bonds was effected by deductions from the wages of the employees. One of the methods used by the respondent to induce its employees to purchase bonds was the bonus plan. It consisted of awarding money premiums by variable and unstable increases in wages to employees over and above the minimum wage of \$10 for a 44 hour week. The factors entering into the awarding of the bonus were efficiency, vote by fellow employees, whether the employee purchased bonds, and finally, the opinion of the department head and management. No definite weight was assigned to any of these factors; nevertheless, it is apparent that the management could unfairly favor any of its employees at will. This bonus plan was one of the major causes for discontent among the employees.

Another wage determining factor was the so-called 90 per cent plan by which the total outlay for payroll, rent, and other operating expenses was at no time to exceed 90 per cent of the gross income of the respondent. The other 10 per cent was to be allotted for the president's salary and for depreciation of equipment. This situation was further complicated by the fact that although nominally the work week consisted of 44 hours, actually most of the regular employees worked many hours overtime, sometimes as high as 80 hours a week, with a standard pay of 30 cents per hour for overtime, irrespective of the hourly wage or piece work rate. The overtime situation was rendered more onerous by reason of the fact that a stagger hour system prevailed; that is, employees were paid only for the time they actually worked, and when there was no work they had to stay in the plant and be subject to call for work at any time.

It is not surprising that the result of such a labor policy was that confusion and dissatisfaction obtained among the employees of the respondent. The resentment among them finally became articulate in the fall of 1936, when it took expression in a sharp increase in Union membership. The Union is a federal labor union affiliated with the American Federation of Labor.

In September, 1936, Whitehouse became aware of organization activities among the employees and of the prospective collective demands for improvement of wage and hour conditions. On Monday, September 21, 1936, he called together the salesmen, the department heads and their assistants and discussed the situation with them. Conflicting opinions were expressed as to the policy to be adopted towards the Union. Miss Bruce, who was one of the department heads, advised Whitehouse to meet with the representatives of the Union and ascertain their demands. Apparently such a policy did not find favor with Whitehouse because thereafter hostility to the

Union was evident in every move of the respondent. Thus, during the late afternoon of Thursday, September 24, 1936, Whitehouse called all of the employees to the seventh floor and delivered himself of a tirade against the Union. A uniformed policeman was present, apparently to impress those present. Whitehouse read the following prepared statement,<sup>4</sup> which was also distributed to every employee present, with instructions to fill out the attached ballot:

"TO OUR EMPLOYEES

"It has been called to my attention that a salesman claiming to work for a union has been soliciting the signatures of our employees to have an outsider speaker for them to the management.

"I am in this plant about 12 hours per day including Saturday, which covers both night and day shifts. Nobody in the Globe Mail Service, Inc. who had occasion to speak to me ever yet failed of a hearing and sympathetic consideration.

"We have already made increases in those departments where decreases were necessary at the beginning of the Summer. We have announced that 90% of our income would be devoted to payroll after taking care of necessary expenses. If anyone inside or outside the company can show us how to pay you more money, you won't have to pay him yourself. The company will gladly do so.

"In case you are bashful about speaking to me direct, or prefer to have someone speak for you, this is your opportunity. Write the name of that person on the ballot below and I will talk to him. You don't have to pay \$2.00. You won't have to parade up and down with a sign on your back and you won't have to lose pay striking.

"If anyone tries to threaten you in order to keep you from working, or force you to join a movement you don't want to join, they come in the class of criminals. We will have them put under detective observation immediately and you will be given police protection.

"C. E. WHITEHOUSE."

"I have spoken to you direct whenever I had anything to say.

"I should like to have ----- represent me.

"I should like to speak to you privately.

"Remarks :"

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<sup>4</sup> Board Exhibit No 9

George Green, one of the respondent's salesmen, circulated among the employees to collect the ballots. The elevator operators were told not to take anyone downstairs until the meeting was over. However, Charles Fournier and Ruth Lev left without filling out or depositing their ballots. This was in full view of Whitehouse and Green.

Although the employees were not expressly required to sign the ballot, the legend "I should like to speak to you privately" placed the employees in a position where they had to sign the ballots or risk the clear implication that they were members of the Union. There is no evidence as to the result of this so-called election. However, it was clearly a move on the part of the respondent to forestall further unionization of its employees.

Moreover, the legends

"I have spoken to you direct whenever I had anything to say" and

"I should like to speak to you privately"

could not have been taken seriously by the employees. It had an ironic sound in view of the fact that sometime before the respondent had caused to be circulated among the employees a reprint from the American Business Magazine,<sup>5</sup> which contained a story with a moral. The tale was that of a worker who had requested a raise and had been demoted as a result. The front page of this reprint contained the challenge

"REWARD!!

"Is this person to be found in Globe Mail Service Inc."

Another step in this active hostility of the respondent to the Union took place the next day. This was pay day for the employees of the respondent, and the Union had decided at a meeting that week to collect Union dues on that day. Since the employees were to be paid at the end of the day the collection of dues was to take place after work. The Union appointed John Mollica, Charles Fournier, Miss Ruth Lev, and a fourth undisclosed employee of the respondent to collect the dues. On the same day, Green, apparently the right-hand man of Whitehouse in labor relations, supplanted Miss Bruce as department manager. During the day, Green's assistant, Sylvia Cohen, told Fournier, Miss Lev, and Mollica that she was willing to wager that no Union dues would be collected on that day. Miss Cohen, it may be parenthetically stated, had joined the Union a few weeks before without having been solicited to do so.

Miss Cohen proved to be an excellent prophet. That afternoon Green sent Fournier, an expert operator of a reliefograph machine,

<sup>5</sup> Respondent's Exh No. 2.

which makes plates for addressographing, to one of the respondent's customers to insert printed matter in envelopes; for this work, Fournier was to be paid less than his normal piece rate. Fournier left for the job assigned to him, objecting however that he had never done that kind of work. Fournier worked for the customer on Friday, did not report there for work on Saturday, and returned to the respondent's plant on Monday morning.

Ruth Lev and John Mollica were also prevented from collecting dues on Friday. Miss Lev was watched by one of the employees at the end of the day. The same fate befell John Mollica. Whitehouse testified that Green hired two guards on Friday; Whitehouse, however, gave no particular reason for this step. Green denied they were guards. He explained their presence by claiming that they were helping him to re-arrange equipment. One of the guards was George Green's brother. Although Mollica had never had an assistant, Green assigned his brother as an assistant to Mollica despite the latter's protestations that he did not need any help. For the rest of the day Green's brother followed Mollica wherever he went and kept him under constant surveillance even when he was leaving at the end of the day. Before Mollica quit work that day he was informed by a fellow employee that he was to be searched. Apparently fearful of consequences if his Union membership would become known to the respondent, he gave his Union card and money to his informant. No Union dues were collected that day.

At about 11 a. m. on Monday morning, September 28th, Green informed Fournier that there was no more work for him and that he was discharged. Fournier protested to both Green and Whitehouse that there was enough work for him, but to no avail. That evening a Union meeting was held and it was determined that a committee should see Whitehouse on the next day for the purpose of effecting the reinstatement of Fournier and to discuss certain demands with respect to wages and hours. The committee was to consist of Sam Barron, president of the Union, Murray Nathan, business manager of the Union, John Mollica, and Charles Fournier. Between 10:30 and 11 o'clock in the morning on Tuesday, September 29th, Barron and Nathan appeared on the sixth floor of the respondent's plant to call Mollica so that he could join them in conferring with Whitehouse. Green refused to call Mollica, but ordered the two guards to evict Barron and Nathan. The guards proceeded to shove and push Barron and Nathan despite their explanations of the purpose of their visit. The guards took them to Whitehouse's office on the fifth floor and stood over them. Barron gave his Union card to Whitehouse's secretary and asked to see Whitehouse. Whitehouse's secretary told Barron that Whitehouse would speak to him on the phone. While Barron was explaining the purpose of his

visit to Whitehouse, he was forcibly interrupted by Green. Whitehouse claimed that he could not see Barron then and asked him to wait. Barron explained that they were being physically molested by the guards and it was therefore impossible for them to remain. According to Barron, Whitehouse told him to come back some other day, but Barron replied that the presence of the guards showed that Whitehouse was unwilling to bargain with the Union. However, Barron left his telephone number with Whitehouse and asked him to call later that day, and further told Whitehouse that they would be willing to meet him at any time. Whitehouse made no effort to call off the guards. Meanwhile, Mollica, during the rest period, at about 10:30, went down to the fifth floor to join the committee. Green, seeing him, asked what he was doing there and Mollica explained the purpose of his visit. Green inquired of one of the office girls whether certain papers were ready. Meanwhile, he told Mollica to return to work in a closed corner of the fifth floor. Mollica, fearful that he might be physically assaulted, refused to go. Green then gave him the time sheet and paper which the girl had by that time prepared, and told him he was fired. Barron, Nathan, Fournier and Mollica left for Union headquarters, where a meeting of the employees took place. They were joined there by Ruth Lev. She had been discharged that morning by Green who told her that there was no more work for her. When she insisted that there was sufficient work for her, he indignantly remarked that he would not permit her to run his business.

At noon many of the employees of the respondent met at Union headquarters and decided to call a strike in protest against the discharge of Fournier, Mollica, and Lev, and because of the refusal of Whitehouse to bargain collectively with the committee of the Union. The strike was officially called for 5 o'clock that day. Barron tried several times that afternoon to call Whitehouse but without success. Over 100 employees went out on strike. About 45 remained.

### *B. The discharges*

The circumstances surrounding the discharges of Fournier, Mollica, and Lev point unerringly to their Union activities as the real reason for their discharge. They were all regular employees who had high seniority in their respective classifications. Fournier was employed by the respondent from 1925 to 1928, and from August, 1935, until he was discharged on September 28, 1936. The reason assigned by Green for Fournier's discharge was that there was a slackening of work and since Fournier was inefficient, he had been selected for discharge. However, no evidence was introduced to substantiate this; in fact, the evidence is clear that there was work

for Fournier at the time of his discharge. Further, Green had become the manager of the department in which Fournier worked only three days before the discharge, and at no time could he have observed Fournier at work, since the latter was away at an assigned job and did not return until the day of his discharge. Moreover, no evidence was introduced to show that there was any slackening of work in the respondent's plant or that there was a general lay off of regular employees at the time. The only other lay off which appeared in the testimony was that of a woman employee who was a member of the Union. By Green's own admission, Fournier's failure to return to his job on Saturday was not the real reason for his discharge. Fournier joined the Union on June 22, 1936. He was the second employee of the respondent to join the Union and was very active in soliciting members.

Ruth Lev was the first of the employees of the respondent to join the Union, which was in January, 1936. She had worked for the respondent for two years or more before her discharge. Her work consisted of correction of mailing lists before the addressing was done. Green's position that she was discharged because of lack of work and inefficiency is entirely without substantiating evidence. He testified that he knew that Ruth Lev was the fiancee of Charles Fournier and since he had observed that she felt badly because of Fournier's discharge the day before, he "figured that perhaps a week out in the fresh air would get her back into snuff". Although Green testified that she was merely laid off, the respondent admits in its answer that Ruth Lev was discharged.

John Mollica had worked for the respondent for seven months. He operated a machine which wrapped magazines and circulars. Green admitted on the stand that when he told Mollica to return to work on the fifth floor on September 29, 1936, Mollica looked frightened and nervous. That Mollica's failure to return to work was not the real reason for his discharge is shown by the fact that Green asked the office girl for the papers connected with his discharge before Mollica refused to return to work.

The claim of the respondent that neither Whitehouse nor Green ever knew of the Union membership and activities of the discharged employees is belied by the record. The further claim that Whitehouse never heard of the Union until the time of the strike is ridiculous in view of the anti-Union speech he made at the meeting on September 24, 1936. Furthermore, the fact that the three employees who were discharged were to collect dues for the Union outside of working hours, but were prevented from doing so by the respondent, cannot be ascribed to sheer fortuitousness. The design on the part of the respondent to thwart the unionization of its employees by discharging the three employees most prominent in the activities of

the Union is clearly spelled out from every action of Whitehouse and Green.

We therefore find that by discharging John Mollica, Charles Fournier, and Ruth Lev, the respondent discriminated in regard to hire and tenure of employment of these employees and thereby discouraged membership in the labor organization known as Bookkeepers, Stenographers and Accountants Union, Local No. 12646, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. John Mollica, Charles Fournier, and Ruth Lev were employees of the respondent at the time of their discharges and ceased work because of the aforementioned unfair labor practices.

### *C. The refusal to bargain collectively*

The work of the employees in any department of the respondent's business is closely interrelated, as are operations between departments. There is also considerable interchange of employees between departments. The evidence also shows that only those who work for the respondent for a period of 13 weeks or more are considered regular or permanent employees. On this evidence, we find that the regular or permanent employees of the respondent, exclusive of the office force, salesmen, and department heads, constitute a unit appropriate for the purposes of collective bargaining. These employees are eligible to membership in the Union.

On or before September 29, 1936, 70 employees had made application to join the Union and were accepted for membership. This number rose to 103 immediately after the strike was called. Samuel Yamin, a certified public accountant duly appointed by the Trial Examiner, found from the pay-rolls furnished to him by the respondent that there were 105 regular or permanent employees, other than office force, salesmen, and department heads, during the six-months' period before September 29, 1936. Upon comparison of the list of Union members<sup>6</sup> with the list of permanent employees, Yamin found that about 65 Union members were permanent or regular employees.<sup>7</sup>

We therefore find that on or about September 29, 1936, and at all times thereafter the Union was the duly designated representative of a majority of the permanent or regular employees of the respondent. Consequently the respondent had a duty to bargain collectively with the representatives of the Union when they called upon Whitehouse on September 29, 1936.

<sup>6</sup> Board Exhibit No 16

<sup>7</sup> Board Exhibit No 16. The fairness and accuracy of the testimony in behalf of the Union may be judged by the fact that this figure tallied with the one given by Murray Nathan.

This duty was not fulfilled by Whitehouse. He was told by Barron that the committee was under surveillance of the guards and yet he failed to call off the guards and thus make it possible for the Union representative to wait. That there was no intention on the part of Whitehouse to deal with the Union is conclusively demonstrated by his failure to get in touch with the Union representatives on September 29, 1936, although the latter had left their address and telephone number with him. Indeed, Whitehouse made no effort to deal with the Union even after the strike was called until he was notified that a charge had been filed by the Union with the Regional Director for the Second Region.

We therefore conclude that on September 29, 1936, the respondent refused to bargain collectively with the Union as the representative of its employees.

The strike is a controversy concerning "the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment . . .", and thus is a labor dispute within the meaning of Section 2, subdivision (9) of the Act. Therefore, the strikers, whose work ceased as a consequence of the current labor dispute, were and are employees of the respondent within the meaning of Section 2, subdivision (3) of the Act. It should further be noted that the strikers were and are employees of the respondent within the meaning of that subdivision for the further reason that they struck in protest against the unfair labor practices of the respondent. Consequently, the obligation of the respondent to bargain collectively with the Union continued after the commencement of the strike and during its duration.

Under the guidance and initiative of a representative of the Regional Office of the Second Region of the National Labor Relations Board, a number of conferences were held between the representatives of the Union and Whitehouse and his counsel after the strike was called. Several tentative agreements were drawn up but no agreement was reached. The two issues which finally caused a break in the negotiations were, first, whether the strikebreakers hired by the respondent were to be discharged within 48 hours or any other reasonable time, as the Union demanded, or within a month at the rate of ten strikebreakers a week, as the respondent insisted. The second issue was the question of the duration of the new agreement.

The claim of the respondent that the strikebreakers could not be discharged within a few days because the operations of the respondent would be interrupted is not tenable because the strikers were all experienced employees and offered to work with the strikebreakers for a few days without compensation. On the issue of the

duration of the new agreement the original position of the respondent was that the agreement should be for a six months period. The Union demand was for a one-year period. Finally, the parties agreed on a nine months period. However, an abrupt change of position was then executed by the respondent. In view of the increase of the minimum wage per week for regular and permanent employees from \$10 to \$11, the respondent claimed that it could not agree to any contract for a longer period than two months. The Union claimed that an agreement for two months would not be sufficient to demonstrate the workability of the new plan, especially in view of the stagger system in reemploying the strikers.

Under all the circumstances, we are inclined to believe that the respondent's efforts at collective bargaining during the strike were more apparent than real.<sup>8</sup> However, in view of the fact that we have concluded that the respondent refused to bargain collectively on September 29, 1936, it is unnecessary for us to determine whether the respondent refused to bargain collectively with the Union during the duration of the strike.

By refusing to bargain collectively with the representatives of its employees, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

On September 29, 1936, about 145 employees were employed by the respondent. More than 100 of them went out on strike. Pickets were immediately placed outside of the respondent's place of business. The strike is still going on. Since time and speed are the essence of the respondent's business, the effect of the strike on interstate commerce of the respondent became manifest immediately. Soon after the declaration of the strike there was a decline in the

<sup>8</sup>This inference seems justified in view of the undenied testimony that during the first conference after the strike was called, Whitehouse stated that even if the Union received a majority of the votes of employees in an election, he would not negotiate with the Union. Further evidence of the irreconcilable antagonism of the respondent to the Union is furnished by the following appeals addressed to the strikers by the respondent:

*"Former employees who wish to resign from the Union may obtain the proper forms by telephoning or calling in person upon Norman W. Arnheim, attorney 551 Fifth Avenue. All names will be kept absolutely confidential and presented one at a time in legal manner. Employees indicating that they wish to return to work will be notified as soon as the majority feel it safe."* (Bd. Ex. No. 13.) (Italics ours.)

and:

*"... This company will continue to do business just as previously. We have no attitude for or against unions. Anyone may belong to any just as he may belong to any church or any association without it being any of our business. Unions may have done a lot of good in remedying abuse in certain cases. They have no place in a business which voluntarily works on a 90%—10% division of income..."* (R. Ex. No. 1.) (Italics ours.)

business of respondent. While for the period between August 30 and September 29 the respondent shipped 6,582 sacks of mail, in the month from September 30 to October 29, the respondent deposited with the post office only 3,442 sacks of mail. There is also evidence of cancellations of orders by the respondent's customers as soon as the fact of the strike in the respondent's plant became known. We therefore find that the aforesaid acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

The strike in this case was called not only in protest against the discharge of the three employees but also because of the refusal of the respondent to bargain collectively with the Union. This wrongful conduct accordingly took the form of a wrong against all of the employees who were members of the Union. In order to restore the *status quo* as it existed prior to the time respondent committed the unfair labor practices and in order to enable the processes of collective bargaining to function, it is necessary that all of the strikers be reinstated. If, because of decline in business, the respondent is unable to reinstate all of the strikers immediately, then those not so reinstated should be placed on a preferential list and be reinstated on the basis of seniority as business warrants before any new employees are hired.

#### CONCLUSIONS OF LAW

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

1. Bookkeepers, Stenographers and Accountants Union, Local No. 12646, is a labor organization within the meaning of Section 2, subdivision (5) of the Act.
2. The strike of the employees of the respondent is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.
3. Fournier, Lev, Mollica, and the employees of the respondent who are on strike are employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.
4. The respondent, by discriminating in regard to the hire and tenure of employment of Charles Fournier, Ruth Lev, and John Mollica, and each of them, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.
5. The regular and permanent employees of the respondent, exclusive of the office force, salesmen, and department heads, constitute a

unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

6. By virtue of Section 9 (a) of the Act, Bookkeepers, Stenographers and Accountants Union, Local 12646, having been selected as their representative by a majority of the employees in an appropriate unit, was, on September 29, 1936, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining.

7. The respondent by refusing to bargain collectively with the representative of its employees on September 29, 1936, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

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

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Globe Mail Service, Inc., and its officers and agents shall:

1. Cease and desist from

(a) Discouraging membership in the Bookkeepers, Stenographers and Accountants Union, Local No. 12646, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment;

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

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

(a) Offer to Charles Fournier, Ruth Lev, and John Mollica, and to each and every one of them, immediate and full reinstatement to their former positions with all rights and privileges previously enjoyed, and make whole said employees for any loss of pay they have

suffered by reason of the failure to reinstate them, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by each of them, respectively, during such period;

(b) Offer reinstatement to those of its employees who were employed on September 29, 1936, who struck on that date, and who have not since received regular and substantially equivalent employment elsewhere, where the positions held by such employees on September 29, 1936, are now filled by persons who were hired for the first time after the strike was called, and place all other employees who were employed by the respondent on September 29, 1936, who struck on that date, and who have not since received regular and substantially equivalent employment elsewhere, on a preferential list to be offered employment on a seniority basis if and when their labor is needed;

(c) Upon request, bargain collectively with Bookkeepers, Stenographers and Accountants Union, Local No. 12646, as the exclusive representative of all its permanent and regular employees, other than office force, salesmen, and department heads, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment;

(d) Post notices in conspicuous places in its place of business stating that: (1) the respondent will cease and desist in the manner aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.