

In the Matter of NATIONAL ELECTRIC PRODUCTS CORPORATION and  
UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, LOCAL No.  
609

Cases Nos. C-219 and R-241.—Decided August 30, 1937

*Electrical Equipment Manufacturing Industry—Interference, Restraint or Coercion:* urging, persuading, and warning employees not to join or assist one of rival labor organizations and to join another, and threatening them with discharge for non-compliance with such warning; recognition of one of rival labor organizations as exclusive bargaining agent of employees with knowledge that such organization is not free choice of majority of such employees, and that another rival organization claims to represent majority and seeks to bargain collectively as such representative; requiring membership in one of rival labor organizations; surveillance of meetings of one of rival labor organizations—*Condition of Employment:* membership in labor organization assisted by employer's unfair labor practices, or suffer deductions from wages equal to dues therein—*Collective Agreement:* agreement providing for recognition of one of rival labor organizations as exclusive bargaining agent and requiring membership of employees in such organization or deductions from wages equal to dues therein, is void when such organization is one assisted by employer's unfair labor practices and is not the free choice of majority—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded—*Investigation of Representatives:* controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; collective agreement with one of rival organizations providing for recognition as exclusive representative no bar to investigation of such controversy and direction of election—*Unit Appropriate for Collective Bargaining:* production employees; occupational differences; no controversy as to—*Election Ordered—Certification of Representatives.*

Mr. Benjamin E. Gordon for the Board.

Mr. William A. Wilson and Mr. J. M. Houston, of Pittsburgh, Pa., for the respondent.

Mr. David Turets, of Pittsburgh, Pa., for the United.

Mr. Philip Levy and Mr. Joseph B. Robison, of counsel to the Board.

## DECISION

### STATEMENT OF THE CASE

On May 28, 1937, Ernest De Maio, general organizer of the United Electrical and Radio Workers of America, filed charges with Charles T. Douds, Acting Regional Director, for the Sixth Region (Pittsburgh, Pennsylvania), alleging that National Electric Products Corporation, Pittsburgh, Pennsylvania, herein called the respondent, had

engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Amended charges were filed on July 19, 1937. On July 20, 1937, the National Labor Relations Board, herein called the Board, by its agent, the Acting Regional Director for the Sixth Region, issued its complaint against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), (3) and (5), and Section 2, subdivisions (6) and (7) of the Act. The complaint and notice of hearing were duly served upon the respondent, upon the United Electrical and Radio Workers of America, Local No. 609, herein called the United, and upon the International Brotherhood of Electrical Workers, Local No. 1073-B, herein called the Brotherhood. The respondent filed an answer, dated July 26, 1937, which denied that it had engaged in the alleged unfair labor practices, and prayed that the complaint and proceeding thereon be dismissed.

On June 14, 1937, the United filed with Charles T. Douds, the Acting Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. An amended petition was filed on July 19, 1937. Both petitions named the Brotherhood as a labor organization claiming to represent employees of the respondent, and recited that the respondent had entered into a closed shop agreement with the Brotherhood notwithstanding that the United in fact represented the majority. On June 21, 1937, the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Acting Regional Director to conduct an investigation and provide for an appropriate hearing.

Thereafter, the Board, acting pursuant to Article II, Section 37b of the Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated. On July 20, a notice of hearing in the representation proceeding was served on the same parties as were served with the complaint and notice of hearing mentioned above.

Pursuant to the notices, a joint hearing on the complaint and petition was held in Pittsburgh, Pennsylvania, on August 2 through August 7, 1937, before William R. Ringer, the Trial Examiner duly designated by the Board. It was agreed between counsel for the Board and for the respondent that the two proceedings would be tried at the same time, since the material issues in the complaint case were the same as those involved in the representation case, but subject to objections being made to the introduction of evidence as to

one or the other aspects of the consolidated case. The Board, the respondent, and the United were represented by counsel at the hearing. No appearance was made for the Brotherhood. At the opening of the hearing counsel for the Board moved to amend the complaint with regard to the respondent's date of incorporation. This motion was granted. In the course of the hearing counsel for the respondent moved to dismiss the proceeding on the ground that the Brotherhood was an indispensable party which had not been joined. This motion was denied.

Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the respondent participated in the hearing by cross-examining witnesses for the Board and introducing testimony in its own behalf. On August 7, 1937, after having adduced the testimony of five witnesses, counsel for the respondent made a declaration on the record that he would offer no further evidence on its behalf. Thereafter counsel participated to the extent of stipulating with counsel for the Board as to the number of persons employed by the respondent on various dates. At the close of the hearing counsel for the Board moved that the pleadings be conformed to the evidence. This motion was granted.

On August 24, 1937, the Board ordered that the proceeding be transferred to and continued before it,<sup>1</sup> in accordance with Article II, Section 37, and Article III, Section 10 (c) (1), of the Rules and Regulations—Series 1, as amended. During the course of the hearing, the respondent made numerous motions and objections. The Board has reviewed the rulings of the Trial Examiner on these matters and finds that with one exception, no prejudicial errors were committed. With that exception, discussed in Part III F, *infra*, the rulings are hereby affirmed.

Upon the entire record in both cases, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE RESPONDENT'S BUSINESS

The respondent is a Delaware corporation chartered on April 12, 1928. It first began operations in 1905 under the name of National Metal Molding Company. The respondent now maintains its principal office and place of business in Pittsburgh, Pennsylvania, and a plant in Ambridge, Pennsylvania, where it is engaged in the produc-

<sup>1</sup> In the course of the hearing the Trial Examiner advised counsel for the respondent that it was unnecessary to make exceptions to his rulings on objections, since such exceptions might be taken to the report which the Trial Examiner would file under Article II, Section 34 of the Rules and Regulations. Since the Board has transferred the case to itself, it will be assumed that the respondent made exceptions to all the rulings of the Trial Examiner adverse to it.

tion; sale; and distribution of electrical products, wires, armored cables, conduits, and other types of electrical appliances. The respondent maintains warehouses in Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Chicago, Illinois; St. Louis, Missouri; Minneapolis, Minnesota; San Francisco, California; and Denver, Colorado. Approximately 30 million feet of wire and cable and four thousand tons of steel products are produced monthly at the Ambridge plant.

More than 50 per cent of the raw materials used by the respondent at its Ambridge plant, where the present case arose, are transported from points outside the State of Pennsylvania, and more than 50 per cent of its products are shipped to points outside the State. Distribution of its products is nation-wide. The respondent frequently produces materials under contract with departments of the United States Government. Its gross sales average \$900,000 per month.

### II. THE ORGANIZATIONS INVOLVED

The United Electrical and Radio Workers of America, Local No. 609, is a labor organization admitting to membership all employees of the respondent (exclusive of clerical, office, supervisory, watchmen, and other maintenance employees, production clerks, and time study men). It is a local of an international union affiliated with the Committee for Industrial Organization.

The International Brotherhood of Electrical Workers, Local No. 1073-B, is a labor organization for the respondent's employees. It is a local union of an international union affiliated with the American Federation of Labor.

A plan of employee representation was organized for the respondent's employees in 1933 (Bd. Exh. 23), but disbanded on or about April 15, 1937.

### III. THE UNFAIR LABOR PRACTICES

#### *A. Background of organization of the United and the respondent's reaction to it.*

The organization of the employees in the respondent's plant in behalf of the United began about August 1, 1936, under the direction of Morris Mallinger, organizer for the Steel Workers' Organizing Committee, also affiliated with the Committee for Industrial Organization. Meetings were held frequently and the signatures of employees to application blanks procured. Leaflets were distributed at the factory gates (Bd. Exh. 11). Mallinger made it clear to employees that he was acting in behalf of the United, and that the group would be chartered by that union. On May 7, 1937, Ernest De-Maio took over the organization work for the United. Local No. 609 of the United was organized at a meeting on May 9, and received

its charter on May 11 (Bd. Exhs. 12, 20). Cards signifying membership in the United were issued to those who had previously signed application cards.

The respondent's attitude toward these early efforts at organization is demonstrated not only by the discriminatory discharge of John Cenonico, described hereinafter, but by an incident which occurred at the plant gates on March 16, 1937. On that day, Mallinger distributed a paper to the workers at the respondent's plant gates, calling their attention to the announcement that the Steel Workers' Organizing Committee had negotiated a ten per cent increase in wages with the United States Steel Corporation, and urged them to join. Mallinger was arrested by a policeman and taken to the police station. At the station house the police sergeant advised Mallinger that there were no charges against him, but that he had been arrested because "The National Electric Company called up here to take you away from there because they don't want you around there." Thereupon Mallinger was released and he returned to the plant gate.

Beginning on May 12 and thereafter down to the date of the hearing, the respondent maintained a stenographic record of the meetings held by the United outside the plant gates. About May 15 the members of the United became restive and wanted to strike because the respondent was exerting pressure on them to join the Brotherhood.<sup>2</sup> Beginning on May 21 and for some days thereafter De Maio made an unsuccessful effort to obtain a conference with the respondent's officials for the purpose of discussing these issues and negotiating a collective agreement.<sup>3</sup> When these efforts failed, and it was announced that the respondent had made a "closed shop" contract with the Brotherhood, the United took a strike vote at a meeting on May 30 and thereafter called a strike beginning June 1. The plant was completely shut down until June 21. Under urging from the Brotherhood, the respondent made plans for reopening the plant on June 15. It arranged with the Brotherhood for the temporary employment of a number of maintenance men to help put the plant machinery in order. On June 14, notices of the reopening (Bd. Exh. 15) were delivered to all employees by plant foremen, supervisors and clerical help. On the 15th, some 50 men, many of whom could not be identified as employees by employees testifying for the United, attempted to enter the plant, and considerable violence ensued.<sup>4</sup>

<sup>2</sup> This phase of the case is discussed hereafter, Part III, D, 2.

<sup>3</sup> This phase of the case is discussed hereafter, Part III, C, 2.

<sup>4</sup> One of those who approached the plant that day was Edwin Cronenweth, a Brotherhood member accompanied by two others who, like himself, had not previously been employed by the respondent. According to Cronenweth's testimony, he had been advised by an organizer for the Brotherhood that union men were wanted at the plant. He was not told that a strike was in progress, and testified that he would not have applied if that had been brought to his attention.

Following the failure of the effort to reopen, negotiations for a strike settlement were had on the intervention of Charles T. Douds, Acting Regional Director for the Board, with whom had been filed the charge of unfair labor practices and petition for investigation of representatives herein filed by the United on May 28 and June 14, respectively. On June 19, an agreement was reached and the plant was reopened on the 21st. In one "memorandum of agreement" between the United and Mr. Douds, it was provided that the strike be called off, that stipulated wages and conditions—offered by the respondent on June 14 in its notice of reopening—be applicable, and that the memorandum "shall be in no force and effect after the certification by the National Labor Relations Board of the representatives certified as the sole collective bargaining agency for the employees of the Corporation. Any agreement entered into by the Corporation with said representatives should be in writing." (Bd. Exh. 17). Simultaneously, counsel for the respondent entered into a "memorandum of agreement" with Mr. Douds embodying the same wage clause and the same provision as to the effect of the Board's certification, but adding new provisions to the effect that all employees as of June 1 will be returned to their former positions "without discrimination or prejudice", and that "there shall be no intimidation or coercion of any employee, by the Corporation or its agents, in the exercise of his or her rights to self-organization guaranteed by the National Labor Relations Act." (Bd. Exh. 18.)

So much by way of background. We consider now in detail the major issues of violation of law presented on the record.

### *B. The discriminatory discharge of John Cenonico*

John Cenonico<sup>5</sup> was employed as a laborer by the respondent at the Ambridge plant beginning August 1, 1923 and thereafter until his discharge on September 28, 1936, except for a period between 1928 and 1933, when he was employed elsewhere. He received 46 cents an hour, and his weekly pay was between 25 and 30 dollars. Cenonico joined the United on July 19, 1936, thereafter attended union meetings under the auspices of the Steel Workers' Organizing Committee, and solicited the membership of several employees. About this time he was approached at his work by Charles Flora, his foreman, who warned him he would be discharged if he did not stop attending union meetings. Cenonico persisted in his attendance at meetings and, on September 6, was one of the few union members in the plant who marched in a steel workers Labor Day parade. During the morning of Friday, September 25, 1936, Flora called Cenonico and two other employees in the labor gang into the

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<sup>5</sup> Erroneously referred to in the complaint as "John Canonica".

labor shed. According to Cenonico's testimony and that of the two others, Tony Stancato and Luigi Villeverra, Flora warned them against going to the union meeting scheduled that night at the Croatian Hall, stated that the meeting would be watched, and that anyone caught attending would be discharged. That night Cenonico went to the meeting hall but did not enter for fear of being seen, because he observed Mr. Wanamaker, one of the respondent's officials, seated in a car in front of the hall.

Flora terminated Cenonico's employ about noon on the following Monday, September 28. Later that day Cenonico met Wayne Irion, one of the employee representatives under the plan then in effect, who undertook to make an appointment for him to see Neil C. Lamont, the works manager. The next morning Cenonico saw Lamont and Wanamaker. Lamont observed that Cenonico had no business marching in the steel workers parade on Labor Day. According to Cenonico, Lamont said he wanted him to "talk", but did not explain what he meant. Lamont asked whether Cenonico or any of his friends were Communists, to which Cenonico replied in the negative. Lamont declared they could have Cenonico deported if they desired; and Wanamaker stated they could prevent him from getting his citizenship papers, for which he had made due application. Lamont then told him to go home and not to speak to anyone about his discharge, because he did not want anybody to know what had happened.

Neither Lamont nor Wanamaker testified to refute the obvious implications of Cenonico's testimony. Flora testified, and denied having warned Cenonico about attending union meetings; but we see no reason to disregard the testimony of the two witnesses to the conversation who supported Cenonico's testimony as to what was said. According to Flora, he discharged Cenonico for talking and loafing at work and for making what he regarded as an unpatriotic remark concerning the Spanish situation, during their conversation in the shed on September 25. The claim of loafing in connection with the talk in the shed is unfounded, since Flora himself ordered Cenonico and the two others to go there and wait for his instructions. As for the alleged unpatriotic remark, upon which Flora claims principally to have predicated the discharge, Flora admitted he had himself injected the Spanish situation into the discussion, and that for two or three years back, Cenonico and two or three others had frequently talked "about Spain". According to Cenonico's testimony, supported by that of two witnesses, he had defended the right of employees to organize and referred to Spain only in connection with the possible consequences of the continued coercion and interference by employers with their employees' self-organiza-

tion. Flora admitted it was immaterial to him what the workers' political beliefs were or what the men talked about at their work.

We find that Cenonico was in fact discharged because of his membership and activity in the labor organization of his choice. The respondent thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

From November 1936 to May 1937, Cenonico worked on a WPA job at \$57.20 a month. Thereafter he was employed on a part time job and had earned \$175 on such job up to the date of the hearing. We find that John Cenonico has not, since his discharge, obtained any other regular and substantially equivalent employment.

*C. The alleged refusal of the respondent to bargain collectively*

The complaint alleges that the respondent failed and refused on or about May 20 and 21, 1937, and thereafter, to bargain collectively with the United, although prior to May 20 and at all times thereafter the United had been designated by a majority of the employees in the appropriate unit to represent them in collective bargaining.

1. The appropriate unit

The unit contended for by the United is, briefly, that of production employees at the Ambridge plant; more specifically, it comprises all of the respondent's employees except clerical and office help, production clerks, time study men, supervisory employees (such as superintendents, foremen, assistant foremen, etc.), watchmen, and maintenance men. The respondent does not contest that this unit is appropriate. The Brotherhood did not appear at the hearing, but from indications in the record purports to represent all employees on an hourly basis, exclusive of clerical help.

The basis for exclusion of clerical help and supervisory employees in cases of this kind has frequently been stated in our decisions,<sup>6</sup> and the exclusion of maintenance men seems appropriate because of occupational differences: We find that, in order to insure to the respondent's employees at its Ambridge plant the full benefit of their right of self-organization and collective bargaining and otherwise to effectuate the policies of the Act, all of the respondent's employees, exclusive of the clerical and office help, production clerks, time study men, supervisory employees, watchmen, and maintenance men, constitute a unit appropriate for the purposes of collective bargaining.

<sup>6</sup> See, for example, *Matter of United States Stamping Company and Porcelain Enamel Workers Union*, No. 18630, 1 N. L. R. B. 123

## 2. The failure to negotiate

On May 20, 1937, De Maio telephoned Neil C. Lamont, the works manager at the Ambridge plant, and advised him that he had received numerous complaints from the United's members in the plant about coercion and intimidation practiced by foremen and supervisors, and that he had been urged to file charges against the respondent with the Board. De Maio stated he felt these difficulties could be settled in conference and requested a meeting that day. Lamont said he would consult W. C. Robinson, the respondent's president, and promised to call De Maio back that afternoon, but failed to do so. The next morning, May 21st, De Maio again called Lamont. Lamont stated that he had discussed the matter with Robinson, and they had come to the conclusion there was no point to a discussion because they had not violated the Act. Lamont concluded, "I believe that is all I have to say." De Maio then informed him that the United had been designated by a majority of the respondent's employees for purposes of collective bargaining and that he would appreciate a conference with him at the earliest possible date for the purposes of negotiation. Lamont insisted that this request be put in writing. De Maio expressed the belief that this demand was an effort at delay and that time was of the essence because of the reports of continued interference and intimidation among the employees. He suggested that an early conference would quiet the situation. Lamont persisted, saying that a telephone conversation could be easily "misconstrued" and "misinterpreted." Thereupon De Maio agreed to put his request in writing, and on the same day mailed a letter to Lamont embodying his assertion that the United spoke for a majority of the employees and requesting an early conference with "the management" (Bd. Exh. 14).

On Monday morning, May 24, De Maio again called Lamont, expressed surprise at an announcement by Brotherhood officials in the newspapers the day before that the respondent had made a closed shop contract with the Brotherhood, and reiterated that the United represented a majority. Lamont replied he had nothing to say. De Maio then asked whether Lamont would talk to Mr. Timco, an official of the Steel Workers' Organizing Committee. Lamont replied he had no desire to talk with Timco or anybody else and then hung up the receiver. On or about May 27, De Maio and a negotiating committee made still another effort to reach the respondent's officials. They went to Lamont's office and requested an interview. Lamont advised them, through his secretary, that he had no desire to see them. Thereupon the committee attempted to see Wanamaker.

<sup>7</sup> The agreement referred to was actually signed on May 27. Its purport is discussed in Part III, D, *infra*.

Wanamaker's secretary went to call him. When she did not return after about half an hour the committee left, feeling, as De Maio testified, that they had done everything possible to bring about a peaceful settlement of the dispute.

We think it clear, from the circumstances described above, that the respondent failed and refused to negotiate with the United, on the dates alleged and thereafter, for the purposes of collective bargaining; and this conclusion is strengthened when the treatment accorded the United is contrasted with that accorded the Brotherhood in the matter of arranging and holding conferences.<sup>8</sup> However, an insuperable obstacle to sustaining the United's contention on this aspect of the case is the failure to establish that it represented a majority in the appropriate unit at the time it sought to negotiate with the respondent.

### 3. The United's numerical strength

According to a stipulation made on the record by counsel for the respondent, the Board, and the United, the respondent's employees in the appropriate unit numbered approximately 1612 on May 21, 1937, 1650 on May 26 and 27, and 1420 from July 31 to the date of the stipulation (August 7, 1937). At the hearing there were introduced through Joseph O'Neil, financial secretary of the United, the signed application cards for membership in the United, and through Ernest De Maio, the United's membership index cards (Bd. Exhs. 21, 30). According to these witnesses, the cards showed that the United had approximately 918 members on May 21, 1937, 965 on May 27, 1000 on June 1, and 1047 on August 2, the date the hearing opened.<sup>9</sup> While the United would thus appear to represent a clear majority in the appropriate unit on the dates in question, the record shows definitely that there was duplication, to an unknown extent, of membership applications in the United and the Brotherhood. Thus Joseph O'Neil, the financial secretary of the United, testified on cross-examination as follows:

Q. Do you know as a fact, Mr. O'Neil, whether or not any employees of the National Electric Products Corporation had signed your CIO cards also signed A. F. of L. cards?

A. I do.

\* \* \* \* \*

Q. I suppose you have no way of telling how many?

A. As a matter of fact, I haven't. I only know the people admit the fact to me.

<sup>8</sup> This aspect of the case is discussed in Part III, D, 3, *infra*.

<sup>9</sup> De Maio testified that there were perhaps 25 to 50 more members disclosed by the index cards than appeared among the application cards, because the application cards were sometimes lost or mislaid.

Q. I can see that. You haven't access to the A. F. of L. cards?

A. I have not.

Q. So there is no way you can tell how many duplicates there are?

A. No.

Q. And some members, since you have been financial secretary, have shifted from your union to the other union as well as from the other union to your union?

A. They have joined both unions. Where their sentiments lie I could not say.

Q. Yes, but they have joined both unions?

A. Yes.

While a considerable amount of the membership claimed for the Brotherhood must be deemed vitiated by the interference and coercion exercised by the management in the solicitation of such membership (Part III, D, 2, *infra*), we cannot say on the present record that the United represented an actual numerical majority on the dates under consideration. Under the circumstances of this case, we believe an election by secret ballot is the fairest and most accurate method for determining the unfettered choice of the employees, and in the representation proceeding also before us, we have directed that such election be held (Part IV, *infra*).

The charge of failure to negotiate with the United as exclusive representative under Section 8 (5) of the Act will be dismissed, without prejudice to its renewal if the United should subsequently establish its authority to speak for a numerical majority in the appropriate unit.

#### D. *The May 27 contract with the Brotherhood*

On May 27, 1937, the respondent entered into an agreement with the Brotherhood, effective June 1, 1937, providing in part as follows:

The Employer hereby agrees to recognize the Union as the sole bargaining agent on wages, hours and conditions of employment for employees covered by this agreement, and further agrees to employ only members of the Union or those who have made proper arrangements for becoming members within twenty-one days after being employed, or in the event of failure of employee to join the Union within the aforesaid period, the Company will deduct from such employee's wage the Union dues for each calendar month (not less than \$1.00) which such employee would pay if he or she had become a member of the Union. Such dues collected to be sent to the Secretary-Treasurer of the Union by the Company. (Bd. Exh. 19.)

Section 8, subdivision (3) of the Act provides that it shall be an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." The performance by the respondent of the May 27th agreement would require its employees, as a condition of employment, to join the Brotherhood, or have deducted from their pay a sum equal to Brotherhood dues. Such conditions of employment obviously discriminate in favor of the Brotherhood, and consequently run counter to the statute.<sup>10</sup> The performance of the agreement by the respondent is therefore illegal unless it falls within the proviso to subsection (3), which declares:

That nothing in this Act \* \* \* shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

In view of this proviso, the nub of the case so far as the agreement is concerned, as the respondent's counsel recognized on the record, is whether the Brotherhood represented a majority in the appropriate unit covered by the agreement "when made", and whether the Brotherhood has been "established, maintained or assisted by any action defined in this Act as an unfair labor practice."<sup>11</sup>

We consider first the circumstances of the negotiation of the agreement, and the respondent's relations with the Brotherhood, as described by the respondent's witnesses.

<sup>10</sup> There is not presented here, and we do not decide, the question whether it is a violation of Section 8 (3) for an employer, pursuant to an agreement with a labor organization representing the unfettered choice of a majority of his employees, to check off from the employees' wages the dues currently owed by them as members of the organization. The deductions required from employees' wages by the agreement here under consideration are made in the event they do *not* join the Brotherhood and are equal in amount to the dues they would have paid if they *had* joined it. The agreement does not provide for a check-off of dues owed by *members* of the Brotherhood.

<sup>11</sup> The proviso speaks of an agreement with a labor organization requiring as a condition of employment "membership therein". The contract proviso here in question is not so limited; it requires membership in the Brotherhood or deductions of pay equal to Brotherhood dues. Either contingency comes within the prohibition of Section 8 (3) unless saved by the proviso. In what follows we assume that the proviso is applicable to a contract provision such as this, and inquire whether the conditions stipulated in the proviso were met. If the proviso is inapplicable, the contract provision is invalid on its face, in view of Section 8 (3).

1. The respondent's contentions concerning its relations with the Brotherhood.

I. A. Bennett, the respondent's vice-president, who conducted most of the negotiations leading up to the May 27 agreement, testified that the course of dealing was as follows: His first contact with the Brotherhood came about the middle of March 1937, when a vice president of that organization called on him at his office and discussed his intention to organize the respondent's employees. At this time, the respondent made no statement or commitment. Bennett doubted whether they could ever "do business", because of the Brotherhood's insistence on closed shop agreements. The second meeting, according to Bennett, came about the middle of April, when other officials of the Brotherhood called on Bennett and a conference was had covering substantially the same ground. The officials stated that they had already started organizing among the employees and "had quite a group". About May 1, still another Brotherhood official, A. L. Wegener, called on Bennett and asked for a meeting for the purposes of collective bargaining. This Bennett declined to grant, saying that the respondent was not yet ready to recognize any outside organization. On May 12, according to Bennett, Wegener called again, demanded a conference, and for the first time asserted that the Brotherhood represented a majority. Bennett repeated his stand of the previous meeting. On May 15, Wegener wrote a letter to the respondent which was received on May 18, making substantially the same demand.<sup>12</sup> To this the respondent made no reply. On the 19th, Wegener again came to see Bennett, the latter asserts, claimed a majority, and insisted on a collective bargaining conference. Bennett still made no promise of an interview. However, on May 21, Bennett asserts, the respondent's officials decided to grant the request, and that night Bennett arranged by telephone for a meeting on the 22nd. At this meeting the respondent was represented by Bennett and W. C. Robinson. The parties arrived at a written memorandum of understanding containing this single provision: "The employer hereby agrees to recognize the Union as the sole bargaining agent on wages, hours and conditions of employment for employees, covered by an agreement to be consummated at a future date" (Resp. Exh. 11).

The respondent's officials and the Brotherhood's representatives met again, according to Bennett, in all-day conferences on May 26

<sup>12</sup> This letter, addressed to W. C. Robinson, the respondent's president, reads as follows (Resp. Exh. 9):

This is to advise that the employees of your company have indicated, by their applications for membership to our Brotherhood that they desire our organization to represent them as the bargaining agent for wages, hours, and conditions of employment, therefore, a conference with the management is desired.

Kindly advise me accordingly.

and May 27, which finally resulted in the agreement here under consideration. The agreement embodies the provision as to membership in the Brotherhood already quoted, and other provisions relating to wages, vacations, etc. In these negotiations there was actually no dispute between the parties as to wages, since the company had already recognized the "Valley rates" which had been previously put into effect; and the question of hours, among other things, was left for further negotiation.

On May 28th or 29th the respondent posted in the plant the following notice:

### WE HAVE JOINED THE UNION

What you have read in the papers and listened to during past several months is the story of perhaps one of the greatest "organization" movements ever developed.

Today our company entered into such an "organization agreement" with the (I. B. E. W.) International Brotherhood of Electrical Workers, effective June 1st, whereby we come under the banners of American Federation of Labor.

We have had some discussion about wages; however, this has not been a wage question. The contract that has been made by National Electric Products Corporation is based solely on organization with adjustments to a minimum wage scale of 52½ cents per hour for women and 62½ cents per hour for men.

We have about 125 competitors located outside this wage scale district whose wage rates are 40 cents per hour for men and 40 cents per hour for women.

Our company pays the highest wages of any manufacturer in our industry as high as 30 to 40% more but throwing out the lowest wages paid and counting in only the larger and more important competition, our company pays its employees more than \$400,000 per year more than our competitors wage scale.

The (I. B. E. W.) International Brotherhood of Electrical Workers install 75 to 80% of the products we make. They are not a new organization; have been operating over the country for a period of many years. We believe that this will make more work for the people of our district.

### NATIONAL ELECTRIC PRODUCTS CORPORATION.

There was only one further meeting between the respondent and the Brotherhood officials, and this during the strike on or about June 10 or 12. No further terms have been agreed upon.

This is the version of the sequence of events depicted by Bennett. While Bennett and other of the respondent's witnesses concede the respondent preferred the Brotherhood because recognition of it would end the alleged "sales resistance" to its product by Brotherhood members engaged in its installation,<sup>13</sup> they claim to have recognized the respondent's obligation under the Act to maintain strict neutrality, and to have carried out such a policy in their relations with the employees. In the final analysis, Bennett testified, the question of sales was merely "a factor" in the respondent's calculations; indeed, he said the respondent would still prefer to have its "own union", without outside affiliation. The respondent, he asserted, would never have made the May 27 agreement or recognized the Brotherhood unless it was satisfied that it represented a majority; that it would not have dared to do this; that it regarded the majority issue as very important; and that it was opposed to the closed shop because it needed many of its men "very badly" and because a closed shop would disturb the harmonious relations established with its employees by requiring non-members in its employ to join it as a condition of employment.

This then, is the respondent's purported position. We turn now to the facts as disclosed by the record.

## 2. The respondent's participation in the enlistment of the Brotherhood's membership

There is overwhelming evidence that the respondent participated actively in the enlistment of the Brotherhood's membership and thereby assisted the Brotherhood and interfered with, restrained, and coerced its employees in respect to their choice of representatives, all prior to May 27th, the date of the agreement.

Stella Wojikowski, who was employed in the braiding department, and later became an officer in the Brotherhood, spent an average of two hours a day during the middle of May, to the knowledge of Superintendent Mawhinney, on company time, going throughout the plant soliciting membership applications in the Brotherhood. Other employees, Christine Marmak and Frank Webb, were similarly very active and spent considerable time organizing during working hours, Webb going to the extreme of shutting off machinery in whole departments for 15 to 30 minutes at a time. The respondent claims to have instructed its officials and supervisors to observe neutrality in the organizational drives of the Brotherhood and United, and to allow the employees "to talk their heads off", provided it did not interfere too much with the progress of their work. But Bennett

<sup>13</sup> See footnote 14, *infra*.

conceded this would not include allowing employees to solicit applications throughout the plant or the shutting off of power for purposes of organization meetings.

The complicity of the respondent's officials and supervisors in this organizational work is clearly established. In most instances Miss Wojikowski's approach to employees in the various departments was accomplished under the eyes of the foremen and generally after a conversation with them. Frequently when Miss Wojikowski failed to procure an employee's signature, she would stand to one side, and the departmental foreman would approach the employee and endeavor to persuade him. In the case of Frederick Yanko, who had such an experience some time between May 10 and 15, his foreman, Saunders, had Brotherhood membership cards in his hand, and offered him one. On a like occasion on May 12 or 13, Saunders asked Steve Surowiec whether he had made up his mind, spoke to him about the respondent's sales loss, asked if he liked his job, and stated that if he did, he had better sign.

Paul Albert was approached on May 18 by Saunders, his foreman, who advised him that the Brotherhood was having a meeting on the 23rd; that he was to sign up and go to the meeting; that the respondent needed a Brotherhood label to sell wire; and that those signing with the United were wasting their money because they would have to sign up with the Brotherhood anyway. Saunders told him to take it easy for a while until he found Miss Wojikowski. Saunders returned with Miss Wojikowski, who told Albert in Saunders' presence that all would have to sign the Brotherhood cards and that if he did not sign, he would be out of a job. She gave him a Brotherhood application card and stuck a pen in his hand, and both she and Saunders told him to sign. Albert told them he wanted time to think it over and that he did not have the necessary \$1.00 fee. Saunders offered to give him the dollar.

In at least two departments the power was shut down and Brotherhood applications were openly solicited with the active participation of foremen. On or about May 11, Frank Webb, a former employee representative, shut off the power in the winders department. He and foreman Campbell told the employees to assemble in the stock room. Mrs. Colburn, a timekeeper, was also present. Webb made a long talk in favor of the Brotherhood. As the employees filed out of the stockroom, Campbell passed out Brotherhood application cards, and Mrs. Colburn received and countersigned the signed cards. The stoppage lasted about 30 minutes in all, and no deduction of pay was made on account of it. The day after this incident, Campbell handed Mary Blasko an application card and told her to "have Mrs. Colburn fill it up for you". When she refused it, Campbell declared the respondent could not sell its product if she did not belong to the

Brotherhood. Campbell asked each girl in the department whether she had made up her mind about the Brotherhood, and wrote down their replies on a sheet of paper he carried.

On or about May 14th, Webb shut down the power in the braiders department and conducted a similar meeting on company time, all in the presence of foreman Winslow. Webb spoke for about an hour, and declared the employees could join either union, but urged them to join the Brotherhood. If they did not, he said, perhaps 99 out of a 100 would lose their jobs.

He pointed out they could sign up at the timekeeper's desk, where cards were available. Superintendent Mawhinney testified he "reprimanded" Webb for shutting off the power in these departments. But he does not assert he reprimanded the foremen and time clerks who not only failed to stop Webb, but actually participated in signing up members. Mawhinney's alleged reprimand of Webb did not eliminate in the slightest the effect of the foremen's activities.

Superintendent Gaughenbaugh was particularly active in behalf of the Brotherhood. On May 14th, he approached Norman Charlton at his work and asked if he belonged to a union. When Charlton said he did, Gaughenbaugh asked why the others did not join, and requested him to get some application cards. Charlton, who was interested in the United, attempted to get some applications for that organization, but failed. When he returned to his place, he found Gaughenbaugh accompanied by Wanamaker. Gaughenbaugh asked if he had secured the cards; he then said not to mind since he had "a bunch" here, and showed Charlton some Brotherhood application cards which he held in his hand. Charlton refused his proffer of the cards, saying those were not the kind he wanted. Charlton testified that the superintendent "acted kind of dumbstruck", and walked away.

Later that morning, Gaughenbaugh again spoke to Charlton, telling him that he should join the Brotherhood because it would help sell the respondent's product, and that if the work slackened, "we are going to take care of the people that go along with us." Gaughenbaugh showed him a book containing the Brotherhood's by-laws, and cited the insurance and other benefits offered. Charlton pointed out that Class B membership, for which the employees were being solicited by the Brotherhood, did not carry these benefits with it. On May 19, Gaughenbaugh had a similar conversation about the benefits of Brotherhood membership with Joseph Dye, at his place of work in the storeroom of the shipping department, and Dye also pointed out that the men at the plant came within the Class B exception. About May 17, Gaughenbaugh approached Joseph O'Neil in the storeroom and urged him to join the Brotherhood. At this time he approached all the employees in this department on the subject.

The record is replete with similar instances where foremen, unsolicited, approached employees at their work in the plant, urged them to sign Brotherhood application cards, and frequently threatened the loss of employment if they failed to do so. Foreman Shimco approached Stanley Bakowski, in the rubber mill, on or about May 25, gave him a Brotherhood application card from a number he had in his hand, and urged him to join the Brotherhood because it would help the respondent in selling its product. Foreman Campbell told Hector Santarelli, in the winder department, about the middle of May, that if he joined the Brotherhood he would get work, but if he did not he would be among the first to be laid off, because he had recently been hired. Campbell gave him a Brotherhood application card, and told him to sign it and bring it back with a dollar.

Stephen J. Smith was approached on May 15 by Koenig, his foreman, who asked whether he had joined any union and advised him to join the Brotherhood because the respondent could then "sell" its "label." The next day Koenig repeated his question and made a similar argument for the Brotherhood. He stated that several carloads of pipe shipped by the respondent had been returned on account of the label difficulty. Smith later inquired about this of the shipping foreman, who told him that the only cars returned were empties to be reloaded.<sup>14</sup> The following week, Koenig returned and repeatedly asked him about signing up, paying his dollar, etc. Smith finally capitulated and gave Koenig a dollar. Koenig told him that "Stella" would be around later to give him a receipt. The receipt was dated May 22. Thereupon, Koenig told him that he, Smith, was a "delegate" to a Brotherhood meeting on May 23. This was the first he had heard of his appointment, and Koenig did not tell him how it came about.

Still another significant conversation is related by Joseph Scalajko. Jack Peel, an assistant foreman, approached him on May 17, asked him to join the Brotherhood, and stated that he would bring him an application card. When Peel returned with the card Scalajko refused to sign it. That night he joined the United. The next day Peel again spoke to him about the Brotherhood, and Harry Winslow,

<sup>14</sup>The respondent's witnesses declared that the alleged "resistance" to the sale of its product by Brotherhood members engaged in its installation, because of absence of the Brotherhood label, had been generally known to the managerial personnel for many years back, that it first became "serious" in April of 1936, and that "more or less difficulty" in that regard had been experienced since. The pipe incident described in the text is worthy of consideration in evaluating the bona fides of the reiterated statements concerning loss of sales by the respondent's supervisors to its employees during May 1937. Other circumstances, disclosed by the record—not conclusive, of course—are that notwithstanding the alleged "sales resistance", the respondent's period of peak employment during the last two or three years came in March of 1937, requiring the hiring of additional workers; and that subsequent to the making of the agreement on May 27, 1937, the respondent's business has diminished, requiring the laying off of about 200 workers. In the final analysis, as Bennett testified, the sales resistance was merely "a factor" in the recognition of the Brotherhood. See Part III, D, 1, *supra*.

a foreman, told him he would have to join one or the other union, "just to get order" among the men. Scalajko informed him he had joined the United. On the 19th, Peel remarked that his joining the United was his personal affair. On the 20th, however, when he was given his pay slip by Winslow, the latter told him he did not have to belong to the United and that he should not go to meetings or pay any more money.

Patsy Falloretta had a similar experience in the rubber mill between May 15 and June 1. His night foreman, Bill Timco, approached him, gave him a Brotherhood application card from a number he held in his hand, and said in substance, "here is a card you should sign." Falloretta replied that he had already signed up with the United. Timco told him he could drop out of the United and that if he stayed in it there would be less work later on.

About May 15, Foreman John Losco spoke to Alexander Kolakowski and his helper in the plant about the Brotherhood and the United, and told them to join the Brotherhood "if you knew what is good for you." On May 24, Superintendent Hoffman came to Kolakowski, told him the respondent had signed a closed shop agreement with the Brotherhood, and said he would have to join the Brotherhood in 21 days "or else". This statement, it should be noted, preceded the actual date of signing the May 27 agreement.

Madeline McStay, who fed a hand press in the storeroom, testified to the following significant incident. She ran off two forms of a notice of a Brotherhood meeting called for May 26th,<sup>15</sup> although well knowing the respondent's rule against running off non-company matters on company time.<sup>16</sup> According to her reluctant testimony, given under subpoena, she found the type all set up in her printing press case, and did not know who put it there. Superintendent Gaughenbaugh was present when she found the type, knew its purport when she put it in the press, and was present during most of the 15 minutes required to run it off. When the job was completed, she testified, Gaughenbaugh told her not to tell anyone she had done the printing, and took the notices away with him.

<sup>15</sup> The notices read as follows (Bd. Exhs. 28, 29) :

*ATTENTION*  
MEMBERS OF LOCAL UNION B-1073,  
INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
A MEETING WILL BE HELD WEDNESDAY EVENING AT 8 P. M  
MAY 26, 1937  
ONLY MEMBERS ADMITTED . . . BRING YOUR RECEIPT  
POLISH FALCON'S HALL  
529—8th Street

<sup>16</sup> There is another instance of the relaxation of company rules incident to the respondent's activities in the Brotherhood's behalf. Notwithstanding a strict rule against smoking in the plant, night superintendent Kreva made no objection to smoking by a group of employees in the basement lavatory sometime during this period, while he discussed the Brotherhood with them.

The foregoing is established by an overwhelming mass of testimony given by numerous employees, and stands almost wholly unrefuted. The respondent did not call to the stand superintendent Gaughenbaugh, foremen Saunders, Peel, Campbell, Winslow, Koenig, or any of the others mentioned by the employees. The only testimony presented on this question was by superintendents Mawhinney and Schermerhorn, who made denial of certain testimony, upon which we have not relied in arriving at our findings, concerning conversations prior and subsequent to May 27. The conclusion is inescapable that the respondent actively participated in the enlistment of the Brotherhood's membership through the means above described, thereby assisting the Brotherhood by interfering with, restraining, and coercing its employees with respect to their self-organization and choice of representatives.

### 3. The Brotherhood's numerical strength

Apart from the testimony as to duplication of membership in the Brotherhood and the United, to an unknown amount, and the evidence just described of enlistment of Brotherhood membership through the participation of the respondent's officials, the record contains no evidence as to the exact or even approximate numerical strength of the Brotherhood's membership. At the hearing the respondent's counsel several times stated he would put in evidence the membership cards of the Brotherhood, but failed to do so. In fact, at his request, when it appeared that the Brotherhood organizer who had custody of the records would not testify voluntarily at his call, the respondent's counsel requested, and the Trial Examiner issued, a subpoena duces tecum for his attendance and his records; but counsel never called him to the stand. The Board does not compel labor organizations to disclose confidential records, as the Trial Examiner clearly pointed out. But it remains that not a scintilla of evidence was adduced, not even an assertion in testimony by a responsible official in custody of the Brotherhood's records, that the Brotherhood had achieved majority representation on May 27.

It is extremely pertinent to inquire what demonstration of numerical strength, made by the Brotherhood to the respondent, impelled it, against its desires, as it professed, to enter into the May 27 agreement with the Brotherhood at a time when the United was claiming to represent a majority and requesting a conference for collective bargaining. The admitted facts on this question are astonishing indeed. In substance, while the Brotherhood officials, beginning May 12, asserted they represented "more than a majority", they never submitted any proof whatever and the respondent asked

for none. Bennett testified as follows concerning his discussions with A. L. Wegener, the Brotherhood official:

Q. (by Mr. Gordon). Did you ask him to prove it?

A. No.

Q. You didn't?

A. How could I.

Q. Why, very easily, by asking him to submit a list of his membership.

A. What would that prove?

Q. Well, I will ask you. You don't think that proves anything?

A. Not a thing. They could bring me a list of cards signed up.

Q. And as I understand it, if a union came to you with every member in your plant signed, having signed cards, you would still say that is no proof of membership, is that right?

A. That is right.

\* \* \* \* \*

Q. Well, let me ask you how would you decide whether any union had a majority of the employes?

A. In my faith in the organization, my belief in the individual that I talked to, my contact with him just the same as I would with a customer or a citizen or you or anybody that comes to me.

Q. Mr. Bennett, is that the way you decided whether the IBEW had a majority of your employees in its membership?

A. I said that they had a majority because they told me that they had more than a majority.

Q. And you didn't think—

A. And I believed him.

Q. And you didn't think it was necessary to ask them to show any proof of that fact?

A. *They couldn't show me proof* [italics supplied].

Q. They couldn't show you proof?

\* \* \* \* \*

A. No.

At another point Bennett testified:

Q. (By Mr. Gordon). Did Mr. Robinson question the representation of the IBEW at the meeting on the 22nd?

A. I think he made reasonable sure that he was dealing with men who were truthful.

Q. How did he make reasonably sure?

A. In discussing it.

Q. Why? How did you discuss it?

A. In every way.

\* \* \* \* \*

Q. Well, tell me specifically one way in which you discussed the question of representation?

A. I asked him if they actually had this membership.

Q. And what did he say?

A. They said they had.

Q. And that was sufficient proof for you?

A. Yes.

Q. Is that right?

A. Yes, that is one—

Q. Tell me another specific way in which you discussed it?

A. Well, now, we discussed—

Q. You said you discussed it in every way.

A. We discussed it for perhaps half, three-quarters of an hour.

Q. So far you have only told me one thing.

A. And I don't remember.

The following testimony by Bennett sums up the situation admirably:

Q. You were negotiating from March 15 on for a contract, even though you never even knew that there was one employee of your plants signed up with the IBEW?

A. Yes.

Although, according to Bennett, the respondent was "fairly familiar" with conditions in the plant, and with union organization therein, it had no knowledge that the Brotherhood had any membership in the plant either in March, April, or as late as the 15th of May. And while the respondent agreed in writing on May 22 to recognize the Brotherhood Local No. 1073-B as the exclusive bargaining representative of its employees, *the Local itself was not organized until its first meeting on the 23rd of May, at which time its officers were selected.* The testimony of the respondent's witness, Wayne Irion, a former employee representative under the defunct employee representation plan, shows that the organization of employees in the Brotherhood did not begin until the first or second week in May. As late as May 10th, when Irion joined the Brotherhood, no membership application cards were available, and he was given another form of receipt instead. There are no instances in the record of any individual having joined the Brotherhood at an earlier date. The members of the Brotherhood Local's advisory board, or negotiating committee, whose signatures appear on the May 27 agreement, were not selected, according to Irion, a member thereof, until "around the 28th" of May.

The foregoing takes on added significance when viewed in the light of the organization drive by the United, and the respondent's opposition to it. When a Brotherhood official first called Bennett on the telephone, and asked for a meeting, he was met the next day by three vice presidents of the respondent, A. C. Robinson, W. C. Robinson, Jr., and Bennett. The various conferences with the Brotherhood were generally arranged by telephone; Mr. Bennett did not think any written request was "necessary". If any union called, said it had a majority, and asked for a conference, "that was sufficient," he testified. Yet when De Maio, for the United, telephoned Lamont for a conference and stated he represented a majority, he was required to write a letter and thereafter was ignored. Bennett thought it "very important" that De Maio had contacted Lamont on the 21st; and realized the possibility that the rivalry between the United, the Brotherhood, and the employee representation plan might give rise to a situation where none had a majority. And when De Maio's letter first reached Bennett, on the 24th as he claims, he thought it "was bad business", and was important enough to call to the attention of W. C. Robinson, the respondent's president, who said he would talk to Lamont. Bennett testified he made no further inquiry about the matter, and on the 26th entered into negotiations which resulted in the May 27 agreement with the Brotherhood.

We cannot credit the respondent's assertion that it had no particular knowledge of the strong sustained membership drive by the United, in view of Mallinger's early activity at the plant gates, Cenonico's contact with Wanamaker and Lamont in September 1936, and the respondent's stenographic transcripts of the United's meetings outside the plant gates. In fact, Superintendent Schermerhorn testified that "everybody knew" a United organizing campaign was in progress among the employees during April and May. Nor can we believe that Lamont, who promptly discussed with W. C. Robinson De Maio's telephone call of May 20, did not as promptly make known to him or Bennett the substance of De Maio's far more important call on the morning of the 21st, particularly since, as Bennett testified, the respondent's high officials were discussing the Brotherhood's demands for a conference during this period between May 19 to May 21, and Bennett, the evening of the 21st, arranged a conference with the Brotherhood's officials for the 22nd. Lamont, Bennett testified, is the "go-between" in the respondent's dealings with its employees and "it is up to him to report anything to the management."

Notwithstanding all this, Bennett made no effort to ascertain, from any of his employees or otherwise, whether the claim of the United to a majority representation was correct, and did not ask the

United to prove its claim. When he was asked whether he did not think the making of such inquiries was important, he replied, "*No, we thought it was important that we shouldn't.*" The respondent believed it should keep clear of the rivalry between the contending organizations, Bennett asserted, even to the point of refraining from questioning them about their membership. If that is so, the respondent's recognition of the Brotherhood without any demonstration of its numerical strength was the plainest act of favoritism, having the effect, and we think the intended effect, of assisting it in its membership drive. After the agreement was made, as superintendent Schermerhorn told his employees, "if the A. F. of L. Union is good enough for the Company, its good enough for . . . you fellows."

The respondent's professions of complete detachment so far as the membership drives were concerned, and the picture it paints of its course of negotiation with the Brotherhood and its reluctant capitulation to the demand for a closed shop, are entirely negatived by the overwhelming evidence, detailed above, that the respondent threw all its weight into the balance in favor of the Brotherhood during the membership campaign in May. The disparity between the respondent's story and the true facts casts great suspicion on the motives behind the alleged sudden and reluctant capitulation to the Brotherhood on May 22 and May 27. Particularly significant are the facts that the respondent suddenly capitulated; and on its own motion arranged a conference with the Brotherhood the evening of the very day De Maio telephoned Lamont asserting his majority claim and requesting a conference, and that the very next day it recognized the Brotherhood as exclusive representative without any showing or knowledge of any membership in the plant and before the Brotherhood Local had even been organized.

The conclusion is clear that the respondent was endeavoring to head-off the United, which claimed to have membership applications signed by a majority of the employees, by hastily and prematurely contracting with the Brotherhood. Upon the entire record, it is at least a reasonable inference that the Brotherhood did not represent a numerical majority when the May 22 and May 27 agreements were made, and that the respondent knew this at the time.

#### 4. Conclusions as to the respondent's relations with the Brotherhood

We conclude that the repeated threats by the respondent to carry out the May 27 agreement with the Brotherhood amount to a threatened, wholesale violation of Section 8 (3) of the Act: Such conduct would constitute encouragement of membership in the Brotherhood by discrimination in regard to the hire and tenure of employment and in the terms and conditions of employment. The agreement does

not come within the proviso to subsection (3), since the Brotherhood did not represent a majority of the employees in the appropriate unit when the contract was made, and since in any event the Brotherhood's membership to a substantial extent was enlisted with the assistance of the respondent, through interference with, restraint, and coercion of its employees.

What is presented here is a situation of rivalry between two outside organizations for the allegiance of the great mass of a company's employees. For the employer to dictate the choice of representatives by his employees under such circumstances would be to destroy the self-organization and freedom of selection which the Act requires. The choice of representatives is for the employees alone to make, free from the assistance, interference, restraint, or coercion exercised by an employer.

The respondent did not permit its employees freely to make their own choice, as the law of the land requires. It proceeded on the theory, as expressed by one of its superintendents, that if the Brotherhood "is good enough for the Company, then it ought to be good enough" for the employees. It exercised its power and authority to throw its weight into the balance in favor of the Brotherhood and against the United. It carried this to the point of making an agreement with the Brotherhood, at a time when it well knew the Brotherhood did not represent the free choice of a majority of its employees, to require them to join it as a condition of employment or have deducted from their wages sums of money equal to Brotherhood dues. The respondent will be ordered to cease and desist from such conduct and to disavow the agreement. In this way, conditions will be established for the exercise of an unfettered choice by the employees concerned in the secret ballot we are directing to be held. (Part IV, *infra*.)

#### E. *The Brotherhood as a party*

The respondent contends that this entire proceeding should be dismissed because, it argues, the Brotherhood is an indispensable party and has not been joined by the Board. The argument is apparently directed to the representation case as well as to the complaint case, which were here consolidated.

A representation proceeding is not a contested proceeding between parties in the traditional sense, but simply a convenient method for bringing into a hearing all persons or labor organizations claiming to represent any of the employees concerned, in order that the Board may resolve the question concerning representation which has arisen. The Board's Rules and Regulations (Art. III, Section 3), provide that when the Board directs that an investigation of representatives be instituted, a notice of hearing before a Trial Examiner and a copy

of the petition shall be served by the Regional Director "upon the employer or employers involved and upon any known individuals or labor organizations purporting to act as representative of any employees affected by such investigation (all of whom are hereinafter referred to as 'the parties to the proceeding') \* \* \*." The Brotherhood was so served (Bd. Exh. 2), and thus was expressly recognized as a "party" to the representation proceeding.

Nor does the Brotherhood's failure to appear nullify the complaint proceeding. As with other complaints under the established procedure of the statute, the instant complaint is not directed against the Brotherhood but against the respondent, and the respondent alone is called upon to answer for violation of the Act. The Brotherhood was duly served with copies of the charge, complaint, and notice of hearing (Bd. Exh. 1). Its interests at the hearing, if any, could have been protected by a petition to intervene, under Article II, Section 19 of the Board's regulations and Section 10 (b) of the Act. The respondent cannot be heard to complain that the Brotherhood did not avail itself of that opportunity.

#### *F. The District Court decree*

We have finally to consider the effect of a decree of the United States District Court for the Western District of Pennsylvania made in a suit by the Brotherhood against the respondent and requiring it specifically to perform its May 27 agreement with the Brotherhood. Certified copies of the papers in this proceeding were offered as exhibits by the respondent's counsel, who did not assert the papers had any relevance or force in this proceeding, but simply declared it was for the Trial Examiner and the Board to consider and decide "what, if any, weight" is to be given them.<sup>17</sup> The Trial Examiner rejected the offer. We think that the Trial Examiner should have permitted these papers to be introduced in evidence, without passing on their precise relevance or legal force, and the Trial Examiner's action in this regard is therefore overruled. Counsel for the respondent made an offer of proof sufficient for us to consider the matter; in any event we may take judicial notice of the proceedings in the District Court.

The bill of complaint was filed by the Brotherhood two or three days prior to July 20, the date of service of the Board's complaint herein, but subsequent to May 28, the date of filing of the charge herein. The bill alleges the organization of the Brotherhood and of the respondent, the execution of the contract, and the failure of the respondent to comply therewith. It alleges that the Brotherhood will

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<sup>17</sup> Respondent does not set up any defense in this regard in its answer herein. The answer was filed prior to the Court's decree but subsequent to the filing of the bill.

suffer irrevocable damage for which there is no remedy at law and prays for a specific performance of the contract. The respondent's answer to the bill admits virtually all of its allegations, including respondent's failure to perform, but attempts to excuse this on the ground that a violent strike occurred at its plant soon after the execution of the contract and that it was able to reopen only on condition that it would permit all the employees to return to work without discrimination. The District Court granted the Brotherhood's motion to strike out the answer as insufficient in law. Whereupon the respondent declined to interpose any further defense or to amend its answer. The court entered a decree for specific performance on July 29, 1937.

At the outset, a question arises as to the intendment of the decree. The provision of the agreement set forth in Paragraph Fifth of the bill of complaint<sup>18</sup> and referred to by reference in the decree,<sup>19</sup> does not include the clause providing that "in the event of failure of employee to join the Union" within the 21-day period, the respondent "will deduct from such employee's wage the Union dues for each calendar month . . . which such employee would pay if he or she had become a member of the Union", and send such sums to the Brotherhood.<sup>20</sup> This additional clause is embodied, however, in the true and exact copy of the contract attached to the bill. The respondent made no reliance on this clause in its answer to the bill. While the respondent is undoubtedly in violation of this clause as well as the one set forth and relied upon in the bill, it is a question whether the decree intended that the respondent shall carry out the

<sup>18</sup> "Fifth: That ever since the consummation, filing and execution of said Contract by the Complainants and the Defendant Corporation, on the twenty-seventh day of May, 1937, aforesaid, the Defendant Corporation wrongfully and unlawfully, has been violating and has continued to violate its said Contract, by continuously failing to perform and carry out its covenant and agreement with the Plaintiffs embraced in the following paragraph of said Contract, to-wit:

"The Employer hereby agrees to recognize the Union as the sole bargaining agent on wages, hours and conditions of employment for employees covered by this agreement, and further agrees to employ only members of the Union or those who have made proper arrangements for becoming members within twenty-one days after being employed."

"That the Defendant Corporation in wrongful and unlawful contravention and violation of the above-recited covenant in said third paragraph of said Contract has continuously employed in its plant and industry at Ambridge, Beaver County, Pennsylvania, aforesaid, employees who are not, and have not been 'members of the Union (namely, International Brotherhood of Electrical Workers, Local Union B. No 1073) or those who have made proper arrangements for becoming members within twenty-one days after being employed' "

<sup>20</sup> "That the Agreement mentioned and described in the fifth paragraph of the Bill of Complaint shall be specifically performed and carried out by the defendant, and particularly with respect to its covenant in said Agreement recited and set forth in said fifth paragraph of said Bill, and that the rights of the plaintiffs', as provided for by the terms and provisions of said covenant, so recited as aforesaid, of said Agreement shall be effectuated and secured to the plaintiffs by the specific performance by the defendant corporation of said Agreement and particularly said Covenant thereof, in accordance with the said terms and provisions of said covenant."

<sup>20</sup> Bd Exh. 19, quoted in Part III, D, *supra*.

latter without regard to the apparent alternative presented in the former; that is, whether the decree absolutely requires the respondent to discharge any employee who does not join the Brotherhood within the stipulated period. However, since the respondent's performance of the contract provision, on either alternative, would be a violation of the National Labor Relations Act (Part III, D, *supra*), we pass by the question of construction of the decree and address ourselves to its force and effect, however construed.

This decree is no bar to the instant proceeding under the National Labor Relations Act or to the making of an order by the Board, under the terms of that Act, that the respondent shall cease and desist from discriminating against the employees because they decline to join or pay dues to the Brotherhood. As stated above, such discrimination by the respondent, pursuant to the May 27 contract with the Brotherhood or otherwise, is a patent violation of the terms of the Act, not only because the Brotherhood did not represent a majority at the time the contract was executed, but also because its membership was procured to a considerable extent at least by the active assistance, interference, and coercion of the respondent and consequently was not enlisted through that freedom of choice which the Act guarantees to employees. The District Court action was a suit between private parties in which neither of these issues under the Act was set up in the pleadings or considered or decided by the Court.

This Act embodies a public policy of national concern and is the supreme law of the land on the subject matter covered by it. It empowers the Board to prevent any unfair labor practice affecting commerce and expressly provides that "this power shall be exclusive . . ." (Section 10 (a)). Review of the Board's orders is vested in the appropriate Circuit Court of Appeals; the Act expressly declares that the jurisdiction of that Court "shall be exclusive, and its judgment and decree shall be final," subject only to review by the Supreme Court of the United States by certiorari or certification (Section 10 (e), 10 (f)). In describing the purport of the statute in this regard, the Senate Committee on Education and Labor stated in its report<sup>21</sup> on the bill:

Section 10 (a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matters. Thus it is intended to dispel the con-

<sup>21</sup> Sen. Report No. 573, 74th Congress, 1st Session, p. 15.

fusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining.

It involves no departure from the established law on the conclusiveness of judgments to hold that the respondent may not avoid its plain obligation under the terms of the Act and nullify completely the rights of employees guaranteed by Congress through reliance on a decree made in a private suit to which the Board was not a party and in which the very validity of the agreement under this Act was not even raised. And in view of the exclusiveness of the procedure under this Act, it may be doubted that the District Court would have jurisdiction conclusively to determine questions arising thereunder even if they were properly raised before it. We hold that the decree in question cannot foreclose the Board's consideration of the validity of the May 27 contract under the Act or the making of an order invalidating it, on the basis of the findings of fact hereinabove set forth.

*G. Conclusions respecting the unfair labor practices*

We conclude that:

John Cenonico ceased work as the result of an unfair labor practice by the respondent, has not obtained any other regular and substantially equivalent employment, and is now and has been all through the occurrences of this case, an employee of the respondent. The respondent discriminated against its employees in regard to the hire and tenure of employment, thereby discouraging membership in the United. The respondent exercised surveillance over the meetings and meeting places of the United.

The respondent urged, persuaded, and warned its employees to refrain from joining or remaining members of the United and to become members of the Brotherhood, and threatened them with discharge if they did not comply. The respondent recognized the Brotherhood as exclusive representative of its employees at a time when it had not, to the respondent's knowledge, been designated as the free choice of a majority of its employees in the appropriate unit, and when the United had asserted to the respondent that it represented a majority and had requested a conference for the purposes of collective bargaining. By these acts the respondent assisted the Brotherhood. By threatening to put into effect its agreement with the Brotherhood requiring its employees to join the Brotherhood or have deducted from their wages sums of money equivalent to current Brotherhood dues, the respondent is threatening to discriminate in the hire and tenure of employment and the terms and

conditions of employment, thereby encouraging membership in the Brotherhood and discouraging membership in the United.

The respondent, by all the acts above set forth, has interfered with, restrained, and coerced 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 or other mutual aid or protection, as guaranteed in Section 7 of the Act.

The employees who went on strike on June 1, 1937, ceased work as a consequence of or in connection with a current labor dispute and because of unfair labor practices.

#### H. *The respondent's objection to the conduct of the hearing*

William A. Wilson, Esquire, counsel for the respondent, after adverting the testimony of five witnesses in the respondent's behalf, withdrew from the hearing on the morning of August 7th, and made an extensive statement on the record declaring he did so "solely on the ground of the unfairness of the examination of the witnesses called so far."

This statement is without foundation. It was an obvious appeal to passion and prejudice of the sort which has often been rebuked by the courts when resorted to by lawyers in jury trials where the evidence is strong against their clients. There is not a word in the record of this long hearing to justify in the slightest degree counsel's outburst.

The record shows that the conduct of the government's trial attorney amounted to no more than a vigorous and persistent effort to bring out the relevant facts. His cross examination of the respondent's witnesses was no more severe than may be observed any day at a court house where able counsel are opposing each other in jury trials. The imputation of impropriety to the Trial Examiner because he asked questions of the witnesses is likewise unfounded. It is not the proper function of a judge or other presiding officer at a trial to sit dumbly and leave the questioning of the witnesses solely to the lawyers, regardless of whether they succeed in bringing out the truth. Counsel must have known that this conception of a trial is outmoded and disreputable and nowhere more so than in the jurisdiction where he practices in the courts. The Trial Examiner cannot be criticized because he elicited the truth from reluctant witnesses.

The procedural provisions of the statute follow those laid down long since in the Federal Trade Commission Act, and have been upheld by the Supreme Court of the United States. In *National*

*Labor Relations Board v. Jones & Laughlin Steel Corporation*, decided April 12, 1937, Chief Justice Hughes stated:

The procedural provisions of the Act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation.

We find that the trial of this case was conducted in accordance with the requirements of the statute and affords no basis for the claims of impropriety made by counsel for the respondent.

#### IV. THE REPRESENTATION PROCEEDING

##### A. *The question concerning representation*

On the basis of the facts stated in Section III above, we find that a question concerning the representation of the respondent's employees in the appropriate unit has arisen, and that an election to determine such representation is appropriate.

##### B. *Conduct of the election*

The record shows that the number of the respondent's employees in the appropriate unit was 1612 on May 21, 1937; 1650, on May 26 and 27; and 1420, from July 31 to the date of the hearing. The extensive lay-offs since May, shown by these figures, make it undesirable to base eligibility to participate in the election on any date later than that month. There is nothing to show that the men laid off do not have reason to anticipate returning to work when the respondent's operations are increased. Moreover, the issues in this case were brought to a head by the events of May 21 to 27. The Board should consider the situation which existed on those dates in

determining those issues. We will direct that all employees on the respondent's pay roll on May 21, 1937, shall be eligible to vote in the election.

V. RELATION OF THE UNFAIR LABOR PRACTICES AND THE QUESTION CONCERNING REPRESENTATION TO COMMERCE

The activities of the respondent set forth in Part III above, and the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Part I, 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 thereof.

CONCLUSIONS OF LAW

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

1. United Electrical and Radio Workers of America, Local No. 609, and International Brotherhood of Electrical Workers, Local No. 1073-B, are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

2. The strike of the employees of the respondent on June 1, 1937, was a labor dispute within the meaning of Section 2, subdivision (9) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of John Cenonico, has engaged in and is engaging in an unfair labor practice, within the meaning of Section 8, subdivision (3) of the Act. By threatening to put into effect its agreement with the Brotherhood requiring its employees to join the Brotherhood or have deducted from their wages sums of money equivalent to current Brotherhood dues, the respondent is threatening to discriminate in the hire and tenure of employment and the terms and conditions of employment, and to encourage membership in the Brotherhood and discourage membership in the United, and is thereby threatening to engage in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

4. The respondent, by urging, persuading, and warning its employees to join the Brotherhood and to refrain from joining the United, and by threatening them with discharge if they failed to comply; by recognizing the Brotherhood as the exclusive representative of its employees at a time when the Brotherhood, to the knowledge of the respondent, did not represent the free choice of a majority of its employees in the appropriate unit and when the United had asserted to the respondent that it represented a majority and had requested

a conference for purposes of collective bargaining; by exercising surveillance over the meetings and meeting places of the United; and by the other acts set forth in paragraph 3 above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed<sup>2</sup> in Section 7 of the Act, and has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) thereof.

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

6. The respondent has not engaged in unfair labor practices within the meaning of Section 8, subdivisions (2) and (5) of the Act.

7. All the employees of the respondent at its Ambridge plant, exclusive of clerical and office help, production clerks, time study men, supervisory employees, watchmen, and maintenance men, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

8. A question affecting commerce has arisen concerning the representation of the employees of the respondent in the foregoing unit, within the meaning of Section 9 (c) and Section 2, subdivisions (6) and (7) of the Act.

### ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, National Electric Products Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Discouraging membership in the United Electrical and Radio Workers of America, Local No. 609, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire and tenure of employment or any term or condition of employment because of membership or activity in connection with any such labor organization;

b. Encouraging membership in the International Brotherhood of Electrical Workers, Local No. 1073-B, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire and tenure of employment or any term or condition of employment because of non-membership therein, either through the performance of the contract made on May 27, 1937, with the International Brotherhood of Electrical Workers, Local No. 1073-B, or by any other means;

c. Urging, persuading, warning, or coercing its employees to refrain from joining, or continuing their membership in, or otherwise assisting the United Electrical and Radio Workers of America, Local No. 609, or any other labor organization of its employees, or threatening them with discharge if they join, or continue such membership or activity in, any such labor organization;

d. Maintaining surveillance over the meetings and meeting places of the United Electrical and Radio Workers of America, Local No. 609, or any other labor organization of its employees;

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

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

a. Offer to John Cenonico immediate and full reinstatement to his former position without prejudice to his seniority and other rights or privileges;

b. Make whole John Cenonico for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge on September 28, 1936, to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notices to its employees in conspicuous places throughout the Ambridge plant stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that in order to secure or continue his employment in the plant, a person need not become or remain a member of the International Brotherhood of Electrical Workers, Local No. 1073-B or have deducted from his wages sums of money equal to the current dues therein; (3) that the respondent's contract with the International Brotherhood of Electrical Workers, Local No. 1073-B, dated May 27, 1937, is void and of no effect; (4) that the respondent will not discharge, or in any manner discriminate against members of the United Electrical and Radio Workers of America, Local No. 609, or any person assisting said organization, by reason of such membership or assistance; (5) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

3. The complaint as to the respondent's violation of Section 8 (5) of the Act is hereby dismissed without prejudice.

4. The complaint as to the respondent's violation of Section 8 (2) of the Act is hereby dismissed.

## DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with National Electric Products Corporation, an election by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Acting Regional Director for the Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the employees of the said Corporation at its Ambridge plant whose names appear on the pay roll of the Corporation for the date of May 21, 1937, exclusive of clerical and office help, production clerks, time-study men, supervisory employees, watchmen, and maintenance men, to determine whether they desire to be represented by United Electrical and Radio Workers of America, Local No. 609, affiliated with the Committee for Industrial Organization, or International Brotherhood of Electrical Workers, Local 1073-B, affiliated with the American Federation of Labor, for the purpose of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision, Order, and Direction of Election.

[SAME TITLE]

## AMENDMENT TO DECISION

(Case No. R-241)

September 2, 1937

The National Labor Relations Board, having issued a decision in the above-entitled case on August 30, 1937, and it appearing that said decision should be amended, the Board hereby amends the same by striking out the last sentence of Part IV, B (*supra*, p. 506), and substituting therefor the following: "We will direct that all employees of the respondent in the appropriate unit on May 21, 1937, shall be eligible to vote in the election."

## AMENDED DIRECTION OF ELECTION

The Board having issued a decision on August 30, 1937, finding that a question affecting commerce had arisen concerning the representation of employees of National Electric Products Corporation, Pittsburgh, Pennsylvania, within the meaning of Section 9 (c) of the National Labor Relations Act, and having directed that an election by secret ballot should be conducted; and the Board having this day amended the said decision, it hereby amends the said direction of election to read as follows:

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with National Electric Products Corporation, an election by secret ballot shall be conducted within 15 days from the date of this Direction, under the direction and supervision of the Acting Regional Director for the Sixth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9 of said Rules and Regulations, among the employees of the said Corporation at its Ambridge plant on May 21, 1937, exclusive of clerical and office help, production clerks, time-study men, supervisory employees, watchmen, and maintenance men, to determine whether they desire to be represented by United Electrical and Radio Workers of America, Local No. 609, affiliated with the Committee for Industrial Organization, or International Brotherhood of Electrical Workers, Local 1073-B, affiliated with the American Federation of Labor, for the purpose of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Amendment to Decision and Amended Direction of Election.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

(Case No. R-241)

October 18, 1937

On June 14, 1937, United Electrical Workers of America, Local No. 609, herein called the United, filed with the Acting Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of National Electric Products

Corporation, Pittsburgh, Pennsylvania, herein called the Company. The petition requested an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Thereafter, the National Labor Relations Board, herein called the Board, acting pursuant to Article II, Section 37 (b) of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the case be consolidated with another case which had been commenced on May 28, 1937, by a charge filed by the United with the Acting Regional Director, alleging certain unfair labor practices on the part of the Company.<sup>1</sup>

Pursuant to notice duly served upon the Company, the United, and the International Brotherhood of Electrical Workers, Local No. 1073-B, herein called the Brotherhood, a labor organization named in the petition as claiming to represent employees of the Company, a joint hearing in the two proceedings was held in Pittsburgh, Pennsylvania, on August 2 through August 7, 1937, before Walter R. Ringer, the Trial Examiner duly designated by the Board. On August 30, 1937, the Board issued a Decision in the two cases and a Direction of Election. The Direction of Election provided that an election by secret ballot be held among the employees of the Company, exclusive of clerical and office help, production clerks, time-study men, supervisory employees, watchmen, and maintenance men, to determine whether they desired to be represented by the United or the Brotherhood for the purposes of collective bargaining.

Pursuant to the Direction, balloting was conducted on September 10, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges. On September 21, 1937, the Acting Regional Director issued and duly served upon the parties his Intermediate Report on the secret ballot. No objection with respect to the conduct of the ballot or to the Intermediate Report was filed, and the Acting Regional Director forwarded the Intermediate Report to the Board in Washington, D. C.

As to the results of the secret ballot, the Acting Regional Director reported the following:

Total ballots cast.....	1,615
Total number of blank ballots.....	3
Total number of void ballots.....	2
Total number of challenged ballots.....	155
Total number of ballots cast for the United.....	875
Total number of ballots cast for the Brotherhood.....	780

With respect to the 155 challenged ballots mentioned above, the Intermediate Report stated,

<sup>1</sup> Case No. C-219.

During the conduct of said secret ballot, the undersigned, upon challenge or otherwise, made the following ruling. . . .:

"1. That all of the challenged ballots would be submitted unopened to the National Labor Relations Board at Washington, D. C., for its decision as to the action to be taken with reference to them."

The challenged ballots were sent in sealed envelopes to the Board.

After the Intermediate Report had been transmitted to the Board, the United waived all of the challenges made by it during the conduct of the elections. Examination of the envelopes in which the challenged ballots were sealed showed that 148 ballots were challenged by representatives of the United, and five by representatives of the Brotherhood. Two of the sealed envelopes did not show by what party challenge had been made. The Board has counted the 148 ballots challenged by the United and finds that 138 were cast for the Brotherhood and ten were cast for the United.

The results of the secret ballot, on the basis of the count made by the Acting Regional Director and that made by the Board, are as follows:

Total ballots cast.....	1, 615
Total number of blank ballots.....	3
Total number of void ballots.....	2
Total number of challenged ballots.....	7
Total number of ballots cast for the United.....	685
Total number of ballots cast for the Brotherhood.....	918

Since the seven challenged ballots which have not been counted could not affect the result of the election, the Board will not consider the issues raised by them.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that International Brotherhood of Electrical Workers, Local No. 1073-B, has been designated and selected by a majority of the employees of National Electric Products Corporation, exclusive of clerical and office help, production clerks, time-study men, supervisory employees, watchmen, and maintenance men, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, International Brotherhood of Electrical Workers, Local No. 1073-B, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of work, and other conditions of employment.