

In the Matter of TITAN METAL MANUFACTURING COMPANY and FEDERAL  
LABOR UNION No. 19981

*Case No. C-247.—Decided February 23, 1938*

*Metal Products Industry—Interference, Restraint or Coercion:* antiunion statements; denial of right of employees to be represented by non-employees; threats to remove plant to discourage union activity; questioning employees regarding union affiliation and activity; persuading employees not to join union or to sever union affiliation; threats of retaliatory action for non-compliance—*Company-Dominated Union:* domination and interference with administration of; solicitation of membership by supervisory employees; conduct of activities on company property during working hours without loss of pay; extension of privileges to; futility of request for similar privileges by union in view of employer's expressed hostility; admissions by supervisory employees as to character of; disestablished as collective bargaining agent; collective agreements: invalid; respondent ordered to cease and desist giving effect thereto—*Collective Bargaining:* charges of refusal to bargain collectively with union dismissed; insufficient proof of majority representation—*Strike:* provoked by employer's unfair labor practices—*Reinstatement Ordered:* strikers upon application for reinstatement—*Back Pay:* awarded strikers from date of denial of application for reinstatement.

*Mr. Robert H. Kleeb,* for the Board.

*Mr. Ivan Walker,* of Bellefonte, Pa., for the respondent.

*Mr. W. Bruce Talbott,* of Bellefonte, Pa., for the intervenors, Titan Employees Protective Association and certain employees of Titan Metal Manufacturing Company.

*Mr. Eugene R. Thorrens,* of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by David Williams, Pittsburgh representative of the American Federation of Labor, the National Labor Relations Board, by Ernest C. Dunbar, Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint dated June 7, 1937, against Titan Metal Manufacturing Company, Bellefonte, Pennsylvania, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting

commerce, within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and an accompanying notice of hearing were duly served on the respondent. Titan Employees Protective Association, herein called the Association, and certain employees of the respondent in their individual capacities were permitted by the Regional Director to intervene and to file answers to the complaint.

The complaint alleged in substance that the respondent had engaged in unfair labor practices by (1) interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) dominating and otherwise interfering with the formation and administration of the Association and contributing financial or other support to it; and (3) refusing to bargain collectively with Federal Labor Union No. 19981, herein called the Union, as the representative of its employees.

On June 15, 1937, the respondent filed an answer denying most of the allegations of the complaint, admitting, however, those concerning the respondent and its business. The respondent did not specifically deny the allegations of the complaint with respect to the unfair labor practices within the meaning of Section 8 (2) of the Act, but claimed that it had no knowledge as to their truth. The intervenors filed answers which were substantially similar to the answer filed by the respondent.

Pursuant to the notice, a hearing was held in Bellefonte, Pennsylvania, on June 17, 18, 19, 21, 22, 23, 25, 26, 28, 30, July 1, 2 and 7, 1937, before W. P. Webb, the Trial Examiner duly designated by the Board. The Board, the respondent and the intervenors were represented by counsel and participated in the hearing. At the close of the respondent's case, counsel for the intervenors stated that they did not desire to offer evidence. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

At the conclusion of the Board's case, the respondent and the intervenors moved to dismiss the complaint on the ground, *inter alia*, that the Union did not represent a majority of the employees of the respondent on January 15, 1937, when the Union attempted to bargain with the respondent. For the reasons hereinafter discussed, the Trial Examiner erred in his refusal to grant such motion in so far as it related to unfair labor practices under Section 8 (5) of the Act. That ruling is hereby reversed, and the complaint to that extent will be dismissed. The ruling of the Trial Examiner, denying the motions to dismiss the complaint in respect to unfair labor practices under Section 8 (1) and (2) of the Act, is hereby affirmed.

On September 23, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) of the Act as alleged in the complaint, and further found that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act. On October 5, 1937, the respondent filed exceptions to the Intermediate Report, contesting the Trial Examiner's finding in respect to Section 8 (1) and (2), and various of his rulings. The Board granted the intervenors' request for an extension of time, and the intervenors duly filed substantially similar exceptions on October 13, 1937.

The Board has reviewed all other rulings made by the Trial Examiner on motions and on objections to the admission of evidence not specifically mentioned above and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the Intermediate Report and finds them to be 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, Titan Metal Manufacturing Company, is a corporation organized under the laws of the State of Pennsylvania, having its office and plant at Bellefonte, Pennsylvania. The respondent is engaged in the production, sale and distribution of brass and bronze rods, forgings, automatic screw machine parts and castings. The principal raw materials used in the manufacture of its products are copper, brass, zinc, lead, and tin. Copper, which constitutes approximately 60 per cent of all the raw materials used by the respondent in the manufacturing process, is not obtainable in the raw state within Pennsylvania. More than 50 per cent of the raw materials purchased by the respondent come from States other than Pennsylvania. In excess of 50 per cent of the finished products are shipped from the respondent's plant to customers in 27 States outside of Pennsylvania. The respondent is the owner of a United States Patent Office registered trade-mark, "Resistaloy," which it has continuously used and applied to its goods in interstate commerce since 1934.

As of January 15, 1937, the respondent employed approximately 520 production workers below the grade of foreman.

##### II. THE ORGANIZATIONS INVOLVED

Federal Labor Union No. 19981, chartered by the American Federation of Labor in April 1935, is a labor organization, admitting to

membership the non-supervisory production employees of the respondent's plant.

Titan Employees Protective Association is a labor organization, unaffiliated with any other labor organization. The Association was formed in April 1935 and was incorporated under the laws of the State of Pennsylvania on June 8 of the same year. The Association admits to membership all employees of the respondent, except company officials and representatives.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Domination of and interference with the formation and administration of Titan Employees Protective Association*

The respondent's conduct and attitude toward labor organizations of its employees shortly before July 5, 1935, the effective date of the Act, sheds significant light on the activities upon which the complaint is based. As we stated in *Matter of Pennsylvania Greyhound, Inc.*:

While the National Labor Relations Act applies only to practices occurring on or after July 5, 1935, in cases where such practices have their origin in events prior to that date, knowledge of that background of events may be vital to a proper evaluation of the present practices.<sup>1</sup>

Reference will be made to events prior to July 5, 1935, wherever they are relevant for this purpose.

Prior to 1935 there seems to have been no labor organization of the respondent's employees in existence. During the first part of 1935, however, considerable dissatisfaction arose with reference to wages and seniority rights. About this time several employees began a movement to organize the workers in the respondent's plant into a local union affiliated with the American Federation of Labor. In the latter part of March 1935 the workers attended meetings at the rooms of the Veterans of Foreign Wars in Bellefonte at which plans were drafted to further these efforts towards organization.

This movement met with the disapproval of the respondent. On March 26, 1935, William Sieg, the respondent's president, addressed and distributed a printed letter, over his signature, to all employees of the respondent, in which he stated, among other things:

We have learned that a group of our employees have shown considerable interest in forming a labor union affiliated with the American Federation of Labor . . . We cannot understand your interest in such a movement which will cost you money to

<sup>1</sup> 1 N. R. L. B. 1, at p. 7.

pay other people's salaries and which in the end will not get you any more consideration than you have had in the past. We are ready to correct injustices and abuses if any exist . . .

The American Federation of Labor at the present time is behind legislation which will decrease the working week to 30 hours and thus reduce your average pay check still more, increase your company's costs, and eventually force a real "Closed Shop", where the noise of production has died away, where machinery hummed spiders will spin their webs, and where the tread of industrious workmen has given way to the creep of cowardly rats . . .

There is an old American business formula just as applicable today as it was in the days of our fathers. That formula is: "Avoid trouble, but when you cannot avoid trouble, eliminate it." This formula is quite in contrast to the one being used by agitators today. Their formula is this: "Seek trouble and capitalize it. If you cannot find trouble, make it." . . .

For twenty years we have lived peacefully in Bellefonte and we want to continue to enjoy your happy association during future years. We do not want to be forced to move to another community and we do not believe that it will be necessary for us to do so. We still have faith in your understanding of our problems.

In reply to this letter the "Publicity Committee, Titan Brass Workers' Union,"<sup>2</sup> charged that:

. . . Within the last few days about 30 employees have been laid off or fired without a hearing; those who remain are living in the shadow of hourly uncertainty about the safety of their jobs, not knowing when the ax will fall. The only reason given for the dismissal was not that they were inefficient or incompetent workmen, but that they had the "audacity" to sign up with an organization of their own choosing.<sup>3</sup> . . .

In an effort to discourage our affiliation with the American Federation of Labor, the Titan management has tried to establish a "company union"—so notorious for its spineless boss-controlled character . . . Intimidation, fear and brutality have been the methods used in this case to break up a peaceful and legitimate union. The threat to move the plant out of town is an old trick and we do not intend to be bluffed and terrorized into submission by such tactics . . .

<sup>2</sup> The Union involved in the present case is also known as Titan Brass Workers' Union.

<sup>3</sup> It is not necessary to determine the reasons for the discharges since the Board makes no claim with respect to them.

Further to stem the rising tide of union organization, the respondent closed its plant on Thursday afternoon, March 28, 1935. On Friday morning, March 29, officials of the company announced that plant operations would be resumed on Monday next with approximately 70 per cent of the employees back at their jobs.

The same morning, Roy Jones, the temporary chairman at a meeting of employees held the previous day in the plant, also issued a statement to the effect that 404 employees had signed petitions for the creation of an employees' organization, which the officials of the respondent sanctioned, and that a permanent organization would be formed at a meeting of the employees to be held on the following Tuesday, April 2.

The petitions to which Jones referred had as their object the establishment of an organization to be known as "Titan Employees Protective Association." These petitions were circulated among the respondent's employees prior to the plant shut-down by supervisory and other trusted employees during working hours and on company time. In many instances where employees refused to sign such petitions, they were threatened by the supervisory staff with loss of employment.

Thus, Charles Wayne, an employee in the large-rod department, testified that Doyle Shook, his foreman, approached him in the plant during the month of March 1935 with a petition in hand, saying: "You had better sign this. We are starting a protective association. We are going to keep the A. F. of L. out of here." In order to keep his job, Wayne complied with his foreman's demand.

Milton Baney, the foreman in the forge shipping department, called Harry Justice into the die room one morning in March 1935 and inquired whether Justice intended to sign a petition, which was lying on a desk in the department when the men reported for work that day. Justice obeyed Baney's warning to sign. A week before Baney had told him that "the fellows who attended the Union meeting at the Farmers' National Bank Building were to be fired."

Clarence Heverly, an employee in the trimming department, refused to sign an Association petition in March or April 1935 at the solicitation of Tom Miller, a fellow employee. Bruce Emerick, Heverly's boss, obtained the petition and called Heverly into the tool-room aside from the rest of the men: "You may as well put your name on this. If you want your job, you better sign." Heverly yielded.

The helping hand of the respondent is also seen in connection with the call for the employees' meeting at which the Association was formed. During the plant shut-down, the respondent's employees received through the mails a booklet, which was contained in an envelope bearing the return address of the respondent. The booklet,

entitled "A Plan of Group Insurance," bore the inscription of the respondent's name on its outside cover. Attached to the inside of the booklet's front cover, the employees found an insert sheet which carried a notice and invitation to attend a meeting to be held on Tuesday, April 2, for the purpose of creating a permanent structure for the Association.<sup>4</sup> On the opening page of the booklet appeared a letter over the facsimile signature of William P. Sieg, the president of the respondent, in which he urged the employees to participate in a proposed group-insurance plan. In light of all the evidence, we are not convinced that the responsibility for the distribution of the insurance booklet lies exclusively with the insurance company and the Association committee, as the respondent contends.

About three o'clock in the afternoon on Tuesday, April 2, plant operations ceased for approximately one-half hour by order of Jake Shook, the superintendent, to enable the employees to attend the mass meeting which was held in the die-cast room. The respondent made no deductions from the wages of the employees for attending the meeting. Officers of the Association were elected. By arrangement with the respondent a Bellefonte representative of the Aetna Life Insurance Co., Mary Fauble, addressed the assembled employees to explain the new group-insurance plan. She told the employees that those who signed cards would be insured free of charge for a period of 30 days. Association application cards were distributed among the employees and memberships in the organization solicited. The cards contained the following legend:

#### APPLICATION FOR MEMBERSHIP

I hereby apply for membership in the Protective Association now being formed by the employees of the Titan Metal Manufacturing Company, *and in addition, wish to avail myself of benefits offered free of all obligation on my part.*<sup>4a</sup>

\_\_\_\_\_  
Employee.

<sup>4</sup>The notice read:

#### SPECIAL

*To Our Fellow Employees:*

A petition of our fellow workers has been made for the formation of a Protective Association for all of the Employees of the Titan Metal Manufacturing Company. Such an association is in the process of formation and we hope that each of you will welcome the plan and become a member. On Tuesday afternoon, there will be a meeting of all employees of the Titan Metal for the purpose of forming this Association and electing the officers to carry on the activities of the Association

#### IMPORTANT

There will be an important announcement made at the meeting Tuesday with reference to the Insurance Plan outlined in the attached booklet. Read your booklet carefully and bring it to the meeting.

Be sure to attend the Meeting.

*Committee for the formation of an  
Employees Protective Association.*

<sup>4a</sup> Italics supplied.

Zelda M. Derr, a former employee of the respondent, testified that Mrs. Fauble told her that it was necessary for the employees to sign application cards for membership in the Association in order to obtain the insurance benefits. It was her recollection that Mrs. Fauble made the same statement to the assembled group of employees in the die-cast room. While some employees testified that they did not so understand Mrs. Fauble, the testimony of Miss Derr is corroborated by other witnesses, Charles Wayne, James Weaver and Maurice Coder, employees, who attended the meeting. Her testimony is also supported by the presence of the statement concerning "benefits" contained in the Association application cards.

Several employees testified that they were induced to sign the cards in order to secure the insurance protection and not because they desired to join the organization. Signatures were obtained from numerous employees who gained the impression at the meeting that the Association was being formed to serve as a social club rather than a labor organization for the purpose of collective bargaining with the respondent. Supervisory employees enjoyed a more realistic understanding of the reason for its creation. Doyle Shook, the foreman of the large-rod department, confided to James Weaver, a straw-boss, that the object of the Association was "to get the men together to keep out outside unions."

Coercion to force membership in the Association also took more direct form. The record is replete with instances where foremen, unsolicited, approached employees at their work, urged them to sign application cards for membership in the Association, and frequently threatened the loss of employment, if they failed to do so.

Thus James Weaver was summoned to the office of his boss, Doyle Shook, in April 1935. Weaver had previously refused to join the Association. Shook told him flatly that if he did not sign an application card for membership in the Association, he would have no job. Shook also warned Weaver, a straw-boss, to have no dealings with "outside" unions, and instructed him "to have the men stick with the company union, the Protective Association." Under Shook's orders, Weaver distributed Association application cards among the employees in the plant and solicited their membership in the organization.

Milton Baney, the foreman in the forge shop, laid a batch of Association application cards before Homer Young, a set-up man in charge of a group of employees on the night shift, and said: "Better tell the men on your trick to sign those cards. You better sign one, too." Fearing loss of his job, Young obeyed the command.

Maurice Coder, a charter member of the Union, testified that shortly after April 2, 1935, Baney told him and Lee Lyons, a fellow employee, they "would have to sign one of those cards or have no

work." Charles Smith, general factory foreman, handed an Association application card to Coder with a similar admonition. Coder signed rather than risk the loss of his job.

When employees Hassel Martin, George Reeder and Herman Frye, a committee selected by the Union to confer with W. P. Sieg concerning the lay-off of 17 Union members, met with Sieg on April 1, 1935, they saw petitions in regard to the formation of the Association lying on Sieg's desk in his office. During the conference, Joe Rine, the foreman of the trimming department, brought in additional petitions and handed them to Sieg who invited the committeemen to sign the petition. Sieg commented: "I have been told that there are 470 signatures on these petitions and there are about 20 persons who have not been contacted. This, considering that there are 508 employees, looks rather favorable."

On April 13, the Association advised the respondent by letter that it represented 85 per cent of the acceptable employees in the plant and requested recognition as a collective bargaining agent. The respondent promptly acknowledged the Association's letter on April 15, notifying it that the respondent recognized the Association as the collective bargaining representative of the employees. Thereafter the respondent publicized its action among the workers by distributing printed pamphlets containing the respective letters.

On July 8, 1935, the Association was incorporated with 366 charter members. Its membership was confined to employees of the respondent and it admitted subforemen to its ranks. Its constitution provided for withdrawal from membership only by application in open meeting. Its bylaws provided that there should be no initiation fee. At the organization meeting on April 2, no one mentioned the subject of membership dues. However, later, the members were notified that the Association dues would be 25 cents per month.

Apparently the Association encountered difficulty in making dues collections, for in September 1935, at a meeting attended by 58 members, the Association voted to permit the respondent to deduct dues from the employees' pay checks. The respondent promptly granted this request for the check-off. On October 1, 1935, the Association's secretary posted a notice on the respondent's bulletin board announcing that the Association had entered into an agreement with the respondent with respect to the check-off. While the check-off is ordinarily a legitimate method of collecting union dues with the assistance of the employer, when it is used by the employer to support a management-controlled organization it comes within the ban of Section 8 (1) and (2) of the Act. The apparent ease with which the Association secured this assistance from the respondent sheds significant light upon its relationship to the respondent.

About November 1, 1935, the Association posted a notice upon the

respondent's bulletin board which carried the announcement that the Association dues for the months of July, August, and September would be deducted from members' pay checks, which were to be distributed on November 5. Thereafter, the respondent deducted the dues and remitted the proceeds to the Association. Many employees, although displeased with the practice, testified that they did not complain for fear of losing their jobs. After the strike, which occurred on January 15, 1937, the Association obtained authorizations in writing from its members to permit the continuance of the check-off.

The Association plan operated in this manner: The employees in each department in the plant elected representatives for their respective unit to whom the employees reported complaints and grievances. Elections for representatives were conducted in 1935 and 1936 during working hours in the respondent's plant and on the respondent's time. Infrequently, the department representatives met with their respective foremen to discuss complaints. The Association adjusted few grievances. Soon after the formation of the Association the employees began to feel the futility of reporting grievances. As a consequence, representatives rarely attended meetings with the foremen because they received no complaints from the employees in their departments. In 1935 and 1936 the meetings of the representatives were held on the respondent's property during working hours and on company time. Doyle Shook, the foreman of the large-rod department, instructed James Weaver, a straw-boss, to permit Association representatives to attend meetings and do other Association work on company time. The members of the Association conducted their meetings in an outside hall.

From the testimony it appears that the Association did not function effectively in the interests of its members. Instead it became a convenient weapon in the hands of the respondent to combat any form of genuine collective bargaining activity in its plant. The impotence of the Association in its dealings with the respondent is revealed in the record of its activities. During the entire history of the Association the employees secured one five-percent wage increase. Although the Association secured two written agreements in 1935 from the respondent in respect to basic wage rates, hours, and seniority, the record does not show that the agreements represented a departure from former company policies. It adjusted two or three grievances. Social activities constituted a major portion of its program.

The December 1936 issue of "Titan News," a monthly paper edited and published by the respondent,<sup>5</sup> contained a financial report and

<sup>5</sup> The official staff of "Titan News" consisted of W W Sieg, the respondent's vice president, as its editor, and Philip B. Ray, the respondent's personnel manager, as associate editor.

statement of condition of the Association. The report showed itemized receipts and expenditures of the Association for the period from April 1, 1936 to December 31, 1936, revealing total disbursements of \$655.49. Of this sum the Association spent \$422.72<sup>o</sup> for purely social activities.

Dissension arose within the Association itself. In April 1936, at an Association meeting, a motion made by its president to put the question of disbanding the organization to a vote of the entire membership was defeated, 87 votes to 21.

The respondent's supervisory employees admitted the servile nature of the Association. During the summer of 1936, Leaman Lyons approached his foreman, Baney, in reference to the status of a request previously made by Lyons for a wage increase. Baney informed Lyons that the request had been submitted to Vice President William W. Sieg, Jr., who refused to grant the increase. When Lyons suggested that he would refer the matter to the Association, Baney volunteered: "Well, there's no use. Young Bill said 'no' and he won't do it. It is a company union." At the time Ray Lyons, a straw-boss, solicited Doyle Breon's membership, Lyons bluntly confessed that the Association was a "company union."

As at the time the Association was being formed, the respondent continued, even after the Act became effective in July 1935, to force its employees into membership. Orie Heaton and six of his fellow workers were summoned into the office of William W. Sieg, Jr., sometime in the spring of 1936. Sieg inquired as to the reasons for their failure to become members of the Association. "They are putting up a kick about you fellows not joining. They all belong except you. It is not compulsory but I want it to go through a hundred per cent." Heaton joined the Association as a result of Sieg's interference.

Stanley Daughenbaugh, an Association representative, warned Guyer Fisher, after the latter entered the employ of the respondent in September 1936, in the presence of Charles Smith, the construction foreman, that unless Fisher joined the Association he could not long retain his job.

Such actions by agents of the respondent deepen the conviction that a strong motive for employees joining the Association was fear of the boss' displeasure if they did not do so.

The evidence belies the contention of the respondent that the Association came into existence through the spontaneous enthusiasm of a group of its employees and developed as an organization by means of their efforts, unaided and unsupported by the respondent. The respondent desired the creation of the Association as a buffer to an

<sup>o</sup> The financial report did not disclose the expenses of a Christmas party to which the Association invited all plant and office employees, together with their families.

"outside" union. The evidence that the Association was promoted by supervisory employees is clear. The officials of the respondent gave the Association its blessing. The employees were necessarily given the impression that the respondent was favorable to the Association and wanted them to join it. The testimony of numerous employees that they joined the Association because they were afraid they would lose their jobs if they did not, shows what impression the respondent permitted its supervisory staff to create. The respondent permitted its employees to solicit membership in the Association during working hours and on the respondent's property. It furnished quarters, rent-free, for the holding of meetings of Association representatives and allowed the performance of Association work during working hours without deduction of pay. The respondent also afforded the facilities of its bulletin board to the Association for the posting of notices relating to its activities. In view of the respondent's persistent efforts to thwart any organization of its employees affiliated with the American Federation of Labor, it would have been futile for the Union to request the respondent to extend to it equal privileges of posting notices and soliciting membership within the plant. In contrast with its attitude toward Union organization and its treatment of Union members, hereinafter discussed in Section III-B, the respondent encouraged the birth of the Association, nurtured its growth, and left no doubt in the minds of its employees that the Association was the favored organization.

From the afore-mentioned facts it is clear that the respondent has not only been instrumental in creating the Association and in persuading its employees to become members thereof, but by its gratuitous services and privileges has fostered and continued the existence of the Association from the time of its inception down to the date of the hearing.

We find that the respondent has dominated and interfered with the administration of the Association and contributed support to it.

#### *B. Interference, restraint, and coercion; the strike*

The antiunion attitude of the respondent can be found in events which occurred prior to the effective date of the Act. In the printed letter <sup>7</sup> which the respondent distributed to all its employees in March 1935 it expressed its opposition to the formation of the Union in no uncertain terms and threatened to move its plant to another community in the event that the employees decided to affiliate with the American Federation of Labor. Jake Shook, the plant superintendent, warned Floyd Fye, who was later discharged on June 9, 1935, that if Fye joined the Union, Sieg would be induced to move the plant.

<sup>7</sup> Board Exhibit No 20 Excerpts from this letter are quoted in Section III-A above.

Fred Stewart testified that Doyle Shook, foreman in the large-rod department, in March 1935 stated: "The American Federation of Labor will never come in here."

In March or April 1935 approximately 40 employees were laid off. The respondent assigned "lack of business" as the reason for this action. Proceedings involving charges that these workers were laid off on account of their activities in the Union were pending before the old National Labor Relations Board at the time of the decision of the United States Supreme Court in the *Schechter* case on May 27, 1935.<sup>8</sup> Because of the invalidation of the National Industrial Recovery Act, the old Board did not hear the charges. However, when Doyle Shook, in the presence of Floyd Fye, handed Art Rockey his check at the time the latter was discharged, Shook explained in reply to Fye's inquiry as to the reason for Rockey's discharge: "That is what all you will be getting fooling around this Union. You will all be getting your checks and going down the road."

We have already noted in Section III-A above the significant information which Foreman Baney revealed to Harry Justice, an employee in the forge shop, in March 1935. Baney disclosed that the respondent planned to discharge the employees who attended a Union meeting which was held at the Farmers' National Bank Building on March 25, and warned Justice not to attend American Federation of Labor meetings in the future.

As a part of its campaign to thwart effective organization of its employees, the respondent employed spies to attend Union meetings to obtain the names of its active members as the basis for retaliatory action. Michael Torsell, an inspector in the forge shop, testified that he attended the Union meeting on Sunday, March 25, 1935, at the Farmers' National Bank Building. The next day, his superior, Baney, informed him that he (Baney) had been called to the office of the respondent in reference to the Union meeting. Baney questioned Torsell in regard to his attendance: "They are laying off a lot of men on account of that meeting and they have asked me to lay off everybody in the forge shop who attended the meeting. If I wanted to be dirty as Joe Rine and other foremen through the plant, I would lay off everybody in the forge shop that attended the meeting, but I can't do it because I can't get experienced men at the present time." Baney admitted to Torsell that the respondent had obtained a list, which contained the names of the employees present at the Union meeting, through spies who also attended.

The respondent continued its program of intimidation and coercion to undermine the Union and its membership after July 5, 1935:

In November 1936 Foreman Baney asked Doyle Breon, an employee

<sup>8</sup> *Schechter Poultry Corp. et al. v. United States*, 295 U. S. 495.

in the forge shop, whether he was "talking Union." "Someone is and Clarence Thompson<sup>9</sup> is raising hell. I suppose it is someone who don't want to work this winter." About a month before the strike, which occurred on January 15, 1937, Baney told Luther Newman, an employee in the forging department, to keep his "mouth shut" about the American Federation of Labor or he would be "sent down the road."

Baney also discussed the American Federation of Labor with Leamon Lyons, an employee in the forge shipping department, at various times during 1936. Baney sought to ascertain from Lyons whether he belonged to the Union and endeavored to obtain from him a list of Union members. About three o'clock in the afternoon of January 15, 1937, Baney called Lyons aside in the plant. "If you know what is good for you," he warned, "you will stay away from the A. F. of L." Pressed for the reason, Baney responded: "There is a bunch going to be fired out of this plant for it." Baney admitted to Lyons that he received this information from Sieg, Jr. It is significant that this conversation took place only a few hours after the conference between the Union committee and the respondent concerning recognition of the Union.

The undercurrent of dissatisfaction and unrest among the employees came to the surface in January 1937. Shortly before noon on Friday, January 15, a Union committee, consisting of six employees, called upon William P. Sieg, the respondent's president. The committee advised Sieg that the Union represented a majority of the employees and requested that the respondent execute a form of agreement, which the committee presented, relating exclusively to the matter of Union recognition. After reading the proposed agreement,<sup>10</sup> Sieg stated: "I will have nothing to do with it. Boys, I have been through the mill three times before. It is no good. That is the reason that I am in Bellefonte today, fighting organized labor. I will not operate a plant affiliated with the American Federation of Labor or any other union." Sieg demanded the names of those employees whom the Union claimed to represent. The committee refused to submit a list, fearing reprisals. Sieg refused to assume the responsibility of acting upon the Union's request for recognition, suggesting a need for consultation with two co-directors, one, according to Sieg, in Florida, and the other in New York City.

There followed discussion which involved the fixing of a date for the respondent's decision. Upon the committee's insistence that a definite time be set, Sieg suggested a delay until the following Tuesday. The committee agreed, subject to the approval of the Union

<sup>9</sup> Clarence Thompson was president of the Association

<sup>10</sup> Board Exhibit No. 50.

membership. Then Sieg changed his position. He demanded a delay of a week. Later, he declared that he ought to have two weeks' time. As a final gesture Sieg announced himself as personally opposed to signing the agreement: "The plant would be better off up on the Jersey coast. The only reason the American Limestone Company, was staying here under a union, was that their raw material was here in the ground, and they had to stay." Obviously, since the respondent was not dependent on local sources for its raw materials, the impression which Sieg sought to convey by this remark was that moving the respondent's plant to another community would involve no similar difficulty, should it determine to use that method to escape union organization of its employees.

Unable to reach an agreement, the committee left Sieg with the warning that the Union membership might decide not to wait until Tuesday for the respondent's decision. The committee made its report at a Union meeting that afternoon. It was the consensus of opinion that Sieg was not dealing in good faith with the committee. Reprisals against the committeemen were feared. In view of the respondent's determined fostering of the Association, its insistent efforts to prevent self-organization, and its announced intention not to recognize any affiliated union, further delay appeared useless. The membership resolved to strike. On the very day of the strike, prior to the walk-out, the respondent, by its express refusal to deal with a union affiliated with the American Federation of Labor or any other independently established labor organization, and by its threats, through Baney, of dismissals for union activities, engaged in the clearest kind of unfair labor practices. The rebuff suffered by the Union in its attempt to bargain with the respondent merely served to ignite the gathered fuel resulting from the unfair labor practices in which the respondent had engaged during a period of more than a year and a half preceding the strike. The record is plain that it was these unfair labor practices which constituted the efficient, contributing, and proximate cause of the strike.

The respondent contends that the strike was illegal because the Union did not follow the procedure required by the constitution of the American Federation of Labor to secure authorization from it to call the strike. It appears, however, from the testimony of Harry G. Flaugh, an official organizer for the American Federation of Labor, that locals of that organization possess power to call strikes without parent authorization and are entitled in such circumstances to American Federation of Labor support, exclusive of financial strike benefits. In any event the question whether the strike was called in accordance with the Union's internal rules is not relevant to the issues here.

About ten days after the commencement of the strike, word passed

among the respondent's employees that "withdrawal slips"<sup>11</sup> were available in the cafeteria room of the plant to employees who "desired" to quit the Union. When strikers returned to work, they were sent by supervisory employees to the cafeteria room, the Association plant headquarters, to sign "withdrawal slips," as a condition to their reemployment. The Association mailed 52 signed "withdrawal slips" to the Union.

The strikers who have not returned to work at the respondent's plant have not secured regular and substantially equivalent employment elsewhere. The strike was still in progress at the time of the hearing.

The express efforts to discredit the Union and the denial of the right of its employees to be represented by non-employees, the threats to remove the plant, the interrogation of employees regarding their organizational activities and union affiliation, the solicitation of membership in the Association and the persuasion of employees not to join the Union, or to sever their affiliation with it, by the supervisory staff during working hours in the plant, reinforced by threats of retaliatory action and actual discharges, and the maintenance of the management-controlled Association in the plant—all form a component part of a course of action undertaken by the respondent to frustrate genuine organization of its employees, which led to the strike on January 15, 1937. The respondent has engaged in conduct of all of these various types since July 5, 1935. Such conduct constitutes unfair labor practices under the Act.

Accordingly, we find that the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

### *C. The alleged refusal to bargain collectively*

#### *1. The appropriate unit*

The complaint alleged and the answers of the respondent and the intervenors admitted that the employees in the production departments constitute a unit appropriate for the purpose of collective bargaining.

Accordingly, we find that a unit composed of the employees in the production departments of the respondent, except those in a supervisory capacity, constitutes a unit which is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and such a unit insures to the employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

<sup>11</sup> Board Exhibit 39. The "withdrawal slips," in typewritten form, read as follows:  
TO LOCAL # 19981 OF A. F. OF L., OF BELLEFONTE, PA.:

Take notice I withdraw from membership in the American Federation of Labor and I hereby sever all connections with said organization.

## 2. The question of majority representation

The number of production workers below the grade of foreman on the respondent's pay roll as of January 13, 1937, totaled 520. On Saturday, January 16, the day after the strike began, 291 employees punched the time clock for the morning shift. The respondent operated only one shift on Saturdays. Some employees who reported for work that morning joined the picket lines during the course of that shift. However, some strikers who went out on Friday or Saturday returned to work on Monday.<sup>12</sup> During the week beginning January 18, 379 employees worked. The pay roll on January 31 contained 381 employees. When the hearing opened, 494 employees were at work in the plant. This number included many new employees.

There were introduced in evidence 167 Union authorization cards<sup>13</sup> which were signed by employees of the respondent prior to the conference between the Union committee and the respondent on January 15. It appeared that an undisclosed number of these cards bore the signatures of persons who were formerly employed but not actually working for the respondent on that date. There were also introduced in evidence 106 additional Union authorization cards, which were signed by employees after the conference. The Union secretary testified that he had in his possession during the strike 395 Union authorization cards, which were signed by men employed by the respondent on January 15; but that the missing cards mysteriously disappeared from Union headquarters in the course of the strike. He also testified that some employees, fearing discovery, did not sign such cards, but verbally requested, prior to the strike, that the Union represent them. However, the secretary was not able to disclose the names or the number of such persons. The respondent offered affidavits signed by 264 persons, who swore that they were employees of the respondent on January 15, 1937, were never affiliated with the Union in any way, and never authorized it to act as their representative for the purposes of collective bargaining.

Inasmuch as the evidence does not warrant the conclusion that the Union represented a majority of the production employees, constituting the appropriate unit, prior to the sole attempt of the Union to bargain with the respondent on January 15, 1937, we find that the respondent did not refuse to bargain collectively with the exclusive

<sup>12</sup> At an election to determine the employees' choice of collective bargaining representative conducted by the respondent in its plant under the supervision of Father Sudlow, a clergyman, and two local businessmen, on Monday, January 19, the Association defeated the Union by a vote of 287 to 46. Word that the respondent intended to hold such an election was passed to one of the strikers in the picket line. The inadequacy of the notice of the election is reflected in the fact that not more than a handful of strikers voted.

<sup>13</sup> These cards designated the Union to represent the employees in collective bargaining with the respondent for the purpose of negotiating an agreement on wages, hours, and working conditions and for the purpose of other mutual aid and protection.

representative of its employees, within the meaning of Section 8 (5) of the Act. In consequence, the allegations of the complaint under Section 8 (5) of the Act, based on the respondent's refusal to bargain collectively with the Union as exclusive representative of its employees, must be dismissed.

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

The activities of the respondent set forth in Section III-A and B 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, and commerce among the several States, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

The Titan Employees Association has been utilized by the respondent as a means of diverting its employees from efforts at self-organization and is, in fact, under its thumb. In the form of memoranda of understanding,<sup>14</sup> having no date of expiration, the respondent imposed in 1935, through "agreement" with the Association, standards of working conditions, hours and rates of pay which it itself dictated. In order to remedy its unlawful conduct in this case, the respondent must cease and desist from giving effect to its contracts with the Association, withdraw all recognition from the Association, and disestablish it as an organization representative of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

The Board wishes to make it clear, however, that it does not by this decision intend to interfere with any participation by the respondent in any group-insurance plan covering its employees, provided the plan is administered without discrimination to encourage or discourage membership in any labor organization.

The unfair labor practices described in Section III-A and B above culminated in the strike on January 15, 1937. That strike was called, in large part, to protest against the respondent's interference with, restraint, and coercion of its employees in the exercise of their rights guaranteed in Section 7 of the Act. At the time of the hearing, there were employed by the respondent a number of individuals who were not so employed at the time of the strike on January 15, 1937, although the respondent was operating its plant with a slightly reduced force.

In order to restore, as far as possible, the situation existing before the unfair labor practices, and since the strike was provoked by unfair

<sup>14</sup> Board Exhibit No 41 and Respondent Exhibit H, respectively.

labor practices, we shall order the respondent, upon application, to reinstate all employees who struck on January 15, 1937, and thereafter, to their former positions, without prejudice to their seniority and other rights or privileges, dismissing if necessary employees hired since January 15, 1937. If after dismissing such employees the respondent determines that the services of any of its staff as then constituted are not required, it may reduce its staff, provided that it does so without discrimination against any employees because of their union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business.

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. Federal Labor Union No. 19981 and Titan Employees Protective Association<sup>15</sup> are labor organizations, within the meaning of Section 2 (5) of the Act.

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

3. By its domination of and interference with the administration of Titan Employees Protective Association, and by contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

4. 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, Titan Metal Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of the Titan Employees Protective Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Titan Employees Protective Association, or any other labor organization of its employees;

<sup>15</sup> In reaching the conclusion that the Association is a labor organization, the Board does not thereby place the stamp of legitimacy upon it, as the respondent and the intervenors contend. See *Matter of Atlanta Woolen Mills* and *United Textile Workers of America*, 1 N. L. R. B. 328.

(b) 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 and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(c) From giving effect to any memoranda of understanding or contracts with the Titan Employees Protective Association.

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

(a) Upon application, offer to those employees who were on the last pay roll prior to January 15, 1937, and who went on strike on that date or thereafter, except those since reinstated by respondent, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole all employees who were on the last pay roll prior to January 15, 1937, and who went on strike on that date or thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2 (a) herein, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of offer of reinstatement, less any amount earned by each of them, respectively, during such period;

(c) Withdraw all recognition from Titan Employees Protective Association as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish Titan Employees Protective Association as such representative;

(d) Immediately post notices at the main entrance to its plant, on its bulletin board and in other conspicuous places throughout its plant, and maintain such notices for a period of at least thirty (30) consecutive days, stating (1) that it will cease and desist in the manner aforesaid; (2) that the Titan Employees Protective Association is so disestablished, and that the respondent will refrain from any recognition thereof;

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

And it is further ordered that the allegations of the complaint with respect to the respondent's refusal to bargain collectively within the meaning of Section 8 (5) of the Act be, and they hereby are, dismissed.