

In the Matter of ALTORFER BROTHERS COMPANY and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, LODGE No. 1521

*Case No. C-275.—Decided March 1, 1938*

*Washing and Ironing Machine and Parts Industry—Interference, Restraint, or Coercion:* expressed opposition to outside labor organization; acquiescence in antiunion employees ejecting from plant union employees—*Company-Dominated Union:* sponsoring and fostering growth of; support; disestablished as agency for collective bargaining—*Strike:* result of unfair labor practices; strikers ordered reinstated—*Collective Bargaining:* failure to prove majority in alleged appropriate unit; charge dismissed—*Discrimination:* failure to prove discharges due to union membership or activity; charges dismissed—*Remstatement Ordered—Back Pay:* awarded.

*Mr. Stephen M. Reynolds* and *Mr. William R. Walsh*, for the Board.

*Mr. Frank T. Miller*, *Mr. Val C. Guenther*, and *Mr. Donald G. Beste*, of Peoria, Ill., for the respondent.

*Mr. Anthony Wayne Smith*, of Washington, D. C., for the Amalgamated.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1521, herein called the Amalgamated, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated July 20, 1937, against Altorfer Brothers Company, East Peoria, Illinois, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Amalgamated. The complaint alleges that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The respondent in its answer denied each and every material allegation of the complaint and set forth as affirmative defenses allegations

of violence attending the strike at the respondent's plant and a temporary injunction secured on April 30, 1937, in the United States District Court at Peoria, Illinois.

Pursuant to notice, a hearing was held in Peoria, Illinois, from July 29 to August 21, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the respondent.

At the beginning of the hearing the respondent moved to dismiss the complaint on the ground that the issues of fact raised thereby had already been determined adversely to the Amalgamated in certain proceedings in equity, which had resulted in the issuance of a temporary restraining order against the Amalgamated on April 26, 1937, and a temporary injunction on April 30, 1937, issued by the United States District Court, Southern District of Illinois, Northern Division. The respondent also moved at the beginning of the hearing to restrict the proceedings to matters arising after the issuance of the temporary injunction. The Trial Examiner denied these motions. At the end of the Board's case the respondent moved to dismiss major portions of the complaint. The Trial Examiner dismissed the allegations in the complaint alleging unfair labor practices within the meaning of Section 8 (5) of the Act, but otherwise denied the respondent's motion. At the end of the hearing the respondent renewed its motion to dismiss the entire complaint. This motion the Trial Examiner denied.

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

On October 27, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. Exceptions to the findings and recommendations of the Intermediate Report and briefs were thereafter filed by the respondent and the Amalgamated.

The Board has reviewed the exceptions to the Intermediate Report and, except as to the discharge of Francis Kupperschmid as indicated below, finds them without merit.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent, Altorfer Brothers Company, an Illinois corporation, has its plant and principal office at East Peoria, Illinois. It also

has a small plant in Roanoke, Illinois, and branch offices in Philadelphia, Pennsylvania, and Los Angeles, California.

The respondent is engaged in the business of manufacturing washing machines and ironing machines. It employs from 1,100 to 1,200 workers at its East Peoria plant. During 1936 the respondent manufactured at this plant approximately 185,000 washing machines and 25,000 ironing machines. The principal raw materials used by the respondent are steel, rubber, copper, iron, porcelain enamel, paint, lumber, aluminum, and brass. The respondent distributes its finished products in all 48 States, in Canada, and in many foreign countries. Although the respondent maintains no retail outlets, it has showrooms for the purpose of displaying its finished products in Philadelphia, Pennsylvania, and Los Angeles, California. It has about 30 salesmen on its own pay roll and in addition distributes its products through distributors and dealers throughout the country. The total cost of the raw materials used by the respondent during 1936 amounted to \$4,166,000. Approximately 80 per cent of these raw materials came from States other than Illinois. The value of the respondent's manufactured products during 1936 amounted to approximately \$7,000,000. Approximately 80 to 85 per cent of the finished products were shipped outside the State of Illinois.

In its petition for an injunction in the United States District Court, the respondent stated, "That the manufacturing plant and business of plaintiff, the purchase and delivery of raw materials required by it in the conduct of its business, and the sale, distribution and delivery of its manufactured product, constitutes an instrumentality of commerce, and that any interference by the defendants or others in the conduct of the manufacturing, sale and distribution of its product materially affects, hinders, delays, restrains and controls the flow of raw materials or the manufactured or processed goods from or into the channels of commerce between the states, and causes diminution of employment and wages in such volume as to substantially impair and disrupt the market for its goods flowing from or into the channels of commerce, contrary to and in violation of the laws of the United States as hereinafter stated."<sup>1</sup>

## II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1521, affiliated with the Steel Workers Organizing Committee, herein called the S. W. O. C., and with the Committee for Industrial Organization, herein called the C. I. O., is a labor organization. It admits to membership all employees of the respondent, except supervisory and clerical employees, truck drivers, maintenance employees, firemen, and janitors.

<sup>1</sup> Respondent's Exhibit No 11.

The A. B. C. Employees Association, herein called the Association, is a labor organization without any outside affiliation. It admits to membership all non-supervisory employees of the respondent.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Interference, restraint, and coercion*

In January 1937 a representative of the S. W. O. C. began organization activities among the respondent's employees. On April 12, 1937, Lodge No. 1521 was organized and officers elected; and on the next day it secured a charter from the national organization.

From the very inception of organization efforts the Amalgamated was confronted by the hostile attitude of the respondent's foremen. Although the respondent claimed at the hearing that its foremen had been instructed not to participate or interfere in any manner with union activities at the plant and although the foremen denied making antiunion remarks to employees, nevertheless the record indicates many instances in which the respondent's foremen made statements to employees that were openly hostile to the Amalgamated and plainly tended to discourage employees from joining labor unions.

Ferna S. Miller, a punch press department employee, testified that before the strike, discussed hereafter, he and two employees, named Sprout and Clayton, were talking about an Amalgamated meeting when Ed Miller, the brother of the witness and a supervisory employee,<sup>2</sup> told them, "If you God damn fellows don't quit talking about the C. I. O. around the shop here some of the officials will hear you and you will be canned." Ed Miller also told an employee named Harry Miller, "If you don't stop so much union activity you will be sitting on the curb wishing you had a job." During the strike Ed Miller came to the home of Ferna Miller and wanted to know if he would go back to work, saying, "You better drop the C. I. O. and go back to work and you will never go back to work as long as you belong to the C. I. O."

Durwood Ashley, a machine shop employee, testified that Elmer Martin, machine shop foreman, was introduced to him, saw his C. I. O. button, and said, "I will never shake hands with a C. I. O. man."

Orville Spitler, an employee of the respondent who secured his job with the respondent through L. E. Roark, secretary-treasurer

<sup>2</sup> The respondent denies that Ed Miller and Paul Johnson, mentioned hereafter, are assistant foremen. However, the record indicates that they handed out, checked, and reported on the work of other employees, and that they were considered as supervisory employees by other workers in their departments. In the case of Johnson the respondent posted a notice, about a year prior to the incidents involved in this matter, that Johnson had been appointed assistant foreman.

of the Peoria Manufacturers and Merchants Association, testified that Roark inquired carefully into his union affiliations and remarked, "The company over there (the respondent) doesn't want men over there that will cause trouble among the men in regard to union activities." Spittler further testified that during the strike Elmer Martin, foreman, told him, "I will match my check against yours that the C. I. O. never gets in over there."

On April 10 the local S. W. O. C. representatives requested the respondent to bargain collectively for its employees. Shortly thereafter a vigorous campaign was commenced against the S. W. O. C., the Amalgamated, and the C. I. O. and on behalf of an "inside" labor organization.

During the second shift on April 12 a group of anti-Amalgamated employees, who later became active in the organization of the Association, ejected from the plant a number of employees who were active in the Amalgamated. The manner in which they did this and the respondent's failure either to investigate this incident or to punish these employees in any way indicate that the respondent acquiesced in their acts of coercion and intimidation. Walter Bocean, a machine shop employee, approached Fred Nasser, an inspector, and asked him to tear up his Amalgamated card. This Nasser refused to do. A few minutes later, while Nasser was discussing some work with Elmer Martin, machine shop foreman, and William Rose, the chief inspector, Bocean approached Nasser, grabbed his arm, and took him away from Martin and Rose. After Bocean had Nasser only a few feet away from Martin and Rose, in a very loud voice he ordered Nasser out of the plant. By this time Bocean was joined by an employee named Henry Augustine, and by Paul Johnson, who, the record indicates, was engaged in a supervisory capacity.<sup>3</sup> Bocean, Johnson, and Augustine escorted Nasser back to his bench, compelled him to pack his tools, and then escorted him to the plant exit. At no time during this incident did either Elmer Martin or Rose intervene, although, according to Nasser's testimony, he was escorted past them on his way to the exit.

Bocean and Augustine, assisted by another employee named Clarence Martin, then directed their attention to Lawrence Strohl, another active Amalgamated employee in the machine shop. Strohl at first refused to leave the plant and went in search of his foreman, Elmer Martin. Strohl complained to Elmer Martin against the activities of Bocean and his group and Martin replied, "It is out of my hands," and turned around and left Strohl. Bocean, Augustine, and Clarence Martin then escorted Strohl through the machine shop toward the exit at the front of the building. The party stopped in

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<sup>3</sup> See footnote 2, *supra*.

the office of Ben Grogan, the respondent's employment manager. Grogan asked Strohl if he was quitting and Strohl replied, "No, the bunch are putting me out." Clarence Martin told Grogan, "Here's another one that is going out." Grogan, far from protesting to Bocean against his conduct and instead of offering protection to Strohl, asked Strohl for his badge and told him to return the next day for his pay check.

Bocean and his followers next escorted out William Rogers, an inspector on the first shift, who had been working overtime, and Roy Webb, a machine shop employee on the second shift. Jack Maloney attempted to intercede and himself became a victim. Bocean asked Maloney if he was a member of the Amalgamated and, when Maloney replied that he was, Bocean said that they would give him five minutes in which to leave. When Maloney did not leave with sufficient speed, Bocean, Augustine, and seven or eight other workers carrying iron bars called "dolly" shafts gathered around him, and he left the plant.

George Lawrence, an Amalgamated member working in the machine shop, also attempted to put a stop to these activities. Lawrence spoke to Paul Johnson and demanded that the latter find Elmer Martin, the foreman; Johnson at first refused to go in search of Martin, but upon Lawrence's insistence the two went off together to find the foreman. They went directly to the office of Ulrich, the plant superintendent. Seated in that office were Ulrich, Rose, Elmer Martin, and Edward Pufpaff, the latter being foreman of the machine shop on the first shift. Lawrence told them that men were being thrown out of the plant and wanted to know how long they were going to sit there and do nothing. After some silence Lawrence again demanded of Ulrich that he do something about the situation and suggested that Ulrich shut off the power and send the men home. Ulrich then directed Elmer Martin to go out into the machine shop and talk to the employees. Lawrence, Johnson, and Elmer Martin left the office together. Martin, however, did not accompany them all the way back into the machine shop. As Lawrence reentered the machine shop, he was surrounded by a group of Bocean followers armed with "dolly" shafts and Bocean ordered him to leave the plant. Coker, one of Bocean's cohorts, waved a dolly shaft over Lawrence's head and cried out, "Shall we carry him out?"

While this was going on Elmer Martin returned to Ulrich's office and reported to Ulrich that the situation was quite serious. Then, following Ulrich's instructions, he again returned to the machine shop, ordered the power shut off, and told the men to go home for the remainder of the second shift.

It is apparent that the attack upon the Amalgamated leaders was not spontaneous but had previously been planned by Bocean. Ned

Vanyak, a first-shift machine shop employee, testified that Bocean arrived at work early for the second shift on April 12 and told him, "I have some work to do . . . I have a lot of C. I. O. men here that we are going to throw out tonight. We don't want no C. I. O. men in here . . . I have got my gang here and I will take care of them." Bocean showed him a list of the C. I. O. men to be thrown out and stated, "The company will have something better for us . . . You will see tomorrow night what that is."

The record clearly indicates that the respondent's superintendent and foremen acquiesced in these acts of intimidation, coercion, and violence on the part of Bocean and his followers. Elmer Martin and Rose certainly knew that Bocean was running Nasser out of the plant. Elmer Martin himself testified that he told Rose, "Bill, there is trouble starting down there. What shall we do?" Instead of doing anything immediately, Elmer Martin and Rose, joined by Puffaff, went to Ulrich's office, which was separated from the machine shop and from which they could not possibly obtain a view of what was going on in the machine shop. There they waited for Ulrich to return and there they stayed discussing the situation for some time. They did not return to the machine shop to stop the riot or even to investigate what was happening, until Lawrence broke in upon them and demanded immediate action. Even then Elmer Martin, who went back to the machine shop with Johnson and Lawrence, did not interfere in the resulting fracas between Lawrence and Bocean, but rather returned to Ulrich's office to make a "report" on the situation.

It is significant that the respondent did not punish either Bocean or any of his followers who had been responsible for the disturbance. The respondent, moreover, at no time made an investigation of the incident, nor did it attempt in any manner to disassociate itself from the activities of Bocean and his group. The severest reprimand that Bocean received was a statement from Ulrich that he had committed "a hell of a boner." How serious this reprimand was we shall see below when we examine Bocean's immediate activities in organizing the Association.

On the other hand, when the men who had been run out of the plant interviewed Ulrich and Grogan the next day as to whether they could go back to work, they were advised that that would be very risky. The respondent's foremen and superintendent made no offer whatsoever to protect the men if they did return to work. Ulrich, instead of telling Nasser to return to work, attempted to persuade him to stay away for several days and accused him "of spreading poison among the other men."

As a further indication of the attitude of the respondent toward this incident, we have the testimony of William J. Allen, second-shift machine shop employee, who testified that Elmer Martin, after having

ordered the men home on April 12, said, "I am afraid that you guys (the Amalgamated members) did the wrong thing. I don't believe the company will stand for a union."

Clifford McMullen, a polishing department employee, testified that on the day after the machine shop incident he asked Duffy, the night superintendent, what had been the trouble at the machine shop the previous day and that Duffy had replied, "There are a few of the boys and us that don't want the C. I. O. in here, and they are pretty tough customers, too, and furthermore, the company won't have anything to do with the C. I. O. boys."

In the early morning of April 15, shortly after the third shift had started to work, another incident occurred that seriously frightened the Amalgamated employees at the plant. Somehow Bernard Duffy, the night superintendent, got the notion that a group of C. I. O. men were gathering on the outside of the plant with the intent of attacking the plant. The evidence clearly indicates that there was no such mob in existence. In order to protect the men against an attack, so Duffy testified, he ordered the main power switch of the plant to be pulled and the entire plant thrown into darkness. The employees, remembering the incidents of April 12, became confused and frightened. At no time did Duffy or any of the foremen explain to them the reason why the power and the lights had been shut off and they left the men in complete ignorance and permitted all sorts of fantastic rumors to be spread throughout the plant. When the lights were finally turned on about a half-hour later, the men had become so frightened that many of them refused to return to work, and Duffy permitted them to go home. As a consequence of these acts of intimidation a strike was called on the morning of April 15 as the first shift was going to work.

We find that the above acts of the respondent constitute interference with, and coercion and restraint of employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### *B. A. B. C. Employees Association*

On April 13 Bocean actively began organization of an "inside" union. That day and the next he took considerable time off from his work to talk to employees, to confer with Charles B. Ulrick, a local attorney, to have authorization cards bearing his name printed, and to solicit membership in the new A. B. C. Employees Association. Despite his frequent absences from work, at no time did the respondent's foremen reprimand him or interfere with his activities. During the second shift on April 13 an organization meeting of the Association was held. Bocean, Clarence Martin, Coker, and Augustine were active in spreading word of this meeting among the employees.

About six o'clock these four men and about fifteen other employees left the plant, without any objection by the respondent's supervisory employees, and attended the meeting. The following day feverish efforts were made by Bocean and his followers to sign up employees for the new organization. These activities were carried on during working hours and clearly with the acquiescence of the respondent's foremen.

In the gear-case department during the first shift on April 14, August Buechele, the foreman, spoke to Gaylon Welch, an employee, who immediately began talking to the employees in that department in an effort to sign them up for the Association. Welch told the workers, "We are going to form a company union here, something like the Keystone Union, to keep the C. I. O. out." After Welch had been engaged in such activity for some time, Robert Bucy, a member of the Amalgamated, complained to Buechele that Welch was soliciting on working time and that that was unfair to the other men, since they were being paid for group output. Buechele, instead of immediately stopping Welch, replied to Bucy, "You are a C. I. O. man. Get back to your bench and keep your mouth shut." When Buechele finally instructed Welch to stop his solicitation for the Association, Welch returned his sheet of names to Buechele's desk.

In the polishing department on the second shift on April 14, Coker and Northrup, employees, solicited memberships for the Association for almost an hour. Clifford McMullen, an employee in that department, testified that because they were disturbing him in his work he looked for Dickerson, the department foreman, and complained about the solicitation. Dickerson replied that Elmer Martin had told him that these men were coming in there before lunch to sign up the employees and that since Martin was higher up in authority than himself there was nothing for him to do but to "take a walk."

In the paint-track department on April 14, an employee named Lippert solicited memberships for the Association from 8 a. m. to 11 a. m. in the presence of Somogyi, the department foreman, who at no time interfered with Lippert's activities.

Lawrence McMullen, a machine shop employee, testified that Wilbur Garst, the machine shop foreman, had Association cards and tried to sign up employees during working hours. Garst asked McMullen to tear up his C. I. O. card and to join the Association. Garst admitted advising a toolroom employee named Robert B. Hoover to attend an Association meeting.

On April 14 a second Association meeting was held at which officers were elected. Many of the employees who attended this meeting left the plant during working hours and remained away for some time without any objection by the respondent's foremen.

The record indicates that several of the respondent's foremen knew about the plan to organize an "inside union" before the actual organization steps were taken. Edward Rutledge, a punch press department employee, testified that on April 9 Ulrich told him that two men, one of whom was Randolph Dudley, who was elected president of the Association upon its organization, had just been to see him about starting a union in the shop and that he had told them to go ahead. On April 11 Garst told Lawrence McMullen that a new inside organization was to be formed and that he expected to be elected its treasurer. Herschel W. Darrow, an enamel department employee, testified that on April 12 Hadley, a foreman, talked to some of the men about the new Association and said that it would be a good thing.

During the strike which commenced on April 15, the Association made a demand upon the respondent to recognize it as the sole bargaining agency for its employees. The respondent thereupon sent notices to both the Association and the Amalgamated requesting that proof of membership be presented on or before April 22 before a local ministerial committee. The Amalgamated refused to appear before this committee on the ground that the Board was the proper authority to decide the question of representation. The Association produced its membership cards before this committee and the committee reported to the respondent that the Association represented a majority of the respondent's employees. Thereupon the respondent sent a letter to the Association announcing that it would recognize it as the sole bargaining agent for its employees. Subsequent to the reopening of the plant, the respondent and the Association entered into bargaining negotiations, and at the time of the hearing a written agreement was being negotiated.

Since its recognition of the Association the respondent has been open in its support of that organization. Thus the respondent has provided a bulletin board for Association notices. These notices must be approved by the respondent's superintendent before they may be posted. The respondent permits the Association officers to leave their work at any time for Association business. Although the respondent does not pay them for their time, the Association compensates its officers for any loss of pay.

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

### *C. The strike*

As a consequence of the respondent's unfair labor practices, as described in subsection A above, on the morning of April 15 Joseph Dernoncourt, the S. W. O. C. field director, called a strike of the re-

spondent's employees, and from April 15 to April 27 the plant was closed. On April 25 the respondent ran an advertisement in the local newspapers announcing that the plant would reopen on the morning of April 27 and informed the employees to return to work at that time and that they would be taken back "without any discrimination." On the evening of April 26 the respondent obtained from the United States District Court a temporary restraining order rigidly limiting picketing by the Amalgamated. Under the protection of this restraining order the plant reopened the next morning. The issuance of the restraining order and of the temporary injunction a few days later broke the backbone of the strike, and many of the Amalgamated members soon returned to work.

On May 9, at a meeting of the Amalgamated, the strikers decided to cease their strike activities and attempt to secure their jobs again. A committee was appointed to confer with Grogan, the respondent's employment manager. The committee called upon Grogan at his home, and he informed them that he had no authority to rehire additional men at that time, but suggested a meeting with the respondent's officers. The following day a committee met with A. W. Altorfer, the respondent's president, H. W. Altorfer, its vice president and general manager, Ulrich, and Grogan. The Amalgamated committee told the respondent's officials that the employees who were still out on strike were ready to call off the strike and return to work. A. W. Altorfer answered that business conditions were such that the respondent could not immediately take back all of its former employees. The meeting broke up with the understanding that the respondent would inform the strikers individually as to when they were to return to work.

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

On April 10 representatives of the S. W. O. C. called at the respondent's plant, saw Ulrich, and requested the beginning of collective bargaining negotiations, stating that they represented the "employees." Ulrich refused to discuss the matter, saying that he had no authority to enter into such negotiations, and informed them that H. W. Altorfer and A. W. Altorfer were both out of town, that he would take up the matter with them, and that he would give them an answer by April 13. On April 13 Ulrich telephoned the S. W. O. C. headquarters and informed the officials there that the meeting tentatively scheduled for that date would not take place.

On April 19, during the strike, Louis Disser, an examiner representing the Board, arranged a meeting between the Amalgamated representatives and the respondent's officials. Frank T. Miller, attorney for the respondent, acted as its spokesman. Dernoncourt gave Miller a copy of a proposed collective bargaining agreement, but they

did not get very far in discussing it. Miller insisted that the men return to work immediately and pointed out that there was another organization of employees at the plant. After much discussion the respondent insisted that an election conducted by some local committee take place between the Amalgamated and the Association. Derroncourt, on the other hand, insisted that only the Board had the right to determine the collective bargaining agent for the respondent's employees. The meeting broke up without any agreement and without the Amalgamated either offering proof of, or being given the opportunity of proving, a majority of the employees at the plant.

Although the first demand for bargaining by the Amalgamated merely stated that the Amalgamated represented "employees" of the respondent, paragraph 5 of the complaint sets forth as an appropriate unit for purposes of collective bargaining all production workers paid on an hourly or piece-work basis, except stock chasers, production supervisors, printing department employees, supervisory employees, clerical employees, watchmen, draftsmen, timekeepers, firemen, janitors, caretakers, yardmen, truck drivers, maintenance men, time-study men, technical engineers, engineering department employees, tool and die makers, and nurses. At no time during the brief negotiations between the Amalgamated and the respondent did the Amalgamated inform the respondent that it was bargaining for the above category of employees only.

At the hearing the respondent introduced a list of the employees on its pay roll on April 13, the date on which the Amalgamated claimed it had a majority of the respondent's employees. The total number of employees at the respondent's plant, in the unit defined by paragraph 5 of the complaint, was 1,036.

During the hearing counsel for the Board and for the respondent examined the Amalgamated membership cards and compared the signatures thereon with the respondent's pay-roll signatures. It was stipulated between counsel that 379 Amalgamated cards were signed before April 13 and contained genuine signatures; that 69 Amalgamated cards with genuine signatures were signed between April 13 and 19; and 19 Amalgamated cards with genuine signatures were signed by employees who had been laid off subsequent to April 1.

The evidence thus fails to sustain the allegation that the Amalgamated represented a majority of the employees in the unit set forth in paragraph 5 of the complaint. The allegations of the complaint that respondent failed to bargain collectively with the Amalgamated must therefore be dismissed.

#### *E. The discharges*

The complaint alleges that on or about April 2 the respondent discharged Harry Miller, a punch press department employee, and

Harold Graham, an enamel department employee, because of their membership and activity in the Amalgamated. The evidence submitted in support of these allegations is extremely scanty. No substantial evidence is submitted to demonstrate that they were discharged because of their membership or activity in the Amalgamated. The respondent, on the other hand, claimed that these two employees had not been discharged but had merely been laid off for lack of work, and introduced un rebutted evidence to show that at approximately the same time other men in those two departments had been laid off for lack of work.

The evidence fails to sustain the allegation that the respondent discharged Harry Miller and Harold Graham because of their union membership or activities. The allegations of the complaint with respect to them will therefore be dismissed.

The complaint alleges that on May 22 the respondent discharged Francis Kupperschmid, a paint department employee, because of his union activity. Within a few days after the plant reopened and over a week before the Amalgamated called off its strike, Kupperschmid returned to work. On May 21, Somogyi, his foreman, found Kupperschmid asleep in the men's toilet. Somogyi did not himself awaken him but some time later sent another employee to arouse him. According to the respondent's witnesses, Kupperschmid was sleeping there for approximately 45 minutes. At the hearing Kupperschmid admitted that during the strike he had been selling automobiles for a local automobile agency and that after he had returned to work for the respondent he had continued to sell automobiles during the evenings. Somogyi took the matter up with Ulrich and the next day discharged Kupperschmid for failure to attend to his duties properly. The respondent also introduced evidence to indicate that at various times Kupperschmid had been guilty of neglecting his work and had occasionally been reprimanded therefor. No substantial evidence was introduced to indicate that, after Kupperschmid had returned to work and had thus helped to break the strike, he had remained active in the Amalgamated.

The evidence thus fails to sustain the allegation that the respondent discharged Francis Kupperschmid because of his union membership or activities. The allegations of the complaint with respect to him will therefore be dismissed.

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

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States and with foreign countries, and tend to

lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Inasmuch as we have found that the respondent has dominated and interfered with the formation and administration of the A. B. C. Employees Association and contributed support to it, the respondent must cease contributing financial or other support to it and must withdraw all recognition from the A. B. C. Employees Association as an organization representative of respondent's employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment.

On May 9 and 10 the Amalgamated, on behalf of the strikers, requested the respondent to reinstate them. The respondent's refusal to do so immediately was based upon its contention that business conditions did not warrant the immediate reemployment of all of the strikers and that the respondent was properly giving preference to its employees who had returned to work immediately upon the reopening of the plant. Inasmuch as the strike was due to the respondent's unfair labor practices, it is essential to the proper enforcement of the Act that respondent restore the status quo that existed prior to the commission of the unlawful acts. Accordingly, we shall order the respondent to offer, upon application, to all of its employees who went on strike on or about April 15, 1937, reinstatement to their former positions without prejudice to their seniority and other rights or privileges, dismissing, if necessary, employees hired since April 15, 1937. If, after reinstating its employees pursuant to our order, the respondent determines that business conditions do not require its entire working force, it may reduce its staff, provided the reduction is made without discrimination against employees because of their union activities or affiliation, 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. Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1521, and A. B. C. Employees Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. 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.

3. The respondent, by dominating and interfering with the formation and administration of the A. B. C. Employees Association, and by contributing support to said organization, 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 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, Altorfer Brothers Company, East Peoria, Illinois, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

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

(b) From in any manner dominating or interfering with the administration of the A. B. C. Employees Association, or with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to the A. B. C. Employees Association or any other labor organization of its employees.

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 went on strike on or about April 15, 1937, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, all persons hired since April 15, 1937, to perform the work of such employees;

(b) Make whole all employees who went on strike on or about April 15, 1937, 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 the amount, if any, which each, respectively, shall have earned during said period;

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

(d) Post immediately notices to its employees in conspicuous places throughout the plant stating (1) that the respondent will cease and desist as aforesaid; and (2) that the respondent withdraws and will refrain from all recognition of A. B. C. Employees Association as a representative of its employees and completely disestablishes it as such representative;

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

(f) Notify the Regional Director for the Thirteenth 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 amended complaint that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (5) of the Act, and in unfair labor practices, within the meaning of Section 8 (3) of the Act, by discharging and refusing to reinstate Harry Miller, Harold Graham, and Francis Kupperschmid, be, and they hereby are, dismissed.