

In the Matter of STACKPOLE CARBON COMPANY and UNITED ELECTRICAL & RADIO WORKERS OF AMERICA, LOCAL NO. 502

Case No. C-232.—Decided March 25, 1938

Carbon and Radio Products Industry—Company Dominated Union: sponsoring and fostering growth of; financial and other support; soliciting membership in during working hours; meetings on company property; agreement with for recognition as exclusive representative of employees; disestablished as agency for collective bargaining—*Unit Appropriate for Collective Bargaining:* production and maintenance employees exclusive of clerical, supervisory, "temporary", and machine shop employees; dissimilarity of interests: wage differentials; skilled—*Representatives:* proof of choice: membership applications in Union—*Collective Bargaining:* refusal to negotiate with representatives of majority of employees—*Strike:* result of unfair labor practices—*Picketing—Violence:* participation in, by strikers and other employees held no bar to reinstatement under circumstances—*Reinstatement Ordered:* strikers—*Discrimination:* mailing of checks to striking and picketing employees insufficient to sustain allegation of discharge, charges dismissed—*Back Pay:* awarded from date of refusal of application to date of reinstatement by employer.

Mr. Jerome I. Macht, for the Board.

Thorp, Bostwick, Reed & Armstrong, of Pittsburgh, Pa., by *Mr. Clyde A. Armstrong* and *Mr. Kenneth G. Jackson,* for the respondent.

Mr. Harry Cooper, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Electrical & Radio Workers of America, Local No. 502, St. Marys, Pennsylvania, herein called Local No. 502, the National Labor Relations Board, herein called the Board, by Ernest C. Dunbar, Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint dated June 7, 1937, against Stackpole Carbon Company, St. Marys, Pennsylvania, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In substance, the original complaint alleged that on January 11, 1937, and thereafter, the respondent refused to bargain collectively with Local No. 502, which had been designated as the exclusive representative of the respondent's employees in its production departments. It also alleged that the respondent had in various enumerated ways dominated and interfered with the administration of a labor organization of its employees known as Stackpole Employees' Association, herein called the Association.

The complaint and accompanying notice of hearing were duly served upon the respondent. Notices of two postponements of the hearing which were upon request of respondent, were thereafter duly served upon the respondent and upon Local No. 502.

In its answer, dated June 15, 1937, the respondent admitted that it purchased a substantial portion of its raw materials outside the State of Pennsylvania and that it sold a substantial portion of its manufactured products to customers in States other than Pennsylvania. It denied however, that it was engaged in interstate commerce. It also denied that it had refused to bargain collectively with Local No. 502, and averred that it had recognized the Association as the exclusive bargaining representative of its employees upon the basis of information that the Association represented a majority of its employees. Finally it denied that it had in any way dominated or interfered with the administration of the Association.

Pursuant to notice, the hearing was held at St. Marys, Pennsylvania, from July 2 to July 23, 1937, inclusive (except July 4, 5, 11, and 18, 1937), before Charles B. Bayly, 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 introduce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing counsel for the Board moved to amend the complaint for the purpose of alleging that the production and maintenance departments of the respondent's plant, exclusive of clerical and supervisory employees, constituted a unit appropriate for the purposes of collective bargaining. No objection was made, and the motion was granted. At the end of the Board's case, counsel for the Board moved to amend the complaint to exclude so-called "temporary" employees of the respondent from the allegedly appropriate unit, in addition to clerical and supervisory employees. The motion also proposed to amend the complaint to allege that the respondent had discharged its striking employees, thereby engaging in an unfair labor practice under Section 8 (3) of the Act. Counsel for the respondent objected only to the latter part of the motion. The sole ground stated for the objection was that there was no evi-

dence adduced at the hearing which would support such an allegation. The Trial Examiner granted the motion. We affirm his ruling.

Counsel for the Board made a further motion, at the close of the Board's case, that the complaint be conformed to the proof that had been adduced. The Trial Examiner reserved ruling on this motion at the hearing and denied it in the Intermediate Report which he subsequently filed with the Board. The Board hereby reverses that ruling and orders that the complaint be conformed to the proof adduced during the hearing. During the hearing the respondent moved to amend its answer, denying the allegations of the amendments to the complaint. The motion was granted. This ruling is hereby affirmed. At the close of the Board's case, counsel for the respondent moved to dismiss the complaint on the ground that the Board had no jurisdiction and on the ground that the evidence did not sustain the allegations of the complaint. The Trial Examiner denied the motion. The Board affirms this ruling. During the course of the hearing the Trial Examiner made other rulings on motions and objections to the admission of evidence. The Board has reviewed these rulings of the Trial Examiner and finds that no prejudicial errors were committed. Such rulings are hereby affirmed.

On August 24, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act.

Local No. 502 and the respondent filed exceptions to the Intermediate Report on September 15, 1937, and September 18, 1937, respectively, which the Board has considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Stackpole Carbon Company is a Pennsylvania corporation with its principal office and place of business at St. Marys, Pennsylvania. It is engaged in the manufacture of flashlight and battery carbons, industrial motor brushes, automotive starter and generator brushes, small motor brushes, electrodes, anodes, carbon specialties, welding carbon contacts, and radio products, including resistors, controls, and switches. The respondent is one of the largest carbon manufacturers in the United States, ranking second or third among companies manufacturing carbon products.

In the manufacture of its products the respondent purchases for use in the various processes of manufacture a great variety of raw

materials and commodities. In the period January 1, 1935, to June 1, 1937, about two-thirds of such purchases were made outside Pennsylvania.

For the marketing and distribution of its products, the respondent maintains salesmen throughout the United States. It sells and ships 59 per cent of its manufactured products to customers located outside Pennsylvania in 17 States and Canada. In an application for a trade-mark, dated October 27, 1933, the respondent stated that "the mark has been in bona fide use for not less than one year in interstate commerce by the applicant."

II. THE ORGANIZATIONS INVOLVED

United Electrical & Radio Workers of America, Local No. 502, is a labor organization admitting to membership production and maintenance employees of the respondent, exclusive of supervisory, clerical and "temporary" employees. It is a local of an international union, United Electrical & Radio Workers of America, herein called the United, which is affiliated with the Committee for Industrial Organization, herein called the C. I. O.

Stackpole Employees' Association of St. Marys, Pennsylvania, is a labor organization admitting to membership all employees of the respondent. Active Association members who are in executive positions or who have the power to hire and lay off are permitted to retain full membership in the Association but are not allowed to attend Association meetings.

III. THE UNFAIR LABOR PRACTICES

A. Domination of and interference with the administration of the Association

1. Background: the N. R. A. Union

During 1933 the respondent openly dominated and interfered with the formation of a union of its employees, herein referred to as the N. R. A. Union. The evidence reveals that the first meeting of the N. R. A. Union took place in August of that year during working hours, and that employees were directed to attend the meeting by supervisory employees of the respondent. No attempt was made to conceal the make-up of the N. R. A. Union. Edward Hammer, assistant plant manager of the respondent, was chairman of the meeting. Edward Haberberger, a superintendent of the company, was elected president. Harry Conrad, vice president of the company, addressed the employees at the meeting and said, "We are setting

up a company union." Other supervisory employees were elected officers of the N. R. A. Union. Present at the meeting were, among others, Henry Smith, superintendent of the stockroom department, Knight, foreman of the volume control assembly department, and Forest Reed, a foreman who was elected an officer of the N. R. A. Union. John Engel was also elected as an officer, as was Ambrose Auman. The latter two will be referred to hereafter. The N. R. A. Union was the only organization of the respondent's employees existing at that time. It does not appear that any meetings of the N. R. A. Union were ever held after the first meeting.

2. Formation of the Stackpole Employees' Association

During the summer of 1936 Laverne Lenze, an employee of the respondent, became interested in, and interested other employees in, the United. At the end of September 1936 August Hein, a vice president of and organizer for the United, came to St. Marys, and, with Lenze, planned the organization of the respondent's employees. A week before Christmas, Lenze met with a committee of employees of the respondent and on December 28, 1936, the committee definitely decided to set up a local organization to be affiliated with the United. On December 29, 1936, a meeting of the respondent's employees took place at which Local No. 502 was formed. At this meeting approximately 60 employees signed application cards for membership in the United. A charter was applied for and subsequently received. Among other temporary officers elected at this meeting were Lenze, president, Kraus, recording secretary, and George Meyer, financial secretary.

On December 30, 1936, Lenze, Meyer, and others active in Local No. 502 were called into the directors' room of the respondent. Present were Stackpole, president of the company, Conrad, vice president, Hall, treasurer, and Anthony Haberberger, factory manager. Stackpole asked the employees present why they had not come to him before joining up with "outside agitators" if they desired to have a union in the plant. He threatened to close down or move his volume control department if an "outside" union came in, and said he would gladly let his employees go into the plant to start up an "inside" organization and he would bargain with it. Stackpole made other statements against labor organizations in general, and emphasized that unions were only after the employees' money while a "local" organization would cost the employees nothing. Lenze said that he and the other employees would consider these suggestions.

On December 31, 1936, Lenze, accompanied by Kraus and Jesberger, another officer of Local No. 502, saw Stackpole and delivered to him

a letter from Hein requesting a meeting between representatives of the respondent and representatives of Local No. 502. Stackpole said on this occasion, "If you boys won't set up a company union, I will—in fact, I have already started to set it up."

The N. R. A. Union, which had apparently been quiescent since its first meeting in August 1933, was then revived. Alton Newell, Auman, and Edward Miller had met at Auman's house to plan an organization of the respondent's employees about December 28, 1936. Auman, a former officer and committeeman of the N. R. A. Union, had been a foreman in the plant before he was elevated to the position of tester and grader in the electrical laboratory. Miller's employment status is disputed, but from all the evidence it is apparent that, as assistant to one of the superintendents in the plant, he was employed in a supervisory capacity. Newell was employed as a senior press man. Pursuant to the plan of these employees, on the morning of December 31, 1936, Newell sought out Edward Haberberger, president of the N. R. A. Union and superintendent in the plant, in an attempt to obtain the minutes of the N. R. A. Union meeting. His purpose was admittedly to find out who were the representatives of the N. R. A. Union and how to set up a new organization. Haberberger took Newell to Conrad's office. The minutes of the N. R. A. Union were found. Conrad cautioned Newell against the participation of foremen in setting up the new organization. While Newell was in Conrad's office, Miller received permission from Hammer, assistant factory manager, to use the factory office to hold a meeting and "get the old N. R. A. crowd together."

Early in the afternoon of December 31 a meeting of the representatives of the N. R. A. Union took place in the directors' room in the plant. Conrad, Newell, and Auman were present. Officers and representatives of the N. R. A. Union, including Forest Reed, Mike Keller, and other supervisory employees of the company were also present. According to Newell's testimony, Conrad told some of the representatives to resign because they were supervisory employees. Although the record only vaguely indicates what else transpired at this meeting, it appears that Conrad told the representatives that Newell "wanted the idea of what their duties were, that is, as representatives of that old 1933 union."

That same afternoon a meeting of the respondent's employees was held in one of the factory offices. This meeting, like the one preceding it, was held during working hours. Foremen were seen actively directing some of the employees to this meeting. Edward Haberberger also participated in sending employees to the meeting. At the meeting Edward Miller was in charge. The representatives of the N. R. A. Union attended to tender their "resignations." Miller

spoke against "outside" unions and about loyalty to Stackpole. Cards for membership in the Association were distributed. Temporary officers were elected, namely, Edward Miller, Alton Newell, Joseph Conklin, and John Engel, the latter being a former officer in the N. R. A. Union. Later the same afternoon Miller addressed female employees of the respondent in the washroom of the plant, and again spoke about loyalty to Stackpole and against outside unions. He also told the employees that the Association had just been formed and temporary officers elected, and he again distributed cards for membership in the Association.

The record establishes conclusively that immediately following the above meetings and for a period of several weeks, "loyal" employees distributed cards for membership in the Association and openly solicited members during working hours. In some instances employees were ordered by foremen to quit work and solicit for the Association. Auman was particularly active in soliciting during working hours. In addition he took a whole week off during which he solicited in the plant. The record does not disclose whether or not he was paid during that week. At other times Auman was seen walking around, asking employees if they preferred the white (Local No. 502) or the pink (Association) card, and checking off the answer on a tablet. The evidence also establishes that during this period some employees were threatened with discharge by supervisory employees and told to sign membership cards in the Association. Employees were also told that the purpose of the Association was to keep the "outside" union out of the plant.

The respondent claims that members of Local No. 502 were also given the opportunity to solicit for membership during working hours. The evidence reveals one instance when a committee of Local No. 502 requested permission to solicit in the plant in the same manner as members of the Association. After some hesitation and delay the request was granted by Haberberger, the plant manager. The next morning Haberberger was reported ill at home, and no other official of the company would authorize Lenze and Fleming to solicit for Local No. 502. Finally, about noon of that day, Lenze and Fleming were permitted to solicit but were ordered to report to Hammer, assistant factory manager, in advance of entering any department in the plant. After so reporting, Lenze and Fleming, upon entering a department, would find the foreman of that department watching them. Employees were afraid to sign membership cards under the gaze of foremen. After trying several departments without success, Lenze and Fleming gave up, and members of Local No. 502 never again attempted to solicit during working hours. Lenze and Fleming were not paid for that afternoon.

About January 4, 1937, the Association caused to be distributed at the gates of the plant a circular, the first paragraph of which read as follows:

By the request of a worker, the representatives of the Stackpole Employees Association, *which was organized in 1933*,¹ met on December 31, 1936, and elected new temporary officers. These officers will only serve until such time as the full membership can meet and elect permanent officers and departmental representatives by popular vote.

The circular then criticized the United as a dues-collecting agency² "whose agitators and officers are not interested in the people of St. Marys," and continued:

Every loyal worker who has the interest of his or her family at heart, and who wants our company to prosper *and remain in St. Marys*,¹ should sign a membership card at once, and become an active member in the . . . Association . . . This is vitally necessary as the company will be compelled by law to recognize the organization which has the greatest number of members . . . It will not cost you any money to sign."

On January 4, 1937, a committee, consisting of Lenze, other officers and members of Local No. 502, and Hein, presented a contract to Stackpole and other officials of the company. Stackpole requested a month in which to consider the contract. The committee consented only to a week, and the parties agreed to meet again on January 11, 1937.

In the evening of the same day, January 4, 1937, the Association held its first meeting outside the plant. Superintendents and foremen of the company were present. The employees were addressed by Eynon, president of the Pure Carbon Company,³ and by an official of the Pittsburgh, Shawmut and Northern Railroad. Both men spoke against organized labor in general and "outside" unions in particular.

Thereafter the temporary officers of the Association met with Straub, an attorney hired by the Association, and within a short time Straub drew up an agreement for the Association. On January 7, 1937, the second meeting of the Association was held outside the plant. Supervisory employees again were present. Edward Miller was chairman, and Father Timothy, a pastor, of St. Marys, spoke, saying, among other things, that "he did not see why anyone should involve

¹ Italics supplied

² In this respect the circular read as follows: "Their (Local No. 502) main interest is to take out of St. Marys, from Stackpole employees alone, \$2,000 in initiation fees and \$12,000 of our earnings each year hereafter."

³ The Pure Carbon Company rents offices from the respondent adjacent to the latter's offices. All of the products sold by the Pure Carbon Company are manufactured by the respondent according to formulas furnished by the Pure Carbon Company and under its direct supervision.

himself in outside labor trouble." The Association agreement was read to the members of the Association by Straub.

On January 9, 1937, Conrad was shown the Association membership cards and, being "convinced" that a majority of its employees were members of the Association, arranged for a meeting of some of the respondent's officers with the "contract committee" of the Association on Sunday, January 10, at the plant. According to the testimony of the respondent's witnesses, the "contract committee" of the Association and representatives of the company spent all day Sunday negotiating on the basis of the agreement proposed by the Association. With the exception of one or two items, the parties reached an agreement that day.⁴

On January 11, 1937, the bargaining committee of Local No. 502 returned to respondent's office to attempt to negotiate with the company on the basis of the contract previously submitted. Stackpole presented a prepared statement to the effect that the Association had submitted proof it represented a majority of the employees and that the respondent had already recognized the Association as the representative of its employees. Stackpole also showed Lenze, Hein, and the other members of the committee an affidavit signed by Edward Miller and Conklin, both officers of the Association, stating that a majority of respondent's employees were members of the Association. Thereafter on the same day the agreement with the Association was signed by the company. At a meeting of the Association that evening the agreement was ratified by its members.

On January 15, 1937, during working hours, the election of departmental representatives of the Association took place in the plant. The following week permanent officers of the Association were elected at a meeting outside the plant. The permanent officers included, John Engel, an officer in the N. R. A. Union, president; Alton Newell, vice president; Margaret Herbst, sister of a foreman in the plant, also vice president; and Jerome Conklin, secretary.

The monthly meetings of the Association were held in the plant during working hours. At these meetings Miss Margaret Clancy, stenographer in Conrad's office, took down stenographic notes of the proceedings and thereafter transcribed them into typewritten records at Conrad's office. From these notes Conklin wrote up the minute book of the Association.

On January 28, 1937, the respondent ordered from the Daily Press Publishing Company of St. Marys 150 booklets containing the Con-

⁴The agreement as finally consummated provides for an "open shop," a maximum 50-hour week and an increase of five cents an hour in pay to employees paid by the hour. The open-shop proviso reads as follows. "membership in a labor organization shall not be a condition in favor of or against securing or holding employment with the Company."

stitution and Bylaws of the Association, and the agreement between the Association and the respondent. These booklets were paid for by the respondent. The respondent claims that this was done pursuant to the agreement between it and the Association. The agreement merely provides, however, that the respondent publicize the contents of the agreement, which the respondent fully did on its bulletin board and elsewhere. In this connection it should be noted that when, during February 1937, Local No. 502 attempted to utilize the respondent's bulletin board its circulars were torn off by Conklin.

During the last 2 weeks of January 1937, Lenze and others of the committee representing Local No. 502 saw the management several times concerning specific grievances of members of Local No. 502. One union member was discharged, allegedly for membership in Local No. 502. He was given a "trial" by the Association. Conrad refused to permit Local No. 502 to give him a trial on the ground that the Association was the exclusive representative of the respondent's employees for such a purpose. Lenze, as spokesman for the committee, complained to the management with regard to other cases of alleged discrimination, but no results were forthcoming. Although the agreement between the Association and the respondent does not designate the Association as exclusive representative of the employees of the company by its terms, it is apparent from attempts of Local No. 502 to negotiate with the respondent that the agreement is in practice an exclusive one. In fact, the respondent in its answer states that it recognized the Association as the exclusive representative of its employees.

Also during the last 2 weeks of January 1937, the record reveals an attempt by Anthony Haberberger to bribe officers of Local No. 502. Lenze was called by Haberberger into his office and told that if he and Hein would quit the Union, the respondent would give them a building it had erected, to use as they saw fit. He suggested that they might use it for business purposes. In a conversation with Seth, vice president of Local No. 502, about January 21, 1937, Conrad told him that he was in line for promotion and that "he couldn't understand why since I was making such good progress in that department that I should involve myself with an outside union." Conrad clearly indicated that since Seth was involved in union activity the superintendent and foreman of his department would not "very readily give him the break in case such an opportunity (for promotion) presented itself."

About the middle of February 1937 the Association began to collect dues. These dues were collected by representatives of the Association during working hours, and receipts were written in the offices of foremen. At one of the meetings held in the plant between Association representatives and the management of the company, Stack-

pole said he would match one dollar for each dollar the Association collected in dues. Conrad, vice president of the respondent, later retracted Stackpole's promise because, as he testified, he was afraid that Stackpole's benevolence would be misconstrued. The record further reveals that some employees who were prevailed upon by their foremen to take time off from their work to distribute literature for the Association, and who worked long hours distributing such literature, not only received their regular pay but were recompensed by the respondent for their "overtime." Newell, officer in the Association, handed them their checks with the caution to "keep it under your hat." In addition, solicitation for membership and collection of dues by the Association was facilitated through the opportunity afforded representatives of the Association by the respondent to check their membership list against pay-roll checks and pay-roll lists of the company.

On February 4, 1937, the respondent ordered from the Daily Press Publishing Company a red card entitled "Message to Stackpole Employees." The card stated that the respondent had received evidence of threats made by members of Local No. 502 to the effect that if employees did not join Local No. 502 they might lose their jobs, and assured the employees that "no loyal and efficient employee will ever be blacklisted from working in the Stackpole plant regardless of radical statements to the contrary." This red card was placed in the pay envelopes about February 10, 1937. At about the same time the respondent inserted a paid advertisement in the Daily Press, a newspaper published by the Daily Press Publishing Company, containing the same assurance.

On February 17, 1937, the respondent caused to be distributed among its employees a circular addressed "Dear Employee" and signed "Stackpole Carbon Company." The circular recited the increases in pay which the employees had received since October 1936, and stated that the respondent had recently signed a contract with the Association, since the Association represented a majority, and had thereby complied with the Act. The circular referred to Local No. 502 as "the minority group" and "troublemakers" and continued as follows, "When members of any organization or union tell you that if they were the bargaining group, they could get you even higher rates of pay, they are talking through ignorance or lying maliciously. No union or organization in the world can obtain for our workers any more wage increases at this time. You can't squeeze blood out of a stone. If you are not satisfied with what you are now making, then you might as well call a strike . . . If you are not satisfied with your job or your rate, we suggest that you find a job some place else where the employer can afford to pay you more money, or, if you wish, call a strike. We might as well know now as later, whether or not we . . .

can continue to run this plant in St. Marys. If necessary, we can move all of our production out of town. Many communities will gladly donate the land and buildings just to have us manufacture our products in their town."

On February 24, 1937, Stackpole appeared before a meeting of the Association and told its members of the contemplated removal of the volume control department to Johnsonburg, Pennsylvania, a town approximately eight miles from St. Marys. Stackpole said further that none of the "loyal" employees of the company would lose by this removal of part of the plant. Shortly afterwards the volume control department was in fact moved to Johnsonburg.

The Daily Press Publishing Company, of St. Marys, Pennsylvania, is nominally controlled by a board of five directors. However, Harry S. Conrad, vice president of the respondent, is owner of 210 out of a total of 442 shares of its stock. Besides being the largest single stockholder of the paper, Conrad is one of the board of directors.

The directors have not met as a board within the last two or three years. Bauer, president of the Daily Press, transacted business with them informally, over the telephone. He testified that its editorial policy was never discussed by the board as a board. He admitted, however, that he and the other directors had as individuals spoken to O'Brien, the editor, with reference to editorials "in a friendly way."

It is apparent from the record that by virtue of his financial interest in the Daily Press, Conrad was in a position to influence its policies, and in fact did so in at least one instance. On January 16, 1937, the recording secretary of the Brotherhood of Locomotive Firemen and Enginemen, Lodge 651, a local union of St. Marys, wrote a letter to the Daily Press in protest against its anti-union editorial policy. The letter, at Bauer's suggestion, was referred by O'Brien to Conrad, and upon the latter expressing his disapproval of its contents, was not published. Lenze testified that Local No. 502 was never able to "get any claims" printed in the Daily Press.

On February 25, 1937, there appeared on the front page of the Daily Press a news article based on an interview with officials of the respondent and headlined as follows: "Labor Troubles Cause Change, Officials State." The article continued: "When interviewed today officers of the company stated that due to unsatisfactory labor situations, caused recently by outside influences, but now prevalent in St. Marys, all future expansion will take place in other towns . . . Company officials further stated in today's interview that no loyal and efficient employee would lose his or her position as long as work is available, and stressed still further during the interview that it would be the policy

of the company to hire present loyal employees for the new factory in Johnsonburg." The same issue of the paper carried an editorial which lamented the removal of the respondent's volume control department and discussed the loss to St. Marys caused thereby. This editorial also stated, "The Company's announcement relative to unsatisfactory labor conditions contains the kernel of the whole situation." According to the records of the publishing company, reprints of the news article and editorial were ordered by the respondent on February 23, 1937, two days before the article and editorial appeared in the Daily Press.

On February 26, 1937, an editorial appeared on the first page of the Daily Press entitled, "The Labor Problem in St. Marys." The editorial traced the cause of labor trouble in St. Marys to the alleged presidential aspirations of the chairman of the C. I. O., and his desire for dues and votes. The editorial then painted a picture of the situation in St. Marys upon the shut-down of the respondent's plant if Local No. 502 won out in an election among the employees. The editorial then showed that the alternative to such an eventuality was "loyal" support to the Association. The respondent ordered reprints of this editorial on February 25, 1937, the day before it appeared in the press.

Also on February 26, 1937, the Association ordered a circular in which it discussed the removal to Johnsonburg and assured its members that they were the "present loyal employees" to whom the management referred.

On February 27, 1937, the Association circular and the two reprints discussed above were mailed together to the employees of the respondent from its office, the circular and the two reprints being clipped together.⁵ The fact that the reprints were ordered by the respondent before the editorials appeared in the Daily Press was established by the introduction in evidence of the order slips of the publishing company which were made in the regular course of business, and the testimony of the foreman of the job printing department who made out the order slips. The respondent offered to prove that the reprints were ordered by Conrad only after they had appeared in the Daily Press. The Trial Examiner excluded testimony in support of that

⁵ Conrad admitted ordering the two reprints and also admitted that they were mailed out of the Company's office with the Association circular referred to above. The respondent presented testimony at the hearing in support of its contention, however, that the office manager of the company had been asked by Edward Miller of the Association if a few of the "girls" could mail out the Association circular on the night of February 27, 1937, that several employees of the company were told by the office manager to come back that evening to mail out the reprints for the company; and that due to the lateness of the hour, the reprints and the circular were mailed out in the same envelope to save time; and that this was done without authority from the company. We think this explanation to be unworthy of belief, but even if it were believed, the explanation in no wise diminishes the coercive effect upon its employees of the acts of the respondent as indicated in the facts found above.

contention on the ground that the best evidence as to the fact in question had already been introduced. We have already affirmed the Trial Examiner's ruling. It is clear, however, that even if the facts were established in accordance with the respondent's contention the effect of the respondent's distribution among its employees of the reprints in question would in no wise be diminished. The fact that the reprints were distributed by the respondent is uncontroverted.

On March 1, 1937, the Association ordered a circular from the Daily Press Publishing Company entitled, "A Message to The Loyal Employees of The Stackpole Carbon Company." The circular stated that the Company and the Board had both recognized the Association as a "bona fide labor union." The circular continued:

The Employees' Association has *not* called a strike, therefore any member of the Association who *Does Not* report for work is a *Scab* . . . Don't be dominated or influenced by less than 75 radicals, who are trying to dictate to eight or nine hundred sensible and sane workers. Don't be scared by threats of violence. The Pennsylvania State Constabulary is in town to preserve order and to make sure that you can go to and from your work without being molested.

This circular was distributed at the gates of the plant on the same day, March 1, 1937. Originally payment for the circular was charged to the Association. Some time later the charge was changed to the respondent.

3. Conclusions with respect to domination of and interference with the Association

From the facts as presented above it is clear that the Association was brought into being originally at the instigation of and under the guidance of the respondent. Since its resurrection, the respondent has continually interfered with the administration of the Association and contributed encouragement and support to it. Meetings of the Association have been and are being held on the respondent's property during working hours. Solicitation for membership in the Association has been permitted during working hours, and the privilege of similar solicitation has been in effect denied to members of Local No. 502. In at least two instances, the respondent has aided the Association financially. The respondent has, in various ways as above-indicated, through the press and through the distribution of circulars, contributed support to the Association by openly declaring its antagonism and opposition to Local No. 502. Through its encouragement and aid to the Association the respondent clearly intended to interfere with the self-organization of its employees in Local No. 502

or any other bona fide labor organization. The respondent has aided in the intimidation and coercion of its employees to join the Association. It encouraged membership in the Association by assuring its members that none of them would lose by removal of part of its plant to Johnsonburg.⁶ It climaxed its support to the Association by recognizing it as the exclusive representative of its employees and by signing an agreement with it pursuant to such recognition.

We find that the respondent has dominated and interfered with and is dominating and interfering with the administration of the Association and has contributed financial and other support to it and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The refusal to bargain collectively

1. The appropriate unit

The complaint as amended at the hearing alleges that the employees of the respondent in its production and maintenance departments exclusive of clerical, supervisory, and "temporary" employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The respondent employs a total of some 900 employees. The plants at St. Marys and Johnsonburg are organized into the following departments:

Carbon Green:

Mixing Department.
Molding Department.
Extrusion Department.
Baking Department.
Graphitizing Department.

Carbon Finishing:

Cutting and Grinding Department.
Shunting Department.
Plating Department.

Metal Green:

Copper Manufacturing.
Mixing, Molding & Baking.

Metal Finishing Department.

⁶ At the time of the hearing 180 of respondent's employees were employed at Johnsonburg. Out of these, it was testified that between 140 and 150 were members in the Association.

Radio products:

Resistor Green Department.
Resistor Finishing Department.
Volume Control Spray Department.
Volume Control Assembly Department.
Volume Control Shaft Department.
Volume Control Parts Department.
Bakelite Molding.

Inspection Department.
Shipping Department.
Machine Department (Diemakers, machinists, welder).
Electrical Department.
Blacksmith Department.
Box Department.
Maintenance Department (plumbers, tinnern, etc.).
Construction Department.
Drafting Department.
Engineering Department.
Purchasing Department.
Cost Department.
Sales Department.
Accounting Department.

Employees in the above departments, with the exception of the shipping, machine, drafting, engineering, purchasing, cost, sales, and accounting departments, are semi-skilled or unskilled employees directly engaged in the processing and manufacture of respondent's products, or skilled employees directly engaged in maintenance work. All of the employees in the above departments, with the exceptions indicated, are paid on an hourly basis. Rates of pay in these departments range from 42 to 70 cents per hour. Employees in the accounting, sales, cost, purchasing, drafting, and engineering departments are employed on a salary basis, and are engaged in work of a clerical or technical nature. Those eligible to membership in Local No. 502 are the production and maintenance employees of the company, exclusive of supervisory and clerical employees.

Local No. 502 contends that certain so-called "temporary" employees should not be deemed a part of the appropriate unit. The respondent claims that the system of "temporary" employment was not instituted by it until April 1, 1937, subsequent to the period here in question, namely, January 11 to March 3, 1937. The system of employment in question is one whereby the respondent's employees undergo a trial period of six weeks when they are first hired, during which they wear badges to designate them as "temporary" employees,

and during which they receive lower rates of pay. Although Haberberger, factory manager, denied that the system was in effect before April 1, 1937, it is clear from the testimony of Hammer, employment manager, that during the period here in question employees hired by the respondent received the lower starting rates of pay for the first six weeks of employment. There is also reason to believe that new employees were "on trial" during the six-week period, although Hammer's testimony is apparently contradictory in this respect. The lower rate of pay alone would certainly seem to indicate that the status of employees during the first six weeks of employment was considered by the respondent to be different from their status thereafter. None of the employees who appear on the pay roll to have been hired within the six-week period before January 11, 1937, are members in Local No. 502, and apparently were not then eligible to membership in that union. Further, the shortness of the trial period is significant and indicates the appropriateness of excluding such employees from the appropriate unit. The interests of employees who may be "on trial" for a period of several months are more apt to be identical with the interests of permanent employees; whereas the interests of employees during a probationary period of several weeks are likely to be distinct from the interests of permanent employees, both because of the lower rates of pay that the former may receive, as in this case, and because of their short probationary status. We therefore conclude that the "temporary" employees should not be included in the appropriate unit.

Local No. 502 contends that employees in the machine shop should also be excluded from the bargaining unit. These employees include 10 die makers, 16 machinists, 4 apprentices, and 1 welder. The testimony with respect to the work performed by these employees is conflicting. It is clear that the die makers manufacture dies in the machine shop and place completed dies in machinery in the plant when needed. It is not clear whether these die makers also repair dies broken down in the plant. According to the testimony of the respondent's witnesses both die makers and machinists do some maintenance work in the plant. However, the evidence reveals that none of these employees are members in Local No. 502. Local No. 502 has apparently made no attempt to organize these employees, and no history of organization or of collective bargaining by them as a group appears in the record. Furthermore, they are of course skilled craft employees, and the record reveals that they receive rates of pay substantially higher than those of production employees. In the light of these facts, the limitation which Local No. 502 imposes on its jurisdiction is not unreasonable. In view of the fact that these employees are skilled craftsmen, and that they receive substantially

higher rates of pay than the production employees, which is an indication that their interests are different from the latter employees, and in view of the other circumstances set forth above, we are of the opinion that such employees should be excluded from the bargaining unit.

Local No. 502 claims that watchmen in the plant should not be included in the bargaining unit. Watchmen are not members in and not eligible for membership in Local No. 502 and we have generally excluded such employees from a unit composed of production and maintenance employees. We will exclude the watchmen from the appropriate unit.

Local No. 502 contends that sweepers and clean-up men should not be included in the bargaining unit. These employees are properly maintenance employees. Lenze testified that they were not eligible for membership in Local No. 502. A few of the clean-up men, however, appear on the membership record of Local No. 502. Under these circumstances we will not exclude clean-up men and sweepers from the bargaining unit.

The capacity in which the employees named in footnote seven⁷ are employed, is in dispute. For reasons there indicated, we will

⁷ *Clerical employees.* Paul Farley is chief "follow-up" man whose job it is to see that an order is finished on time. He is employed in the factory office and his work is clerical. Ray Hannibal is stock clerk and assistant to the follow-up man. He checks delivery dates, etc. He "chases" an article from one department to another. He is employed in the factory office part time. Clarence Arnold is employed in the drafting department as a clerk engaged in making factory blue-prints. Otto Urbansky is a stock clerk who keeps inventory of all plates of various sizes and grades. He also writes the proper requisition for an order when the plant needs material. He works in the factory office and his work is clerical. I. Stauffer is employed in the factory office and his work is clerical. His job is to go to the various departments, collect time slips from individual employees, and turn them over to the cost department, after checking them with time cards. Jesse Bickmire is employed in the drafting department, but unlike other employees in that department, is on the hourly pay roll. Andrew Koonenweller is employed in the factory office and his duties are similar to those of I. Stauffer. Earl Foy is a clerk in the office of one of the production foremen. He keeps production records. Joe Davis does clerical work similar to that of I. Stauffer. Jack Fields is employed in the drafting department as a blue-print file clerk. Fred Wise is a clerk in a superintendent's office. Cornelia Bayer during December 1936 and January and February 1937 was employed in the volume control department in a separate division provided for the department superintendent, in a clerical capacity. Caspar Yetzer during December 1936 and January and February 1937 was engaged in the volume control department in filling out requisition sheets, distributing them to various foremen in other departments and later gathering up parts for assembly in his department. We find that Paul Farley, Ray Hannibal, Clarence Arnold, Otto Urbansky, I. Stauffer, Jesse Bickmire, Andrew Koonenweller, Earl Foy, Joe Davis, Jack Fields, Fred Wise, Cornelia Bayer and Caspar Yetzer are clerical employees and should not be included in the appropriate unit.

Supervisory Employees. Local No. 502 contends that the following are employed in a supervisory capacity: John Skok. The evidence shows that Skok supervised the work of about 15 men in the parts department on the night shift, and was known as foreman to the employees there, although once in a while he ran an automatic die on the day shift. Elmer Decker. Elmer Decker is a working foreman in the plant. Several maintenance employees testified that their foremen would send them to Decker to take orders from him. It appears that Decker at times supervised the work of as many as nine employees on a construction job, although he was also chief bricklayer in the plant,

exclude these employees from the appropriate unit. The capacity in which other employees, named in footnote eight,⁸ are employed, is also in dispute. For reasons there indicated, we will not exclude the employees named from the unit.

The respondent moved its volume control department to Johnsonburg, Pennsylvania, during the last week in February 1937.⁹ During the period from January 11 to March 1, 1937, the appropriate unit consisted of the respondent's employees at the St. Marys plant alone. Since March 1, 1937, the unit has consisted of the respondent's employees at both its St. Marys plant and its Johnsonburg plant. The removal of its volume control department to Johnsonburg, approximately eight miles from St. Marys, cannot be said to have destroyed that mutuality of interest between production employees of that department and production employees of other departments in the respondent's plant which existed before the removal. It does not appear that the problems of the production employees of the volume control department are different in Johnsonburg from what they were in St. Marys. The management personnel with whom the employees at Johnsonburg are required to deal is the same as that with whom the employees at St. Marys are required to deal. It does not appear that the duties of the employees in the volume control department were changed by the removal or that the wages or hours of work of these employees were changed.

and laid bricks when necessary. It does not appear that Decker was responsible to any foremen, but that in fact he had requested various foremen to send employees to work under him. *Edward Miller*. Although Miller testified that he was a clerk in the superintendent's office (carbon finishing department), several employees testified that he was known as assistant superintendent in that department, and that he had frequently directed employees in their work there. It also appears that he replaced a foreman in another department in that foreman's absence. We find that John Skok, Elmer Decker and Edward Miller are employed in a supervisory capacity and should not be included in the appropriate unit.

Miscellaneous. *John Clark* is employed as a routine tester in the laboratory of the engineering department. *F. H. Kennedy* works in the laboratory of the engineering department, putting various materials together to make experimental grades under the supervision and instruction of the various engineers. We find that John Clark and F. H. Kennedy should not be included in the appropriate bargaining unit.

⁸*J. A. Shower* runs an electric truck and delivers production materials to all departments as needed. *Otto Zelt* and *Gervase Wortman* are stockroom attendants who receive and dispense materials. *Owen Hagen* and *David Heath* are employed in the stockroom as inspectors of incoming materials. It does not appear that the employees above named are engaged in any clerical or supervisory capacity. They should be included in the appropriate bargaining unit.

Supervisory employees Local No 502 contends that the following are employed in a supervisory capacity: *Hugh Lawrence*. Testimony reveals that Lawrence, although known as assistant foreman to some employees, merely replaces a foreman of the volume control department, in the foreman's absence. *Joe Schabrel* and *John Gnan*. One employee, a laborer, testified that he worked under George Andrews, foreman of the carpenters, and that he had been sent to Gnan and Schabrel, who also worked under George Andrews, at various times to take orders from them. We find the evidence insufficient to justify a finding that Lawrence, Schabrel and Gnan are employed in a supervisory capacity. They should be included in the appropriate bargaining unit.

⁹From testimony at the hearing, it appears that 180 of the respondent's employees are now employed at Johnsonburg. It also appears that the respondent has employed 85 of these employees since March 2, 1937.

For the period beginning January 11 and up to March 1, 1937, we find that all production and maintenance employees in the respondent's plant in St. Marys, Pennsylvania, exclusive of clerical, supervisory and "temporary" employees and also exclusive of employees in the accounting, sales, cost, purchasing, drafting, engineering, and machine shop departments, and exclusive of watchmen, constitute an appropriate unit for the purposes of collective bargaining and that such unit insures to respondent's employees the full benefit of their right to self-organization and otherwise effectuates the policies of the Act.

For the period beginning with March 1, 1937, and thereafter, we find that all the production and maintenance employees in the respondent's plant at St. Marys, Pennsylvania, and Johnsonburg, Pennsylvania, excluding those employees above-indicated, constitute an appropriate unit for the purposes of collective bargaining and that such unit insures to respondent's employees the full benefit of their right to self-organization and otherwise effectuates the policies of the Act.

2. Representation by Local No. 502 of the majority in the appropriate unit

At the hearing the permanent membership book¹⁰ of Local No. 502, containing a record of all members in Local No. 502, was introduced in evidence. The financial secretary of Local No. 502 testified that he had copied the names in the book from application cards signed by employees of the respondent for membership in Local No. 502, in the course of his duties as financial secretary. The recording secretary of Local No. 502 testified that he had received the signed application cards in the course of his duties as officer for Local No. 502, that he had carefully checked through the cards, and that they were in order. The financial secretary also testified that by rule of Local No. 502, all applicants for membership were required to sign their own application cards. The cards were produced at the hearing for examination by the respondent's counsel, and he cross-examined the officers of Local No. 502 therefrom. By the application card Local No. 502 is authorized and requested through its officers to represent the applicant for the purpose of collective bargaining in regard to wages, hours, and working conditions.

The membership book reveals a total of 375 names. However, a check of those names against the pay roll¹¹ of the respondent reveals that three of them are not employees of the respondent. Furthermore, it appears from testimony at the hearing that three application

¹⁰ Board Exhibit No. 33-B.

¹¹ Board Exhibit Nos 51-E, 54, 54-B, 55, and 56.

cards were not signed by the applicants themselves, although an officer of Local No. 502 testified that he was authorized by the applicant to sign for them. In addition, counsel for the respondent specifically challenged the membership of one other applicant, who, it was admitted by an officer of Local No. 502, asked to have his name withdrawn from the membership rolls of Local No. 502. Because of the doubt existing in the last four cases enumerated, we will not count the employees in those cases as members in Local No. 502. The financial secretary of Local No. 502 testified that 16 members had joined since January 11, 1937, and that, with one exception, the total membership as indicated by the record book had been acquired on or before March 2, 1937. Thus it is apparent that on January 11, 1937, 352 of the respondent's employees were members of Local No. 502.

According to the pay rolls of the respondent introduced in evidence at the hearing, there was on January 11, 1937, a total of 706 employees in the appropriate unit designated above. As of February 26, 1937, the pay rolls reveal a total of 696 employees in the appropriate unit. Of those whose employment with the respondent was severed between January 11, 1937, and February 26, 1937, two were members in Local No. 502, the total membership by the latter date therefore being reduced to 350. On March 2, 1937, the pay rolls also reveal a total of 696 employees in the appropriate unit. It is clear from a check of the names in the membership book against the pay roll of the respondent that by March 2, 1937, 365 employees were members of Local No. 502.

From these facts we are unable to find that on January 11, 1937, a majority of the respondent's employees in the appropriate unit had designated Local No. 502 as their representative for the purposes of collective bargaining. It is clear, however, that on February 26, 1937, a majority of 2 and on March 2, 1937, a majority of 17 in the appropriate unit had designated Local No. 502 as their representative for the purposes of collective bargaining.

We find that on February 26, 1937, and on March 2, 1937, Local No. 502 was the duly designated representative of the majority of respondent's employees in the appropriate unit. By virtue of Section 9 (a) of the Act it was, therefore, the exclusive representative of all 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 refusal to bargain

On December 31, 1936, pursuant to authorization from the members of Local No. 502, Hein, organizer and vice president of the United, wrote to the respondent stating that Local No. 502 had been designated by a majority of respondent's employees to represent them, stat-

ing that an agreement was being drawn up by representatives of Local No. 502 which the representatives hoped to present to the respondent for consideration on January 5, 1937, and asking that Lenze, the bearer of the letter, be instructed whether or not that date was convenient for the respondent. On January 3, 1937, the membership of Local No. 502 in meeting assembled voted unanimously to approve an agreement drawn up by Hein and officers of Local No. 502.¹² On January 4, 1937, Hein, Lenze, and other members of a committee elected by the members of Local No. 502 presented the proposed agreement to Stackpole, Conrad, Haberberger, and other officials of the company. Stackpole looked at the proposed agreement, laughed, and shook his head. Haberberger picked it up and said, "We could never meet that." Hein asked the management to negotiate different parts of the agreement. Stackpole said he would have to have time to consider, and asked for at least a month. The committee decided to give the respondent a week, and Stackpole agreed to meet the committee on January 11, 1937.

During that week, as set forth above, the Association was active, with the respondent's assistance, in soliciting members and drawing up an agreement. The respondent negotiated the agreement with the Association on January 10, 1937.

On January 11, 1937, the bargaining committee of Local No. 502 met with Stackpole, Conrad, Lyle Hall (treasurer of respondent), and Haberberger. The committee was told that the Association had already been recognized as the exclusive collective bargaining representative for the respondent's employees, and Stackpole showed the committee a written statement to that effect. The committee was also shown an affidavit signed by two officers of the Association, stating that a majority of the respondent's employees were members in the Association. Hein questioned the validity of that type of proof and asked Stackpole whether he believed in collective bargaining. Stackpole said "No." Hall corrected him telling him he did not mean that, and Stackpole said "Yes." Hein then asked him if he would bargain with Local No. 502, and Stackpole said he would not because he had already recognized the Association. It is not clear from the testimony whether Stackpole asked Hein if Local No. 502 had a majority of the respondent's employees as members. Even if we assume that he did, it is apparent from the respondent's domination of and interference with the Association and the consummation of a contract with it, that such questioning could not have been made in good faith. At any rate, Hein offered to prove that a majority

¹² Board Exhibit No. 28. The agreement provided for a closed shop, a 40-hour maximum workweek, time and one-half for overtime, a minimum rate of pay of 40 cents per hour for female employees and 50 cents per hour for male employees, and an increase of 10 cents per hour for all employees over the rates then in effect.

of the respondent's employees were members in Local No. 502. He refused to do so by showing application cards for fear of discrimination against members of Local No. 502, but said there were other ways to prove a majority, both legal, such as by holding an election, or by a strike which, Hein said, was a "nasty way." No cooperation, however, in determining the majority was forthcoming from Stackpole or any of the other officials of the respondent.

A few days later Lenze and other officers of Local No. 502 attempted to deal with the respondent on behalf of a member of Local No. 502 whom it was alleged had been discriminatorily discharged. Conrad stated that the Association was the sole collective bargaining representative for the respondent's employees, and that the Association had given the discharged employee a "fair trial." Thereafter at various times Local No. 502 attempted in vain to negotiate with respondent with respect to other specific grievances, such as alleged discrimination in rates of pay for employees who were members of Local No. 502.

In the middle of February 1937 Lenze came to Conrad on behalf of Local No. 502 and charged that several members of Local No. 502 had been discriminated against, by being laid off in the graphitizing oven department. Lenze repeated that Local No. 502 represented a majority of the respondent's employees and wanted to negotiate with the respondent. Conrad said, "Prove your majority." Thereupon Lenze offered to secure the application cards for membership in Local No. 502 to show to Conrad. Conrad then said it was too late. Lenze asked him if he would be willing that "they write jointly to the Board for a vote." Again Conrad refused.

On February 17, 1937, the respondent distributed among its employees the circular hereinbefore discussed. On February 26, 1937, Hein, pursuant to authority from Local No. 502, wrote to Stackpole the following letter:

DEAR SIR:

At a meeting of Local 502 of the U. E. & R. W. of A. on Thursday, February 25th, a resolution adopted by secret ballot stated: That unless the Stackpole Carbon Co. meets with the representatives chosen by Local No. 502 to bargain with them collectively in matters of hours, wages, and working conditions, taking the proposed agreement which was submitted to the Stackpole Carbon Co. on January 4, 1937 as a basis for a contract, there will be a cessation of production at 6:00 a. m. Tuesday, March 2, 1937.

The members of Local 502 have used every means to avoid a stoppage of work and to bring about a peaceful settlement of the present controversy. But the Stackpole Carbon Co. has

defied and aggravated the situation by setting up a company union in violation of the National Labor Relations Act, and has stubbornly refused to deal with or recognize the representatives of Local 502, a bona fide Labor Organization.

Therefore, the Stackpole Carbon Co. is responsible for the present strained relations, and any consequent actions that its employees may deem necessary to protect themselves and their jobs.

Labor has the right by law to collective bargaining. The members of Local 502 who are employees of the Stackpole Carbon Co. are standing on that right.

Very truly yours,

(s) August Hein.

AUGUST HEIN, *General Vice Pres.*

No answer to this letter was ever received.

The Department of Labor of the State of Pennsylvania, having been informed of the impending events, sent to St. Marys a mediator from that department. He was accompanied by a conciliator from the Federal Department of Labor. On February 26, 1937, a meeting was arranged by the State and Federal mediators between representatives of the respondent and representatives of Local No. 502, and a tentative agreement was reached with respect to the holding of an election among the respondent's employees. The terms under which the election would be held were left unsettled, however, Stackpole agreeing to abide by terms fixed by the Regional Director for the Sixth Region.

On March 1, 1937, as a result of the meeting of February 26, another meeting was arranged between Stackpole and other officers of the company and Lenze, Hein, and other representatives of Local No. 502. Robert Kleeb, Board attorney for the Sixth Region, attended this meeting, the purpose of which was to arrange the terms of an election among the respondent's employees. The testimony in regard to the events at the meeting is in conflict. It is evident that an oral agreement was reached between the parties. Local No. 502 claims that Hein proposed certain terms under which an election would be held, that no mention of the Association was made at the meeting, and that Stackpole agreed to the terms of the election, which Kleeb was directed to draw up in legal form that night. Local No. 502 contends that the agreement as proposed was one between the respondent and Local No. 502 only, and provided that an election should be held to determine whether a majority of the respondent's employees desired to be represented by Local No. 502. It is undisputed that the agreement provided that no employees of the company were to solicit votes, that no literature would be distributed, and that

the election would not be discussed, in the plant. It is significant that on the same day there was distributed at the gates of the plant the Association circular of March 1, 1937, discussed above—a circular which was charged to the account of the respondent. It is not clear, however, whether this occurred before or after the agreement between the parties.

The respondent contends that the agreement for an election was to be a tripartite one between it, the Association, and Local No. 502, and that the Association was to be put on the ballot. The respondent claims also that its oral agreement on March 1 was subject to the approval of the Association.

At any rate Kleeb drew up an agreement which was presented to the respondent and to Local No. 502 on March 2. Local No. 502 meanwhile had delayed its strike vote for 24 hours. Whatever the agreement for an election originally may have been, the final agreement presented to the respondent and to the membership of Local No. 502 on March 2 was a bipartite one between the respondent and Local No. 502, but it also placed the Association on the ballot. The members of Local No. 502 approved even this agreement and on the night of March 2 waited for the respondent to sign it. It was never signed.

The evidence shows that on March 2, 1937, when the agreement was presented to the respondent, representatives of the Association were called in by Conrad, who refused to approve the agreement until the Association had approved it. That afternoon Straub asked Kleeb for more time to consider the agreement. That evening in a telephone conversation with Kleeb, Stackpole said that the agreement for the election was a matter for the Association to decide upon. Clearly the respondent refused to sign the agreement without the approval of the Association.

On March 3, 1937, members of Local No. 502 went out on strike. On that day, Hein, pursuant to authority from Local No. 502, wrote to Stackpole as follows:

DEAR MR. STACKPOLE:

Local 502 of the United Electrical & Radio Workers of America, a unit composed entirely of employees of the Stackpole Carbon Co., is now on strike.

The negotiating committee of the above mentioned unit of the U. E. & R. W. has been trying since December 30, 1936, to reach an agreement with the management. On January 4, 1937, a proposed agreement was submitted for collective bargaining in the matter of hours, wages, and working conditions.

We have tried to reach a friendly and peaceful solution of this controversy. But your stubborn refusal to abide by the National and State Labor Laws has resulted in the present strained rela-

tions between you and your employees. The responsibility of the strike, therefore, rests directly at the door of the Stackpole Carbon Co.

Nevertheless, the negotiating committee is still ready to confer with the management on the basis of the above proposed agreement.

Very truly yours,

AUGUST HEIN, *Gen. Vice Pres.*

No answer to this letter was ever received.

In the middle of March 1937 an attempt was made to negotiate a settlement of the strike. De Maio, organizer for the United, and Lenze and Fleming, officers of Local No. 502, met Hall, treasurer of the respondent, at his home. The committee asked that the Association be dissolved, that Local No. 502 be recognized as exclusive representative of the respondent's employees for purposes of collective bargaining, and that the striking employees be reinstated without discrimination. Hall asked Fleming "how he would like to be head man at one of the plants." No results were forthcoming at this meeting.

On April 14, 1937, De Maio wrote to Stackpole as follows:

DEAR MR. STACKPOLE:

In accordance with our informal discussion yesterday afternoon, we suggest the following terms to effect an amicable settlement of the strike of Local 502 of the U. E. & R. W.

Inasmuch as harmonious relations between the management and all the workers involved is the desired end, we urge you to use your influence to help bring this about.

It is our belief that the interests of peace will best be served, if the United Electrical & Radio Workers of America is recognized *as the bargaining agent for its members*,¹³ and that all striking employees return to their usual work at former rates of pay without prejudice or discrimination.

Our experience has shown that collective bargaining is possible and effective only as a result of friendly negotiations. We propose, therefore, that such negotiations take place within ten days after the striking employees return to work.

We further feel that your expressed desire to comply with and act within the framework of existing laws will be conducive to permanent peace.

With every good wish for an immediate settlement, I am
Respectfully yours,

ERNEST DE MAIO, *gen'l organizer.*

No answer was received to this letter.

¹³ Italics supplied.

About the middle of April 1937 Fleming, as chairman of the shop committee of Local No. 502, was instructed by other members of the shop committee to call Hall, the respondent's treasurer, and "ask him if we couldn't settle this strike some way." Hall said he would see Stackpole and Haberberger and let Fleming know. He never communicated with Fleming with respect to this attempt at a settlement.

4. Conclusions with respect to the refusal to bargain collectively

It is clear from the facts as presented above that during the week of January 4, 1937, which the respondent requested for consideration of the contract presented by Local No. 502, no such consideration was in fact given. During that week, the respondent deliberately negotiated an agreement with a labor organization which it had fostered and was at the time fostering for the purpose of defeating the attempt of Local No. 502 to bargain collectively. It is clear that the respondent's executive employees never in good faith at any time before or during the strike questioned whether Local No. 502 represented a majority of its employees. On the other hand, Stackpole and Conrad were speedily "convinced" that the Association represented a majority of its employees. It is also clear that Local No. 502 represented a majority of the respondent's employees in the unit found appropriate on February 26 and March 3, 1937. On those dates and thereafter during the strike unsuccessful attempts were made by Local No. 502 to negotiate with the respondent.

We find that on February 26, 1937, and March 3, 1937, and thereafter, the respondent has refused to bargain collectively with Local No. 502 as the exclusive representative of its employees in the unit which we have found appropriate, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The strike and the alleged discharge by the respondent of its striking employees

Having received word late at night on March 2, 1937, of the respondent's refusal to sign the agreement for an election without the Association's approval, and after discussing the respondent's support to and encouragement of the Association, the discrimination practiced against members of Local No. 502, and also the refusal of the respondent to bargain collectively with Local No. 502, its members voted to go out on strike the next morning.

On March 3, 1937, members of Local No. 502 struck and picketed the respondent's plant. At the time of the hearing the striking employees were still out on strike and picketing the respondent's

plant. The exact number of striking employees does not appear. The respondent admitted, however, that 131 employees "quit work" and had not returned since March 3, 1937. It also admitted that 110 striking employees picketed the plant on the morning of March 3, 1937, and thereafter. Some of the members of Local No. 502 did not go out on strike. One picketing striker who attempted to return to work was intercepted at the gate, told he was "fired," and forced out of the plant.

It does not appear that any of the respondent's striking employees have since been reemployed elsewhere, with the exception of two, one of whom at the time of the hearing was "working off" a furniture bill and the other of whom was "working off" a doctor's bill. All of the striking employees desire reinstatement.¹⁴

On March 4 or 5 all the picketing employees received checks marked "paid in full" covering the pay period ending February 28, 1937, and the first two days in March 1937. The other strikers who did not picket were visited at their homes by employees of the respondent and told to report to work on or about March 8, 1937, or to come and "get their pay." Those who were visited and did not so return received their checks on March 10, 1937, the regular pay day. In the middle of April 1937 Stackpole, in a conversation with two or three employees picketing in front of the plant, said, "You will never get in there as long as I live." Stackpole's statement was interpreted by those employees who heard it to refer to all picketing employees.

At the hearing, Hammer, the employment manager, was asked why all of the picketing employees were sent their checks marked "paid in full." He testified as follows:

We didn't want them back in there. We figured they had put our plant out of commission; there was all sorts of rumors that they were going to stop production and we were afraid of violence to put them back in there.

The complaint as amended at the hearing alleges that the respondent discharged its striking employees. The facts set forth above do not sustain that allegation. After ceasing work the position of the respondent's striking employees was, from a practical point of view, unaffected by the acts complained of. Since they had already ceased their work, there is no question of discriminatory discharge; the question arises only as to whether there was a discriminatory refusal to reinstate them to their former employment. On the record we cannot find that the respondent had indicated that it would not reinstate striking members of Local No. 502 upon application. That such

¹⁴ Since March 2 the respondent has hired 62 employees at the plant in St. Marys and 85 at the plant in Johnsonburg.

application would not necessarily have been futile as indicated by evidence that some employees—members of Local No. 502 who struck on March 3, 1937—did return to work thereafter. For these reasons we will dismiss the allegation of the complaint that the respondent discharged its striking employees.¹⁵

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III A, B, and C 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 tend to lead and have lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The Board has found that the respondent dominated and interfered with the formation and administration of the Association and contributed financial and other support to it, that its growth has been due to the encouragement and aid received from the respondent, and that through the Association the respondent has harassed the members of Local No. 502 in their attempts to deal with the respondent. In order to remedy the unlawful conduct in this case, the respondent must withdraw all recognition from the Association as an organization representative of its employees for the purposes of dealing with the respondent with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment. We will therefore order the immediate disestablishment of the Association as such representative. Further, the respondent must cease to give effect to its contract with the Association.

We will also order the respondent to bargain collectively with Local No. 502 as the representative of its employees.

It is clear that the employees of the respondent who struck on March 3, 1937, did so as a direct result of the respondent's unfair labor practices. The evidence establishes that the members of Local No. 502 voted to strike because of the respondent's refusal to bargain collectively and its interference with the Association, as well as to its refusal to consent to an election without the approval of the Association. Moreover, the strike has been prolonged because of the respondent's continued refusal to negotiate with Local No. 502 since March 3, 1937. Thus the possibility of a return to work by the strikers was in effect precluded by the respondent's refusals to bargain col-

¹⁵ See *Matter of Biles-Coleman Lumber Company and Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679.

lectively with Local No. 502 during the strike. Since March 3, the respondent has hired new employees both at its plant in St. Marys and at its plant at Johnsonburg. In order to restore the *status quo* existing before March 3, 1937, we will order the respondent to offer reinstatement to all its employees who were on the pay roll on March 2, 1937, and who struck on March 3, 1937, and thereafter, dismissing, if necessary, new employees who were hired on or after March 3, 1937. We will order the offer of reinstatement of such striking employees to their former positions either in the plant at St. Marys or in the plant at Johnsonburg, wherever those positions are available. Our order will also provide that employees whose application for reinstatement is refused by the respondent in violation of our order shall be entitled to back pay accruing from the date of the refusal of the application to the date of reinstatement, less any amount earned during that period.

The strike was accompanied by some violence on the part of the respondent and members of the Association on the one hand, and of members of Local No. 502 on the other. On Saturday, March 6, 1937, all employees of the respondent who were members of the Association were told by the foremen to attend a meeting in the plant. The meeting took place approximately between 11:30 and 12 o'clock, during working hours, and the employees were paid for that time. Straub, attorney for the Association, addressed them. At about 11:45 a State trooper, who had been seen in the office of the company a short while before, came to the captain of the picket line and notified him to tell those pickets who were wearing glasses to take them off. A few minutes later, some of the "loyal" workers, apparently those who had attended the meeting of the Association, rushed out of the plant without punching their time cards. One employee with crutches came out of the plant swinging his crutches, and others came swinging their fists. Several striking employees on the picket line were injured. Two women were severely injured and laid up for several weeks. No arrests were made, though a dozen State troopers were on duty at the time in the vicinity of the plant.

On the other hand, charges were preferred by members of the Association, State troopers and others against about 20 members of Local No. 502, including most of the officers, for violence alleged to have been committed during the strike. The offenses included assault and battery, destruction of property, disorderly conduct and disturbing the peace. The occasions for these charges were the alleged beating up of non-striking employees, and the alleged injury to property of such employees. At the time of the hearing one striker had been convicted of assault and battery and had been sentenced to four months in the county jail. The charges against all

others were pending.¹⁶ The most serious charge in this group was that against Sylvester Jesberger, an officer of Local No. 502, who was accused of "using explosive substance with intent to do grievous bodily harm."

One non-striking employee testified in the hearing in the present proceeding that he was beaten up by members of Local No. 502, and was under doctor's treatment for a few weeks. The home of Alton Newell, an officer of the Association, was dynamited. He testified that the damage amounted to about \$35 and that the management of the company gave him \$25 to make repairs. Association members and other persons who were not employees of the company were also charged with disorderly conduct, and assault and battery, apparently in connection with altercations between striking and non-striking employees.¹⁷

The respondent in its answer to the complaint contends that one of the reasons why members of Local No. 502 who went out on strike are not entitled to reinstatement is that they have from time to time engaged in violence. This Board has said that it could not condone violence by any party to a labor dispute. It has said that "an employer cannot, however, use the fact that violence has been committed during a strike as a pretext for not reinstating some of his employees where the real motive behind his refusal is the union activities of such employees and not an honest belief that they have engaged in illegal acts."¹⁸ From the facts as presented above and in the light of the respondent's conduct from the record as a whole, it is clear that the real reason behind its contention that its employees are not entitled to reinstatement is the union activity of those employees and not any act of violence alleged to have been committed by them. This is particularly clear since, with one exception, the offenses with which employees were charged are of little seriousness, as indicated above. The case against Jesberger was nolle prossed in January 1938. Moreover, there is a strong indication that the respondent aided and abetted the acts of its employees which caused the injuries to picketing employees on March 6, 1937. For the reasons indicated we will order that employees charged with violence, and otherwise entitled to reinstatement, be reinstated.

¹⁶ The majority of the bonds set for the union members ranged between \$500 and \$1,500. The bonds of nine of them were set by A G Brehm, Justice of the Peace, and secretary-treasurer of the Daily Press Publishing Company.

¹⁷ There were nine of these cases which were all heard before A G Brehm. Out of eight of these, three were discharged, three were fined \$10 and costs, and two were held for court on bonds of \$500 and \$100 respectively. In at least three of these cases, the persons charged with offenses were employees of the respondent. At the time of the hearing, one had been found not guilty and discharged, and one had been fined \$10 and costs and one was being held for court.

¹⁸ In *Matter of Kentucky Firebrick Company and United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B. 455.

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

CONCLUSIONS OF LAW

1. United Electrical & Radio Workers of America, Local No. 502, and Stackpole Employees' Association of St. Marys, Pennsylvania, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the administration of the Stackpole Employees' Association of St. Marys, Pennsylvania, and contributing financial and other support thereto; has engaged in and is engaging in an unfair labor practice, within the meaning of Section 8 (2) of the Act.

3. The production and maintenance employees in the respondent's plant at St. Marys, Pennsylvania, for the period from January 11 to March 1, 1937, and at the respondent's plants at both St. Marys, Pennsylvania, and at Johnsonburg, Pennsylvania, since March 1, 1937, exclusive of clerical, supervisory and "temporary" employees and also exclusive of employees in the accounting, sales, cost, purchasing, drafting, engineering, and machine shop departments, and also exclusive of watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. United Electrical & Radio Workers of America, Local No. 502, was on February 26 and March 3, 1937, and thereafter has been the exclusive representative of all employees in such unit for the purposes of collective bargaining.

5. By refusing to bargain collectively with United Electrical & Radio Workers of America, Local No. 502, as the exclusive representative of the employees in such unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

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

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

8. The respondent has not engaged in an unfair labor practice within the meaning of Section 8 (3) 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, Stackpole Carbon Company, St. Marys, Pennsylvania, 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 rights 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 Stackpole Employees' Association of St. Marys, Pennsylvania, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Stackpole Employees' Association of St. Marys, Pennsylvania, or any other labor organization of its employees;

(c) From giving effect to its contract with the Association;

(d) From refusing to bargain collectively with United Electrical & Radio Workers of America, Local No. 502, as the exclusive representative of the production and maintenance employees at its St. Marys, Pennsylvania, plant and its Johnsonburg, Pennsylvania, plant, except clerical, supervisory, and "temporary" employees and except employees in its accounting, sales, cost, purchasing, drafting, engineering, and machine shop departments, and except watchmen.

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

(a) Withdraw all recognition from Stackpole Employees' Association of St. Marys, Pennsylvania, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish said Association as such representative;

(b) Upon request, bargain collectively with the United Electrical & Radio Workers of America, Local No. 502, as the exclusive representative of the production and maintenance employees at its St. Marys, Pennsylvania, plant and its Johnsonburg, Pennsylvania, plant, except clerical, supervisory, and "temporary" employees and except employees in its accounting, sales, cost, purchasing, drafting, engineering, and machine shop departments, and except watchmen, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(c) Upon application, offer to its employees who were employed on March 2, 1937, and who struck on March 3, 1937, or thereafter, immediate and full reinstatement to their former positions at either its St. Marys, Pennsylvania, plant or its Johnsonburg, Pennsylvania,

plant, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, persons hired on or after March 3, 1937;

(d) Make whole all employees who went on strike on March 3, 1937, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2 (c) herein, by payment to each of them respectively, of a sum equal to that which each would normally have earned as wages during the period from the date of any such refusal of their application to the date of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(e) Post immediately notices to its employees in conspicuous places throughout its plant, stating (1) that the respondent will cease and desist as provided in paragraphs 1 (a), (b), (c), and (d) of this order; (2) that the respondent withdraws and will refrain from all recognition of Stackpole Employees' Association of St. Marys, Pennsylvania, as a representative of its employees, and completely disestablishes it as such representative; (3) that the agreement signed with Stackpole Employees' Association of St. Marys, Pennsylvania, is void and of no effect;

(f) Maintain such notices for at least thirty (30) consecutive days from the date of posting; and

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

And it is further ordered that the allegation in the complaint that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (3) of the Act, by discharging its employees who struck on March 3, 1937, be, and it hereby is, dismissed.