

In the Matter of LION SHOE COMPANY and UNITED SHOE AND  
LEATHER WORKERS' UNION

*Case No. C-92.—Decided May 20, 1937*

*Shoe Manufacturing Industry—Strike—Employee Status:* during strike—*Interference, Restraint or Coercion:* threat to remove plant; shut-down of plant; soliciting individual strikers to return to work—*Company-Dominated Union:* initiation and sponsorship; domination and interference with formation and administration; soliciting membership in; coercion to join; closed shop agreement with; disestablished as agency for collective bargaining—*Condition of Employment:* join company-dominated union—*Discrimination:* strikers: requiring application for membership in company-dominated union as condition of reemployment; non-reinstatement—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; displacement of employees newly-hired during strike.

*Mr. Ralph H. Cahouet* for the Board.

*Mr. Charles J. Goldman*, of Lynn, Mass., for respondent.

*Mr. Aaron W. Warner*, of counsel to the Board.

DECISION

STATEMENT OF CASE

A charge and an amended charge having been duly filed by United Shoe and Leather Workers' Union, hereinafter called the Union, the National Labor Relations Board, by its agent, the Regional Director for the First Region, (Boston, Massachusetts), issued and duly served its complaint, dated January 9, 1936, against the Lion Shoe Company, the respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce as defined in Section 8, subdivisions (1), (2), and (3), and Section 2, subdivision (6) and (7) of the National Labor Relations Act (49 Stat. 449).

In respect to the unfair labor practices, the complaint alleges in substance that the respondent has dominated and interfered with the administration of a labor organization of its employees known as the Lynn Shoe Workers' Union, and contributed financial and other support thereto, contrary to Section 8, subdivisions (1) and (2) of the Act; and that the respondent has required and is now requiring all applicants for employment to sign applications for membership in the Lynn Shoe Workers' Union and has otherwise discriminated in favor of the Lynn Shoe Workers' Union, and against

the United Shoe and Leather Workers' Union, contrary to Section 8, subdivisions (1) and (3) of the Act.

On January 16, 1936, the respondent filed an answer to the complaint, "without waiving but expressly relying on its Special Appearance and Motion to Dismiss Plaintiff's Bill of Complaint". The answer admits that the respondent requires all applicants for employment to sign applications for membership in the Lynn Shoe Workers' Union, but states that this is in accordance with the provisions of a valid agreement between the respondent and that organization. It denies that the respondent has dominated and interfered with the administration of the Lynn Shoe Workers' Union, and denies any discrimination against the United Shoe and Leather Workers' Union, or in favor of the Lynn Shoe Workers' Union, with respect to terms and tenure of employment. It claims that the Act is in violation of the Constitution of the United States, and is in any case inapplicable to it, because neither its business nor its labor relations are in or affect interstate commerce. It further alleges that the proceedings instituted by the Board against the respondent are "illegal, irregular and contrary to the principles of common law". The respondent for these reasons moved to dismiss the proceedings.

A hearing was held after postponement, on January 27, 1936,<sup>1</sup> at Boston, Massachusetts, before John Moore, the Trial Examiner designated by the Board, and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. Counsel for the respondent objected to the jurisdiction of the Board and renewed the motion to dismiss the proceedings. The Trial Examiner denied the motion, and his ruling is hereby affirmed.

Upon the record thus made, the Trial Examiner, on May 9, 1936, filed an Intermediate Report, finding and concluding that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, recommending that the respondent (a) discharge all production employees who were not on its payroll on September 20, 1935, and offer employment on a seniority basis to all employees who were on its payroll on September 20, 1935, and had not been in its employment since November 20, 1935; (b) abrogate its contract with the Lynn Shoe Workers' Union, and cease and desist from further dealings with that organization; (c)

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<sup>1</sup> Prior to the hearing, on January 15, 1936, a bill in equity was brought by the Lion Shoe Company in the United States District Court for the District of Massachusetts against the Board and its agents to enjoin further enforcement of the Act. The Lynn Shoe Workers Union petitioned the Court for leave to intervene as party plaintiff. The bill was dismissed on January 20, 1936, upon the motion of the defendants in the case.

post notices in its factory, stating that the respondent has terminated its relationship with the Lynn Shoe Workers' Union, and stating that its employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection; and (d) file a written notification with the Regional Director for the First Region within a stated time, setting forth the manner and form of compliance with the foregoing recommendations.

The respondent thereafter filed exceptions to the record and Intermediate Report, taking exceptions to the alleged irregularity of the proceedings and to the Trial Examiner's rulings upon its motions and objections, as well as to the Trial Examiner's Intermediate Report.

We find no error in the Trial Examiner's rulings upon the respondent's motions and objections, and such rulings are hereby affirmed. As set forth below, we also find that the evidence supports the findings and conclusions made by the Trial Examiner in his Intermediate Report that the respondent has engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. Although the Trial Examiner found that the respondent was dominating and interfering with a labor organization of its employees, and had contributed financial and other support thereto, he neglected to conclude as a matter of law that the respondent had thereby committed acts in violation of Section 8, subdivision (2) of the Act.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE RESPONDENT AND ITS BUSINESS

The respondent, Lion Shoe Company, is and has been since 1921, a corporation duly organized and existing by virtue of the laws of the State of Massachusetts, having its factory and its principal place of business in Lynn, Massachusetts, where it is engaged in the manufacture of women's shoes. It employs between 300 and 350 workers.

Leather is the principal item used by the respondent in the manufacture of its product. It also uses wood heels, eyelets, buckles, thread, shoe tape, and nails. It purchases sole leather from the Boston office of Armour & Company, and upper leather in Boston and Peabody, Massachusetts. Between 90 and 95 per cent of its raw materials are purchased in Massachusetts, although it is not indicated in the record in which states such materials originate.

The respondent manufactures its shoes in accordance with a carefully planned production process, the various materials moving continuously and methodically from the stock room, through a large number of operations from the cutting of the leather to shape and size to the finishing and packing department. The major shop divisions are cutting, stitching, lasting and stock fitting, heeling, edge making, packing, and finishing. The production time from raw stock to packing is three to four weeks.

The respondent's sales fluctuate with the season. For the Easter and autumn trade, it manufactures most of its shoes for cutomers' orders. During the balance of the year it manufactures shoes and puts them in stock to fill future orders. About 60 per cent of its shoes are made for stock and 40 per cent made for order.

The respondent ships between 40 and 50 per cent of its product out of Massachusetts to jobbers in New York, Pennsylvania, Missouri, Ohio, Illinois, Virginia, North Carolina, Texas, California, and Porto Rico. Shipment is made by truck to Boston at the respondent's expense, and the product is then forwarded by truck, boat, or railroad, as directed by the purchaser. In 1935 the respondent sold 15,000 cases, which amounts to 600,000 to 700,000 pairs of shoes, ranging in price from 60 cents to \$1.10 per pair, with an average sale price of 85 cents to 90 cents per pair. The respondent's annual net sales, purchases and payroll for 1934 and 1935, respectively, were as follows:

	1934	1935
Net Sales.....	\$651, 645. 54	\$602, 161. 92
Purchases .....	\$342, 442. 93	\$318, 618. 09
Payroll.....	\$188, 172. 84	\$185, 016. 33

## II. THE UNION

The United Shoe and Leather Workers' Union, hereinafter referred to as the Union, is a national labor organization with about 35,000 members. It has branches in 18 factories in Lynn, Massachusetts. The Union has jurisdiction over and has organized six crafts, which include the cutters, stitchers, lasters and stock fitters, heelers, edge makers, and packers and finishers. Each craft is organized in Lynn into a city-wide local, with a business agent who represents it in its dealings with all employers throughout the city. The six locals constitute the Lynn Joint Council, to which each local sends three delegates and one alternate. The Council is the governing body of the shoe workers organized in the Union in Lynn.

## III. NEGOTIATIONS BETWEEN THE RESPONDENT AND THE UNION PRIOR TO THE UNFAIR LABOR PRACTICES

On July 27, 1934, the Lynn Joint Council, acting for the Union, entered into a contract with the respondent relating to rates of pay,

wages, hours of employment, and other conditions of employment. By its terms, the contract expired on October 31, 1935. About the second week in October, 1935, Thornton, the president of the Lynn Joint Council, accompanied by eight agents of the craft locals, called on the respondent with the intention of arranging an extension of the contract until the first of the year 1936. They talked with Nathan Gass, Morris Gass, and Abraham Gootman, the respondent's president, vice-president, and treasurer, respectively. The respondent refused to extend the life of the agreement unless the Union agreed to a 15 per cent reduction in the existing rates of pay, together with the elimination of one of the Union's business agents. Five or six conferences between the representatives of the Union and of the respondent followed, at intervals of three or four days, all taking place in the respondent's office. The respondent finally offered an alternative wage plan, and it appeared for a time, according to the testimony of the Union's representatives, that a settlement would be effected. However, the conferences ceased when the respondent abruptly refused to meet further with the Union.

The respondent denies having entered into negotiations with the Union, but admits having had three conferences with the Union's representatives prior to October 31, 1935. It claims that it had already formulated its plans to remove its plant from Lynn, but said nothing to the Union prior to October 31, 1935, because it feared that its employees would stop working before their jobs were finished.

On November 8, 1935, after the contract had expired, Thornton, with a large committee of Union representatives, entered the respondent's office despite the fact that the management had left orders with its office help to say they "were not in". Nathan Gass, Morris Gass, and Gootman were present, and stated that the respondent was not interested in a new contract. In the words of Morris Gass: "We sat down with them and figured out all the troubles we had with them during the year prior to the expiration of the contract, explained to them every point and we told them that is the reason we cannot do any business with the United and that we have definitely decided to move." The "troubles" referred to and brought forward by the respondent resolved themselves into the following 15 points of difference: (1) reduction of 15 per cent in all wages and prices of piece work; (2) elimination as business agent of Arthur Walsh, representative of one of the craft locals of the United; (3) a nine hour day for eight weeks in each of the two busy seasons in each year; (4) minor complaints to be adjusted by the shop stewards in the shop; (5) reduction of the number of Union agents with whom respondent had been dealing from six to two or three; (6) right to hire a new employee immediately in an emergency without first

securing a permit from the Union; (7) employer alone to schedule manufacturing operations and eliminate operations it deems unnecessary; (8) right to hire temporary Union help when necessary because of rush of business and lay same off when rush is over—temporary period to be limited to six weeks and the persons so hired not to be classified as permanent employees; (9) right to shift employees from one operation to another within the same craft; (10) prices on new operations to be based on prices of existing similar operations; (11) Union not to impose new working rules without consulting management; (12) right to make compo shoes if desired, with right to train help to make same—prices on operations on compo shoes to be based on prices of similar work in other Massachusetts shops; (13) arbitration agreement which shall be final and binding on both parties; (14) no over-staffing of departments with workers; (15) contract to expire on October 31, not on December 31, as in the other union contracts in Lynn.

The 15 points were discussed on November 8, and the parties were unable to agree on any one. Late in November, 1935, the Lynn Chamber of Commerce took cognizance of the dispute, and called a meeting of the parties. The respondent and the Union were represented, and had their attorneys present. The 15 points were again brought forth by the respondent as the reason for the inability of the parties to reach an agreement. In addition, the respondent's attorney stated that "We now have a contract with the Lynn Shoe Workers' Union which I consider legal and binding". Nevertheless, there were further conferences at the Chamber of Commerce, and, on or about November 23, 1935, the respondent and the Union agreed to refer the 15 points to a board of arbitration made up of the attorneys for the disputants and the president of the Chamber of Commerce. On the following day, however, the Union was notified that the meeting of the arbitration board had been called off. The respondent refused to have further dealings, and the negotiations thereupon ceased.

During this period, two strikes had been called by the Union at the respondent's plant, and were still unsettled at the time of the hearing. The first was called on November 1 or 2 by the Lynn Joint Council because the respondent failed to pay an award of an arbitration board on a claim of ten or 12 employees. The second strike was called about a week later, after the respondent's proposals in regard to a modified agreement were voted down unanimously at a meeting of about 300 of the respondent's employees.

In the light of these circumstances, we conclude that, at the time of the occurrence of the unfair labor practices described below, there existed a current labor dispute in the respondent's plant.

## IV. THE UNFAIR LABOR PRACTICES

*A. Formation of the Lynn Shoe Workers' Union*

As already indicated, the contract between the respondent and the Union expired on October 31, 1935. The respondent so scheduled its shop operations for October that when the contract should expire the last shoes put in process would be completed. Cutting, the initial operation, ceased about September 28. By October 31, all operations had ended and the plant became idle. Then the respondent caused to be published in the two daily newspapers in Lynn, on the front page, a notice to all employees to remove their tools from the factory. These newspapers also published, as news, a statement that the respondent was going to move its business from Lynn. Morris Gass and Gootman both testified that a decision to remove from Lynn had been made in July or August, 1935. However, the respondent had made no actual preparations for moving, and had never bought or leased any factory space outside of Lynn.

A few days after the closing of the factory on October 31, 1935, one of the employees, Edward T. Barron, who had worked for the respondent for 11 years, talked with Nathan Gass in an effort to find out if the respondent was really going to move from Lynn, and to dissuade him from moving. Barron had been a member of the Union, but had left, because of difficulties, in August, 1934. Barron testified: "I told him I thought from my contact with the different members of the shop's crew, that a large majority of them was in favor of seeing the factory open up. They wanted to see the factory opened up and they wanted their jobs." Nathan Gass ventured no response other than a shrug of his shoulders, whereupon Barron approached Morris Gass, who was apparently equally indifferent. The next conversation in this connection, according to Barron's testimony, took place "after I went around and talked with different members of the shop's crew to find out how they felt about it. We had been doing that anyway, different ones of us, meeting in the street and talking it over. I felt from the conversation I had with different ones in the shop's crew, that if the Gasses knew about this and the Lion Shoe Company knew of their attitude, it might influence them to open the factory or to reconsider their idea of moving out of town . . ." Two of the employees with whom Barron spoke were John J. Couhig and Linwood T. Goodwin, both of whom had been in the respondent's employ for a considerable time.

Couhig went to the factory on November 11, 1935, and talked with Morris Gass. He, too, made an appeal for a reopening of the factory and argued that the firm owed something to the loyal employees of long standing. He said he "felt sure a majority of the shop's crew

would be willing to enter into a reasonable business proposition which would assure their employment being given back to them". According to Couhig, Morris Gass replied: "I don't care to open up on an open shop basis. It is an irresponsible manner of doing business. As for a company union, we are not interested in that because it is too one-sided. As far as the United Shoe and Leather Workers are concerned, we are through with them. There is nothing else I can see except to go ahead with our plans." Couhig asked, "If we formed an independent legitimate labor union with representatives of all the departments in the factory represented in that membership, would he consider reopening the factory." Morris Gass hesitated, and finally said, "I will have to talk that over with the boys (his associates) . . . I am not interested in an open shop proposition again. We did have it for eight or ten years, but times and conditions have changed; people have changed. We don't care to involve ourselves in that mess . . . . If agreeable to the rest of the boys, if you can show us where you will be able to get a sufficient number of our employees in an organization that is a legitimate organization capable of entering into a contract, I will recommend to the rest of them that we will give you that opportunity. But you have got to show us."

Barron testified that on his own responsibility he hired the Paul Revere Hall in Lynn, on November 12, 1935, and invited the employees to "get together and talk it over". About 40 employees came to the meeting. Barron's description of what occurred at the meeting is as follows: "At that meeting, after we had talked for some little while, the question came up as to whether or not we could form a union ourselves, and I thought we could. Others thought we could. So we decided we would try it. They elected me temporary chairman at that time, and then I called the meeting to order and they elected me permanent chairman and they elected Mr. Goodwin secretary. We went ahead and we formed a setup of a simple organization, as far as I know about it, and we appointed a committee out of the group. They appointed a committee and they instructed the committee to go to the firm and see if they could not make some kind of an agreement with them, let them see their attitude". On the next day, the committee went to the plant, and had a talk with the management. Barron says that as a result of the talk he "came to the conclusion that if the firm could be convinced that we could show them that we could provide a responsible organization, that they would do business with us". Couhig, who had seen Morris Gass, told him about the meeting, and stated that "the attendance was not satisfactory to us, and we are going to have another meeting to see if we couldn't interest and get more people there". Gass said "that was all right so far as he was

concerned," and that "his plans would be held in abeyance until a reasonable time".

There was a larger attendance at the next meeting, held on November 13th, in the evening. The main question discussed was the selection of one of two wage reduction plans proposed to the committee that afternoon by the respondent. It was decided to accept a 15 per cent reduction in all wages, five per cent to be refunded in December to employees who had, during the year, conformed to the rules of the organization. A committee of five was then appointed to notify the firm that the employees were ready to enter into negotiations with the management. The committee met with Morris Gass and Nathan Gass on the morning of November 14th. In the words of Couhig, "they were pleased to learn that the shop's crew were willing to cooperate to that extent with them. But they did then insist that they would not want to enter into an agreement unless they were assured that every department would have at least a working basis, and we assured them that we were in a position to do that".

That afternoon, about 60 or 70 of the employees attended a meeting in the packing room of the closed plant. The Union was picketing the plant at the time. The management had been notified by Barron that "there was going to be a crowd", and all of them attended except Sam Gass. Morris Gass was invited to address the meeting. He testified that he spoke as follows: "I told them that the committee of theirs approached us about making an agreement with this newly-formed union and I told them that although we have decided before to move, we felt a duty to the people who have been with us so many years that we should listen to their proposition, and we agreed to talk to them about an agreement with the new union". He advised them to get a lawyer and "we will get our attorney so we can discuss and finish up the agreement". There was an additional talk by Mr. Lalime of the Chamber of Commerce, whom Barron had invited to the meeting. A committee was chosen and instructed to engage the services of Mr. Morgan, an attorney. Morgan did not accept, and the committee secured the services of an attorney named Hadley, who drew up the by-laws and a constitution.

The next meeting was held on November 17, 1935, at Paul Revere Hall. On this occasion, the organization changed its name from the Shoe Workers Protective Association to Lynn Shoe Workers' Union, and ratified a draft of a proposed closed shop contract with the respondent. At this meeting, 35 "former employees of the Lion Shoe Company" signed a statement<sup>2</sup> that they "desire to enter into membership in the Shoe Workers Protective Association for the purpose of gaining employment in the Lion Shoe Factory".

<sup>2</sup> Board's Exhibit No. 6.

On November 20, 1935, there was another meeting at Paul Revere Hall, at which time the by-laws were adopted, and instructions given to Barron and Goodwin to sign the proposed closed shop agreement with the respondent. The agreement had been drawn in the following manner: Hadley, counsel for the Lynn Shoe Workers' Union, prepared a first draft, which he submitted to Barron, who, in turn, gave it to Morris Gass; a second draft was prepared by the respondent's attorney, Mr. Goldman, and submitted to Hadley; there was then a conference at Hadley's office, attended by Goldman and the Executive Committee of the Lynn Shoe Workers' Union, when a final agreement was decided upon; the final agreement was drawn up in Goldman's office, and was later discussed by a group consisting of Hadley, several members of the Executive Council of the Lynn Shoe Workers' Union, Morris Gass, Nathan Gass, and Goldman. The agreement was signed on behalf of the respondent by Abraham Gootman, its treasurer. The agreement<sup>3</sup> thus prepared and signed provides for the demands which the respondent had previously made in its dealings with the United Shoe and Leather Workers' Union. About a week later, the factory resumed operations.

The respondent has at all times displayed a lively interest in the new organization. In spite of its assumed indifference as to whether or not it would reopen its factory in Lynn, it was obviously anxious that the Lynn Shoe Workers' Union should successfully organize. As soon as it recognized that the efforts of Barron and Couhig were meeting with success, it began openly to urge its employees to become members of the new organization. Robert Cyr, one of the striking employees, testified that when he approached the plant seeking information during the period described above, he was met by Gootman, who informed him that he would have to join the new union in order to secure employment, and that he could get further information from union officials located in Gootman's office. Mrs. Celia Thornton, forelady of 100 employees in the stitching room, the largest group in the factory, although ineligible to join the Lynn Shoe Workers' Union, was zealous in helping it organize. She told one of her stitchers that if she wanted her job back she had "better attend the Paul Revere meeting". She was active at the meeting held in the factory on November 14th. As soon as the new contract was signed, Mrs. Thornton conducted an energetic recruiting campaign, got in touch with nearly all the girls who had been employed in her department to induce them to come back to work, and told them about the new union. She also notified the officials of the new organization of the arrival of the new recruits, and the officials then signed them up. Hyman Gass, son of one of the owners, drove Bar-

<sup>3</sup> Board's Exhibit No. 9.

ron and others to the houses of former employees, to persuade them to return to the plant. Nathan Gass, the respondent's president, met Mr. Henry, an agent of the United Shoe and Leather Workers' Union, who was picketing the plant at the time the plant was about to reopen, and said to him: "Henry, what is the use of talking? You know you are done. You know you haven't any more job because your people (the Union) are going to get through in Lynn. Do you want to take a tip from a friend? The new union needs an agent or they will need a new agent very soon. Why don't you apply for the job?" Morris Gass testified that the respondent wanted a contract with a union whereby it could eliminate the 15 points of difference the respondent had with the United Shoe and Leather Workers' Union, and said: "It didn't make any difference what union it was, as long as we eliminated the troubles we had had with the previous union." Morris Gass testified further that, at the meeting of November 15th, in the packing room of the plant, he told the employees what points would have to be incorporated into the agreement if the respondent was to remain in Lynn.

At the time of the signing of the agreement with the respondent, the Lynn Shoe Workers' Union had 62 members. At the time of the hearing, this number had increased to 165. On January 24, 1936, there were 175 names on the respondent's payroll. The Lynn Shoe Workers' Union has held no regular meetings from the time of its organization until January 10, 1936, although there is provision in its by-laws for regular monthly meetings.

The dealings between the respondent and the Lynn Shoe Workers' Union took place during the same period the respondent was negotiating with the United Shoe and Leather Workers' Union. It was not until late in November, 1935, when the respondent was certain of the success of its new arrangement and had been shown that the new organization was capable of securing a sufficient number of employees to operate the plant, that negotiations with the Union were abruptly terminated.

The formation of the Lynn Shoe Workers' Union has thus provided the respondent with a simple escape from its difficulties with the Union. Had it not been for the encouragement given to Couhig by the respondent's vice-president, Morris Gass, at the outset, it is probable that the organization would never have taken form. Gass' challenge to be shown if a sufficient number of employees were prepared to join a "legitimate" union capable of entering into a contract was clearly an invitation to Couhig to organize such a group. In the light of what followed, it is impossible to mistake the nature of the "legitimate" organization Couhig and Gass had in mind. From the very start the respondent regarded the Lynn Shoe Workers' Union as a means of reopening its plant on its own terms. At no

time after its inception did the new organization represent the will of the employees. It served instead as a means whereby the respondent utilized to the fullest extent the economic advantage it had secured over its employees by the closing of the plant and the threat to remove from Lynn. Barron and Coulhig, who allied themselves closely to the respondent's officials, took no step in organizing the employees except under the respondent's direction and with its approval. The respondent, as we have seen, soon discarded its pretense of indifference, and actively assisted in the formation of the new union. Its forelady, Mrs. Thornton, entreated the employees to attend meetings. Other officials, including Morris Gass, spoke at the meeting held on November 15, on the respondent's premises, and gave directions to the employees as to the terms they should incorporate in the agreement they were about to draw up. Through Barron, the respondent submitted its own wage scale for adoption by the organization. The respondent's attorney participated in the drawing of the agreement, which incorporated the points the respondent had complained of in its dealings with the Union. By adroit manipulation the respondent, therefore, was able to bring into being a labor organization restricted in membership to its own employees, and devoted solely to its own interests. By reason of the "closed shop" provision in the agreement, it has successfully carried out its avowed intent of being "through with" the Union. But the respondent was at the same time fully aware of the undesirability of an out and out "company" union. Such a union, it said was "too one-sided". Therefore, it advised the new organization to consult an attorney, so as to impart to the proceedings an air of legality and mutuality. However, the respondent has not succeeded in disguising its underlying purpose in utilizing the organization to liberate itself from the necessity of negotiating with the Union, and in destroying the independence of its employees.

The formation of the Lynn Shoe Workers' Union is a clear example of how an employer, by suggestion and indirection, may encourage others to bring into being an organization subservient to its wishes. As above described, the relation of the Lynn Shoe Workers' Union to the respondent was solely one of dependence—a condition which the respondent recognized and fostered. In addition, the respondent's officials solicited employees on behalf of the new organization, inducing them to join by the promise of jobs, and threatening that the union and its members were "through" in Lynn. The respondent, in so doing, has acted in absolute disregard of the rights of its employees under the Act. We find that the respondent has dominated and interfered with the formation of the Lynn Shoe Workers' Union, and has, by its aforesaid acts, interfered with, restrained and coerced, and continues to interfere with,

restrain, and coerce its employees in the exercise of the rights to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid and protection.

*B. Discrimination in regard to hire and tenure of employment*

It is alleged in the complaint that the respondent has discriminated in regard to the hire and tenure of its striking employees for the purpose of discouraging membership in the United Shoe and Leather Workers' Union by requiring all applicants for employment to sign applications for membership in the Lynn Shoe Workers' Union. This is borne out by the testimony at the hearing. Several of the respondent's striking employees testified that they were refused reinstatement because of their unwillingness to abandon the Union and to join the Lynn Shoe Workers' Union. In one instance Gootman said to Robert Cyr: "If you want to work, you can join . . . (the Lynn Shoe Workers') Union and work. If you don't want to work I have got plenty to take your place." It is clear, in view of the findings in the preceding paragraph, that the agreement between the respondent and the Lynn Shoe Workers' Union is illegal, and that the respondent, by its admitted policy of requiring all applicants for employment to sign applications for membership in the Lynn Shoe Workers' Union, and by its refusal to recognize the United Shoe and Leather Workers' Union, has discriminated illegally against the latter. This is especially true because of the fact that the respondent is seeking to operate its plant with its former personnel, all of whom were members of the Union prior to the closing of the factory. Due to the activities of the respondent in recruiting workers in order to reopen its plant, the conditions of reinstatement were well known to all the strikers. Consequently, it would have been futile for them to have applied for reinstatement unless they were willing to relinquish their membership in the Union, as is illustrated by the testimony of the employees referred to above. Under circumstances such as these, the failure of employees to apply for reinstatement is no bar to the securing of such relief as is offered by the Act. Nor is the respondent, having committed the illegal acts described above, in a position to contend that the striking employees would have refrained from making application for reinstatement even if the condition that they sacrifice their membership in the Union had not been imposed.

We find, therefore, that the respondent has discriminated in regard to the hire and tenure of employment and terms and conditions of employment of its employees, and has thereby encouraged membership in the Lynn Shoe Workers' Union and discouraged membership

in the United Shoe and Leather Workers' Union, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We find further that the striking employees have ceased work because of the aforementioned unfair labor practices, and in consequence of a current labor dispute, and were employees of the respondent at the time of its refusal to effect their reinstatement.

The aforesaid acts of the respondent, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

The Lynn Shoe Workers' Union, so far from representing the interests of the employees, is the instrument whereby the respondent enforces obedience to its will. The respondent has gained, and through its agreement will maintain, standards of working conditions, hours and rates of pay which it has itself dictated. It has accomplished this under the guise of bestowing a favor upon its employees, and has thus added the force of moral obligation to the economic pressure already brought to bear. It is necessary to restore to the employees the independence of thought and judgment of which they have been deprived. Consequently the respondent must affirmatively withdraw recognition from the Lynn Shoe Workers' Union as an organization for the purpose of collective bargaining upon behalf of its employees. Furthermore, the respondent, through its agreement with the Lynn Shoe Workers' Union, has made it impossible for members of the United Shoe and Leather Workers' Union to secure reinstatement without first relinquishing their membership in the Union. The respondent, having secured its full quota of employees in illegal disregard of the Union, should not be permitted to discriminate further in this manner. It is necessary, therefore, that the respondent restore, as far as possible, the situation as it would have existed had there been no violation of the Act. In order to accomplish this, the respondent should offer reinstatement to its striking employees in so far as their positions are now filled by persons who were not working for the respondent on October 31, 1935.

#### CONCLUSIONS OF LAW

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

1. United Shoe and Leather Workers' Union is a labor organization, within the meaning of Section 2, subdivision (5), of the Act.

2. Lynn Shoe Workers' Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. The strike of the employees of the respondent is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

4. The employees of the respondent who are on strike are employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.

5. By its domination and interference with the formation of the Lynn Shoe Workers' Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

6. By discriminating in regard to hire and tenure of employment and terms and conditions of employment, the respondent has encouraged membership in the Lynn Shoe Workers' Union, and has discouraged membership in the United Shoe and Leather Workers' Union, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

8. 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 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, Lion Shoe Company, and its officers, agents, successors and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from encouraging membership in the Lynn Shoe Workers' Union or any other labor organization of its employees, or from discouraging membership in the United Shoe and Leather Workers' Union or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination;

3. Cease and desist from in any manner dominating or interfering with the administration of the Lynn Shoe Workers' Union, or any other labor organization of its employees, or from contributing financial or other support thereto.

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

(a) Withdraw all recognition from the Lynn Shoe Workers' Union, as representative of its employees, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and disestablish the Lynn Shoe Workers' Union as such representative;

(b) Offer to those employees who were on the payroll between September 28 and October 31, 1935, and whose work is now performed by other persons hired since October 31, 1935, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed, notifying them at the time of the offer that they will not be required, as a condition of reinstatement, to (1) relinquish their membership in the United Shoe and Leather Workers' Union, or (2) submit to the terms of the illegal agreement between the respondent and the Lynn Shoe Workers' Union; and place those for whom employment is not available on a preferred list to be offered employment as it arises before any other persons are hired;

(c) Post notices in conspicuous places on each floor of the factory, stating (1) that the Lynn Shoe Workers' Union is so disestablished, and that the respondent will refrain from any recognition thereof, and stating (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

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