

In the Matter of REMINGTON RAND, INC. and REMINGTON RAND
JOINT PROTECTIVE BOARD OF THE DISTRICT COUNCIL OFFICE EQUIP-
MENT WORKERS

Case No. C-145.—Decided March 13, 1937

Office and Business Equipment Manufacturing Industry—Lockout—Strike: provoked by employer's refusal to meet and bargain with representatives—*Employee Status:* during strike—*Interference, Restraint or Coercion:* threats to close plant; shut-down of plant; interference with right to strike; holding election among employees on question of calling strike, misrepresentation of results thereof; discrediting and vilifying union; during strike: "Mohawk Valley Formula"; employment of strike-breaking agencies; propaganda and publicity campaign against union and strike, misrepresentation of issues involved in strike; initiating and fostering anti-union and anti-strike sentiment among strikers, townspeople, and public officials; discrediting and vilifying union and union leaders; "staging" mass meetings and other public demonstrations for purpose of creating and fostering "back-to-work" psychology; molding and inciting public opinion against strike and strikers; influencing public officials, press, and public against strikers; interference by public officials, citizen and vigilante committees; instigating and fostering repressive measures against union and union activities; initiating and fostering "back-to-work" movement among employees; soliciting and inducing individual strikers to return to work; "whispering" campaign and "missionary" work and propaganda among strikers; circulating anti-union literature and petitions among strikers and strikers' wives; espionage among strikers; bribing union leaders and strikers to return to work; initiating and fostering employer-dominated organizations of employees for purpose of inducing "back-to-work" movement and psychology; employment of strike-breakers; intimidating strikers, employment of armed guards; terroristic activities against strikers; precipitating and inciting disorder, rioting, and violence for purpose of creating adverse publicity against strikers; intervention and interference by police and deputies; interference with picketing; instigating arrest of strikers and strike leaders; injunction against strikers based upon evidence of rioting and violence precipitated by employer; refusal to negotiate with representatives of strikers for purposes of negotiating a settlement—*Company-Dominated Union:* initiation and sponsorship; domination and interference with organization and administration; financial and other support; formation and use of as strike-breaking device; dis-established as agency for collective bargaining—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; established labor organizations in plants; history of collective bargaining relations with employer; eligibility for membership in complaining union—*Representatives:* proof of choice; membership in union; strike vote—*Collective Bargaining:* meeting with representatives but with no *bona fide* intent to reach an agreement; dilatory tactics; failure or refusal to make counter proposals; distraction of representatives by misleading information; employer's duty as affected by majority rule, by strike; refusal to meet and negotiate with representatives during strike—

Discrimination: discharge; refusal to reinstate strikers; notice to strikers of termination of employment—*Reinstatement Ordered, Strikers*: strike provoked by employer's violation of law; on basis of seniority; preference list ordered, including; displacement of employees hired during strike; at new location of operations; transportation expenses to new location of operations ordered paid—*Reinstatement Ordered, Non-Strikers*: employees discharged prior to or during strike—*Back Pay*: awarded.

Mr. Daniel B. Shortal, Mr. Emmett P. Delaney, and Mr. Fred. G. Krivonos for the Board.

Bond, Schoeneck & King, by Mr. George H. Bond, Mr. Hubert C. Stratton, and Mr. Tracy H. Ferguson, of Syracuse, N. Y., and Mr. J. A. W. Simson, of Buffalo, N. Y., for respondent.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

In June, 1936, the Remington Rand Joint Protective Board of the District Council Office Equipment Workers, hereinafter referred to as the Joint Board, filed a charge with the Regional Director for the Third Region (Buffalo, N. Y.) against Remington Rand, Inc., Buffalo and New York City, N. Y., charging that Company with violation of Section 8, subdivisions (1), (2), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On July 11, 1936, the Board, by the Acting Regional Director for the Third Region, issued a complaint against Remington Rand, Inc.,¹ hereinafter referred to as the respondent, 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 alleged in substance:

1. That on or about April 24 and 25, 1936, May 10, 23 and 25, 1936, and thereafter, the Joint Board, which represented a majority of the employees in the production, maintenance, and machinists departments of the respondent's plants at Syracuse, Ilion, North Tonawanda, and Tonawanda, New York; Middletown, Connecticut; and Norwood and Marietta, Ohio, said departments in all of said plants together constituting a unit appropriate for the purposes of collective bargaining, requested the respondent to bargain collectively with it as the exclusive representative of the employees in said unit but that the respondent did refuse and continues to refuse so to bargain.

¹ The complaint erroneously spells the name "Remington-Rand, Inc"

2. That on May 21 and 22, 1936, the respondent discharged 17 named employees in its Syracuse plant; on May 21 and 28, and June 13, 1936, discharged 14 named employees in its Tonawanda plant; on June 15, 1936, discharged one named employee in its Iliion plant; and on July 3, 1936, discharged 800 or more employees in its Norwood plant, and refuses to reinstate all of these employees, said discharges and refusals being made for the reason that these employees had joined and assisted the Joint Board and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

3. That the respondent on May 26, 1936, and thereafter, sponsored, dominated and interfered with the formation and administration of labor organizations of its employees known as the "Iliion Typewriter Employees Protective Association", "Employees Independent Association Remington Rand Syracuse Plant", and "Reinrand Employees' Back to Work Association", and contributed financial and other support thereto.

4. That the respondent by enumerated acts and threats, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 8, subdivision (1) of the Act.

On July 18, 1936, the respondent filed its answer to the complaint in which it denied the allegations of unfair labor practices and stated that the relations with the employees in question related solely to its local and intrastate manufacturing operations, upon which ground it asked that the complaint be dismissed. Thereafter, on July 17, 1936, the respondent filed a bill of complaint in the District Court of the United States for the Western District of New York seeking to enjoin the Board, through its agents, from taking any action, including the holding of a hearing, against the respondent on the ground that the Board had no jurisdiction over the respondent and, further, that the Act was unconstitutional. A restraining order was granted by the District Court enjoining the agents of the Board from proceeding against the respondent pending a hearing on the respondent's bill of complaint. On September 11, 1936, the District Court rendered a decision in which it denied the application for an injunction, set aside the restraining order, and dismissed the respondent's bill of complaint. The respondent appealed this decision to the Circuit Court of Appeals for the Second Circuit, requesting a stay of the Board's proceedings pending the appeal. The request for a stay was denied by both the District Court and the Circuit Court. The appeal has not been prosecuted further.

Pursuant to notice thereof, Charles A. Wood, duly designated by the Board as Trial Examiner, commenced hearings on October 14, 1936. Hearings were held from October 14 to October 27 in Buffalo,

N. Y.; from October 28 to November 6 in Syracuse, N. Y.; from November 9 to November 18 in Utica, N. Y.; on November 24 and November 25 in New York, N. Y.; from November 30 to December 8 in Hartford, Conn., and on December 10 and December 11 in Cincinnati, Ohio. Previous to the hearings the respondent, appearing specially, had filed a motion to dismiss the complaint on stated constitutional and jurisdictional grounds and, without prejudice to the motion to dismiss, a motion for a bill of particulars. At the opening of the hearings the respondent, stating it was appearing specially, argued these motions orally. The Trial Examiner denied² the motion for a bill of particulars and so much of the motion to dismiss as related to the constitutionality of the Act, reserving decision as to the applicability of the Act to the respondent. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. The respondent did not offer any oral testimony but cross-examined the witnesses for the Board and offered documentary evidence on its own behalf. During the hearings the complaint was amended to include the discharges of two named employees at the Tonawanda plant and to conform to the proof adduced. At the close of the Board's case the respondent moved to dismiss, and this motion, together with its previous motion, was denied by the Trial Examiner. The Board finds no prejudicial error in any of the rulings of the Trial Examiner, and they are hereby affirmed. On December 9, 1936, the Board, acting pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceeding to be transferred and continued before it, and re-designated Charles A. Wood as the Trial Examiner.

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

FINDINGS OF FACT

I. THE RESPONDENT

Remington Rand, Inc., is a Delaware corporation having its principal executive offices at Buffalo and New York City, New York (Bd. Ex. 47). As of July 31, 1935, its consolidated assets were stated to be \$49,179,156.20.³ It is essentially an operating company, owning and operating its physical properties and "manufacturing and selling directly to consumers, except in minor instances, and abroad where

² The motion was denied with certain exceptions that are unnecessary to state.

³ Good will, valued at \$10,000,000 at that time, has since been written off.

approximately three-quarters of its sales are made through subsidiary companies, and the balance through dealers".⁴ Plants owned and used by the respondent for manufacturing purposes, covering 102 acres of land area and comprising approximately 2,422,000 square feet of floor space, are located at Tonawanda, N. Y.; North Tonawanda, N. Y.; Ilion, N. Y.; Syracuse, N. Y.; Middletown, Conn.; Bridgeport, Conn.; Benton Harbor, Mich.; Marietta, Ohio; Norwood, Ohio; Niagara Falls, Ontario, Canada;⁵ and Calcutta, India. Additional plants, comprising approximately 385,000 square feet of floor space, have been leased from other concerns in order to meet the respondent's manufacturing requirements. These are located at Cambridge, Mass.; Brooklyn, N. Y.; Bridgeport, Conn.⁶; Atlanta, Georgia; San Francisco, California; Hamilton, Ontario, Canada; Saarbruecken, Germany; Berlin, Germany; London, England.⁷ (Bd. Ex. 54.)

The products of the respondent include typewriters, adding and computing machines, record and filing equipment, and, in general, business and office equipment. Through the development of new products, such as portable adding machines, duplicator supplies, and photographic record equipment, and the improvement of old products, the respondent has met changing conditions in world markets. The principal products of the plants with which we are here particularly concerned are: Syracuse—typewriters; Ilion—typewriters and accounting machines; Tonawanda and North Tonawanda—filing

⁴ Among its active subsidiaries are the following corporations, in all of which respondent owns securities representing 100 per cent of the voting power: Accounting and Tabulating Machine Corporation, Delaware, Library Bureau Limited, England; Remington Rand International Limited, Canada; Remington Typewriter Company, New York; Remington Schreibmaschinen G. m. b. H., Austria; Remington Typewriter Company S. A., Belgium; Remington Rand Limited, Canada; Remington Schreibmaschinen und Rechenmaschinen G. m. b. H., Czecho-Slovakia; Remington Typewriter Company Limited, England; Remington Typewriter Company, S. A., France; Remington Schrijfmachine Maatschappij Naamloose Venootschap, Holland; Remington Rand Internacional S. A., Mexico; Remington Typewriter Company A. S., Norway; Remington Typewriter Company Aktiebolag, Sweden; Smith Premier Typewriter Company, New York, Smith Premier Typewriter Company Limited, England; United Business Equipment Company, Inc., Delaware; United Typewriter and Supplies Company, West Virginia; Universal Office Equipment Company, Inc., New York; Victor Safe and Equipment Company, Inc., New York, New York; and Remington Rand, Inc., Louisiana (Bd. Ex. 49). In addition to the active subsidiaries here set out, respondent owns securities representing 100 per cent of the voting power of six other companies, and, in addition, of 20 companies at present inactive.

⁵ This plant is owned and operated by a subsidiary.

⁶ These first three plants are leased and operated by subsidiaries.

⁷ The plants located in Canada and abroad are leased and operated by subsidiaries. Plants owned by the respondent but not used for manufacturing purposes are constructed on 11.18 acres of ground, and comprise approximately 495,000 square feet of floor space. They are located at Benton Harbor, Mich., Holyoke, Mass., Newark, N. J.; Norwood, Ohio; Kalamazoo, Mich.; Kansas City, Mo. Eighty-five per cent of these plants are rented to other companies or persons. Plants are also owned which are vacant at present. These plants are constructed on 76.14 acres of ground, comprise approximately 1,122,769 square feet of floor space and are located at North Tonawanda, N. Y.; Benton Harbor, Mich.; and Cambridge, Mass.

cabinets and accessory equipment; Middletown—typewriters; Marietta—safe cabinets; and Norwood—adding machines and tabulating equipment.⁸

The respondent's products are internationally known; sales abroad are an important and profitable part of its business. Distribution of the respondent's products is effected through 235 branch sales offices located in practically every principal city of the world and through approximately 8,500 independent dealers. About 3,200 salesmen are engaged in the respondent's domestic business. The cultivation of nation-wide and foreign markets makes it inevitable that practically all of its manufactured products be shipped in interstate and foreign commerce. In the case of the plants with which we are particularly concerned, enumerated above, the incoming and outgoing shipments are almost completely interstate in character. Thus, at the Middletown plant, the outgoing and incoming rail shipments, in sample months, were 99 to 100 per cent interstate in character;⁹ at the Syracuse plant the outgoing interstate rail shipments likewise approached 100 per cent of all rail shipments, while of the incoming shipments about 80 per cent were interstate;¹⁰ at the main Ilion plant about 95 per cent of the outgoing and 80-85 per cent of the incoming rail shipments were interstate in character;¹¹ at Tonawanda and North Tonawanda about 94 per cent of the outgoing and 90 per cent of the incoming rail shipments were interstate in character.¹² The incoming shipments for these plants

⁸ Since the strike hereinafter referred to the Norwood plant has been closed and offered for sale and its equipment transferred to other plants.

⁹ June, 1935, March, April, and June, 1936, were the months chosen (Bd. Exs. 241a, b). 95 to 98 per cent of all shipments to and from the Middletown plant, which figure includes shipments by American Railway Express and truck, are interstate in character. For rail shipments the respondent at Middletown uses the New York, New Haven and Hartford Railroad.

¹⁰ Outgoing shipments: June, July, 1935—100 per cent; May, 1936—100 per cent; June, 1936—71 per cent; July, 1936—100 per cent; incoming shipments: June, 1935—79 per cent; July, 1935—90 per cent; May, 1936—77 per cent; June, 1936—75 per cent; July, 1936—87½ per cent (Bd Exs 169, 170). Rail shipments at the Syracuse plant are carried by the Delaware, Lackawanna and Western Railroad.

¹¹ Outgoing shipments May, 1935—97 per cent; June, 1935—98 3 per cent, July, 1935—93 per cent; May, 1936—95 per cent; June, 1936—83 per cent; July, 1936—94 per cent, incoming shipments May, 1935—85 per cent; June, 1935—82 per cent, July, 1935—78 7 per cent; May, 1936—84 per cent; June, 1936—83 per cent; July, 1936—79 5 per cent. The rail shipments are carried by the New York Central Railroad.

¹² Outgoing shipments June, 1935—93 per cent, March, 1936—93 per cent, April, 1936—96½ per cent; June, 1936—84 per cent (Bd Exs 120-123); incoming shipments: June, 1935—86 per cent; March, 1936—96½ per cent; April, 1936—80 per cent; June, 1936—94 per cent (Bd. Exs. 141, 143-145). The respondent in general receives incoming materials at the North Tonawanda plant and ships its products from the Tonawanda plant, about a mile from the first plant. Delivery between the two plants is made by trucks. Rail shipments are carried on the New York Central Railroad.

About 90 per cent of the respondent's shipments from the Norwood plant via the American Railway Express were interstate in character for the sample months of June, 1935, March, April, May, and June, 1936 (Bd Ex 278 (The number of this exhibit was erroneously recorded in the original of the Board's Decision as 281. This error was corrected by an Amendment of Decision issued March 16, 1937.))

cover a wide variety of materials drawn from the entire country, for example: steel wire, castings, lacquer, chemicals, and cans from New Jersey; strip steel and varnish from West Virginia; glue from Illinois; brass screws, bearings, and typewriter ribbons from Connecticut; bolts, castings, and bar steel from Ohio; steel and truck casters from Michigan; wrapping paper from Vermont; fibre brushes from New Hampshire; corrugated fibre from Indiana; steel, steel cabinets, and lubricating oil, from Pennsylvania; steel, steel and iron wire from Massachusetts; steel cabinets from Wisconsin; printing paper and handles from Maine; cardboard and paper boxes from Rhode Island; steel cabinets from California; wire brushes and grinders from Maryland; file drawers from Florida; bookkeeping machinery from Georgia and Tennessee; paper from Minnesota; accounting machinery from Toronto, Canada, and so on.

We conclude that the operations of the respondent at its Iliion, N. Y.; Syracuse, N. Y.; Tonawanda, N. Y.; North Tonawanda, N. Y.; Middletown, Conn.; Norwood, Ohio; and Marietta, Ohio plants constitute a continuous flow of trade, traffic and commerce among the several States and with foreign countries.

II. THE EVENTS PRECEDING THE STRIKE ON MAY 26, 1936

Organization of the Remington Rand Joint Protective Board and the refusal of the respondent to bargain collectively with the Joint Board

A few unions, for the most part locals of the International Association of Machinists, affiliated with the American Federation of Labor, existed in the respondent's plants in 1933. But in that year the passage of the National Industrial Recovery Act, and especially Section 7a of that Act, prompted the respondent's employees to join and form additional labor organizations with considerable rapidity. Federal Labor Unions¹³ were chartered by the American Federation of Labor in many of the plants, together with new Machinists locals. This movement progressed so rapidly that a conference of officials representing labor organizations in the Syracuse, Iliion, Middletown, and Norwood plants was held on August 12, 1933, for the purpose of providing a mechanism whereby the unions represented could act in unity. As a direct result of this conference, a charter was granted in March, 1934, by the Metal Trades Department of the American Federation of Labor to the District Coun-

¹³ Federal Labor Unions are local unions chartered directly by the American Federation of Labor. They are not affiliated with any International Union. Their membership is usually confined to the employees in a single plant and craft lines among the employees are not necessarily observed. United States Department of Labor (1936), *Handbook of American Trade-Unions*, pp. 8-9.

cil Office Equipment Workers, to be composed of local unions, either chartered by the American Federation of Labor, or affiliated with the International Unions forming the Metal Trades Department, having members employed in the office equipment industry (Bd. Ex. 5). In addition to unions in the above four plants of the respondent, there were also unions in plants of other concerns in the office equipment industry represented in the District Council.

In the meantime a meeting had been held on February 3, 1934, between representatives of the Remington Rand unions, active in the labor organization of the District Council, i. e., those unions then existing at the Syracuse, Ilion, Middletown, and Norwood plants, and officials of the respondent, including the factory managers of those four plants. The meeting was held to consider a comprehensive working agreement submitted to the respondent by these unions concerning hours, rates of pay, and working conditions. It was not fruitful in achieving an accord on these matters, for the respondent evaded the main issues and refused to enter into an agreement. The union representatives indicated to the respondent that a strike might be the result of such continued refusal. The matter was then taken to the Regional Labor Board for the Western District of New York of the National Labor Board, and a hearing was held by that Board on March 1, 1934, in an endeavor to settle the differences between the two parties. After the hearing, at which both the unions and the respondent were represented, the Regional Labor Board recommended on March 15, 1934, that the duly authorized representatives of both parties "proceed at once to negotiate an agreement and that any agreement which may be reached be reduced to writing". These recommendations were ignored by the respondent and the matter was taken to the National Labor Board, which held further hearings and conferences on April 30, 1934, and during the first week of May, 1934. The respondent's representatives, apparently acting upon the advice of its president, James H. Rand, Jr., refused to enter into a formal agreement with the union representatives, their willingness to negotiate extending only to a "Memorandum of Understanding" signed by the respondent alone and carefully avoiding recognition of the unions as bargaining agencies (Bd. Ex. 164). As a consequence, negotiations between the two parties collapsed and the unions called a strike in the four plants on May 9, 1934.

The strike effectively curtailed operations in these plants and forced further negotiations between the two groups. On June 18, 1934, an agreement was concluded between the respondent and the union representatives which settled the strike. This agreement was signed by R. E. Benner, vice-president of the respondent, and various union

officials, including members of the District Council, who signed as such. (Bd. Ex. 4.) The agreement, fairly detailed, covered hours, rates of pay, working conditions, and relations between the respondent and all of its employees; the respondent agreed to deal with the unions as representative of their members and in general to "deal with any individual employee or his or her chosen representative, or representatives of its employees". The agreement at that time extended to employees in the Syracuse, Ilion, Middletown, and Norwood plants. At the same time a supplementary understanding was entered into between the two parties providing as follows:

"It is understood and agreed that any discrimination or intimidation on the part of any employee toward any other employee shall be just cause for discharge." (Bd. Ex. 17.)

The respondent had presented this understanding for signature and Rand himself requested that it be kept entirely confidential, even to the extent that the union representatives were not to disclose it to their members. The latter acquiesced, believing that it in reality went no further than Section 12 of the main agreement, which pledged both parties to the maintenance of peace and harmony upon resumption of work and which was designed to eliminate trouble between returning strikers and non-striking employees.¹⁴ But events two years later were to show that the union representatives had been mistaken as to the respondent's motive for procuring this confidential agreement.

On the whole the remainder of 1934 and most of 1935 was a quiet and harmonious period. The District Council extended its representation to employees in the Tonawanda and North Tonawanda plants¹⁵ of the respondent in September, 1934, when Federal Labor Union No. 19401, to which such employees were eligible to membership, became affiliated with it. In February, 1935, Benner recognized that the June 18, 1934, agreement should extend to the Tonawanda plant and at a conference held on April 27, 1935, formally acknowl-

¹⁴ Section 12 read as follows: "Upon resumption of work, all those employees now involved shall return to their former positions. The chosen representatives of the employees and the executives of the company both agree to exert their best efforts at all times for the maintenance of peace and harmony within the Remington Rand plant, both as between individual employees and as between employees and the management."

In a series of "Interpretations" sent to the membership in 1935, the interpretation placed on that Section by the union representatives was as follows:

"Deals with promise of both parties to ignore any bitterness aroused during the strike period, as far as possible. We were not to bother or harm the few scabs and they were to keep their skirts clean to the extent that Mr. Benner ruled that if anyone caused us an unusual amount of trouble, that they would be eliminated. This promise has been pretty faithfully kept; some scabs have become reinstated and other have been eliminated during various lay-offs so that hardly any remain and they cause no trouble." (Bd. Ex. 59.)

¹⁵ Hereafter generally referred to as the Tonawanda plant.

edged that the agreement so applied.¹⁶ (Bd. Ex. 19.) From time to time, additional union locals, organized in the four plants originally represented, became affiliated with the District Council. Throughout these months numerous conferences were held between representatives of the local unions and the factory manager of the plant involved, at which routine problems relating to working conditions were satisfactorily adjusted.

The fall of 1935 brought trouble. Rumors reached the District Council and the affiliated Remington Rand unions that the respondent had acquired a plant at Elmira, N. Y. As these reports spread and acquired credence they occasioned further rumors that units from existing Remington Rand plants would be moved to Elmira, that some plants, particularly the one at Iliion, would be closed down and so on. The union leaders were disturbed by these reports, especially since they indicated that the Elmira plant had been purchased by a group of citizens in Elmira interested in improving business conditions in that town and turned over to the respondent on the condition that Elmira residents would be given preference in employment. But the unions were not the only groups upset by such rumors. The business men, the mayors, the newspaper editors of the towns in which the respondent's plants were then located and upon whose continued operation the towns in large measure were dependent, recognized the possibilities inherent in the respondent's acquisition of the Elmira plant. All these groups thus focused upon the respondent, seeking information and a definite pronouncement. All were unsuccessful—the respondent's officials were either evasive or silent.

Throughout 1934 and 1935 the respondent had been developing at its Iliion plant a new typewriter model, known as the "Madam X". It was understood at Iliion that upon the completion of the plans, production of the model would begin at that plant. However, in the beginning of 1936, coincident with the rumors in regard to the Elmira plant, tools and other materials pertaining to the "Madam X" were transferred to that plant in the name of the Elmira Precision Tool Company. The person in charge of the development, Mr. Bauer, also left Iliion for Elmira. Moreover, Benner, at a meeting with union representatives, stated that the respondent was interested in the Elmira plant. The union representatives then wrote Mr. Rand a letter in which they stated that the rumor concerning the Elmira plant was causing a good deal of uncertainty and unrest among the employees and that it would be to the interest of all that

¹⁶ By such action the June 18, 1934, agreement thereby superseded arrangements previously agreed upon between the factory manager at Tonawanda and Federal Labor Union No. 19401. (Bd Exs. 74, 75) The factory manager had refused to enter into a written agreement but had published in a posted statement the points upon which an understanding had been reached.

a conference be held between them and officials of the respondent having knowledge of the Elmira situation. (Bd. Ex. 7.) Rand's secretary replied, stating that the letter had been referred to Mr. Ross, factory manager at Ilion, in Mr. Rand's absence, and adding: "I am confident that the rumors which you mention are untrue." (Bd. Ex. 8.) As a consequence, the union representatives met with Ross, questioned him concerning the Elmira plant and obtained from him the following cryptic statement, previously prepared in writing, that "Remington Rand has no intention of manufacturing in Elmira".

Disturbed by these developments, representatives of the Remington Rand unions met on February 14 and 15, 1936. They decided that their relations with the respondent were of such a nature as to require treatment separate from the matters involving the unions in other companies included in the District Council. Consequently, the representatives of the Remington Rand unions on the District Council formed a separate committee, known as the Remington Rand Joint Protective Board of the District Council, to handle exclusively Remington Rand problems. Pursuant to the recommendation of this Joint Board, the various unions in each of the respondent's plants represented on the Joint Board formed Local Protective Boards¹⁷ which acted to coordinate their local activities. The Chairmen of the Local Boards acted as the representatives of those unions on the Joint Board. These unions, all affiliated with the District Council and represented on the Joint Board at its formation, and also thereafter, were as follows:¹⁸

Syracuse Plant: Federal Labor Union No. 18344; Machinists Local Unions¹⁹ Nos. 849 (limited to aligners) and 381.

Ilion Plant: Federal Labor Union No. 18486 (excludes employees eligible to the other unions listed); Machinists Local Unions Nos. 635 (machinists, aligners, and toolmakers) and 706 (assemblers and adjusters); Polishers Local Union No. 46,²⁰ and Molders Local No. 57.²¹

Tonawanda (and North Tonawanda) Plants: Federal Labor Union No. 19401.

Middletown Plant: Machinists Local Unions Nos. 616, 782, and 851 (together covered all production and maintenance employees), and

¹⁷ A Local Protective Board was not formed at Marietta and Tonawanda.

¹⁸ All of the unions herein enumerated, as well as the District Council, are labor organizations within the meaning of Section 2, subdivision (5) of the Act, in view of their membership and purpose. The Joint Board was thus a committee within a labor organization.

¹⁹ This designation is used to describe local unions affiliated with the International Association of Machinists.

²⁰ This designation is used to describe local unions affiliated with the Metal Polishers, Buffers, Platers and Helpers International Union.

²¹ This designation is used to describe local unions affiliated with the International Molders' Union of North America.

Polishers Local Union No. 60 (not represented on Local Protective Board).²²

Norwood Plant: Machinists Local Unions Nos. 162 (machinists), 729 (tool and die makers, and special parts makers), and 789 (general production and maintenance employees); Draftsmen's Local Union No. 50,²³ and Polishers Local Union No. 68.

Marietta Plant: Sheet Metal Workers' Local Union No. 75.²⁴

As the Federal Labor Unions admitted to membership all production and maintenance employees,²⁵ and as the Machinists Locals in the plants where no Federal Labor Union existed together had a similar scope, all production and maintenance employees in these plants were eligible to join some one of these unions.²⁶ The Joint Board as constituted in February, 1936, was thus the representative for collective bargaining of all unions in the Syracuse, Iliion, Tonawanda, Middletown, Norwood, and Marietta plants of the respondent, membership in which was open to all production and maintenance employees in those plants.²⁷ Clerical and supervisory employees were not eligible to membership in these unions.²⁸

The Joint Board proceeded to have the above unions vote on a series of "interpretations" of the June 18, 1934, agreement to be presented to the respondent for its approval. In the meantime, Giles, the secretary-treasurer of the Joint Board, and also the secretary-treasurer of the District Council, wrote Rand on February 20, asking that he meet with them in view of the "unsatisfactory reply" received from Ross (Bd. Ex. 9), and again on March 30, adding that they also desired to discuss the interpretation of the June 18, 1934, agreement and changes in the rates of pay. (Bd. Ex. 10.) This last letter was likewise answered, not by Rand, but his secretary, who stated:

"The matters referred to . . . will have to be taken up with Vice-President R. E. Benner, who is away at present on an extended absence.

²² This union was represented on the Local Board in November, 1936, and thereafter

²³ This union was affiliated with the International Federation of Technical Engineers', Architects', and Draftsmen's Unions.

²⁴ This union was affiliated with the Sheet Metal Workers' International Association

²⁵ The Federal Labor Union at Iliion excluded employees eligible in the other unions existing in the plant.

²⁶ Employees in the shipping departments of the various plants were eligible to membership in the Federal Labor Unions or the comprehensive Machinists Locals and are included in the designation, "production and maintenance employees".

²⁷ Whether such employees in these six plants, considered together, constitute a unit appropriate for the purposes of collective bargaining and, if so, whether the Joint Board represented a majority of the employees in such unit and was therefore the exclusive representative of all such employees, will be considered at a later stage of this decision.

²⁸ While clerical employees could theoretically join the Federal Labor Unions, they would not be permitted to vote or exercise other privileges of full members. In the plants in question, the clerical employees had not joined the unions.

"However, I can tell you . . . that neither Remington Rand Inc. nor any subsidiary is engaged in manufacturing in the city of Elmira." (Bd. Ex. 11.)

A conference was finally arranged with Benner to be held on April 24. Giles informed Benner, in answer to his request, that the Joint Board desired to discuss at that conference the June 18, 1934, agreement and increases in the present rates of pay.

On April 24, 1936, not Benner, but H. T. Anderson, factory manager at the Norwood plant, represented the respondent. Anderson read to the Joint Board and the other union representatives present the following telegram:

"THIS IS TO AUTHORIZE YOU TO REPRESENT REMINGTON RAND AT THE MEETING OF SHOP COMMITTEE TO BE HELD AT THE ONANDAGA HOTEL STOP YOU HAVE FULL POWER TO ACT FOR THE COMPANY

"SIGNED JAMES H RAND JR AND R E BENNER"

The following interchange then took place:

"Pres. Crofoot (of the Joint Board): I thought if we could get together with Mr. Benner and the different plant managers we would get more done. The questions of the interpretations of the agreement, wage increases, and the Elmira situation were to be discussed.

"Mgr. Anderson: I will do my best to answer any questions and discuss any policies or ideas." (Bd. Ex. 15, p. 1.)

After the interpretations were discussed with some degree of success, the Joint Board members adverted to the Elmira situation. They repeated the rumors regarding the Elmira plant, the denials and evasions of the respondent's officials and pointed out that such denials were in sharp contrast to the movement of equipment from Ilion to Elmira (on the previous day, April 23, 28 tons of dies for the new "Madam X" had been shipped from Ilion to Elmira). The June 18, 1934, agreement was then referred to and the claim made that if the Elmira plant was being operated by Remington Rand, such operations should be subject to that agreement, as in the case of the Tonawanda plant, and that if it was not a Remington Rand plant the sending of work there to be performed for the respondent was in violation of Section 15 of the agreement.²⁹ Finally, it was stated that while the operations in Elmira were apparently being conducted under the name of the "Elmira Precision Tool Company",

²⁹ Section 15 reads as follows: "No work which can be performed with the men and the plant equipment on hand is to be sent outside of the company plants except for the purpose of maintaining an equal working force and to prevent periodic occurrence of preventable hiring and laying off of temporary employees."

in view of the agreement the real question was the respondent's connection with that company. Anderson's replies follow:

"Mgr. Anderson: I doubt that I will be able to give you a satisfactory answer. In the first place, it is evident that everyone believes the operation is a Rem-Rand operation. *I am not familiar* with the set-up in Elmira but I know the Elmira Precision Tool Company is not a Remington Rand organization now. As to who may be in back of it, I do not know.

"Mr. Crofoot: Is there any good reason why the officials of Remington Rand can not give us a definite answer regarding moving the plant from Ilion?

"Mgr. Anderson: *I do not know.*

"Mgr. Anderson: *As far as I know*, it is an entirely different company.

"Mr. Crofoot: If Mr. Rand or Mr. Benner is interested in the relations between the employees of these six plants, he could at least come down here to see us. I think the situation has gone about as far as it should. I suggest that you get in touch with Mr. Rand or Mr. Benner and they can arrange to be here tomorrow by night at least. If he does not want to meet us, it is his responsibility; that's all. This is the second time that a direct answer has been avoided by putting a plant manager on the spot.³⁰ Three times and out is enough. If we can not meet him, it is time we found out.

"Mgr. Anderson: I do not think they will be here."

The conference resumed next morning and the following colloquy occurred:

"Mgr. Anderson: . . . I am of the opinion that the Elmira Precision Tool Company is a separate institution. How it may or may not be interlocked with Remington Rand, *I do not know.* In view of that, I can not see why you want the present agreement of Remington Rand to apply to the Elmira plant.

"Mr. Bellows (Joint Board member from Syracuse): The reason the people say the plant is owned by Remington Rand is because Mr. Benner himself said so.

"Mgr. Anderson: The plant *may* belong to Remington Rand.

"Mr. Beer (Joint Board member from Ilion): It violates Section 15. If it isn't a company plant it is a violation, and if it is a company plant, we want the agreement applied.

³⁰ Such tactics were a direct violation of Section 11 of the June 18, 1934, agreement which provided that grievances, if not settled satisfactorily, might be taken up directly with the Works Manager or higher executive of the company.

“Mgr. Anderson: The Remington Rand Company *may* own the plant, but the company that operates it *may or may not* be Rem-Rand.

“Mr. Fenton (a union representative): It looks as if the Precision Tool is a promoter’s name for the Remington Rand. It seems to me it demands a frank statement from the Company because it is vitally important to the people working in the Remington Rand. We are thoroughly convinced that Remington Rand is the undisclosed principal. At least they should tell us if they are interested.

“Mgr. Anderson: As I said yesterday *I do not feel that I can answer the question satisfactorily or completely.*”³¹ (Bd. Ex. 15.)

It will be recalled that Anderson was presented to the Joint Board as having “full power to act for the company”. The evasion and lack of candor on the part of the respondent which his statements undeniably disclose are heightened when contrasted with representations being made elsewhere by the respondent during the same period. A prospectus issued by the respondent on February 19, 1936, stated: “Manufacturing facilities have been increased . . . by the purchase of a plant at Elmira, N. Y. . . .” (Bd. Ex. 54, pp. 5, 6.) This was repeated in a registration statement filed with the Securities and Exchange Commission in the same month. (Bd. Ex. 49.) Later events leave no doubt that the respondent intended to operate in Elmira, for such operations actually commenced in the summer of 1936. Machinery and equipment were moved from Syracuse, Middletown, and Ilion to Elmira in the summer and fall of 1936, the consignee being the Elmira Precision Tool Company. On September 21, 1936, the respondent reported to the Securities and Exchange Commission the following:

“The plant at Norwood, Ohio, has recently been closed, the equipment moved to, and the manufacturing operations concentrated in, the plants at Ilion and Elmira, N. Y. In addition, approximately 45% of the operations formerly carried on at the Syracuse, N. Y., plant, together with the required equipment, have been transferred to the plant at Elmira, N. Y.” (Bd. Ex. 51.)

The fears of the Joint Board had a sound foundation.

But on the issue of a wage increase, Manager Anderson’s hands were not tied for the respondent felt itself able to take an unequivocal position. The Joint Board representatives stated that the request for an increase was the result of the assurance given two years previous that increases would be made when the respondent was in a better financial condition. Beer, Joint Board Member for

³¹ Italics ours.

lition, stated, "Mr. Benner, Mr. Rand and practically all of them have freely admitted that the wages were not as they should be and gave us the assurance that they would pay more money when they were in better financial condition. They have never come through with any of it." The reply to this request was as follows:

"Mgr. Anderson: I can tell you right now that there can be no general increase in wages. I am in a position to tell you definitely that the company is not in a position to grant a general wage increase.

"Mr. Crofoot: Have you a counter proposal?

"Mgr. Anderson: No.

"Mr. Crofoot: I do not see how you can go farther if you have no counter proposal." (Bd. Ex. 15.)

There could be but one reaction on the part of the union representatives to the respondent's attitude. On April 28 the Joint Board requested the various unions affiliated with it to take a strike vote in view of the unsatisfactory nature of the Anderson conference, the letter reading in part as follows:

"After the conference, the Joint Protective Board unanimously agreed that it would be absolutely necessary that a vote be taken to authorize the Board to call a strike, but only after every other means possible has been taken to bring about a satisfactory adjustment and a conference arranged with Mr. James H. Rand, Jr.

"This move may seem drastic to you, but, if we succeed in getting nearly 100% affirmative vote, giving the Board the authority mentioned above, it would have the effect of making that move unnecessary. It would show the company that we have the cooperation of all the organized workers in Remington Rand, Inc." (Bd. Ex. 61.)

The strike ballot, stating the issues succinctly, read as follows:

"Because of the unsatisfactory result of the conference with H. T. Anderson, representing Mr. James H. Rand, Jr., President, and Mr. R. E. Benner, Vice-President of Remington Rand Incorporated, April 24 and 25, 1936, and because of Mr. Anderson's refusal to grant a general increase in wages; and his refusal to give a satisfactory reply to the Remington Rand activities in Elmira; and his refusal to apply the present working agreement to that plant; and the continued refusal of Mr. James H. Rand, Jr., to meet the duly authorized representatives of the employees, this authorizes the Remington Rand Joint Protective Board to call a strike, when, and if, in their opinion, all other means, have failed to bring about a satisfactory conclusion." (Bd. Ex. 24.)

The strike vote was taken in accordance with the instructions of the Joint Board. A total of 3768 votes was cast, of which 3200 were affirmative votes authorizing a strike under such conditions, and 568 were negative votes. (Bd. Ex. 62 plus Bd. Ex. 40.) With this mandate, the Joint Board wrote to Rand on May 10, 1936, stating that a strike vote had been taken "to ascertain the number of workers who are willing to leave their work if necessary in order to come to some kind of an understanding or at least to have a conference arranged with the Remington Rand Joint Protective Board and the representatives of the Company who are vested with sufficient power to decide the important questions at issue" and that such vote had resulted in "90% of the organized employees voting in the affirmative." It closed with the statement that the Joint Board felt "such a move will be unnecessary if it is possible to arrange to meet around a conference table and discuss the questions Mr. Anderson hadn't the authority to decide". (Bd. Ex. 23.) At the same time the Joint Board notified Federal Labor Conciliators that a strike might eventuate if conferences could not be arranged and requested that they aid in securing such conferences.

Turning for a moment to those conditions established by the Act in regard to the employer's duty to bargain collectively, relating to the appropriateness of the unit and the designation by a majority of the employees, we find that the Joint Board was purporting to speak for the employees engaged in production and maintenance work in six of the respondent's plants—Syracuse, Ilion, Tonawanda, Middletown, Norwood, and Marietta. There can be no question that production and maintenance employees here constitute an appropriate unit in so far as character of work is concerned;³² the justification for considering such employees separate from supervisory employees and non-production or clerical employees is stated in prior decisions of the Board.³³

There remains only the question whether the production and maintenance employees must treat with the respondent separately plant by plant or whether they may properly request the respondent to treat with their representatives on a group basis, such employees in the six plants being represented by the one bargaining agency, the Joint Board. Under the facts in this case we find that a unit based upon such a grouping is appropriate. The bargaining that took place in 1934 was on the basis of a grouping of the plants in which there were unions representing the production and mainte-

³² The complaint refers to the production, maintenance, and machinists departments. The machinists are covered by the designation "production employees" and consequently need not be referred to specifically.

³³ *Matter of United States Stamping Company and Porcelain Enamel Workers' Union No. 18630*, 1 N L R B 123; *Matter of R C A Manufacturing Company, Inc and United Electrical & Radio Workers of America*, Case No. R-49, decided August 3, 1936 (*supra*, p 159).

nance employees. The respondent made no objection to such a principle. In 1935 the extension of the agreement to the Tonawanda plant and the subsequent dealing with the District Council for the five plants indicated that the respondent recognized the appropriateness of a system of bargaining which considered its organized plants as a unit. Marietta was added to the group in 1936 and was thereafter represented by the Joint Board on the same basis, a fact which the respondent recognized in April, 1936, when Benner in a memorandum explaining the June 18, 1934, agreement indicated that it extended to Marietta as well. (Bd. Ex. 22.) Neither the Joint Board nor the respondent ever has stated that other plants of the respondent were involved in the negotiations. Consequently we find that the production and maintenance employees, exclusive of supervisory employees, in the Syracuse, Ilion, Tonawanda, Middletown, Norwood, and Marietta plants of the respondent constituted a unit appropriate for the purposes of collective bargaining.³⁴

The number of employees in this unit was between 6,000 and 6,500 in the spring of 1936. The Joint Board claimed to have out of that number about 4,500 persons as paid up members of the various unions represented by it. The strike vote indicates that at the very least it had 3,768 members, and since generally such a vote does not reflect the total membership, its claims to membership in the four thousands are supported by the record.³⁵ It is significant that the respondent

³⁴ Cf. *Matter of Atlantic Refining Co. and Locals Nos 310 and 318, International Association of Oil Field, Gas Well, and Refinery Workers of America*, 1 N L R. B 359; *Matter of Motor Transport Company and General Chauffeurs, Teamsters & Helpers, Local Union No 200*, Case No R-113, decided December 22, 1936 (*supra*, p 492)

³⁵ In the strike instructions issued on May 23, 1936, the Joint Board stated that there were about 6,000 production and maintenance employees at that time and that the paid up membership in the unions affiliated with it was 4,490 (Bd. Ex 64) The testimony of officials of these various unions places the membership at a higher figure, since the testimony was not limited to paid up membership and included all members. On the basis of that testimony the membership in March, 1936, is given in the following table, along with the number of production and maintenance employees in the various plants, as gathered from the testimony and other exhibits:

PLANT	PRODUCTION AND MAINTENANCE EMPLOYEES	UNION MEMBERSHIP
Syracuse-----	1500	1402
Ilion-----	1800	1478
Tonawanda-----	515	475
Middletown-----	1200	1050
Norwood-----	1500	852
Marietta-----	125	49
Totals-----	6640	5306

¹ The oral testimony of the various officials showed 1,144 members at Middletown

The Middletown unions on May 26, 1936, issued a statement in which they claimed 2,050 members, 993 of which were paid up (Bd Ex 236b) The record indicates that from March to May, 1936, there was little, if any, appreciable change in the employment or union membership figures. Thus in the text we have taken the most conservative figures. The evidence shows that there were over 7,500 employees of all types in these six plants in the period March-May, 1936. The total number of all of respondent's employees engaged in manufacturing including the plants not involved in the proceeding, is about 11,000. Its total employees throughout the world number approximately 19,000.

neither in the 1934 conference nor at the April, 1936, conference questioned the District Council or the Joint Board on the number they represented or raised the question that such a number did not constitute a majority of the employees involved. As far back as February, 1934, a vice-president of the respondent recognized that some of the plants were "organized 95%, possibly greater". (Bd. Ex. 2, p. 67.) We accordingly find that on April 1, 1936, and thereafter the Joint Board represented a majority of the employees in the unit described above and was therefore the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

In sending the letter of May 10 the Joint Board was thus speaking for at least 6,000 employees, constituting all of the respondent's production and maintenance employees in the six plants here involved. But the respondent made no direct reply to the request. Instead, on May 21, without any previous warning, employees in the six plants involved were informed that a vote would be taken that morning by the respondent on whether they favored a strike. The notice of the balloting stated that each employee may vote free from the influence of "any employee" and drew special attention to the "special confidential understanding" reached in June, 1934, which was then quoted in full. (Resp. Ex. 2.) The union representatives in the various plants immediately protested to the factory managers against the taking of such a vote. They were told in reply that the factory managers had instructions to "disassociate" from the payroll anyone who interfered with the balloting.

The ballot used in this vote is worthy of study—it is an intimation of the publicity to flow in the future from the respondent's offices. It began: "Remington Rand has been notified in writing by a union official that '90% of the organized employees' have voted to strike unless the company meets demands of the Union. No demands are stated." Yet the Joint Board had clearly outlined its demands in letters to Rand and Benner, and orally to Anderson on April 24. And, in a real sense, the paramount demand was simply a conference with Rand or Benner, as stated in the letter of May 10, a demand which Rand's deliberate efforts to avoid such a conference indicate was thoroughly understood by him. The ballot continued: "The 'organized group' is not a majority of Remington Rand employees. For example out of 1700 employees in the Cincinnati (Norwood plant) only 54 voted to strike. That means only 3% are trying to dictate to the other 97% in the Cincinnati Plant." These figures are not only false, but they also leave the implication, equally false, that the votes in the other plants represented a small minority of the employees. While the members in the Norwood

unions did vote against the strike, though by a fairly close vote,³⁶ the ballot fails to mention that in every other plant the vote was overwhelmingly in favor of a strike, and that the Joint Board was speaking for all six plants as a group, not separately.

The ballot then turned from false statements to threats: "If a majority of the employees in Syracuse want to continue work under present conditions, Remington Rand will keep the plant open *at any cost* and will take steps necessary to protect everybody in his or her right to work. DO YOU WISH TO WORK OR DO YOU WISH TO STRIKE? . . . The results of this ballot will determine the continued operation of the Syracuse plant."³⁷ And then the clause: "1. Are you dissatisfied with present working conditions? Yes ----. No ----. 2. Are you in favor of a strike? Yes ---- No ----", which is far different from asking whether an employee will strike if such action becomes necessary as a last resort. (Bd. Ex. 25; Resp. Ex. 3.)

Foremen and other supervisory officials of the respondent conducted the balloting and counted the votes. Clerical help were permitted to vote. The deception evident in the wording of the ballot was present likewise in the statement of the results. Totals of the "Yes" and "No" votes were not given but only percentage figures announced. Moreover, in computing the percentages, blank votes were disregarded. Consequently, an announcement in Iliion that 98 per cent of the employees were not in favor of the strike concealed an actual vote of 911 against a strike, 70 in favor, and 637 blanks out of about 2,000 employees. (Resp. Ex. 4; Bd. Ex. 171.) In Tonawanda the vote was announced as 91 per cent against a strike, 9 per cent in favor of a strike, yet blank votes greatly exceeded the number of votes against the strike; the factory manager stated that "the company is entitled to those 316 blank ballots" and counted them as votes against the strike. In several of the plants the large number of blanks were the direct result of instructions by the union leaders to the members to vote in that fashion. In other plants many ballots were not cast at all due to instruction of union leaders. It is obvious, in addition, that many of the employees, fearing reprisals, must have voted to please the respondent and not according to their real beliefs.

The voting at Syracuse took a different return from the balloting conducted at the other plants. In the latter a vote was actually accomplished, its completeness varying somewhat according to the temper of the employees in the particular plant. But in Syracuse

³⁶ The vote was 256 to 310. (Bd. Exs. 40, 62 (Bd. Ex No. 62 was erroneously recorded as number 61 in the original of the Board's Decision. This error was corrected by an Amendment of Decision issued March 16, 1937))

³⁷ Italics ours.

the union leaders requested the members to cease work until the plant officials agreed to call off the balloting. The plant was thus idle for about two hours while Straub, the Factory Manager, conferred with higher executives of the respondent. As a result of these conferences, Straub posted that morning a hurriedly prepared notice reading as follows:

“Starting at 9:30 A. M. on Thursday, May 21, 1936, this plant will be closed down for the usual two weeks summer vacation, to renovate and re-arrange this plant.” (Bd. Ex. 26.)

In the past the Syracuse employees had received from two to six weeks' notice of such temporary closing; even Straub appeared surprised at the order for a vacation. Moreover, heretofore such vacations had occurred in July or August. The employees left the plant pursuant to the notice and operations ceased. There can be no question that the respondent's solution of the dispute at Syracuse was to lock out all of its employees. In all of the other plants vacation notices of a different tenor were posted at this time, apparently in an attempt to influence the employees against a strike through the inducement of a vacation policy. The policy announced in the notices—that of a vacation with pay, the amount depending on years of service—was to take effect immediately, but actual vacations were not to commence until plans were perfected. It was the first time vacations with pay had been granted. (Bd. Ex. 71.)

The sudden closing of the Syracuse plant, which employed about 1,800 people, brought an immediate response from city officials. Mayor Marvin of Syracuse telephoned Rand in an attempt to mediate the matter but was promptly informed by Rand that he would not meet with the leaders of the Syracuse unions but would telephone back and state under what conditions he would reopen the plant. Rand telephoned later, and gave the Mayor the names of 16 employees, leaders in the Syracuse unions, who were to be discharged before the plant would reopen and asked him to give the list to Straub. The Mayor did so and then placed before these unions Rand's proposal that he would reopen the plant on condition that the union members return and acquiesce in the discharge of their leaders. The proposal was rejected unanimously. That evening, and the next day, letters over Straub's signature were sent to the employees on the list, now increased to 17, notifying them that their services were no longer required at the plant. Among those thus discharged was Crofoot, president of the Joint Board, and Bellows, Joint Board member from Syracuse. The respondent, striking at the leaders and heads of the unions, thus hoped to demoralize their members and cripple their activities. The next day the Mayor called Rand, and, after the latter once more refused to meet with the union

representatives at Syracuse, arranged for another vote to be taken, Rand to reopen the plant if a majority were willing to return to work. The ballot was prepared and mailed by the respondent, to be returned in a prepared envelope to the Mayor's office. The ballot was very similar to the one used on May 21, containing a statement that "if a majority of the employees in Syracuse want to continue work under present conditions, Remington Rand will keep the plant open at any cost and the authorities of the City of Syracuse will take steps necessary to protect everybody in his or her right to work". (Bd. Ex. 28.) At the same time the Mayor sent a letter to the Syracuse unions advising them of the plan. The salutation is interesting—"To the Employes of Remington-Rand, Inc."—for Rand in his telephone conversations with the Mayor had asked him not to use the term "union representatives". The Mayor stated that Rand had declared the plant would remain in Syracuse permanently, perhaps at increased capacity, if the vote were in the affirmative—a statement clearly intended as bait for a favorable vote. (Bd. Ex. 31.) The scheme fell through for the union members would have none of it. Most of them did not vote and no union representative appeared at the tally of the votes.

Two significant events occurred on the same day, May 22, to reveal that Rand had definitely turned his back on any solution that involved a conference with the Joint Board. He first told the Federal Conciliators who were trying to arrange a conference between him and the Joint Board that he refused to meet with the latter. Next, when Doyle, Supervising Mediator in the New York State Department of Labor, telephoned him that he had heard of the shut-down of the Syracuse plant and desired to ascertain whether a labor dispute was involved, Rand informed him that the plant was merely closed because of the usual two weeks' vacation and that no labor trouble existed, but added: "Of course, I am getting sick and tired of these men dictating to me as to how, when and where they will work."

On May 23, proceeding with its previous plans, the Joint Board issued instructions calling for a strike on Tuesday morning, May 26. The strike was to be preceded by a meeting of the employees at each plant on May 25 to familiarize them with the recent developments and proposed plans. The instructions reviewed briefly the efforts to obtain a conference with Rand and pointed out that "A strike would be unnecessary if the representatives of the company who had authority to act had seen fit to sit down and discuss our problems with us". (Bd. Ex. 64.) In line with that belief the Joint Board was still attempting to obtain a conference. Working through Hart, Factory Manager at Tonawanda, the union leaders there had attempted to secure a meeting with Rand but had been told they

instead should see Anderson, the respondent's representative at the April 24 conference. Crofoot, on May 25, called Benner, the respondent's vice-president, and was informed that he was out of town. Crofoot then called Anderson and was informed that it would not do any good for him to hold another conference. While the Joint Board was thus using every possible approach to a conference with Rand, the latter was telling Mayor Marvin in person in New York City that he would not talk to the Joint Board and that the union leaders discharged at Syracuse would remain discharged.³⁸ That evening, as a last resort, the Joint Board sent a final telegram to Rand:

"IS IT NOT POSSIBLE YOU ARE LETTING ANGER INSTEAD OF REASON
RULE IN YOUR PRESENT ATTITUDE REGARDING PRESENT MISUNDER-
STANDING WITH EMPLOYEES AT SEVERAL PLANTS STOP A MEETING
MAY STILL BE ARRANGED WHICH MAY AVOID SERIOUS DIFFICULTIES
BUT IMMEDIATE REPLY URGENT" (Bd. Ex. 65.)

There was no reply. On the morning of May 26 the strike became effective.

III. THE EVENTS SUCCEEDING MAY 26, 1936—DEVICES ADOPTED BY THE RESPONDENT TO DEFEAT THE STRIKE

The response to the strike left no doubt that the employees of the respondent were united in their efforts to achieve genuine collective bargaining. With but a handful of exceptions, every employee engaged in production and maintenance refused to enter the plants on May 26. All of the plants came to a standstill and production ceased. But at the same time forces were already being set in motion which were to prove powerful enough not only to defeat the strike but also to crush some of the unions.

Even before the strike commenced Rand was preparing to meet it. It is clear that the decision lay with Rand whether the respondent would attempt to settle the issues between it and the Joint Board by means of conferences, or would, by refusing to confer, compel the latter to call a strike. The events transpiring in the New York offices of the respondent in the week preceding the strike point to the respondent's grim determination not to bargain collectively with its employees but to settle the issues by force. Rand in that week gathered about him a group whose past activities eloquently testify to that resolve. There was Pearl L. Bergoff, who, in his testimony, described his business as simply that of "strikebreaking" and who

³⁸ The Mayor, in a letter to the Syracuse unions reporting on the conference and urging them to return, did not believe it politic to include that refusal in his report (Bd. Ex. 32.)

said he had been engaged in that business for "over 30 years". Others have styled him "The King of Strikebreakers".³⁹ There was Captain Robert J. Foster, head of Fosters Industrial & Detective Bureau, which has been operating for 25 years. A third member of this group was Raymond J. Burns, president of the William J. Burns Detective Agency. Later there was added Captain Nathaniel S. Shaw, whose calling card bore the words "Confidential Industrial Missions", and who described himself as a "Radical Investigator" who had been engaged in that work for 27 years.⁴⁰ These men are experts in their trade—they brought to Rand all of the many techniques they had developed through years of experience. They know how to operate "propaganda factories" designed to spread demoralizing rumors among striking employees, how to use "missionaries" to visit the homes of these employees and, posing as members of the company's personnel department, persuade them to return to work, how to organize "back to work movements" that would cause an ever widening breach in the ranks of strikers. They appreciate how the devices of the law can be used to advantage and so they know the technique of securing a labor injunction by framed "acts of violence". They understand the aid which state and local police protection can offer in opening a plant so they know how "to get to the Sheriff or the Chief of Police, maybe to the Mayor", or how to bring about "violence" that can be used to support a demand for such protection. When small towns are involved, they are aware of the opportunity offered to divide the community by bringing pressure on the business groups through threats to move the plant elsewhere. Finally, they have at their command the forces necessary for all these purposes—"guards", whose police records are not without significance, undercover men, missionaries, ordinary strikebreakers. All these resources were placed at Rand's disposal. To them he added the invaluable device of a skillful publicity campaign to mould public opinion as yet unacquainted with the issues involved or the forces at play, against the striking employees. With these men and the techniques and resources they offered, Rand, supported by his publicity expert, Earl Harding,⁴¹ and his attorney, J. A. W. Simson, proceeded to evolve the strategy of the respondent in fighting the strike. While the cam-

³⁹ Levinson (1935), *I Break Strikes*, Passim.

⁴⁰ The following amounts were paid by the respondent for the services of these men and their agencies: Foster—\$30,000; Bergoff, who in all supplied 200 men—\$25,850; Burns—\$25,000, "a good substantial job", according to his testimony. Shaw was promised \$50 a day and expenses but aside from \$300 in expenses did not receive any more due to a dispute with Rand.

⁴¹ Mayor Marvin had this to say of Harding: "To my mind, Mr Harding was a domineering dictatorial type of person that was never willing to listen except to one side, and one side was always right and the other side was always wrong, and to my mind, Mr. Harding impressed me as being nothing more or less than a professional strikebreaker . . . Mr. Harding, I think, was more in the role of a publicity expert. That was his particular forte."

paign proceeded simultaneously on all of the six fronts, the use of different methods at different points makes it advisable to concentrate our attention for the time on one of these fronts—the Iliion plant.

A. *Iliion*

Iliion, New York, is a village having a population of about 10,000. The plants of two industrial concerns, the respondent and the Remington Arms Company, are its support. Nearly all of the workers in Iliion are employed in these plants. Similarly, the surrounding villages of Herkimer, Mohawk, and Frankfort⁴² are in large part dependent for their existence upon the payrolls of these plants. Under such conditions, the effect of the rumors which arose early in 1936 regarding the removal of the respondent's plant to Elmira can hardly be exaggerated. Yet the respondent did nothing to allay the uneasiness and fear that affected the merchants and workers alike—both groups, despite their efforts, were unable to obtain a definite statement from the respondent.

Barney Allen, a retail dealer in electrical appliances, had been the leader of a group of Iliion business men who were attempting to ascertain the respondent's plans for its Iliion plant, especially in view of the Elmira rumors. After trying unsuccessfully to contact Rand for many months, on or about May 18 they were suddenly informed by Ross, the Iliion factory manager, that Rand would like to meet with them. Allen's group of business men met with Rand in New York City on May 19. The group consisted of Frank Schmidt, an attorney, who had represented the respondent, two bankers, and Allen. Rand's first statement was, "Well, I suppose you fellows would like to know what is wrong in Iliion"—and then he proceeded to tell them what was wrong. It seemed that Iliion had been a "very good manufacturing place" for the respondent until Mr. Bowen (International vice-president of the Machinists' Association) "came into the picture". From that time on, according to Rand, the respondent's manufacturing problems had been very unsatisfactory and it had not been able to operate its factory efficiently. Rand stated that he had met with union representatives on various occasions, and "that on each and every occasion after the meeting his remarks and statements, and agreements with the Union had been misrepresented to the public". And then he added, "As far as Iliion is concerned, we lately have felt that it is not the best place in the world to manufacture with the sentiment of the citizens of Iliion as a whole . . . Your own local paper, apparently, has been very antagonistic to our firm, and it looks as though, that practically every-

⁴² The population of the four villages is about 35,000.

body in Iliion is not interested in Remington Rand and they are working entirely against us." Schmidt then protested that Rand held the wrong opinion of the people in Iliion and hoped he would alter that opinion. Rand replied that he was very glad to obtain a "different angle on the situation". At that point another group entered the discussion. This group was headed by Reginald Boote and consisted of several employees in the Iliion plant. Rand had arranged that the two groups would be together with him at the same time so that Boote's group was there when Allen and his associates entered the office. Boote assured Rand that the majority of the employees were satisfied with conditions at Iliion, that while some of them were members of the Iliion unions they were opposed to the tactics being used by the American Federation of Labor and wished that such "outsiders" would keep away from Iliion. Someone proposed a secret ballot to determine how many would be against a strike if one were called, and mentioned that the employees and the business men had not recovered from the 1934 strike, so that all were anxious that there should not be another strike. Rand informed both groups that he would not again personally meet with representatives of the American Federation of Labor. As a result, Allen left the meeting with two impressions: that the future of Iliion depended on what the employees did, and that if a strike did occur it would be a "long drawn-out affair" because of Rand's refusal to meet with the unions.

The strike came on May 26. About 1800 employees were on strike—all of the production and maintenance employees. Picketing was commenced in orderly fashion and there was no trouble. But despite the absence of disorder, more than 50 guards appeared in the plant that morning. Most of these men, employed by the Foster Industrial & Detective Bureau, had been sent to Middletown at Rand's orders on May 22 and 23. At midnight, May 25, they were told by Benner to leave for Iliion. They arrived there and, armed with clubs and wearing badges, patrolled the plant. Their number increased to about 100 in a few days.

At the same time the seeds sown by Rand on May 19 began to bear fruit. Allen's group of business men met with Boote's group of employees. The latter said that they represented a majority of the employees, all of whom desired to return to work but needed proper protection. Allen's group, realizing that the strike might be a "long drawn-out affair", decided to organize into a "Citizens Committee" and to call a mass meeting of citizens to acquaint them with the "facts", which seemed to be two in number: that a long strike would mean a serious loss, and that the main thing was for the employees to resume work.

The first signs of trouble came the next day. A group of about 50 men arrived at the plant, changed into uniforms of the Burns Detective Agency, and then proceeded to patrol the streets around the plant armed with clubs and guns. Their presence and their reputation immediately created tension—the employees were incensed that such men should be imported to police a strike which was entirely peaceful. The Sheriff was of the same opinion—“he didn’t want anything to do with that Burns crew” and wanted to remove them since they were a source of trouble. Yet Simson, the respondent’s attorney, was at the office of Mayor Whitney demanding that these men, not identified by him as Burns men to the Mayor, be sworn in as deputies. The Mayor refused, since the law did not permit him to deputize non-residents, and the Burns men left that same evening about midnight. But Simson had made it clear that the respondent thought the protection afforded by the local police was far from adequate and would insist on increased police protection. Moreover, at a conference that day on the subject, Simson had suddenly announced that he had just received a phone call from Rand and that the respondent was going to move the plant immediately. A large “For Sale” sign that appeared at the plant and the moving of machinery corroborated this statement.

The village authorities began to feel the pressure that was being exerted upon them. On the one side was the respondent with its insistent demands for more police protection; on the other were the business groups, fearful of a long strike and its losses, and of the possibility that the plant would be moved elsewhere. The neighboring villages offered their aid to Mayor Whitney, and a meeting was held on May 29 of the Joint Valley Board, consisting of the authorities of the villages of Ilion, Frankfort, Herkimer, and Mohawk. Boote, who was looked upon as the spokesman for the employees said to be opposed to the strike, although no one bothered to investigate his authority or the number of such employees, was called to the meeting. He joined in the demand for police protection and also described the conference with Rand on May 19. Beer, the Joint Board Member for Ilion, was also called to explain the unions’ view. The authorities stated to him that Rand had threatened removal of the plant if greater police protection were not provided. According to Beer “all the police force which they painted a picture as required by Mr. Rand would be something in the nature of an army that could drive the strikers in”. The Joint Valley Board then spoke to Ross and Simson and were informed that it had been decided the plant would be moved, the matter was “out of their hands” and that “some one higher up would have to be contacted”.

Simson’s hint had its effect. When the Joint Valley Board met again on June 1, all were impressed with the seriousness of the

responsibility they faced in view of the threat to move the plant. They decided to see Rand in New York. But in the meantime Allen's group of business leaders had been moving faster, goaded by the fear of losing the plant. Their economic life depended upon the purchasing power of the plant's payroll—their stores, their banks, their loan associations, their medical and legal practices, stemmed from that source. After some discussion, Allen telephoned Rand, told him that they were working in cooperation with Boote's group in attempting to bring the employees back to work and asked him for a week's grace to work it out. Rand made an appointment with him for June 1. Boote's group was now operating under the name, Iliion Typewriter Employes Protective Association. The later events at Iliion involving this Association and the nearly identical Associations that were to spring up at other plants clearly stamp them all as creatures of the respondent. The efforts of the Iliion Association were directed toward a mass return of the employees and a reopening of the plant, and Boote so informed Allen. He emphasized to Allen that the main problem was one of police protection for the undertaking. The two groups worked in close cooperation throughout this period, meeting every day.

Allen saw Rand on June 1. Rand said that he would reopen the plant if a majority returned to work, and when Allen spoke of police protection, added "I fully agree with you, that that is very essential, and that is a big problem for you people to work out who are interested in having Remington Rand manufacture in Iliion". Rand again made it clear he would not meet with the unions. The next day, pursuant to an appointment, Rand, with Harding and other officials of the respondent, met for five hours with Mayor Whitney and a group of 20 from the Joint Valley Board at the Union League Club in New York City, and repeated these statements—if Rand obtained police protection for opening the plant, he would keep the plant in Iliion and might even move other plants to Iliion. Throughout the strike this demand for police protection was to be made again and again by the respondent, for the presence of large forces of police at its plants was one of the major factors in its campaign to defeat the strike. The presence of such forces both intimidated the employees on strike and aided in swinging public opinion against the strikers. Flattering their vanity, Rand told them that they were one of the most representative groups he had ever conferred with. In turn he was assured that they would do everything they could to have him keep the plant in Iliion. Mayor Whitney did not mention, in connection with Rand's request for police protection, that no disorder of any consequence had yet occurred in Iliion.

The Joint Valley Board returned to face the problem of police protection. The Iliion police force numbered only about six, and

though about eight special policemen had been added, it obviously fell far short of Rand's requirements. So the Joint Valley Board arranged a conference with Governor Lehman and asked for State Police. These were refused by the Governor, who stated that it was a problem for the Sheriff and local authorities to handle and there was no indication that they could not cope with the situation. The Joint Valley Board returned and continued to meet, but took no action. But inactivity was the very thing which the business groups could not permit to continue. Informed of Governor Lehman's refusal, they went to the Sheriff and demanded police protection, stating that Boote's group wanted ample protection and it was up to the Sheriff to provide it. With him they formulated plans for the appointment of 300 special deputies to be drawn from the four villages. Many of these were appointed on the night of June 7. The Sheriff also stated he would order tear gas and ammunition.

On June 8 the business men had a show-down with the authorities. They held another mass meeting and Allen, as Chairman, addressed it. Echoing Rand, he spoke of the vote on May 21 against the strike and of "outside agitators". He declared that the employees desired to return to work and demanded police protection. "Police protection" was to include the clearing of all people off the streets and the ordering of union representatives out of Iliion. The Chief of Police replied that people had a right to use the streets. Allen then called upon the Mayor and the Chief of Police either to resign or to cooperate in the measures that were being taken. A representative of the Iliion Typewriter Employes Protective Association joined in the demand. The Mayor agreed to cooperate with them and more deputies were sworn in.⁴³ Allen and his group now took control.

The evening of that same day Mayor Whitney met with two of the leaders of the Iliion unions. He explained to them, tearfully, "that he was being compelled to do things that he didn't want to do, because these particular interests had and could wield an influence which would ruin him". The Mayor was one of the largest property owners in Iliion "and was afraid of this committee, members of which included bankers, . . . he could easily be a ruined man and have nothing left but his hat, coat and pants if these people were to clamp down on him as they were able to do and in a manner which he felt fearful they would do". Similarly, other merchants informed the union members that they feared retaliation by the Citizens Committee unless they went along with that group.

The Joint Valley Board evidenced its acquiescence by a resolution passed that day, a copy of which was sent to Commissioner Andrews

⁴³ He did refuse to accede to pressure brought to have the fire bell rung to summon all of the volunteer firemen who could then be deputized.

of the State Department of Labor. The document is worth study. It opens as follows: "Realizing the grave danger of losing a valuable industry to our community, we assembled on the 29th day of May last" to determine the issues and to settle them. But, after briefly listing the meetings it held to determine those issues, it goes on to state the conclusions reached without any mention of what it found the issues to be:

"First . . . we are constrained to say that agreement as between the strike leaders and the company management is in our opinion impossible.

"Second: That Remington Rand, Inc., has definitely determined to reduce its spread of operation and is to be influenced in its policy in this connection, by the attitude of the respective communities in which its plants are located, toward the enforcement of law and the protection of workers from intimidation, coercion and violence. It will not long remain in a community which, by lack of law enforcement, encourages such unlawful practices.

"Third: That we, as public officials, owe a duty to the industries in our community and the workmen therein to suppress such practices by the arrest and prosecution of violations of law, wherever and by whomever committed. We are glad to say that the law enforcement organizations of the respective villages and county are now coordinated and strengthened so that this duty which rests upon us and the county enforcement authorities is going to be met. The Sheriff, with our cooperation, will have available for any emergency, approximately three hundred deputies, fully equipped. The district attorney and his assistant, together with the respective village attorneys, are prepared to promptly prosecute violations of law wherever arrests are made. The present grand jury will remain in session to continue to hear any evidence of violation of law which may properly come before it. The law must and will be enforced.

"Fourth: Finally, if plants at Ilion are not to be lost to our community for the benefit of some other, prompt decision and action toward settlement must be taken, without further delay, by all workmen and their leaders. It is the responsibility of no one individual or group of individuals. It is the individual responsibility of each, and the common responsibility of all." (Bd. Ex. 173. (The number of this exhibit was erroneously recorded in the original of the Board's Decision as 123. This error was corrected by an Amendment of Decision issued March 16, 1937.))

A document as amazing for its omissions as for its affirmative statements—no mention of the fact that the law was being enforced and

that no violence had occurred to justify the measures announced, or that no violence had occurred in the 1934 strike, no mention of the fact that the reason agreement was impossible was the refusal of the respondent to meet with the union representatives, no invocation to the respondent to take prompt action to settle the strike, but only to the employees to end it by returning to work, thereby abandoning the objectives for whose attainment they had gone on strike. But the document did show that the respondent's strategy was having its effect—apart from the strikers, all groups were joining together to effect a mass return to work.

On June 8 there had appeared an advertisement in the Iliion Sentinel by the Iliion Typewriter Employes Protective Association. It stated that when enough applications to return to work had been secured, the Association would petition Rand to reopen the plant. But this warning followed immediately: "We must move rapidly so that it may be possible to save some part of the plant for your future employment before the machinery which is being dismantled and shipped daily from Iliion, is entirely removed and the Remington Rand industry irrevocably lost to us." Those who could not personally apply at the Association office were told to telephone it and two telephone numbers were listed. The advertisement ended with these words: "Make Your Application Now." (Bd. Ex. 180.) On June 9, Boote, Allen's group, and Ross and Simson conferred about the reopening of the plant. Arrangements were made for a meeting in the plant next day of those employees that desired to return. Pursuant to these plans, the Association, which had opened an office, sent a mimeographed letter signed by Boote to the employees of the Iliion plant inviting them to attend a private meeting in the plant yard on the afternoon of June 10. They were told to meet on the respondent's property opposite the plant and march across into the plant yard. The streets were to be roped off and "all approaches and entrance will be properly guarded . . . THERE WILL BE AMPLE POLICE PROTECTION. YOU WILL NOT BE MOLESTED". Finally, "We have received the necessary applications to warrant asking Remington Rand to reopen the plant if you so vote at this meeting. This letter is being sent to some people who have not already made application, but we believe your name will be acceptable to the Company"—which, translated, means that by this device we are able to keep the actual number of applications a secret and thereby create sufficient doubt and fear to induce many more to apply who would otherwise refuse. A pass was enclosed in each letter bearing the employee's name and that of the Association. These plans were announced by Boote to the press.

Everything was in readiness on June 10. All of the streets surrounding the plant were roped off. Deputies and police were every-

where. Such measures naturally led to disturbances, which in turn were treated with a severity completely beyond necessity, thereby heightening the intimidation worked by the display of force. For example, after a crowd drawn by a brief altercation had returned behind the ropes, it was nevertheless dispersed with tear gas, one bomb coming from a factory window. Tear gas guns were mounted in several of the plant windows. A little over 500 employees entered the plant grounds that day. These numbers were swelled by a group of employees from one of the small units of the plant which had not joined the strike, and which marched to the main plant grounds in a body. They listened to speeches by Boote, Simson, Ross, and others. Finally, at the proper moment the "For Sale" sign came down and a flag rose melodramatically on the staff. Rand himself appeared and in a speech congratulated the employees.

The first step was thus over—and the plant was to open in earnest the next day. On the night of June 10 the final preparations were taken. These preparations were aided by a rumor—declared later by a reporter covering Ilion for a Utica paper to be untrue—that 500 strikers were marching from Syracuse that night. Allen had first requested State police from Acting Governor Bray and his request had been refused. The Board of Trustees of Ilion then met and passed the following resolution:

"Motion made by Trustee Maury and seconded by Trustee Paddock, that the Mayor be authorized to declare a state of emergency in the Village of Ilion and that all roads and entrances be blocked and nobody allowed to enter the village unless they have lawful business in the village."

The Mayor declared the emergency to be effective as of midnight, June 10. With that declaration "law and order" broke loose and Ilion became an armed camp, separated from the outside world. The number of special deputies was increased to 300, many business men serving in that capacity. The main road leading into the village was barricaded with a large chain. Squads of special deputies and the local police armed with shotguns—consisting of four to six deputies and one policeman in a squad—stood guard at the entrances to the village and patrolled the streets. Only persons with passes of the Association, those working at the Remington Arms plant, and others satisfactory to the guards were permitted to enter the village. Arms had been secured that night at the Remington Arms plant and were carried by many of the special deputies and police. Others carried clubs. Private cars were used to serve as police cars. The headquarters of the Ilion unions, where the pickets gathered, and which were across the street from the plant, were padlocked by the Village Board on the basis of one complaint by

an adjoining landowner.⁴⁴ The Chief of Police, in answer to protests of union leaders, stated that "Lieutenant Governor Bray declared martial law on the request of Mayor Whitney of Iliion"—which was denied by Bray and was obviously false. When an investigator attached to New York State Department of Labor, who had been sent to Iliion to investigate the situation upon complaint of the unions, questioned the necessity for such measures, he was informed by the spokesman for the Joint Valley Board that "as Mr. Rand had threatened to move the plant from Iliion, and it would be the ruination of all four villages, . . . it was absolutely necessary that the strikers were shown that they were in the wrong and have them return to work".

With the village thus turned into a fort, the foremen on June 11 visited the homes of the employees to persuade them to return. They stated that the deadline for jobs was that evening. All they wanted them to do was to enter the plant—they were not required to work in the plant. For that they would receive \$5 in cash and \$10 later. There was an exception—those who had been too "active" in the unions would not be permitted to return at that time.

These measures could have had but one effect. The union ranks were broken and the employees began to enter the plant in large numbers. On June 12 about 1200 employees entered the plant.⁴⁵ The barricades were withdrawn and the deputies decreased, but the emergency resolution remained in force.⁴⁶ The union headquarters were still padlocked, the authorities stating in answer to the contention that these actions were unlawful, "Legal or not, we done it."⁴⁷ A celebration was also held at the plant on Saturday, June 13. Allen, village officials, and others made speeches, all in a jubilant tone. An employee who had been working on Friday and who did not attend the celebration and have his picture taken was discharged for that failure. There remained only the work of "mopping up". For the next few weeks foremen and other supervisory officials visited the homes of employees to persuade them to return to work. They stated that "The Federation is a thing of the past in Iliion", and informed the employees that their jobs would be held open for only a few days. Many succumbed to this pressure. In the course of the

⁴⁴ The unions had leased the building.

⁴⁵ By the middle of November, 1100 to 1200 union members had returned. Picketing, with about 100 to 150 people participating, still continued. About 500 union members were still on strike at that time.

⁴⁶ About 10 special policemen were kept at least until September 1. The total expense to the Village for special policemen in the period from May 26 to September 1, was about \$3000. The normal monthly expenses of the village for all purposes is only \$10,000. The other villages, of course, experienced similar expenses.

⁴⁷ The headquarters remained padlocked under order of the Village Board until July, when a court order required the removal of the padlock. But the same day Schmidt, one of the Citizens Committee, acting for a client, had the premises padlocked and consequently the unions were unable to use them.

attempts to persuade the polishers to return, the superintendent invited a committee to meet him at the plant ostensibly for a conference. However, they were met with motion picture cameras and refused to enter the plant, realizing that it was a scheme to obtain pictures which could be headed, "Polishers returning to work." Later the superintendent informed the polishers all could return with the exception of Harold Beer, President of the Polisher's Union and Joint Board member for Iliion. It was understood that this meant Beer was discharged.⁴⁸

The reopening was celebrated at a meeting on June 12 of the Citizens Committee and the Joint Valley Board, at which they were honored with a speech by Rand. He was effusive in his praise: Iliion was to be congratulated for the type of people it had and what they had done. "Two million business men have been looking for a formula like this and business has hoped for, dreamed of and prayed for such an example as you have set"—an example that "would go down into history as the Mohawk Valley Formula". Such perpetuation of their example was no idle boast—the next day representatives of the National Association of Manufacturers came to Iliion and interviewed those prominent in the execution of the "Mohawk Valley Formula". On July 20, 1936, an article entitled, "A Community Organizes!" appeared in the Labor Relations Bulletin of that organization. In it Barney Allen told the story of how Iliion's "aroused citizens, determined that no group should place itself above law and order by restricting the rights of others, organized to safeguard the 'right to work'". After the story was related, the article continued: "The N. A. M. appreciates the opportunity, through these columns, of bringing to the attention of industrial America the constructive manner in which this controversy was handled by these villages. Regardless of the final settlement of the dispute, here or at other Remington-Rand plants, Iliion has made a real contribution to civic dignity." (Bd. Ex. 178.)

Rand thus handed industry the "Mohawk Valley Formula". But the representatives of the N. A. M. had wisely omitted to interview a person who could have illuminated the picture from a different angle. Pearl Bergoff, expert in the technique of strikebreaking and head of a large strikebreaking agency employed by the respondent, had this to say about Iliion:

"A. Rand was very anxious to get his help back. He was away ahead of the rest of his lieutenants. He wanted to get them back in four or five days. Take Utica (Iliion), for in-

⁴⁸ Beer's weekly pay prior to the strike was \$32, but much of his time in 1936 was spent on union matters for which he was not compensated by the respondent.

stance. If he had his way, he was away ahead of Simson and the rest of them that were there. He wanted to do everything in a hurry, but he was advised against it by Simson and Ross, and myself, as far as that is concerned.

"Q. What was the technique Rand suggested to you?

"A. He thought we ought to have a big mass meeting, get them all together, and a lot of speeches and ballyhoo, and march them all to the plant.

"Q. Was that discussed pro and con with Rand?

"A. I believe things along that line was discussed with him, mostly over the long distance telephone.

"Q. Had you never had occasion to use that device in your business before?

"A. Yes, I had. Sometimes it was successful and sometimes it failed.

"Q. Did you vote against it, so to speak?

"A. I voted against anything that Rand wanted done in a hurry. He was too much in a hurry on this job. In fact, I think that Mr. Simson, over there, had more to do with getting the men back at Utica (Ilion) than anyone.

"Q. Did you cooperate with Mr. Simson?

"A. I did to the best of my ability.

"Q. Just exactly what form did that cooperation take?

"A. I was in conference with him sometimes at the Hotel Utica, I think it was, in the evening, and plant superintendent Ross was there, and he would get on the telephone and spend about three hours talking to Rand.

"Q. What was the plan evolved out of all that?

"A. Rand had two or three days that he was going to get the men back to work and I know that I advised against it and so did Mr. Simson.

"Q. Just what did Rand want to do that you thought was bad business judgment from your own point of view?

"A. I didn't think that the conditions were quite right to warrant the help being brought back. I thought they needed a little more patience and waited.

"Q. And is there a kind of build-up that is used as a matter of . . .

"A. They had quite a number of their own employees going (about) doing missionary work in Utica (Ilion). I imagine there were about forty or fifty loyal employees going around. Rand wanted my men to go around with these people. I was against it. Simson was against it and thought it wouldn't look very well for outsiders to go around with loyal employees. In

fact, they were doing better work than my men could do, but Rand—he thought otherwise.

“Q. When you speak of Utica, you mean Ilion?”

“A. Yes, sir.

“Q. Did Rand’s view finally prevail or your view finally prevail about your men going out with employees on missionary work?”

“A. No, I stuck to my guns.

“Q. And you did not let them go out together?”

“A. No, I did not.

“Q. What did you have your men doing?”

“A. My men were scattered around Ilion, the different little towns and, Lord, I forget, I had about sixty or seventy scattered around there.

“Q. What was the peak at Ilion?”

“A. I guess about seventy, somewhere around there . . . I had about 150 between Syracuse and Ilion, at one time, I should imagine.

“Q. At what period was that?”

“A. I should say about the sixth, seventh or eighth of June, around that time.

“Q. Now what were these men doing that you had instructed not to go around with the old employees?”

“A. They were simply mixing around with the help and listening, just hanging around, making themselves useful. God knows what they were doing. I could not keep track of them myself.

“Q. We have heard a lot about rumors in this case, Mr. Bergoff. Are rumors part of the technique, starting rumors?”

“A. You mean whispering, is that the idea?”

“Q. Yes.

“A. That would have a lot to do with it.⁴⁹

“Q. What of all the whispering subjects, do you consider most persuasive in your business so far as accomplishing the purpose?”

“A. Well, you talk along the line that ‘you are out of work, you are not drawing any wages’. You know the man wants to go back to work; maybe his rent is due. ‘Why don’t you fellows go on back to work, or you girls’, whatever they are, and

⁴⁹ Whittemore, the reporter for the Utica Daily Press, who covered Ilion during the strike, testified:

“Q. What other rumors came to your attention that you did run down?”

“A. There were, there were about 50 every day.

“Q. Did you find out what the source was?”

“A. No.

“Q. Had you ever been in a town where there were so many rumors?”

“A. No, I never had.”

'If you have any grievances, when you get back, go on back to work, and if you have any grievances, take them up with him. This fellow must be human and is not a tin god'. If you have two or three . . . who have been in the plant twenty years, take John Jones or Sarah Anderson, maybe they have been in the plant all their life, and take your superintendent, and get them back to work, and . . . you will get about fifty per cent of them going back instead of staying out on strike.'

"Q. Isn't that what you have described a missionary job?

"A. Yes, sir . . .

"Q. Who do you rely on for instructions to your men so far as it relates to the whispering campaign?

"A. Oh, they use their own judgment.

"Q. In other words, you do not feel it is necessary to instruct your lieutenants?

"A. No, a man that cannot go out and do his work without my instructing him every time is no good. These fellows get good wages. For Heaven's sake, if they can't go out and do their work right, after being at it fifteen or twenty years, they would have to have a nurse or something."

Captain Shaw, the "radical investigator", had this to say concerning his conversations with Rand:

"Q. Did you get the impression that he was following some plan which he had worked out?

"A. I did, yes sir.

"Q. What was that plan of Rand's?

"A. The first idea was to—to go to most of their homes, talk to their wives and families. The second was to have a lot of people go in en masse into the plant and to come out en masse, and there were so many numerous propositions, I just don't remember off hand . . .

"Q. Was this mass entry into the plant to be associated with the so-called opening of the plant?

"A. Yes, sir."

In the light of such testimony Allen, Mayor Whitney, and their fellow citizens appear as mere puppets dangled on an economic life-line held by the respondent. With Bergoff's testimony as a guide, the events at Ilion may be thus summarized and interpreted: Ilion is dependent upon the respondent's plant for its economic existence. Since the beginning of 1936 that village had faced disquieting rumors of a transfer of the plant to Elmira and the respondent had heightened the effect by its evasion of a definite reply. When Rand realized a strike was inevitable because of his refusal to confer with the Joint Board, he invited Allen and the financial leaders of Ilion to a con-

ference in New York. Three things were accomplished at this conference—the business men were threatened with removal of the plant because of alleged interferences of the unions; they were made to realize that a strike would be a long and costly affair because of the impossibility of settlement, inasmuch as Rand was determined not to meet with the unions; they were introduced to Boote and his group as purporting to represent a majority of the employees and informed by Boote that the employees did not desire a strike. In this fashion the leaders of the community were led to believe that the strike lacked the support even of the employees. As a result, when the strike actually came, Allen and the Citizens Committee joined with Boote in an attempt to reopen the plant rather than with the unions in an attempt to end the strike through collective bargaining conferences.⁵⁰ Rand's first move had been successful—the community had been divided with the business groups opposed to the unions.

This much accomplished, the next objective was a show of force to intimidate the striking employees and compel their return to work. The Burns crew was imported for that purpose, but the move failed as the community had not yet been prepared for the use of thugs. The plan was then adapted to a slower and subtler approach. Pressure was brought on the village authorities and on the Citizens Committee through threats to move the plant, and these threats were substantiated by overt acts, such as the "For Sale" sign and the movement of machinery. At the same time they were informed through Rand at the New York conference and by Simson in Ilion that the pressure could be lifted if ample "police protection" were afforded by the village for a "back to work" movement. The movement was being fostered through the combined efforts of Bergoff's missionaries and the respondent's direction of the work of Boote's group. But the village authorities were slow to act and when Governor Lehman refused State Police they were at a loss for the next step. But at this point the heavy economic pressure directed at the business groups in the community had its effect and they, in turn using economic pressure, forced the Mayor to yield control to them. With the intimidating show of force now provided by the village itself, through its police and deputies, Rand was ready for the next move. A trial mass meeting accompanied by speeches, dramatic scenes, and Bergoff's "ballyhoo" showed that the "back to work" propaganda had been effective and the plant was ready for reopening. Naturally, at this time the cumulative force of the various events began to tell on the people in the village. A few well chosen rumors, such as that regarding the Syracuse invasion, provided the final impetus. With

⁵⁰ Allen did not at any time contact the unions.

these, a wave of mass hysteria swept the village and Ilion became an armed town ruled by citizens turned vigilantes and raised to a frenzied pitch by the delusions evoked by armed force and the swift seizure of power. The union ranks, subjected to that hysteria and being at the same time undermined by the respondent's threats of replacement and bonus offers—eight hundred \$5 bills were distributed on June 10—could not hold together and the strike was broken.

There remained only the final touch—Rand's christening this technique the "Mohawk Valley Formula" and proudly offering it to his fellow members in the National Association of Manufacturers as an example of modern strike breaking. The Labor Relations Bulletin of that organization, which contained the description of the events at Ilion, while avoiding interpretation, was careful in effect to outline the steps so that the "Formula" can be more easily followed. We repeat this technique of strike breaking, interpolating our interpretations:

First: When a strike is threatened, label the union leaders as "agitators" to discredit them with the public and their own followers. In the plant, conduct a forced balloting under the direction of foremen in an attempt to ascertain the strength of the union and to make possible misrepresentation of the strikers as a small minority imposing their will upon the majority. At the same time, disseminate propaganda, by means of press releases, advertisements, and the activities of "missionaries", such propaganda falsely stating the issues involved in the strike so that the strikers appear to be making arbitrary demands, and the real issues, such as the employer's refusal to bargain collectively, are obscured. Concurrently with these moves, by exerting economic pressure through threats to move the plant, align the influential members of the community into a cohesive group opposed to the strike. Include in this group, usually designated a "Citizens Committee", representatives of the bankers, real estate owners, and business men, i. e., those most sensitive to any threat of removal of the plant because of its effect upon property values and purchasing power flowing from payrolls.

Second: When the strike is called raise high the banner of "law and order", thereby causing the community to mass legal and police weapons against a wholly imagined violence and to forget that those of its members who are employees have equal rights with the other members of the community.

Third: Call a "mass meeting" of the citizens to coordinate public sentiment against the strike and to strengthen the power of the Citizens Committee, which organization, thus supported, will both aid the employer in exerting pressure upon the local authorities and itself sponsor vigilante activities.

Fourth: Bring about the formation of a large armed police force to intimidate the strikers and to exert a psychological effect upon the citizens. This force is built up by utilizing local police, State Police if the Governor cooperates, vigilantes, and special deputies, the deputies being chosen if possible from other neighborhoods, so that there will be no personal relationships to induce sympathy for the strikers. Coach the deputies and vigilantes on the law of unlawful assembly, inciting to riot, disorderly conduct, etc., so that, unhampered by any thought that the strikers may also possess some rights, they will be ready and anxious to use their newly acquired authority to the limit.

Fifth: And perhaps most important, heighten the demoralizing effect of the above measures—all designed to convince the strikers that their cause is hopeless—by a “back to work” movement, operated by a puppet association of so-called “loyal employees” secretly organized by the employer. Have this association wage a publicity campaign in its own name and coordinate such campaign with the work of the “Missionaries” circulating among the strikers and visiting their homes. This “back to work” movement has these results: It causes the public to believe that the strikers are in the minority and that most of the employees desire to return to work, thereby winning sympathy for the employer and an endorsement of his activities to such an extent that the public is willing to pay the huge costs, direct and indirect, resulting from the heavy forces of police. This “back to work” movement also enables the employer, when the plant is later opened, to operate it with strikebreakers if necessary and to continue to refuse to bargain collectively with the strikers. In addition, the “back to work” movement permits the employer to keep a constant check on the strength of the union through the number of applications received from employees ready to break ranks and return to work, such number being kept secret from the public and the other employees, so that the doubts and fears created by such secrecy will in turn induce still others to make applications.

Sixth: When a sufficient number of applications are on hand, fix a date for an opening of the plant through the device of having such opening requested by the “back to work” association. Together with the Citizens Committee, prepare for such opening by making provision for a peak army of police by roping off the areas surrounding the plant, by securing arms and ammunition, etc. The purpose of the “opening” of the plant is threefold: To see if enough employees are ready to return to work; to induce still others to return as a result of the demoralizing effect produced by the opening of the plant and the return of some of their number; and lastly, even if the manoeuvre fails to induce a sufficient number of persons to

return, to persuade the public through pictures and news releases that the opening was nevertheless successful.

Seventh: Stage the "opening", theatrically throwing open the gates at the propitious moment and having the employees march into the plant grounds in a massed group protected by squads of armed police, so as to give to the opening a dramatic and exaggerated quality and thus heighten its demoralizing effect. Along with the "opening" provide a spectacle—speeches, flag raising, and praises for the employees, citizens, and local authorities, so that, their vanity touched, they will feel responsible for the continued success of the scheme and will increase their efforts to induce additional employees to return to work.

Eighth: Capitalize on the demoralization of the strikers by continuing the show of police force and the pressure of the Citizens Committee, both to insure that those employees who have returned will continue at work and to force the remaining strikers to capitulate. If necessary, turn the locality into a warlike camp through the declaration of a state of emergency tantamount to martial law and barricade it from the outside world so that nothing may interfere with the successful conclusion of the "Formula", thereby driving home to the union leaders the futility of further efforts to hold their ranks intact.

Ninth: Close the publicity barrage, which day by day during the entire period has increased the demoralization worked by all of these measures, on the theme that the plant is in full operation and that the strikers were merely a minority attempting to interfere with the "right to work", thus inducing the public to place a moral stamp of approval upon the above measures. With this, the campaign is over—the employer has broken the strike.⁵¹

B. *Tonawanda*

Tonawanda and North Tonawanda are adjoining villages of about 31,000 total population, situated four miles from Buffalo, New York. They constitute one community and will be referred to as Tonawanda. As in Ilion all the production and maintenance employees responded to the strike call, and on May 26 the plant was completely closed. Peaceful picketing was commenced by the union.

The respondent's first move at Tonawanda was to attempt demoralization of the union through the discharge of its leaders.

⁵¹ The article in the Labor Relations Bulletin of the National Association of Manufacturers presents the steps taken at Ilion in narrative fashion. We have above added certain steps not stressed in the Bulletin, and amplified others in accordance with the events that actually occurred at Ilion, so that the reader may possess the complete picture intended to be conveyed by the Bulletin, inasmuch as the Bulletin obviously omits certain aspects that might be too embarrassing to the respondent if they were known fully. The method of paragraphing used above does not appear in the account in the Bulletin in view of its narrative style.

David Lozo, the recording secretary and former president, also Joint Board member for Tonawanda, Walter G. Gaul, the vice-president, Walter J. J. Todd, a member of the shop committee, Floyd J. Young, chairman of the shop committee, Felix Monnier, a member of the shop committee, and William Townsend, also on the shop committee and former vice-president, received letters on May 28, 1936, worded as follows:

"Due to the fact that you have tried to prevent some of the employees of the Tonawanda Plants from expressing and exercising their own opinion by coercion and intimidation, I find it necessary to dismiss you from our payroll.

"You will, therefore, find your final check, which is payment in full, enclosed." (Bd. Ex. 88.)

It was this group of union leaders who, Cooper, had constituted the shop committee that met with Hart to discuss grievances and other matters. The respondent was thus resorting to the June 18, 1934, confidential agreement in an effort to disguise discharges for union activity. Previously, on May 21, Charles Cooper, president of the Federal Labor Union, had been discharged by Hart, the factory manager. Cooper had stated that the posted notice containing the results of the voting on May 21 was false and when he began to support his contention, Hart stated, "I am not going to take any more from you. I have taken enough off you. Here are both your checks, get off the premises of Remington Rand Company and don't come near it no more." His discharge occasioned a spontaneous sit-down strike, which was ended only when Hart agreed to meet with Cooper to consider his reinstatement. Cooper had not been reinstated by May 26, the day of the strike, nor was he reinstated at any later date.

On the day after the discharges of the union leaders, May 29, the respondent announced that its plant was open and ready to resume operations. No one entered. But two days later a bus load of strike-breakers entered the plant under heavy police guard. The entire Tonawanda police force, led by its chief and armed with shotguns, and a large number of deputies convoyed the bus into the plant yard. The situation may be visualized, perhaps, from the following testimony:

"Q. How many men were in this bus?

"A. About thirty, sir.

"Q. How were they dressed?

"A. Well, Mr. Examiner, that bus went in so fast in that gate, it was just a blur".

Their presence immediately created resentment among the striking employees and the situation grew so tense that the Mayor called

Cooper and Hart together in an effort to ease the tension. Hart urged Cooper that the Tonawanda union should split off from the other unions affiliated with the Joint Board and make a separate settlement. The Mayor joined in this request but Cooper explained that it was clearly impossible. Hart then said that "he had orders to ship and he must ship at all costs". The Mayor finally arranged for a one day truce, stating that in the meantime he would contact Rand. He did and at a meeting of the union he reported Rand's answer: "You run the City and I will run my business." The next day the respondent again attempted shipping operations. The United Press report of the result follows:

"Violence broke out again at one of the Tonawanda plants today when strike breakers appeared on the loading platform. Strikers began throwing rocks, breaking about a half dozen windows in the plant. Deputy sheriffs, police and railroad detectives succeeded in dispersing the strikers. None was injured.

"The mayors of Tonawanda and North Tonawanda asked company officials to suspend shipping operations from the local plants. The company answered the orders had to be filled and that it was the job of local law enforcement authorities to prevent strikers from interfering." (Bd. Ex. 236i.)

Cooper halted the stone-throwing by the strikers.

All was then quiet on the surface until June 8. In the intervening days the union could notice only an increasing tension, as if a storm were brewing, and police and deputy sheriffs increased in number. On June 8 the entire Tonawanda police force gathered, reinforced by about 80 deputies armed with night sticks. They were spread throughout the entire area around the plant. Early in the same morning a group of 50 men appeared across a field adjoining the plant and commenced to march toward the plant. They were followed in turn by another group of 50. The union pickets and sympathizers, recognizing them as strikebreakers, blocked their way and fighting began. The police aided the strikebreakers and they marched into the plant. A half hour later Hart asked Cooper to give the strikebreakers a safe escort out of town and Cooper agreed. The strikebreakers left the same morning.

The United Press report of the occurrence uses such terms as these: "strikers who earlier in the morning had rioted. Several persons were injured and six were arrested during the disorder . . . The riot was ended by police who charged into the melee swinging night sticks . . . Earlier in the day union leaders claimed the company brought in 100 strike-breakers in two groups. Pickets met the first group of 25 at the plant gates and forced the strike-breakers away.

The second group of 75 was met by 200 strikers who threw stones and engaged in hand to hand combat with clubs. Police used night sticks before the rioting was brought under control." (Bd. Ex. 236j.)

Any person familiar with the labor scene knows what is likely to be the consequences of such reports. Riots mean "violence" and "violence" swings public opinion against the strikers. There is an immediate cry for "law and order", state police, the National Guard, so that the issues that gave rise to the strike are swept away by bullets and tear gas. Moreover, in a case such as this where plants in various portions of the country are involved, news of the "violence" is disseminated at once to all areas affected by the strike. The citizens of Middletown, Ilion, Syracuse, and Norwood read in their local papers of the "violence" at Tonawanda and at once are prey to the respondent's suggestions that measures be taken to prevent its occurrence in their communities, not stopping to reflect that no disorders have yet occurred in their localities. In this regard the testimony of Mayor Whitney of Ilion is revealing:

"Q. Now, early in the strike, being the first week of the strike, and the last week in May, what was it that caused you to make the statement 'Ilion should have protection', and what did you mean by that?

"A. I meant that the Village of Ilion should preserve law and order . . .

"Q. What made you apprehensive as to the need for protection?

"A. We wanted to prevent occurrences that were occurring in other towns where Remington Rand was located . . .

"Q. Normally, however, it is quite peaceful?

"A. Very peaceful.

"Q. What disorders had come to your attention prior to your conference with Rand in New York on June 2nd?

"A. Why only minor . . . If there were, they were minor . . ."

The importance of seeking the causes for the disorder at Tonawanda is thus evident. We turn again to the testimony of Bergoff:

"I took 75 or 85 men to Tonawanda on the 7th or 8th of June, I forget which. It was on Monday, the 8th . . . There was about 75 or 80 men that were taken to Buffalo with the idea of going to the plant⁵² . . . We had a terrible time to get vehicles to transport them, so we had to get taxicabs. About half past four in the morning these men were all sent up in cabs to Tonawanda, which is possibly eight or ten or twelve

⁵² These men were taken from Bergoff's groups of operatives in Syracuse and Ilion.

miles away, I guess, and they were to be dropped off at a certain point and—

“Q. How near the plant?”

“A. I guess about half a mile, I don't know . . . So as I understand, they started for the plant in two bodies about a couple of blocks or three or four blocks apart . . .

“Q. And their instructions were to get into the plant?”

“A. To try, yes, to peacefully go in, go into the plant as though they were looking for work, just to go in there . . .

“Q. What did he tell you was the object of those people going back there, what was the reason for having this group walk in?”

“A. He (Rand) said he had a great many loyal employees that wanted to return to work and he would like to have these people go there as though they were seeking work . . . These men did not even have a pen knife, talk about arming men,⁵³ and they were showered with bricks and concrete, mortar, anything that was handy, and several of my boys were severely hurt. There was a lot of scalp wounds, and bruises, a general battle. About sixty of them got into the plant, or fifty-nine, to be exact. The rest of them faded, but showed up later on to be transported. You understand, you could not see their coattails, some of them were so fast . . .

“I do not know, Rand kind of put it over on me—between you and I, I did not know there were quite so many bricks in Tonawanda. He even wanted me to send some of the women and I am glad I didn't, afterwards, and so was he. Our relations were very friendly, but we certainly had a reception committee. They called it the Tonawanda rock pile . . .

“I met Rand in the plant about an hour or two afterwards. He had been taking pictures, moving pictures and I really believe it was a very good stunt on Rand's part because he took some nice pictures and showed how my men were showered with bricks. I believe he published some in the papers afterwards showing how the peaceful pickets molested those who wanted to go to work. In fact, he identified some of these employees of his, that were on strike, throwing bricks and showering rocks on these peaceful chaps I had, wanting to go to work . . . I believe he told me that he had had photographs taken and I think, not only moving pictures but still photographs, to be

⁵³ On this point, however, Cooper testified that the strikebreakers were armed with rocks, sticks, iron bolts, etc. He described them as follows: “They were about the toughest bunch of men that I ever laid eyes on, half of them had scars from ear to ear on their faces. They were real big, husky, plug-uglies.”

used in the newspapers, showing the strikers throwing stones at the men that were trying to enter the plant . . .

"Rand talked about the pictures. He said he had photographs about the assault and my people had done wonderful work and started to congratulate me . . . he congratulated me on the brilliant work I had done, and I said I didn't see anything brilliant about it, the men had gotten into the plant the best way they could while they were under a shower of bricks, and he was taking pictures of it. Naturally he had them published showing peaceful pickets, America, a free land, all that stuff. Naturally, it wasn't bad stuff, because those peaceful pickets were certainly raising the devil . . .

"I didn't know anything about it until it was over with and then Rand and I had a battle . . . I was sore as the devil at Rand. In fact, I had a hell of an argument with him . . . and said 'If you were going to pull a stunt off like this, why didn't you let me know. Some of my men might have got killed up there . . . It is a good thing we didn't bring the women along'. He laughed.

"Trial Examiner Wood: Were you accusing Rand of staging this thing?

"The Witness: I did, to tell you the honest truth, but I guess everything is all right. Rand is all right. I am not making any complaint. . . . I think this was an injunction or something, I don't know . . . he was going to use it to apply for a temporary injunction restraining intimidating those who wanted to go back to work . . . I know I must have mentioned to him, 'If you wanted to have an injunction taken out, if you wanted this stuff, why didn't you tell me?' . . . That was good stuff for getting an injunction, if anything could get an injunction, that would."⁵⁴

Williams, one of the Bergoff men that "made the plant", testified as follows:

"Q. Did you have anything to do with obtaining injunctions?

"A. Well, unless you would consider that trip to Tonawanda and Middletown.

"Q. Well tell us how they worked in with injunctions?

"A. Well, no doubt but that trip there was proof of violence.

"Q. That Middletown trip?

"A. Yes, and Tonawanda.

"Q. And Tonawanda?

"A. Yes."

⁵⁴The sequence of Bergoff's testimony has been rearranged so as to present a connected story and some of the questions are omitted.

This testimony requires no "reading between the lines". Rand deliberately had these men, posing as people applying for work, stage a march into the plant knowing that their presence would infuriate the strikers to the point of combat. As Bergoff said: "I wasn't informed, but I knew darned well that taking seventy-five men into a plant, whether it is Tonawanda, Syracuse or Ilion, that there would be no picnic while they were going in there—not at that stage of the game." The violence thus manufactured could be put to many uses—propaganda to mould public opinion against the unions, evidence to be used in injunction suits as Bergoff explained, the basis of a request for local police protection or the National Guard. There is food for thought here for courts overhasty to grant injunctions in labor disputes when "violence" appears, and for Governors prone to call out the troops to maintain "law and order" at such times—back of the evidence presented to them by employers may be the operations of the Bergoffs, Fosters *et al.*

Shortly after Bergoff's men entered the plant that morning, Rand himself came out to address the strikers. He said, "We don't have to be on strike here. We can iron out our difficulties right here." The crowd cried, "Talk to Cooper, Cooper is here." Rand answered, "I only talk to people on the payroll." Cooper then stated that if Rand were sincere in his desire to settle the strike, he would have the Joint Board members meet at once. Rand replied, "You will never get me to talk to the Joint Protective Board and especially Crofoot and the rest of them. I will never sit down and talk to them. . . . I never want to have anything to do with any organized unions." When Cooper suggested that if Crofoot's presence was the only stumbling block he would withdraw, Rand answered, "I won't sit down and talk to any of them. I won't talk to no representative of the American Federation of Labor or any other representatives." Photographers then appeared and Rand said to Cooper, "Let's have a picture together," but Cooper refused. Pictures were taken of Rand addressing the strikers and urging them to "go back to work and forget the other plants." Later, when Hart told Cooper that Rand would see him or some of his local committee, Cooper replied that while Hart knew Cooper could not speak for the Joint Board he would nevertheless see Rand if Walsh, an A. F. of L. organizer representing Federal Labor Unions, who was then present, were allowed to accompany him. Hart said, "I am sorry, Cooper, but I can't let Walsh come in there because I don't believe Mr. Rand would stand for it, you know how Mr. Rand would feel about it, and I can't take that upon my shoulders."

That evening Rand made known the following document :

"Points decided on at the meeting held at the Main Street office, Plant #1, June 8, 1936 at 5:30 P. M. between Mr. J. H. Rand, President and five union and five non-union workers of Remington Rand Inc., Tonawanda, N. Y.

"1. We have the unanimous agreement from both these groups that they believe that the Company is justified in not taking back these seventeen (17) men who were guilty of intimidation at Syracuse.

"2. We have the unanimous agreement that the relations between the employees and the Company in Tonawanda should be handled without reference to anything that might take place or any persons who might be employed in outside cities. That the Tonawanda affairs be handled by Tonawanda and for the Tonawanda people.

"3. We have had request from the workers as to what could be done in relation to group life insurance plan and a profit sharing plan and the management has agreed to take this into consideration.

"4. We have discussed the future operations of this plant and the management has stated that unless enough workers return to work within a few days to fill the orders on the books of the corporation that supply the commissions to the sales force, who are entirely dependent upon them for their livelihood, it is the duty of this Company to move the manufacturing operations from here to Marietta as rapidly as can be done with the exception of the printing and book binding and a few miscellaneous special departments, and, if that is done the Main Street Plant of the Company will be devoted to warehousing." (Bd. Ex. 86.)

Thus the "agreement"; now the facts: The printers in the plant, 15 to 20 in number, were members of the Buffalo Printing Pressmen & Assistants' Union No. 27. That organization was not affiliated with the Joint Board and the printers did not join in the strike, remaining at work in the plant. About 4:30 o'clock in the afternoon of June 8, the superintendent asked them to send five men to the main office. These were the "five union workers." There were also gathered in that office in the same fashion two time clerks, a stock chaser for one of the superintendents, a foreman and an assistant foreman—these were the "non-union workers." With these ten men present, who had neither gone on strike nor were in any sense representatives of the employees, Rand dictated the document quoted above and asked them to sign it. The next day a representative of the International Printing Pressmen & Assistants' Union of North America repudiated the action of the five printers.

A farcical procedure perhaps, but one whose consequences clearly reveal Rand's motive. In Connecticut, the Middletown Press of June 8 carried this story on the events at Tonawanda:

"RAND WILL TALK WITH N. Y. HELP

"Meets Pickets at Tonawanda and Agrees to Confer There Tonight

"The first break in the staunch lines maintained by company and employes in the two weeks old strike of Remington-Rand Company union employees occurred today when President James H. Rand, Jr. announced he would meet both union and non-union employe group representatives at Tonawanda, N. Y. tonight. Engaged in personally viewing reopening of the Tonawanda factories, Mr. Rand talked with union pickets outside the factory gates and agreed to meet all disputing parties this evening. . . .

"Rand told the strikers that he was willing to meet a committee from the striking workers and arbitrate the matter. His announcement, the first overture of the company toward arbitration, was followed by a truce under which the company agreed to send all strike breakers away . . .

"You have said that I refused to meet the employes', Rand said. 'Well I am here and will meet with any of you'.

"Will you meet with our union representatives?' Cooper asked.

"I have never refused to meet union representatives,' Rand replied. 'I have always believed in collective bargaining' . . .

"I will meet this afternoon or tonight with the chosen representatives of both groups. Let the union send its own committee and the non-union members their own committee and I will talk with both.'" (Bd. Ex. 236j.)

Next day the paper contained the following:

"In a statement issued at the Tonawanda offices of the company and allegedly agreed to by leaders of non-strikers, Rand is held justified in his threat to move the plant to Marietta . . .

"The company statement was issued after a three-hour conference reportedly attended by strikers and representatives of those not on strike . . .

"Approximately 400 non-union workers took the position that the strike should be settled as a local matter. They also agreed that the company was justified in refusing to take back 17 workers dismissed from the Syracuse plant.

"This marked the first break between the non-union and union strikers. The non-union employes put forth demands of their

own—that the company take some action in relation to group life insurance and a profit sharing plan.” (Bd. Ex. 236m.)

Thus, while aides such as Borgoff were assisting Rand in the rougher phases of the campaign to break the strike, other aides were seeking the same end through the medium of manufactured propaganda handed to the public in the form of news articles. Such news articles certainly have two effects: People elsewhere would argue: “If Tonawanda is settling, why not Middletown? Why not Syracuse?” and public opinion would bring pressure for local settlements in disregard of the legitimate union demands for unified collective bargaining. Also, the impression is created that there was a large group of non-union members who are presenting demands to the respondent, so that contrary to the actual facts the employees would be conceived of as divided into two equally strong groups and sympathy thus won for the spurious “back to work” movements operated covertly by the respondent.

The respondent then introduced a new device in its attempt to reopen the Tonawanda plant. As at Ilion, the first step was the creation of a “back to work” psychology. Threats were made to move the plant to Marietta. Since the Ilion strike was crumbling at this time, the respondent had two employees of the Tonawanda plant visit Ilion at its expense on June 11, survey the situation there, and report back to the Tonawanda employees. While the union also sent a committee to Ilion when it heard of this move by the respondent, the conflicting report rendered by the respondent’s committee served to confuse the employees and make them uneasy. A large sign was posted at the Tonawanda plant reading, “Fourteen hundred have returned to work in Ilion. The strike is lost, and it is all over. Why make Tonawanda the goat.” Bonuses were offered to employees for only entering the plant—\$5 in cash the minute they entered the gates and \$15 if they then walked into the plant. All of the foremen visited the employees’ homes, urging them to return to work and offering the \$5 and \$15 bonuses. Deputies mingled with the employees, grabbing them by the arms and saying, “Come on, don’t be a big fool; get in the plant and go to work. The strike is over.” In this fashion the respondent was able to weaken the morale of the strikers. Beset on every side by threats of permanent loss of his job, bonuses to return to work, reports and rumors that the strike has collapsed elsewhere, urgings of his foreman, an employee naturally finds it difficult to keep his balance. With large numbers of the employees in such a state it is possible by a single dramatic incident to create a mass stampede back to work. This incident the respondent proceeded to supply.

The toolmakers and machinists employed at the Tonawanda plant, about 25 in number, constituted a skilled group of higher-paid employees. They were thus a key unit in the plant and respected by the other employees. On June 13 Hart, the factory manager, gathered 15 to 20 of these toolmakers in a saloon where the "drinks were on Hart" and offered them a 10 per cent raise if they returned to work in a group. He succeeded in inducing them to return. With this accomplished, the respondent made its final plans. On Monday, June 15, with the employees crowding around the plant, the toolmakers appeared at the plant in a body and stood apart from the other workers. The figures on the sign purporting to show the number who had returned to work at Iliion had been changed from 1400 to 2000. Cooper spoke to the toolmakers and said that they were betraying their oath, that they themselves had voted for the strike. The toolmakers were uncertain, ashamed to enter the plant. Then Hart appeared and said to them: "Now, listen here, fellows, you know I have published in all the papers that you boys would return to work Monday morning. You are not going to make a liar or a fool out of me. Come on, what do you say? Let's go in." Hart then placed himself at their head and marched into the yard. The toolmakers followed him. The crowd wavered, "became panicky", then broke and many employees followed the toolmakers into the plant. As one union member testified: "for some reason or other the general run of employees figured the machinists were far above the average worker, and figured if they went in, it was time for them to go in." The respondent was quick to utilize the momentum thus initiated. That same day individual telegrams were sent to the employees, reading as follows:⁵⁵

"Your job is waiting for you, but we regret that it will be necessary to replace your services unless you report for work on or before 8 A. M. Tuesday, June 16th, 1936. Our obligation to our customers and our sales organization demand that we resume operations in full without further delay. Regardless of all reports to the contrary, our Iliion plants this morning, are operating one-hundred percent with more than two thousand employees and have over six hundred applicants for jobs. Marietta is also working one-hundred percent and will be glad to have additional work from Tonawanda. Don't continue to be misled by false information. We will pay \$25,000 to any person or persons who

⁵⁵ Cf. an advertisement with a similar purpose published on June 16 :

"Over seventy-five percent of the former employes are now back at work. The positions of those who have not reported are being filled rapidly, from the hundreds of applications we have had from people who are not interested in a dead issue." (Bd. Ex. 108.)

can prove that our Ilion and Marietta plants are not in full operation. Protect your job and seniority rights by reporting immediately.

“F. W. HART,
“*Manager*”
(Bd. Ex. 80.)

These measures had the calculated effect and the strike at Tonawanda was broken—in October there were only 150 employees still on strike. But the respondent did not stop at getting the employees back to work. It sought also to cripple the union for the future by discharging more of its active members. A number of employees who applied for work during these days were refused employment and discharged because of their previous union activity. Among these were Alfred L. Kloss, the oldest in seniority in the shipping department, who, when the ballot was taken on May 21, was the only one in his department who inquired if the union had sanctioned it;⁵⁶ Ernest Quenneville, who held the office of guide in the union and was also employed in the shipping department;⁵⁷ Joseph Dreyer, who had informed Cooper of the balloting on May 21, Cooper being in Hart's office at the time, and who had been said by the superintendent on that same day to be “too active in the union” and “on the spot”;⁵⁸ Viola Rose Demmin and Blanche Smith, who on June 16, while on picket duty, had asked the plant manager if their jobs were still open, were in reply informed that while he had made “different arrangements” in their department he would call them in two weeks or so, but who had not heard from him since that day. The complaint will be dismissed as to Daisy Johnson, Dolores Greene, Freda Ferris, and Susan Ferris, all employed at the Tonawanda plant, no evidence having been presented as to their alleged discharges.

C. Syracuse

The course of events at Syracuse from May 21 to May 26 has already been described. The respondent in this period had likewise resorted to a mass discharge of union leaders. It is significant that Rand had the list of leaders prepared in New York and not in

⁵⁶ He was discharged on June 13, the general foreman of the shipping department saying: “We will send for you when we need you”, when he returned to work with others in his department.

⁵⁷ The general foreman, Ryan, had said to Quenneville on June 15, “I will call you when I need you”, when the latter stated that he desired to return to work. A representative of a finance company, which had loaned money on his house saw Ryan on Quenneville's behalf to obtain his job for him. However, after the conference he reported to Quenneville, “You might as well go and look for a different job because you will never get back to Remington Rand. If you do, you won't last.”

⁵⁸ He had been acting secretary of the union. He had returned to work on June 13, but later in the day had been discharged.

Syracuse, for their names were given by Rand to the Mayor and by him transmitted to the factory manager at Syracuse. The seventeen on the final list (Bd. Ex. 27) were: Clair Bellows, president of the Federal Labor Union and Joint Board Member for Syracuse; Vernon Crofoot, president of Machinists Local No. 381 and president of the Joint Board; Earl LaBranche and Kenneth C. Bunnell, members of the shop committee of the Federal Labor Union; William Dunn, member of the grievance committee of Machinists Local No. 381; August Lingyak, member of a department grievance committee of the Federal Labor Union; George Slade and Burton Reyone, formerly members of the shop committee of the Federal Labor Union; George Bowen, member of a department grievance committee of the Federal Labor Union, and formerly a trustee; Eugene Palmenter, member of the grievance committee of Machinists Local No. 849, and on the Local Protective Board; Walter J. Boyle, chairman of the finance committee of the Federal Labor Union and a trustee; Albert Galipeau, member of the grievance committee of the Federal Labor Union and a trustee; Alexander Smith, chairman of the tool room committee of Machinists Local No. 381 and member of the Local Protective Board; Stephen Estey, President of Machinists Local No. 849; Peter Witcher, member of various committees of the Federal Labor Union and vice-chairman of the Local Protective Board; John Sickler,⁵⁹ formerly president of Machinists Local No. 381, and Edward J. McCoy, member of Machinists Local No. 381.⁶⁰

The Syracuse plant, as a consequence of the events of May 21, was closed when the strike was called on May 26. The unions on that day began to picket the plant. As at Iliion, guards appeared in the plant the same day.⁶¹ At the same time when Mayor Marvin saw Rand in New York, the latter informed him that the plant would reopen on May 28 and asked permission to have his guards patrol the streets. This permission was refused by the Mayor, who stated that the Syracuse police could handle the situation. However, Rand had about 25 men employed by the Burns Detective Agency, all armed with guns, patrolling the gates and grounds about

⁵⁹ He was discharged on May 22. The superintendent of tools informed him that "the Company would not have a salaried foreman working as an employee who belonged to a labor organization".

⁶⁰ McCoy was a member of Machinists Local No. 381 and known as such, but was not active in the union. While his presence on the list was probably due to misinformation possessed by the respondent as to the extent of his activities, since the respondent discharged him because of his union membership and supposed union activity and to discourage membership in the union, the discharge was in violation of Section 8, subdivision (3). It is significant that when McCoy looked elsewhere for employment, his application was refused after the company to which he had applied had called the respondent for information. Others in this group were also refused employment elsewhere when their former connection with the respondent became known.

⁶¹ Later, some of these guards acted as escorts for employees who had returned to work.

the plant.⁶² The plant "opened" on May 28—but no one entered. After this preliminary move, designed to test the strength of the sentiment in favor of the strike at Syracuse, the respondent set to work in earnest.

Syracuse, a town of about 209,000 population, obviously presented a situation different from that confronting the respondent in the much smaller localities of Iliion and Tonawanda. Pressure could be brought to bear with greater ease on the business elements and municipal authorities in the latter places. Likewise public sentiment could be more readily aroused and guided in areas where the plant was the focal point of the community's economic life. The respondent realized these difficulties and decided to surmount them by supplementing the measures adopted elsewhere with a skillful publicity campaign and more intensive "missionary" work. The publicity campaign will be described in some detail after a review of some of the "behind the scene" measures utilized at Syracuse.

As at Tonawanda, the respondent's use of strikebreakers was having the calculated effect of provoking trouble. A large crowd, numbering in the thousands, which had gathered on June 9 when Syracuse policemen escorted a group of strikebreakers from the factory, was dispersed with tear gas by the police. Bergoff described the incident as follows, after stating that he knew the Tonawanda job would be "no picnic":

"The same thing happened in Syracuse two days afterwards, when Rand wanted me to send some men in to the Syracuse plant, which I did . . . About the ninth or tenth. I sent twenty-five or thirty men in there when everything was O. K., but Lord God, when they left the plant, we had the Syracuse police department out and ten thousand people trying to murder them."

Rand was merely following a chartered course. The very next day either Rand or Harding called the Mayor, who was then attending a convention at Cleveland, and asked that the militia be called out and for large quantities of tear gas bombs. But Mayor Marvin was not proving as cooperative as the respondent desired. He refused to act on the respondent's request and we find Rand complaining to Bergoff that the Mayor would not provide the large police protection that their manoeuvres demanded.⁶³ Pressure was therefore brought to bear upon the Mayor. Rand invited a group from the Syracuse Chamber of Commerce to visit Iliion at the time that village had barricaded itself from the outside world. Once there, the group was told to demand the same measures from Mayor Marvin. They did

⁶² This group was later increased to 50. They remained until September 10

⁶³ On May 26, 85 members of the police force had been detailed to strike duty. This detail was reduced at intervals and by November had fallen to eight.

so at once. At meetings with the Mayor on June 11 and June 12, their spokesman, the president and the secretary of the Chamber of Commerce, presented their demands: "A clearing house where an office would be located, and . . . anybody that called up and said that they wanted to go to work, . . . a car manned by policemen would go . . . and take the people to work, . . . an edict that if anyone were seen idling around or anywhere in the streets around the plants they were to be picked up and taken in", the areas around the plant to be roped off, "if anybody called the other fellow a scab . . . that was to be grounds for grabbing him and throwing him in jail", refusing to allow the striking employees to congregate on a lot that they had leased opposite the plant. Summarizing the trip to Iliion, the spokesmen stated that "they had been advised that the strike had been broken at Iliion effectively, and that by reason of certain methods having been employed, that it made it possible to accomplish it, that Mr. Rand and Mr. Harding had invited a group to come down and see with their own eyes, and that they had, pursuant to that suggestion, gone to Iliion, spent a day or a half day, whatever it might have been, looking the whole situation over, and studying it, the various phases, the way it was handled at Iliion". The Mayor put it more briefly: "Both Mr. Rand and Mr. Harding had them worked up to a pitch that they were very anxious to have them adopt the same methods that had been employed at Iliion." The Mayor refused their demands.

The respondent did not cease its pressure. A week later Harding again called and protested that the police protection was insufficient. Then, about July 24, a bomb exploded near the plant. Harding, at about 1 A. M., telephoned the Syracuse Post Standard and told the editor to obtain a statement from the Mayor. The editor sent out two reporters who returned after ascertaining that the Mayor was at Cazenovia, N. Y., that night, 20 miles away. Then Harding called the editor again to ask, "Did you get the Mayor?" The editor replied: "Why, no, he wasn't there (at the bomb scene), hasn't been there." Harding said: "That don't make any difference whether he was there or not. Get him out of bed and make him make a statement." Two or three days later, when he was informed of this, the Mayor called Harding and told him "not to try to pull any more funny work" on him. At the hearing the Mayor stated that he believed "it was a deliberate attempt on Mr. Harding's part to have a newspaper call me out of a sleep in the dead of the night and explain facts to me in such a way that in the heat of the moment, I would make some very positive statement". Failing in the attempt to obtain a statement from the Mayor, the respondent issued its own release. Although there was no evidence to connect the bomb with the unions, Rand said:

"This latest outrage is the climax of a series of lawless acts which have been inadequately punished, or not punished at all. Police and citizens alike will now realize that their lives and their property are not safe until these roving bands of agitators are punished for inciting mobs to violence and, as in this case, to attempted murder.

"The series of assaults, riots and bombing has spread with the movement from plant to plant—Middletown, Ilion, Syracuse, Tonawanda, Norwood—of the paid agitators who seek to levy tribute on our employees for the right to work. The 10,000 employees in Remington-Rand factories will not be intimidated by such tactics. Every honest worker will rally to their support, for this fight now involves the rights and liberties of every American worker and every American citizen." (Bd. Ex: 235k.)

On August 22 there occurred at Syracuse another instance of deliberate precipitation of violence by the respondent. The number of pickets had been limited to four under an injunction secured by the respondent. These four pickets were on duty outside the plant. About 200 other persons, mainly union members, were on the streets in the immediate neighborhood, but were not engaged in picketing. As on other days in the past, at closing time, a group of nearly 500 persons came out of the plant and entered automobiles parked on a lot opposite the plant, the lot being owned by the respondent and used as a parking lot. These people were accompanied by about 10 Burns men, armed with revolvers. The entire proceeding appeared to be peaceful and the crowd in the street expected nothing more than the customary driving away of the cars on the lot. Suddenly, one of the Burns men pounded with a stick on the sidewalk. At that signal the people jumped out of the cars and, armed with guns, clubs, sticks, blackjacks, and other weapons, rushed to attack the group in the streets. A general fight then took place. The police intervened and arrested a number of persons—all of them members of the attacked group of strikers. They did force several of the attackers back into the plant, but did not arrest them,⁶⁴ though requested to do so by the strikers. Even after the melee had ended, the assistant manager pointed out one of the strikers for arrest and the police complied with his request. Three days later Rand had occasion to

⁶⁴ One of the men was William Gleason, head of the Employees' Independent Association (see *infra*). Gleason and others had attacked Kenneth Smith, a striker, and beaten him into an unconscious state. But it was Smith who was arrested by the police. The Captain asked if he was a striker and when he replied that he was, the Captain said, "Lock him up", and a second policeman added, "I ought to kill the son-of-a-bitch right here." Warrants for the arrest of the men who attacked Smith were obtained later through the persistent efforts of Smith and the unions. They were released on bail and their cases never tried.

say the following in a telegram to the Mayor, which was made the basis of a news article:

"We are further reinforced in this determination by the outrageous acts of violence repeatedly perpetrated by union men and women in your city and even against your officers of the law. We are willing, however, to expand our operations in Syracuse and to further increase employment if the union will put an end to violence." (Resp. Ex. 12.)

The Mayor had this to say about the entire telegram:

"A. I think that is a little a-la-Mr. Harding, typical as to the way he would frame a message

"Q. Is it your opinion this telegram was really not sent to you, but a press release, and you, the medium of distribution? Is that what you mean?

"A. Oh, I wouldn't be surprised at that."

While the respondent all through this period was thus endeavoring by acts of violence committed or provoked by its agents to force the city officials to lend their aid to break the strike by means of the intimidating presence of excessive police and other measures, it was also conducting an intensive and personalized propaganda campaign. Syracuse was the scene of widespread "missionary" activity. Bergoff sent 60 missionaries to Syracuse about May 30 to see Straub, the factory manager. The group had been carefully selected—as Bergoff testified, "A man should have a little more than ordinary intelligence and a certain amount of diplomacy to go around and visit people and in a gentlemanly or lady-like manner try to induce them to return to work. You can't have gorillas or strong-arm people to go around doing missionary work." The selection did not stop at the type of person chosen; there were about 20 women in the group, since "women can talk to women better than men", and a number of people of various nationalities—"take a German who is out on strike, it would be pretty nice to have a man or woman that could speak German to interview him, wouldn't it?" Bergoff's lieutenant in charge of these people, "a chap named Cohn under the name of Hartley up there", secured a list of all of the employees of the Syracuse plant from Straub. While this list was being prepared, the missionaries were "getting acquainted with . . . whoever they could" and "spreading propaganda, 'You ought to go back to work', 'It is bad to be on strike.'" After the list of employees was secured it was divided among the missionaries. Each missionary was provided with a card which read, "Remington Rand Typewriter Company, Personnel Department", and contained the missionary's name, or the name he was using.⁶⁵ In addition, Straub said to them,

⁶⁵ Bergoff stated: "Most of these people that take charge of jobs, in fact a number

"If anybody doubts your identity, tell them to call me up." Straub received about 300 telephone calls concerning these men and he replied to each inquirer that they were *bona fide* representatives of the respondent and "every thing is on the up and up". The missionaries then proceeded to visit the homes of about 2000 of the employees to induce them to return to work. Williams, one of the Syracuse missionaries, testified as follows:

"Q. Did you have to pay more than one visit to some of their homes; was that necessary?

"A. Yes, if they wasn't home, we did.

"Q. Now, when you did make these calls, will you just tell us what you did say to them, Mr. Williams?

"A. I just introduced myself and I would say I represented—you understand, I worked at Syracuse twice. The first time I worked for Mr. Bergoff and the next time I worked for Remington Rand direct. . . . Simply state the fact and say 'I come around to see how you feel about the strike situation.'⁶⁶ . . . I would rely on my own ingenuity, whatever course the conversation took, I would try to follow it up, agreeably. If they were strong union, I told them I could understand their point of view, there wasn't any hard feelings on their part, I just wanted to come around and talk to them about it . . .

"Q. Whom did you talk to?

"A. These men.

"Q. And their wives?

"A. If they seemed at all inquisitive, we did.

"Q. And did you talk about going back to work?

"A. We did play that angle up, naturally they would want him to go back to work, and we would play the woman up to try to get the woman to get the man to go back to work. . . . We would say 'What has he got to gain? He (Rand) is not going to settle with the Union' . . . it is just the idea of confusing their logic, so to speak, that would be about all.

"Q. What do you mean, confusing their logic?

"A. Well, their logic of the whole thing was that the Union was keeping them from getting—had kept them from having their pay cut and so on, and we would try to confuse that by showing them where they were losing all this time, and even if they were to go back to work after losing two months work, they would be still out a lot of money, no matter how much of a raise they got. Then, we would bring out the fact the heads of

of the . . . strikebreakers—they go under different names. They don't want to have their families, neighbors and everybody know what business they are in, and they take different names as they go on jobs' . . . I, myself, registered under the name of Brady . . ."

⁶⁶The missionaries stated that they were from the respondent's Personnel Department.

the Union were in soft, had good jobs; so on, and try to break down the general Union morale . . . We explained to them the heads of this Union were simply padding their own—building up their own prestige at the expense of these people being out of work and the Union hadn't done anything for them, only just took their money for dues, hadn't got them anything, only lost them a lot of work . . .

“Q. What instructions did you have in regard to whispering campaigns?”

“A. Well, it wasn't called a whispering campaign . . . it is propaganda.

“Q. Propaganda, you call it?”

“A. Yes, any kind of humor that you can get started that will help the thing a little is all right . . . It depends on the turn the conversation takes. If it looks like a weakling, that will go for a line like that, why give it to him . . .

“Q. Was there any of this propaganda in connection with the threat to move the plant?”

“A. Yes, sir . . . we were just told if they didn't go back to work they were going to move the plant, and tell them that, and the fact that they had already moved part of it, tell them that . . .

“Q. What would you say in regard to your approach after they told you they intended to stick along with the Union. Did you say anything?”

“A. I would tell them the futility of it and explain to them Mr. Rand said he was not going to settle with the Union. Quite a number of times I told them about the Wagner Law, and that I thought they should go back to work and try to take it up in Court, nothing could be gained by losing time . . . they had no chance with Rand; the Union wasn't going back in there; if they wanted their job, to get down to that plant and go to work; if they didn't they would be without a job.

“Q. In that part of your conversation, what did you tell them about the futility of staying out?”

“A. Well, Mr. Straub told us in a group before that Union would come back into that plant again he would resign.

“Q. Now, was it also necessary for you to go back again to some of these people?”

“A. Oh, some of them I was back to a half a dozen times. If I thought there was any chance at all I kept going back.

“Q. How many did you call on on an average on a day?”

“A. I imagine 15 or 20.

“Q. How long did you stay at that type of work?”

"A. Sometimes we would only be a minute. If I would see they were not Union, there was nothing to it, I would say 'So long' and go on. Other times I might spend an hour . . .

"Q. Now, you stated you were instructed to explain the industrial situation to the employees there. What was the industrial situation?

"A. Now, if I testified I was instructed to explain the industrial situation, I was wrong.

"Q. What was the truth of the matter?

"A. I would go into that. If you get an intelligent man that could understand it, we would go into that end of it . . . I would say 'What are you gaining this way? You know Rand is not going to give in to you. You will go broke before he does. Why don't you go back and get yourself a place to eat and sleep. You will have a winter on your hands'.

"Q. Did you believe what you said?

"A. I didn't believe it."⁶⁷

These missionaries were paid \$10 a day; Cohn-Hartley received \$30. At one time there were as many as 75 or 80. They remained until June 11. In the first week of July missionary work was resumed at Syracuse. Six missionaries recommended by Bergoff were placed on the respondent's payroll and paid directly by it at the rate of \$15 a day. Four of these missionaries worked for 10 days, the remaining two for 30 days. The respondent was particularly interested in inducing the aligners, a specialized group, to return to the plant and instructed the six missionaries to "get two or three fellows to come back and get them assembled to walk in together". Each of the missionaries was given a letter of introduction on stationary of the respondent:

"REMINGTON RAND INC.,
 "114 Gifford Street,
 "Syracuse, N. Y., July 7, 1936.

"To Remington Rand Employees in Syracuse:

"This is to advise you that when the bearer, Mr. N. F. Williams, calls on you, he is sent by me to tell you what the situation is here in respect to your job, and to offer you full protection if you care to return.

"You can return with assurance that Remington Rand will not make any settlement with the union.

"Yours very truly,

"J. E. STRAUB,
 "General Superintendent."

(Bd. Ex. 205.)

⁶⁷The sequence of Williams' testimony has been rearranged and some of the questions omitted to present a connected narrative.

Each evening the missionaries would meet with Harding and Straub in the former's hotel room and discuss their progress.

The respondent's foremen also "heard the call" and became missionaries during this period. Their *modus operandi* centered on the employee's job—if he did not return now his place would be filled by another. For example, foreman Ross told strikers Lanphear and DeMarko that the strike was lost and they might as well go back to work or their job would be taken in two or three days; straw boss Barr told striker Coughlin, "If you don't come back, your job will be filled;" inspector Moore told striker Duby that his name was not on the list of those that "could not come back" again, but that if he did not return at once, he "would be out of a job". Straub in the injunction proceedings brought by the respondent testified as follows:⁶⁸

"Q. Did you send out your foremen to contact the employees?"

"A. Yes.

"Q. In an effort to settle this dispute and get them back to work?"

"A. We sent out the foremen to contact the various employees.

"Q. Did they do it and give a report to you?"

"A. They did."⁶⁹

An effort was also made to persuade many of the strikers to leave Syracuse and work for the Elmira Precision Tool Company at Elmira. A "Mr. Edwards" visited the homes of strikers Millis, Findley, and Braumgard, stated that "he was hired by Remington Rand to come from New York and contact people to go to work" and attempted to induce them to move to Elmira. He was authorized to move them free of charge and to offer them an increase of \$6 a week.

Another agency joined with the respondent in performing "missionary" work, but its touch was more subtle. In the middle of July and again in September the wives of the striking employees received a letter from Cathrine Curtis, National Director of Women Investors In America, Inc. Portions of this first letter read as follows:

"This is the first time in history that a woman's organization has attempted to take a poll and obtain the view of strikers' wives or employees' wives, who, we feel, have a greater stake in their husbands' jobs than is generally realized.

"Whether we are **PROPERTY HOLDERS, JOB HOLDERS OR HUSBAND HOLDERS** we are **ALL** Investors **IN** America and our organization is working for the interests and welfare of the women of the country.

⁶⁸ By stipulation a portion of his testimony in the injunction proceedings was read into the record.

⁶⁹ There also was an attempt to talk to the aligners separately.

name unless you want to. Please answer all questions and return in the enclosed prepaid envelope.

“CATHRINE CURTIS,
National Director,

WOMEN INVESTORS IN AMERICA, INC.
535 Fifth Ave., New York, N. Y.”

The respondent, in engaging in these practices, was careful to keep its participation hidden from the public eye. The ordinary citizen, not acquainted with the strikebreaking tactics of employers, knew nothing of the sordid measures being utilized to defeat the strike. But the respondent was not content with merely maintaining a public opinion based on such a negative attitude. It sought throughout the strike affirmatively to mould that opinion against the unions. On May 25—before the strike—a full page advertisement directed “To The Community of Syracuse” appeared in the Syracuse Herald. The advertisement bore the notation, “Executive Offices, New York.” It attempted to prove that the respondent had been more than fair to its employees and that any strike agitation was unwarranted. Several examples of the respondent’s “fairness” may be illuminating:

“employees of Remington Rand’s other plants have been told by outside agitators that the company has refused to meet with their representatives; that Mr. Anderson came to the Syracuse conference with no credentials and no authority to act for the company.

“The facts are that Mr. Anderson presented the following authorization:

“This is to authorize you to represent Remington Rand at the meeting of the shop committee to be held at the Onondaga Hotel, *and you have full power to act for the company.*

“(Signed) J. H. RAND, Jr.

“R. E. BENNER.’

“From the foregoing it should be evident that the company has not refused to confer with employes’ representatives, through a fully authorized executive officer of the corporation.”

It is “evident” only if one is not acquainted with Mr. Anderson’s denials of authority at that conference with respect to the all-important Elmira question. Again:

“Such was the situation when Remington Rand received written notification from an officer of the union that ‘90 percent of the *organized* employes’ of the company had voted to strike, if necessary, to force the company into another conference.

“Remington Rand management felt that the union representatives were given fair, straightforward answers to their demands at the conference in Syracuse, April 24–25, and that re-discussion of the same questions could serve no good purpose. The percentage of employes who favor the strike agitation was so small that the union representatives who were demanding a rehearing could not fairly represent them, and therefore should not attempt to voice the views of the great majority.”

The advertisement then speaks of the respondent’s ballot and continues:

“In every case, excepting in Syracuse—*where the union publicly declares that it interfered and prevented the vote being completed*, the number voting to support a strike was insignificant. In Ilion only 4 per cent of the total number of employees voted for a strike. In Norwood (Cincinnati) only 3 per cent. In Tonawanda 1 per cent. In Middletown, Conn., only 10.7 per cent of the employees said they would favor a strike.”

We have already adverted to the use of the percentage device. And finally, a blunt threat to the citizens of Syracuse:

“The company is interested, vitally interested, in the communities of which it is a part. It will leave a community only if conditions there make it impossible to operate efficiently and with a reasonable profit.

“When employees are intimidated and their rights are involved, industry has no choice but to dismiss those who interfered—*whoever they may be*—or pack up and go elsewhere.

“In this case, the decision rests with the people of Syracuse.”⁷⁰

(Bd. Ex. 97.)

A similar threat was made on May 30 in an advertisement in the Syracuse Post Standard:

“The strike ends all hope of keeping a part of the plant at Syracuse—one of the demands of the strikers. It might have been done if ‘The City got rid of sixteen radicals who were making all this trouble.’ The strikers demanded that sixteen employees who were discharged for alleged intimidation be reinstated, and walked out when this was not done.

“The factory, it is definitely decided now, will be consolidated with the Ilion, N. Y. plant.” (Bd. Ex. 98.)

Possibly the respondent had overlooked momentarily the large “For Sale” sign then exhibited on its Ilion, N. Y., plant.

⁷⁰ Emphasis made in the advertisement indicated by italics.

The respondent had announced a reopening on May 28, but no one had entered. So, on June 7, an advertisement in the Syracuse American and the other two Syracuse papers announced another reopening in these words:

"This plant will re-open on Monday, June 8, 1936. Since the plant was closed, machinery has been removed, so that now we have positions open for only 800 workers instead of the 1800 workers formerly employed.

"Owing to the distress and lack of funds on the part of loyal workers who have been out of work through no fault of their own, the Company has decided to pay \$15.00 in cash to each and every worker accepted for re-employment Monday, in addition to next week's regular wages."

In Ilion and Tonawanda the \$15 was simply called a "bonus" for returning to work.

"The Company will exert every effort to find employment for those employees for whom it cannot provide employment in Syracuse and moving expenses will be paid by the Company for such workers as are approved by the Syracuse Plant superintendent, so that no loyal worker need go without employment because of changes in the Syracuse plant." (Bd. Ex. 99.)

A similar note in regard to bonus arrangements is contained in an advertisement of June 16 in the Syracuse Herald, headed, "Relief for Remington Rand Employees", and stating that:

"Owing to the many distressing cases of need created by this unnecessary strike . . . and desiring to fulfill its obligations to loyal workers pending their transfer to other locations . . . Remington Rand's Syracuse plant office . . . will arrange, by personal conference, to extend immediate assistance to former workers now in financial straits . . ., EXCEPTING the seventeen who were discharged . . ." (Bd. Ex. 103.)

The hypocritical nature of these advertisements is evident when they are placed alongside of a news article of August 25, stating:

"Despite the fact that it is now three months since the start of labor trouble at the Remington-Rand plant and that about 1,000 employees have been without work since, less than a dozen have applied to the city for relief, according to Welfare Commissioner Leon H. Abbott." (Resp. Ex. 12.)

On June 17 there appeared an advertisement in the Syracuse Herald which indicated that in Syracuse also the respondent had an *alter ego*. In this advertisement the "Employees' Independent Association"

announced that it had opened headquarters and urged employees to return. This advertisement stated that:

"The company must build typewriters, and if it cannot get the help in Syracuse, it must close the Syracuse plant and build the typewriters elsewhere. This the company had definitely decided to do within the next few days *unless enough help returns to work to operate the plant . . .*

"Call any of the numbers listed below (there were three telephone numbers listed). Give us your name, address, and clock number. *Do this at once.* Are you with us to save this plant for Syracuse?"

"By tomorrow (Thursday) morning we'll have enough names to convince the management that we mean business. Then we will call you to a meeting where we can have the protection the law guarantees us.

"At that meeting we will complete our plans and *go straight to work in a body.*

"Save our Plant! Save our jobs! Get on the band-wagon and *let's go!*"⁷¹ (Bd. Ex. 101.)

An Association—an appeal to return to work at once to save the plant—the use of telephone numbers to prevent open disclosure of the number that desire to return to work—a meeting—police protection—the final marching into the plant in a body—all form a pattern identical with that of the Ilion Typewriter Employes Protective Association.

On July 1, Harding addressed the "Citizens of Syracuse, Fellow Workers of Remington Rand" on the radio and the respondent printed his talk in a full page advertisement on July 2. Straub spoke on July 5 and Harding again on July 6, both talks also being printed in advertisements. In these talks the cause of the strike was stated to be the discharge of the 17 union members and a falsified account of their discharge was presented to the public. As in the past the Anderson conference was exhibited to prove that "Mr. Rand has never denied" the right of collective bargaining. After it is stated that "definite assurances" had been given the unions on the subject of the Elmira plant, we find that issue still being treated in an evasive fashion:

"Question. Who is going to make the typewriters at Elmira, Remington Rand or Elmira Precision Tool Company? And why was the building in Elmira labeled 'Future Home of Remington Rand'?"

⁷¹ Emphasis made in the advertising indicated by italics.

"Answer. That label exists in the imagination of strike agitators only. Any manufacturing in Elmira will be by the Elmira Precision Tool Company."

The consignment of shipments of machinery and tools from the Iliion and Middletown plants of Remington Rand during this period to the Elmira Precision Tool Company was not mentioned. But on one point the respondent spoke out boldly and with conviction:

"Any statement that any conference has been arranged, or is contemplated, or will be entered into by Remington Rand to make any settlement with striking unions is ABSOLUTELY FALSE.

"The Management of Remington Rand again states emphatically that under no circumstances will it make an agreement, either written or oral, with the Union that called the strike, or with any other Union dominated by the American Federation of Labor, or by any other outside professional agitators."

However, lest the public receive a false impression of Mr. Rand, it was told in the same talk that "The right to collective bargaining has not been denied by Remington Rand and will not be denied".⁷² (Bd. Exs. 104, 105.)

On July 5, Mrs. Marcia Daz, who said she had been employed for six years in the plant, made a radio address on "Why I Went Back to Work." Her talk was reprinted, along with Straub's and Harding's, in an advertisement entitled, "Shall A Mother's Right to Earn A Living For Her Children Be Denied?" (Bd. Ex. 105.) A carefully worded appeal to return to work, her talk was in much the same vein as those of the respondent's officials. This same Marcia Daz personally visited the homes of a number of persons to induce them to return. She was also instrumental in the arrest of two striking employees for "waving rubber rats at her and calling her names".⁷³ (Bd. Exs. 140j, 236ccc.) On all the evidence, there can be little doubt that she was merely a part of the respondent's publicity campaign.

Harding, in his July 2 speech, announced the following reward:

"Remington Rand will pay a reward of \$500 to anyone who furnishes information resulting in arrest and conviction for threatening and intimidating or committing any act of violence against the person or property of any employee of Remington Rand in Syracuse." (Bd. Ex. 104.)

⁷² A copy of this talk was distributed to the pickets.

⁷³ For this offense, the two employees were each fined \$30 or 30 days in jail.

This reward was also carried on a large sign on the respondent's plant. The respondent's missionaries used this reward as a talking point. Williams testified:

"Mr. Rand offered a reward of \$500 to any employee bothered by anybody, attacked by any one or intimidated, so we took this up as a means of protection. We would say, 'Here you are, if you are imposed upon by anybody at all, you have \$500', and they had already paid a couple, so that was pretty good protection."

All of these devices—missionaries, advertisements, releases, radio talks, rewards—made up the publicity campaign at Syracuse. Mayor Marvin's testimony in regard to this campaign is revealing:

"Q. Did you ever have any conversations with the city desk of the local newspapers as to releases?

"A. Yes.

"Q. Were any of these conversations about releases inserted by the company?

"A. Yes.

"Q. What was said and when? . . .

"A. Oh, around in August . . . The newspapermen told me that they thought that they had tried to be extremely fair in handling the news releases, and in view of some of the happenings that had occurred on Mr. Harding's part, that they would have to be a little more careful to print the news in a fair unbiased way to all parties concerned.

"Q. Were they more specific than that?

"A. I don't think so, but I got their meaning . . .

"Q. Well, what had you observed that made it possible to gather their meaning?

"A. That the advertisements were so written and the statements issued by the company were so prepared so that to the reading public both sides to the argument might not fairly be presented; that it was a product of a skillful paid publicity man, all of which I concur in and have no objection to Mr. Harding serving Mr. Rand. That is what he was paid for, but nevertheless he did such a good job in that respect the public could have been influenced."

Syracuse was one of the strongest points in the Joint Board organization. Nevertheless, it is still surprising in view of all of these measures that by November less than 200 had returned out of the 1450 who went on strike in May. The respondent had to resort to hiring new employees to keep the plant open and by November there

were about 650 employees at work, including the clerical force. Consequently, at the time of the hearings in this case in November, 1936, there were about 1200 union members still on strike in Syracuse.

D. *Middletown*

The Middletown scene is probably the most interesting of those involved in this proceeding. While the techniques presented are no different from those we have already described, their manipulation by the respondent is so apparent and well-defined that we obtain a deeper insight into the mechanics of strikebreaking. In addition, the record contains complete newspaper reports for the period involved, so that we are able by a comparison of these reports with the activities of the respondent as revealed by the testimony and exhibits to realize fully how public opinion may be fashioned to serve certain ends. The importance of this aspect of the case can hardly be under-emphasized, for under present conditions the role played by public opinion in disputes of this nature is probably paramount. When a large strike occurs in an important industry or affects a well known company, it is at once an important news story. Where many separate units are involved, as here, the press associations gather the stories from each and present them all to the newspaper editor in each locality. He in turn groups them together for his reading public, so that the reader finds on one page not only articles concerning the Remington Rand plant in Middletown but all other Remington Rand plants—Ilion, Tonawanda, Syracuse, Norwood. The grouping does not stop there—the word “strike” may serve to tie in stories of other strike-affected plants or industries, for people and events that can be related to the strike gather greater significance if presented in the light of that relation. To all of this the reading public reacts and that reaction in large measure may determine the outcome of the strike. If the community believes it is threatened with monetary loss through removal of a strike bound plant, it may, in the name of self defense, sanction a campaign of ruthlessness by the employer and public authorities. If the cause of the strikers is adequately and fairly presented and the employer cannot so readily go elsewhere, the community may demand that he deal with them on a civilized basis and that the public authorities be neutral. If violence occurs, even though it is not traceable to the strikers, a public opinion that fancies itself outraged may in the name of “law and order” countenance activities that, in their suppression of personal and group rights and freedom, far outweigh the original violence. But it must be remembered that this public opinion is of necessity formed second hand from newspapers. And in turn those newspapers must look to the sources of their news

articles—the employer, the union, and the events themselves. Either of the first two, if intelligently guided, will appreciate the importance of a favorable public reaction, and consequently the truth of their releases will vary directly with the scruples of their consciences. Nor can the events themselves be trusted to convey the candor of objectivity, for events may be staged and planned to achieve calculated effects. The responsibility of the newspaper editor and his staff to the public is thus evident. To the extent that this responsibility is accepted and respected, there will in similar measure be a sane consideration of the issues involved in a strike.

The respondent's activities at Middletown fall into three distinct phases: the first, an attempt on the part of the respondent to achieve its ends by threatening the community with removal of the plant; the second, a frank abandonment of such threats and an effort to reopen the plant by a respondent-created "back to work" movement; the third, the introduction of violence and the reopening of the plant by a combination of strikebreakers and state police. Concurrent with all three phases was an unscrupulous publicity campaign designed to turn public opinion against the strikers. We turn to the first phase.

On May 23, Rand telephoned Mayor Santangelo "that there was going to be a strike in his plant in Middletown and wanting to know if they would get protection". The Mayor replied: "Of course, we always protect our factories." On that same day a two page advertisement appeared in the Middletown Press addressed to "The Community of Middletown".⁷⁴ It referred to the cost of the 1934 strike, the \$2,000,000 annual payroll of the Middletown plant, dragged out the Anderson telegram of April 24 to show that the respondent had bargained with its employees, and mentioned the strike vote of the unions and the respondent. Then came these significant paragraphs:

"DOES MIDDLETOWN WANT THIS INDUSTRY

"Industry cannot live in a community where it cannot operate at a profit. If Middletown employees can be protected in their desire to work, and if they are willing to work to bring production up to a maximum, Remington Rand will route orders to Middletown.

"If employees will not cooperate, orders will have to be routed elsewhere, and in the end, if Remington Rand cannot get production in Middletown, under fair wages and working conditions, and at reasonable cost, it will have to move—but much against its wishes.

⁷⁴ Full page advertisements were rare occurrences in the Middletown Press.

"The Company will, in fulfillment of its moral obligation to loyal employees, take steps necessary to protect everybody within its plant in their right to work.

"It is gratifying to know that Middletown, through its mayor and other officials, has signified the determination of the community to see that all who wish to work are protected.

" REMINGTON-RAND, INC.,

"Executive Office,

"New York, May 23, 1936."

This advertisement is nearly identical in tone and wording with an advertisement, already discussed, that appeared two days later in Syracuse. (Bd. Ex. 97.) In addition, under the heading, "REMINGTON-RAND ANSWERS UNION REQUEST FOR ANOTHER CONFERENCE", the advertisement contained a reprint of a telegram addressed to the Middletown Central Labor Union, stating the following in part:

"But the percentage of our people who favor the present agitation for a strike is so small that the Union representatives for whom you ask another hearing cannot fairly represent and therefore should not undertake to voice the views of a large majority of our Middletown people.

"They might represent the wishes of 90% of those who are paying union dues but that is only a small minority of the total number on the present large payroll, a large majority of whom deplore further useless strife to secure an objective which so far has never been clearly stated . . .

"I can see no possible good to result therefrom, particularly after the failure of the recent two day conference with an officer of our company in Syracuse.

"(Signed) J. H. RAND, JR. PRES."

(Bd. Ex. 222a, b.)

Thus, before the strike, Rand was already attempting to win public opinion to his side. It must not be forgotten, in a study of these quotations, that the Middletown unions had over 1,000 members out of 1,200 eligible production and maintenance employees.

On May 25, after the strike action was announced, the union leaders in Middletown informed the Mayor and the Chief of Police of that decision, so that the strike and a large picket line would not come as a surprise to them. The next day, May 26, all of the plant's 1,200 production employees went on strike and picketing commenced with an entire absence of disorder. Only 125 employees—office help and foremen—entered the plant. The Middletown Press⁷⁵ reported that "only the office staff and foremen, and a few workers were at

⁷⁵ Newspaper references are to the Middletown Press unless another source is indicated.

their tasks today, . . . There was no disorder". (Bd. Ex. 236b.) Rand was quoted as saying that "only 10 per cent of his operatives favored the strike and that he expected all plants would resume operations within a week." (Bd. Ex. 236b.) The next day was likewise quiet, but, as elsewhere, it brought the introduction of armed guards inside the plant. These guards, about 15 in number, had been recruited in New York City and consisted in the main of persons who made such work their profession. Their pay was \$12 a day and they remained for about two months. The respondent armed some of them with riot guns.⁷⁶ The only local news in the next few days was the announcement of an investigation by the Connecticut Board of Mediation and Arbitration; the remaining strike news consisted of reports from Syracuse and Tonawanda.

The calm was shattered on May 31 when the respondent ordered the plant closed and the machinery made ready for shipment. To complete the picture, the respondent covered the windows with tarpaper and placed the property in the hands of the Mayor for sale. The Mayor immediately responded to this action by inviting the respondent and the union officials to a conference. The newspaper stated editorially:

"None is blind to the fact that the removal of the plant would work serious loss upon employes, upon every business house and indirectly upon most of the residents. To that extent the city and county feel vitally concerned and it was with this thought in mind that Mayor Leo B. Santangelo yesterday afternoon determined to make an attempt to bring together the parties at issue in an effort to find some grounds upon which an agreement might ultimately be reached." (Bd. Ex. 236h.)

The respondent's reply on June 2, which combined both a threat to the community and the utilization of the answer as a medium of obtaining favorable publicity, speaks for itself. The following telegram was sent to the Mayor and published in the paper:

"Mayor Leo B. Santangelo

"Parties you refer to have met around the table for two days and the company has learned that organized minority are attempting to terrorize unorganized majority into following dictation of a few radicals Stop We have always had the latch-string open to discuss matters with our own employees who are in good standing but we will not discuss matters with discharged employees nor with rank outsiders presuming to represent our employees Stop Because you have failed to give protection to

⁷⁶ Later, in June or July, five additional guards were supplied by the Burns Detective Agency.

honest workers willing and anxious to go back to work and have allowed radicals to coerce and intimidate them in violation of law the company has decided that Middletown is not a suitable community in which to carry on operations and therefore have issued instructions to close Middletown plant permanently.

“Earl Harding, Assistant to President Remington Rand, Inc.”
(Bd. Ex. 236i.)

But while the respondent was unwilling to meet with the Mayor and the union leaders, it was endeavoring to continue the chosen line of attack—pressure on civil authorities—by meeting alone with the Mayor and other citizens. On June 3, Carlos Ellis, a local attorney, called on the Mayor and stated that he had sufficient influence to arrange a meeting with Rand if the Mayor desired it. The Mayor was anxious to meet with Rand and appointed a committee of local leaders, later increased and known as the Citizens Committee, to accompany him. The original group included three business leaders—a banker, the president of Wesleyan University, and Ellis. Howland, the Middletown factory manager, arranged the appointment for June 4 in New York. When the Committee met Rand on that day they told Rand that the city resented the tone of his telegrams to the Mayor. Rand's reply is astonishing for its frankness: “Well, don't feel too bad about that, because that is what we have to do in order to make the merchants and citizens of Middletown realize the kind of factory they have got there, and the payroll we leave, and therefore we wanted to give you the story. I sent you that telegram so as to get you started in the proper direction.” As the Mayor said, “he thought we ought to be on the alert and do something.” But Rand then made it clear that he still would move the plant if he did not obtain proper police protection. He also reiterated his refusal to meet with the union leaders. In the middle of this conference four or five employees of the plant joined the group. Rand asked them to “tell the story of conditions in the factory for the past two years”, and each spoke his piece, all to the effect that conditions were intolerable because of the presence of the unions. The parallel to Ilion is unmistakable. Once more the leaders in the community and a group of employees controlled by Rand are brought together so that the leaders will in the future work with such employees and not with the union representatives who are described as merely a radical minority.

The Mayor and the Citizens Committee, now composed of 17 members and including the editor of the local paper, met among themselves and with the Middletown union leaders to discuss the situation but accomplished nothing. In the meantime Ellis was ac-

tive. About June 9 he met with the Mayor, Anderson, head of the Local Protective Board, Shea, president of the State Federation of Labor, and Hubner, business agent of the Middletown Central Labor Union. At the meeting Ellis advanced the proposal that, as Shea testified, "the Mayor should make some kind of a proposition, that he, was interested in maintaining the plant in Middletown and so forth and that the plant should be reopened, and that Mr. Anderson's part of it was that he should announce that he was interested in just the Middletown union and not the others out of state, and he was urging the people to go back to work. I presume I was to also come in on the same line with Mr. Anderson, and in return Mr. Ellis said Mr. Anderson and myself probably had ambitions political, one thing and another, and we certainly would be helping ourselves to agreeing to this proposition, and also that the Mayor who would probably be on the state ticket would also help himself." The Mayor asked Ellis "if he was working for Rand." Ellis answered, "no." The Mayor then asked: "How is it you are so sure Mr. Rand will accept the proposition?" Ellis replied: "Through some friends in New York I am pretty sure I can get him to accept." Anderson's comment on this meeting was as follows:

"Well, it was very evident to us that we were to get our people back to work between us, and if we would agree to do that, we would be taken care of some how or other. We have always mentioned it as practically being a bribe to us, to do something, to bring our people back to work, . . ."

Ellis' conduct was arousing suspicions. A little later, at a meeting of the Citizens Committee, he was asked point-blank if he represented the respondent. He answered that "he did not represent Remington Rand, he was not a representative of theirs whatsoever." Despite that denial, later events were to prove the soundness of their suspicions.

In the meantime all was quiet at the plant. On June 13 the newspaper reported that "strike conditions remain unchanged." (Bd. Ex. 236o.) There had been no disorder in the three weeks' period. Machinery was still being moved from the plant. But it was evident that the respondent's threats had not achieved the desired result.

On June 16 Simson met with the Citizens Committee. To date it had not proved to be as pliable as Barney Allen and his 'Iliion associates. Simson stated to the members that he had been sent there to expedite dismantling of the plant. The Committee told him of the unfortunate situation that had arisen as a result of the telegrams sent by Rand to the Mayor and that these telegrams were

keenly resented by the Committee. Smith, editor of the Middletown Press, testified as to Simson's reply:

"Mr. Simson outlined the fact that with the direction of the company removed quite a distance, it was quite evident that the temper of Middletown had not been correctly diagnosed and instead of having the effect of throwing a scare into the city it had stiffened the city's back in opposition to Mr. Rand and he deplored the situation and asked the indulgence of the committee and city, and said he would see Mr. Rand and set his mind at rest as to the attitude of the city wanting the factory . . .

"Mr. Simson was very largely instrumental in indicating to us that that attitude on the part of Mr. Rand was a part of the campaign . . . They evidently had a formula for breaking this strike and that was part of it; they wanted to frighten the city through the removal of the plant. Instead of frightening the city it rather angered the city that he should say those things about it."

After that conference the respondent made a complete about-face and its campaign to break the strike entered the second phase. On June 17 the newspaper carried the headline, "REMRAND WORKERS WOULD END STRIKE—ORGANIZING TO RESUME WORK HERE", over an article announcing the formation of the "Remrand Employees Back-to-Work Association". (Bd. Ex. 236q.) An advertisement of the same date by the Association read in part as follows:

"Because of the large number of employees who have signified their desire to join the association and the back-to-work movement, the Association has opened an office at The Middletown Savings Bank Building, Room 412, entrance 164 Court Street, for the convenience of those desiring to join.

"As the association must act quickly in making its demands upon the company before too much equipment has been removed from the plant, we are requesting all employees of Remington-Rand, Inc., desiring to join this movement and association to call at said office personally and sign the application for membership or to call by telephone, numbers 2261 and 2262, giving your name and address and a member of the association will call upon such person for his signature.

"The association will keep in confidence the names of all those who are members of the association and has been assured of full police protection." (Bd. Ex. 209.)

Ellis' connection with this Association is significant. The evening before, Frizzell, an office worker at the plant, who was nominally at the head of the Association, had secured application blanks from

Ellis. Moreover, Ellis later unsuccessfully asked the Mayor if the Association could obtain space in the City Hall but cautioned the Mayor "under no circumstances" to use his name.

It will be remembered that Ellis was a member of the Citizens Committee. Previously, Harding had suggested to that Committee that if it desired to be "helpful" it could support a "back to work" movement. But the Committee, after talking the matter over with Anderson, had appreciated that its participation in such a movement would amount to a complete abandonment of neutrality and therefore refused to offer its aid to such a plan. When Ellis, a member of the Committee, openly identified himself with such a movement, the Committee felt that his action would reflect on it and consequently decided to ask Ellis to resign and then to disband itself. It did so on June 18, at the same time that it published a statement announcing its inability to end the strike. Parts of that statement are worth quotation:

"We regret to report that up to the present time all efforts to get the contending parties together have failed. The Union leaders have been ready to meet representatives of the company, but representatives of the company have been unwilling to meet with Union leaders, although they have expressed a willingness to meet with employes in a group or with employes who are not Union officers . . .

"We fear that, if the disputants persist in maintaining their present positions, Remington-Rand, Inc. will, as definitely stated to this committee by an officer of the company, complete dismantlement and removal of the machinery and equipment of the local factory to other plants now in operation . . .

"This report would not be complete without reference to a movement that has been announced for the purpose of regaining employment. This committee wishes it to be known definitely that it has had no part in the inception of this movement." (Bd. Exs. 236r, s.)

In regard to the middle paragraph, the editor of the local paper testified that there was no question but that the threats to move the plant had caused a certain amount of fear in the minds of the townsmen and the Committee.

The ensuing days saw an intensive publicity campaign conducted by the Association. Large advertisements appeared nearly daily in the paper. At the same time the respondent apparently shut off its supply of news, so that the paper was forced to resort to these advertisements for material for its news articles. The citizens of Middletown thus received a double dose of this publicity. The advertisements were of a type practically identical with those of the

associations in the other cities. Mention is made of the "many workers who called . . . expressing their desire to return to work", but no figures are stated. Prompt action is held imperative "as we have no assurance of Remington-Rand, Inc. remaining in Middletown".⁷⁷ On Saturday, June 20, it is stated that to avoid a rush of calls on Monday morning the office will be kept open on Saturday and Sunday—phone numbers remaining as before. On June 22 the Association offers to "pay the expenses of any employee who wishes to go to Ilion to learn the truth" about employment there. On June 23 a time limit is set—the Association "will hold its office open for 3 more days at which time it expects that a sufficient number of employees will have signified their intention to return so that the Association may approach the executives of Remington Rand, Inc. with a sufficient number of employees to commence operations". Additional pressure is then supplied:

"Two more carloads of machinery were shipped last night and the Association feels that those remaining employees who wish to keep the plant in Middletown must hasten to give their names to the Back-To-Work Association. We are confident that it is the intention of the executives of Remington-Rand to move the plant from Middletown if their employees do not wish to return to work.

"There are those who say that the Remington-Rand executives are bluffing. Our feeling on this point is that even if they are bluffing, they are doing so with all the aces up their sleeves. With a plant in Elmira handed to them on a silver platter in a town well populated with highly skilled mechanics and with the additional prospect that a good many of Middletown's skilled mechanics have signified their willingness to move to Elmira, we cannot see how Remington-Rand can lose materially even if its Middletown employees should oblige them to move the plant from this community. It certainly is a small loss to the company in comparison to the great loss to the community of Middletown and to the former employees and the families which have lost their means of livelihood." (Bd. Ex. 217.)

On June 24, "The Time Is Growing Short . . . To Return To Your Job". On June 25 the employees are informed that they have lost \$154,000 since May 26th and are losing \$7,000 each day they remain out of work. Then, "Do hired agitators have your personal interest at heart? Or are they more interested in their own salaries than in your wages?" (Bd. Ex. 219.) The employees that day received at

⁷⁷ The respondent, in an advertisement under its name on June 19, continued this approach by stating that it would receive applications for employment in other plants inasmuch as a large part of its equipment had been moved out of Middletown.

their homes rather interesting literature mailed to them by the respondent; a composite picture of Remington Rand plants, with the June 25 status of manufacturing, as follows: Ilion, Tonawanda and Marietta—returned to work; Syracuse—60 per cent moved; Norwood—10 per cent moved; Middletown—30 per cent moved; photostatic copies of affidavits signed by Ilion employees that they had “voluntarily” returned to work, and a reprint of the two-page advertisement of May 23. That same day two significant items appeared in the paper. The news columns of the paper stated that Rand had accepted the invitation of the Association to address it at Middletown. As usual, Rand’s acceptance was in a form capable of utilization as a publicity medium:

“We will be glad to come to Middletown and talk to your association and all employes, regardless of their affiliations. The officers of our company were very reluctant to move the Middletown plant. That decision was reached only after we were convinced that unlawful threats and intimidation by a few would be allowed to continue so as to frighten the vast majority of loyal workers, preventing them from working in the Middletown plant.” (Bd. Ex. 236bb.)

The advertising column contained the following:

“Male Help

“WANTED—25 millwrights to start work immediately dismantling and skidding machinery for shipment. Remington Rand, Inc., Middletown, Conn. R. E. Benner, vice-president.” (Bd. Ex. 229.)

The scene shifts to New York and a meeting between Rand and Bergoff on June 25. Rand told Bergoff that he wanted some “millwrights” sent up to Middletown the next day. Bergoff, who already had ten men planted in Middletown, obtained the new men, about 59 in number, and they left in a private railroad car on June 26. Bergoff’s description of them is interesting: “A man, a fink, as you call him in the newspapers, he is anything; he may be a carpenter today, a plumber tomorrow, a bricklayer the next day; this particular day they were millwrights.” Rand boarded the train at Stamford and said to Bergoff: “You better have these men get off at Hartford and come over to Middletown the best way you possibly can, taxicabs, automobiles, buses, trains, . . . I would like to have about half the men come in the plant at once and other half remain out . . . We will have to give these men identification cards.” Cards were then written out stating that each man was a millwright and given to the men. Rand stated: “I will notify the

police at Stamford not to molest any of these men that have a millwright's card." He then spoke to the "millwrights". Williams, one of the "millrights", testified as follows on Rand's talk:

"he was going up to Middletown and give a speech; that the people up there had petitioned him to reopen that plant, instead of moving it. He was going to Middletown and make a speech to the employees and try to get them to go back to work. He said they were all starving to death and wanting to go back to work. He wanted us to kind of stooze for him. He wanted us to kind of applaud for him . . . We were to make the plant, yes, to make the plant. We had to get on the company property . . . Mr. Rand wanted us there for his speech, and he was going to make the speech on company property so we had to make it."

And so the "millwrights" came to Middletown. It will be recalled that on June 23 the Association had advertised that in three days it expected to approach the executives of the respondent and ask them to reopen the plant. Three days meant the 26th of June—the identical day to which all of Rand's preparations in New York for an opening were directed.

On the morning of June 26 there were 60 to 70 policemen on duty at the plant, in contrast to the usual 10 or 11, the additional police being assigned

"at the request of the factory officials, who expressed fears of disorders arising from the hiring of 25 millwrights, who were to come to work today and continue dismantling of the plant."

(Bd. Ex. 236gg.)

Previously, Howland had telephoned the Mayor and asked for police protection for the "millwrights". The "millwrights" arrived and entered the plant, jostling the pickets with their elbows as they went through the picket lines. But the union leaders had urged that order be maintained and consequently "the threatened disorder failed to occur".⁷⁸ During the day Rand conferred with the Mayor. Telegrams were sent to the employees notifying them of a mass meeting in the afternoon. Foremen were busy contacting employees and urging them to attend. Announcements of the meeting were broadcast over the radio. In the afternoon the grand event took place—Rand addressed the employees gathered around the plant and in the plant yard through amplifiers erected around the building. After the speeches the crowd, composed nearly entirely of the respondent's salesmen, office employees, and strangers to Middletown, rushed into the plant, the "For Sale" sign came tumbling down, the tar-paper

⁷⁸ The Chief of Police ordered the "millwrights" out of town that same night.

covering was ripped from the windows, and a celebration staged. Williams, a "millwright", testified as follows:

"A. Then Mr. Rand invited everybody into the plant, had a surprise for everybody. I don't know whether it was Mr. Rand or the superintendent of the plant; somebody invited us in anyway. Anyway they all got up and walked in.

"Q. What happened inside?

"A. The big surprise . . . was they were going to take the sign down off the building. I thought we were going to get a drink of beer or something, but I didn't see any."

Newsreel cameramen were present taking pictures of the demonstration. When it was all over Rand came to Bergoff and said: "Now you have done wonderful work." Bergoff said: "Almost, as good as Tonawanda," and they then "kidded each other." The testimony of the editor of the local paper on this event was as follows:

"Q. When did the fact that there was a campaign involved, come to your attention for the first time?

"A. A campaign involved for breaking the strike? Of course we assumed from the very first that was the object of the notice the factory was going to be moved, but to what extent he meant it, we were uncertain and, of course, somewhat concerned.

"Q. What else led you to believe that Rand was out to break the strike?

"A. Well, when he opened the factory, of course, then we were convinced he really meant to break the strike rather than remove the factory . . .

"Q. Did that appear to you to be a staged manoeuvre?

"A. No, I thought it was an honest to goodness effort to operate the factory in Middletown.

"Q. You did not identify that with strike-breaking technique?

"A. Yes, I should say his object was to break the strike.

"Q. When you say 'break the strike', you use the word in contradistinction to the word 'settle'?

"A. Yes sir."

That same day Howland sent the following telegram individually to the employees:

"AM GLAD TO ADVISE THAT THE RESULTS OF TODAY'S CONFERENCE AND MEETING RESULTED IN REMOVAL OF THE FOR SALE SIGN AND OFFICERS GRANTING THE DEMAND FOR THE REOPENING OF THE PLANT MONDAY MORNING STOP WILL EXPECT YOU TO REPORT FOR WORK OR ADVISE BY TELEPHONE OR LETTER ON SATURDAY JUNE TWENTY SEVENTH IF YOU WANT YOUR JOB HELD OPEN AS WE HAVE POSITIONS FOR ONLY

911 WORKERS AT THE PRESENT TIME VACATION PRIVILEGES AS HERETOFORE ANNOUNCED WILL BE MAINTAINED AND YOU WILL BE ENTITLED TO THE FIFTEEN DOLLAR VACATION MONEY AT THE END OF THE FIRST WEEK IN ADDITION TO YOUR REGULAR WAGE" (Bd. Ex. 268.)

Foremen also contacted the employees to persuade them to return.

On June 29 the plant was reopened for work but only 23 persons entered. There was no disorder. For the next few days the respondent maintained its intensive efforts to induce the employees to return. Amplifiers at the plant, which could be heard for three to four miles, and sound trucks blared forth a confusion of music, exhortations, inducements, bonus offers, and threats. Advertisements by the respondent talked of "A Final Message To Middletown Employees" (Hartford Daily Courant) and stated, "Welcome Back to Work, The Stampede Is On".⁷⁹ Significantly, advertisements by the Association ceased and that organization disappeared from the scene.

It was evident that the "back to work" movement had not succeeded. On June 30 no more than 45 people entered the plant according to a police count; the respondent stated 151 workers were in the factory. Under such conditions a statement issued that day by Simson possesses unusual significance. The newspaper carried a headline, "Remington Rand Inc. Is Determined To Operate Its Middletown Factory", over the following article:

"Announcement that the Remington-Rand, Inc. factory here was 'open to stay' and will definitely remain here was made by J. A. W. Simson, secretary and general counsel for the company this morning. Mr. Simson asserted that the company was determined to produce typewriters here even if the office workers had to be employed on the job of manufacture. The factory, he stated, will remain open no matter how few former employees return, and it was stated that 151 workers were in the factory today. If necessary workers will be imported from other cities to carry on essential operations. Schools for training skilled help are to be opened." (Bd. Ex. 236jj.)

An advertisement of the same date rounded out the announcement:

"Remington Rand Is Building A New Factory Organization around a small nucleus of foremen and experienced hands. This is your opportunity to learn how to assemble and how to align typewriters.

⁷⁹ This same advertisement stated: "The management of the company desires again to state emphatically that under no circumstances will it make an agreement, either written or verbal, with the union that called this strike, or with any other union dominated by the American Federation of Labor or other outside professional agitators."

“Competent instructors will remain in Middletown for the purpose of assisting in the teaching of assembling and aligning operations to new employees during the next thirty day period.” (Bd. Ex. 223.)

The respondent was thus entering on the third phase of its campaign—operation of the plant with strikebreakers. This phase was to be marked by a wave of disorder that was to arise suddenly and to stir the community to fever pitch in its determination to stamp down “violence” and maintain “law and order”, but at the same time to draw attention away from the respondent’s wholesale use of strikebreakers and to obscure further the issues of the strike.

Since May 26 there had been no disorder of any sort. On June 26 the newspaper spoke of “the record of absence of disorder continued since the strike started four weeks ago”. The police records for the same period stated, “No trouble during this time”. The newspaper again on June 30 referred to the order maintained by the pickets and the police records confirm the report. Such maintenance of order for over a month under strike conditions and with over 1,000 persons involved is little short of remarkable. It serves to underscore the sincerity of the union leaders and the discipline they exerted upon their members. Yet suddenly, simultaneous with the announcement of the respondent that the plant will remain open and new employees will be hired, there comes the first outbreak of disorder. On June 30 the house of three persons who had reported to work at the plant was stoned—“four concrete blocks weighing about 50 pounds each, were thrown at the home”. On July 2 complaints on behalf of the residents of the house for damages were served against three of the unions and their leaders, each claiming \$9,000 damages. Ellis was the attorney for each of the plaintiffs.⁶⁰ On the same day the respondent filed a suit for an injunction against the same three unions and the same leaders to restrain them from committing acts of violence. Ellis was the attorney for Remington Rand, Inc. Ellis in the injunction suit referred to the damage suits filed the same day and the “violence” that occasioned them. Previously, on June 30, a statement issued by the respondent had described at length an injunction secured by it at Norwood against the unions in that town, so that the community at Middletown would be prepared for the institution of an injunction suit in its courts. After argument, a broad injunction was granted against the unions, by stipulation, however, limiting pickets to ten in number, preventing the union members from congregating on a public street, restraining the union

⁶⁰ A damage suit was brought in Syracuse by the respondent against the union leaders at the same time that the respondent there instituted a suit for an injunction.

members from any unlawful act directed against any employee of the plant, and "from striking, beating, ill-treating or following in a mocking, threatening or intimidating manner" any such employee.⁸¹ The respondent immediately sent individual telegrams to the employees on strike informing them of this result:

"INJUNCTION ISSUED AGAINST ALL EMPLOYEE MEMBERS OF UNION STOP COMPANY POSITIVELY REFUSES ANY CONFERENCE OR SETTLEMENT WITH UNION STOP BOTH SYRACUSE AND NORWOOD HAVE RESUMED WORK STOP BEWARE FALSE RUMORS

"REMINGTON RAND INC JAMES H RAND JR"

(Bd. Ex. 257.)

Copies of the injunction were also served personally on about 900 members of the unions, even though they were not named as individual defendants in the action, and even on persons who were members of the union not named in the action—Machinists Local No. 851—in an effort to intimidate these employees by playing on their unfamiliarity with the vagaries of equity jurisdiction. A statement issued by the respondent again referred to the Norwood injunction and also referred at length to acts of disorder at Syracuse and Iliion by union members. The case against the unions at Middletown was thus being built up by the respondent.

During this period the respondent was steadily hiring new employees. It stated on July 6 that there were 705 employees at work on that day. Of these, 77 were said to be former strikers, while the unions' count showed that only 59 union and non-union employees had returned to work. Considering that there were only 151 employees at work on June 30, the respondent must have hired about 500 strike-breakers in that period.⁸² In the meantime, from July 1 to July 7, there was no disorder. Suddenly, in the early morning of July 7, a series of stonings of homes occurred in outlying parts of Middletown. The reaction was swift. The newspaper carried a headline, "Mayor and Prosecutor Determined To Preserve Law and Order In City, Violence Here Stirs Officials". Mayor Santangelo issued a statement prominently placed on the front page that he was "shocked" by the violence and that "law and order" would be preserved by means of all the forces at his command. And yet in small type was the following:

⁸¹ Previous to the injunction there had been several hundred pickets daily. The unions had leased lots around the plant and strikers were permitted to congregate on these lots after the injunction. Later, one of these lots which was strategically located, was purchased by the respondent and strikers excluded from it.

⁸² An advertisement on October 28, stating that positions were open on a second shift then being organized, contained the following: "Experience is not necessary. A large number of the present force started without previous experience and are now proficient operators"

During the first week in July practically all of the tool makers, including Anderson, had their tools sent to them by the respondent.

“There is no evidence to show that the stoning was done by striking employees of the Remington Rand Inc. factory . . . The timing of the acts of violence and the fact that in Middlefield and East Hampton those who threw the stones took flight in a black sedan lead authorities to believe all the incidents were carefully planned, and they find significance in the fact that in all instances the attacks were directed against those now employed in the factory.” (Bd. Ex. 236rr.)

On the same day there occurred an event on which the newspapers did not care to comment. An automobile containing Rand, his brother-in-law who was an assistant superintendent, and several foremen, moved slowly back and forth along the picket line. The car was traveling at about ten miles an hour. One of the occupants was taking pictures of the people on the picket line. James H. Rand, Jr., member of the Business Advisory Council of the Department of Commerce and Chairman of the Committee for the Nation,⁸⁸ was deliberately “thumbing his nose at the group of pickets”.

The city authorities determined to take stern measures. On July 8 the “riot act” was read to a crowd of strikers and they were ordered to disperse. This unnecessary action only served to anger the strikers and they “booed” the local police to such an extent that the police captain reading the “riot act” could not be heard. This occasioned a headline, “Strikers Defy Command To Disperse; Mayor Will Call Militia If Needed”. As a consequence, a total of 66 state police arrived to assist the local police, which numbered about 45. Yet the news article of the same day reported that all was quiet within an hour after the “riot act” had been read and the rest of “the morning passed without incident”. A state police officer remarked: “These people do not appear to be unruly.” The emotional tension that the respondent was creating in Middletown is evidenced by this contrast between the actual situation and harsh measures adopted by the authorities.

The respondent continued its policy of keeping indignation alive. On July 9, Ellis obtained writs against Anderson and other members of the unions charging them with contempt of the injunction on the ground that they had “acquiesced in” and “encouraged” acts in violation of the injunction. Such a move could only result in causing the community to swing further away from the unions and at the same time demoralize them through action against their leaders. Many of these cases were dismissed when brought to a hearing weeks later. At the same time the respondent encouraged the filing of groundless complaints against striking employees by announcement in a news

⁸⁸ Who's Who in America, Vol. 19 (1936), p. 2011.

release that the following telegram had been sent to a citizen of Middletown:

"I want to notify you that the officials of Remington Rand Inc. have decided to give you the five hundred dollar reward although you did not come under the terms of the offer. I want to commend you for your demonstration of good citizenship in assisting in the enforcement of law and order and hope that your action will encourage all other good citizens in our community to follow your example. My best personal wishes to you and your eight children.

"(Signed) JAMES H. RAND, JR., *Pres.*"
(Bd. Ex. 234k.)

The recipient of the reward, similar in terms to that made in Syracuse, had testified in cases in which conviction for intimidation and breach of the peace had been secured.

These events established the pattern for the next two months. The news articles on the strike were nearly entirely devoted to the topic of disorder—accounts of acts of violence, arrests, trials, fines, declarations by the city authorities, etc. The news from the other cities involved in the strike that was featured in the Middletown Press contained nearly exclusively accounts relating to disorders and acts of violence in those cities. Even news articles concerning disorders at Middletown that were entirely unrelated to the strike were grouped with the strike news. The editorials in the paper, which had up to July been neutral in character, now turned against the unions because of the violence that had occurred. On this point the editor of the paper, who wrote its editorials, testified as follows:

"A. Before the strike was called, Mr. Shea came in and we had quite a long talk on the strike in general, and my belief led me to a fairly accurate idea of what was going to happen and I told him this, that if a strike were called, the press would not take an editorial stand either for or against it. We believed that was an argument to be settled between the factory and employees, but if the employees became violent, we would then take up a stand for law and order irrespective of its consequences and until the violence broke out, the press made no editorial mention whatever of the strike . . .

"Q. So as and when violence began, which I assume was early in July, the editorial policy shifted?

"A. I wouldn't say so. We don't figure that we shifted. We did not condemn the strikers as strikers. We did condemn the use of violence to achieve their ends and only that . . .

“Q. You know it indicated a definite siding with the factory point of view?

“A. Unfortunately we knew that would be the attitude of Union Labor.

“Q. Well, did you know why that is the attitude of Union Labor?

“A. Except as I know something of human nature; if you oppose a man you are either with him or agin him; if you are agin him, you are agin him; that is all there is to it.

“Q. What was the effect of this editorial policy as far as the local government was concerned?

“A. I think it strengthened them in that.

“Q. Did it strengthen the police force?

“A. I think so. I think they felt they had some backing behind them, that the Press more or less spoke for the public.

“Q. Was the police force thereafter augmented?

“A. Oh, yes, very considerably.”

The effect was naturally cumulative and the unions suffered as a consequence, since responsibility for all acts of violence was laid at their door without any serious attempt to sift the facts and detect the wrongdoers. Several things stand out in this period. After days of calm, acts of disorder would suddenly occur at a time when violence would be most damaging to the unions. For example, when the state police would be withdrawn because of absence of disorder, fresh disorders would occur that would necessitate their recall. Again, one of the local judges had adopted the practice of holding union members convicted of violence as hostages, in that the judge would delay sentence and state that its severity would depend upon the conduct of the unions in the future. Such an announcement would be followed by an outbreak of disorder and the hostages would then be dealt with severely. The most serious trouble occurred on September 9 and 10. On the first day the state police, without any provocation, drove pickets away from the plant by means of tear gas and clubs and refused to permit the strikers to congregate on a lot they had leased near the plant. The next day the state police launched a tear gas attack on the strikers who were proceeding in orderly fashion to their lots. The State Commissioner of Labor investigated the situation the next day and was able to ease the tension existing as a result of these attacks.

The respondent kept the tide running against the unions by inserting advertisements calculated to incite public opinion, such as one containing a news article relating to violence in strikes unconnected with the respondent, and the imposition of heavy bail in cases where union employees had been arrested, and one headed, “Will You Pa-

rade In Defiance of the Injunction", which implied that a union parade would be a violation of the decree. The latter was inserted just before a parade was held by the unions with the express permission of the city authorities. On July 25, the strikebreakers at the plant sent a petition to the city authorities demanding special deputies and charging that the law enforcing agencies of the city lacked "guts". And in September, Frizzell and others visited the Governor and stated that unless they were given more protection they "would have to take the law into their own hands". In October and November, the respondent mailed out to a large number of its employees in Middletown, and also Syracuse, a book entitled, "This Labor Union Racket", by Edward Dean Sullivan. This book, containing 311 pages and published in 1936, by emphasis on scattered incidents of unscrupulous union leadership and by omission of the principles and benefits of legitimate union organization, presents a distorted view of the labor movement. It is written in a spectacular style and rumors make up a large part of its material. The respondent had purchased 1,500 copies from the publisher. Employees in Middletown were also mailed by the respondent a marked copy of the New York Sun containing an article on union racketeers.

All the disorder and violence that thus occurred at Middletown reacted adversely to the interests of the unions. They lost the sympathy of the public and such loss in turn enabled the city authorities, including the police and the courts, to treat the unions with unusual severity. It is not without significance that when the Mayors of Middletown and Ilion appeared to testify at the hearings in this case, the only documents they brought with them were clippings relating to acts of disorder. At the same time the issues which gave rise to the strike and the respondent's refusal to meet with the union leaders were lost sight of in the welter of violence news. The perspective of the public thus shifted and it was impossible for it to approach the underlying issues with a calm and reasoned consideration. Behind the cloak thus created, the respondent was able both to continue its refusal to meet with the union representatives, and to hire strikebreakers and so operate its plant without any protest from the public. According to the editor of the local paper, apart from slight misgivings concerning the millwrights, "the public at no time had before it any suspicions on the part of the local press" concerning the respondent's strikebreaking activities. Finally, the effects of the disorder were not confined to Middletown, but, through the press associations and the respondent's press releases, radiated out to all of the other areas affected by the strike. In view of the serious consequences of the disorder at Middletown it becomes necessary to determine what portion of the responsibility for the disorder must be borne by the respondent.

From an examination of this phase of the record one fact stands out—much of the violence that occurred was the result of direct acts of provocation by the respondent, or of acts indirectly traceable to the respondent. Speaking editorially, the Hartford Daily Courant stated:

“The first acts of violence occurred only after a loud speaker installed at the factory sent forth comments on the strike and the pickets that might well have incited to riot.” (Bd. Ex. 235d.)

Union leaders claimed, and with understandable justification, that Rand's exhibition of nose-thumbing “incited the crowd”. Anderson's testimony on the question of provocation is interesting:

“Q. Were you on the picket line the day the millwrights came?

“A. I was.

“Q. From where you were, were you able to observe how they crossed the picket line?

“A. They came from various places. I noticed one coming in here, going across the street on to the picket line, and intermingling there with the picket line all the way up towards the entrances to the factory.

“Q. How did they walk through the picket line, if you know?

“A. They walked right through our crowd, and anybody was in the way, there would be a little jostling back and forth . . .

“Q. Was it necessary to jostle the picket line to get through that day?

“A. There wasn't anybody on the other side, hardly at all. There was plenty of room to go there. We didn't have any pickets on Johnson Street at that time. They could have walked down that sidewalk and up Johnson.

“Q. Did you observe anyone else on that occasion apart from (the millwrights) who were jostling among the pickets?

“A. Mr. Howland, factory manager.

“Q. What was the action which you described as jostling?

“A. Well, of course, the pickets were walking along the street, and they would go through the picket line, one side and then come back through it again on the other side continually, all the way, the whole length, and George Howland I noticed in particular, they went in there, and he was just worming his way through the crowd there.

“Q. The witness is indicating with the motion of his elbows extended.

“A. That is right.

“Q. What do you think the purpose of it was, as observed that movement by Howland and others through the picket line on that day? . . .

"A. It was very definite in my mind that was done with the same purpose and in the same way that these thugs went through the line, to start some kind of disturbance, to get our people worked up, so there would be a disturbance, so there would be occasion to stick in a big force of police. That is (the) way I took it right away. Some people became perturbed over it, and I had to talk to them quite a bit to calm them down, not to get excited over it, which they did. It wasn't any trouble there.

"Q. Were you an observer of other attempts which in your opinion were attempts to provoke the strikers?

"A. Yes sir.

"Q. What were they? . . .

"A. That was from the very beginning it started that day when Mr. Howland was elbowing his way through the crowd . . . and all those instances, like the parade they had around the factory, carrying flags and so forth, playing the Star Spangled Banner⁸⁴—all those things the Mayor testified here it was a reign of terror. It wasn't a reign of terror the way we saw it, it was a reign of hysteria. It was almost an impossible job with a large group like that to keep them in control after the way they were being aggravated. I know the day they were playing the National Anthem, with people over there with flags in their hands, some of our people were almost on the verge of running over and tearing that thing out of the windows. We have always been brought up since the time we were children to respect the National Anthem, and to see it being used for strike-breaking purpose, I know it made my blood boil, and there were others—the whole group was very much disturbed over it."

Once disorder had entered the picture and brought the state police to the scene, the unions were beset on every side. Strikers were arrested on flimsy evidence, with widespread publicity given to their arrest, only to be released later for lack of evidence or to be acquitted. Excessive bail was required. In cases where the final verdict was against the defendant, heavy fines were levied entirely out of proportion to the offense.⁸⁵ Besides affecting the morale of the strikers, these activities were a serious drain on their funds, drawn upon to meet the requirements of bail and fines. In addition, while arrests of strikers were freely made, the unions experienced extreme difficulty in securing warrants against guards or strike breakers

⁸⁴ A parade was held of the employees in the factory on July 3. The Star Spangled Banner was played on various occasions over the amplifiers at the factory.

⁸⁵ At Ilion and Syracuse the unions experienced similar difficulties of arrests on meagre evidence, excessive bail and heavy fines in cases where the verdict went against the defendant.

charged by them with illegal acts because of the reluctance of the authorities to take any action directed against the respondent. Their leaders were summoned to answer contempt charges. The state police time after time indulged in provocative acts. Anderson testified on this as follows:

“Q. Now, I will ask you what was the attitude and action of the state police after they were placed on duty with reference to the people on the picket line?

“A. Their attitude continually has been very, very aggravating toward our people. I recall the first time I met Sergeant Pettengill,⁸⁶ the first time I had met him in that area, he had stopped me and very sarcastic about—in his line of talk, and continually he would stop me in the line for the least little thing, if one of our people had their foot over on the sidewalk, they would immediately say, ‘Get your foot off and get back on that lot where you belong, or we will run you in’. That was done time after time, that that aggravation was used against our people, and it rather surprised me to see that their attitude—that they would use, because from all observations that I had, the state police in Middletown done more, as I saw it, in a strike-breaking attitude than any of the thugs that were ever brought into the plant.

“Q. Those actions took place not only by Pettengill, but by others?

“A. By several of the state police . . . Why, they would come along with their clubs, and if your foot was sticking over they would give it a knock, and ‘get back on the lot’. Time after time it was done there continually . . .”

On October 29, a special commission of the National Social Labor and Religious Foundation⁸⁷ reported to the Governor that the state police were guilty of “brutally and unnecessarily clubbing” strikers and that “while the purpose of calling out the state police was to maintain order, this purpose was perverted into their use as a strike breaking agency”. It should not be overlooked that in Middletown, as elsewhere, the respondent was continually striving to obtain large forces of police assigned to its plants. The respondent also made certain that the flow of complaints against the unions was maintained. On July 1, Howland made four complaints; on July 7, Howland and Ellis made four complaints; Ellis made a complaint on July 8; Howland, on July 14, made a complaint, stating he had “received information that the Noiseless Plant was going to be dynamited tonight”, etc. And at the same time the respondent was stead-

⁸⁶ His brother was a guard employed in the plant at that time

⁸⁷ The group included a number of prominent Connecticut citizens

ily refusing even to meet with the union leaders and was operating its factory with strikebreakers. The union members must be judged by human standards—their response to the respondent's provocative conduct and its adamant refusal to bargain collectively was the response of the normal human being goaded beyond endurance and impotent in the face of sheer immobility.

There is thus no question that the respondent deliberately set in motion a train of events that could only end in violence. The record also raises the suspicion that much of the violence for which the unions received the blame was directly committed by agents of the respondent. The respondent, and not the unions, stood to gain by a wave of disorders. It was acknowledged that the union leaders were opposed to violence of any sort. On the other hand, the respondent had hired strikebreaking agencies who admittedly indulge in the tactics of using "agents provocateurs" and of committing acts of violence to turn public opinion against unions.⁸⁸ After repeated requests from Anderson, the state police finally searched the cars of some of the strikebreakers and in one found 45 revolvers. The strikebreakers would incite stonings through acts of provocation, such as throwing paint at pickets. Several of the strikebreakers and guards were arrested by the police for acts of violence. Some of these were defended by Ellis. In addition, much of the disorder was of the type that would arouse suspicion in persons familiar with the work of strikebreaking agencies: stones thrown at night, stones thrown from behind bushes, stones thrown from an unidentified figure in a crowd of strikers, etc. It is significant that in Norwood the police arrested eight guards employed by the respondent for carrying concealed weapons and one for shooting to kill. The police charged that the "guards were aggravating the strike disorders". In Middletown a guard was also arrested for firing at strikers.

It might be well to consider the type of guard employed by the respondent. Rand and Harding throughout this period were hurling epithets at the union leaders and characterizing them by referring constantly to "brigandage" and "atrocities". But quietly, unknown to the public at the time, they were employing on their part as guards persons such as Sam "Chowderhead" Cohen. This professional guard and strikebreaker who has practiced his trade for over 20 years has, through the prominence received as a result of his appearance at a Senate Committee investigation of labor espionage and strikebreaking,⁸⁹ come justifiably to typify the class of persons whom certain of our leaders of industry, such as Rand, consort and deal

⁸⁸ Hearings before a Subcommittee of the Senate Committee on Education and Labor, 74th Congress, 2nd Sess., Pursuant to S. Res. 266; Levinson (1935), *I Break Strikes*.

⁸⁹ See note, 88, *supra*.

with when they determine to break strikes. Chowderhead's long police record includes terms spent at the Elmira Reformatory for receiving stolen goods, Sing Sing Prison for grand larceny and again for burglary, and the U. S. Penitentiary. Related to this record is the following portion of his testimony:

"Q. Now, when you went up and saw Mr. Howland at that time Mr. Cohen, did the company ask you for any references?

"A. No, sir.

"Q. Did you give them any?

"A. No, sir.

"Q. Tell them what your qualifications were?

"A. You see, in this line of work they never asked for no references."

Finally, Bergoff himself said:

"A. I told Rand to avoid as much violence as he possibly could. Well, Rand is Rand.

"Q. What do you mean by that, he didn't pay any attention?

"A. He went along the line he thought was best, I presume."

Bergoff had elsewhere in his testimony stated that "Rand is very aggressive and pretty much likes to do things his own way". His brief characterization of Rand in the testimony quoted above—"Well, Rand is Rand"—speaks volumes.

At this point reference might appropriately be made to another aspect of the Middletown situation which was kept from the knowledge of the public. Rand had a number of spies and undercover men at work all through this period. One was Oscar Fortis. Under the name of Burke he had appeared in Middletown after the 1934 strike claiming to represent a corporation investigating conditions at the Middletown plant for a group of Remington Rand stockholders. At that time he contacted union members and requested them, in return for monetary payments, to provide from time to time information that would prevent another strike from occurring at the plant. Duane, an employee to whom he spoke, was to be his "contact man" and to keep him informed on conditions at the plant. Any one who is familiar with the mechanics of labor espionage, as revealed in the Senate Committee investigation of that matter, would at once recognize this—the typical approach of a labor spy attempting to "hook" a union member without the latter being aware of what is actually taking place. Burke appeared again in Middletown in June, 1936, and once more approached Duane, stated he was still connected with the "same outfit", and spoke to him about the events leading up to the strike and the strength of the unions. Unfortunately for Burke, he stated this time that his name was Carter, and

upon Duane's commenting on the change from 1934, attempted to cover the slip by stating it was "Burke Carter." When the Middletown police checked the matter at Duane's request the name turned out to be Oscar Fortis of Pennsylvania, believed by police at Pittsburgh to be a labor spy. Another was Joseph Germain. He had been a member of one of the Middletown unions. When the strike was called he volunteered for strike duty and by some adroit manoeuvres obtained the assignment of answering the telephone at the union headquarters. In this position he was able to check on all calls. Later, in July or August, he returned to work as night superintendent. In conversation with him Harris, one of the guards employed inside the factory and who testified at the hearing, learned that all the time he had been attending union meetings and serving the unions he had been paid by the respondent and was reporting to it. A third was Captain Nathaniel Shaw, known to the profession as "Crying Nat Shaw", and described elsewhere as the "Prince of Provocateurs."⁹⁰ In July he had contacted Harding, who wanted him to supply "missionaries" for some of the plants. But Shaw informed him he was not active in that field—his forte was "radicalism." Rand then employed him to visit Middletown to determine, according to Shaw, if there were any "agitators" and "radicals" in the union leadership. This was the third week in July. Shaw stayed in Middletown for three days. While at Middletown he reported daily to Rand by telephone. The high spot of that trip was his attempt to bribe Shea, president of the State Federation of Labor. Then he reported back to Rand that he could find no radicals among the Union leaders. This report displeased Rand greatly, since he insisted that the Union leaders were "radicals" and "communists". Shaw was next employed to gather together a group of machinists to work at Elmira. Through advertisements—reading, "Men wanted, mechanics, shopmen, machinists, aligners for out of town, labor trouble"—Shaw obtained people in New York, Philadelphia, and Jersey City and these came to a hotel room in New York in response to telegrams from Rand. By this time it was decided to send them to Middletown, where aligners were needed, and a foreman from that plant came down to assist in the selection. The men were then interviewed, questioned as to whether they belonged to a union, and "dry cleaned". Shaw testified on this practice as follows:

"A. The way I do is to take three men and put them together in a room with one of my men and my man starts the conversation with them. 'Well, we don't want to go to work. I don't think I want to go to work. I think there is trouble over

⁹⁰ Levinson, *I Break Strikes* (1935), p. 257 *et seq.*

there', and the other fellow will say 'I have to go to work, trouble or not, if there is plenty of protection'. The other fellow turns around and says 'Well, there is a strike over there. I don't think we ought to go there', and all that kind of stuff. The other men would say, 'Why did you come here in the first place?' 'I just wanted to find out all about it.'

"Q. That is the third man?

"A. Yes. Then the party comes around and says, 'You took up all this time of mine to find out these things?' And he says, 'Who are you finding these things out for?' And we get a little peeved and just knock them out. . . .

"Q. What is the technical name for such examinations in industrial matters and industrial service? What is the technical word applied to such an examination by you in your business?

"A. Why, examining, that is all.

"Q. Just examining?

"A. Yes.

"Q. Have you heard the words 'dry cleaning'?

"A. Sometimes some of them use that expression.

"Q. What is the full meaning of the words 'dry cleaning'?

"A. Well, 'dry cleaning', what they mean by that is, that he is not a radical. He has been cross-examined to such an extent, he is marked O. K.

"Q. That goes for Union men too?

"A. Yes, sir."

Shaw, in the end, did not take these men to Middletown, for he refused to take them across a state line in interstate commerce,⁹¹ despite Rand's offer of \$5,000 for the job. Shaw was to "survey" the other plants in addition to Middletown, but after his refusal to take the men to Middletown his relations with Rand ceased. Finally, Captain Foster testified that he had two undercover men in Middletown, as well as one apiece at Ilion and Syracuse, while Burns had two operatives acting as undercover men at Tonawanda and one at Ilion or Syracuse.⁹² The union leaders themselves had uncovered a spy at Ilion who had been in the plant for two months prior to the strike. It should be noted that all of these agencies, such as Bergoff and Foster, send a few people in advance to "get the atmosphere . . . by mixing in on the outside . . . as regular pedestrians around the town, getting public opinion and so forth".

By December, there were about 1150 employees at work in the plant. The respondent had thus, during the months in which this

⁹¹ Shaw was thinking of the Byrnes Act, 49 Stat. 1899, which forbids the interstate transportation of strikebreakers in certain instances.

⁹² Bergoff had six men doing "escort" duty at Tonawanda.

screen of violence was maintained, employed nearly a thousand strikebreakers. A public fully informed of this fact and not prejudiced by the respondent's propaganda, would resent this sweeping displacement of former employees. The importance to the respondent of the screen of violence it had created is thus clear. But in terms of the union members, it meant that nearly a thousand were still on strike in December, the time of the hearings in this case at Middletown.

E. *Norwood and Marietta*

The situation at Norwood and Marietta⁹³ is not covered in the record in the detailed fashion that the other plants are treated, since much of the evidence was said to be merely cumulative by counsel for the Board. Several aspects of the Norwood situation are worth mention, however. There were about 1,500 production and maintenance employees at the Norwood plant, and all of these were on strike on May 26. In the month of June the respondent attempted to create a "back to work" psychology, but without the medium of an association as at the other plants. As part of this campaign, there were the customary advertisements. On June 12, in the Cincinnati Post, and on June 13, in the Cincinnati Enquirer, there appeared an advertisement signed by the respondent containing, in part, the following statements:

"We have received written assurances from a substantial percentage of our 1700 employees that they are anxious and willing to return whenever we see fit to reopen the plant, but it has been suggested that we provide an easier, more confidential method for the hundreds of others who also want to return.

"That suggestion has been followed, and those so inclined are asked to call Parkway 7666, between 9 A. M. and 9 P. M., and give their name and clock number.

"Everyone so calling has positive assurance their identity will not be revealed to anyone. When an overwhelming majority has indicated a desire to return, and not until then, they will be duly notified when the plant will reopen."

The technique is thus identical with that followed by associations in the places where those agencies were utilized. The advertisement also contained the following interesting statement:

"Marietta employees have returned and the plant is operating 100% normal. 85% of the employees of Plants 1 and 2, at Iliion voluntarily returned to work this week, and the balance of the jobs available have been filled with new applicants.

⁹³On May 26, the 125 employees in the Marietta plant went on strike. They all returned to work on June 8.

“Strikebreakers were not used to open either of the above plants. Employees at Tonawanda and Syracuse are also starting to return and it is expected these plants will be fully manned very shortly.” (Bd. Exs. 279h, i.)

On June 15, there appeared in the Cincinnati Enquirer a full page of excerpts from the Utica newspapers relating to the events at Ilion on June 10 and 11. The citizens of Norwood were thus made familiar with the Mohawk Valley Formula evolved at Ilion. On June 23, a full page advertisement in the same paper presented the “real facts of the situation”. Included in these “real facts” were the Anderson telegram of April 24 to substantiate the claim that Anderson had full authority to act for the respondent, reliance on the respondent’s ballot to prove that the number supporting a strike was “insignificant” and references to a “radical minority” and “professional paid agitators”. On the next day another advertisement contained a threat to move the plant from Norwood and the astounding statement that “the only strike confronting us today is in our Norwood plant”—this on June 24. On June 29, an advertisement of the respondent in the Cincinnati Enquirer contained excerpts from articles in the Syracuse Journal relating to a report by a committee of Syracuse citizens on the Ilion situation and, *mirabile dictu*, an impassioned plea for “TRUTH”.

About this time the Norwood unions obtained approximately 800 signatures to a petition pledging the signatories not to return to work “until the strike now in progress is settled by an agreement between Remington Rand, Inc., and the officials in charge of the strike for the unions of which we are members”.

On July 3, in answer to that petition, two advertisements appeared in the Cincinnati Times-Star. The first stated:

“NOTICE

“To all former Remington-Rand employees who have signed agreements not to return to their jobs with this company until the present strike at our Norwood plant is settled on Union terms:

“You are requested to call for your tools and any other personal property on our premises in Norwood, Ohio, on Sunday morning, July 5, 1936, between the hours of nine A. M. and twelve noon. We cannot be responsible for such property not called for and removed after the time specified.

“REMINGTON-RAND, INC.” (Bd. Ex. 279a.)

"Call for your tools", of course, means "discharge".⁹⁴ The second stated:

"NOTICE

"To all Remington-Rand employees who have *not* signed any agreement not to return to their jobs with this company until the strike in progress at our Norwood plant is settled on union terms:

"We are gratified by your response to the opening of our Norwood Plant this morning.

"Your loyalty and courage will be an inspiration to those of you who wanted to report but who waited to see what would happen. YOU HAVE SHOWN THE WAY. At 9 P. M. today 228 employees, or approximately 25% of our total requirements, had reported for work. To avoid all misunderstanding this figure does not include guards . . ." (Bd. Ex. 279c.)

Despite this statement, the plant closed again on July 7. It reopened for a short time in the middle of August, at which time an advertisement was inserted, stating, "Wanted—Machine tool operators of all kinds". However, the plant was again closed at the end of August and the equipment moved to Ilion and Elmira. Removal was completed by September 15 and the plant advertised for sale. The respondent, in a report to the Securities and Exchange Commission dated September 21, 1936, thus stated that "the plant at Norwood, Ohio, has recently been closed, the equipment moved to, and the manufacturing concentrated in, the plants at Ilion and Elmira, N. Y." because of "labor difficulties". But in weighing the reasons for the move, the following two items would seem important: First, a statement by Mayor Roudebush of Norwood, in reply to demands for additional police protection made by a vice-president of the respondent:

"With five plants in three different states (Ohio, New York and Connecticut) in this labor controversy, you have no right to ask Norwood or any other city to settle your disputes by armed force when our government has set up machinery by which labor disputes may be worked out.

"Until I am persuaded that Mr. Rand (J. H. Rand, Jr.) the head, representing your national units, has made every sincere effort to mediate with labor in this matter, I am not willing that Norwood should be made a seething pot of disorder when, in the end, only a charitable understanding as to the rights of both sides will bring real peace." (Bd. Ex. 236 000.)

⁹⁴ No general offer of reinstatement was made to these men; a few received telegrams attempting to induce their return to work by means of bonus payments.

And second, the testimony of Shaw :

“Q. What plant worried Mr. Rand most when you first spoke to him?

“A. Out in Norwood.

“Q. The Norwood plant worried him most?

“A. Yes sir.

“Q. From what point of view? . . .

“A. The reason that worried him was because the Governor wouldn't give him any protection out there.

“Q. What was the situation he told you about?

“A. He was very sore at the Governor of Ohio. He told me he wouldn't give him the protection he wanted. He wouldn't have no trouble in opening the plant if he could get the protection he wanted.”

F. Efforts at mediation

While the respondent was thus resorting to the methods described above to defeat the strike on all fronts, there were agencies and persons that were attempting to settle the strike through mediation. We now turn to a consideration of their experiences with the respondent. We have already adverted to the inability of the Federal Conciliators to accomplish that purpose because of Rand's refusal to meet with the Joint Board. On May 27, the second day of the strike, Commissioner Andrews of the New York State Department of Labor, in a telegram, requested Rand to meet with representatives of his workers and of the State Department of Labor in order to effect an amicable settlement of the controversy. Rand's secretary replied as follows that same day :

“IN MR RAND ABSENCE WILL UNDERTAKE TO ANSWER YOUR TELEGRAM BY INFORMING YOU THAT A TWO DAY CONFERENCE BETWEEN REPRESENTATIVES OF EMPLOYEES AND DULY AUTHORIZED REPRESENTATIVE OF COMPANY HAS ALREADY BEEN HELD IN SYRACUSE TO NO AVAIL” (Bd. Ex. 131.)

This answer was deliberately misleading, inasmuch as it obviously implied that the conference both had been held recently and had dealt immediately with the strike issues, whereas it had been held more than a month before the answer and even before a strike vote had been taken. Andrews called this to Rand's attention the next day in another telegram :

“I AM ADVISED BY WORKERS REPRESENTATIVES THAT STRIKE HAS TAKEN PLACE INVOLVING NEW ISSUES SINCE TWO DAY CONFERENCE MENTIONED YOUR TELEGRAM TWENTY SEVENTH WHICH MAKES IT NECESSARY YOU MEET WORKERS COMMITTEE BEFORE SETTLEMENT CAN BE REACHED STOP I THEREFORE RENEW REQUEST . . .” (Bd. Ex. 132.)

Harding answered this request, and in his reply continued the tactics of deliberately misleading Andrews:

“REPLYING YOUR TELEGRAM TO MR RAND IF YOU REFER TO STRIKE IN SYRACUSE PERMIT ME TO INFORM YOU THAT PLANT WAS CLOSED BY THE COMPANY FOR PURPOSE OF MOVING TO MORE DESIRABLE LOCATION AND WAS NOT CLOSED BY WORKERS STOP WE ARE INFORMED THAT ILION WALKOUT WAS ORDERED BY UNION OFFICIALS IN ATTEMPT TO COMPEL COMPANY TO REFRAIN FROM MOVING SYRACUSE MACHINERY STOP THIS IS A MATTER WHICH CANNOT BE ARBITRATED WITHOUT WAIVING THE COMPANY'S CONSTITUTIONAL RIGHT AND TITLE TO ITS PROPERTY WHICH OF COURSE THE COMPANY IS NOT CALLED UPON TO DO STOP THOSE PERSONS SEEKING TO REPRESENT OUR EMPLOYEES HAVE NOT BEEN AUTHORIZED BY BALLOT AND UNDER RECENT GUFFEY COAL DECISION BY SUPREME COURT CANNOT LEGALLY ASSUME TO REPRESENT THE BODY OF WORKERS IN THE COMPANY'S EMPLOY”

(Bd. Ex. 133.)

Finally, after several telephone calls and another telegram, Andrews finally arranged for a conference between the respondent and Doyle, Supervising Mediator in the State Department of Labor. On June 2, in New York, Harding talked to Doyle for ten minutes, the conference being twice interrupted in that time by Harding's leaving to attend to other engagements, and finally being terminated by Harding, so that he could meet with the committee of the Joint Valley Board from Ilion. Doyle the next day again met Harding, who conferred with him for about twenty minutes. This conference likewise consisted of disjointed conversations due to Harding's practice of attending to other engagements. Finally, Harding stated, “I am sorry, Mr. Doyle, we will have to call this conference to a close inasmuch as I have to prepare a news release for the Tonawanda papers . . . If your department desires to be of assistance in this matter I suggest you get in touch with the Mayor's Committee . . . the Mayors of Ilion, Herkimer, Frankfort and Mohawk.” After the failure of these conferences, Andrews wrote to Rand on June 4, the letter stating, in part, after a review of his first telegram to Rand:

“The reply to that telegram and also to subsequent telegrams and to several telephone messages to assistants of your company was, I am sorry to say, very evasive and most unsatisfactory . . .

“The Labor Law makes it mandatory upon me to inquire into the cause of all strikes, lockouts and other industrial controversies in an effort to bring about a peaceful settlement. In the instance of the Remington-Rand dispute I have faithfully attempted to perform my duty. So far, due to lack of your co-operation, my

attempt has been futile both in clearly determining the cause of the controversy and in approaching a peaceful settlement.

"The workers' committee is willing and ready to go into a conference of the disputed question and I now feel obliged to advise you that further neglect on your part to avail yourself of the good offices of The Industrial Commissioner of New York State places the responsibility for prolongation of this controversy squarely upon you." (Bd. Ex. 135a.)

But Rand and his advisors were quite willing to assume that responsibility, since, as we have seen, they had other methods of meeting a strike. Harding therefore replied as follows, after referring to his conferences with Doyle:

"Further, I suggested to Mr. Doyle as your representative that the services of your department might well be placed at the disposal of the Mayors of New York communities who are trying to organize effective protection for their working population. By this I mean protection against intimidation, humiliation of workers, their wives and children, and threats of bodily injury, as well as bodily injury itself.

"You state in your letter to Mr. Rand that 'the workers' committee' is willing and ready to go into conference on disputed questions. By what right do you assume that a committee from unions comprising only a small minority of Remington Rand's employees is 'the workers' committee'? Is it a function of the State of New York to insist that a small minority, organized and encouraged by outside agitators, must be permitted to force their will upon the great majority of this company's workers? . . .

"While you complain to the press that we are not conferring with them, Remington Rand management has been busy every day meeting with employee representatives from each of its plants. The door is open here at all times to those who really represent this company's employees." (Bd. Ex. 135b.)

Andrews could do nothing more.

The Connecticut State Board of Mediation and Arbitration likewise attempted to mediate the strike at the Middletown plant. On June 4, the Chairman of that Board wrote to both Anderson, the Joint Board member for Middletown, and Rand, stating that the Board desired to meet with them on June 8 in an attempt to settle the dispute. No answer was received from the respondent. The Board met with Anderson on June 8, but in view of Rand's refusal to meet with it and the union leaders, could accomplish nothing. As we have seen, the Citizens Committee of Middletown failed for the same reason. In July, Governor Cross of Connecticut intervened

in an attempt to settle the strike. On July 23, he telegraphed personal invitations to Rand, as follows:

"I WANT TO ARRANGE FOR A CONFERENCE TO CONSIDER THE SETTLEMENT OF THE STRIKE OF YOUR EMPLOYEES WITH YOU THE GOVERNORS OF NEW YORK AND OHIO AND A REPRESENTATIVE OF THE EMPLOYEES OF YOUR CORPORATION" (Bd. Ex. 235g.)

Rand's reply, obviously written with an eye to the public, requires quotation to do justice to its arrogant tone:

"I have received through The Press the text of your telegram inviting me to a conference with yourself, Governor Lehman and Governor Davey. Since your invitation has been published before I received it, I am making public my reply. If I have been correctly informed as to the attitude of the Governor of Ohio, there is nothing to be gained through a conference with him.⁹⁵ I understand that he stated recently that he had never called out the Ohio Militia and never would do so in a labor dispute, which amounts to boasting that he would not live up to his oath as governor to uphold the law of his State and to preserve law and order and the right of citizens to work unmolested. It would be a waste of time to confer with any official who admits that his word and his oath of office are not to be taken seriously and who by his actions has condoned the violence tolerated by the Mayor of Norwood.

"The Press summary of your invitation . . . indicates that 'the representative of the employees' to be invited would be a Union man. There is no outside Union nor any Union official authorized to represent the 10,000 nonunion men and women now working in Remington Rand Manufacturing plants . . . it would be unjust for an officer of Remington Rand to enter into a discussion with Union Officials representing only a minority of our workers. I have stated to you that the two-day discussion with Union representatives in Syracuse April 23rd-24th was final and that never again will our Company discuss with outsiders a demand to enforce a closed shop and pay tribute for the right to work.⁹⁶ . . . For my part, I will not be a party to the injustice

⁹⁵ Earlier in the day, in a telephone interview on the invitation, Rand had said, "Governor Davey of Ohio is a total loss. He is not a man of his word" (Bd Ex 235g)

⁹⁶ Here, and elsewhere, the respondent gave the impression that the sole issue of the strike was the "closed shop", in order to turn uninformed public opinion against the strikers. For example, in a report to the Securities and Exchange Commission, it stated,

"The Corporation has had labor difficulties in its plants at Tonawanda, North Tonawanda, Syracuse and Ithaca, N Y, Middletown, Conn, and Marietta and Norwood, Ohio. These difficulties involving primarily the question of open or closed shop have been largely overcome except minor difficulties" (Bd Ex 51)

The "closed shop", however, was not an issue in this strike. While it is true that the District Council on July 20, 1936, stated in a letter soliciting funds from other labor organizations that the respondent's employees had been on strike for "a closed shop agree-

of using official positions to impose the will of a minority upon a majority of our workers by permitting the unlawful mob violence, rock-throwing and brigandage which have characterized this strike in Middletown and Norwood. We will not compromise with Communism nor with those who use the methods of the Communists.

"By tolerating the mob violence which has taken possession of the plant at Norwood, Governor Davey countenances a procedure every red blooded American employer and employee alike will resist because it is the beginning of the end of liberty in the United States. If you will continue to enforce the law in Connecticut and put an end to rock throwing and other violence as you have tried to do recently, and which has been done by the cities of Ilion, Marietta and Tonawanda, you will help put an end to the greatest menace to our American system of government—namely, an organized system of mob violence. If Remington Rand were not paying the highest wages in its industry and would not provide working conditions conducive to employees' welfare, there might be proper ground for discussion. But there is only one issue and that is the issue of the UnAmerican Closed Shop with compulsory deductions of Union dues from the pay envelope. On this there will be no compromise by Remington Rand.

"I shall be glad to talk over the situation with you and Governor Lehman in New York on Monday and will place myself at your disposal as to the time and place in New York City.

"JAMES H. RAND, JR." (Bd. Ex. 235h.)

The very next day, July 24, the respondent gave to three news agencies, the United Press, Associated Press, and International News Service, the following telegram signed by Rand:

"THIS IS TO NOTIFY YOU THAT YOU MAY AT ALL TIMES INFORM YOUR CORRESPONDENTS THAT ANY RUMOR TO THE EFFECT THAT REMINGTON RAND IS NEGOTIATING DIRECTLY OR INDIRECTLY WITH ANY UNION OFFICIAL EITHER LOCAL OR OTHERWISE TOWARD SETTLEMENT OF LABOR TROUBLES IS ABSOLUTELY FALSE NOT ONE CENT FOR TRIBUTE" (Bd. Ex. 235i.)

ment and wage increases" (Resp. Ex. 1), that is the only indication in the record that the "closed shop" was involved and its presence in such a letter is understandable. The Joint Board had never made such a demand of the respondent nor was it one of the issues on which the strike ballot was based. The respondent's attacks on the closed shop produced an interesting inconsistency. During the strike Haiding stated in a radio talk:

"Mr. Rand has dealt with unions and has not discriminated against them. But he does deny the right of unions to coerce and intimidate and compel employees to join a union and pay tribute for the right to work. That he will never do. An open shop, he believes, is the American way, and a closed shop is tyranny." (Bd. Ex. 104.)

Yet the Polishers' Union had maintained a closed shop status at the Ilion plant for the past 20 years, and at Middletown for the last 10 years.

Governor Cross, stating publicly that Rand was "a damned difficult man to deal with", did not hold the conference he had contemplated.

The Mayor of Norwood was also attempting in July to achieve a solution through negotiations. To his attempt on July 12, the respondent's attorney in Cincinnati replied, "There is nothing to negotiate. Employees have no complaints and the union will not be recognized."

The Connecticut Mediation Board then offered its services once more, in a letter dated August 5, in which Rand was requested to meet with it. At first Rand's assistant replied, on August 10, referring the letter to Howland, "the executive of the company in charge of our Middletown plant". Previously, Howland had informed a representative of the Mediation Board that "he could take no action upon the strike without the direct sanction of Mr. Rand". The reply continued:

"At this time, the latest report from Middletown would seem to indicate the plant is now in full operation and there is now no need for additional workers at that location. I would also say it is certain that workers who have been working regularly in the Middletown plant for the past six weeks will not be discharged to make room for workers who deliberately walked out on their jobs and left the employ of the company." (Bd. Ex. 251.)

On August 17, Rand himself replied to the Board's letter:

"Replying to your letter of August 6th, facts and circumstances, which Mr. Howland will give you in more detail, and the interstate nature of the situation preclude the possibility of your Board being able to accomplish anything in the matter. For this reason I find it necessary to decline your invitation." (Bd. Ex. 252.)⁹⁷

Howland also answered on the same day:

"If there were anything to mediate I would be most pleased to accept your invitation. However, I am exceptionally busy here supervising production, and could ill afford any time from the plant. Under no circumstances will any of the present loyal employees be laid off to make room for others. Neither will any agreement be made with the unions. A vote of our employees in this plant taken prior to the walkout showed that approximately 90% did not desire to leave their work." (Bd. Ex. 253.)

⁹⁷ We may contrast with this statement the position taken by the respondent in its suit to enjoin a hearing by this Board on the ground, among others, that all matters involved related to intrastate and not interstate commerce, so that this Board had no jurisdiction.

After these replies, the Connecticut Board reported to the Governor on August 20. Referring to the causes of the strike, as stated by the unions, the Board reported:

“The strike occurred because of the failure of representatives of the employees to obtain a conference with a representative of the Company who could speak with authority, as had been promised by the Company. The union desired this conference for the purpose of obtaining assurance from the Company that the Elmira plant, in which no union agreement existed, would not be built up at the expense of the other plants where such union agreements did exist. The union feared, according to its statement, that the business would gradually be shifted to the Elmira plant, at which time the workers in other plants would find themselves helpless. It was solely to prevent such a situation that the strike was called. The dismissal of the Syracuse employees had nothing to do with the calling of the strike, and in no sense was the strike a sympathetic one.”

The Board then summarized its correspondence with the respondent and stated:

“The Board wishes to bring to your attention the fact that the failure of the company to reply to its letter of June 4th, and the lapse of 12 days before replying to its letter of August 5th is unprecedented in its experience of fifteen months. During that period a total of 32 cases have come to the attention of the Board, and in each other case not only were replies received promptly from those persons to whom the Board addressed its communications but conferences between such individuals and the Board ensued.”

The Board then addressed itself to the final results of its efforts to mediate the controversy:

“Although the law of its creation confers upon the Board the right to subpoena witnesses and to compel testimony under oath, the members of the Board have to date been of the opinion that the exercise of this power would probably serve no useful purpose in attempting a solution of this controversy. This opinion is based mainly upon the fact that the dispute is interstate in nature. The past experience of the Board has convinced it that mediation will inevitably be unsuccessful unless both parties are responsive to compromise. In the case under consideration each party in its public statements has maintained a position irreconcilable with that of the other. The company in its public statements has refused categorically to negotiate with the union; and the strikers likewise have refused to negotiate excepting through

their own labor organization. For this reason also, the Board seriously doubts the advisability of using its power to subpoena." (Bd. Ex. 254.)

The Board's statement of the deadlock is unfortunate.⁹⁸ The view that the union members had contributed to the deadlock because they refused to negotiate except through their chosen representatives, and were therefore partly at fault, presents an entirely false picture of the situation. Moreover, it is a denial of the fundamental right of employees, given expression to in Section 7 of the Act, "to bargain collectively through representatives of their own choosing." The deadlock existed because, and only because, the respondent refused "categorically" to negotiate with the unions, and through them with its employees.⁹⁹

IV. CONCLUSION

From the thousands of pages of testimony in this proceeding there may be distilled two very plain facts: the unwavering refusal of the respondent to bargain collectively with its employees, and the cold, deliberate ruthlessness with which it fought the strike which its refusal to bargain had precipitated. If the provisions of the Act ever required justification, one need go no further than the facts of this case. Over 6,000 employees, with their families and dependents, are subjected to the miseries of a prolonged strike, the people of six communities experience the economic hardships that inevitably result when an accustomed source of income is suddenly withdrawn, these same communities are turned into warring camps and unreasoning hatreds are created that lead to abuses alien to a sane civilization—all because the respondent refused to recognize the rights of six thousand employees. A decent respect for the rights of human beings demands that no employer be free to ignore his employees in such fashion, but that, as provided by the Act, they be entitled through the procedure of collective bargaining to have a voice in shaping their destinies. Human rights aside, even a cal-

⁹⁸ The Middletown Citizens Committee had also made the same error.

⁹⁹ On August 28, a few days after the Mediation Board's report, the respondent circulated a statement in its Middletown plant, in which the following was contained:

"A number of rumors have been circulated recently by former union employees. In order that there may be no misunderstanding we want to make it perfectly clear that the company will make no agreement whatsoever with any outside union organization. Wednesday, Mr. Simson, Corporation Attorney, while representing the company in a court action near Syracuse, listened patiently to a statement by an attorney for the union. There was no discussion of a settlement and there will not be any discussion with officers of the union. . .

"There will not be any more union shop committees in this plant . . . The unions will never come back into control of affairs in the (Middletown) Noiseless Plant.

"J. H. RAND, *Pres*

"G. K. HOWLAND, *General Superintendent*"

(Bd. Ex. 237)

culating dollars and cents approach to the situation would require that an employer confer with the representatives of his employees, for here six manufacturing plants are rendered idle and the channels of commerce dislocated, at a cost of millions of dollars, simply because the respondent could not bring itself to meet with its employees.¹⁰⁰ In the legal phraseology of the Act, the respondent, from April, 1936, to the strike on May 26, and again from the strike to the time of the hearings in this case, has continuously refused to bargain collectively with the representatives of its employees as required by Section 8, subdivision (5). In the language of the average person, the respondent, through Rand, its president, has exhibited a callous, imperturbable disregard of the rights of its employees that is mediaeval in its assumption of power over the lives of men and shocking in its concept of the status of the modern industrial worker.

To draw attention from its determined refusals to bargain collectively with the representatives of its employees and as part of its "back to work" movements, the respondent secretly formed employees' associations which it exhibited to the public as genuine employee organizations dealing with the respondent at arm's length. These associations—the Middletown Remrand Employees' Back-to-Work Association, the Iliion Typewriter Employes Protective Association, and the Syracuse Employes' Independent Association—were "labor organizations" within the technical definition given that phrase in Section 2, subdivision (5) of the Act, for they were organizations in which employees participated, and which existed for the purpose of dealing with employers concerning labor disputes and conditions of work, here the reopening of the plant.¹⁰¹ In view of that status, the respondent was forbidden by Section 8, sub-

¹⁰⁰ Rand apparently recognizes the wisdom of the majority rule provision of the Act for he stated in a release of August 28, 1936:

"Any reasonable-minded person will agree that a Democratic form of collective bargaining necessarily means the rule of the majority of the workers in a plant" (Bd. Ex. 234h)

But evidently his attorneys disagree with him, for in the complaint in the respondent's suit to enjoin this Board from hearing the case it is stated that:

"the said National Labor Relations Act, in thus providing for a majority representation to the exclusion of minority employees, as aforesaid, deprives this complainant of its rights to lawfully and freely contract with all of its employees for work and labor, . . . and . . . is unconstitutional."

¹⁰¹ As we said in *In the Matter of International Harvester Company and Local Union No. 37, International Union, United Automobile Workers of America*, Case No. C-41, decided November 12, 1936 (*supra*, pp 310, 353): "It is obvious that the term 'labor organization' is not used in its ordinary meaning but in a special and technical sense solely for the purpose of statutory draftsmanship and to make the prohibition of Section 8, subdivision (2) all inclusive. That prohibition was intended to apply to any device which would tend to displace, or masquerade as, a genuine labor organization, whether it was itself such a genuine organization or not."

division (2) to dominate or interfere with their formation or administration or to contribute financial or other support to them. From the facts found above, the conclusion is inescapable that the respondent has deliberately flouted that provision of the Act. All three associations were nothing more than dummy organizations operated by the respondent to further the "back to work" movement and break the strike. All three associations operated in an identical manner—advertisements, offices, telephone numbers, requests to the respondent to open the plant, mass meetings, and celebrations of employees at such openings. In each city where the associations operated the advertisements were in the same pattern—and moreover, were skillfully written. Moreover, in Norwood, where the respondent did not choose to create such an association, but instead conducted the "back to work" movement entirely in its own name, the mechanics were nevertheless identical. The appearance of each association coincided with a drive on the respondent's part to create a "back to work" breach in union ranks, and they were admirably suited to that end. The use of telephones, while permitting the respondent to ascertain the number of employees ready to return to work, as pointed out before, also enabled it to keep secret the number of such employees, and, through the fear occasioned by such secrecy, prompt many more to telephone. In addition, the very presence of these associations would induce the public to believe that there was a large body of employees who did not belong to the unions, and that the strike was supported by only a small minority of employees. The associations also offered a basis for requests for heavy police protection and a medium for the dissemination of propaganda, which, if handed out by the respondent in its own name, might be held suspect by the public. It is apparent that these associations had many expenses—offices, telephones, advertisements, printed literature, offers of trips to Ilion, etc. Yet there is no indication of any means whereby the associations themselves obtained the large funds necessary to defray such expenses. There were no dues, no requests for contributions. The money obviously came from the respondent. Bergoff's testimony in regard to the Ilion association and Ellis' activities on behalf of the Middletown association, would in themselves indicate that these associations were *alter egos* of the respondent. It should be noted that at the Board's hearing in this case, Ellis was introduced by Simson as the "attorney for the Remington Rand at Middletown". Ellis had, as pointed out above, represented both strikebreakers employed by the respondent and the respondent itself in legal proceedings arising during the strike, so that his intimate relationship to the respondent is beyond question. Yet we also find Ellis preparing application blanks for the Middletown association and attempting to secure office space for it.

We therefore find that the respondent organized and operated these associations and defrayed their expenses in violation of Section 8, subdivision (2). At Ilion, and later at Middletown, there was an attempt to capitalize on the results of these "back to work" associations by using them as a basis in the formation of company-controlled organizations among the employees that had returned to work. These successor organizations are tainted with the illegality of their predecessors and are likewise in violation of the Act.¹⁰²

We turn to a consideration of the other unfair labor practices. The strike was caused by the respondent's unqualified and determined refusal to meet with the representatives of its employees. Thus, when the strike came the respondent knew it was not to be settled by collective bargaining or mediation. Outside agencies, unaware of the quality of the respondent's determination, and seeing only a costly and bitter strike, would make efforts to mediate the dispute. Governors, Industrial Commissioners, Mayors, State Mediation Boards, Federal Conciliators would attempt in turn to end the strike by the peaceful method of conference. But all were predestined to failure in the face of that unyielding resolve to fight the strike rather than to compromise ever so little through the concession of a conference. And in the execution of that resolve the respondent exhibited even a greater disregard for human rights and values than that which characterized its earlier refusals to bargain. It immediately engaged not one, but four strikebreaking agencies, and with their aid charted its campaign. That campaign, as we have shown, was built around "back to work" movements, created systematically by the respondent and operated for the most part through associations formed by it, which culminated in some cases in reopenings of the plants attended by celebrations and the return of massed groups of employees or thugs masquerading as such. These movements were built up through an intensive propaganda drive, openly in advertisements and news articles, covertly through the work of "missionaries". They were buttressed by threats to move the plants, and in some cases by actual movements of machinery, designed to create fear of loss of employment on the part of employees and fear of economic starvation on the part of whole communities. These threats presented a bewildering maze to both the employee and the man in the street—the Norwood, and Syracuse plants were moving to Ilion, yet the Ilion plant was for sale. The Tonawanda and Middletown plants were also to be moved, and yet where could they be

¹⁰² At Ilion, the organization was known as the Remington-Rand Employees' Association; at Middletown it was the Middletown Remington Rand Employees Association. It should be noted that in 1933 and 1934 at both Ilion and Tonawanda the respondent had introduced identical company-controlled employee representation plans to counteract the organization by its employees of a genuine labor organization, but the attempt failed of its purpose. Apparently the same thing was attempted at Elmira in 1936.

moved to if the other plants were also in the process of being transferred? The answer of course is that such confusion best served the respondent's interests, for no one community could feel sure of not being the victim. Keeping pace with these "back to work" movements was the respondent's constant drive to obtain the presence of large forces of police and guards, not only for the intimidation that their presence would work upon the average employee, but also because of the psychological effect such forces possess to turn the average citizen against a strike and the tendency of police and guards to indulge in excesses of force and arrest against employees on strike. Where the "back to work" movements did not result in inducing a sufficient number of employees to return, the respondent hired thousands of strikebreakers to operate its plants, describing them to the public as "loyal employees".

Such was the main attack. It was supported by a variety of manoeuvres and devices. Spies were planted in the various towns. The company attempted to bribe union leaders and to influence public officials. Individual bargaining was resorted to through bonuses, personal telegrams, and visits of foreman and "missionaries" in order to undermine the solidarity of the union members. Union leaders were discharged and others arrested for the purpose of demoralizing the union. We have previously discussed in detail these discharges of union leaders at Iliou, Syracuse, and Tonawanda. All of the individuals discharged, whose names appear in the Conclusions of Law, were discharged because of their union membership and activity, and their discharges, and each of them, thus constitute discrimination in regard to hire and tenure of employment to discourage membership in a labor organization contrary to Section 8, subdivision (3) of the Act. These individuals, who were employees at the time of their discharges, thus ceased work as a consequence of unfair labor practices on the part of the respondent and therefore continued to be employees of the respondent within the meaning of the Act.¹⁰⁸ Scenes

¹⁰⁸ The duties and weekly pay at the time of the discharges of these employees were:

Crofoot: toolmaker	\$34.80
LaBranche: inspector	24.00
Dunn: toolmaker	34.80
Bunnell: stock chaser	23.00
Linnjak: metal polisher	30.00
Slade: set-up man	25.20
Bowen: set-up man	25.20
Reyene: group leader	28.00
Palmenter: aligner	33.00
Boyle: inspector	24.40
Gallpeau: inspector	25.50
Smith: toolmaker	34.80
Estey: aligner	30.00
Witcher: group leader	
Sickler: chief tool inspector	39.00
Bellows: repairman	

of disorder and violence, to be described to the public as riots, were staged so that they could serve as the basis for injunctions, requests for police protection, and "law and order" tirades in the press. In the planning of these disorders, the respondent exhibited the small value it placed on human life, for with even-handedness it stood willing to sacrifice the lives of the men whom it hired to break the strike as well as those of the strikers. Likewise, in having its agents commit acts of violence in such a fashion as to ascribe the guilt to the strikers and in its deliberate provocation of disorders by the strikers, it was not deterred by the knowledge that innocent men would be arrested and fined, that a citizenry, made almost hysterical through the respondent's subtle playing on its emotions and thoughts, would inflict excessive punishment upon men acting under infuriating provocation. Nor did the respondent stop at making dupes of the civil authorities or the leading citizens, as at Ilion, so that they would do the job for the respondent.

But all of these stratagems demanded for their success a public opinion favorable to the respondent and opposed to the strikers. The respondent appreciated that today the success or failure of a strike of such magnitude may ultimately depend upon the reaction of the public. It also recognized that a public fully informed of the tactics the respondent was employing and of its firm refusal to meet with its employees would in all probability condemn their use. Finally, it realized that the public is nearly entirely dependent upon the press and the radio for its information. Consequently, the respondent proceeded to wage a publicity campaign designed both to cloak its ruthlessness toward its employees and the public and to swing opinion against the unions. To this end numerous advertisements in the names of the respondent and its "back to work" associations were inserted in which the facts were distorted or completely falsified, the unions and their leaders maligned, and the communities' dependence upon the respondent's payrolls stressed. Radio speeches of the same nature were made at frequent intervals. Release after release was handed out by the respondent from its executive offices and from its various plants, such practice to be varied at times by

Footnote ¹⁰³—Continued

McCoy: toolmaker.....	\$34.80
Lozo: acetylene welder.....	35 00
Gaul: shipping department.....	26 00
Todd: electrician.....	33.00
Young: brake press operator.....	35-40
Monnier: stock room clerk.....	
Townsend: punch press operator.....	31-32
Cooper: spot welder.....	34-35
Kloss: shipping department.....	25-27
Quenneville: shipping department.....	25-28
Demmin: punch press operator and inspector.....	17.00
Smith: punch press operator and inspector.....	17.50

suddenly shutting off that source of news and forcing the papers to turn to the advertisements or to the associations when such sources better served the respondent's immediate needs. Harding kept constant watch over the various press association reports so that the respondent could remedy impressions in the reports contrary to its ends, or supply through releases and advertisements information which it thought the public should be handed and which those reports did not carry. Replies to offers of mediation were so framed as to be no more than a means of conveying to the public some particular item of propaganda that the respondent was desirous of spreading. Aspects that were sure to evoke a desired response were continually stressed, such as violence and threats of the likelihood of loss of a particular plant through closing and moving elsewhere.

It must be remembered that by striking the employees did not sever their status as such with the respondent. Section 2, subdivision (3) of the Act defines the term "employee" to 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". Here the strike was caused by the respondent's refusal to bargain collectively, and hence the employees ceased work as a consequence of an unfair labor practice. Moreover, the strike was obviously a "labor dispute" within the meaning of Section 2, subdivision (9) of the Act, since it was a controversy concerning conditions of employment and the association and representation of persons seeking to arrange terms and conditions of employment, and hence the employees also ceased work in connection with a current labor dispute. Thus, those employees who have not returned to work, but who have remained on strike and who have not obtained employment elsewhere (between three and four thousand at the time of the hearing),¹⁰⁴ have been, since May 26, and still are, the employees of the respondent in view of the unfair labor practice that caused the strike and the currency of the labor dispute. These employees were, of course, within their rights in striking, for Section 13 of the Act declares that "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike". Under Section 8, subdivision (1) of the Act, the respondent was forbidden to interfere, restrain or coerce these employees in the exercise of their rights guaranteed in Section 7—among others, to bargain collectively and to engage in concerted activities for that purpose and for mutual aid and protection. The activities of the respondent which we have described in detail were all designed to and did in fact interfere with, coerce and restrain its employees in

¹⁰⁴ These are divided approximately as follows: Syracuse—1200; Middletown—1000; Norwood—800; Ilion—500; Tonawanda—180.

the exercise of their rights. To put it concisely, those activities were employed to defeat the strike, to end the strike by breaking it, rather than by settling it through collective bargaining. As the strike was in the first instance directly caused by the respondent's refusal to bargain collectively in violation of Section 8, subdivision (5), and was thereafter perpetuated through further refusals, also in violation of that Section, all of those activities must be regarded as contrary to Section 8, subdivision (1). While many, if not all, of those activities would likewise constitute unfair labor practices even though the strike and its continuation were not themselves the results of unfair labor practices, such a determination need not be made in this proceeding. Here, by its illegal refusal to bargain collectively, the respondent caused and perpetuated a strike, and consequently any activities on its part designed to end that strike by defeating it, in contrast to settling it by the method of collective bargaining, are in violation of Section 8, subdivision (1). Each step taken so to defeat the strike constituted an assertion that the respondent would illegally continue to refuse to settle the strike through collective bargaining as provided by the Act—they were but the opposite faces of the same coin. We find that by its refusal to bargain collectively, and by its other acts, the respondent interfered with, coerced and restrained its employees in the exercise of the rights guaranteed in Section 7 of the Act.

V. THE REMEDY

Our previous decisions point the general remedy for these illegal acts. We have required in cases of strikes caused by a refusal to bargain collectively that the employer both bargain collectively with the representatives of his employees, and restore as far as possible the *status quo* that existed at the time of the strike. Normally, such restoration of the *status quo* is accomplished by the reinstatement of all employees on the payroll at the time of the strike, any new employees hired since that date to be dismissed if such action is necessary. If, because of curtailed production or other reasons, there are not a sufficient number of positions available to take care of all of the employees on the payroll at the time of the strike, the initial reinstatement is to be made on the basis of seniority by classifications, and those not reinstated are to be placed, on a similar basis, on a preferential list.¹⁰⁵ However, the respondent's acts of closing one of its plants, the Norwood plant, opening another, the Elmira plant, and shifting the equipment of still other plants, have introduced factors

¹⁰⁵ *Matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mill Employees Union*, No. 19694, 1 N. L. R. B. 181; *Matter of Rabhor Company, Inc. and International Ladies Garment Workers Union*, 1 N. L. R. B. 470; *Matter of S. L. Allen & Company, Inc. and Federal Labor Union, Local No. 18526*, 1 N. L. R. B. 714.

which make solution of the problem more difficult. While the total number of individuals now employed is approximately equal to the number employed at the date the strike was called,¹⁰⁶ there has been a radical alteration in the location of the jobs for these employees. Thus, the Norwood plant has been closed and its equipment moved to the Ilion and Elmira plants, so that while no jobs are available at Norwood, additional jobs are available at Ilion and Elmira. Similarly, 45 per cent of the Syracuse operations, and a substantial percentage of the Middletown operations have been transferred to Elmira, so that although the number of available positions in Syracuse and Middletown has been greatly reduced, a corresponding number of positions is now available at Elmira. Consequently, if all of the employees on the payroll of May 26, 1936, are to be reinstated, many will find it necessary to move from their present homes to other towns where positions are available. With nearly 4,000 employees to be reinstated under such conditions, the complexity of the problem created by the respondent's acts is readily realized.

The respondent will be ordered to reinstate all those production and maintenance employees involved who were employed on May 26, 1936, and who have not since received regular and substantially equivalent employment elsewhere. As the first step in carrying out this general order, such production and maintenance employees shall be reinstated to their former classifications, on the basis of seniority by classifications, where positions in such classifications are now open or have been filled by individuals employed since May 26, 1936, who were not employed on that date, the respondent dismissing such individuals if that is necessary to accomplish the reinstatement so ordered. In this fashion as far as possible employees will be reinstated in the plants in their own towns and will not be required to move elsewhere. But after such reinstatement there will still be a large group of employees, composed almost exclusively of Norwood, Syracuse, and Middletown employees, who will have to move to other cities in order to obtain reinstatement. Consequently, all such production and maintenance employees not reinstated in the plant in their own towns shall be grouped together, regardless of the plant in which they were previously employed, on a single preferential list on the basis of seniority by classifications, to be offered the positions at the Elmira plant, and any positions still available at any of the other plants after those who struck at such plants have been reinstated. At Elmira, as well as elsewhere, individuals employed since May 26, 1936, who were not employed on that date must be dismissed

¹⁰⁶ A report of the respondent to the Securities and Exchange Commission, made September 22, 1936, states: "All of the Company's plants are now in operation and the total number of employees now employed approximately equals the number employed before the strike was called." (Bd. Ex. 50.)

if such action is necessary to effectuate such reinstatement. Thereafter, this list shall be drawn upon whenever further employees are needed at any of the plants involved, including the Elmira plant, preference being given to employees on the list then residing in the locality in which employment is available. The respondent will be ordered to pay the transportation expenses of any employee and his family who is forced to move in order to obtain reinstatement under these conditions.¹⁰⁷ As can be gathered, the Board has attempted to keep such moving to a minimum by ordering that available positions at each plant be filled by employees residing in the locality. Finally, as many of the employees who had, prior to the strike, designated the Joint Board as their representative for collective bargaining will thus be reinstated to the Elmira plant instead of to the plants where they had worked on May 26, 1936, we will include the Elmira plant together with the other plants in the unit which we have found to be appropriate for collective bargaining.

The employees who were individually discharged will be reinstated to their former positions, and in addition be awarded back pay on the following basis: (1) those who were discharged when they sought reinstatement during the continuance of the strike, designated as Group A in the Conclusions of Law, will receive back pay from the date of such discharge; (2) those who were discharged before the strike commenced or during the continuance of the strike, but not as a consequence of applications for reinstatement, designated as Group B in the Conclusions of Law, will receive back pay from the date of discharge to the date of the strike if the plant was operating in that period, and again from the date on which operations in their departments began after the reopening of the plants involved to the date of offer of reinstatement.¹⁰⁸

VI. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

That, in the words of the Act, "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes . . . which have the intent or the necessary effect of burdening or obstructing commerce", is abundantly clear from the respondent's own statements. At the very beginning, in a full-page advertisement in *The Post*

¹⁰⁷ The respondent, in a statement to the Securities and Exchange Commission, stated that among the expenses it suffered because of the strike were those "incident to the moving of machinery, materials and the families of employees, and the re-establishment of operations in the new locations", indicating that it recognized an obligation to employees thus forced to move their homes.

¹⁰⁸ Cf. *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).

Standard of Syracuse on May 30, 1936, the respondent asserted that the strike of its employees:

“diverts manufacture for the export trade, which is 25 per cent of the company’s total business, to branch plants in London, England, and Hamilton, Ontario, that will be doubled in productive capacity . . . work that thousands of Americans have been doing will be given to Britains and Canadians . . . The decision of the company to enlarge their branch factories in England and Canada is an even harder blow to the workers, it will mean that many of their members will lose their jobs permanently. There will be less to do for the domestic plants and half our men needed. It will mean that their work will be done by workers of other lands.” (Bd. Ex. 98; emphasis as in original.)

On June 1, 1936, one day later, the United Press reported,

“Operations of the huge office equipment supply company have been virtually paralyzed by a six day strike of employees in six company plants in three states.” (Bd. Ex. 236g.)

The testimony of Straub, factory manager at Syracuse, called as a witness in an injunction suit about July 13, 1936, tersely indicates the extent of that paralysis at Syracuse:

“Q. Now Mr. Straub, prior to the strike, how many typewriters were you turning out?

“A. 3230 per week; that is finished typewriters, and 750 parts for our assembly plants.

“Q. Since the strike started, how many have been turned out?

“A. None.”¹⁰⁹

Several months later the extent of the dislocation of the normal channels of commerce was vividly indicated by the respondent, reporting to the Securities and Exchange Commission on September 21, 1936:

“The labor difficulties have accelerated a plan to abandon some of the plants in part or whole and move the equipment to and concentrate manufacturing in other plants. The plant at Nor-

¹⁰⁹ Railway statistics for the strike period present the effect of such cessation of production on the normal flow of commerce. In June, 1936, at Tonawanda and North Tonawanda, demurrage and storage on inbound rail freight mounted in sharp contrast to the same months in the year 1935. (Bd. Exs. 115, 117, 119, 146, 147; see also Bd. Exs. 148-149.) There was no demurrage, however, on outbound shipments. (Bd. Exs. 114, 118; Resp. Exs. 9, 10.) At Iilon demurrage debits marked against the respondent by the railroad for the months of May, June, and July, 1936, were twice the amount for the same months of 1935. (Bd. Exs. 199, 200-204. (Bd. Ex. No. 199 was erroneously recorded as number 191 in the original of the Board’s Decision. This error was corrected by an Amendment of Decision issued March 16, 1937.)) The local freight agent of the railroad at Iilon, New York, could recall only one occasion prior to 1936 that respondent had demurrage charges either on inbound or outbound rail freight.

wood, Ohio, has recently been closed, the equipment moved to, and the manufacturing concentrated in the plants at Ilion and Elmira, New York. In addition approximately 45 per cent of the operations formerly carried on at the Syracuse, New York, plant, together with the required equipment, have been transferred to the plant at Elmira, New York." (Bd. Ex. 51.)

The respondent also recognized that the integrated character of its business,¹¹⁰ the diversified location of its plants, and the organization of the unions,¹¹¹ made this paralyzing strike a national and not a local problem. Exercising the ghost of mediation, Rand, on August 17, 1936, wrote to the Connecticut Board of Mediation and Arbitration as follows:

"Replying to your letter of August 6th, facts and circumstances . . . and the interstate nature of the situation preclude the possibility of your Board being able to accomplish anything in the matter. For this reason I find it necessary to decline your invitation." (Bd. Ex. 252.)

The respondent's advertisements spoke of "this national strike". Governor Cross of Connecticut, attempting to arrange a conference of the Governors of three States, declared to the press that "Everyone concerned seems to feel that it is an interstate matter." The report of the Connecticut Mediation Board expressed the same view of the strike, characterizing the dispute as "interstate in character".

The cost of this strike to the employees and the public is perhaps incapable of reasonable estimates. As for the respondent—it stated

¹¹⁰ Integration of manufacturing activities among the respondent's various plants in different states cuts into bold relief the interstate character of its enterprise and the distortion of the normal channels of commerce consequent upon an industrial controversy. The Middletown, Conn., plant, for example, supplies type to Syracuse, N. Y., without which type the products at Syracuse could not be finished; the Ilion, N. Y., plant manufactures screws and castings for other plants, including the plant at Norwood, Ohio; the Norwood, Ohio, plant manufactures packing washers for the Ilion, N. Y., plant; and so on. A statement of the respondent printed in the public press on or about October 10, 1936, reads in part as follows:

"The production of finished machines is now at the pre-strike level of May and in addition the plant (Middletown) is now supplying large quantities of complete sets of parts to the new assembly plants in London, Calcutta and Sidney, Australia. The Ilion plant is also producing some parts for Noiseless (Middletown) typewriters . . ."

¹¹¹ The respondent sought, and obtained, an injunction in Middletown on the ground that its business was endangered by a nation-wide combination, its pleadings stating:

"On or about the 26th day of May, 1936, the Defendants entered into a combination with other local unions located at various points throughout the United States . . . and conspired to injure and destroy the good will, trade and business of the Plaintiff in order to prevent it from conducting its business . . . On account of the aforesaid combination and conspiracy and the aforesaid acts tend to interference thereof, which combination, conspiracy and acts are still continuing, and for which there is no adequate remedy at law, and Plaintiff has suffered and is still suffering, irremediable loss and damage to its good will, trade and business." (Bd. Ex. 53.)

to the Securities and Exchange Commission on October 30, 1936, as follows:

"The management of registrant estimates that the earnings of registrant during the four months ended September 30, 1936, have absorbed non-recurring items of approximately \$982,000 of which \$325,259.77 was direct expense of the labor difficulties and the balance was unabsorbed burden due to interruption of production caused partly by the labor difficulties and partly by the moving and the abnormal expenses incident to the moving of machinery, materials and the families of employees, and the re-establishment of operations in the new locations."¹¹²

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

CONCLUSIONS OF LAW

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

1. The District Council Office Equipment Workers, Federal Labor Unions Nos. 18344, 18486, and 19401, Machinists Local Unions Nos. 849, 381, 635, 706, 616, 782, 851, 162, 729, and 789, Polishers Local Unions Nos. 46, 60, and 68, Molders' Local Union No. 57, Draftsmen's Local Union No. 50, and Sheet Metal Workers' Local Union No. 75, are each labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. The production and maintenance employees employed by the respondent in its Iliou, N. Y., Tonawanda, N. Y., North Tonawanda, N. Y., Syracuse, N. Y., Elmira, N. Y., Middletown, Conn., and Marietta, Ohio, plants and those employed in its former Norwood, Ohio, plant constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, the Remington Rand Joint Protective Board of the District Council Office Equipment Workers, having been designated on or before April 1, 1936, by a majority of the employees in an appropriate unit as their representative for the purposes of collective bargaining, has been at all times since said date the exclusive representative of all said employees for the purposes of collective bargaining.

4. By refusing and continuing to refuse to bargain collectively with the Joint Board as the exclusive representative of the employees in an appropriate unit, the respondent has engaged in and is en-

¹¹² It will be noted that this statement is so phrased as to be inconclusive. Thus, \$982,000 has been "absorbed"—whether there were items in addition, not yet absorbed, does not appear.

gaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. The Associations—the Middletown Remrand Employees' Back-to-Work Association, and its successor, the Middletown Remington Rand Employes Association, the Iliion Typewriter Employes Protective Association and its successor, the Iliion Remington-Rand Employes' Association, and the Syracuse Employes' Independent Association—are labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

6. By its domination and interference with the formation and administration of the Associations, and by its contribution of financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

7. By discriminating in regard to the hire and tenure of employment of Alfred L. Kloss, Ernest Quenneville, Joseph Dreyer, Viola Rose Demmin and Blanche Smith (referred to later as Group A), Harold Beer, Clair Bellows, Vernon Crofoot, Earl LaBranche, Kenneth C. Bunnell, William Dunn, August Lingyak, George Slade, Burton Reyone, George Bowen, Eugene Palmenter, Walter J. Boyle, Albert Galipeau, Alexander Smith, Stephen Estey, Peter Witcher, John Sickler, Edward J. McCoy, David Lozo, Walter G. Gaul, Walter J. Todd, Floyd J. Young, Felix Monnier, William Townsend and Charles Cooper (referred to later as Group B), and each of them, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

8. By its activities to defeat the strike, as described in the Findings of Fact, including its employment of strikebreaking agencies, its use of spies, "missionaries", and armed guards, its threats to move its various plants, its attempts to turn civil authorities and business and other interests in the various cities involved in the strike against the unions, its "back to work" movements, its attempts at individual bargaining, its intensive publicity and propaganda campaign based upon deliberate falsehoods and exaggerations, its use of agents to commit acts of disorder and to provoke others to commit such acts, and the other acts described in the Findings of Fact, by its persistent and continuing refusals to bargain collectively, by its discharges as stated above, and by its activities in connection with the Associations as stated above, and by each of 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, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

9. The strike was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

10. The persons employed by the respondent in the unit described above, including the persons named in Paragraph 7 above, were, on May 26, 1936, and continued thereafter to be employees of the respondent, except in so far as they obtained regular and substantially equivalent employment elsewhere, within the meaning of Section 2, subdivision (3) of the Act.

11. 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 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, Remington Rand, Inc., and 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 purposes of collective bargaining and other mutual aid or protection;

(b) From dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto;

(c) From discouraging membership in any of the labor organizations affiliated with the Remington Rand Joint Protective Board of the District Council Office Equipment Workers, or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire or tenure of employment or any form or condition of employment, or by threats of such discrimination;

(d) From refusing to bargain collectively with the Remington Rand Joint Protective Board of the District Council Office Equipment Workers as the exclusive representative of the production and maintenance employees of the respondent employed at its Iliion, N. Y., Tonawanda, N. Y., and North Tonawanda, N. Y., Syracuse, N. Y., Elmira, N. Y., Middletown, Conn., Marietta, Ohio, plants and at its former Norwood, Ohio, plant.

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

(a) Withdraw all recognition from the Iliion Remington-Rand Employees' Association and the Middletown Remington-Rand Em-

ployes' Association as representatives of its employees at its Ilion and Middletown plants, respectively, for the purpose of dealing with respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish those Associations as such representatives;

(b) Offer to Alfred L. Kloss, Ernest Quenneville, Joseph Dreyer, Viola Rose Demmin, and Blanche Smith (referred to later as Group A), Harold Beer, Clair Bellows, Vernon Crofoot, Earl LaBranche, Kenneth C. Bunnell, William Dunn, August Lingyak, George Slade, Burton Reyone, George Bowen, Eugene Palmenter, Walter J. Boyle, Albert Galipeau, Alexander Smith, Stephen Estey, Peter Witcher, John Sickler, Edward J. McCoy, David Lozo, Walter G. Gaul, Walter J. Todd, Floyd J. Young, Felix Monnier, William Townsend, and Charles Cooper (referred to later as Group B), and each of them, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(c) Make whole the persons named in Paragraph 2 (b) above, and each of them, for any losses of pay they have suffered by reason of their discharge, by payment to them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period, in the case of Group A from the date of discharge to the date of such offer of reinstatement, and in the case of Group B from the date operations in their departments began after the plants had reopened to the date of such offer of reinstatement, and in addition in the case of Cooper from May 21 to May 26, 1936, computed at the weekly wage earned by each on May 26, 1936, less the amounts, if any, which each earned during such period;

(d) Offer reinstatement to all persons who were production and maintenance employees in its Ilion, N. Y., Tonawanda, N. Y., North Tonawanda, N. Y., Syracuse, N. Y., Middletown, Conn., and Marietta, Ohio, plants and in its former Norwood, Ohio, plant on May 26, 1936, who have not since received regular and substantially equivalent employment elsewhere. The detailed execution of this Paragraph of the Order shall be in accordance with the conditions prescribed in the section of the Decision entitled "The Remedy";

(e) Upon request, bargain collectively with the Remington Rand Joint Protective Board of the District Council Office Equipment Workers as the exclusive representative of the production and maintenance employees in its Ilion, N. Y., Tonawanda, N. Y., North Tonawanda, N. Y., Syracuse, N. Y., Elmira, N. Y., Middletown, Conn., and Marietta, Ohio, plants and in its former Norwood, Ohio, plant, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(f) Post notices in conspicuous places throughout its Ilion, N. Y., Tonawanda, N. Y., North Tonawanda, N. Y., Syracuse, N. Y., Elmira, N. Y., Middletown, Conn., and Marietta, Ohio, plants stating (1) that the respondent will cease and desist as provided above, (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting, and (3) in the case of the Ilion, N. Y., and Middletown, Conn., plants that the Ilion Remington-Rand Employes Association and the Middletown Remington Rand Employes Association are so disestablished, respectively, and that respondent will refrain from any recognition thereof.

3. The allegations in the complaint relating to the discharges of Daisy Johnson, Dolores Greene, Freda Ferris, and Susan Ferris and of the Norwood, Ohio, employees are hereby dismissed.