

In the Matter of THE JACOBS BROS. CO., INC. and UNITED ELECTRICAL
AND RADIO WORKERS OF AMERICA, LOCAL NO. 1226

Case No. C-244.—Decided February 25, 1938

Scale, Refrigeration, and Store Fixtures Assembling and Manufacturing Industry—Interference, Restraint and Coercion: expressed opposition to labor organization; threats of retaliatory action; antiunion statements; persuading employees to refrain from forming or joining or to resign from union; interference with, surveillance of, questioning regarding; engendering fear of loss of employment for union membership and activity—*Company-Dominated Union:* domination or interference with formation or administration; soliciting membership during working hours and by supervisory employees; disestablished as collective bargaining agency—*Collective Contract of Employment:* with labor organization assisted and formed by unfair labor practices, not representing free choice of employees, void; respondent ordered to cease and desist from giving effect thereto—*Individual Contracts of Employment:* entered into as result of interference with, restraint and coercion of employees, void; respondent ordered to cease and desist from giving effect thereto—*Discrimination:* discharge; charges of, dismissed as to ten, sustained as to two, employees—*Reinstatement and Back Pay;* ordered and awarded as to two employees discriminatorily discharged—*Strike—Unit Appropriate for Collective Bargaining:* production employees, functional coherence; similarity of wage scales and skill required—*Representatives:* proof of choice: applications for union membership—*Collective Bargaining:* refusal to negotiate with union.

Mr. Will Maslow, for the Board.

Kotzen, Mann & Siegel, by *Mr. Abraham Mann,* and *Mr. Joseph Yaspan,* of New York City, for the respondent.

Mr. Frank Scheiner, of New York City, for the Union.

Mr. Harry A. Sellery, Jr., of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 24, 1937, District No. 15 of International Association of Machinists filed a charge with the Regional Director for the Second Region (New York City) alleging that The Jacobs Bros. Co., Inc., Brooklyn, New York, herein called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the National Labor Relations Act, 49 Stat.

449, herein called the Act. Local No. 1550 of International Association of Machinists having affiliated with United Electrical and Radio Workers of America, upon an amended charge duly filed as such by United Electrical and Radio Workers of America, Local No. 1226, herein called the Union, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, the said Regional Director, duly issued and served its complaint dated July 19, 1937, against the respondent. The complaint, as subsequently amended during the course of the hearing, alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2),¹ (3), and (5), and Section 2 (6) and (7) of the Act.

In respect to the unfair labor practices, the complaint, as amended, alleged in substance (1) that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by persuading and coercing its employees to refrain from becoming or remaining members of the Union, to bargain individually with respect to their conditions of employment, and to sign individual contracts waiving the rights guaranteed to them by the Act, and by attempting to spy upon and keep under surveillance the activities of three named and others of its employees and their representatives in the exercise of the said rights; (2) that the respondent initiated, formed, sponsored, and dominated and contributed support to a labor organization known as The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., herein called the Committee; (3) that the respondent about June 15, 1937, laid off approximately 100 of its employees and discharged and has since refused to reinstate thirteen named employees for the purpose of discouraging union membership and otherwise interfering with the collective bargaining rights of its employees; (4) that by reason of the lay-offs and discharges substantially all of the respondent's employees went on strike about June 16, 1937, and since that date have remained on strike; and (5) that although the Union has been, since June 15, 1937, the exclusive representative of the respondent's production employees, the respondent on that date and at all times since then refused to bargain collectively with the Union as the exclusive representative of such employees.

On July 26, 1937, the respondent duly filed its written answer. The answer, as amended, denied all the allegations of the complaint except those relating to its corporate existence and the nature of its business and the allegation that some of its employees went on strike on or about June 16, 1937. It further affirmatively alleged (1) that the respondent has conducted its activities so as to eliminate any

¹The allegation of an unfair labor practice affecting commerce within the meaning of Section 8 (2) of the Act was added during the course of the hearing.

obstruction to commerce, has bargained collectively with its production employees through representatives of their own choosing, and has entered into collective bargaining contracts with the Committee, designated by such employees as their bargaining agent, and with such employees themselves; (2) that the Board has no jurisdiction to pass upon the validity of such contracts; and that this proceeding is therefore invalid; (3) that the Board by issuing its complaint and proceeding thereunder is interfering with the respondent's business; (4) that about June 16, 1937, because of lack of work, the respondent laid off, for four days, approximately 72 employees, who went on strike on June 17, 1937, and failed to return to work on June 21, 1937, thereby breaching their written contracts with the respondent; (5) that the respondent, because of lack of work, laid off 13 employees and that such employees were told at the time of the lay-off that they would be notified when there was sufficient work to warrant their recall; (6) that neither Local 1226 of United Electrical and Radio Workers of America nor United Electrical and Radio Workers of America represented a majority of the respondent's employees; (7) that at no time was any proof of such majority ever submitted to the respondent; (8) that Local No. 1226 of United Electrical and Radio Workers of America had no charter and no legal existence prior to June 15, 1937, and prior to and since June 15, 1937, has acted contrary to and in violation of the bylaws and constitution of United Electrical and Radio Workers of America, and in that respect has precluded itself from having any standing before the Board; and (9) that United Electrical and Radio Workers of America are not a party to this proceeding. The answer concluded by moving that the complaint be dismissed. With its answer the respondent filed its written motion for a verified bill of particulars with notice that it would present such motion at the commencement of the hearing.

Pursuant to the notice of hearing, duly served, a hearing was held at New York City on July 29, 30, August 2, 3, 4, 5, 9, 10, 11, and 12, 1937, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. 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 commencement of the hearing, the respondent objected to the admission of the charge in evidence and, upon its admission, moved that the complaint be dismissed for the reason that the respondent had no previous knowledge of the charge, since only the amended charge and not the original charge had been attached to the complaint. The Trial Examiner denied this motion. The respondent then presented a written motion for a verified bill of particulars. The Trial Examiner denied this motion.

During the course of the hearing, counsel for the Board, while expressly reserving any claim to back pay, moved to dismiss the complaint as to the refusal to reinstate Ann Sharko on the ground that she had already been reinstated. The motion was granted.

At the conclusion of the Board's case, counsel for the respondent made seven motions to dismiss the complaint on the grounds (1) that the original charge, although admitted into evidence, was not attached to the complaint; (2) that the strike was over and the employees, pursuant to their contracts with the respondent, were returning to work; (3) that the evidence proved that the respondent on April 29, 30, and May 3, 1937, bargained collectively with the duly designated representatives of its employees; (4) that the Union and the Board by this proceeding are attempting to interfere with contractual relationships of the respondent; (5) that the Board has no jurisdiction to determine the validity of such contracts; (6) that the evidence does not sustain the allegation that on or before June 15, 1937, the Union had been designated as their bargaining representative by a majority of the respondent's production employees; and (7) that the evidence presented by the Board was insufficient to sustain the complaint. All seven motions were denied. After the subsequent introduction of additional evidence by counsel for the Board, the respondent again moved to dismiss the complaint on the ground of general insufficiency. The motion was likewise denied.

During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings, and rulings made with respect to the motions previously mentioned and other motions made by the parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed. With respect to the motion to dismiss the complaint on the ground that a copy of the original charge, although admitted into evidence, was not attached to the complaint served on the respondent, it should be noted that the amended charge in this proceeding was not supplementary to the original charge, but in substitution therefor.

On September 20, 1937, the Trial Examiner filed and served upon the parties 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), (2), (3), and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist from these violations, that Anne Banavich and Jean Saltis be reinstated, and that the respondent proceed to bargain collectively with the Union.

Thereafter both the respondent and the Union filed exceptions to the Intermediate Report. Pursuant to notice, a hearing was held at the request of the respondent before the Board on October 8, 1937,

in Washington, for the purposes of oral argument upon the respondent's exceptions. Thereafter the respondent filed a memorandum in support of its exceptions. The Board has considered the exceptions to the Intermediate Report, the memorandum, and a brief filed by the respondent, and finds the exceptions 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 is a New York corporation, having its principal office and place of business in County of Kings, State of New York. There it cuts, paints, and assembles raw materials, including steel stampings, iron castings, celluloid, rubber, mats, paints, glass, and lumber, in order to produce bathroom and other scales, refrigerators, and store fixtures. Such products are then packed and distributed. Approximately 33 per cent of the raw materials used by the respondent are purchased outside New York.²

Approximately 50 per cent of the respondent's sales are of bathroom scales, approximately 30 per cent are of other types of scales, and approximately 20 per cent are of refrigerators and store fixtures. About 50 per cent of the respondent's scales are sold outside New York, in other States and in territories of the United States, the West Indies, South America, and Europe. The respondent maintains a showroom in New York City and has salesmen and sales agents throughout the United States. It advertises its products in trade journals and magazines with a national circulation.

The respondent employs approximately 340 persons, of whom about 69 are clerical employees and officials and 271 production employees.³

II. THE ORGANIZATIONS INVOLVED

Local No. 1226 of United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization. It is a successor to International Association of Machinists, Local No. 1550, which was organized in April 1937. It admits to membership the respondent's production employees, except supervisory employees.

The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., is a labor organization admitting to membership the respondent's production employees, except supervisory employees.

² Board Exhibit No. 28.

³ Board Exhibit No. 3.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion*

About April 12, 1937, three of the respondent's employees signed applications for membership in International Association of Machinists. They procured signed applications from other employees of the respondent, and thereafter Local No. 1550 of International Association of Machinists was formed. On April 28, 1937, Local No. 1550 became affiliated with United Electrical and Radio Workers of America. Local No. 1226 received its charter on June 15, 1937.⁴

On April 29, 1937, Seymour Alberts and Edward Bolduc, two Union employees, and Arno Huste, a nonunion employee, were found by Max Klein, the respondent's production manager, in a wash-room in the respondent's plant discussing union activities. Klein ordered Alberts and Bolduc to come with him to the office of David S. Hammerman, the respondent's secretary and in charge of personnel. At the hearing Hammerman denied having done more than warn them not to engage in union activity at the plant. Alberts and Bolduc testified that he also urged them not to join the Union and told them that it was "no good", that it had lost several strikes in Brooklyn, and that 300 Brooklyn companies, including the respondent, would never recognize the Union. Alberts testified that when he and Hammerman were alone in the office the latter urged him on racial grounds to cease his union activity.

During that same day a "Special Notice"⁵ was posted in the plant. This notice, which was drafted by Hammerman and signed by the president, secretary, and production manager of the respondent, read in part as follows: "It has come to my attention that employees have been told that unless they sign up with a union they will not be able to work here . . . No man or woman must belong to a union to work here now or any time in the future . . . Anyone who solicits or organizes during the regular working hours will be dismissed immediately . . ." On that same day Hammerman approached Frieda Kavetsky while she was at her work bench. He told her that he had heard that she was soliciting for a union, that a notice had been posted prohibiting such action, and that she would be discharged if she were found soliciting for the union while she was at work.

Stephen Nahaczewski, a stockroom employee, on April 30, 1937, was instructed by William Furst, stockroom foreman and an assistant to the production manager, to observe and report anything Alberts did or anyone to whom he spoke during the entire day. Nahaczewski protested that his regular work did not afford him any excuse to do

⁴ Respondent Exhibit No. 14

⁵ Board Exhibit No. 7.

so. In order to enable Nahaczewski to watch Alberts without arousing suspicion, Furst arranged work that day for him near the inspection department where Alberts worked. At the end of the day Nahaczewski reported that he had watched Alberts, but that the latter had been unable to speak to any one because of an order which had recently been issued in that department which authorized only two employees, not including Alberts, to leave the cage in which inspection work was performed.

When Furst was asked at the hearing why he had ordered Alberts watched, he gave as his reason that he had learned of the washroom incident and that he did not believe Alberts would keep his promise to Hammerman not to engage in union activity during working hours.

Nahaczewski testified that Furst then ordered him to attend a Union meeting that evening and to report on what Alberts and other Union employees said there. Nahaczewski followed Furst's instructions and the next morning reported to him concerning the meeting. Some two weeks later, about the time the original charge was filed, Furst encountered Nahaczewski in the plant and told him that he had talked with the respondent's president concerning his activities and that if the matter were brought up at a hearing of the Board, Furst intended to deny having issued any instructions, such as are herein described, and that Nahaczewski should do likewise and testify that he went to the meeting on his own initiative. At the hearing Furst admitted ordering Nahaczewski to watch Alberts at work, but denied having ordered Nahaczewski to report to him concerning the Union meeting. He stated that, although he believed Nahaczewski to be trustworthy, he wished to impress upon him the necessity for telling the truth. Furst denied having instructed him to commit perjury.

Frieda Kavetsky also testified that she had seen Klein, the production manager, and the respondent's president hiding behind pillars and boxes watching her, and that John Norey, her foreman, told her she was being constantly watched.

On May 5, 1937, "A Message to Employees"⁶ was posted on the respondent's bulletin boards stating that employees were being threatened that if they wished to continue to work they must join a union. The notice further said, "The Company will go to the limit financially or otherwise to see that employees who want to work are able to do so. At no time will anyone have to pay dues to work here."

At the same time that this notice was posted, the respondent was conducting an intensive campaign to induce its employees to sign individual contracts of employment with it. This campaign will be discussed subsequently. But if the notice is considered together with the campaign, it is apparent that it was intended by the respondent

⁶ Board Exhibit No. 8.

to have and did have the effect of advising the employees that the respondent was opposed to the Union, and that the employees should save their money by avoiding the payment of dues to an outside union and should maintain a relationship with the respondent unaffected by an outside organization.

On June 9, 1937, Furst asked Nahaczewski if he was a Union member and added that if he learned that he was "the porter needed a good helper". Nahaczewski interpreted this as an intimation that he would be assigned to less desirable work if Furst learned of his Union membership. Jean Krawiec also testified that Norey, her foreman, asked her if she knew anything about the Union. After the respondent's employees went out on a strike, which will be described below, officials of the respondent also approached Catherine Ryan, Ike Tarashinsky, and other employees directly and urged them to return to work.

About July 23, 1937, Hammerman prepared a letter⁷ bearing that date and addressed to the Board's Regional Director. The letter was never sent. The letter stated that its signers were employees of the respondent who desired to retract the incorrect statements they had been prevailed upon to make, that they were satisfied with their working conditions and wished to withdraw their charges, and it repudiated any charge claimed to have been filed on their behalf. Hammerman and the respondent's vice president invited employees, including some who were requesting reinstatement, to sign this letter. Twenty-seven of the 29 names signed to the letter are those of employees who had previously signed Union application cards. At least one of the employees reinstated, Catherine Ryan, refused to sign this letter, stating that she was not satisfied with her working conditions.

Hammerman's explanation for this letter was that some of the employees had indicated that they were uneasy because they had signed a petition⁸ requesting the Board to declare void the individual contracts, and that Hammerman, accordingly, had prepared this letter as an accommodation to them.

The respondent's officials pursued a course of coercion, intimidation, and interference clearly intended to discourage and restrain its employees from affiliation with an outside union. By direction and indirection the respondent pressed its employees either not to join the Union or to renounce their membership in it. The respondent's coercion and intimidation included direct and indirect criticisms of any outside union in notices and letters, conversations with individual employees and groups of employees by its officials and supervisory employees, espionage practiced upon employees and sur-

⁷ Board Exhibit No. 37.

⁸ Board Exhibit No. 26.

veillance of their union activities, and threats of demotion or discharge to employees if they did not cease their union activities.

We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

B. Domination of and interference with the Committee; the signing of the individual contracts

On the morning of April 29, 1937, Hammerman called the respondent's foremen to a meeting in the president's office and quoted from a newspaper article⁹ by the Regional Director discussing the rights of employers and employees under the Act. Hammerman testified that he instructed the foremen that they should say nothing to the employees about joining or not joining any union, and that the respondent, under the Act, was compelled to bargain collectively with any one representing a majority of its employees. He further instructed the foremen that the employees had no right to organize for a union in the plant during working hours and ordered them to report to him any employee doing so. Hammerman afterwards conducted a similar meeting for the assistant foremen.

Later that day the employees in several of the departments of the plant held meetings upon the instruction of their respective foremen. Alberts testified that Harry Pappas, his foreman, said to him that day, "I hate like hell to do this, Seymour, but we have been told at the foremen's meeting to get you fellows to elect your own representatives for collective bargaining."

In substantially the same language Pappas issued instructions to William Kirschner, an employee in the inspection department, and the same general procedure was followed in other departments. For example, Anthony Urevich, a foreman of the machine department, told Stephen Ciecura to call together his fellow employees in the department and tell them to elect a representative to act as the bargaining representative of such employees. Dan Leonardi, an inspector in the assembly department, called together the employees in that department and told them that they should select representatives to represent them in collective bargaining with the respondent.

The various departmental meetings which were held, some on April 29, 1937, and some on the next day, were informal in character. In some instances the foremen stood by and watched the meeting; in others they played a more active part in the selection of representa-

⁹ Respondent Exhibit No 18

tives. For example, Norey, a foreman in the drum department, pointed out one individual, Elizabeth Vogel, and asked her fellow employees if she would be satisfactory to serve as their representative. No objection was heard to her appointment and thereafter she acted as a representative of her department. In no case does it appear from the record that an election by secret ballot or formal vote was conducted in any department for the election of such representatives. So far as the record discloses, the expression of choice was limited to consent to the representatives proposed. Although Hammerman ordered that any employee organizing for a union be reported to him, it does not appear that any report of these departmental meetings was made.

On the afternoon of April 29, 1937, approximately ten representatives from the fifth-floor departments went to Hammerman's office. Hammerman testified that, after an informal discussion of their demands,¹⁰ he told them that he could not recognize them as representatives of their departments without written proof of their designation by their fellow employees. When the representatives appeared uncertain as to what type of written designation would satisfy his requirements, Hammerman volunteered to prepare it for them. He subsequently did so and presented it to the departmental representatives at their meeting the next day.

The following morning, April 30, 1937, Hammerman telephoned the foremen to instruct the representatives in their respective departments to come to the vice president's office at 11 o'clock. Klein, Furst, and Hammerman attended this meeting on behalf of the respondent. Hammerman informed the departmental representatives that they had been selected for the purposes of collective bargaining and that each representative should, in consultation with his fellow employees, draw up the demands of his department for presentation at a meeting to be held that afternoon. Before the representatives left they were requested to sign the proof of their designation as representatives, in the form of the petition,¹¹ previously described, which had been prepared by Hammerman.

After it had been signed by the representatives present, the petition was given to Louis Brunnings, representative from the receiving room for circulation among the employees. Brunnings was accompanied to his department by Furst and in the presence of Furst, Brunnings requested his fellow employees to sign. Thereafter Furst accompanied Brunnings to the next department, where Brunnings gave the petition to its representative and then withdrew. This same method was employed for the circulation of the petition throughout

¹⁰ Respondent Exhibit No 9 A.

¹¹ Respondent Exhibit No 2.

the plant: after the petition had been circulated in one department Furst conducted its representative to the representative of the next department, who then received the petition and under Furst's observation circulated the petition there. This procedure was fruitful of signatures, for when the petition was returned to Hammerman that afternoon it had been signed by 212 employees, in addition to the representatives.

During the early part of the afternoon the employees of the various departments informally discussed with their representatives the demands to be presented. The foremen observed these meetings, but did not report any of them as union activities, although they were taking place in the plant during working hours. This attitude of the respondent toward the departmental meetings contrasts, as we have said above, with its attitude toward the Union activities of its employees. Its officials warned the employees not to solicit for the Union in the plant during working hours, and spied upon them to see that its warning was observed, while at the same time it was permitting meetings on company time and property called for the purpose of organizing the Committee. In the course of the afternoon the representatives were told to come to a meeting with the respondent's officials at 4:30 p. m.

At the meeting the representatives submitted the demands of their departments in writing.¹² The officials of the respondent read them over and described them as "fantastic", "outlandish", and "inconsistent." Hammerman stated, "We might just as well go out of business if we consider meeting these demands." The officials then voluntarily withdrew from the meeting in order to permit the representatives to discuss and revise the demands. About 7 o'clock the officials were requested to return and Kirschner informed them that the representatives had agreed on only one demand: in order to obtain security for their jobs they wished the respondent to submit all discharges for the approval of an employee committee. Hammerman stated that the respondent would not relinquish its right to hire and discharge employees and refused the request. He stated that the respondent would present its proposal to the employees in the near future.

On May 3, 1937, the next working day, the representatives again met with Hammerman and other officials of the respondent. Hammerman started the meeting by announcing that the respondent would never relinquish its right to hire and discharge, and that the respondent had prepared for their signature a contract embodying its proposals.¹³ No copies of the contract were given to the representatives,

¹² Respondent Exhibit Nos 3, 9B, 9C, 9D, 10A, 10B, 20, 21, 22, 23, 24, 25, and 26

¹³ Respondent Exhibit No. 7.

but Hammerman read the terms to them and at the close of discussion 25 of the representatives signed.

At least two representatives, Alberts and Kirschner, refused to sign. Alberts asked the respondent's president if this was not a yellow-dog contract. Kirschner testified that when he offered to discuss the contract with his fellow employees, Klein said that he would do the explaining of the contract to the inspection department.

This contract is of the same general character as that first considered by us in *Matter of Atlas Bag and Burlap Company, Inc.*, and *Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*,¹⁴ much of the language of the two contracts being identical.

Briefly summarized, the employees renounce their right to strike until May 1, 1941; substantial increases over the existing wage scale are given; minimum wages and maximum hours effective until May 1, 1938, time and one-half for overtime, and vacations are established; a procedure for annual wage revision is set forth; the respondent agrees not to lock out employees, but retains the right to discharge them for any reason. The contract also provides that the employees are permitted to join or refrain from joining any union, but shall not have the right to demand a closed shop or a signed agreement by the respondent with any union.

The contract is directly between the respondent and the individual employee, and under it the Committee, as such, has no rights or duties. In fact, so far as the record shows, it ceased to function after the representatives had signed the contract.

This contract was prepared by Hammerman who testified that he had for some time been collecting data and information concerning the Act. The respondent is a member of the Brooklyn Chamber of Commerce, and Hammerman consulted L. L. Balleisen, industrial secretary of the Chamber, at frequent intervals concerning some of the respondent's labor problems. He examined copies of similar types of contracts on file in Balleisen's office and discussed with Balleisen the type of contract to be used by the respondent. Balleisen testified that the contract embodied what he characterized as the "Balleisen theory". One of the elements of this theory is that it is beneficial to have the employer go to its employees and work out arrangements with them before an outside union or organizer "gets in" to them.¹⁵

As we said in the *Atlas Bag* decision, "Despite the lip-service rendered by the terms of the contract to the right of an employee to

¹⁴ 1 N. L. R. B. 292.

¹⁵ The Balleisen system of organizing company-dominated unions is described and discussed in the *Atlas Bag* case; *Matter of Metropolitan Engineering Corporation*, 4 N. L. R. B. 542; *Matter of Hopwood Retinning Company, Inc.*, 4 N. L. R. B. 922; and *Matter of Catung Rope Works, Inc.*, 4 N. L. R. B. 1100.

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

When the individual contracts were circulated, the respondent's officials stated that the benefits of these contracts, in the form of higher wages, shorter hours, overtime pay, and vacations, were limited to those employees who signed the contracts. In return for such benefits, the signers agreed to relinquish the right to strike, thereby renouncing any effective protest for any unfair labor practice by the respondent and the right to demand a closed shop or a signed agreement with any union. They also agreed to accept a procedure not necessarily involving the Union in the settlement of labor disputes. The burdens of these contracts, in removing certain conditions of employment beyond the field of possible collective bargaining during the life of these contracts, were such that no practical field of activity remained to the Union.

On May 3, 4, and 5, 1937, Hammerman, Furst, Klein, and other officials of the respondent circulated individual contracts among the employees and urged them to sign. With the exception of a slight variation in the contracts signed by the employees in the inspection and register departments,¹⁶ these individual contracts are identical with the contract signed by the Committee. The representatives had no part in the signing of these contracts, except to stand near the respondent's officials while they were in the particular representative's department.

The method of securing signatures in the machine department is illustrative of the manner in which these agreements were executed and the opportunity given the employees to consider the respondent's proposals. Ciecura, the representative in the machine department, testified that the employees were brought by officials of the respondent into a tool crib, approximately ten by twenty feet in size. Two officials, Weiss and Klein, took their stand at the single entrance to the tool crib; so anyone leaving it was required to pass by them. Klein then read a condensed explanation of the contract.¹⁷ After asking if there were any questions, he requested the employees to come forward and sign the contract, although they had not yet

¹⁶ Board Exhibit Nos 4 and 16, respectively.

¹⁷ Board Exhibit No. 6.

had an opportunity even to read it, much less discuss it with their representatives and each other. No employee came forward. Klein repeated his request, saying, "It won't bite you." Finally the brother-in-law of the department foreman came forward, signed, and left the crib. All the machine department employees did likewise, including Ciecura.

The procedure for procuring signatures to the contracts appears to have been substantially the same in all the departments. Officials of the respondent appeared in the various departments with copies of the contracts and had the departmental representative stand beside them. When the employees had been called together, the explanation of the contract, but not the contract itself, was read to the employees so assembled. They were told they were not required to sign the contract, but that only those employees who did sign would receive the benefits provided in the contract. Some employees asked questions concerning clauses in the contracts, and, according to Hammerman's testimony, approximately 30 or 40 employees retained their copies of the contracts and signed them later.

The employees who did sign the contract received a copy of the explanation of the contract and approximately two days later a copy of the contract signed by officials of the respondent.¹⁸ The effectiveness of the procedure adopted by the respondent can be judged by Hammerman's testimony that approximately 211 employees signed the contracts on May 3, 1937. In the course of the next few days the total number was brought up to about 250 signatures. Thereafter a notice¹⁹ was posted at various locations in the plant summarizing the changes in wages and hours and the vacation provisions of the contract.

The actions of the respondent's agents, both officials and supervisory employees, in advising the employees to elect representatives, prepare demands, and meet with the management, initiated the organization of the plan of representation. The respondent prepared the authorization for the representatives, directed the time and method of the circulation among the employees, directed and assisted its circulation and the procurement of the employees' signatures, and secured its return. The respondent summoned the representatives to meetings with its officials, described their powers and duties, ordered them to present demands, and dismissed their meetings.

Upon the basis of the foregoing facts, we find that the respondent,

¹⁸ Board Exhibit No. 29, a copy of Board Exhibit No. 5, is an example of the contracts signed by the employees. Board Exhibit No. 35, also a copy of Board Exhibit No. 5, is an example of the contracts signed by officials of the respondent. The respondent has possession of the signed individual contracts, copies of Board Exhibit No. 29, and also of Respondent Exhibit No. 7, the contract signed by the Committee, but which is not signed by officials of the respondent. There is apparently no copy of any of such contracts signed by both the respondent and the employees individually or collectively.

¹⁹ Respondent Exhibit No. 27.

by its officers and agents, on April 29 and 30, 1937, sponsored and dominated the formation of the Committee, and thereafter dominated its administration, and contributed support to it. Upon that basis, we further find that the limitations on Union activity imposed by the contracts interfered with, restrained, and coerced the respondent's employees in the exercise of their rights to self-organization and collective bargaining.

C. The discharge and lay-offs

1. Discharge of Anne Banavich and Jean Saltis

On June 14, 1937, Anne Banavich and Jean Saltis paused on their return from luncheon to their posts of duty on the assembly line, while Miss Saltis asked Miss Banavich for a piece of candy. At that moment their assistant foreman, John Hoglund, came up to them saying, "Break it up", and followed Miss Saltis back to her post. While Miss Banavich was returning to her post, August Hohne, the foreman, said to her, "Anne, don't you know your lunch hour is over?" The lunch hour ended at 12:30 p. m. Miss Banavich testified that the clock registered 12:33 p. m. when she began work again. Approximately one hour after this incident occurred, Hohne telephoned Hammerman to ask him to come to the assembly-line floor and, when he arrived, described the incident to him. Shortly before the close of work on that day, Hammerman summoned the two girls to his office and discharged them.

On the stand, Hohne estimated that the two girls, who claimed they were approximately three to five minutes late, had been approximately seven minutes late in returning to work. He also testified that it was his practice to allow a three-minute grace period at the end of the lunch hour, that if a person was regularly late to work he would successively warn him to be more prompt, reprimand him, and then discipline him by laying him off for a half-day, thereby docking his wages, and that if an employee still persisted in being late, his case was reported to Hammerrnan. Hohne and the girls testified that they had never been warned by him for tardiness, and also testified that no complaints had ever been registered against them for unsatisfactory or inefficient work. Hohne thus violated the regular practice in regard to tardiness. He stated that he was surprised when Hammerman discharged the two girls. Miss Banavich had been employed by the respondent for about one year and two months at the time of her discharge. Miss Saltis had been employed approximately one year at the time of her discharge.

Miss Banavich testified that she handled 96 scales per hour on the belt, which required her to pass three scales approximately every two minutes. She further testified that when she went to luncheon

there was only one scale at her post and when she returned to work only one additional scale had arrived there. This testimony is uncontroverted: This fact strongly indicates that she was not more than three minutes late, as she claimed.

Both girls were members of the Union. Miss Banavich had been appointed a shop steward for the Union approximately three weeks prior to this incident and given the responsibility of contacting the girls on her floor. She had not formally joined the Union at the time of her appointment for fear that she would lose her job. Miss Saltis had joined the Union shortly before the appointment of Miss Banavich as shop steward.

The unusual measures taken by both Hammerman and Hohne are so extraordinary under the circumstances as to satisfy us that the discharge of these two girls was not for any alleged tardiness or insubordination, but was intended to frighten the Union employees and persuade them that their only security lay in abandoning the Union and agreeing to whatever proposals the respondent advanced.

Upon the basis of the foregoing facts we therefore find that the respondent discharged Anne Banavich and Jean Saltis on June 14, 1937, and thereby discriminated against them with respect to hire and tenure of employment, in order to discourage membership in the Union.

2. The temporary lay-off of 72 employees

The complaint alleges that on June 15, 1937, the respondent laid off approximately 100 employees for the purpose of discouraging membership in the Union. The respondent's answer admits that on or about June 16, 1937, it temporarily laid off 72 employees for four days.²⁰ Although the method and time of notification of the lay-off varied, there is general agreement that the employees were informed on June 15, 1937, by various officials and employees that a temporary four-day lay-off had been ordered for the purposes of making some physical rearrangement of the plant and because of a decline in business.

In support of this latter contention the respondent stated that its busy season extends approximately from September to March and that the slow season extends approximately from June to August. In addition officials of the respondent testified that because of large anticipated orders the number of employees had not been reduced as usual; such orders and other anticipated orders failed to materialize and the respondent was therefore compelled to reduce its production because of lack of storage space and in order to avoid piling up an excessive inventory.

²⁰ Respondent Exhibit No 15 lists the names of 72 employees so laid off.

The number of lay-offs on June 15, 1937, is large in comparison with those of previous years.²¹ The business reasons for such lay-offs are not entirely substantiated by the stipulation entered into between counsel²² concerning the production of units before, during, and after the lay-offs. Klein testified that the average production per month was approximately 30,000 units and that the respondent had in stock approximately that same number of units at the time of the lay-offs. Nevertheless, the alleged basis for the reduction in production does not appear completely unsubstantiated, and there is not sufficient evidence in the record to controvert the evidence that a seasonal decline in business is customary during the period including June 15, 1937.

Two hundred and five of the respondent's 271 production employees are members of the Union; 62 of the 72 employees, who were temporarily laid off, are members of the Union. A comparison of the proportion of Union employees employed by the respondent with the proportion of Union employees laid off shows that only a slightly larger number of Union employees were laid off than might have been expected, if the lay-offs were based on Union membership. The lack of evidence serving to connect the lay-off of the 72 employees with a campaign against the Union leads us to conclude that the lay-offs were not intended to discriminate against Union members in order to discourage membership therein. We will, therefore, dismiss that part of the complaint.

3. The discharge of 13 employees

The complaint further alleges that the respondent discharged 13 employees named in a schedule attached thereto. We have already discussed the cases of Anne Banavich and Jean Saltis and the dismissal of the complaint in so far as it concerns the discharge of Ann Sharko.

There remains for our consideration the discharge of ten other employees. It was stipulated that the remaining ten employees were told on June 15, 1937, that they were laid off indefinitely, but would be notified when to return to work and that none of them had been so notified. There is some testimony by two of these employees that they had not completed the work they were engaged in at the time of the lay-off. The respondent takes the position that the same business considerations, previously referred to in regard to the temporary lay-off of the 72 employees, are applicable here, and there is little evidence to rebut this contention. We conclude that it has not

²¹ Board Exhibit No. 34, a tabulation of lay-offs by weeks for the months of March to July, inclusive, for the years 1933 to 1937, inclusive, shows substantial lay-offs in various weeks in the months of June and July in previous years, but none as drastic as that of June 15, 1937.

²² It was stipulated that the production of units during the months of April to August, 1937, inclusive, was approximately as follows: April: 41,750 units; May: 22,750 units; June: 35,000 units; July: 24,000 units; and August: 33,500 units.

been established that the lay-off of the ten employees was made for the purpose of discouraging Union membership or discriminating against Union employees. Accordingly, we will dismiss the complaint in so far as it concerns their lay-off.

D. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges that all of the respondent's production employees, excluding office workers, draftsmen, salesmen, truck drivers, and those engaged in supervisory duties, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. This allegation is uncontroverted, and there is ample evidence to support it.

The production employees are divided into departments, several of which are located on each floor. Each department is under the supervision of a foreman who, in turn, is supervised by Klein, the production manager. Although the several departments have separate functions, the production of the respondent is so integrated that products of the respondent are often passed through several departments in the course of production. The work of certain departments, such as that of the inspection department, requires their employees to pass throughout the respondent's factory in the performance of their duties.

There is no considerable difference in the degree of skill or training required for work in a particular department. The general wage scale is substantially the same throughout the factory. The production employees are paid on an hourly or daily basis; the foremen and office workers are paid on a weekly basis.

We find, therefore, that all the production employees of The Jacobs Bros. Co., Inc., excluding office workers, draftsmen, salesmen, truck drivers, and those engaged in supervisory duties, constitute a unit appropriate for the purposes of collective bargaining and that such a unit insures to the employees the full benefit of their right to collective bargaining and otherwise effectuates the policies of the Act.

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

The factory pay roll for the week ending June 16, 1937,²³ lists 271 employees in the appropriate unit, and a "Departmental Schedule as of June 9th, 1937"²⁴ prepared by the respondent lists a total of 268 employees in the appropriate unit. We shall adopt the factory pay roll as containing the correct number of employees in the appropriate unit as of June 16, 1937. A comparison of the names on the pay roll with cards authorizing the Union to represent the signers for the pur-

²³ Board Exhibit No. 3.

²⁴ Board Exhibit No. 17.

poses of collective bargaining and introduced into evidence discloses the signatures of 137 employees on the cards dated on or before June 15, 1937; of 34 employees on cards dated June 16, 1937; of 14 employees on cards dated after June 16, 1937; and of 20 employees on undated cards. It thus appears that on June 15, 1937, at least 137 of the 271 employees in the appropriate unit had designated the Union as their collective bargaining representative and that on that date the Union had been designated by a majority of the employees in such unit.

The respondent at various stages of the proceeding has objected to the introduction of the Union's cards into evidence on the ground that they have not been properly identified. Comparison of the signatures on these cards and on a petition²⁵ dated June 28, 1937, signed by 155 persons as employees of the respondent, discloses 142 signatures on the petition identical with signatures on the cards and no discrepancies between signatures purporting to be of the same person.

The respondent contented itself merely with alleging the lack of identification of the signatures on the exhibit. It introduced no definite proof that the signatures were not those of the persons they purport to be. The respondent had in its possession and under its control all the data necessary to substantiate its objection to the exhibit, but made no effort to do so.

Under such circumstances, we are satisfied, upon the basis of the comparison described above, that the signatures are authentic, and we find that on June 15, 1937, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit. By virtue of Section 9 (a) of the Act, it was, therefore, the exclusive representative of all of the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The strike and the refusal to bargain collectively

The lay-offs and discharges previously described were discussed at a Union meeting on June 15, 1937. The employees present voted not to return to work until the respondent explained the reason for the lay-offs. They also elected a negotiating committee to discuss with the respondent the lay-offs and certain demands. As a result of this decision only a small number of nonunion employees went to work the next day.

On the morning of June 16, 1937, Charles Rivers, a Union organizer, telephoned Hammerman requesting an appointment to discuss the refusal to return to work and other Union matters. That afternoon

²⁵ Board Exhibit No. 26.

Rivers and the Union negotiating committee had a conference in Hammerman's office with some of the respondent's officials. Rivers testified that, after showing his credentials²⁶ as a Union official, he offered to prove that the Union had been designated by a majority of the respondent's production employees as their exclusive bargaining representative. Hammerman denied that Rivers offered such proof and testified that when proof of majority was requested, Rivers pointed to the employees standing across the street and said that they were his proof. It is not disputed, however, that Rivers in the course of the discussion presented Hammerman with certain demands²⁷ of the Union in regard to working conditions. The respondent requested time to consider the demands, and it was agreed that the respondent would reply the next afternoon. Witnesses, who are members of the Union, testified that the respondent promised to reply by 2 p. m. on June 17; Hammerman claims that no specific hour in the afternoon of June 17 was agreed upon. Pending an answer by the respondent, the Union agreed that it would not picket the plant if the respondent employed no strikebreakers.

On June 17, when no reply from the respondent had been received by 2 p. m., Rivers telephoned the respondent's plant and thought he spoke to Hammerman. The latter testified that he was out of town and did not return to his office until approximately 4 p. m.

The unidentified person with whom Rivers spoke purported to speak for the respondent, but limited himself to stating that he did not care to make any comments on the situation. He did not ask for more time to consider the Union's demands or agree to communicate with the Union later, and gave no answer except that the respondent was not in any mood to discuss the terms of the contract proposed by the Union. Shortly after this telephone conversation pickets were thrown around the respondent's plant. The strike continued until about July 22, 1937, when the picket line was withdrawn and many of the strikers applied for reinstatement.

Frank Scheiner, attorney for the Union, testified that later in the month of June he talked by telephone to Mr. Siegel, of Kotzen, Mann & Siegel, counsel for the respondent in this proceeding. Scheiner asked if the respondent would enter into negotiations with the Union to settle the strike and for the purposes of collective bargaining. Scheiner testified that Siegel said that the respondent would not. This testimony is uncontroverted.

On June 25, 1937, the respondent mailed a letter²⁸ to its striking employees, giving four reasons why the respondent had decided it could and would not sign any contract with a union or operate

²⁶ Board Exhibit No. 27.

²⁷ Board Exhibit No. 12.

²⁸ Board Exhibit No 9

its plant under a closed shop, as follows: (1) the Union has openly advised the respondent's employees to break their individual contracts with the respondent; (2) a closed shop eventually leads to the check-off whether or not the employee desires it; (3) employees then working are threatened with loss of their jobs; and (4) the respondent would be requested to break its individual contracts, which the respondent did not intend to do.

In view of Hammerman's testimony that he did not speak to Rivers on June 17, 1937, we are not satisfied that the telephone conversation Rivers had with the unknown person whom he believed to be Hammerman constitutes a refusal to bargain collectively. We are, on the other hand, in no doubt that Siegel's reply to Scheiner's request later in June and the respondent's letter of June 25, 1937, clearly constitute a refusal to bargain collectively. We find that the respondent has refused to bargain collectively with the Union as the exclusive representative of the respondent's employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

We have found that the respondent dominated and interfered with the formation and administration of the Committee and contributed support thereto. In order to remedy this unlawful conduct in this case, the respondent must withdraw all recognition from the Committee as an organization representative of the respondent's employees for the purposes of dealing with the respondent concerning wages, rates of pay, hours of employment, and other conditions of employment. We will, therefore, order the immediate disestablishment of the Committee as such representative.

We have previously found that the limitations on Union activity imposed by the contracts interfered with, restrained, and coerced the respondent's employees in the exercise of their rights to self-organization and collective bargaining. The terms imposing such limitations are necessarily void as contrary to the provisions of the Act.

The contracts as a whole are void on other grounds, namely the character of the instrumentality through which they purported to be negotiated and the means by which the signatures of employees were

obtained. As we have found, the Committee was under the domination of the respondent and was therefore not a proper bargaining representative for its employees. As we have also found, the signatures to the contracts were procured by coercion and intimidation.

Since Anne Banavich and Jean Saltis were dismissed as the result of unfair labor practices, we shall order their reinstatement to their former positions with the back pay they would normally have earned, less any amounts earned by either of them respectively in the meantime.

CONCLUSIONS OF LAW

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

1. United Electrical and Radio Workers of America, Local No. 1226, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., is a labor organization within the meaning of Section 2 (5) 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 in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The respondent, by dominating and interfering with the formation and administration of the Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

5. The respondent, by discriminating against Anne Banavich and Jean Saltis in regard to their hire and the tenure of their employment and thereby discouraging membership in United Electrical and Radio Workers of America, has engaged in and is engaging in unfair labor practice within the meaning of Section 8 (3) of the Act.

6. All the respondent's production employees, excluding office workers, draftsmen, salesmen, truck drivers, and those engaged in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

7. United Electrical and Radio Workers of America was on June 15, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

8. By refusing to bargain collectively with United Electrical and Radio Workers of America, Local No. 1226, as the exclusive repre-

sentative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

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

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Jacobs Bros. Co., Inc., and its agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Electrical and Radio Workers of America, Local No. 1226, 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 or tenure of employment or any term or condition of their employment because of their membership in, activity in behalf of, or sympathy toward any such labor organization;

(b) Dominating or interfering with the formation or administration of The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., or any other labor organization of its employees, or contributing financial or other support to any such labor organization;

(c) Either directly or indirectly engaging in any manner of espionage or surveillance for the purposes of, or, in any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(d) Giving effect to its contracts with The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., and its individual contracts of employment with its employees;

(e) Refusing to bargain collectively with United Electrical and Radio Workers of America, Local No. 1226, as the exclusive representative of its production employees, excluding office workers, draftsmen, salesmen, truck drivers, and those engaged in supervisory duties.

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

(a) Withdraw all recognition from The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages,

rates of pay, hours of employment, or conditions of work, and completely disestablish The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., as such representative;

(b) Personally inform in writing each of its employees who has entered into the individual contract of employment, that the obtaining of such contract by the respondent constituted an unfair labor practice within the meaning of the National Labor Relations Act, and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment and to desist from in any manner enforcing or attempting to enforce such contract;

(c) Offer to Anne Banavich and Jean Saltis immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(d) Make whole Anne Banavich and Jean Saltis for any loss of pay they have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment, by payment to each of them of a sum of money equal to that which each would normally have earned as wages during the period from the date of such discrimination against each of them to the date of the offer of reinstatement, less any amount each has earned during that period;

(e) Upon request bargain collectively with United Electrical and Radio Workers of America, Local No. 1226, as the exclusive representative of its production employees, excluding office workers, draftsmen, salesmen, truck drivers, and those engaged in supervisory duties;

(f) Post immediately in a conspicuous place on each floor of the respondent's plant notices stating (1) that the respondent will cease and desist as aforesaid; (2) that The Collective Bargaining Committee of the Employees of The Jacobs Bros. Co., Inc., is disestablished as the representative of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the respondent will refrain from recognition thereof; (3) that the individual contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees;

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

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

And it is further ordered that the allegations of paragraph 7 of the complaint, as amended, except with respect to the discharge of Anne Banavich and Jean Saltis, be, and they hereby are, dismissed.