

In the Matter of AMERICAN MANUFACTURING COMPANY; COMPANY UNION OF THE AMERICAN MANUFACTURING COMPANY; THE COLLECTIVE BARGAINING COMMITTEE OF THE BROOKLYN PLANT OF THE AMERICAN MANUFACTURING COMPANY and TEXTILE WORKERS' ORGANIZING COMMITTEE, C. I. O.

Case No. C-261.—Decided February 18, 1938

Textile Manufacturing Industry—Interference, Restraint, or Coercion: soliciting membership in company union; expressed opposition to outside labor organization; persuading employees to refrain from forming or joining or to resign from union; purported election of collective bargaining committee; "negotiation" of "yellow dog" contracts—*Discrimination:* discharge—*Strike:* discriminatory refusal to reinstate strikers—*Company-Dominated Union:* domination and interference with establishment and administration of; support; sponsoring and fostering growth of; disestablished as agency for collective bargaining—*Unit Appropriate for Collective Bargaining:* wage differentials; skill; no controversy as to—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to negotiate with representatives; dilatory tactics; attempt to destroy union's majority—*Reinstatement Ordered:* discharged employees and strikers—*Back Pay:* awarded to discharged employees and strikers refused reinstatement—*"Yellow Dog" Contracts:* discontinuance ordered.

Mr. Lester M. Levin, for the Board.

Mr. Thomas F. Magner, by *Mr. Daniel G. Connolly*, of Brooklyn, N. Y., for the respondent.

Mr. Joseph E. Brill, *Mr. Sidney L. Cahn*, and *Mr. Albert Udoff*, of New York City, for the T. W. O. C.

Mr. Arthur F. O'Brien, of Brooklyn, N. Y., for Nu-Art Employees, Inc.

Mr. J. Mark Jacobson, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by the Textile Workers' Organizing Committee, herein called the T. W. O. C., the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint dated July 27, 1937, against American Manufacturing

Company, Brooklyn, N. Y., herein called the respondent, against Company Union of the American Manufacturing Company, herein called the Company Union, and against the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company, herein called the Collective Bargaining Committee. The complaint and notice of hearing thereon were duly served upon the respondent, the Company Union, and the Collective Bargaining Committee. The complaint alleged that the respondent had engaged 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 respondent in its answer dated August 3, 1937, denied all the material allegations of the complaint.

Pursuant to notice, a hearing was held in New York City on August 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27, before Herman Gray, the Trial Examiner duly designated by the Board. At the hearing, pursuant to notice dated August 10, 1937, and duly served upon the respondent, the Company Union, the Collective Bargaining Committee and the T. W. O. C., the Board moved to join as a party the "Independent Union of the American Manufacturing Company", a labor organization purporting to represent employees of the respondent, and to amend its complaint by alleging its formation and domination by the respondent. Counsel appeared for the "Independent Union of the American Manufacturing Company", admitted service of the notice of motion to amend, and stated that the true name of that organization was Nu-Art Employees, Inc. The motion to amend was granted by the Trial Examiner, who ruled, at the same time, that all the allegations included by the amendment were deemed to be denied by the several respondents and that the respondents might file at any time during the course of the hearing a formal answer altering or modifying the said denials in any respect they saw fit and containing such affirmative defenses thereto as they might deem fit to interpose and otherwise to alter or amplify their several pleadings thereto. The respondent and Nu-Art Employees, Inc., served formal answers to the amended complaint, dated, respectively, September 3, 1937 and August 16, 1937.

At the hearing the Board, the respondent, Nu-Art Employees, Inc., and the T. W. O. C. were represented by counsel. The Company Union was not represented. The respondent's counsel stated that he was appearing for the Collective Bargaining Committee for the limited purpose of protecting a certain contract purported to have been made between the respondent and the said Collective Bargaining Committee. Full opportunity to be heard, to examine and to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all the parties. At the close of the hearing, counsel for

the Board moved that the pleadings be conformed to the proof. This motion was granted by the Trial Examiner. During the course of the hearing, the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On October 8, 1937, the Trial Examiner filed an Intermediate Report finding that the respondent had engaged 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 Act. The respondent and Nu-Art Employees, Inc., thereafter filed briefs and exceptions to the Intermediate Report.

Pursuant to notice, a hearing was held before the Board on November 16, 1937, in Washington, for the purpose of oral argument. The respondent, Nu-Art Employees, Inc., and the T. W. O. C. were represented by counsel and participated in the oral argument.

The Board has reviewed the exceptions to the Intermediate Report, and finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, American Manufacturing Company, a Massachusetts corporation, has its principal office at Brooklyn, New York. It is engaged in the manufacture of coarse textile products, such as rope, twine, jute bagging for baling cotton, oakum packing of jute and hemp, and fiber fabric used for slip-cover work of various kinds. The respondent is one of the three largest companies in the rope industry in the United States and its gross sales in 1936 amounted to approximately \$6,500,000. It has manufacturing plants in Brooklyn, New York, Philadelphia, Pennsylvania, St. Louis, Missouri, and Charleston, South Carolina. Its principal sales offices are located in Brooklyn, New York, Boston, Massachusetts, Chicago, Illinois, and Galveston, Texas; and it has additional sales offices and sales agents in other cities throughout the country.

The raw materials used by the respondent at its Brooklyn, New York, plant are: Manila hemp from the Philippine Islands; Sisal hemp from Mexico, Cuba, Haiti, Africa, and Java; Italian hemp from Italy; Mauritius hemp from the Island of Mauritius off the coast of Africa; American hemp from the States of Kentucky, Indiana, Illinois, and Wisconsin; jute from India; and paper; about half of which comes from the State of Ohio. Approximately 80 per cent of these raw materials are shipped to the respondent directly from their points of origin. The Brooklyn plant produces approx-

imately one half of the respondent's products and consumes approximately one half of the raw materials. Approximately 75 per cent of the products of the Brooklyn plant are shipped to points outside the State of New York.

The Nu-Art department¹ of the Brooklyn plant employs approximately 260 to 270 workers,² and manufactures fibre rugs and fibre fabrics for slip covers and upholstery.

II. THE ORGANIZATIONS INVOLVED

Textile Workers Organizing Committee, affiliated with the Committee for Industrial Organization, herein called the C. I. O., is a labor organization.

Nu-Art Employees, Inc., is a labor organization without any outside affiliation. Its membership is limited to the employees of the respondent's Nu-Art department.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

During the summer of 1936 a large number of Nu-Art department workers were laid off. Upon their return to work late in that summer, they were solicited by supervisory employees of the respondent to sign the following statement:³

I, as an employee of the American Manufacturing Company, Brooklyn, New York, hereby sign and consider myself a member of the Company Union of the American Manufacturing Company, with the understanding that no dues are to be imposed upon me at any time as a member of this Union.

I agree to abide by the By-Laws of the Works Council Committee of this Union with the understanding that any grievances or question that may arise, or suggestions made, shall be passed upon by the Works Council Committee and that only this Committee shall have the privilege of looking out for my interests, as I feel that only those working in this Mill are familiar with the conditions therein.

I am signing as a member of this Company Union of my own free will, without suggestion or instructions from anyone to do so.

Particularly active in the formation of the Company Union and in the solicitation of membership were: Christopher Joseph Fardy, assistant to the general superintendent of the Brooklyn plant and

¹ Sometimes called "Nu-Art Fibre Products Company" by the respondent

² The total number of employees in the Brooklyn plant was approximately 1,100, and the respondent employed approximately 2,250 in all its plants.

³ Board's Exhibit No. 9.

engaged in general supervisory and personnel work; Josephine Gulino, general assistant to the superintendent of the Nu-Art department, who also performed the duties of timekeeper and production clerk; Pete Matusza, George Gosslein and James Cartello, supervisory employees in the Nu-Art department; Harry Wilman, a loom fixer in the Nu-Art department; and Margaret Schwartz, scale girl in the Nu-Art department with supervisory duties.

The respondent denies that Fardy, Josephine Gulino, Matusza, Gosslein, Cartello, Margaret Schwartz, and James Dillon, mentioned hereafter, are foremen or supervisory employees and emphasizes the fact that these individuals do not have authority to discharge employees. However, the record indicates that they distribute work to and check and report on the work of other employees, and that they are considered by the workers in the Nu-Art department as supervisory employees. If we were to accept the respondent's statements as to their status, we would be forced to the unacceptable conclusion that the entire Nu-Art department functions without any supervisory employees other than its superintendent. A careful weighing of the evidence convinces us that these individuals are supervisory employees.

Harry Wilman gave the following explanation of the origin of the Company Union: "The different boys in the weaving department was doing a lot of crabbing about different kinds of stuff, the way the work went, and things was going bad this way and that way, which you always get in a weaving department." Wilman reported his observations to Gosslein; and, as to the subsequent events, he gave the following testimony: "Well, the next thing I heard they came around to me—that is Mr. Fardy came around to me—and he told me that the boys elected me as a delegate to represent them for a company union and give him all the details that was going on. The complaints, all the complaints that was made to report them at regular meetings once a month."

Fardy was hazy in his recollection of the origin of the Company Union. He did not know who drafted the above application form distributed to the employees for their signatures; but he did recall that applications and the membership cards came out of the respondent's stationery room. He testified that someone in the respondent's company gave the applications to "the committee that was elected" and "the committee" distributed them among the workers.

During working hours Wilman, Gosslein, Matusza, Cartello, Josephine Gulino, and Margaret Schwartz asked employees of the Nu-Art department to sign the membership applications. Adolph Koschade and John Dusheck, both weavers, testified that Wilman told them that the respondent was having trouble at its Philadelphia plant and did not want any "outsiders to come here and tell us what to do." Matusza testified that the forms had been given to

him by Josephine Gulino. Employees hired after the formation of the Company Union were asked to join by their superiors.

Subsequent to the signing of the above statements, Josephine Gulino distributed among the employees membership cards, reading "Employee's Union Card of the Nu-Art Fibre Products Co."

The record is clear that no genuine election was ever held to choose officers of the Company Union; rather the respondent named delegates from various divisions of the Nu-Art department. Wilman testified, as stated above, that he did not know how he had been chosen a delegate. Most of the witnesses testified that after they had signed the membership application and had received their cards they heard nothing further concerning the organization. Only two witnesses—Edward Bressett, a weaver, who later was chosen chairman of Nu-Art Employees, Inc., and John Hritzay, a weaver—had even vague recollections of a Company Union election. They testified that Josephine Gulino came around with slips of paper and told them to write down the name of an individual to represent their departments. The Company Union's constitution and bylaws were drawn up by the respondent without consultation with or approval of either the members or the delegates of the organization.

Concerning the activities of the Company Union, Wilman testified that the delegates met the first Saturday of each month on the respondent's premises, that Fardy personally informed him of the holding of the first meeting, that he was paid for his time by the respondent for attending the meetings, that Fardy attended the meetings of the delegates, and that these meetings were devoted to presentation of complaints to Fardy and to the discussion of such problems as baseball and social doings of the delegates.

After about nine meetings of the delegates, the Company Union expired. Concerning its sudden demise, Wilman testified as follows: "All of a sudden there was no more meetings, and I didn't inquire why, or what it was all about. As I didn't inquire, so I didn't get no news, so I let it drop at that." Fardy was more enlightening. He testified that in the early part of April 1937, Filley, president of the respondent, told him that the Company Union would no longer exist and instructed him to so inform the employees.

In April 1937, the T. W. O. C. began to organize the employees of the Nu-Art department. Apparently it made rapid progress in its campaign, and the respondent's officials were aware of these organizational efforts.

On either May 8 or 15,⁴ the respondent held a meeting of a number of its more important weavers in the Nu-Art department, including several known to have been leaders in the T. W. O. C. drive. Filley

⁴The witnesses for the Board fixed the date as May 8; those for the respondent, as May 15.

instructed Fardy to call the meeting and authorized him to meet reasonable demands of the workers. Fardy, during working hours on the previous day, had approached various weavers and had asked them to attend a meeting at the plant the following morning. Joseph Robinson, a loom fixer, testified that Fardy told him: "Robinson, there is a lot of underground work going on around here, and we are going to call a meeting tomorrow of the weavers." Although the meeting was held on a Saturday morning when the plant is usually closed, the 16 or 18 employees attending the session were paid by the respondent for their time. Fardy and Anderson, superintendent of the Nu-Art department, attended the meeting. Fardy opened the meeting by asking the workers to give him all their complaints. He and Anderson noted the grievances and promised to take steps to remedy them. Undoubtedly, as Robinson's testimony indicates, the purpose of this meeting was to forestall the T. W. O. C. bargaining demands and thereby to convince the employees that an outside union was unnecessary.

When this technique failed and after the T. W. O. C. presented its demand for recognition on May 29, as will be discussed below, the respondent embarked upon a vigorous campaign to discourage the T. W. O. C. membership among its employees. The weapons of this attack were the circulation among its employees of a petition repudiating the T. W. O. C., an "election" of a collective bargaining committee, the "negotiation" of individual contracts with the employees, and the spread of scare stories.

Repudiation petition. On the morning of June 4, Francis Bradbury, who was then a color shader and filler carrier and who has since then been promoted to the position of weaver, circulated the following petition among the Nu-Art department employees:

We, the undersigned who are signed with the C. I. O. wish to withdraw. We were unaware of the unreasonable demands they were making. We are satisfied with present conditions and do not wish any outside representation.⁵

Simultaneously, Margaret Schwartz circulated a similar petition among the girls in the department. For several hours during regular working hours they carried these petitions among the workers and solicited signatures while the respondent's supervisory employees were present and did not object either to their solicitation or to their absence from their jobs. After the petitions were signed, Bradbury took them to Anderson's office and left the sheets on his desk. Bradbury testified that he acted on his own initiative, that he heard that Margaret Schwartz was also planning to circulate a petition, that Margaret Schwartz had thought up the idea independently, and

⁵ Respondent's Exhibit No. 8.

that, when he heard of her intentions, he assisted her. Bradbury did not explain how he heard of Margaret Schwartz's proposed petition before she began circulating it. The respondent did not call upon Margaret Schwartz to testify, although at the time of the hearing she was still in its employ. It is difficult to believe Bradbury's story that both he and Margaret Schwartz conceived the plan for the petition independently of each other at the same time and without any suggestion from the respondent's officials. The Trial Examiner, who had the opportunity of observing Bradbury on the witness stand, found his testimony difficult to believe. We find it difficult to believe that Bradbury, a young man with little experience in industry and none in labor organization work, would on his own initiative step into this difficult situation and of his own accord use the phrase "do not wish any outside representation", a phrase which has a technical significance in the field of labor relations.

"Election" of collective bargaining committee. Fardy testified that he had been approached by a number of unnamed workers relative to the organization of a collective bargaining committee and that he had reported these conversations to Filley, who had told him that he would look into the advisability of such a move. On June 3 Filley called Fardy into the office. Brown, vice president and treasurer of the respondent, and Connolly, the respondent's attorney, were present at that conference. Connolly, after stating that he understood that the employees wanted their own collective bargaining committee, said that he had designation sheets to be used for an election and told Fardy to conduct the election the next morning. Most of the designation sheets read as follows:⁶

We, the undersigned employees of the American Manufacturing Company, hereby notify you that we have this day re-confirmed our delegate, -----, who has represented us in the past in collective bargaining with you, as our representative of our particular department or sub-division of a department to bargain collectively with you in conjunction with the duly elected representatives of the other sub-divisions and departments of the Brooklyn plant. We authorize this representative to cooperate with the representatives of the other sub-divisions of the Brooklyn plant to enter into and to sign a contract with the company, provided it contains substantially the provisions outlined to us by our representative.

This authorization is to supersede any prior authorization we may have heretofore granted, and we hereby revoke and cancel any such prior authorization to any other person or group, and

⁶ Board's Exhibit No. 23 A-J. The variations in wording were slight.

hereby certify that no one else is authorized to represent us in collective bargaining with the company.

Each of the ten such sheets had space for approximately 40 signatures. Four of the sheets had no names inserted as the designated delegate; the remaining six had the names written in pencil; and two of them named as a delegate James Dillon, a supervisory employee. Although Fardy had charge of the "election", at the hearing he could not explain its mechanics, nor did he know why the names of delegates were missing on some of the sheets. On the morning of June 4, between eleven and twelve, he handed the sheets to workers, one to each division of the Nu-Art department, for them to sign their names. In one section, Margaret Schwartz took care of the "election". Fardy collected the sheets and brought them to Filley. Fardy never heard the results of the "election" and he admitted that the delegates "re-confirmed" were not all the same individuals who had been delegates in the old Company Union.

John Kroll, a cutter on the night shift, who was designated as a delegate on the collective bargaining committee, threw a little additional light on the so-called "election". He stated that about 5:30 or 6:00 o'clock on June 4 Fardy gave him one of the "election" sheets together with a batch of the contracts which we shall discuss below, and testified as follows:

He (Fardy) said that entitles me to be a delegate. I just went on. I had a fellow up there with the contracts. After the fellow passed around the contracts and had some of them signed, I went around with that sheet.

Kroll told his fellow employees:

"Well, fellows, this sheet entitled me to be a delegate. If you want me, O. K., sign your name." Some of the fellows signed. They did not read it, not the heading or anything. They just signed their names, and gave it back to me.

While these "election" sheets purported to represent the voluntary designation of delegates by the employees, it is clear that the employees were given no real choice. Moreover, inasmuch as only a few days before the T. W. O. C. had attempted to negotiate with the respondent and the latter had not questioned the authority of that union to act for its employees, it is apparent that the inclusion in the "election" sheet statement of a revocation of "any such prior authorization to any such person or group" was intended to dissuade its employees from becoming or remaining members of the T. W. O. C.

"Negotiation" of individual contracts. No sooner was the "election" completed but the respondent on June 4 also distributed among the Nu-Art department employees mimeographed copies of a letter and

a contract purported to have been negotiated with the Collective Bargaining Committee. In the night shift, as indicated above, the respondent simultaneously held the "election" of the Collective Bargaining Committee and distributed the contracts purported to have been "negotiated" with that committee. The letter and the contract had been previously prepared by the respondent. Filley handed the contracts to Fardy; and Fardy and several of the supervisory employees distributed them among the employees during working hours with a request that they sign their copies. They were encouraged to stop their work to read the letter and the contract; and during the afternoon their foremen sent many of the employees to Anderson's office where Fardy saw them individually and again inquired whether they intended to sign the contract. A majority of the Nu-Art department employees signed the contract.

The letter⁷ attached to the contract read as follows:

To Our Employees:

During the past two or three weeks our plant and you have both been distracted and our normal work has been disrupted by agitation caused by outsiders who claim to represent a small minority of your fellow workers. We have done nothing to date to interfere with the agitators.

You probably know that under the Wagner Act you have a right to bargain collectively with us in regard to conditions of employment. We are in complete agreement with the theory of collective bargaining, as is evidenced by the fact that we have been bargaining and dealing with the duly accredited representatives of our employees in the past. We have had peaceful and pleasant relationships between ourselves and our workers for a great number of years. We have always tried to be fair and just. We want to continue such pleasant and happy relationships. We know that neither you nor we are desirous of having any trouble, interruption of work, or loss of time in this plant. We are therefore going to make a suggestion to you which you may or may not accept as you see fit.

We have met with your duly authorized representatives, and have requested them to get a re-confirmation of their right to represent their fellow workers in their respective sub-divisions of the plant. We have offered them a contract to be entered into between the company and the collective bargaining committee and each individual employee. This contract is an insurance policy against labor disturbances. It is as much a protection to you as it is to the company. Your representative will hand each one of you two copies of this agreement. We trust that you will

⁷ Board's Exhibit No. 7.

see fit to sign both copies, whereupon the company will counter-sign them and return one copy to you for your keeping.

We have no objections to your being in a union or not, as you see fit, and under the law we cannot discriminate against you because of your union activity or because you are a member or are not a member of a union.

While the company is willing to enter into a written contract with its own employees, it has come to the conclusion that it will not sign a contract with any union or have a closed shop in its plant. It will not have a closed shop because the company, after due deliberation, has come to the conclusion that a contract with outsiders and a closed shop would be against the best interests of both the company and the workers. The Wagner Act does not require the employer to have a closed shop nor to sign a contract with a union, nor to agree to any term the union may ask. The Act simply makes it a duty of the employer to negotiate and confer with a duly accredited representative of a majority of its employees. This we are always willing to do.

The type of contract that we would negotiate with a committee of your fellow workers would contain the rate of pay, the number of hours of work, no lockouts, no strikes, and the peaceful settlement of all disputes by mediation between ourselves, and, if we cannot agree, by arbitration. All of these conditions, if satisfactory to both sides, would then be incorporated into a written contract that we would like to have with our employees. This type of contract will insure lasting peace and eliminate industrial warfare. Industrial warfare is as much out of date as war between nations. No one has ever won a war and no one has ever won a strike. Both sides always lose. Sensible people do not have to blow each other's heads off to arrive at a fair understanding.

Very truly yours,

AMERICAN MANUFACTURING COMPANY.

This letter, obviously calculated to induce the employees to sign the contract and to repudiate their T. W. O. C. authorizations, contains a number of false and misleading statements. Not one iota of evidence was introduced into the record that prior to June 4 the employees had been "distracted" or their "normal work" had been "disrupted" by outside "agitators". The respondent stated that these "outsiders" represented only "a small minority of your fellow workers"; in fact, the evidence is clear, as shall be shown below, that at that time a majority of the Nu-Art department workers had joined the T. W. O. C. It was not true that the respondent had met with the employees' "duly authorized representatives"; in fact, there

never was any Collective Bargaining Committee with whom the respondent could have negotiated. The Company Union had, under orders from the respondent itself, ceased its existence back in April; and the "election" of the delegates to the so-called Collective Bargaining Committee had not taken place until that very same day. Moreover, the respondent produced not a single witness—either official of the respondent or member of the Collective Bargaining Committee—to testify as to any negotiations leading to the drafting of the attached contract.

The contract purported to be the result of collective bargaining. It named "the duly elected collective bargaining committee of the Brooklyn plant" as a party to the contract; it recited that "the Employees . . . have duly and regularly selected and designated the committee whose names are hereunto subscribed as their spokesmen and representatives, and which said committee has been so recognized by the Employer" and that "the Employees, through the Committee, have bargained collectively"; and at the end it contained eleven blank lines for the signatures of the members of "The Collective Bargaining Committee of the Employees of the Brooklyn Plant of the American Manufacturing Company." From the above facts, it is clear that this contract was not the result of any collective bargaining, but was rather prepared exclusively by officials of the respondent. In fact, the signatures of the Collective Bargaining Committee were never annexed to the contracts; nor was any attempt ever made to obtain them.

The contract provided for the maintenance of the existing wage rates and hours of work. The respondent agreed not to lock out any employees, but reserved the right to discharge or lay off any employee and denied recourse to mediation or arbitration concerning any discharges. The following clauses drastically limited the employees' rights of union activity:

Fifth: The Employees agree that henceforth and during the entire period of this agreement to June 1, 1942, they, or any of them, will not go out on strike.

Sixth: Any Employee has the right to join any union of his own choosing, or to refrain from joining any union. The Employees, or any of them, shall not have the right to demand a closed shop or a signed agreement by the Employer with any union. This does not in any way restrain the Employees from having a union representing them or advising them in collective bargaining, and the Employer has the absolute and unqualified right to hire or discharge any employee or employees for any

reason, or for no reason, and regardless of his or their affiliation or non-affiliation with any union . . .⁸

On June 28 the employees who had signed the above contract received the following letter from the respondent:⁹

To the Employees of the Nu-Art Fibre Products Department of American Manufacturing Company:

The management has been advised that the Textile Workers Organizing Committee has charged that your contracts dated June 4th, 1937, with the Company, were not voluntarily signed by you, and that you were forced to sign them. This, of course, is not so.

We ask you to confirm your contract by signing the statement below. We want you to take this home with you and seek advice about it, if you so wish. You can show your contract to your lawyer or other person in whom you have confidence. If you still feel as you did on June 4th, 1937, that this contract is to your best interest, then sign and return this statement.

AMERICAN MANUFACTURING COMPANY.

I am an employee in the Nu-Art Fibre Products Department of the American Manufacturing Company. I hereby certify that the contract of June 4th, 1937, signed by me, a copy of which is in my possession, was freely and voluntarily signed by me, without any compulsion directly or indirectly by the American Manufacturing Company, or any other person or organization, and I hereby ratify and confirm my said contract.

JUNE

1937

We have already held that the "negotiation" of such contracts by employers constitute an unfair labor practice. In the *Matter of Atlas Bag and Burlap Company, Inc. and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*,¹⁰ we characterized a similar contract, as follows:

The contract . . . constitutes an individual anti-union or "yellow dog" contract of employment, discriminatory in regard to terms or conditions of employment and discouraging to membership in a labor organization, in this case Local No. 2469.

The contract deprives each employee who signs it of the right to strike until November 1, 1940, of the right to demand recognition of any union by the employer, and of the right to question discharges for any reason or no reason regardless of his affiliation or non-affiliation with any union. Despite the lip-service

⁸ Board's Exhibit No. 6

⁹ Board's Exhibit No. 10.

¹⁰ 1 N L R B 292

rendered by the terms of the contract to the right of an employee to join any union of his own choosing, the agreement deprives such employee subscriber of the fundamental rights inherent in union affiliation and activity—the right to union recognition, which means the right to collective bargaining, the right to concerted activities for mutual aid or protection, which is guaranteed to employees in Section 7 of the National Labor Relations Act, and the right to protest against the employer's exercise of his most powerful anti-union weapon, discharge for union affiliation or activity. It would be hard to devise a more patently anti-union or "yellow dog" contract, or one more discouraging to membership in a labor organization.

Acts of intimidation. During the month of June several of the respondent's supervisory employees in the Nu-Art department in conversations with employees attacked the T. W. O. C., made veiled threats against union members, and stated that the respondent would sooner shut down the entire department than deal with the T. W. O. C. Anna Covaleski, an employee in the winding room, testified that early in June, Margaret Schwartz whose prior activities have already been noted, asked her during working hours to sign some antiunion paper, saying, "Everybody else is signing it. If you don't sign it, Friday is going to be the last for you." Adolph Koschade, a weaver and an active T. W. O. C. member, testified that Gosslein one day came over to his loom dangling a pair of shoes by the laces, asked him how his shoes were, and remarked that "Some of you fellows are asking too much and the Company can't grant that. So you will have to have a vacation." Gosslein denied the remarks concerning a vacation, but admitted carrying the shoes around the weaving room; he attempted to explain his conduct by saying that he frequently found old shoes around the plant and that he asked the workers if they owned the shoes. The explanation is not very convincing, especially inasmuch as several witnesses testified that both Anderson and Cartello likewise told them that they would soon need new shoes.

Mary McGee, a twister, testified that on June 3, after they had heard rumors that the respondent intended to shut down the plant, eighteen girls went to Anderson's office and told him that they did not want any trouble and would repudiate their T. W. O. C. signatures provided he let them work. Anderson replied, "I don't want to have trouble with the C. I. O., but if they are going to cause it, I will close the plant up." The next day Fardy asked Mary McGee if she had signed the contract with the respondent and remarked to her: "Why should we have trouble with the C. I. O.? Why should you pay a Jewish organization \$2.00 a month?"

Anthony Jacini, a weaver, testified that he used to ride home with James Cartello, a supervisory employee in the department, and that on numerous occasions Cartello told him he "would be crazy if I joined up with the C. I. O. for the simple reason I would have to be looking for another job." He also testified that Fardy warned him that the respondent had delved into his past and knew all about him. John Greco, a weaver and an active T. W. O. C. member, testified that Matusza told him the plant would be closed down if the T. W. O. C. secured a majority of the employees and that the respondent had put padlocks on the door. Greco also testified that early in June, Cartello told him, "It is your fault that this plant is going to close down." Stephen Ablamsky, a weaver, testified that about the middle of May, Matusza told him that he thought Greco was the C. I. O. leader in his section and that the bosses would rather close the plant than give in to the C. I. O. Sam Melocheck, a weaver, testified that early in June, Matusza advised him to "try to get the boys together and get over to the A. F. of L. or an independent union", and warned that "these people will close the plant before they take the C. I. O."

John Dusheck, a weaver, testified that on June 29 Dillon, a supervisory employee in the department and a designee on the June 4 "election" sheets, told him: "What is the matter with you? Why don't you get an independent union . . . The company has twenty million dollars, and they will spend that to the last cent before they will let a C. I. O. come in." This testimony was confirmed by John Geby, a weaver, who overheard the conversation between Dusheck and Dillon.

We find that the above actions of the respondent constitute interference, restraint, and coercion of employees in the exercise of their right to self-organization guaranteed in Section 7 of the Act.

B. *The discharges*

On the night of June 28 the T. W. O. C. shop committee of the Nu-Art department employees met to consider the situation at the plant. They discussed the refusal of the respondent to bargain collectively with the T. W. O. C. and its various acts of intimidation and coercion. The committee decided that it had become essential to endeavor to induce the respondent to cease its evasion and to resume negotiations with the T. W. O. C. In order to accomplish this objective, the committee determined to have the weavers in the Nu-Art department temporarily stop work the next morning while the committee called upon the respondent's officials to get a definite commitment concerning union negotiations. Pursuant to this plan, at ten o'clock on the morning of June 29, without the use of any force and

without any disorder, all the weavers stopped their looms; and immediately the committee spoke to Anderson and Fardy, who were then in the weaving rooms, telling them that the stoppage had taken place in order to get a promise from the respondent that it would meet and bargain collectively with the T. W. O. C. representatives. Anderson said that he was in charge of the plant in the absence of Filley and Brown but refused to talk to the committee. The committee then called the weavers together in a back room and told them about Anderson's refusal to listen. Anderson, Connolly, and a photographer came into the room and Anderson told the employees to "cut out this monkey business and get back to work." A few of the weavers did return to work, but the great majority did not; and the weaving department remained substantially stopped until after the noon lunch period. During this time members of the committee again urged Anderson to talk over the situation with them, and again Anderson refused. Meanwhile the photographer took pictures of the men in one of the two weaving rooms under the instructions of Anderson and Connolly.

At twelve o'clock all but two of the weavers left the building to get their lunch at a nearby diner. Joseph Robinson and Anthony Jacini ate their lunches in the plant and were discharged during the noon hour by Anderson and Connolly. Robinson's discharge occurred after he had already resumed work on his loom; Jacini's, just as he was starting to work. Fourteen employees—John Ablamsky, Stephen Ablamsky, Roscoe Anderson, Alexander Boresevitch, Anthony Bushman, Francis Chapman, Alfonso Czepulewicz, John Dusheck, John Geby, John Greco, Adolph Koschade, Samuel Melocke, Ralph Naylor, and Anthony Payne—were discharged on their return to work from their lunch. They found all except one entrance to the plant locked; and at that entrance Anderson and Connolly picked out the above fourteen employees, refused to allow them to return to work, and summarily discharged them.

The respondent admitted the discharge of the above sixteen employees but claimed that they were discharged, not because of their T. W. O. C. membership or activities, but because of insubordination in refusing to obey Anderson's order of the forenoon that they return to work. Anderson testified that everyone in the weaving rooms, except the sixteen discharged, had obeyed him and had returned to work by 11:30; he stated that between 11:15 and 11:30 he had checked the names of the weavers who had gone back to work and those who had not, and that by 11:30 he had completed the list of those who had refused to start their looms. To support Anderson's testimony, the respondent introduced seven photographs¹³ taken be-

¹³ Respondent's Exhibit Nos. 1-7.

tween 11 and 11:30 by a photographer hired by the respondent. These photographs, however, do not support the respondent's contention that only the employees not working were discharged. In the first place, the photographer admitted that he took pictures in only one of the two weaving rooms; and in the second place, these very photographs show three employees not working who were not discharged—Prittwitz, Romanowicz, and Gudeatis.

The position of the respondent is further weakened by the following testimony. Robinson was discharged after he had already started his work. Walter Romanowicz, Leo McGee, and Mike Sabo testified that they did not obey Anderson's orders to return immediately to work, that they did not work until after lunch, and that Anderson saw them not working; they were not discharged. Emmett Jerome, a weaver testifying for the respondent, admitted that only 10 to 15 out of 32 men in his section obeyed Anderson's order to return to work. Gosslein testified that the men in his section did not start going back to work until 11:35 or 11:40 and that he did not finish checking those refusing to until 11:50, at which time Anderson had already, according to his testimony, given the paymaster the names of the employees to be discharged.

It is significant that all 16 of the discharged employees were active members of the T. W. O. C. and that every member of the shop committee that had endeavored to negotiate with Anderson that morning was discharged. None of the 16 discharged employees have since secured any employment.

We find that the above-mentioned 16 employees were discharged for the reason that they had joined and assisted the T. W. O. C.

C. The strike

On June 29, as a result of the above discriminatory discharges and of the respondent's refusal to bargain collectively, the T. W. O. C. called a strike among the employees of the Nu-Art department; and the next day approximately 70 employees went out on strike. During the strike the respondent kept the Nu-Art department open and continued its operations. The strike was still going on at the time of the hearing.

During the strike the respondent attempted to induce various strikers to return to their jobs in order to break the morale of the T. W. O. C. Anthony Payne testified that about July 6 Anderson and Connolly asked him to return to work and that Anderson told him, "They (the respondent) are willing to spend millions of dollars but they won't let in the C. I. O. The A. F. of L. or something else they might consider, but the C. I. O. is out . . . It is the psychological effect on the workers, that is why we want you to go back on

Tuesday". Sam Melocheck, Stephen Ablamsky, and John Greco testified that while they were picketing the plant Anderson urged them to give up their picketing and return to work. In none of these instances, however, did the respondent offer to remedy its unfair labor practices or to bargain collectively with the T. W. O. C. In effect, the respondent asked them to become strikebreakers.

On July 27 the strikers sent a committee to the respondent to request their reinstatement. The committee conferred with Anderson, Fardy, Rick, assistant to the president, and Metzler, respondent's purchasing agent. Rick told the committee to return the next day. The committee did so, and were then told by Connolly that before any of the strikers could return to work each must sign the contract of June 4. The committee reported back to the strikers and they agreed to go back to work on the terms presented to them. On July 29 the committee again saw Rick and Fardy and reported that the strikers were willing to accept their terms of reinstatement; they were, however, told that all decisions were in the hands of Connolly. That afternoon a messenger arrived at the strike headquarters, informing the committee that the respondent wanted to see not merely the committee but all the strikers. The committee accordingly gathered together as many of the strikers as possible and they went over to the respondent's office in a body. Connolly there informed them that each striker who desired to return to work would, in addition to signing the contract of June 4, be required to file an application as a new employee and would be subject to medical examination, as would any new employee. Connolly further indicated that not all the strikers would be taken back and that the most active union men would not be considered for reinstatement. Although the respondent denies that Connolly made the latter part of the statement, it is significant that Connolly did not himself take the stand to testify concerning this conference. Rick also indicated that the reinstated strikers would not retain their seniority rights. The strikers rejected these terms. Subsequently a number of strikers returned to work; and in each case they were required to file applications for employment as new employees, to take physical examinations, and to sign contracts similar to that distributed to the workers on June 4. The strikers who did not accept the respondent's terms have not secured any other employment.

The strike, commencing June 29 and still continuing at the date of the hearing, constituted a labor dispute. The continuance of the strike after July 27 was caused by the respondent's refusal to reinstate the strikers. We further find that on that date the respondent treated them as discharged employees and discriminated in regard to their reinstatement so as to discourage membership in a labor organization.

D. Nu-Art Employees, Inc.

Nu-Art Employees, Inc., was organized on July 14, 1937, among the employees of the respondent's Nu-Art department. At the time of the hearing it was seeking incorporation under the laws of the State of New York; however, its certificate of incorporation had not yet been approved by the Board of Standards and Appeals of the New York State Labor Department. Although its actual organization took place during the strike, its inception occurred during the June efforts of the respondent to destroy the T. W. O. C. Several of the respondent's witnesses testified that the new union was established in order to keep out the T. W. O. C. and to sustain the contracts of June 4. Emmett Jerome admitted on cross-examination that the new organization was definitely related to the Collective Bargaining Committee mentioned in the June 4 contracts. He testified as follows:

Q. (By Mr. Udoff.) It says here about the duly elected collective bargaining committee. Do you know what this contract refers to?

A. Yes, sir, a new union was supposed to represent us, that is all.

Q. This was supposed to relate to the new union, is that your testimony?

A. Yes, sir, that was our idea to start that up.

The evidence is clear that during the latter part of June a number of Nu-Art department employees laid their plans for the establishment of the new union. This group included among others Josephine Gulino, who acted on behalf of the respondent in establishing the prior Company Union, Edward Bressett, who was subsequently promoted to the position of loom fixer, Bradbury, who was subsequently promoted from color shaver and filler carrier to weaver, and Antonio Masi, head color shaver with supervisory authority. Before the new union was organized, Bressett asked Anderson whether it was permissible for the employees to have an independent union; Anderson replied that he would find out; and later Anderson reported to Bressett that the respondent was agreeable to the establishment of the new union. Anderson also gave the new organization permission to hold its meetings on the respondent's premises and during working hours.

The leaders retained Arthur F. O'Brien as attorney for the new union several weeks before its actual organization. O'Brien prepared for them a new petition repudiating the T. W. O. C.¹² and also had printed individual cards repudiating the T. W. O. C.¹³ The printer's

¹² Board's Exhibit No. 12.

¹³ Respondent's Exhibit No. 9.

bill for the cards was dated June 28, or approximately two weeks before Nu-Art Employees, Inc., was formed.¹⁴ During the first week in July both the repudiating cards and the new repudiation petition were circulated during working hours, without objection by the respondent's supervisory employees, among the Nu-Art department employees who had not gone out on strike.

On July 8, the week before Nu-Art Employees, Inc., was formally organized, O'Brien wrote to the respondent stating that he had been retained by a committee of employees "to uphold for them and the majority of this department whom they represented their contracts with your company and to aid many of the members of this department whom I was given to understand had signed some card or paper for the C. I. O. which they wished to repudiate"; and he informed the respondent that he had in his possession 190 repudiation cards signed by Nu-Art department employees during the month of July.¹⁵ On June 14 Connolly replied on behalf of the respondent, stating, "The Company is very much interested in the contents of your letter, and I wish you would let me know when it would be convenient for me to call upon you."¹⁶

On the afternoon of July 14, at a meeting held in the plant during regular working hours, Nu-Art Employees, Inc., was formally organized. A leading role at this meeting was played by Josephine Gulino. She suggested that Bressett act as chairman; she proposed that the dues be fixed at ten cents a week; and she was chosen as secretary and treasurer. Other officers and leaders of the new organization testified that she was the only one who knew anything about its finances and books.

Bressett testified that no membership application cards for Nu-Art Employees, Inc., were ever signed by the employees of the Nu-Art department and that the T. W. O. C. repudiation cards¹⁷ were considered as applications for membership in the new organization, although the repudiation cards made no mention of application for membership in any organization.

The dues of the organization have been collected on pay days during working hours. The meetings of the union have all been held on the respondent's premises during working hours; and the respondent has not charged it for the use of the meeting facilities.

Within a few days after this first meeting, Rick told the shop committee of Nu-Art Employees, Inc., that the respondent would recognize the new union. The committee had told Rick how many members they had; he took their word that they represented a majority of the

¹⁴ Board's Exhibit No. 20.

¹⁵ Board's Exhibit No. 21.

¹⁶ Board's Exhibit No. 22.

¹⁷ Board's Exhibit No. 12.

Nu-Art department employees and did not ask for proof either of their authority or of their majority.

Up to the time of the hearing Nu-Art Employees, Inc., had not made any attempt at collective bargaining with the respondent. Although the respondent has since the strike reduced the working week and thus the employees' weekly income, the new union has acquiesced.

Although the respondent did not play as open a role in the creation of Nu-Art Employees, Inc., as it had in that of the former Company Union, its connection with the new organization is clear. It was the respondent who suggested a new union through its "election" of the Collective Bargaining Committee and through its letter and individual contracts of June 4 that were so patently hostile to outside unions. The respondent's supervisory employees advised several workers to break away from the T. W. O. C. and form an independent union. Josephine Gulino, who is looked upon by the employees as a representative of the management, and who participated in the organization of the former Company Union, was one of the moving spirits in the establishment of Nu-Art Employees, Inc. Finally, the respondent threw its support to the organization by approving its formation, by providing it rent-free meeting facilities at the plant, by permitting meetings during usual working hours and closing down the plant early for its meetings, and by promising it recognition without proof of its authority to represent the employees and without regard to the provisions of the June 4 contract.

Accordingly, we find that the respondent has dominated and interfered with the formation and administration of Nu-Art Employees, Inc., and contributed support to it.

E. Refusal to bargain collectively

1. The appropriate unit

The Nu-Art department is operated as a unit distinct from the respondent's other departments. The products of this department as described above, are different from those of other branches of the respondent, and their production calls for a specialized skill. The level of wages among the employees of this department is higher than that in the respondent's other departments. The record indicates that the respondent treats the Nu-Art department employees as a distinct unit and does not shift them to other departments of the Brooklyn plant. The record, moreover, indicates that the respondent has recognized that the employees of this department constitute a distinct and separate unit appropriate for the purposes of collective bargaining. The membership cards of the Company Union contained the words "Employee's Union Card of the Nu-Art Fibre Products Co." When the representatives of the T. W. O. C.

met on May 21 and 29 with the respondent's officers for the purpose of commencing collective bargaining, the respondent knew that they claimed to represent only the employees of the Nu-Art department and, nevertheless, they raised no objection that the employees of that department did not constitute a unit appropriate for the purposes of collective bargaining. Moreover, the record clearly indicates that no labor organization claims to represent the respondent's entire plant as a single bargaining unit. Even Nu-Art Employees, Inc., the organization of which the respondent has approved and which it has agreed to recognize, is expressly limited in its membership to employees of the Nu-Art department.

In accordance with our usual practice where no evidence is introduced to indicate that they should be included in the unit, we exclude supervisory and clerical employees. We find that the employees of the respondent's Nu-Art department, except supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to the respondent's employees the full benefit of their right to self-organization and otherwise effectuates the policies of the Act.

2. Representation by the T. W. O. C. of the majority in the appropriate unit

During the hearing counsel for the parties checked the T. W. O. C. membership cards against the respondent's pay-roll records and agreed that the signatures on 184 of the 195 cards submitted were those of the individuals whose names appeared thereon and that each of such signatories was an employee of the respondent in the appropriate unit at the date of the signature; counsel could not agree as to the signatures on the other 11 cards. On May 14 there were 268 employees in the Nu-Art department;¹⁸ the respondent's pay roll for June 27¹⁹ showed 279 employees in that department. This list, however, included the names of seven employees—Josephine Gulino, James Dillon, James Cartello, Peter Matusza, Antonio Masi, Margaret Schwartz, and George Gosslein—who, we have found, act in supervisory capacities. The list of the T. W. O. C. members,²⁰ introduced by stipulation as an exhibit in lieu of the original membership cards, shows that on May 29 the T. W. O. C. had signed up at least 150 Nu-Art department employees.²¹ Even if we assume that on May 29 the larger number of workers were employed, and even if we assume that all 11 of the disputed cards were included in the 150 signed by May 29, nevertheless, on that date the T. W.

¹⁸ Board's Exhibit No 14.

¹⁹ Board's Exhibit No 16.

²⁰ Board's Exhibit No 5

²¹ A number of membership cards were undated. These are not included in the 150.

O. C. had a majority of the employees in the appropriate unit. It is, moreover, significant to note that at no time during the meetings of the respondent with the T. W. O. C. representatives on May 21 and 29 did it dispute their claim that they represented a majority of the Nu-Art department employees.

We find that on May 29 the majority of the respondent's employees in an appropriate unit had designated the T. W. O. C. as their bargaining agent. The respondent contends that subsequent to the above date many of its employees revoked the authority of the T. W. O. C. to represent them. However, had it not been for the unfair labor practices of the respondent commencing the beginning of June in persuading, intimidating, and coercing its employees to leave the T. W. O. C. and to join Nu-Art Employees, Inc., there is no indication that the respondent's employees would not have remained members of the T. W. O. C. The unfair labor practices of the respondent cannot operate to change the bargaining representative previously selected by the untrammelled will of the majority.²² Accordingly, we find that on May 29, 1937, and at all times thereafter, the T. W. O. C., pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in the appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

On May 17 or 18 Joseph Glass, attorney for the T. W. O. C., arranged a meeting between the respondent's officials and the T. W. O. C. representative for May 21. On that date Milton Rosenberg, the T. W. O. C. organizer, met with Filley, president of the respondent. Rosenberg told Filley that the T. W. O. C. represented a majority of the Nu-Art department employees and offered to submit proof of such majority to the respondent. However, Filley did not question the right of Rosenberg to speak for the respondent's employees in that department. At this meeting Rosenberg made no demands for an agreement between the respondent and the T. W. O. C.; rather he merely asked that Filley meet with a committee representing the Nu-Art department employees for the purpose of collective bargaining. They agreed to meet for that purpose on May 29.

On May 22 Rosenberg met with approximately 200 Nu-Art department employees, who were members of the T. W. O. C., and reported to them the results of his talk with Filley the previous day. The employees chose a negotiating committee to act with the T. W. O. C.

²² See *Matter of Bradford Dyeing Association (U. S. A.)* and *Textile Workers' Organizing Committee of the C I O*, 4 N L R B 604.

representative and decided upon the demands to be presented to the respondent.

On May 29 Rosenberg, Glass, and the negotiating committee met with several of the respondent's officials. The T. W. O. C. representatives again offered to submit proof that they represented a majority of the Nu-Art department employees; and again the respondent did not question their statement. The employees' demands were then presented to the respondent. They included union recognition, a closed or preferential shop, a 40-hour week, time and a half for overtime, a 25-per cent wage increase, arbitration of disputes, pay for designated holidays, and a week's vacation each year with pay. The demand for a closed shop was flatly rejected by the respondent's officials; as to the other demands, they refused to make any definite commitments, indicating that competitive conditions rendered their acceptance impossible. The respondent offered no counter proposals whatsoever. The meeting ended with an offer by the T. W. O. C. representatives to investigate the wage scales prevailing in plants of the respondent's competitors and with an understanding that another meeting would be held within a week to continue negotiations.

On June 3, 4, 5, and 7 Rosenberg made repeated but unsuccessful efforts to telephone the respondent's officers for the purpose of arranging another meeting. During this period the respondent was actively engaged in the unfair labor practices discussed above. Finally, on June 8 he spoke by telephone to Brown, the respondent's vice president and treasurer, who informed Rosenberg that the respondent believed that the T. W. O. C. no longer represented the majority of the Nu-Art department employees and would not bargain with the T. W. O. C.

The respondent's rejection of the T. W. O. C. demands on May 29 and its refusal to submit any counter proposals, the commencement immediately thereafter of the respondent's unfair labor practices which interfered, restrained, and coerced the employees in the exercise of their rights to self-organization, and then the flat refusal of the respondent to bargain with the T. W. O. C. on the ground that it no longer represented the majority of the Nu-Art department employees clearly indicate that the respondent did not at any time during the attempted negotiations intend in good faith to bargain collectively with the T. W. O. C.

Accordingly, we find that the respondent at all times since May 29 has refused to bargain collectively with the T. W. O. C., as the representative of the Nu-Art department employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

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 with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

As we have found that John Ablamsky, Stephen Ablamsky, Roscoe Anderson, Alexander Boresevitch, Anthony Bushman, Francis Chapman, Alfonso Czepulewicz, John Duscheck, John Geby, John Greco, Anthony Jacini, Adolph Koschade, Samuel Melocheck, Ralph Naylor, Anthony Payne and Joseph Robinson were discharged because of the respondent's unfair labor practices, we shall order the respondent to offer to reinstate them; and, inasmuch as the respondent's Nu-Art department was not shut down during the strike commencing June 29, we shall award them back pay from June 29, the date of their discharge, to the dates on which the respondent offers them reinstatement, less any amounts earned by them in the meantime.

On July 27, 1937, the strikers requested the respondent to reinstate them. The respondent refused to do so except upon certain stated conditions, treated the strikers as discharged employees, and informed them that it would rehire only those who accepted its conditions. The conditions imposed upon the strikers by the respondent constituted new unfair labor practices, that had not been the cause of the strike and that seriously threatened to destroy the status of the strikers as employees of the respondent, contrary to the meaning and intent of Section 2 (3) of the Act. When employees voluntarily go on strike, even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike. However, when the strikers abandon the strike and apply for reinstatement despite the unfair labor practices, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, we are of the opinion that the considerations impelling our refusal to award back pay are no longer controlling. Accordingly, we hold that where, as in this case, an employer refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts. Here the strikers who were refused reinstatement except on the conditions set forth by the respondent are entitled to reinstatement with back pay from July 27, 1937, to the dates on which the respondent offers them reinstatement, less any amounts earned by them in the meantime.

Inasmuch as we have found that the respondent has dominated and interfered with the formation and administration of Nu-Art Employees, Inc., and contributed support to it, the respondent must cease requiring, urging, or intimidating its employees to join or remain members of that organization; must cease contributing financial or other support to it; and must withdraw its promised recognition of Nu-Art Employees, Inc., as an organization representative of the respondent's employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment or other conditions of employment. Inasmuch as the Company Union of the American Manufacturing Company is no longer in existence and inasmuch as the evidence indicates that the Collective Bargaining Committee mentioned in the contracts of June was never established, we find it unnecessary to order their disestablishment.

We shall order the respondent to bargain collectively with the T. W. O. C. as representative of all the non-supervisory and non-clerical employees in the Nu-Art department of its Brooklyn, New York, plant. Prior to the hearing many of the members of the T. W. O. C. joined Nu-Art Employees, Inc., and renounced their T. W. O. C. affiliation. We have found that such action was the result of the respondent's unfair labor practices. We are ordering the respondent to inform its employees that they are free to become or remain members of the T. W. O. C. and are not required to become or remain members of Nu-Art Employees, Inc. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with the T. W. O. C. would be to hold that the obligations of one subdivision of the Act may be evaded by the successful violation of another and that the freely expressed wishes of the majority of the employees may be negated if the employer brings to bear sufficient interference, restraint, and coercion to undermine the representative's majority support. We cannot permit the purposes of the Act to be thus circumvented.

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. Textile Workers' Organizing Committee and Nu-Art Employees, Inc., are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of John Ablamsky, Stephen Ablamsky, Roscoe Anderson, Alexander Boresevitch, Anthony Bushman, Francis Chapman, Alfonso Czepulewicz, John Duscheck, John Geby, John Greco, Anthony Jacini, Adolph Koschade, Samuel Melocheck, Ralph Naylor,

Anthony Payne and Joseph Robinson, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of the employees of its Nu-Art department who went out on strike on or after June 29, 1937, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

5. The respondent, by dominating and interfering with the formation and administration of Nu-Art Employees, Inc., and by contributing support to that organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

6. The employees of the Nu-Art department at the respondent's Brooklyn, New York, plant, excluding all supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

7. Textile Workers Organizing Committee, was on May 29, 1937, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

8. By refusing and continuing to refuse to bargain collectively with Textile Workers Organizing Committee, as the exclusive representative of the employees in the above-stated unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) 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 respondent, American Manufacturing Company, Brooklyn, New York, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Nu-Art Employees, Inc., or with the formation or

administration of any other labor organization of its employees and from contributing financial or other support to Nu-Art Employees, Inc., or any other labor organization of its employees;

(b) From discouraging membership in Textile Workers' Organizing Committee or any other labor organization of its employees by discrimination in regard to hire or tenure of employment or any terms or conditions of employment;

(c) From refusing to bargain collectively with Textile Workers' Organizing Committee, as the exclusive representative of the employees of the Nu-Art department of its Brooklyn, New York, plant, except supervisory and clerical employees;

(d) From giving effect to the individual contracts made with its employees on June 4, 1937, and thereafter; ²³

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

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

(a) Offer John Ablamsky, Stephen Ablamsky, Roscoe Anderson, Alexander Boresevitch, Anthony Bushman, Francis Chapman, Alfonso Czepulewicz, John Duscheck, John Geby, John Greco, Anthony Jacini, Adolph Koschade, Samuel Melocheck, Ralph Naylor, Anthony Payne, and Joseph Robinson immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole John Ablamsky, Stephen Ablamsky, Roscoe Anderson, Alexander Boresevitch, Anthony Bushman, Francis Chapman, Alfonso Czepulewicz, John Duscheck, John Geby, John Greco, Anthony Jacini, Adolph Koschade, Samuel Melocheck, Ralph Naylor, Anthony Payne, and Joseph Robinson 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 each would normally have earned as wages from the date of his discharge, June 29, 1937, to the date of the respondent's offer of reinstatement, less any amount earned by each during that period;

(c) Offer the employees of the Nu-Art department of the respondent's Brooklyn, New York, plant who went out on strike on or after June 29, 1937, immediate and full reinstatement to their

²³ Board's Exhibit No. 6.

former positions without prejudice to their seniority and other rights and privileges;

(d) Make whole the employees of the Nu-Art department of the respondent's Brooklyn, New York, plant who went out on strike on or after June 29, 1937, and who individually or through their representatives applied for and were refused reinstatement, 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 each would normally have earned as wages from the date of the respondent's refusal to reinstate them to the date of the respondent's offer of reinstatement, less any amount earned by each during that period;

(e) Withdraw all recognition from Nu-Art Employees, Inc., as a representative of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish Nu-Art Employees, Inc., as such representative;

(f) Upon request bargain collectively with Textile Workers' Organizing committee, as the exclusive representative of the employees of the Nu-Art department of the respondent's Brooklyn, New York, plant, except supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(g) Post immediately notices to its employees in conspicuous places throughout its plant stating: (1) That the respondent will cease and desist as aforesaid; (2) that the respondent withdraws and will refrain from all recognition of Nu-Art Employees, Inc., as a representative of its employees and completely disestablishes it as such representative; (3) that the individual contracts made with its employees on June 4, 1937, and thereafter²⁴ are void and of no effect; and (4) that to secure or retain employment a person need not become a member of Nu-Art Employees, Inc.;

(h) Maintain such notices for a period of at least thirty (30) consecutive days from the date of the posting;

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

²⁴ Board's Exhibit No. 6.