

In the Matter of ZENITE METAL CORPORATION and UNITED AUTOMOBILE
WORKERS OF AMERICA, LOCAL NO. 442

Cases Nos. C-214 and R-216.—Decided February 19, 1938

Automobile and Refrigeration Parts Manufacturing Industry—Interference, Restraint, or Coercion: persuading employees to refrain from forming or joining a union; soliciting membership by supervisory employees—*Closed-Shop Contract:* with company-favored union not the free choice of a majority of the employees—*Discrimination:* discharge of employees because of non-membership in favored labor organization—*Collective Bargaining:* refusal to negotiate with representatives of majority of employees—*Unit Appropriate for Collective Bargaining:* production employees, exclusive of buffers, polishers and platers; wage differentials; skill; history of collective bargaining relations with employer—*Representatives:* proof of choice: membership applications in union—*Back Pay:* awarded.

Mr. Emmet P. Delaney and Mr. Benjamin E. Gordon, for the Board.

Gavin & Gavin, by *Mr. James L. Gavin,* and *Eubank & Dowden,* by *Mr. Louis Eubank and Mr. Samuel H. Dowden,* of Indianapolis, Ind., for the respondent.

Mr. Arthur C. Edwards, of Indianapolis, Ind., for the U. A. W. A.

Mr. H. T. Hamilton and Mr. Freeman Snyder, of Indianapolis, Ind., and *Mr. David Kaplan and Mr. Paul R. Hutchings,* of Washington, D. C., for the I. A. M.

Mr. Abraham L. Kaminstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On June 2, 1937, United Automobile Workers of America, Local No. 442, herein called the U. A. W. A., filed with Robert H. Cowdrill, Regional Director for the Eleventh Region (Indianapolis, Indiana), a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Zenite Metal Corporation, Indianapolis, Indiana, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 7, 1937, the National Labor

Relations Board, herein called 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. Notice of the hearing on the petition was duly served upon the respondent, upon the U. A. W. A., upon the International Association of Machinists, herein called the I. A. M., which had been named in the petition as a labor organization claiming to represent employees in the bargaining unit, and upon the Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 171, herein called Local 171, a labor organization named in the petition as representing employees not in the bargaining unit claimed to be appropriate.

Charges and amended charges having been duly filed by the U. A. W. A. on June 8, 1937, and June 17, 1937, respectively, the Board, by the Regional Director, issued and duly served its complaint dated June 17, 1937, against the respondent, alleging that the respondent had engaged in and was 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. On June 17, 1937, copies of the complaint and notice of hearing were served upon the same parties as were served with the notice of hearing in the representation proceeding. On June 18, 1937, the Board, acting pursuant to Article II, Section 37 (b), of the Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for purposes of hearing.

On June 23, 1937, the respondent filed its answer to the complaint, in which it denied that it had engaged in or was engaging in the unfair labor practices alleged therein, and denied that its activities constituted a continuous flow of trade, traffic, and commerce among the several States. On the same day the respondent filed written motions to make the charge more specific, to quash the complaint, and to dismiss the charge; all three motions being directed to insufficiencies in the charge, and to the Board's jurisdiction. At the opening of the hearing the Trial Examiner, after hearing argument in support of the motions, denied them.

On June 23, 1937, the I. A. M. filed a motion to intervene, stating facts as to its designation as exclusive bargaining agent at the respondent's plant. On June 24, 1937, pursuant to Article II, Section 19, of the Rules and Regulations, Series 1—as amended, the Regional Director issued and served his order permitting such intervention for the purpose of presenting evidence with respect to the designation of the I. A. M. as the representative of the employees of the respondent, and with respect to the question of the appropriate bargaining unit.

Pursuant to notices of hearing and of postponement of hearing, duly served upon all parties who had been served with the original notice of hearing, a joint hearing on the complaint and petition was held in Indianapolis, Indiana, on July 2 through July 14, 1937, before Frank Bloom, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, the U. A. W. A and the I. A. M. by officers. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all the parties. At the close of the hearing briefs were filed on behalf of the respondent and the I. A. M.

During the course of the hearing counsel for the Board moved that the pleadings be conformed to the proof. This motion was granted by the Trial Examiner in his Intermediate Report. During the hearing and at its conclusion, the respondent made several motions to dismiss the complaint. The I. A. M. made a similar motion at the close of the hearing. All these motions for dismissal were denied by the Trial Examiner in his Intermediate Report. During the course of the hearing all parties made numerous motions and objections. The Board has reviewed the rulings of the Trial Examiner on these matters, and the above-mentioned motions, and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 11, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, but making no finding in regard to a violation of Section 8 (2). The respondent and the I. A. M. filed exceptions to the Intermediate Report which the Board has considered and, except as indicated hereinafter, finds them to be without merit.

The I. A. M. took exception to the statement of the Trial Examiner in his Intermediate Report that the terms of the intervention order had been enlarged during the course of the hearing, in that, except for one instance, it was not allowed to examine witnesses on methods used by the U. A. W. A. in obtaining membership applications. In view of the fact that all parties entered into a stipulation on the record which covered this question, any further testimony on the same subject would merely have been repetitive and would have proved nothing that had not already been admitted. The record also shows that the Trial Examiner scrupulously observed the rights of the I. A. M. throughout the entire proceeding, and that it was he who suggested that the I. A. M. move to widen the order of intervention, indicating his willingness to consider such a motion. But the I. A. M. never did so, and merely asked for permission to go beyond the scope of the original order in one case and examine a witness. This was allowed.

We find no error in the rulings of the Trial Examiner in this respect.

The I. A. M. also objected to the conduct of counsel for the Board and the Trial Examiner, and alleged that they had severely examined the temporary officers of the I. A. M., especially Thomas Bell, and Frank Sanders. The record fully reveals the very evident reluctance with which these witnesses testified. Sanders changed his testimony on several occasions, and was very unwilling to reveal information evidently within his own knowledge. As we have stated before, "The Trial Examiner cannot be criticized because he elicited the truth from reluctant witnesses."¹

Pursuant to notice, a hearing was held before the Board on September 20, 1937, for the purpose of oral argument. The respondent, the U. A. W. A. and the I. A. M. were represented, and the respondent filed another brief,² which the Board has considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is an Indiana corporation, reorganized in 1933 under the provisions of the Indiana General Corporation Act. It first began operation in 1908 under the name of Duckwall Belting and Hose Company. The respondent now maintains its principal office and place of business in Indianapolis, Indiana, where it is engaged in the business of buying, selling, and manufacturing metal products of all kinds. At the present time its chief products are metal stampings, moldings, and grilles, for use in the automotive and refrigeration fields. Most of the respondent's business is done on order, in fulfillment of yearly contracts.

The larger percentage of raw materials, according to the testimony of J. I. Garrett, secretary and treasurer of the respondent, comes from outside the State. These consist of zinc, brass, and stainless steel, brought in from Pittsburgh, Pennsylvania; Cleveland, Ohio; Illinois, and points within Indiana. Approximately a million pieces a month are manufactured, and 90 per cent of the products are sent outside the State of Indiana. Approximately 60 per cent of the total product is shipped to Michigan; the remainder shipped outside the State is sent principally to Wisconsin, Minnesota, Indiana, and Ohio. The principal customers of the respondent are Chrysler Corporation in Detroit, Michigan, Seamon Body Corporation in Milwaukee, Wisconsin, and Ford Motor Company in Dearborn, Michigan, in the automotive field; and Westinghouse Electric and

¹ *Matter of National Electric Products Corporation and United Electrical and Radio Workers of America, Local No 609, 3 N. L. R. B 475.*

² We shall refer to this as the supplementary brief.

Manufacturing Company in Mansfield, Ohio, and Seager Refrigerator in St. Paul, Minnesota, in the refrigeration field. The respondent ranks within the first fifteen companies engaged in its type of work. In 1936 its total volume of sales amounted to approximately \$1,097,000.

II. THE ORGANIZATIONS INVOLVED

United Automobile Workers of America, Local No. 442, affiliated with the Committee for Industrial Organization, is a labor organization admitting to its membership all production employees of the respondent, exclusive of clerical, office, and supervisory employees.

International Association of Machinists, Local No. 1022, affiliated with the American Federation of Labor, is a labor organization admitting to its membership all production employees of the respondent.³

Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 171, affiliated with the American Federation of Labor, is a labor organization admitting to its membership the buffers, polishers, and platers employed at the respondent's plant, as well as employees in other plants located in Indianapolis, Indiana.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Prior to April 1937, all or nearly all of the buffers and polishers in the respondent's plant had become members of Local 171. At some time during April, Local 171 began negotiations for a contract with the respondent. These negotiations were concluded on May 17, 1937, when a contract was signed. This agreement was to become effective on June 1, 1937, and to run for a period of one year.

At about the same time that the above negotiations were beginning, organizers for the U. A. W. A. began to distribute handbills and to procure members among the employees in the respondent's plant. The first mass meeting was held on April 17, and membership in the U. A. W. A. grew during the remainder of April and the beginning of May. On May 13, a proposed agreement was submitted to a U. A. W. A. meeting, at which it was voted that the contract be submitted to the proper officials of the respondent, and negotiations begun. On May 14, Joseph D. Persily, director for the Indiana region for the Committee for Industrial Organization, contacted A. D. Murray, vice president of the respondent, and on behalf of the U. A. W. A. presented the proposed contract to him. Persily asked

³ Local 161 of the International Association of Machinists acted for the Zenite members up to the time of the hearing. During the course of the hearing Local 1022 received its charter.

Murray for an appointment at which the agreement could be discussed. Murray replied that he could give them no appointment that week, as he was going out of town and would not be back before May 22 at the earliest. During the morning of May 18, however, the president of the U. A. W. A., A. C. Edwards, was presented with a letter from Murray stating, "This is to advise you that the officers and directors of this Company will enter into negotiations with your Union under date of May 24 and attempt to conclude same by May 28."⁴

Aware of the activity of the U. A. W. A. and the growing membership in that organization, and informed that the U. A. W. A. was seeking to take over the sole bargaining rights for the plant, members of Local 171 became anxious. On May 22, they went to see the Board's Regional Director, Mr. Robert H. Cowdrill, and asked him whether their contract could be disturbed by the U. A. W. A. Cowdrill informed them that the U. A. W. A. could not trouble them in any way, unless it procured some of the members of Local 171.

On May 24 conferences between the respondent and the U. A. W. A. commenced. The first question asked by the respondent, through Gavin, its attorney, was, "How many men, Mr. Persily, are already members of your Union?"⁵ Persily replied that the approximate percentage was 75 to 80 per cent of the men. The U. A. W. A. further stated that it believed it had a great majority of those employed in the plant and that it was entitled to sole bargaining rights. The respondent replied that it already had a contract with the buffers and polishers, and that it would agree that the U. A. W. A. could bargain for its own members only. The U. A. W. A. at first insisted that the Act entitled them to sole bargaining rights, because they had a majority of the entire plant. On May 28, however, it was definitely agreed that the U. A. W. A. would accept exclusive representation for all employees in the plant with the exception of the buffers and polishers. Gavin stated that this arrangement was satisfactory and met his prior objection.

As a result of the conferences held on May 25, 26, and 27 the respondent and the U. A. W. A. were in substantial agreement on many points, leaving open some questions concerning wages, plant or departmental seniority, vacations, and arbitration. At no time did the respondent ever question the majority of the U. A. W. A., or ask for such proof; the respondent admitted that it was accepted that the U. A. W. A. did represent a majority of the employees.

During the week in which the negotiations with the U. A. W. A. began, members of Local 171 sought the aid of Louis C. Schwartz, of the International Association of Machinists, Local No. 161, of In-

⁴ Board Exhibit No. 6.

⁵ Board Exhibit No. 7.

dianapolis, for the purpose of organizing the plant. Schwartz supplied them with application cards, and on May 27 contacted officials at the respondent's plant. He described his impression of this meeting as follows: "I proceeded to the plant and met with some of the officials. They were very agreeable. They informed me that they would be acceptable to carry on negotiations with the Machinists Union representing their employees."

On the evening of May 27 the I. A. M. held its first meeting, and authorized the presentation of a tentative contract to the respondent. Schwartz testified that at 11:30 p. m. that same night a letter was written to the respondent in which the I. A. M. stated that it assumed the authority to represent the "Toolmakers, Machinists, Specialists and Production Employees" of the respondent. The note concluded, "Articles of Agreement will be submitted for conference on June 1, 1937, and we trust that you will arrange to meet our representative on that day."⁶

The respondent maintained that this letter was received by it on May 27, but the testimony of those who wrote and sent it shows clearly that the letter was delivered by messenger on May 28. The letter indicates that the proposed agreement would be presented on June 1; actually it was presented to the respondent the same afternoon the letter was received. Thus no time was lost in the negotiations with the I. A. M.

On May 26, 1937, the I. A. M. began an active organizational campaign, which was particularly intensive on May 26, 27, and 28. During these days the buffers and polishers ranged through the plant at will, signing up employees in the I. A. M. Though the U. A. W. A. had solicited membership in the plant before this time, there is no evidence that it was ever aided by the respondent or its supervisory officials. The leading participants in the I. A. M. drive were Frank Sanders, Thomas Bell, Virgil Farley, Marion Gatlin, and George Breedlove. All of these men are part of the supervisory staff of the respondent or hold some position which, in the eyes of the employees of the plant, clearly indicates their connection with management. Though sometimes termed foremen, assistant foremen, set-up men, and inspectors, by the respondent, such titles are an insufficient basis upon which to judge the position of these men. Murray, vice president of the respondent, stated that the plant was not large enough for any sharp differentiation between the supervisory and non-supervisory employees, and that men who were qualified for supervision or inspection were given those duties, irrespective of what their titles might be.

Frank Sanders is employed in the molding division of the plant, and has a variety of duties. Admittedly Sanders is an ex-foreman.

⁶ Intervenor Exhibit No. 6.

At present he takes charge of the plating room and supervises all the work that goes on at any time in that room. He occasionally does some buffing and polishing, and he checks the time sheets for a line of polishers and buffers; if he finds their work unsatisfactory, he reports it to the foreman. He signs the time sheets for these men in the space ordinarily left blank for the signature of the foreman. Thus, the time sheets so signed by Sanders read, in part, "Approved by F. S. Foreman."⁷ Sanders' own time sheets show that he is paid for "plating and polishing, and supervision."⁸ Occasionally the "supervision" is changed to read "inspection."⁹ Witnesses testified that Sanders tells the platers and polishers what to do, and that he was the "boss of the buffers." At one time Sanders had been a member of Local 171, but he said he was no longer affiliated with that organization. Evidently this statement stemmed from the fact that he had been elected recording secretary of the I. A. M., for he had never resigned from Local 171.

Bell checks the work of sixteen buffers, and is classified by the respondent as an inspector. When their work is not satisfactory, he directs the buffers to do it over. At the end of the day they turn the sheets showing the amount of work they have finished over to Bell, who checks them to see that they coincide with the time sheets.

A pay roll submitted by the respondent¹⁰ lists George Breedlove as foreman of the buffers, Marion Gatlin as assistant foreman, and Roy Turner as assistant foreman and set-up man. Virgil Farley testified that he was not an assistant foreman, but was merely a set-up man in the grille department.

A review of the activities of Sanders, Breedlove, and the other supervisors, will demonstrate the extent to which the respondent, through its officials, promoted and engaged in the drive of the I. A. M. from the time of its inception on May 26.

On the stand Frank Sanders admitted that on May 26 and 27 he signed up at least 130 people. Of these, Sanders says he signed 60 to 75 in the plating room, and the remainder in the basement. In addition, Sanders also wandered around the plant and secured a few applications at other points. During all this unwonted activity, Sanders would have us believe that he continued to work as usual, and simply signed people up as they came in. Sanders admitted that he wrote at least half the cards himself, and that, at times, there were four or five people gathered around him. Other witnesses testified that the line sometimes extended to fifteen persons.

⁷ Board Exhibit No. 27.

⁸ Respondent contended Sanders was not a foreman since his pay was only 50¢ an hour. Board Exhibit No. 26 shows that Sanders is paid both on an hourly and piece basis, and that his rate is frequently from 86¢ to 92¢ per hour.

⁹ Board Exhibit No. 26.

¹⁰ Board Exhibit No. 21.

Sanders denied that he had told employees that they could not have a job unless they signed up with the I. A. M., or that it would cost them \$25 to do so later on, although he did admit saying it would cost them over \$5 to join the I. A. M. if the charter was closed. However, many witnesses corroborated the statements Sanders is said to have made, and we see no reason for disbelieving their testimony. One of the employees was told that the company would not sign with the U. A. W. A., and that if he wanted to work he would have to join the I. A. M. When Sanders took his application, he told him to keep it quiet. "so that the C. I. O. would not find out about it yet."

Sanders further testified that Tom Bell assisted him in his campaign for membership, and that Marion Gatlin helped him at night. He said that Virgil Farley brought the applicants he secured down to the plating room where they were signed up. It will be seen that though Sanders and the plating room were the focal points of I. A. M. activity, his assistants saw to it that the rest of the plant was not neglected.

Witnesses testified that Breedlove had talked to them in the plant and told them that the C. I. O. would not go over, and that if they didn't join the A. F. of L. by ten o'clock they would be locked out of the plant and would not be allowed to work. Mary Prestwood and Stanley Webb testified that Breedlove told them this story and to go down and see Frank Sanders who would fix them up. Both went down and signed up, after Mary Prestwood had asked Sanders if what Breedlove said had been correct. Sanders reaffirmed the statements, and told them it would cost them \$25 if they signed after ten o'clock.

On Saturday afternoon, May 29, Breedlove was sitting in a tavern and entered into an argument with two employees. Deck and Hale, the two employees, testified that Breedlove had told them, "Anyone that belongs to the C. I. O. is worse than scabs . . . Better sign with the A. F. of L. . . . I know more about the place than people think I do, and I know the Zenite is not going to sign the C. I. O. contract . . . If you don't sign before Tuesday morning, you get a gas pipe wrapped around your neck." Breedlove said that he merely told the employees that the A. F. of L. had been in the plant first, "and if there had to be a union there it should be everything together." Breedlove's denial is weakened by his own later testimony.

Joseph B. McClanahan, an employee in the Dodge grille on the night shift, testified that Turner, foreman or assistant foreman in the grille, told the employees that "the Company would not meet the obligation of the C. I. O., that it was a losing proposition to try to meet the demand, and they could not accept it." On June 1, McClan-

ahan met Breedlove, who said, "Don't join up with the C. I. O. They are no good. They will put us out of business. The A. F. of L. is all right, but the C. I. O. is no good." It is significant that neither Breedlove nor Turner denied these statements.

Leonard Keeler, another employee on the night shift, testified that Virgil Farley had told him to get the C. I. O. members over to the A. F. of L. Keeler confirmed the testimony of McClanahan, and stated that Bud Rader, in the presence of the witnesses' foreman, Turner, told the men in the grille department that Duckwall had once closed the windshield plant on account of union trouble, and that Duckwall would sign with the A. F. of L. but not with the C. I. O. Turner verified the statements of Rader.

The closing down of the respondent's plant for two hours on June 1, to allow attendance at an I. A. M. meeting, is an additional indication of the assistance rendered the I. A. M. by the respondent.¹¹ The testimony of Marion Gatlin, who is admitted by the respondent to be an assistant foreman, and who is a member of the I. A. M., shows that practically all the men in his department went to the meeting, which he himself also attended. No general orders seem to have been issued in regard to the closing of the plant. A. E. Teall, general foreman in charge of the night shift, testified that Mann, superintendent of the plant, informed him that he could shut down the plant for two hours if the men wanted to go to the meeting. Teall testified that the plant closed down, the power was shut off, and nobody worked. However, Teall stated that he made no general announcement as to the shut-down. On further examination, he became uncertain as to whether the entire plant had closed, and concluded that a majority of the men on the second floor had not gone to the meeting. The only one he had spoken to was Virgil Farley, who had informed him that all the men wanted to go.

The respondent did not seriously dispute the organizing activities of its supervisors in the shop and outside it. It relied upon the fact that they were not instructed to take any part in the I. A. M. campaign, and that, in any event, there had been no showing that any men working under these foremen, assistant foremen, and inspectors were influenced by them into joining the I. A. M. It argued that only those working directly under Sanders, Breedlove, Farley, et al., would be so influenced. However, it is apparent that in a small plant other employees will also take their cue from those they assume are more closely connected with management, whether or not they happen to be under their immediate supervision.

¹¹ Though the respondent offered the same privilege to the U. A. W. A. on June 1, at the time such offer was extended, the U. A. W. A. had substantially completed its organizing activities, and the privilege was never exercised.

The testimony indicates that some of these supervisors spent the major portion of their working hours on May 26 and 27 aiding the I. A. M. The respondent did not deny Sanders' activities in the plant, and indeed Sanders admitted them. But the respondent stated that it knew nothing of these activities because the plating-room is set apart. The Trial Examiner, who was able to observe the witnesses and who examined the factory and the location of the plating room, found the testimony of officers of the respondent that they did not know Sanders was so engaged "simply not credible." Any perusal of Sanders' industry on these days cannot but lead to the same conclusion.

When confronted with the actions of Breedlove, the respondent said it ought not be held accountable for the "whiskey inspired vaporings" of a foreman, particularly since he was not in the plant at the time he made the statements. Such a defense, even if tenable, does not meet the additional testimony of witnesses, who told of Breedlove's warnings within the plant.

The tactics of the respondent and its officials in aiding the I. A. M. resulted in a protest by U. A. W. A. representatives to the respondent May 28. Again on June 1 the respondent was warned that officials had been soliciting members for the I. A. M. and had threatened employees with the loss of their positions if they did not join. On June 2, feeling these protests ineffectual, the U. A. W. A. called a strike and walked out of the plant.¹² Most of the employees went out immediately, and an hour later the buffers stopped work and also left the plant. The strike lasted until June 10.

During the period of the strike, Sanders and Bell visited the homes of employees, and continued to solicit signatures to petitions and statements designating the I. A. M. Witnesses testified that they were told that unless they signed they would not go back to work. When some protested that they were already members of the U. A. W. A., they were informed that signing the petition would not indicate membership in the I. A. M. but meant that the employee would return to work.

From the facts set forth above, we find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

¹² The respondent insists that the strike was illegal, since no secret ballot was taken upon the question, as required by the bylaws of the U. A. W. A. In *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill and Smelter Workers, Local No. 203*, 2 N. L. R. B. 125, at 142, the Board pointed out that, "It is neither the business of the Board nor of an employer to inquire into the manner in which labor organizations conduct their internal affairs . . . Nor can the fact that a Union may not conduct its affairs in perfect parliamentary fashion give the employer any justification for violating the Act."

B. The refusal to bargain collectively

1. The appropriate unit

The petition of the U. A. W. A. seeks an appropriate unit consisting of all the production employees, exclusive of the buffers, polishers, and platers. The I. A. M. contends that a complete industrial unit is more fitting here, and that the buffers, polishers, and platers ought to be included in the appropriate unit.

Though spread throughout two buildings, the various departments in the plant, molding, tool, grille, plating, and press, are physically interconnected, and are interdependent upon each other. A. D. Murray, vice president of the respondent, stated that the molding and grille departments, the two largest divisions in the plant, might be considered as separate units or treated as one unified whole.

The buffers, polishers, and platers are employed in three departments of the plant. Murray testified that they were among the most highly skilled and best-paid workers in the plant. The testimony showed that all or nearly all of the buffers, polishers, and platers were members of Local 171, and had been for many years. They are the oldest organized group in the plant, and had signed a contract with the respondent on May 17, 1937. Though the buffers, polishers, and platers designated the I. A. M. to act as their representative in June 1937, they still remained a distinct group. When the I. A. M. signed its contract with the respondent on June 9, 1937, it left the buffers, polishers, and platers to be covered in another contract signed the same day. Witnesses for both the I. A. M. and the respondent described the new contracts as "three cornered" or "three jointed" affairs, involving the respondent, the I. A. M., and Local 171.

For these various reasons, we find that the production employees of the respondent, exclusive of the buffers, polishers, and platers, and excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the U. A. W. A. of the majority in the appropriate unit

The plant normally employs approximately 389 workers, exclusive of the clerical and supervisory staffs. As of June 9 the respondent employed 379 workers, 80 of whom were buffers, polishers, and platers.¹³

¹³ Respondent Exhibit No. 10. The number of buffers decreased thereafter to 63.

At the hearing, the U. A. W. A. introduced cards showing that on May 24, the date of the opening conference with the respondent, the U. A. W. A. had 214 members, a clear majority of the entire plant.¹⁴ In its brief and supplementary brief, the respondent does not contest the numerical figures given by the U. A. W. A. However, the respondent argues that, due to the requirements of the U. A. W. A. itself, not all these employees had become members or had designated that organization. The respondent claims that on May 24 the U. A. W. A. had only 121 members, and applications from 93 who had never fully paid their initiation fees or obtained official receipts.¹⁵

The back of each membership card in the U. A. W. A. reads:

I hereby agree that this declaration and payment shall be the ground of contract between the International Union, United Automobile Workers of America and myself and if I fail to present myself for obligation as a member within thirty (30) days from date of notification, without good and sufficient reason, the sum already paid or any further sum that may be paid by me to the International Union, United Automobile Workers of America, shall be forfeited and myself deprived of all benefits or advantages therefrom.

The bylaws of the U. A. W. A. provide that applications shall be accompanied by the initiation fee in full, and that the initiation fee may not be less than \$2. The respondent argues that employees are not members until these conditions have been fully complied with. Respondent also points out that there is no evidence that any application was ever accepted by a majority vote of all members present, or that anybody was ever initiated into the union, all as required by the bylaws.

These contentions are based upon a misconstruction of the Act. Section 9 (a) of the Act speaks of "representatives designated or selected for the purposes of collective bargaining by a majority of the employees . . ." In *Matter of Clifford M. DeKay, Doing Business Under the Trade Name and Style of D & H Motor Freight Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*,¹⁶ the respondent similarly relied upon the fact that some union members had not paid their initiation fees, and others had not been voted upon by the union. In holding that applications for membership were sufficient, the Board stated that,

¹⁴ Board Exhibit No. 14. On May 28 the membership figure was 242, and on June 2 it was 263

¹⁵ The figure of 93 evidently refers to those who had paid no sum at all, and those who had paid only \$1, the initiation fee being set at \$2

¹⁶ 2 N. L. R. B. 231.

The Act says nothing about union membership. These applicants by requesting membership in the Union indicated their desire to have the Union act as their representative for the purposes of collective bargaining and thereby selected the Union for that purpose.¹⁷

The respondent and the I. A. M. claim that subsequent to May 24, a majority of the employees designated the I. A. M. as their bargaining representative. At the hearing, to prove its majority, the I. A. M. submitted in evidence 167 application cards bearing dates prior to June 9, and a list of 18 additional names obtained from a petition designating the I. A. M. as their representative.¹⁸

The record clearly shows that the signature and information on many of these I. A. M. application cards were copied from slips of paper which did not mention the I. A. M. The manner in which these cards were signed was brought out late in the hearing. Joseph Scanlon, an employee in the plant, testified that on May 27, he went down to the corner behind Mann's office, in the little cubbyhole, and saw Bell and Sanders. Bell asked Scanlon how long he had worked at the plant, his age, and address, and wrote this information on a blank piece of paper. When the paper was filled out, Scanlon signed it. When Scanlon was shown an I. A. M. application card, bearing his purported signature, he testified that he had never signed his name to any such card.

It was then revealed and admitted by the I. A. M. that many of the application cards had been filled out, not by the persons whose signatures they should have borne, but by officials of the I. A. M. Not only was the information given on these slips of paper transferred to the application cards, but the signatures were reproduced, or, as in some cases, were obvious attempts to trace the signatures. These slips of paper were blanks, containing no writing on the side on which they were signed; on the reverse side, they varied from time sheets and blank cards, to announcements of mass meetings of the U. A. W. A.

At the hearing, Hamilton explained this procedure as merely a matter of necessity, no cards being then available. When specifically questioned as to the reproduction of signatures on these cards, and whether the transposing of other information also included signatures, Hamilton said he was "quite sure that it would include the signature". The card of Martin Thomas was shown to him, and it was pointed out that what appeared to be the signature of Martin.

¹⁷ P 237.

¹⁸ Intervenor's Exhibit No. 6A contains the names of 159 persons, Exhibit No. 7 contains the names of 8, and Exhibit No. 8, the names of 18, a total of 185 whose names have dates marked on them preceding June 9. The I. A. M. also received 65 applications between June 9 and July 2.

Thomas was not the same as that which appeared on the application blank. Hamilton then said, "There is no doubt that has been reproduced."

Hamilton stated that the employees knew they were designating the I. A. M. At the oral argument, the I. A. M. admitted there was no designation on any of these slips, and that the employees might not have known whether they were signing social security slips, employment cards, or some other type of card.

Furthermore, quite aside from these deficiencies, the slips and cards were secured in many instances by Sanders and other supervisory officials in the manner already described. Under such circumstances we cannot consider the purported designation of the I. A. M. as representing the true and uncoerced choice of the employees.¹⁹

The I. A. M. also submitted several petitions designating it as exclusive bargaining representative. Some of these were signed by the buffers, polishers, and platers. One was secured during the period of the strike. An examination of the record reveals that they were all secured under conditions similar to those we have described in regard to the application cards, and with the aid of the respondent's supervisory officials. What we have said previously in this connection applies with equal force to these petitions.

Later events disproved the claims of the I. A. M. and the respondent in regard to the question of which organization represented a majority. On June 16, 1937, when the respondent came to enforce a closed-shop contract made with the I. A. M., it found it necessary to discharge 158 employees, a majority of the employees in the appropriate unit, for non-membership in the I. A. M., leaving only 141, or at most, 151, in the unit.²⁰ In the face of such a showing, it is perfectly plain that the I. A. M. did not represent a majority of the employees in the appropriate unit.

We find that on May 24, 1937, and at all times thereafter the U. A. W. A. was the duly designated representative of the majority of the employees in the appropriate unit and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

¹⁹ *Matter of Bradford Dyeing Association (U. S. A.) (a corporation) and Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604, and *Matter of National Electric Products Corporation and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475.

²⁰ On June 9 the respondent informed the State Labor Commissioner that it had 379 employees, of whom 80 were buffers, polishers, and platers. This information, given by the respondent itself, is the closest employment figure we have to the date of the discharges, June 16. However, the same conclusion would be drawn if the figure were 389.

3. The refusal to bargain

We have seen that by May 28 the respondent and the U. A. W. A. had arrived at substantial agreement upon many of the terms of a contract. Thereafter the I. A. M. began its organization drive, and began to negotiate with the respondent.

On June 1 the respondent offered both unions contracts, the last clause of which provided that an election was to be held and that the agreement of the union receiving the lesser number of votes should be voided. Both unions declined to sign any such document. On June 2 the U. A. W. A. filed its petition for certification with the Board. On June 3 the U. A. W. A. undertook to sign the contract the respondent had offered on June 1 and to agree to such an election, but the respondent refused.

On June 5 officials of the respondent and the U. A. W. A. met at the offices of Cowdrill, Regional Director of the Board, with whom the petition had been filed. At this conference, the respondent suggested that both unions submit their cards to Cowdrill, who would then determine which union had a majority. The U. A. W. A. consented, and the I. A. M. seems to have agreed to this procedure when first informed of it. The count was to have taken place on June 7, but on that date the I. A. M. refused to submit its cards. Officials of the I. A. M. testified that they knew the U. A. W. A. was claiming a majority all along, and that the U. A. W. A. was willing to submit its cards, but that they "positively would not consent to any consent election or alternative of having Cowdrill count applications." The reason given by H. T. Hamilton, Grand Lodge representative of the I. A. M., who repeated the assertion frequently, was that, "until such time as the employer refused to bargain with us that we would not submit our membership to anyone other than the employer."

On the evening of June 8 the board of directors of the respondent voted that a contract with the I. A. M. be signed. The respondent asserts that a little earlier in the same evening its attorney, Gavin, had examined the membership claims of the I. A. M. and found that it represented a majority of the employees.

On June 9, at 11 a. m., the respondent and the I. A. M. conferred with the State Labor Commissioner and his assistant to determine whether the respondent could safely sign a contract with the I. A. M. Both officials pointed out that charges had been filed with this Board, and that the best way to settle the question would be to hold an election, either before or after an agreement was signed.

To the warnings of the Commissioner and his assistant the respondent and the I. A. M. turned deaf ears, and a few hours later a closed-shop contract was signed. This contract covered all employees in the

plant, with the exception of buffers, polishers, and platers, and the office and supervisory staffs. That same afternoon the respondent and the I. A. M. signed another contract covering the buffers, polishers, and platers similar in terms to the contract signed with Local 171 on May 15.²¹

In view of the fact that the U. A. W. A. represented a majority of the employees in the appropriate unit, the act of the respondent in signing the closed-shop agreement with the I. A. M. on June 9 constituted an open refusal to bargain with the U. A. W. A. The respondent has advanced several reasons for the necessity of signing of the contract, which we will now examine for the additional light they cast upon the signing of the agreement.

The respondent insists that the threat of business loss was a serious factor in the situation. However, R. H. Duckwall, president of the respondent, testified that it was not until June 9 that he received notice that they would lose their annual contract with Chrysler if they did not reopen the following day. Since this was the morning after the board of directors had voted for the I. A. M. contract, it is evident that the Chrysler ultimatum had nothing to do with the decision to sign the agreement.

The audit by Gavin is similarly relied upon. Every report of this count indicates that the figure he arrived at is as elastic and as variable as the occasion seemed to demand. In his briefs, Gavin himself used two different figures, and when Gavin and the I. A. M. appeared before the State Labor Commissioner the morning after the count was made, they submitted still a third figure.²² No explanation has been offered for the wide discrepancies.

The contentions of the respondent must also be weighed in the light of several known facts. The transcript of the conference with the Commissioner of Labor clearly shows that the respondent was aware of the difficulties which might ensue if an impartial check of union claims was not made. The respondent had realized that it could not determine which union had a majority; had seen the utility of an unbiased count, and had taken the initiative in asking both unions to submit to such a check. To sign a closed-shop contract with the union which had consistently refused to submit its cards for the comparative

²¹ It was the claim of the buffers, polishers, and platers that their old contract with the respondent had been abrogated by the strike of the U. A. W. A. on June 2. This notion seems to have occurred to no one before June 8. However, since the respondent agreed, the old contract was abrogated. The new contract covering the buffers, polishers and platers, with the exception of a few clauses is almost a copy of the earlier agreement.

Since we have found that the buffers, polishers and platers, are not included within the appropriate unit, further reference to this second contract of June 9 is unnecessary. When further reference is made to the June 9 contract, the closed-shop contract covering all the remaining production workers is meant.

²² Respondent Exhibit No. 10. It should also be noted that the figure submitted to the Commissioner included the buffers and polishers.

tally, without even bothering to check the claims of the opposing union, and notwithstanding the pendency of an investigation of the Board, can hardly be said to be conformable to the neutral policy the respondent says it has maintained.

The Commissioner of Labor and his assistant were explicit in pointing out to the respondent and the I. A. M. that complaint had first been made to this Board, and that it has assumed jurisdiction; that the only way of finally settling the dispute was to hold an election, either before or after the signing of the contract; that the U. A. W. A. had submitted its membership cards showing a substantial majority, and that they could not "sanctimoniously" give their approval to the signing of the agreement with the I. A. M. Gavin expressed his disappointment and stated that they had hoped they would be able to pass the responsibility for the signing of the contract on to the Commissioner.

Though Duckwall testified that he was "disappointed that the I. A. M. had not submitted its cards" to an impartial individual, the respondent, in its own words, "took the bull by the horns", and signed the closed-shop contract.²³

The circumstances described above further support our previous conclusions. We find that the respondent, on June 9, 1937, and at all times thereafter, refused to bargain collectively with the U. A. W. A. as the representative of its employees in the appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment. Indeed, the signing of the contract with the I. A. M., when considered together with the course of conduct pursued by the respondent, casts considerable doubt upon the good faith with which the respondent at any time bargained with the U. A. W. A.

C. The discharges

On June 12 a notice was posted announcing the closed-shop contract with the I. A. M. and informing employees that, in order to continue to work at the plant, they must have joined the I. A. M. no later than 7 a. m. on June 16.²⁴ On May 16, Frank Mann, plant superintendent, told his men to ". . . call in two or three of your C. I. O. people, and I will tell them this sad news that I am compelled to tell them" Mann said he assumed that Good, foreman in the grille, would know which men were C. I. O., "they just knew". Thomas Bell and other members of the I. A. M. were present when Mann questioned employees and offered them a last chance to join the I. A. M. Bell testified that he was the I. A. M. representative at the plant that day, to see who was going to be discharged, and that

²³ Respondent Exhibit No. 10.

²⁴ Board Exhibit No. 16.

he expected the I. A. M. to pay him for his services on that day. The respondent admitted that on June 16 its foremen told "employees in large number" to join the I. A. M. or quit.

Relying upon the closed-shop contract the respondent discharged approximately 158 men, 92 of whom were on the day shift.²⁵ None of these were buffers, polishers, or platers. Even though it resorted to the method of asking each employee whether he desired to join the I. A. M. or be discharged, the respondent could not muster a majority of the employees in the appropriate unit into the I. A. M. One hundred and fifty-eight employees chose an outright discharge, and were told to get their pay.

Section 8 (3) of the Act provides that it shall be an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Obviously the closed-shop contract discriminated in favor of the I. A. M. and is illegal unless it falls within the proviso to subsection (3), which declares,

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

The closed-shop contract with the I. A. M. on June 9, does not fall within the proviso, for we have seen that, on June 9, the I. A. M. was not the free choice of a majority of the respondent's employees in the appropriate unit, and it had been assisted by unfair labor practices.²⁶ The closed-shop contract is therefore invalid, and we shall order the respondent not to give effect to it. We shall also order the respondent to resume its collective bargaining with the U. A. W. A. as the representative of all the employees at its plant, with the exception of the buffers, polishers, and platers, and the clerical and supervisory staffs.

²⁵ Clifford Brown, personnel director of the respondent, testified that he had the task of preparing checks for 158 employees who were discharged on June 16

²⁶ *Matter of National Electric Products Corporation and United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475; *Matter of Consolidated Edison Company of New York, Inc., and its affiliated companies—Brooklyn Edison Company, Inc.; New York and Queens Electric Light and Power Company; Westchester Lighting Company; the Yonkers Electric Light and Power Company; New York Steam Corporation; and Consolidated Telegraph and Electric Subway Company and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 71; and *Matter of Lenox Shoe Company, Inc and United Shoe Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 372.

Since the contract is void and of no effect it cannot operate as a defense to the discharges of June 16.

During the evening of June 16, the respondent sent special-delivery letters to the discharged employees, notifying them that they were to return to work "tomorrow morning, June 17, 1937, at your regular time", in view of the fact that the I. A. M. had "consented to *TEMPORARILY* waive its contract requiring all employees to belong to such Union".

At the request of the respondent,²⁷ the I. A. M. mailed to all discharged employees copies of a letter addressed to Duckwall, president of the respondent. The list of employees' names was furnished to the I. A. M. by Gavin, attorney for the respondent. The letter concludes:²⁸

For your information, we are sending a copy of this letter to many of these men and women employees, who obviously have made a serious mistake. We are not only urging them to return to work, but upon doing so to make application for membership in our Association. This is the right course for them to follow, and those who accept this advice will never have any justifiable cause to regret co-operating to the fullest extent with your company through our Association.

Very truly yours,

(Signed) H. T. HAMILTON,
Grand Lodge Representative.

On the morning of June 17 the employees returned to the doors of the plant. Mark Thomas, the watchman at the plant, testified that before employees were to be admitted, they were to have I. A. M. cards. He stated that he had not asked his boss whether he was to ask for these cards, but that he did consult Hamilton, the representative of the I. A. M. Thomas also asked Dickson, son-in-law of Duckwall about it, but allegedly only because Dickson happened to be standing around that morning, and despite the fact that Dickson had informed him (according to Dickson's testimony) on May 15 that he would no longer be giving him orders.

Men returning to the plant were asked for an I. A. M. card, and when they could not produce one, were referred to the personnel division. Those refused at the gates informed other employees, and many did not bother to walk up to the gates.

After meeting with a committee of the U. A. W. A. the respondent agreed to reinstate all the discharged employees, and to pay all these employees for the time lost on June 16; but it refused to recognize the negotiating committee of the C. I. O., to permit a C. I. O. repre-

²⁷ Respondent's Brief, p. 31.

²⁸ Board Exhibit No. 18.

representative to address the employees, or to pay employees for the time lost on the morning of June 17.

The respondent recognized its liability for wages the discharged employees would have earned during the afternoon of June 16. The Trial Examiner found that the refusal to permit employees to enter the plant on June 17 was presumably due to a misunderstanding on the part of the watchman. However, the watchman acted within his authority in excluding the employees, and the respondent is responsible for his actions. Moreover, it is hardly conceivable that officials of the respondent did not know what was taking place at the gates. We shall, therefore, order the respondent to pay the discharged employees on the day shift the wages they would normally have earned during the morning of June 17.

We find that the employees were discharged by the respondent on June 16 because of their failure to join the I. A. M., and that the respondent thereby discriminated in regard to hire and tenure of employment in order to discourage membership in another labor organization, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

THE PETITION

In view of the Board's findings in Section III A above, as to the appropriate bargaining unit and the designation of the U. A. W. A. by a majority of the respondent's employees in the appropriate unit as their representative for the purposes of collective bargaining, it is not necessary to consider the petition of the U. A. W. A. for certification of representatives. Consequently the petition for certification will be dismissed.

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. United Automobile Workers of America, Local No. 442, International Association of Machinists, Local No. 1022, and Metal Pol-

ishers, Buffers, Platers and Helpers International Union, Local No. 171, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by discharging and threatening to discharge employees on June 16 because they would not join the International Association of Machinists, and discriminating in regard to the hire and tenure of employment of all such employees, and each of them, thereby discouraging membership in United Automobile Workers of America, Local No. 442, and encouraging membership in the International Association of Machinists, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. 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 and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The production employees of the respondent, excluding the buffers, polishers, and platers, and 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.

5. By virtue of Section 9 (a) of the Act, United Automobile Workers of America, Local No. 442, having been designated as their representative by a majority of the employees in an appropriate unit, was on May 24, 1937, and at all times thereafter has been the exclusive representative of all employees in such unit for the purposes of collective bargaining.

6. By refusing and continuing to refuse to bargain collectively with United Automobile Workers of America, Local No. 442, 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.

7. 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 above 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, Zenite Metal Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Automobile Workers of America, Local No. 442, or any other labor organization of its employees, or encouraging membership in International Association of

Machinists, Local No. 1022, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

(b) Urging, persuading, warning, or coercing its employees to join the International Association of Machinists, Local No. 1022, or any other labor organization of its employees, or discharging or threatening them with discharge if they fail to join such labor organization;

(c) Giving effect to its June 9, 1937, closed-shop contract with the International Association of Machinists;

(d) Recognizing the International Association of Machinists, Local No. 1022, as the exclusive representative of its employees, exclusive of buffers, polishers, and platers, and clerical and supervisory employees;

(e) Refusing to bargain collectively with United Automobile Workers of America, Local No. 442, as the exclusive representative of its employees, with the exception of buffers, polishers, and platers, and clerical and supervisory employees;

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

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

(a) Make whole all employees on the day shift discharged on June 16, and each of them, for any loss of pay they have suffered by reason of their respective discharges, by payment to each of them of a sum equal to the amount each would have normally earned as wages during the morning of June 17;

(b) Upon request, bargain collectively with the United Automobile Workers of America, Local No. 442, as the exclusive representative of its employees, with the exception of buffers, polishers, and platers, and clerical and supervisory employees;

(c) Post immediately notices to its employees in conspicuous places throughout its plant stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondent; (3) that in order to secure or continue his employment in the plant, a person need not become

or remain a member of the International Association of Machinists, Local No. 1022; (4) that the closed-shop agreement signed with the International Association of Machinists on June 9, 1937, recognizing it as the exclusive representative of the employees of the Indianapolis plant is void and of no effect; (5) that the respondent will bargain collectively with the United Automobile Workers of America, Local No. 442, as the representative of the employees in the appropriate unit; (6) that the respondent will not discharge, or in any manner discriminate against members of the United Automobile Workers of America, Local No. 442, or any person assisting said organization, by reason of such membership or assistance; and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

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

And it is further ordered that the complaint, in so far as it alleges that the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

The petition for certification of representatives, filed by United Automobile Workers of America, Local No. 442, is hereby dismissed.

MR. EDWIN S. SMITH, concurring:

The industrial unit asked for by the I. A. M., which includes the buffers, polishers and platers, is logical. Except for an important fact which appears in this case, this more comprehensive industrial unit should be preferred to the unit asked for by the U. A. W. A., which excludes the buffers, polishers and platers.

The decision points out the assistance given by the employer in building up the present membership in the I. A. M. The I. A. M. is the chief proponent of the larger unit. Acceptance of its contention would have the effect of denying representation and collective bargaining through the only industrial labor organization in this case whose support is based on a spontaneous movement for self-organization by the employees.

For this reason, I concur in the decision that the unit claimed by the U. A. W. A. is appropriate.