

In the Matter of HIGHWAY TRAILER COMPANY and UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL NO. 135 AND LOCAL NO. 136

Case No. C-204.—Decided September 10, 1937

Automobile Industry—Company-Dominated Union: domination and interference with formation and administration; organization and domination by supervisory employees; soliciting and encouraging membership in; discrimination in favor of; check-off agreement with; agreement tantamount to closed shop agreement with; disestablished as agency for collective bargaining—*Interference, Restraint, or Coercion:* urging, persuading and warning employees to join company-dominated union, and threatening them with discharge for non-compliance; surveillance of meetings; recognition of one organization with knowledge that not free choice of majority, in spite of agreement to await result of election to be held by the Board—*Condition of Employment:* liability to discharge at will of company-dominated union for failure to join such union—*Discrimination:* non-reinstatement following strike; discharge for refusal to join company-dominated union—*Reinstatement Ordered—Back Pay:* awarded; in case of employees obtaining regular and substantially equivalent employment, only to date on which said employees obtained such employment.

Mr. Lawrence A. Knapp for the Board.

Jeffris, Mouat, Oestreich, Wood and Cunningham, by Mr. O. A. Oestreich and Mr. F. J. E. Wood, of Janesville, Wis., for the respondent.

Mr. Joseph Friedman, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

Upon charges duly filed by Local No. 135 and Local No. 136, United Automobile Workers of America, herein called Local No. 135 and Local No. 136, respectively, the National Labor Relations Board, herein called the Board, by Nathaniel S. Clark, Regional Director for the Twelfth Region (Milwaukee, Wisconsin), issued its complaint, dated March 7, 1936, against the Highway Trailer Company, Edgerton, Wisconsin, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint and an accompanying notice of a hearing to be held on March 19, 1936, were duly served on the respondent and

on Local No. 135 and Local No. 136. Thereafter the respondent filed an answer to the complaint. On March 18, 1936, the respondent sought to restrain further proceedings under the Act by filing a bill in equity with the District Court of the United States for the Eastern District of Wisconsin, praying for a temporary restraining order and a preliminary injunction. The former was granted by the Court on the same day without notice, and the latter shortly thereafter upon notice and hearing. Proceedings in the case under the Act were postponed until the District Court entered its decree on the mandate of the United States Circuit Court of Appeals for the Seventh Circuit, issued on February 2, 1937, directing the District Court to reverse its order and to dissolve the temporary injunction and dismiss the respondent's bill for want of equity.¹

On February 10, 1937, the respondent filed an answer, substantially similar in content to its answer previously filed on March 12, 1936, in which, in substance, it denied most of the allegations of the complaint, admitting, however, those concerning its incorporation and, in part, the allegations concerning the respondent and its business. It did not specifically deny the alleged discrimination against any of the persons named in the complaint because of membership in Local No. 135 or Local No. 136 or their predecessor unions, or refusal to join the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union, herein called the Edgerton Shop Union and the Stoughton Shop Union, respectively, but set forth affirmative allegations in justification of the respondent's action as to each person. The answer also contained averments that the Act was unconstitutional.

Pursuant to notice, a hearing was held on May 6, 7, 8, 10, 11, 12, and 13, 1937, at Janesville, Wisconsin, before John T. Lindsay, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all the parties. During the hearing a stipulation was entered into by counsel for the Board and counsel for the respondent whereby it was agreed that certain facts pertaining to the respondent and its business should be included in the record. The parties declined to avail themselves of the opportunity afforded for argument at the close of the hearing, but the respondent filed a brief with the Trial Examiner.

By order of the Board, dated August 5, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37 of the National Labor Relations Board Rules and Regulations—Series 1, as amended.

¹ The decision of the Circuit Court of Appeals appears in *Clark et al. v Lindemann and Hoverson Company, et al and four other cases*, 88 F. (2nd) 59 (C. C. A. 7th).

On the second day preceding the final day of the hearing, the testimony of John D. Erickson was introduced to prove a five weeks' discriminatory lay-off of Erickson, although the complaint contained no allegations concerning it. At approximately noon of the day preceding the final day of the hearing counsel for the respondent stated privately to counsel for the Board that he expected to be able to offer evidence in denial within 24 hours. On the morning of the last day of the hearing, the Trial Examiner, over the objection of counsel for the respondent, allowed the complaint to be amended to include allegations setting forth a five weeks' discriminatory lay-off of Erickson. The Trial Examiner made a ruling requiring counsel for the respondent to offer evidence in denial by three o'clock of the afternoon of the last day of the hearing, over the objection of counsel for the respondent that he had been unable to discuss the matter with his client and therefore did not deem himself authorized to defend Erickson's case. He offered no evidence in denial. The allegations in the amended complaint concerning Erickson will be dismissed, for the reason that the respondent was not allowed sufficient time in which to answer them.

The Board has reviewed all the other rulings made by the Trial Examiner during the course of the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent, Highway Trailer Company, is a Wisconsin corporation with its principal office and main plant at Edgerton, Wisconsin, and an additional plant at Stoughton, Wisconsin. It is licensed to transact business as a foreign corporation in five states. The respondent is engaged in the manufacture, assembly, sale, and distribution of various types of hauling, transportation, and other equipment, including automotive and truck commercial trailers, earth boring machines, winches, bodies, pole derricks, and self-loading scrapers.

The principal raw materials, parts, and supplies utilized by the respondent in the manufacture and assembly of its products are iron; steel; various iron and steel products, such as wheels, axles, rims, bearings, bolts, and screws; lumber; paint; and tires. The respondent's purchases of raw materials, parts, and supplies in 1936 aggregated in value approximately \$1,340,000. About 80 per cent of the raw materials, parts, and supplies purchased by the respondent come from states other than the State of Wisconsin.

All of its products are manufactured at its Wisconsin plants. Approximately 55 to 60 per cent of its sales are made through its Edgerton office and shipped to customers. Approximately 40 to 45 per cent of its sales are made through branch sales offices which it maintains in several large cities outside of Wisconsin, through the Martin Rocking Fifth Wheel and Trailer Company, a wholly-owned subsidiary situated in Westfield, Massachusetts, and through various dealers and distributors located in the leading cities of the country. More than 90 per cent of its products are shipped outside of the State of Wisconsin, principally by railway and motor transportation. In connection with its sales to purchasers in states outside of the State of Wisconsin, the respondent's mechanics and employees render service in the repair and alteration of its products. Approximately 40 per cent of the trailers sold require the installation of a "fifth wheel" on the towing vehicle, a device utilized to couple or connect trailers to the purchaser's truck or tractor. The installation is performed by the respondent outside of the State of Wisconsin when sales are made by its branch offices. The respondent's sales in 1936 were \$2,075,000. In 1936 the respondent employed on an average of 300 men at the Edgerton plant and 200 men at the Stoughton plant.

Purchases of materials, parts, and supplies are synchronized with the manufacture, assembly, sale, and distribution of finished products. Purchases are made on schedules of work in the plants, which work schedules are in turn based upon sales volume. The vendors of materials, parts, and supplies ship on the schedules so designed.

The respondent owns several trademarks, consisting in the arrangement in different forms of the words "Highway Trailer Company", and various patents issued under the laws of the United States, covering numerous features of its products, for its protection and use in interstate commerce.²

II. THE UNION

In March 1935, Federal Labor Union No. 19978 was organized and chartered to cover the employees at the Edgerton plant, and Federal Labor Union No. 19998 was organized and chartered to cover the employees at the Stoughton plant. On October 1, 1935, the Federal Unions relinquished their charters and at the same time new charters were issued to the respective organizations as Local

² All of the above facts concerning the respondent's business are taken from the stipulation which was introduced in evidence at the hearing. Board's Exhibit No. 27.

Compare the similar description of the trailer business in *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49 (1937), enforcing the order of the Board entered in *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*, Case No. C-2, 1 N. L. R. B. 68.

No. 135 and Local No. 136, of the United Automobile Workers of America.

III. THE UNFAIR LABOR PRACTICES

A. *The discharges—refusal to reinstate after settlement of strike, July 12, 1935*

1. Events prior to July 5, 1935

The story of the respondent's conduct toward labor organizations of its employees shortly before July 5, 1935, the effective date of the Act, lends continuity to, and focuses a ray of significance upon, the activities upon which the complaint is founded.³ Prior to the latter part of 1933, there seems to have been no labor organization of the respondent's employees in existence. Mounting dissatisfaction in 1933 with the respondent's hourly wage rate as compared with that of federal relief agencies culminated in a spontaneous strike at the Edgerton plant on December 11, 1933. The strike was settled two days later upon the respondent's acceptance of the hourly rate demanded by a committee representing the strikers. Thereafter, a substantial number of the respondent's employees, early in 1934, formed a Protective Association at both the Edgerton and Stoughton plants, herein called the Association. After the meeting for the election of officers, the Association did not convene for some time, because its president refused to call a meeting. C. Otto, the vice president, was persuaded to call a meeting, which he did. Shortly thereafter he was discharged for a mistake in his work. A committee was designated by the Association to confer with the respondent concerning Otto's reinstatement, but it failed to function for fear lest the respondent's displeasure result in their discharge, or as Norman Anderson testified, "they didn't want the same ride Otto got". During this period, at a farewell party given in honor of Fitch, who was leaving his position as superintendent at the Edgerton plant, Norman Anderson and Leon Jenson, both named in the complaint and both active members of the Association, were taken aside by Fitch and admonished of their precarious position. Fitch confided that he had had orders to discharge them, but that he had been unable to find a pretext.

Thus discouraged, the Association died within six months of its inception. The antagonism displayed by the respondent toward this employees' association, genuinely arising out of the desires of its employees, presents a meaningful contrast to the eager affection with which the respondent subsequently embraced the Edgerton and

³ *Matter of Clinton Cotton Mills and Local No 2182, United Textile Workers of America, Case No C-5, 1 N. L. R. B 97, 103.*

Stoughton Shop Unions, which the respondent is charged in the complaint with dominating and assisting.

In February 1935, Ed Hall, an organizer for the American Federation of Labor, began organizing the respondent's employees. Organization proceeded apace; and in the latter part of March 1935, the Federal Unions were chartered. In the latter part of April 1935, Ray Bullian, named in the complaint, and certain officers of the Union were discharged. Through the efforts of Dr. Scrimshaw, the official in charge of the enforcement of Section 7-A of the National Industrial Recovery Act in that region, a conference was arranged, as a result of which all the men except two were reinstated. Shortly thereafter, a union committee discussed the reinstatement of the two men with J. W. Menhall, president of the respondent. He appeared to adopt a favorable attitude, promising to do his utmost, but the men were never reinstated. Thereafter, the Federal Unions were unable to contact Menhall, until N. S. Clark, then examiner with the Milwaukee Regional Labor Board of the old National Labor Relations Board, arranged a conference in the latter part of June 1935. At this conference, wages and hours, as well as the reinstatement cases, were discussed. Menhall, now distinctly antagonistic, was adamant in refusing to make a concession on any point, even upon threat of a strike. Thereupon, at a general meeting held on Friday, June 28, 1935, the Federal Union at Edgerton empowered Hall to call a strike on Monday, July 1, 1935. On Sunday, June 30, at a mass meeting of the members of both the Edgerton and Stoughton Federal Unions, the proposed strike was discussed.

2. The strike, July 1 to July 12, 1935

The strike was called on Monday, July 1st. In order to demonstrate to Menhall that the men were staying out of the plant of their own free will, there was no picketing at the Edgerton plant on the first day of the strike. The gates to the plant were open and freely accessible, the strikers taking a position on the opposite side of the street. Menhall and a number of his supervisors tried to coax the strikers, individually and in groups, to return to work, Menhall spicing his persuasion with vilification of Hall. According to Hall's testimony only 25 men went to work that day, while according to the evidence introduced by the respondent, about one half of its employees went to work during the first three days of the strike prior to the closing of the plants, but this figure included the office staff, foremen, and other supervisory officials. On the second and third days the plant was picketed. Menhall and certain supervisors were still engaged in persuading men to return to work, while George Connors, superintendent of the Edgerton plant at that time, was en-

gaged in photographing the pickets. On the third day Hall went to Stoughton where he had heard that trouble had arisen. Menhall was there. After having failed to persuade the chief of police to break the picket lines, Menhall had caused a riot call for the sheriff to be sent. The sheriff also refused to interfere. On the fourth day the plants were closed; and they were not re-opened until July 15th, after the strike had been settled.

Through the efforts of Robert E. Mythen, a conciliator dispatched to the scene at the request of Hall by the Conciliation Service of the United States Department of Labor, several conferences were held between Menhall and a union committee, of which Hall was not a member in deference to Menhall's refusal to deal with him. At a conference held on July 5th, Menhall refused to consider an agreement presented by Mythen, because Hall had drafted it. An agreement was finally reached at a conference held on July 12th, at which there appeared Fred J. Holt, representing the Edgerton Shop Union, which had grown up between July 5th and July 12th. Holt tendered 122 signed affidavits of membership in the Edgerton Shop Union as proof that he represented a majority of the employees at the Edgerton plant. Without the slightest hesitation or reluctance, Menhall expressed his willingness to recognize, and enter into an agreement with, the Edgerton Shop Union. Mythen suggested an immediate election under the auspices of the Conciliation Service of the Department of Labor. After some objection by Holt that an election was rendered unnecessary by his affidavits, the following agreement⁴ was reached:

To The Employees of the Highway Trailer Company—

The Management of the Highway Trailer Company hereby agrees to open their manufacturing plants at Edgerton, Wisconsin, and at Stoughton, Wisconsin, Monday morning, July 15th, at the usual time.

They agree to re-employ their manufacturing forces at both of said plants without discrimination due to membership in any union, or to the fact that any employee is now or has been out on strike or active in strike activities as a picket or otherwise, as rapidly as production requirements will permit.

While the Wagner Bill has been signed by the President, at the present time no machinery for carrying out its provisions is in effect, but the Management agrees that as soon as provisions are made for the selection of representatives in accordance with the terms of the Wagner Bill to represent employees for collective bargaining purposes, it will permit such an election to

⁴ Board's Exhibit No. 3.

be held and will abide by the results thereof, and will enter into a collective bargaining agreement in accordance with the Wagner Bill.

HIGHWAY TRAILER COMPANY

By J. W. MENHALL

Attested:

ROBERT E. MYTHEN

Commissioner of Conciliation

U. S. Department of Labor

Washington, D. C.

July 12, 1935.

3. The refusal to reinstate

The complaint alleges that on and after the re-opening of its plants on July 15th the respondent refused to reinstate five employees because of their union activities. The answer asserts affirmatively that they were refused reinstatement for other reasons.

(1) *Norman Anderson* commenced work in the heat-treat department at the Edgerton plant on January 2, 1931. He was employed as first, or chief, heat-treater, in which capacity he was engaged in tempering steel. There were three other employees in the department. Ray Hollinger, Anderson's assistant, had been employed for a period of nine or ten months prior to the strike. During the period from January 2, 1931, until the time of the strike, Anderson was the only one in the department who was employed continuously, while each of the other men had been laid off at various times. At one period Anderson was the only one employed in his department.

Anderson had been treasurer of the short-lived Protective Association, and, as already noted, had been warned of his activities at Fitch's farewell party. Upon the establishment of the Federal Union at Edgerton in March 1935, he was elected recording secretary. He was very active in signing up members for the Federal Union. A short time before the strike he was questioned, while at his work, by Adolph Yoss, then chief inspector of products, concerning union affairs and activities. During the strike he was in charge of the pickets. Upon the establishment of Local No. 135 on October 1, 1935, he was elected president, resigning from that office on February 20, 1937, when he became national field organizer for the United Automobile Workers of America, in which capacity he earns more than he did in the employ of the respondent. He does not desire to return to his old job, but insists on his right to back pay.

On July 13, 1935, the day after the signing of the strike settlement agreement, Edgar Crass, Anderson's foreman, called at his home and told him to report for work on July 15th. It was the

customary practice to call an employee back to work by telephoning him, or when he had no telephone, by having someone, usually the foreman, deliver the message to him at his home. When he reported for work on the 15th, his card was not in the rack, thereby signifying that there would not be a job for him until he was called. Anderson was never called back. The other three men in his department returned to work on July 15th, Hollinger taking over Anderson's job.

The respondent averred in its answer that Anderson was not reinstated because production requirements did not permit it. There is ample uncontroverted testimony that he was a competent workman. In the light of his almost four years of continuous service, his seniority over Hollinger, and the respondent's practice, before the strike, of retaining him and laying off the other men in his department in slack periods, we find that in refusing to reinstate Anderson on July 15, 1935, and thereafter, the respondent has discriminated against him with respect to hire and tenure of employment for the purpose of discouraging membership in the Federal Union and its successor union, Local No. 135. In view of his preference for his present job elsewhere over his old job with the respondent, we find that Anderson has obtained regular and substantially equivalent employment elsewhere and ceased to be an employee of the respondent as of the date of the commencement of his present employment elsewhere.

(2) *Leon Jenson* commenced employment in December 1924, as shipping clerk at the Edgerton plant. Like Anderson, he was a member of the ill-fated Protective Association, was active in its affairs, and was also warned of his union activity at Fitch's farewell party. He joined the Federal Union upon its establishment in March 1935; and was actively engaged in signing up members. He served on the picket line during the strike. At the present time he is recording secretary of Local No. 135. During the period following the strike, he was active in union affairs, visiting the vicinity of the plant at quitting time to distribute union notices and to carry signs and banners.

When Jenson reported for work on July 15, 1935, his card was not in the rack, whereupon he went home. He returned to the plant on July 22nd at 7 a. m., at which time his card was in the rack. He punched the card and went to work. At 7:30 a. m., while carrying down his papers in his customary manner, he was encountered by Connors, the superintendent of the plant, who told him to go home as the card was in the rack by mistake. He was never called back. Some three or four weeks after July 15th he met Montgomery, the receiving clerk, who, since July 15th, had also assumed the duties of shipping clerk. Montgomery said that he wished that the respond-

ent would call Jenson back, as he was being overworked, and was frequently putting in overtime.

The respondent averred in its answer that Jenson was not reinstated because production requirements did not permit it. The respondent introduced evidence to the effect that on July 15th there was only enough work for either Jenson or Montgomery, and not for both. The foreman testified that he selected Montgomery, who had been employed for only a year and a half prior to the strike, in preference to Jenson, who had been employed since 1924, because he considered Montgomery to be the better man and because Jenson had on one occasion in the past exchanged some cross words with a truckman.

The evidence discloses that Montgomery performed the duties of both shipping and receiving clerk for a period of three or four weeks after July 15th, but does not indicate for how long a period thereafter. The presence of Jenson's card in the rack on July 22nd, Montgomery's declaration that he was being overworked in filling both positions and his expressed conviction that Jenson's services were required, the testimony of Frank C. Gokey, an official of the respondent, that business gradually increased in 1935 and 1936, and the stipulation of counsel wherein it appears that the average number of men employed at the Edgerton plant in 1936 was 300, 100 more than were employed before the strike, combine in raising the inference that if Jenson's services were regarded as necessary prior to the strike, then they would also have been required shortly thereafter. Indeed, it is a reasonable inference that the services of a shipping clerk were needed on July 22nd when Jenson's card appeared in the rack, and that the only mistake involved in its presence therein was that it served to recall Jenson, who had served on the picket line, of which superintendent Connors had taken photographs as "souvenirs" of the strike.

For the foregoing reasons and in view of the fact that the respondent selected Montgomery to perform duties at least equally within the capabilities of Jenson, in preference to Jenson who enjoyed a seniority of employment of many years, we find that in refusing to reinstate Leon Jenson on July 22, 1935, and thereafter, the respondent has discriminated against him with respect to hire and tenure of employment for the purpose of discouraging membership in the Federal Union and its successor union, Local No. 135.

(3) *Sanford Jenson* was a service stock-chaser at the Edgerton plant, commencing his employment in 1923. He was the only one in the plant performing the duties of service stock-chaser, and was experienced in all jobs involving stock. He was a member of the Federal Union and was active in its affairs. He served on the picket line during the strike, being stationed at various times at

both the front and rear entrances to the plant. At present he is a member of Local No. 135. He is a brother of Leon Jenson, who, we have found, was refused reinstatement because of union activity. When he returned to work on July 15th, his card was not in the rack, whereupon he went home pursuant to a notice on the clock explaining that the absence of a card from the rack signified that its holder would be called when he was needed. He was never called back.

The respondent in its answer alleged the unreliability of Jenson as the sole ground for refusing to reinstate him. Testimony was introduced tending to prove that Jenson, for the period of a year prior to the strike, was absent from his work on an average of twice a month, for a day or two on each occasion. The evidence introduced by the respondent to prove that the absences were due to drinking was tenuous, to say the least. In any event, it is clear from the record that if Jenson was guilty of frequent absences as asserted by the respondent, he was never warned about them, but was retained at his job, even receiving a two and one-half cent hourly wage increase shortly prior to the strike. The evidence is unanimous that he was a good workman while on the job. The fact that prior to the strike the respondent saw fit to retain Jenson, without so much as an admonition concerning his alleged frequent absences, is a clear indication that the reason advanced by the respondent for its refusal to reinstate him was culled *ex post facto* to screen its true motive. In the light of the fact that Sanford Jenson was himself active in union affairs, especially while serving on the picket line, of which photographs were taken by Superintendent Connors, and that he is the brother of Leon Jenson, who, as we have found above, is a leader in union affairs in Edgerton and was refused reinstatement by the respondent because of union activity, it becomes apparent, upon the elimination of the reason advanced by respondent for its refusal to reinstate Sanford Jenson, that its real reason was his union activity.

We find that in refusing to reinstate Sanford Jenson on July 15, 1935, and thereafter, the respondent has discriminated against him with respect to hire and tenure of employment for the purpose of discouraging membership in the Federal Union and its successor union, Local No. 135.

(4) *Ole S. Martinson* went to work for the Company on May 1, 1933, as a band sawer in the finishing department of the wood shop at the Stoughton plant. He was vice president of the short-lived Protective Association. He participated in the organization of the Federal Union, was elected recording secretary, and was very active in signing up members. He was the leader of the strike at the

Stoughton plant and a member of the union committee which participated in the strike settlement conference. In the course of the strike, Wilson, the manager of the Stoughton plant, accused him of being a "red" and declared that he was through with him. Martinson has been president of Local No. 136 since its establishment on October 1, 1935.

As already noted in the case of Anderson, it was the customary practice for the foremen to call men back to work. Martinson's foreman did not call Martinson back when the plants reopened. Shortly after the settlement of the strike, his foreman, whom he encountered on the street, assured him that as business was improving he would soon be calling Martinson back to work. Several conversations of this nature with his foreman took place during the summer. On November 12, 1935, Martinson applied for work at the plant. He saw his foreman, who advised him to see Carroll, formerly Wilson's assistant and now his successor as manager of the plant, as men were being hired on the assembly floor. Carroll said that it was up to Martinson's foreman to hire him, whereupon the foreman declared that he had no work for him. Martinson had made it clear that he was willing to accept work in departments other than the one in which he had been employed prior to the strike. On October 26, 1936, the foreman hired Alfred Oslend to fill Martinson's former job on the band saw. Martinson has never been called back to work.

The respondent introduced testimony tending to prove that Martinson had been laid off on June 6, 1935, because of slack production and hence was not in the respondent's employ at the time of the strike. This testimony was controverted by Martinson who maintained that he had been employed for a period of several days before the strike. Adopting the respondent's version, it is clear, in any event, that Martinson was not discharged on June 6, 1935, but was only temporarily laid off. He therefore continued to be an employee of the respondent.⁵

The respondent alleged in its answer that Martinson was not reinstated because his services were no longer needed in the department in which he had worked prior to the strike. An employee's right to reinstatement is not necessarily confined to a particular job or kind of job or to a particular department. If an employee is not reinstated to his former job or one substantially similar thereto, and thereafter applies for a job of quite a different character, such as Martinson's application on November 12, 1935, for a job on the assembly floor, a refusal to grant the employee's application might,

⁵ *Matter of Radiant Mills Company, a Corporation and J. R. Scarborough and George Spsak, Case No C-9, 1 N. L. R. B. 274, 280, 281.*

in a proper situation, constitute a discriminatory refusal to reinstate. Such a situation, however, is not presented in this case, for the evidence is insufficient to establish at least two essential elements, viz., (1) that men were being hired on the assembly floor and (2) that Martinson possessed the necessary qualifications for a job of that kind, especially in view of the fact that his entire employment career at the respondent's plant was devoted to operating the band saw in the wood work department, except for a short period during which he piled lumber. We find, therefore, that the respondent's failure to grant Martinson's application for a job on the assembly floor did not constitute a discriminatory refusal to reinstate.

On October 26, 1936, the respondent's foreman hired Oslend to fill Martinson's former job on the band saw. Upon questioning by the Trial Examiner, the foreman frankly admitted that he should have recalled Martinson instead of hiring Oslend. He referred, in extenuation, to the lapse of more than a year and his consequent uncertainty as to whether Martinson still desired his job back. The changes effected in the respondent's relations with its employees during that period, without doubt, afforded a genuine basis for such uncertainty. As set forth in Subsection B hereinafter, the power granted by the respondent to the company-dominated Edgerton and Stoughton Shop Unions to discharge "undesirables" had already been exercised in the discharge of two employees for refusal to join the Edgerton Shop Union. It was inevitable under these circumstances that the foreman should be afflicted with uncertainty as to whether Martinson, the leader of the union movement at Stoughton since its inception and now president of Local No. 136, would desire his job back upon condition of being discharged as an "undesirable". It is clear, however, that there was no uncertainty in the foreman's mind that the respondent's labor policy required him not to reinstate Martinson. We find that in refusing to reinstate Martinson on October 26, 1936, and thereafter, the respondent has discriminated against him with respect to hire and tenure of employment for the purpose of discouraging membership in Local No. 136.

(5) *Ernest Gonzolus* began to work for the respondent in 1926 as a workman on the van assembly floor of the Stoughton plant. He was a member of the Federal Union, a very close associate of Martinson, and active in signing up members for the Union. He was laid off on May 20, 1935. His foreman was unable to explain the lay-off or tell him whether he would be called back. About ten days thereafter he applied for work at the plant, but was told by Assistant Superintendent Carroll that there was no chance, because the American Federation of Labor was not going to run the plant and that Gonzolus talked too much of the American Federation of Labor and spent too much of his time with Martinson. On June

Stth he secured employment elsewhere, but left it to join the picket line during the strike at the Stoughton plant. When the Stoughton plant closed down during the strike, he resumed his employment elsewhere, continuing his employment there until August 19, 1935, when he quit because the pay checks were not always honored by the bank. He then applied for work at the Stoughton plant for the first time since it re-opened pursuant to the strike settlement agreement. He was unsuccessful. He applied again in the early part of September, but was again refused, although he was an experienced and competent workman on the assembly floor and testified that to his own knowledge men were being hired on the assembly floor at that time.

The respondent alleged in its answer that Gonzolus was not an employee of the respondent at the time of the strike. Such a contention, even if sustained by the facts, would not dispose of the case, for aside from the matter of variance with the complaint, there still remains the question of whether the respondent had refused to employ Gonzolus because of union membership or activity. In *Matter of National Casket Company, Inc. and Casket Makers Union 19559*,⁶ we held such a refusal to hire to be unlawful under Section 8, subdivision (3) of the Act. The evidence introduced by the respondent established merely that Gonzolus was laid off on May 20th because of slack production and, standing alone, would not be sufficient to differentiate his case from that of Martinson, who, we have found, continued to be an employee. The evidence of Gonzolus, himself, however, shows that he was discharged and not laid off. Resumption of his employment elsewhere instead of returning to the Stoughton plant when it re-opened on July 15th indicates that he was content to be regularly employed elsewhere and allow his standing as an employee at the Stoughton plant to lapse. We find that Gonzolus was not an employee when he applied for work in August and September. Furthermore, we find that the evidence is insufficient to establish that Gonzolus was refused employment in September because of his union membership or activity. There is no evidence that the respondent was hiring men on the assembly floor when Gonzolus applied for work, other than his own testimony that such was the case to his own knowledge. Even if it is assumed that the respondent was hiring men on the assembly floor, there is no evidence, as, for example, that the respondent was hiring men of less ability or experience to fill jobs for which Gonzolus was qualified, tending to prove that the respondent would have hired him if he had had no connection with the Federal Union. Such evidence was ample and irrefutable in the *National Casket Company* case where we found a discriminatory refusal

⁶ Case No. C-11, 1 N. L. R. B. 963.

to hire applicants for employment, but the state of the record before us does not justify a similar finding.

B. Domination and interference with the Edgerton and Stoughton Highway Trailer Employees' Shop Unions

1. Formation of the Shop Unions

It appears that on the night of July 5, 1935, when the plants were no longer in operation because of the strike, Adolph Yoss, then chief inspector of products at the Edgerton plant, called a meeting at his house for the alleged purpose of organizing under the "Wagner Bill." The meeting was attended by approximately 20 men, of whom a substantial number were foremen. According to his own testimony as the respondent's witness, Yoss was the guiding genius at this meeting. A petition to be circulated for signatures was drafted with the following caption:

We the undersigned hereby pledge ourselves to join a Highway Trailer Co. Employees Shop Union legally organized under the provisions of the Wagner Bill and in the event of a Shop election further pledge ourselves to vote to be represented by this union and its officers and committees as later selected by us:—⁷

The petition was signed by those present, and copies circulated by foremen for signatures during the course of the strike. On the following day, a general meeting, attended by a substantial number of foremen, was held. Fred J. Holt, business agent for an employees' association at the Nunn-Busch Shoe factory in Edgerton, addressed the gathering. Both Holt and Lester Hudson, an employee on the final assembly floor, testified that Holt's presence had not been prompted by the respondent, but was due to the request of Hudson, who had been told about Holt and the Nunn-Busch employees' association by his wife who was employed there. In addition to describing the structure of the association at the Nunn-Busch plant, Holt expounded the legality of forming such an organization at the respondent's Edgerton plant in terms suggestively reminiscent of the caption to the petition drafted the night before at Yoss's house. The gathering clothed Holt with authority to draft a constitution and by-laws for an employees' association modeled after the one at the Nunn-Busch factory, and to act as the representative of the signers of the petition until the organization was formally established. At this time the use of notarized affidavits of membership in the Edgerton Shop Union appeared. Hudson asserted that their use was not discussed at the meeting, but that he, uninfluenced by the respondent or anyone else, decided upon affidavits as superior to signatures on a

⁷ Board's Exhibit No. 44.

petition, because they would seem more binding. A drive for signatures to the affidavits was assiduously pursued, largely by foremen, with the result that 122 signed affidavits were delivered to Holt on July 12th for his use in the strike settlement conference. The original form of affidavit contained an avowal of membership in the Edgerton Shop Union, concluding with a clause "that he does not belong to any other union." Many of the employees struck out this final clause before signing.⁸ It was then decided that membership in another union should not constitute a bar to membership in the Edgerton Shop Union, and new affidavits without the final clause were mimeographed. It is readily understandable why Holt balked at Mythen's suggestion for an immediate election, even though Holt held affidavits of 122 men out of the 200 employed at the plant, for 16 affidavits had the final clause stricken, a substantial number were affidavits of foremen,⁹ while the remainder did not contain a final clause, so that it was impossible to determine the number of signers of that form of affidavit who did not belong to another union.¹⁰ The willingness of Menhall, president of the respondent, to enter into an agreement on July 12th with Holt as the representative of the majority of his employees on the basis of 122 patently equivocal affidavits is significant. Indeed, the mere presence of Holt at the conference is also significant in view of Menhall's positive refusal to permit Hall, the organizer for the American Federation of Labor, to attend the conference, for Holt was also an "outside organizer", holding the office of business agent for a labor organization of an outside plant, and at a later date, while still business agent for the Shop Union, participated in the organization of employees' associations at two "outside" plants in Fort Atkinson, Wisconsin, without any expression of disapproval by Menhall.

At a meeting held a week after the July 12th conference, the Edgerton Shop Union was formally established. The constitution and by-laws drafted by Holt were adopted, officers were elected, and Holt was elected business agent. The question of foremen membership was raised at the meeting which was also attended by foremen. Most of the respondent's witnesses were vague as to whether a vote was taken on the matter, but were clear that there was some sort of an acquiescence in foremen membership. Hudson testified that he made a motion to the effect that all employees who punched the clock and were paid an hourly wage should be eligible for membership—thereby including foremen. On cross-examination he at first stated that all those present, including foremen, voted, but later he became positive that the foremen had not voted.

⁸ Board's Exhibit No. 25.

⁹ Board's Exhibit No. 33.

¹⁰ Board's Exhibit No. 25.

The pertinent provisions of the constitution and by-laws¹¹ were (1) that only employees who punched the clock and were paid an hourly wage were eligible for membership; (2) that membership ceased upon termination of employment; (3) that any employee was eligible for membership upon recommendation of his foreman; (4) that only the members at work on the day of the election could vote for officers; (5) that the business agent, who was to act as the representative of all the members in all dealings with the management, must not be an employee of the respondent; and (6) that a shop committee composed of one man from each of seven departments in the plant, with the business agent as its chairman, should be the controlling body. The provision permitting foremen to become members was sought to be justified on the ground that the foremen were "working" foremen. The record is clear beyond peradventure that the foremen were supervisors or overseers, representing the management. Many of them had offices and desks; they did not perform the work of ordinary workmen except on special occasions; and they had virtual power to hire and fire. They had the power to decide upon lay-offs, and in all cases, whether the lay-off originated with the foremen or with their superior officers, they exercised an unhampered choice in determining the particular men to be laid off.

When the plants were re-opened on July 15th, the respondent granted Holt and the Edgerton Shop Union officials a free run of the plant, while similar privileges were denied to the Federal Union officials and organizer. Holt and the Edgerton Shop Union officials engaged in a relentless drive for membership, soliciting the employees on company time while they were at work. The employees were solicited to sign, not applications for membership, but affidavits of membership, in the presence of a notary. A number of the men refused to sign in the presence of a notary for fear that it would then be "legal", so they were permitted to sign without a notary present. During this period, at least one official of the respondent and several Edgerton Shop Union officials were watching the entrance to the hall in which the meetings of the Edgerton Federal Union were held.

The control and management of the Shop Union activities were vested in the shop committee, of which the business agent was chairman. It operated without consulting the general membership. A comparison of the signatures on the affidavits admitted by the respondent to be those of foremen with the names of the shop committeemen appearing on the various monthly shop committee bulletins, discloses that there were always some foremen on the shop committee. This committee convened in a room on company property for which

¹¹ Board's Exhibits Nos. 20 and 23.

it paid a monthly rental of one dollar. The minutes of these meetings which were introduced in evidence disclose a preoccupation with 100 per cent membership and the remedying of the sources of minor discomforts, such as drinking fountains, toilet seats, the supply of brooms and gloves, the washing of windows, and other related items. A number of the minutes reflect dissatisfaction with the management's failure to act on such recommendations. Monthly bulletins of the Shop Union activities were posted on bulletin boards in the plant, and often distributed to the employees at their work.

The methods for conducting elections and for achieving wage increases illustrate the servile nature of the Shop Union. Elections of Shop Union officers were held on company property and to some extent on company time, in substantially the following fashion: ballots were distributed to the employees at their work, the men marked their choices, and on leaving the plant dropped their ballots into the ballot box, although sometimes a Shop Union official would collect the ballots during working hours. The Shop Union established a system for obtaining individual increases in wages, by means of a "yellow slip" procedure. An employee desiring a raise indicated his desire on a yellow slip which he passed on to his foremen, who noted his recommendation thereon, passing the slip on to the superintendent, who also noted his recommendation thereon, passing the slip on to the management for verification or rejection. The management indicated its decision and passed the slip on to Holt, whose office it was to explain the decision to the employee. The evidence shows that many employees who never received responses to their yellow slips voiced suspicions that the slips never went beyond the management's waste basket.

The formation and organization of the Shop Union at the Stoughton plant paralleled that of the Shop Union at the Edgerton plant, with Holt addressing the early meetings. The chief point of difference was that George A. Ford, who maintained a local furniture and undertaking business, was elected its first business agent. Ford testified that the position was offered to him by the employees, but he did not accept immediately. Thereafter Menhall paid him a visit, telling him that he understood that the employees wanted him for their business agent and that in his opinion he was admirably suited for the job. Ford accepted the job, but testified that his decision was prompted by his sense of civic duty rather than by the dialogue with Menhall.

Upon the foregoing findings, we conclude that the respondent dominated and interfered with the formation and administration of the Edgerton Shop Union and the Stoughton Shop Union, and has contributed financial and other support to them. This conclusion

is reinforced by the agreements, next to be discussed, entered into between the Shop Unions and the respondent.

2. The agreements

During the intensive drive for membership by the Edgerton and Stoughton Shop Unions after the re-opening of the plants on July 15th, the Federal Unions noted a diminution in the attendance at their meetings and, desiring an election before its membership was emasculated, exhorted Clark and Mythen to arrange an election. Both men strove diligently toward this end, but were rebuffed by the refusal of both the respondent and the Shop Unions to consent to any election that was not held technically under procedure and machinery established under the Act. The Board was not appointed until August 27, 1935, and Clark not until September 16, 1935, by which time the Shop Unions had virtually attained their ultimate aim by reaching substantially identical agreements with the respondent containing provisions for the check-off and a provision at least tantamount to the closed shop.

Notwithstanding its agreement of July 12th to consent to an election as soon as machinery under the Act was established and to bargain collectively with the victorious union, in August 1935, the respondent acquiesced in collective bargaining agreements with the Edgerton and Stoughton Shop Unions.¹² The agreements were not formally executed by the parties until October 14, 1935.¹³ The agreements were to be in operation for six months after their execution, and for another six months' period thereafter, unless either party gave notice to the contrary within a month prior to the expiration of the first six months' period. The crucial provision in this agreement read,

The employment of any operative whom the Shop Committee of the Union in proper session has found undesirable shall terminate upon the receipt by the Company of the Shop Committee's findings. Appeal may be made to the Arbitration Council of the Union.

The provision is obviously but one removed from a straightforward closed shop agreement. It substitutes for the initial exclusiveness of the closed shop a preliminary probationary period, a device in some respects more advantageous than the closed shop, for it reserves to the respondent its freedom in hiring its employees and confers upon its creatures, the Shop Unions, the right to police

¹² Board's Exhibit No. 24.

¹³ Board's Exhibit No. 27.

them in a manner forbidden to itself and to eliminate employees who are not sufficiently responsive to its labor policy. By establishing as a condition of employment the liability to discharge at the whim of the shop committee of the Shop Union at each plant, the respondent has discriminated in favor of the Shop Unions and its members. Such discrimination encourages membership in the Shop Unions, and by virtue of the arbitrary power vested in the Shop Unions, discourages membership in any other labor organization. The discrimination was directed against members of the Federal Unions and their successor unions, Local No. 135 and Local No. 136, and its effect was to discourage membership therein, or at least to render it passive and ineffective. In addition, it is an interference with the exercise of the rights guaranteed employees in Section 7 of the Act and coerces them into conduct preferred by the respondent. Such a discrimination is thus an unfair labor practice prescribed by Section 8, subdivisions (1) and (3) of the Act, unless it is covered by the proviso of subdivision (3). That proviso is as follows:

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.

As we have already found that the respondent dominated and assisted the formation and administration of the Shop Union, it follows, as we said in *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*,¹⁴ that "the tainted origin of the Association thus prevents the respondent from using its agreement with the Association as a shield behind which it may operate in a manner forbidden by the Act." Furthermore, the exercise of the power to expel "undesirables" by discharging two employees, as hereinafter set forth, for refusal to join the Edgerton Shop Union constituted a discrimination in regard to hire and tenure of employment.

C. Discharges for refusal to join the Shop Union

The complaint alleges that the respondent discriminatorily discharged three of its employees for refusal to join the Edgerton Shop Union. The answer sets forth affirmative defenses as to each employee.

¹⁴ Case No. C-5, 1 N. L. R. B. 97, 108.

1. *Raymond (Ray) Bullian* commenced his employment in April 1929, as a machinist in the utility machine shop at the Edgerton plant. He was discharged on April 19, 1935, along with certain officers of the Federal Union, for his union activities. He was reinstated on April 23, 1935.¹⁵ During the strike he served on the picket line and was personally exhorted by Menhall to return to work. When the plants re-opened he was reinstated to his former job. Thereafter he was solicited by his foreman, a member of the Shop Union, on company time to join the Shop Union, but he refused. The September 1935, Shop Union bulletin, which was posted on the company bulletin boards and also distributed among the employees, concluded with the following notice:¹⁵

Original charter membership for the Employees' Shop Union will be accepted up to and including September 16, 1935. After that date, all who have not joined will be accepted in the same way as a new employee of the shop. This means—Three months must elapse before membership can be obtained and then only through the regular channel of application and acceptance by the Shop Committee.

The constitution and by-laws contain no provisions as to charter memberships, so that the meaning of the notice was ambiguous, to say the least. Bullian was considerably upset by the notice, construing it to mean that unless he joined the Shop Union by September 16th, he would forfeit his seniority rights and be relegated to the status of an apprentice at an hourly wage of 30 cents. Upon questioning, his foreman did not deny the interpretation and advised joining the Shop Union, while Yoss, chief inspector of products, observed that the American Federation of Labor would do the same thing if it had the chance. Bullian stated that he would rather quit than work under such conditions. About a week later, on September 10th, his foreman inquired if Bullian still felt the same way and received an affirmative answer from Bullian. About a half hour thereafter the foreman handed him his pay check. He tried to secure employment with the respondent several times during the early part of 1937, but was unsuccessful, although he was questioned by foremen as to whether he had filed a complaint with the Board and was interrogated concerning the Committee for Industrial Organization by Lee S. Sickler, then manager of both plants.

The respondent averred in its answer that Bullian voluntarily quit his employment. Whether Bullian quit or was discharged, it is clear that it was not voluntary. Under the circumstances narrated above, the cessation of his employment was caused by a forced resignation tantamount to a discharge. Bullian's testimony is reinforced by the

¹⁵ Board's Exhibit No. 26

testimony of Carlisle Stewart, still in the respondent's employ, that he, Stewart, joined the Shop Union at this time, after reading the bulletin, under coercion and solicitation of his shop committeeman.

We find that in discharging, or forcing the resignation of, Raymond Bullian on September 10, 1935, the respondent has discriminated against him in regard to hire and tenure of employment for the purpose of encouraging membership in the Edgerton Shop Union.

2. *Martin Rucks* and *John M. Johnson*. In the Edgerton Shop Union bulletins of December 1935, and January 1936, there appeared notices to the effect that there remained only six employees, all employed in the utility machine shop, who had not joined the Shop Union. These six, all active members of Local No. 135 which had now succeeded the Federal Union, were Rucks, Johnson, Acherson, Halvorsen, Nagle, and Eckhardt. All six were solicited on company time by their foreman, shop committeeman, and, in some instances, by Holt, to join the Edgerton Shop Union. The solicitations were instinct with coercion and intimidation by virtue of the threat of discharge implicit in the power of the shop committee to weed out "undesirables." In the case of Eckhardt, solicitation by Holt on company time prevented him from operating his machine for half an hour. Finally they were told that they had to sign up by Wednesday, or in the words of their shop committeeman, "You guys, this is your last chance you get to sign up with the union, or you get fired." Nagle, then president of Local No. 135, on approximately January 7th or 8th of 1936, yielded to Holt's importunities to sign up or be discharged, and signed the back of an affidavit whereon he reserved the right to pay his own dues and not have them deducted from his pay by the respondent. Eckhardt followed Nagle's example. The other four refused to join the Shop Union. Thereupon, after a meeting of the shop committee, a letter was dispatched on January 8th¹⁶ to the management requesting the discharge of the four recalcitrants. The management requested a statement of reasons.¹⁷ A meeting of the shop committee and the arbitration council, the latter body composed of Shop Union members and apparently of no actual importance, was held on January 10th. As a result, another letter was sent to the management stating that Acherson and Halvorsen would be given another chance, but insisting upon the discharge of Rucks and Johnson.¹⁸ Rucks was discharged on January 11th and Johnson on January 13th. According to the terms of the provision empowering the shop committee to eliminate "undesirables", the arbitration council was to serve as an

¹⁶ Respondent's Exhibit No. 39.

¹⁷ Respondent's Exhibit No. 40.

¹⁸ Respondent's Exhibit No. 39

appellate body in a case of this kind, yet here it sat in joint session with the shop committee and prejudged the case.

Although no reasons were stated for granting Acherson and Halvorsen another chance, it appears from the record that the shop committee decided that since both men were quiet and retiring, there was hope for their conversion, which was subsequently justified in the case of Halvorsen. The reasons stated in the letter of January 10th for requesting the discharge of Rucks were in substance (1) failure to cooperate, (2) creation of fear and unrest by his attitude, and (3) defiance of his superiors. The same reasons were given as to Johnson, except for the third, which was that his attitude tends to check the efforts of the employees toward better working conditions. From the evidence adduced at the hearing, it is clear that in the case of both men the three stated reasons all meant the same thing—refusal to join the Shop Union. Holt, the chairman of the shop committee and its presiding officer at the meetings, specifically admitted that the action taken was solely because of the refusal of the two men to join the Shop Union.

The respondent alleged in its answer that the two men were discharged not only because of complaints of co-employees, but also because of inefficiency. Rucks was never warned for inefficiency and his foreman testified that he had always been a satisfactory workman. Rucks has been employed elsewhere since June 15, 1936. He does not desire reinstatement, but insists on his right to back pay. As for Johnson, the respondent tried to prove that he was negligent in his operation of the crane, often endangering his fellow workers by dropping heavy objects. It appears that the respondent never warned Johnson of any negligence, but saw fit to retain him as crane-operator. Furthermore, it was shown that the crane was old and defective and that Johnson was regarded as handling a crane in that condition remarkably well.

We find that in discharging Rucks on January 11, 1936, and Johnson on January 13, 1936, for refusing to join the Shop Union the respondent has discriminated against them in regard to hire and tenure of employment for the purpose of encouraging membership in the Edgerton Shop Union. In view of Rucks' preference for his present job elsewhere over his old job with the respondent, we find that he has obtained regular and substantially equivalent employment elsewhere and ceased to be an employee of the respondent as of the date of the commencement of his present employment elsewhere.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The operations of the respondent as described in Section I above constitute a continuous flow of articles from the several states to

the respondent's plants and from the respondent's plants to the several states. The strike of July 1, 1935, caused in part by labor practices similar to those set forth in Section III above, resulted in the closing of the respondent's plants from the third day of the strike until July 15th, thereby seriously curtailing the flow of shipments to the respondent's plants from points of origin outside of Wisconsin, and from the respondent's plants to destinations outside of Wisconsin.

Upon the whole record, we find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce:

THE REMEDY

It is clear that large numbers of its members have never freely chosen the Shop Unions as their representative. Indeed, the relation of the Shop Unions to a substantial number of their members who are also members of other unions is not clear. In order to remedy its unlawful conduct in this case, the respondent must withdraw all recognition from the Shop Unions as organizations representative of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. In addition, the respondent must cease requiring as a condition of employment that employees be liable to discharge as "undesirables" by the shop committees of the Shop Unions.

As we have found that Norman Anderson and Martin Ruck's have obtained regular and substantially equivalent employment and have ceased to be employees of the respondent, we shall not order the respondent to offer them reinstatement, but as they are entitled to be made whole for any losses they have suffered by reason of the respondent's discriminatory acts, we shall order back pay for the period from the date of the discriminatory acts to the date on which they obtained regular and substantially equivalent employment, less any amounts earned by them in the meantime.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Local No. 135 and Local No. 136, United Automobile Workers of America are, and their predecessor unions, Federal Labor Union

No. 19978 and Federal Labor Union No. 19998, were, labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. The Highway Trailer Employees' Shop Union at the respondent's Edgerton plant and the Highway Trailer Employees' Shop Union at the Respondent's Stoughton plant are labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

3. The strike of the respondent's employees, commencing on July 1, 1935, and terminating on July 12, 1935, was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

4. Norman Anderson was an employee of the respondent at the time of the strike and continued to be an employee of the respondent until the time he obtained regular and substantially equivalent employment, within the meaning of Section 2, subdivision (3) of the Act; Leon Jenson, Sanford Jenson, and Ole S. Martinson were employees at the time of the strike, and are still employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act; Raymond (Ray) Bullian and John M. Johnson are employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act; Martin Rucks was an employee of the respondent at the time of his discharge and continued to be an employee of the respondent until the time he obtained regular and substantially equivalent employment, within the meaning of Section 2, subdivision (3) of the Act; and Ernest Gonzolus was not an employee of the respondent at the time he applied for work at the respondent's plant, within the meaning of Section 2, subdivision (3) of the Act.

5. By discriminating in regard to hire and tenure of employment and by enforcing the discriminatory condition of employment described above, and thereby discouraging membership in the labor organizations known as Federal Labor Union No. 19978 and Federal Labor Union No. 19998, and their respective successor unions, Local No. 135 and Local No. 136, United Automobile Workers of America, and encouraging membership in the labor organizations known as the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union, the respondent has engaged in and is engaged in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

6. By its domination and interference with the formation and administration of the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union, and by contributing financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

7. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the re-

spondent has engaged in and is engaged in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

9. By its refusal to employ Ernest Gonzolus, the respondent has not engaged in and is not engaged in unfair labor practices, within the meaning of Section 8, subdivision (3) 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, Highway Trailer Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted Local No. 135 or Local No. 136, United Automobile Workers of America, or any other labor organization of its employees, or have refused to join the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union or any other labor organization of its employees; (b) from maintaining surveillance of the meetings and activities of Local No. 135 or Local No. 136, United Automobile Workers of America or any other labor organization of its employees, and (c) from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Cease and desist (a) from requiring as a condition of employment liability to discharge as an "undesirable" at the will of the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union; (b) from encouraging membership in the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union or any other labor organization of its employees, and from discouraging membership in Local No. 135 and Local No. 136, United Automobile Workers of America or any other labor organization of its employees, by refusing to reinstate the employees named below in paragraph 4 (a); and (c) from otherwise discriminating in regard to hire and tenure of employment or any term or condition of employment or by threat of such discrimination.

3. Cease and desist from in any manner dominating or interfering with the administration of the Edgerton Highway Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union or with the formation or administration of any other labor organization of its employees and from contributing financial or other support to the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union or any other labor organization of its employees.

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

a. Offer to Leon Jenson, Sanford Jenson, Ole S. Martinson, Raymond (Ray) Bullian, and John M. Johnson immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary any employees at present holding such positions;

b. Make whole the employees named above in paragraph 4 (a) for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of the occurrence of the discriminatory act to the date of the respondent's offer of reinstatement, less any amount earned by him during that period;

c. Make whole Norman Anderson and Martin Rucks for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of the occurrence of the discriminatory acts to the date of the commencement of his present employment elsewhere;

d. Withdraw all recognition from the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union as representatives of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union as such representatives;

e. Post immediately notices to its employees in conspicuous places throughout its plants at Edgerton and Stoughton stating (1) that the respondent will cease and desist as provided in paragraphs 1, 2, and 3 of this Order; (2) that the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union are so disestablished and the respondent will refrain from such recognition; (3) that to secure and retain employment at the Edgerton or Stoughton plants a person need not

become a member of the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union or be liable to discharge as an "undesirable" at the will of the Edgerton Highway Trailer Employees' Shop Union or the Stoughton Highway Trailer Employees' Shop Union; (4) that the agreements signed with the Edgerton Highway Trailer Employees' Shop Union and the Stoughton Highway Trailer Employees' Shop Union are void and of no effect; (5) that the respondent will not discharge or in any manner discriminate against members of Local No. 135 or Local No. 136, United Automobile Workers of America or any person assisting said organizations or engaging in union activity; (6) that the respondent has instructed its foremen and other supervisory officials to remain neutral as between organizations and that any violations of this instruction should be reported to it; and (7) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of the posting; and

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

5. The allegations in the complaint that the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act, by refusing to reinstate Ernest Gonzolus, are hereby dismissed.

6. The allegations in the amended complaint concerning John D. Erickson are hereby dismissed.

[SAME TITLE]

AMENDMENT TO ORDER

September 24, 1937

The National Labor Relations Board having issued a decision, including findings of fact, conclusions of law, and order, in the above entitled case on September 10, 1937, and it appearing that said order should be amended, the Board hereby amends the same by changing the semicolon at the end of subdivision c of paragraph 4 of the order to a comma, and adding thereto the following: "less any amount earned by him during that period;"