

In the Matter of TODD SHIPYARDS CORPORATION, ROBINS DRY DOCK AND REPAIR Co., AND TIETJEN AND LANG DRY DOCK Co.<sup>1</sup> and INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA

Case No. C-239.—Decided February 1, 1938

*Shipbuilding and Repairing Industry—Interference, Restraint, or Coercion:* anti-union statements; expressed opposition to labor organization; shut-down of plant; dominating and interfering with a company-dominated labor organization for the purpose of defeating self-organization by employees—*Company-Dominated Union:* sponsorship, domination, and interference with formation and administration of; support of; solicitation of membership during working hours; meetings on company property during working hours; disestablished as agency for collective bargaining—*Discrimination:* discharge; allegations in complaint dismissed—*Unit Appropriate for Collective Bargaining:* production and maintenance employees of three plants; organization of business; history of collective bargaining relations with the respondents; history of organization of employees in one unit; similarity of wage scales and working conditions; community of interest; interchangeability of employees; formation of Joint Council to deal jointly for employees of the three plants with the respondents—*Collective Bargaining:* charges of refusal to bargain collectively dismissed—*Strike:* provoked by employers' unfair labor practices—*Employee Status:* strikers—*Reinstatement Ordered:* strikers, upon application—*Discharge Ordered:* employees hired after strike, if necessary to make room for employees reinstated—*Back Pay:* awarded; strikers from date of denial of application for reinstatement.

*Mr. Will Maslow, Mr. Lester Levin, Mr. Martin Selman, and Mr. David Schatzow, for the Board.*

*Cullen & Dykman, by Mr. Arthur E. Goddard, Mr. Robert B. Lisle and Mr. Harry G. Hill, of Brooklyn, N. Y., and Mr. Harry E. Burroughs, of Boston, Mass., for the respondents.*

*Mr. M. H. Goldstein, of Philadelphia, Pa., for the Industrial Union.*

*Mr. H. N. Glickstein, of New York City, for Locals No. 13 and No. 15.*

*Mr. John J. Fallon, of Hoboken, N. J., for the Association.*

*Mr. Joseph M. Conroy, and Mr. Dwyer Shugrue, of New York City, for the Yard Union.*

<sup>1</sup> Todd Shipyards Corporation, Robins Dry Dock and Repair Co., Tietjen and Lang Dry Dock Co., and American Marine Workers Association, Inc., were incorrectly designated in the complaint, the petitions, and in the order directing investigation and hearing as Todd Shipyards Company, Robins Dry Dock & Repair Company, Tietjen and Lang Dry Dock Company, and American Marine Workers Union. The complaint subsequently was amended at the hearing on motion of counsel for the Board and with the consent of counsel for the respondents so as to change Todd Shipyards Company and American Marine Workers Union to Todd Shipyards Corporation and American Marine Workers Association, Inc., respectively. The Board of its own action hereby amends the designation of the other respondents in the pleadings of this case to correspond to the correct names.

*Mr. Charlton Ogburn* and *Mr. William Gallagher*, of New York City, for the Metal Trades Council.

*Mr. Hyman A. Schulson*, of counsel to the Board.

## DECISION

AND

## ORDER

## STATEMENT OF THE CASE

Upon charges duly filed by the Industrial Union of Marine and Shipbuilding Workers of America, herein called the Industrial Union, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint dated July 8, 1937, against the respondents, Todd Shipyards Corporation, herein called Todd, Robins Dry Dock and Repair Co., herein called Robins, and Tietjen and Lang Dry Dock Co., herein called Tietjen, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged in substance that the respondents had initiated, formed, sponsored, dominated, and interfered with the administration of and contributed support to the Yard Union for Collective Bargaining of the men of Robins Dry Dock and Repair Co., herein called the Yard Union, and American Marine Workers Association, Inc., herein called the Association; that the respondents had urged, persuaded, and warned their employees at the Robins and Tietjen plants to refrain from becoming or remaining members in the Industrial Union; that on June 7, 1937, the respondents had discharged William Haas and others from the Robins plant because they had applied for membership in the Industrial Union and had been active therein; that on about March 23, 1937, the Industrial Union was designated by a majority of the production and maintenance employees of the respondents as their representative for collective bargaining; that on March 23, 1937, and thereafter, the respondents had refused to bargain with the Industrial Union.

Copies of the complaint and of notice of hearing to be held upon the complaint and the petitions, hereinafter discussed, on July 19, 1937, in New York City, were duly served upon the respondents, the Industrial Union, the Yard Union, the Association, and the Marine Workers Metal Trades District Council, herein called the Metal Trades Council.

On July 14, 1937, Todd filed an answer to the complaint admitting that it owned all the voting capital stock of Robins and Tietjen, but denying that it participated with them, or either of them, as a joint business enterprise. It further denied all the other material allegations of the complaint and asserted that it did not bargain with the Industrial Union because it is not an employer within the meaning of the Act, nor is it engaged in interstate commerce, and that it was, therefore unnecessary to reply to the Industrial Union's letter of March 23, requesting it to bargain.

On July 14, 1937, Robins filed an answer to the complaint admitting that Todd owned all its voting capital stock, denying that the respondents conduct their operations as a joint business venture, and asserting that it is a separate business; Robins admitted that it refused to bargain with the Industrial Union, but asserted that the reason therefor was that the Yard Union represented a majority of the production employees in its plant and that the appropriate unit for purposes of collective bargaining is one consisting of the employees of Robins alone. It also denied that it had laid off or discharged William Haas and others because of union activities, and that it had initiated, formed, sponsored, dominated, or interfered with the administration of the Yard Union, or contributed support to it.

On July 14, 1937, Tietjen filed an answer to the complaint admitting that Todd owned all its voting capital stock, denying that the respondents conduct their operations as a joint business venture, and asserting that it is a separate business. Tietjen admitted that it refused to bargain with the Industrial Union, but asserted that the reason therefor was that the Industrial Union did not represent a majority of the employees. It also denied the other alleged unfair labor practices.

Pursuant to notice, a joint hearing on the complaint and petitions was held in New York City, commencing on July 19, 1937, before Frank Bloom, the Trial Examiner duly designated by the Board. The Board, the respondents, the Industrial Union, the Yard Union, and the Association were represented by counsel and participated in the hearing.

Prior to the hearing, petitions for intervention in the proceeding upon the complaint were filed by the Yard Union and the Association. The Trial Examiner granted the petitions, limiting intervention, however, to the presentation of proof at the conclusion of the respondents' case, if not adequately presented by the respondents. Also prior to the hearing, Todd filed a motion to dismiss the complaint for lack of jurisdiction on the grounds that it was not an employer nor engaged in interstate commerce within the meaning of the Act. The Trial Examiner denied the motion at the conclusion of the hearing.

Counsel for the Board moved to dismiss the complaint in so far as it related to the discharge of others than William Haas. The motion was granted. During the hearing the respondents moved to dismiss the complaint as to the discharge of William Haas; counsel for the Board joined in this motion, which was granted. This disposed of all the allegations in the complaint relating to unfair labor practices within the meaning of Section 8 (3) of the Act.

At the hearing, John J. Fallon, counsel for the Association, testified that the intervenor was a New Jersey corporation, read the purpose clause from the Certificate of Incorporation, and under oath stated that the Association was not a labor organization within the meaning of Section 2 (5) of the Act. Consequently, counsel for the Board moved to dismiss the allegations in the complaint that the respondents had initiated, formed, sponsored, dominated, and interfered with the administration of and contributed support to the American Marine Workers' Association, Inc. The motion was granted.

At the close of the hearing counsel for the Board moved that the complaint be conformed to the proof that had been adduced. The motion was granted. Counsel for the respondents renewed his motion to dismiss the complaint as to Todd for lack of jurisdiction. The motion was denied. Counsel for the respondents made several motions to dismiss the complaint on other than jurisdictional grounds; the Trial Examiner denied some of these motions and reserved ruling as to the others, some of which he later denied in his Intermediate Report. The respondents' motion to dismiss the allegations of the complaint relating to their refusal to bargain with the Industrial Union was granted by the Trial Examiner in his Intermediate Report. The ruling is hereby affirmed, but it will be discussed in detail in the body of the decision.

The parties did not avail themselves of the opportunity afforded for oral argument at the close of the hearing, but thereafter the respondents and the Yard Union filed briefs to which we have given due consideration.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

On August 30, 1937, the Trial Examiner filed his Intermediate Report to the complaint, in which he found that the respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act in that they had formed, sponsored, dominated, interfered with the administration of and contributed financial and other support to the Yard Union, and thereby had interfered with, restrained, and coerced their employees in the exercise of their right to self-organization.

The respondents, the Industrial Union, and the Yard Union filed exceptions to the Intermediate Report and requested an opportunity to argue the exceptions before the Board. On October 1, 1937, counsel for the respondents, the Industrial Union, and the Yard Union orally argued the exceptions to the Trial Examiner's Intermediate Report before the Board in Washington. Briefs in support of their exceptions to the Intermediate Report were subsequently filed with the Board by counsel for the parties.

The Board has reviewed the rulings made by the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

We have fully considered the exceptions to the Intermediate Report and find them without merit.

On June 4, 1937, the Yard Union filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Robins, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. The Industrial Union filed with the Regional Director a petition on June 23, 1937, and an amended petition on July 8, 1937, alleging that a question affecting commerce had arisen concerning the representation of production and maintenance employees of Todd, Robins, and Tietjen, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On July 9, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On September 10, the Board issued a Direction of Election.<sup>2</sup> The election was later postponed.<sup>3</sup> On September 16, the Metal Trades Council, by its secretary, William Gallagher, and its council, Charlton Ogburn, filed with the Board a motion for leave to intervene in order to have its name placed on the ballot in the election directed by the Board. On September 21, 1937, the secretary of the Metal Trades Council, counsel for the respondents, the Industrial Union, and the Yard Union orally argued the motion before the Board in Washington.

On October 1, 1937, the Board received a petition of the Association for leave to intervene alleging that it is now a labor organization, affiliated with the International Longshoremen's Association as Local No. 1508. The Association, claiming to represent about 350 employees

<sup>2</sup> 3 N L R B 619.

<sup>3</sup> 3 N L R B. 620

of Tietjen contends that it is now entitled to a place on the ballot in the event that the Board orders an election.

We shall not at this time pass upon the petitions of the Yard Union and the Industrial Union, and the petitions for leave to intervene of the Metal Trades Council and the Association. We shall issue our decision in the representation case <sup>4</sup> and set the date for holding an election at such time as the Board is satisfied that there has been sufficient compliance with its order to dissipate the effects of the unfair labor practices of Todd and Robins and to permit an election uninfluenced by the conduct of Todd and Robins.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENTS

Todd Shipyards Corporation is a New York corporation having its principal office at 1 Broadway, New York City. It is a holding company which owns all the stock of both Robins and Tietjen and various other subsidiaries.<sup>5</sup> The chief officers are John D. Reilly, president; George Dawe, J. Herbert Todd, George G. Raymond, and William A. Maloney, vice presidents; Sanford S. Cox, treasurer; and Joseph Haag, Jr., secretary.<sup>6</sup>

Todd's counsel have contended both in the pleadings and by repeated motions in the course of the hearing that Todd is not an employer within the meaning of Section 2 (2) of the Act, and that the complaint should be dismissed as to Todd. This contention is untenable. The record plainly shows that Todd is not merely a holding company, but has been and is acting in behalf of its subsidiaries, Robins and Tietjen. Todd, through its officers, actively participates in, helps to formulate, and directs the labor policies of Robins and Tietjen. During the strike, Todd hired guards for the Robins plant and bills were rendered directly to Todd.<sup>7</sup> Letters to the William J. Flynn Detective Agency, Inc. with reference to the guards hired during the strike were written by a representative of Todd who signed the name of George Dawe; who is also president of Robins, without even consulting him or obtaining his permission.<sup>8</sup> Dawe regularly apprised Reilly about Robins' labor problems. Todd continually kept Robins informed both by letters and telephone as to

<sup>4</sup> Board's Case No. R-237.

<sup>5</sup> Other subsidiaries of Todd engaged in the business of repairing ships are the following: Todd Seattle Drydocks, Inc., Seattle, Washington, Todd Mobile Drydocks, Inc., Mobile, Alabama, Todd New Orleans Dry Docks, Inc., New Orleans, Louisiana, Todd Galveston Dry Docks, Inc., Galveston, Texas.

<sup>6</sup> For the names of other officers and directors see Board Exhibit No. 2 B.

<sup>7</sup> Board Exhibit No. 12

<sup>8</sup> Board Exhibit No. 13.

how it was handling correspondence relating to labor policies and advised Robins about such matters. Thus, when the Robins plant committee of the Employees Representation Plan asked Dawe for an increase in wages in March 1937, Dawe consulted Reilly who gave him advice as to how the reply should be drafted.<sup>9</sup>

Apart from the control which Todd exercises as the sole stockholder of Robins and Tietjen, Todd also employs salesmen to procure business for Robins and Tietjen. The salaries of Todd officers are paid directly by the subsidiaries. The employees of Robins are given badges bearing the name "Todd;" the roof of the main office of the Robins plant has on it the words: "Todd Shipbuilding Company;" the fence surrounding the plant has inscribed on it "Todd Shipbuilding Company,"

<sup>9</sup> Todd's contention that Reilly, its president, neither advised nor offered any suggestions, to Dawe with respect to Robins' labor policies is not borne out by the record. During direct examination Dawe stated that he did not consult any officer of Todd concerning his reply of April 13 (Board Exhibit No. 7-B) to the Industrial Union's letter requesting Robins to confer with the Industrial Union concerning labor conditions at Robins (Board Exhibit No. 6). Bendel, president of Tietjen, however, subsequently testified that at a meeting held at Todd's office in the early part of April, at which Reilly, Dawe, Haag, Bendel, and the respondents' counsel were present, a discussion took place concerning the reply to be made by Dawe to the Industrial Union's letter, which reply was thereafter made on April 13 pursuant to such discussion. Dawe was later recalled at the direction of the Trial Examiner and the Board's attorney to explain inconsistencies between his testimony and Bendel's. On redirect examination Dawe squarely contradicted his previous testimony and admitted that he had consulted with officers of Todd in drafting his reply of April 13:

Q Where did you first see that letter? (Board Exhibit No. 7-B)

A. In No. 1 Broadway.

Q. What is that?

A. Our New York office.

Q. Whose New York office?

A. Todd Shipyards.

Q. With whom did you consult before you sent that letter out, did you consult with any officer of the Todd Shipyards Corporation?

A. There was—

Q. Did you or didn't you?

A. Yes.

Q No; just answer the question. Do you care to change the testimony that you gave when you said you did not consult with any officer of the Todd Shipyards Corporation.

A. I do.

Q. You wish to change that testimony?

A. I do.

Q. Who was present from the Todd Shipyards Corporation, or with whom did you consult of the Todd Shipyards Corporation, before you sent out the letter dated April 13th, being Board's Exhibit No. 7?

A. Mr. Reilly was present.

Q Not present—you consulted with him, where did you consult with him?

A. No. 1 Broadway.

Q What was the nature of the conference had with him?

A In reference to answering the telegram sent by Mr. Green.

Q. What did you say to him and what did he say to you?

A. Well, counsel blocked out this letter.

Q Was any one else present?

A. Mr. Haag, Mr. Goddard, Mr. Hill and Mr. Reilly, Mr. Bendel and myself

Q Are any one of those other persons officers of Todd Shipyards Corporation?

A. Mr. Haag, the secretary.

and underneath it "Robins Dry Dock and Repair Company Plant."<sup>10</sup>

In short, Todd's subsidiaries are wholly subject to the same ownership and control; and the labor policies of Robins and Tietjen are directed by the parent company, Todd. The holding company arrangement need not obscure the true picture of the respondents and their business, namely, that of a single enterprise with unitary control.

Robins Dry Dock and Repair Co., a New York corporation, is engaged in the business of repairing, reconditioning and reconstructing ships, principally large steel ocean-going vessels. Robins has two plants, the Erie Basin plant located at the foot of Dwight Street in Brooklyn, New York, and the Tebo plant, a smaller plant chiefly engaged in yacht, harbor craft, and steamship repairing, located on Third Avenue in Brooklyn, New York. The chief officers of Robins are George Dawe, president; Francis J. Gilbride and Joseph Haag, Jr., vice presidents; Joseph A. Seits, secretary; and Sanford S. Cox, treasurer. John D. Reilly is chairman of its board of directors.

The Erie Basin plant consists of a yard, various shops, executive offices, chemical laboratory, garage, warehouse, furnace, drydocks (floating and graving), piers, etc.<sup>11</sup> It is equipped to do all kinds of repairs on all types and sizes of vessels. Most of the repairs are made on vessels in drydock or on vessels tied up along its wharves.

Q So you consulted with him as well as with Mr. Reilly, is that correct?

A At the conference there amongst us.

Q. At the conference?

A. Yes.

Q. What was said at the conference?

A. Each gave our different views. I gave my views in reference to this, Mr. Haag gave his views.

Q. I see.

A. And I believe Mr. Bendel gave his views.

Q As the result of these composite views, this letter was prepared?

A. This letter was prepared by counsel.

Q But you never told us you consulted with Reilly at No. 1 Broadway on April 13th, did you?

A. I said Mr. Reilly was present.

Q. Oh, no, you did not, sir.

A. Now I say Mr. Reilly was present.

Q. (By Trial Examiner BLOOM) : Why didn't you tell the truth the other day?

A. I have been under such a strain this last eight weeks it is a hard thing for me to remember everything.

Q. This reply of April 13th, who drafted it for you, Board's Exhibit No. 7?

A. Counsel.

Q. Who, Mr. Goddard.

A. Mr. Goddard.

Q. You just signed your name to it?

A. That is right.

Q. Whose idea was the sending of this reply?

A. The ideas of the parties present

Q Was it your idea?

A. Mr. Reilly's and mine.

<sup>10</sup> Respondent Exhibit No. 6.

<sup>11</sup> Same as footnote 10.

Robins, through its sales agents, solicits orders for the repair of vessels from numerous steamship companies both inside and outside the State of New York and from the United States Government. Robins has business agents in the States of New York and New Jersey, and foreign business agents in Denmark, England, Germany, Holland, Ireland, and Norway. About 98 per cent of the vessels repaired at the Erie Basin plant are engaged in coastal and ocean-going transportation.<sup>12</sup> The value of repair work done at the Erie Basin plant on coastal and ocean-going vessels from January 1 to May 31, 1937, amounted to \$3,511,982.00; other repairs for the same period amounted to \$49,594.00. In the Tebo plant from January 1 to May 31, 1937, 46 per cent of the repair work was done on harbor craft, amounting to \$195,160.88, 13 per cent on ocean-going vessels amounting to \$56,473.99, 21 per cent on coastal ships amounting to \$88,798.98, and 20 per cent on others amounting to \$84,771.34. From January 1 to May 31, 1937, both the Erie Basin and Tebo plants did work aggregating \$3,987,006.19.<sup>13</sup>

In its operations Robins uses a considerable amount of steel, bolts, nuts, lumber, castings, pipe, valves, brass, electrical equipment, machinery and parts. Approximately 70 per cent of this material, valued at about \$20,000,000.00 is obtained from sources outside the State of New York and is shipped to the Robins plants by rail and motor truck.

The number and identity of employees employed at the Erie Basin plant fluctuate from day to day and from week to week, ranging from 600 to about 2,360 employees. Robins employed during the week of June 12, 1937, the week prior to the strike, about 2,363 employees. Robins' pay roll for the first six months of 1937 amounted to \$1,787,960.62.

Tietjen and Lang Dry Dock Co., a New Jersey corporation, is engaged in the business of repairing, reconditioning, and reconstructing smaller ocean-going vessels, wooden ships, yachts, tugs, and harbor and river craft. Its plant is located in Hoboken, New Jersey, and is relatively much smaller than the Robins plant. The chief officers of Tietjen are Ernest H. Bendel, president and general manager; J. William Jamin, Jr., vice president; Sanford S. Cox, treasurer; and Henry Frielinghaus, secretary and assistant treasurer. George G. Raymond is chairman of its board of directors.

Tietjen's shipyard consists of a yard, various shops, floating dry-docks, executive offices, storerooms, piers, etc.<sup>14</sup> It is equipped to do all kinds of repairs on all types of vessels, but does chiefly wood and iron work.

<sup>12</sup> Board Exhibit No. 65.

<sup>13</sup> Respondent Exhibit No. 65.

<sup>14</sup> Respondent Exhibit No. 7.

Tietjen, through its sales agents, solicits orders for the repair of vessels from numerous steamship, freight, and railroad companies both inside and outside the State of New Jersey and with the United States Government. Its average contract jobs range from \$15,000.00 to \$20,000.00. During 1936, about 33 per cent of the vessels repaired by Tietjen were engaged in ocean-going transportation, 10 per cent in coastal, one per cent in intercoastal, 55 per cent in harbor, and one per cent in other transportation. The value of all this work during 1936 amounted to \$2,773,391.38.

In its operations Tietjen uses steel, lumber, brass, pipe, mechanical rubber goods, etc. Approximately 60 per cent of this material is obtained from sources outside the State of New Jersey and is shipped to the Tietjen plant by rail, motortruck, and boat.

The number and identity of employees employed by Tietjen vary with the work available. During the week of June 12, 1937, the week prior to the strike, Tietjen employed 731 employees.<sup>15</sup> Its pay roll for the first six months of 1937 amounted to \$684,646.68.

The respondents' operations are performed upon instrumentalities of interstate and foreign commerce. Such operations have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States and with foreign countries.

## II. THE ORGANIZATIONS INVOLVED

The Industrial Union is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership "all workers employed in the shipbuilding, ship-repairing industry, and industries producing marine equipment."<sup>16</sup> Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, herein called Local No. 13, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees working in the marine and shipbuilding industry in Brooklyn, New York, excluding office workers, clerical, and supervisory employees. Industrial Union of Marine and Shipbuilding Workers of America, Local No. 15, herein called Local No. 15, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees working in the marine and shipbuilding industry in Hoboken, New Jersey, and vicinity, excluding office workers, clerical and supervisory employees.

The Yard Union is a labor organization admitting to membership all workers employed at the Erie Basin Robins plant, exclusive of supervisory and clerical employees.

<sup>15</sup> Board Exhibit No. 51.

<sup>16</sup> Board Exhibit No. 52.

## III. THE UNFAIR LABOR PRACTICES

A. *Domination of and interference with the Yard Union* 5

Prior to the decisions of the United States Supreme Court on April 12, 1937, holding the Act constitutional, there existed in the Robins and Tietjen plants a joint plan of employee representation initiated and sponsored by Todd in December 1933. The respondents, during the course of the hearing, admitted that this was a company-dominated union. The executive committee consisted of six representatives, two from Robins, two from Tietjen, and two from Todd Dry Dock Engineering and Repair Corporation, subsequently known as the Tebo plant. After the United States Supreme Court declared the Act constitutional, the joint plan of employee representation ceased to function and was generally considered abandoned and dead by both the respondents and employees. There was, however, no formal disestablishment of the plan.

Since December 1936, the Industrial Union had been making active efforts to organize the employees of the Robins and Tietjen plants. On about March 24, 1937, each of the respondents received a letter from John Green, president of the Industrial Union, requesting, on behalf of its members employed in their shipyards in the New York harbor, a joint conference of the representatives of all the large repair yards in the port of New York with representatives of its three Locals Nos. 12, 13, and 15, covering that area.<sup>17</sup> The respondents made no reply to this communication. On about April 9, 1937, each of the respondents received another letter from John Green again requesting a joint conference with employers in the ship-repair industry in the port of New York for the purposes of collective bargaining.<sup>18</sup> Todd made no reply to this letter. On April 13, 1937, however, the presidents of Robins and Tietjen replied to the foregoing letters, refused to participate in a joint conference, and rejected the idea that a joint conference involving all the shipyard employers in the port of New York would serve any useful purpose.<sup>19</sup> Meanwhile, the Industrial Union had been conducting a vigorous membership campaign among the employees of the Robins and Tietjen plants.

On May 28, 1937, at 3 p. m., during working hours, a meeting attended by approximately 1,000 Robins employees was held in the garage of the Robins Erie Basin plant. There is considerable credible testimony that the employees were instructed either by their foremen

<sup>17</sup> Board Exhibit No. 8.

<sup>18</sup> Board Exhibit No. 6.

<sup>19</sup> Board Exhibits Nos. 7-A and 7-B.

or snappers<sup>20</sup> to stop working shortly before 3 o'clock and to attend the meeting at the garage. John Kirk, an acetylene welder and burner at Robins, testified that Charles Thompson, his foreman, told him and other employees working on the same ship to put their rigs in their lockers a little before three since there was to be a meeting in the garage at that time. Harry Murray, a pipe fitter and proofer at Robins, testified that Joseph Walker, a minor boss at the iron works, told him to "get over to the garage . . . they are having a meeting over there." The uncontradicted testimony of Ernest Fishwick, a burner at Robins, was that Frank Woods, head time-keeper, told all men then standing around the No. 1 gate to go to the garage. Although the foremen denied that they directed their men to attend the meeting, we cannot give credence to their denials when considered in the light of the other circumstances of the case. Despite conflicting testimony we believe that this meeting was planned in advance with the knowledge of the respondents' agents. When the men entered the garage, they found that improvised benches made of rough station planks laid across kegs had been set up. Furthermore, a platform had been erected in one corner of the garage.

The leading spirits of this meeting were Thomas McMahan, a burner, Robert Fleming, a machinist, Joseph Weldon, a machine riveter, Harry Cabre and Conrad Brandle, burners. The testimony of McMahan and Weldon with respect to the meeting is significant. There was great unrest at the yard at this time, according to their story. The Industrial Union had held meetings across from the yard daily during May 1937. McMahan and Weldon resented the activities of the Industrial Union and decided to organize an independent union within the Robins yard, to offset the influence of the Industrial Union. On May 27, McMahan decided that the time was ripe, and the next day told Weldon that there would be a meeting that afternoon, the time and place of which had not yet been decided. At 2 p. m. the meeting place was still uncertain, although McMahan knew that the meeting was to be held at 3 p. m. At about 2:30 p. m. he definitely decided to hold the meeting in the Robins garage, and shortly thereafter notified Fleming, Weldon, Brandle, and Cabre about the meeting place. Despite the fact that not until a half hour before the meeting was it decided to hold the meeting, nevertheless, even on such short notice, a meeting instigated by only a half-dozen employees and the aid of several supervisory employees was attended by 1,000 employees who found the garage already prepared upon their arrival at 3 o'clock.

<sup>20</sup> A snapper is a term used in the Robins and Tietjen yards to describe a straw-boss or "leading man" or "hurry-up" man; he might be classified as slightly lower than an assistant foreman.

When the meeting got under way, Weldon got up on the platform and selected McMahan as chairman. McMahan then announced that the purpose of the meeting was to find out whether the employees desired an independent union. Thereafter he stated that machinists, pipe fitters, and riggers would not be permitted to vote at this meeting. No reason was given for this action. During the meeting Kirk asked McMahan if it was not illegal under the Act to hold a meeting of this kind on company premises. McMahan abruptly dismissed this question. The meeting lasted approximately one hour, at the end of which time ballots,<sup>21</sup> which McMahan on May 27, the previous day, had ordered printed, were distributed among the men to determine whether or not they wished to form an independent yard union. Tony Carmody and James O'Brien, timekeepers present at the meeting, were ordered by McMahan to get the ballot boxes. There were about 330 votes for the yard union and 150 against it; the remainder did not vote. This poll was not very reliable as there is credible testimony that many men voted more than once and some voted as many as six times. After the voting the meeting was adjourned until the next day.

Dawe, president of Robins, testified that he did not know that the meeting was to be held in the garage, but learned about it ten minutes after it was over. This testimony is not credible. Joseph Weldon testified that the men would necessarily have to pass the Robins main office building, where Dawe's office is located, in order to get to the garage.<sup>22</sup> It is incredible that such a mass movement of employees could occur shortly before 3 p. m. during working hours without it being known as Dawe, the president of Robins, who testified that he was in his office at that time.

When the timekeepers asked William Sammon, assistant treasurer of Robins, whether the men should be paid for the time lost in attending the meeting during regular working hours, Sammon consulted Dawe, who ordered that the men should be paid because it would be impossible to determine which men did not attend the meeting and if some men were not paid, it would cause trouble. This reason advanced by Dawe for paying the employees who attended the meeting is not in accord with the testimony of the timekeepers. Several timekeepers testified that they could have told who attended the meeting, for they checked the time of the men in the various departments. Thus, if a man was absent, such fact would be noted, and he, accordingly, would not be paid for the time lost. Sammon, however, neither asked him for the names of those who had attended nor made it his business to find out.

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<sup>21</sup> Board Exhibit No. 14.

<sup>22</sup> See Respondent Exhibit No. 6, photograph of the Robins yard.

It might be expected that after such an occurrence, the respondents, in order to foreclose the drawing of any inference of domination, interference, or favoritism toward the independent yard union, would have immediately taken some direct action to prevent a recurrence of such a meeting on their property during regular working hours, particularly when it was generally known that the meeting had adjourned to resume the next day.<sup>23</sup> The respondents, however, took no precautions to stop this.

The following day, pursuant to the adjournment, another meeting was held in the garage at 10 a. m., during regular working hours. It was also attended by about 1,000 employees and lasted approximately an hour. There is much testimony that the men went to this meeting also at the direction of their foremen and snappers. Otto Hansen, a rigger, testified that Hans Hansen, his snapper, came to the boat on which he was working to tell him and his fellow employees to go to the meeting. John Kirk testified that Charles Thompson, his foreman, told him to go to the meeting. Harry Murray testified that Ted Thomas, the pipe-fitter snapper, told him and other pipe fitters to "put tools away and get over to the garage to the meeting." Ove Larsen, a rigger, testified that his timekeeper called off both him and another rigger from their jobs and told them to go to the meeting. George Anderson, a ship's carpenter, testified that Selby King, his foreman, just before 10 a. m., told him "to take the tools together and go over to the meeting."

Hans Hansen, an assistant rigger foreman, testified that he attended the meeting. Despite the fact that all foremen and snappers were asked to leave, Hansen remained. Thomas Stoker, ship riggers' foreman, testified that his assistant foreman also attended the meeting.

The following officers were elected at this meeting: Joseph Weldon, president; Thomas McMahon, vice president; Robert Fleming, treasurer; Harry Cabre, secretary. These men had been most active in the promotion of the Yard Union. All the employees were paid for the time spent in attendance at this meeting and no attempt whatsoever was made by the management to prevent or stop such a meeting during working hours.

After the meeting on May 29 many of the employees were told by their foremen and snappers to join the Yard Union. Marcus Brandfon, a tool maker, testified that Ralph Vitalowy, his snapper, during working hours suggested that he join the Yard Union in order to "entrench himself better in the company". Brandfon also testified that Walter Loranzo, a snapper in the machine shop, handed him Yard Union application cards.<sup>24</sup> He tore them up and threw them

<sup>23</sup> See Yard Union Exhibit No. 1 (minutes of meeting)

<sup>24</sup> Board Exhibit No. 15.

on the floor in the presence of Dan MacDonald, the general foreman of the machine shop. Thereupon, MacDonald said, "What are you trying to do—you hold your job by so much" (indicating with his fingers a distance of an inch and a half). The uncontradicted testimony of Thomas O'Connor, a burner and driller, was that on about June 1, during working hours, Charles Colberg, his snapper, urged him to join the Yard Union. The uncontroverted testimony of John Kirk, a welder, was that the week following the meeting, Johnson, assistant timekeeper for outside machinists, during regular working hours, distributed application cards to the machinists "as he walked around." The unrefuted testimony of Ove Larsen, a ship's rigger, was that Johnson, during regular working hours, also asked him to sign up with the Yard Union. Harry Murray, a pipe fitter, testified that Albert Farrier, head boss of pipe fitters, came over to him and inquired whether he had joined up with the Yard Union. When Murray told him that he belonged to the C. I. O., Farrier said, "Better join up with the Yard Workers Union \* \* \* you can suit yourself." Fearing the loss of his job, Murray joined the Yard Union. There is also testimony that other employees actively solicited membership in the Yard Union during working hours in the presence of foremen and snappers who took no action to stop this practice.

On June 16, two days after the strike had commenced, the Yard Union held another meeting in the Robins garage during regular working hours, permission for which was clearly given by Dawe. The employees were also paid for the time spent in attendance at this meeting. The question to be considered was the closing of the Robins plant. Numerous acts of violence had been committed around the Erie Basin plant against strikers, nonstrikers, and pickets. Therefore a committee of the Yard Union, consisting of McMahon, Weldon, Cabre, and Fleming, was selected to request the management to close the plant. When the committee approached Dawe, he immediately acceded to their request. When they told him that they represented a majority of the employees, he inquired no further for proof thereof, but told them that he would close the plant.

Further evidence of support of the Yard Union by Robins is Dawe's turning over to the officers of the Yard Union copies of all correspondence the respondents had with the Board's Regional Director relative to the calling of an election. Furthermore, when communications with respect to the closing of the Erie Basin plant were to be sent to Robins' employees by the Yard Union committee, Dawe mimeographed 1,500 copies of a letter<sup>25</sup> which he thereupon turned over to the Yard Union committee for distribution to em-

<sup>25</sup> Board Exhibit No 8.

ployees. In addition, a mailing list of Robins' employees was forwarded to Cabre by Frank Woods, a timekeeper of Robins.

We find that Todd and Robins have dominated and interfered with the formation and administration of the Yard Union and have contributed support to it.

We find that Todd and Robins, by the acts above set forth, have interfered with, restrained, and coerced their 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 and other mutual aid and protection as guaranteed in Section 7 of the Act.

*B. The alleged refusal to bargain collectively*

1. The appropriate unit

The Industrial Union contends that the production and maintenance employees working in the two Robins' plants and in the Tietjen plant, exclusive of supervisors, office, and clerical employees, draftsmen, timekeepers, watchmen, and guards, constitute a single unit appropriate for the purposes of collective bargaining. The respondents contend that the production and maintenance employees of each yard, exclusive of supervisory and clerical employees, constitute separate and distinct units appropriate for the purposes of collective bargaining. The factors urged by the respondents against including the production and maintenance workers of the Robins and Tietjen plants in one unit are: (1) their plants are located in different States; (2) their employees reside in different States; (3) the members of the Industrial Union are divided into two locals, No. 13 in Brooklyn, New York, and No. 15 in Hoboken, New Jersey; (4) the greater bulk of repair work done by Robins is on large ocean-going vessels, whereas at Tietjen the greater proportion of work done is on wooden vessels, harbor, and river craft; (5) at the Robins plant there are customarily three shifts, whereas there are only two at Tietjen; (6) Robins has only a small amount of carpenter work, whereas a greater portion of the work at Tietjen consists of skilled carpenter work; and (7) the type of customer at Robins is different from that of Tietjen in that speed in repairing is of utmost importance at Robins.

The respondents' first objection is disposed of by the paramount fact that both the Robins and Tietjen plants are owned and operated by the respondents more or less as a unit, and were so regarded by the respondents themselves in initiating and carrying on the joint plan of employee representation from 1933 up to the time of the

formation of the Yard Union on May 28.<sup>26</sup> The second objection is not of serious weight since the three plants are so close to each other that intercommunication and common action by the employees of the three is feasible. The State line, of course, presents no obstacle. The third objection disappears when it is considered that the two locals, being organized on a geographical basis for the convenience of the members, have formed a Joint Council for the purposes of dealing jointly for employees at both the Robins and Tietjen plants with the respondents. The fourth and sixth objections are not significant since the record discloses that the craft training and skills involved on the part of the artisans in the Robins and Tietjen yards are the same whether it be wooden, steel ocean-going, or harbor vessels that are being repaired. The record discloses that many of the employees engaged in the ship repairing industry in and about the port of New York shift constantly from one yard to another. This holds true for workmen employed by the respondents. The Industrial Union's membership cards show that many former Robins' employees are now employed in the Tietjen yard and vice versa. The men do not work steadily in either of the plants where the "shape up" is in practice. The "shape up" is a method by which employees of the respondents are hired on a day-to-day basis. They must assemble in the "shape up" line at the yard gate every day and are selected by one or more representatives of the respondents, called "shapers", to work on that particular day. The fifth and seventh objections are of no consequence in determining the appropriate unit in this case since the only difference in working conditions that would be brought about by the requirement of greater speed in one yard than in the other would be the maintenance of a larger staff and the use of more than the usual two shifts.

The record discloses that the wage scales, the beginning and ending hours of the shifts, and other conditions of employment are the same in both plants. Despite the repeated protest that each of the respondents determines its own labor policy, the record shows that the policy concerning the labor relations of the two yards have a common source, Todd, the parent company.

The following classes of employees are to be excluded from the unit because it is clear that they constitute groups with functions sharply distinguished from that of the production and maintenance employees: Office and clerical employees, those classified as executives, supervisors, snappers (or assistant foremen), watchmen, doormen,

<sup>26</sup> See Board Exhibit No 2, page 2: "Owing to the close interrelationship of the employees in the operation of the three companies, a single election will be held by and for the three companies."

chauffeurs, traffic department dispatchers, timekeepers, janitresses (or cleaners), engineers, and draftsmen.<sup>27</sup>

We find that the production and maintenance employees of the respondents working in the two Robins plants and the Tietjen plant, exclusive of office and clerical employees, executives, supervisors, snappers (or assistant foremen), watchmen, doormen, chauffeurs, traffic department dispatchers, timekeepers, janitresses (or cleaners), engineers, and draftsmen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to them the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

## 2. Representation by the Industrial Union of a majority in the appropriate unit

At the hearing pay rolls of Robins and Tietjen for the week ending June 12, 1937, were introduced.<sup>28</sup> On the Robins pay roll there are listed about 2,128 employees who could properly be classified as production and maintenance employees. Similarly on the Tietjen pay roll there are listed 674 production and maintenance employees. The membership records of the Industrial Union disclosed that at best the Industrial Union represented 1,000 employees in the Robins plants, and 400 in the Tietjen plant. Some 230 of the 1,000 are in doubt. Thus, many of the application cards were signed by others than those whose names appeared on the cards.

It is not clear from the record that the Industrial Union represented a majority of the employees in the appropriate unit on March 23, April 8, June 10 and 12, or July 26 and 31, 1937, the dates of the respondents' alleged refusal to bargain. Consequently there has been no violation of Section 8 (5). The allegations of the complaint under Section 8 (5) of the Act, in so far as they are based on the respondents' refusal to bargain with the Industrial Union, will therefore be dismissed.

## IV. THE STRIKE

On June 14, the members of the Industrial Union employed at the Robins and Tietjen plants went out on strike. Hugh McQuillen, president of Local No. 13, testified that at a special meeting called on June 13, about 97 per cent of the members present voted to strike. Edward McHugh, recording secretary of Local No. 15, testified that at a regular meeting held on June 11, the members unanimously voted

<sup>27</sup> The names of employees thus excluded appear in Board Exhibits Nos 68, 69 (pages 2 and 3), 70 (excepting powerhouse engineers and chauffeurs), 72, 73 (excepting chauffeurs, doormen and traffic department dispatchers), 74 A-F.

<sup>28</sup> Board Exhibits Nos 50 and 51.

to strike. Philip Van Gelder, secretary and treasurer of the Industrial Union, testified that officers of Locals Nos. 13 and 15 reported to him that the strike was declared because of the activities of Todd and Robins in organizing, dominating, and supporting the Yard Union and because of the respondents' failure to respond satisfactorily to the Industrial Union's letters of March 23 and April 8, requesting them to participate in a joint conference with employers in the ship repair industry in the port of New York for the purposes of collective bargaining.

We have already seen that the employees at all three plants are governed by a common labor policy and have common interests, that together they constitute a single appropriate unit for collective bargaining, and that the two locals of the Industrial Union dealt with the respondents through a Joint Council. Under these circumstances it is plain that the unfair labor practices of Todd and Robins, although confined at the time of the strike to employees at the Robins plant, directly affected all the employees, including those at the Tietjen plant. For this reason, as the record makes clear, the strike at the Tietjen plant, as well as at the Robins plants, must be ascribed in large part to the unfair labor practices set forth above.

The strike was still going on at the time of the hearing. At the oral argument before the Board on October 1, 1937, counsel for the parties stated that the strike terminated on August 18.

The strike constituted a labor dispute.

Many of the strikers were employees who, prior to the strike, were hired from day to day by the "shape up" system. It is apparent that either because employees who "shape up" cannot be used or because they do not wish to work every day, these employees do not have continuous and regular employment in the same sense that an employee has in the ordinary industrial plant. The record discloses, however, that prior to the strike there was in the main a regular and continuous employment of the same employees who "shaped up" regularly. We think that such employees are employees of the respondents even though, because of the nature of the work, they are not "shaped up" daily.

#### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of Todd and Robins set forth in Section III, above, occurring in connection with the operations of the respondents, described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, transportation, and commerce among the several States and with foreign countries and on the high seas, and tends to lead and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VI. THE REMEDY

The Board has found that Todd and Robins dominated and interfered with the formation and administration of the Yard Union and contributed support thereto. In order to remedy the unlawful conduct in this case, Todd and Robins must withdraw all recognition from the Yard Union as an organization representative of their employees for the purposes of dealing with Todd and Robins concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment. We will therefore order the immediate disestablishment of the Yard Union as such representative.

Since Todd, through its officers, actively participates in, helps to formulate, and directs the labor policies of Robins and Tietjen, it is clear that Todd is the employer of the employees at the Robins and Tietjen yards within the meaning of Section 2 (2) of the Act. Since Todd and its subsidiaries, Robins and Tietjen, function as an integrated system and since Todd is a principal and Robins and Tietjen are its agents in carrying out its policies and activities, the order of the Board in order to be effective must of necessity run against all the respondents. Since the strike was caused in substantial part by the unfair labor practices of Todd and Robins, the respondents are under a duty to restore the status quo which existed prior to the commission of the unlawful acts. The respondents must, therefore, upon application offer to their employees who went on strike on June 14, 1937, and thereafter, reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, discharging, if necessary, any employees hired since that time.

Employees of the respondents who went on strike on June 14, 1937, and thereafter, whose application for reinstatement is refused by the respondents in violation of this order herein shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.

## CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. Industrial Union of Marine and Shipbuilding Workers of America, Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13, and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 15, are labor organizations within the meaning of Section 2 (5) of the Act.

2. Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co. is a labor organization, within the meaning of Section 2 (5) of the Act.

3. Todd Shipyards Corporation and Robins Dry Dock and Repair Co., by dominating and interfering with the formation and administration of the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co., and contributing support thereto, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. Todd Shipyards Corporation and Robins Dry Dock and Repair Co., by interfering with, restraining, and coercing their employees in the exercise of their rights guaranteed in Section 7 of the Act, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

6. All production and maintenance employees of the respondents working in the Erie Basin plant and the Tebo plant of the Robins Dry Dock and Repair Co. and in the plant of Tietjen and Lang Dry Dock Co., exclusive of office and clerical employees, executives, supervisors, snappers (or assistant foremen), watchmen, doormen, chauffeurs, traffic department dispatchers, timekeepers, janitresses (or cleaners), engineers, and draftsmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

#### ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents; Todd Shipyards Corporation, and Robins Dry Dock and Repair Co., and their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their 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 National Labor Relations Act;

(b) In any manner dominating or interfering with the administration of the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co., or with the formation and administration of any other labor organization of their employees, or con-

tributing support to said organization or any other labor organization of the employees;

(c) In any manner recognizing or dealing with the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co., or any group or committee purporting to represent the said organization concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment.

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

(a) Withdraw all recognition from the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co., as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co. as such representative.

It is further ordered that the respondents, Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tietjen and Lang Dry Dock Co., and their officers, agents, successors, and assigns shall:

1. Upon application, offer to those employees who went on strike on June 14, 1937, and thereafter, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing, if necessary, all persons hired since June 14, 1937;

2. Make whole all employees who went on strike on June 14, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

3. Post immediately, and maintain for a period of at least thirty (30) days from the date of posting, notices to all their employees in conspicuous places throughout the Todd Shipyards Corporation office, the Robins Dry Dock and Repair Co. plants, and the Tietjen and Lang Dry Dock Co. plant, stating (1) that Todd Shipyards Corporation and Robins Dry Dock and Repair Co. will cease and desist as aforesaid; (2) that the Yard Union for Collective Bargaining of the Men of Robins Dry Dock and Repair Co., is disestablished as the representative of any of their employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that

the Todd Shipyards Corporation and Robins Dry Dock and Repair Co. will refrain from any such recognition thereof;

4. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply therewith.

It is further ordered that the complaint be, and it is hereby, dismissed in so far as it alleges that the respondents have engaged in unfair labor practices within the meaning of Section 8 (5) of the National Labor Relations Act.