

In the Matter of M. LOWENSTEIN & SONS, INC. and BOOKKEEPERS',  
STENOGRAPHERS' AND ACCOUNTANTS' UNION, LOCAL No. 16, UNITED  
OFFICE AND PROFESSIONAL WORKERS OF AMERICA, C. I. O.

In the Matter of M. LOWENSTEIN & SONS, INC. and TEXTILE WORKERS'  
ORGANIZING COMMITTEE LOCAL No. 65, C. I. O.

In the Matter of M. LOWENSTEIN & SONS, INC. and UNITED WHOLESALE  
EMPLOYEES OF N. Y.

*Cases Nos. C-357, C-358, R-524 and R-525.—Decided March 26, 1938*

*Textile Converting Industry—Interference, Restraint, or Coercion:* anti-union statements; questioning employees regarding union affiliation—*Company-Dominated Union:* domination of and interference with administration of, and support to; use of company property; activity during working hours. disestablished as agency for collective bargaining—*Collective Bargaining:* no proof of majority; charges dismissed—*Investigation of Representatives:* controversy concerning representation of employees: substantial doubt as to majority status; refusal by employer to recognize representatives—*Units Appropriate for Collective Bargaining:* separate units for office and warehouse; supervisory employees and private secretaries to executives excluded—*Election Ordered:* company-dominated union excluded from ballot.

*Mr. John T. McCann,* for the Board.

*Mr. Benjamin C. Ribman* and *Mr. William B. Aberson,* of New York City, for the respondent.

*Mr. Sidney E. Cohn,* *Miss Vera Boudin,* and *Miss Norma Aronson,* of New York City, for the B. S. & A. U.

*Mr. Douglass Newman* and *Mr. David Cohen,* of New York City, for the Employees' Group.

*Mr. Joseph B. Robison,* of counsel to the Board.

## DECISION

### ORDER

AND

## DIRECTION OF ELECTIONS

### STATEMENT OF THE CASE

On July 9, 1937, Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O., herein called the B. S. & A. U., filed a charge with the Regional Director for the Second Region (New York City) alleging that M. Lowenstein & Sons, Inc., New York City,

herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 13, 1937, a similar charge, and on August 3, 1937, an amended charge, were filed with the Regional Director by Textile Workers' Organizing Committee, Local No. 65, C. I. O., herein called T. W. O. C. On August 17, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director, issued complaints and notices of hearing in the two cases. Each complaint alleged 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 Act. One of the complaints deals with activities of the respondent at its Leonard Street office; and the other with activities at its warehouse. Copies of the first of these complaints and notices of hearing were duly served on the respondent and the B. S. & A. U. and copies of the second were duly served on the respondent and T. W. O. C. The respondent filed an answer to each of the complaints, dated August 27, 1937, which denied all of the material allegations.

On July 9, 1937, the B. S. & A. U. also filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of the office employees of the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On August 17, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On August 17, 1937, the Regional Director issued a notice of hearing, in this case, copies of which were duly served upon the respondent and upon the B. S. & A. U.

On August 17 and August 31, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, issued orders consolidating the three cases for the purposes of the hearing.

Pursuant to notices and amended notices of hearing, duly issued and served upon the respondent and the unions above-mentioned, a hearing was held in New York City from September 23 to October 7, 1937, before James C. Paradise, the Trial Examiner duly designated by the Board.

On September 21, 1937, prior to the commencement of the hearing, United Wholesale Employees of N. Y., herein called the U. W. E., filed with the Regional Director a petition alleging that a

question affecting commerce had arisen concerning the representation of the warehouse employees of the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 22, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of the Rules and Regulations, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice; and the Board further ordered, pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations, that the case be consolidated with the other three cases for the purposes of the hearing. Copies of the petition of the U. W. E. were served upon the parties at the hearing on September 24, 1937. The Trial Examiner ruled that since the petition raised no issues which were not raised by the complaints in these cases, no prejudice could result to any of the parties from proceeding with the hearing.

The Board, the respondent, and the B. S. & A. U. were represented by counsel and participated in the hearing. The Employees' Group of M. Lowenstein & Sons, Inc., herein called the Employees' Group, which is described and discussed in Section III B below, appeared on September 23, 1937, by one of its members. On September 24, 1937, it appeared by counsel and moved to intervene in these proceedings. The motion was granted. Thereafter, by answers dated September 30, 1937, the Employees' Group denied the material allegations of the complaints.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing, the respondent renewed its motions, previously made in writing, for bills of particulars. The motions were denied. Motions made by the respondent and the intervenor at various points in the hearing to dismiss the charges and complaints on the ground that they failed to state the facts with sufficient particularity, on the ground that the Board lacked jurisdiction in this proceeding, and on the ground that the evidence failed to sustain the allegations of the complaints, were denied. Ruling on the respondent's motion to dismiss those portions of the complaints which alleged unfair labor practices upon the part of the respondent, within the meaning of Section 8 (5) of the Act, was reserved.

At the conclusion of the hearing, counsel for the Board moved to amend the complaint in Case No. C-358, by adding an allegation that Local No. 65 of T. W. O. C., the union which filed the charge in that case, had changed its affiliation and had assumed the name of United Wholesale Employees of N. Y.<sup>1</sup> The motion was granted.

<sup>1</sup> The relationship between the U. W. E. and T. W. O. C. is discussed below in Section II.

The additional allegation was denied on the part of the respondent and the intervenor at the hearing. The motion of counsel for the Board to amend the pleadings to conform to the proof was granted. At the close of the hearing the parties were given ten days for the filing of briefs. Thereafter, the respondent filed a brief which has been considered by the Board.

On December 28, 1937, the Trial Examiner duly filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices and withdraw recognition from, and completely disestablish, the Employees' Group as representative of its employees. In addition the Trial Examiner granted the motion of the respondent, made at the hearing, to dismiss the allegations in the complaints of unfair labor practices within the meaning of Section 8 (5) of the Act. Thereafter the respondent and the intervenor each filed exceptions to the findings and recommendations of the Trial Examiner made in his Intermediate Report.

Pursuant to notice, a hearing was held before the Board in Washington, D. C., on February 7, 1938, for the purpose of oral argument. The respondent and the B. S. & A. U. were represented by counsel.

During the course of the hearing numerous objections and motions with regard to the introduction of evidence were made by the parties. The Board has reviewed the rulings of the Trial Examiner on objections to the admission of evidence and on motions made at the hearing and finds that with one exception, which will be hereinafter referred to, no prejudicial errors were committed. With this exception the rulings are affirmed. The Board has considered the exceptions to the Intermediate Report and finds that, except to the extent that they deal with the point on which the ruling of the Trial Examiner is reversed herein, there is no merit in them.

At various times during the hearing counsel for the respondent objected to the admission of evidence concerning events which took place subsequent to the filing of the charges and complaints herein. All of the evidence offered and admitted had a direct bearing on the chief issue in this case, namely, whether the respondent had committed unfair labor practices within the meaning of Section 8 (2) of the Act. This issue was properly framed by the charges, complaints, and answers. To the extent that events which occurred subsequent to the filing of such charges and complaints tended to prove or disprove the allegations of the complaints, they were properly admitted.

The respondent offered in evidence an affidavit made on March 22, 1934, by one of its employees who testified for the Board, to the

effect that he had committed defalcations of the respondent's funds to the extent of \$48.58 during a period of about 10 months in 1933, and that he promised to make restitution therefor.<sup>2</sup> This affidavit was excluded by the Trial Examiner. This ruling of the Trial Examiner is overruled, and the affidavit has been taken into consideration by the Board. It cannot be taken as completely impeaching the testimony of the witness in question, however, particularly in view of the fact that the respondent itself has retained the witness in its employ for more than three years since the defalcations were admitted.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The respondent, M. Lowenstein & Sons, Inc., is engaged in the converting of cotton and rayon goods. It employs about 325 employees at its office at Leonard Street in New York City, and about 50 employees at its warehouse, which is also located in New York City. It has five wholly owned subsidiaries. Four of these subsidiaries<sup>3</sup> are operated as an integral part of the New York City operations of the respondent. They have the same officers and occupy the same buildings as the respondent, and each handles one or more phases of the respondent's business. Although they have a few separate employees, all of the business done at the New York office and warehouse, whether by the respondent or one of these four subsidiaries, is intermingled. All references hereinafter to the respondent include the four corporations in question. The fifth subsidiary is Rockhill Printing and Finishing Company, Inc., herein called Rockhill, which operates a finishing plant in Rockhill, South Carolina. The employees of this corporation are not involved in this proceeding.

The respondent is one of the biggest cotton and rayon converters in the country. It does an annual business of \$30,000,000 and has an annual pay roll of \$400,000.

The only raw material of importance purchased by the respondent is unfinished or greige cloth. The mills which produce this cloth are located throughout the country, but most of them are in the South. The contracts for the purchase of the cloth are made by the respondent in New York City, through brokers or agents. In many cases the goods are not in existence at the time the contract is made.

<sup>2</sup> Respondent Exhibit No 4 for identification

<sup>3</sup> Classic Mills, Inc., Pickwick Diaperies, Inc., Aleo Mills, Inc., and Eddington Fabrics Corporation

The respondent resells some of the greige goods without first converting them. The bulk, however, is held at the greige mills for shipment, on the respondent's instructions, to finishing plants. Seventy-five per cent of the goods so shipped by the greige mills go to States other than those in which they originate.

At the finishing plant, the goods go through processes such as bleaching, dyeing, and printing. During this time they remain the property of the respondent, although the raw materials necessary for the processing are purchased by the finishers. Instructions for the finishing of the goods are given by the New York office, as are the instructions for their subsequent shipment. Seventy-five per cent of the respondent's goods are finished at Rockhill, and the balance at various plants located in South Carolina, Rhode Island, Connecticut, New Jersey, and New York.

After the processing of the goods by the finishing plants, they are ready for shipment to the respondent's customers. They are held by the plants for the respondent's instructions. Some are sent to the New York warehouse. Most, however, are sent directly to the customers. The latter are located in many parts of the country, including New York, Illinois, Missouri, Michigan, and Pennsylvania, and include both manufacturers and retailers. Among the latter are mail-order houses and chain stores. Some of the respondent's goods are shipped to foreign countries, including Turkey, the Philippines, and various South American states. In the process of shipment from the finishing plant to the customers, 75 per cent of the goods cross State lines.

The respondent uses all kinds of transportation, including parcel post. It has a trade-mark which is registered for use in interstate commerce.

The intimate relationship between the respondent's office and the vast amount of interstate shipments which it directs appears clearly in the record. The respondent's 30 to 40 salesmen, who travel throughout the country, operate out of New York, and all of the orders which they secure are cleared through the office. The contracts of sale made with mail-order houses and chain stores, which specify shipment to many scattered points, are made in New York. It has already been pointed out that not a piece of the respondent's goods moves except on instructions from the office. These instructions specify the manner of shipment, as well as the amount and destination. The merchandising of the goods, the selection of styles and patterns, the determination of the amount of each brand which is to be made up and kept on hand, and the securing of a proper amount of greige goods to supply the finishing plants are all done in New York. In addition all of the records of the respondent,

including those for inventory, cost accounting, bookkeeping, and crediting are handled and kept at the office. Thus that office is an indispensable nerve-center, which sets into motion all of the extensive transactions which occur in the converting process.<sup>4</sup>

The respondent keeps between 8 and 14 per cent of its total inventory at its warehouse, which is situated at some distance from the office. It is maintained for the convenience of customers in the New York area and also handles returned goods. Over 75 per cent of the shipments to the warehouse come from outside of New York, and 40 per cent of the shipments from the warehouse are made to States other than New York.

## II. THE ORGANIZATIONS INVOLVED

Bookkeepers', Stenographers' and Accountants' Union is a labor organization which has been in existence for 27 years. On June 1, 1937, it received a charter as Local No. 16 of United Office and Professional Workers of America, which is affiliated with the Committee for Industrial Organization. It admits to membership office and professional workers, including those employed by the respondent, but excludes supervisory employees and confidential secretaries to executives.

Textile Workers' Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It chartered Local No. 65 in February 1937. The jurisdiction of Local No. 65 was at first limited to employees in wholesale textile warehouses. During the succeeding months, however, it started to include employees in warehouses in lines other than textiles. In September 1937, at the suggestion of Sidney Hillman, chairman of Textile Workers' Organizing Committee, the executive board of Local No. 65 decided to change its affiliation to United Retail Employees of America, herein called the U. R. E. A., which is also affiliated with the Committee for Industrial Organization. This decision was approved by the membership. Thereafter the Local assumed the name of

<sup>4</sup>The Report of the U. S. Tariff Commission to the President on Cotton Cloth (No. 112, Second Series), 1936, pp 91-92, 118-119, throws light on the importance of the converters. It states:

The converters occupy the key position in the marketing and distribution of cotton cloth and constitute the basic points of contact between the producers and the consumers of cotton goods. Using the gray goods from the mills as their raw material they have it finished to their order in a great number of designs, finishes, and styles. A large percentage is bleached, in various finishes from soft to hard; a certain portion is dyed, in various colors, tints, and shades; and a substantial portion—in the case of print cloth the largest portion—is printed, in a great number of colors and designs. The converters keep in close touch with the fluctuating requirements of the market and are an important factor in determining, within the limits of fashion changes, the seasonal drift of style goods.

See also Cotton Textile Industry, Report of Cabinet Committee to the President, 74th Congress, 1st Session, Senate Document No. 126, pp. 119-120.

United Wholesale Employees of N. Y. and was admitted as Local No. 65 of the U. R. E. A.

The complaint in Case No. C-358, as amended, alleges that Local No. 65 of T. W. O. C. has, since it filed the charges in that case, changed its name and become affiliated with the U. R. E. A. We find that the record sustains this allegation. The respondent's contention that the complaint should have been dismissed because the complaining union had gone out of existence is without merit. The change in name and affiliation did not affect the structure of the organization. It retained the same membership, jurisdiction, officers, and executive committee. The respondent's contention that it might have been prejudiced by the change, in view of the allegation in the complaint of unfair labor practices within the meaning of Section 8 (5) of the Act, need not be considered, since we are not sustaining that allegation.

The Employees' Group of M. Lowenstein & Sons, Inc., is a labor organization whose membership is limited to employees of the respondent at the office and the warehouse.

### III. THE UNFAIR LABOR PRACTICES

#### *A. Background of the organization of the respondent's employees*

In December 1936, a small group of the respondent's office employees who were members of the B. S. & A. U. started a drive for membership. During the succeeding six months between 20 and 25 leaflets were distributed outside of the respondent's office, urging the employees to join, and pointing out the benefits of organization. There was no open union activity at the office, however. While the record indicates that some of the organizational work was done on company time, it was done in secret, in the rest rooms and behind shelves and filing cabinets.

The B. S. & A. U. by June 1937, had procured a substantial number of members and, at a meeting on June 10, 1937, it elected Leona Cotton as shop-chairman. At a subsequent meeting, on June 16, the members discussed the contract which they hoped to secure from the respondent, and authorized Norma Aronson, organizer of the B. S. & A. U., to negotiate for them with the respondent. A negotiating committee, which had also been elected on June 10, was to assist Aronson, who was not an employee, once she had secured recognition from the respondent.

A similar course of events took place at the warehouse, where T. W. O. C. started organizing the employees in May. By the middle of June it also believed itself to be in a position to negotiate with the respondent.

The respondent was made aware, through the distribution of the leaflets, that its employees were being organized. When the first leaflet was issued in December 1936, Kath, who at that time was the respondent's personnel manager, went into that portion of the office in which the cost and converting departments were located and made a speech to all of the employees present. He stated that there was a traitor among the employees who should be discovered; and went on to say that he felt this was an opportune time to announce the Christmas bonus which he had originally intended announcing a week later. Thereafter, he called Cotton, one of the early members of the B. S. & A. U., into his office and asked her why she had joined the union. She denied that she had done so. Kath told her, however, that the time would come when she would have to choose between him and the union.<sup>5</sup> Similar incidents occurred during the following months with regard to Rose Feldman and Rubin Robinson.

*B. Domination of and interference with the Employees' Group*

Formation of a new union at the respondent's office, limited to employees of the respondent, was first announced on Monday, June 21, 1937. This organization later became known as the Employees' Group. Testimony for the intervenor indicates that the idea for the formation of this organization originated with an employee named Arthur Gross. He first mentioned the idea to Freddie Feitler on June 19, while they were playing golf; and on the following day these two employees met with Julie Saltzman and Herbert Simon at Gross' home and decided to launch the organization.

On June 21, at nine o'clock in the morning, these four employees spoke to Archie O. Joslin, who since May 1937 had taken over the position of personnel manager for the respondent. They informed him of the proposed organization and asked him whether he would recognize it if it obtained a majority. Joslin told them he would, but asked for no further information.

Thereupon Gross and the others went through the office announcing a meeting for all employees to be held that night, immediately after working hours, in the respondent's lunchroom. Gross, and David Cohen, another employee, were particularly active in announcing this meeting. The method they adopted was also used for subsequent meetings. They went into each department at the office and made their announcement publicly, interrupting the work of the employees to do so. In some cases, they stayed in the department for some time discussing the new organization with the employees and comparing its merits with those of the B. S. & A. U. In fact, on June 21, Gross and Cohen were going in and out of

<sup>5</sup> Kath was not called on to testify at the hearing by the respondent.

the cost and converting departments all day; and the executives were undoubtedly well aware of their activity.

Certain assistant department heads also participated in the announcement of the June 21 meeting. Four of these in particular, Rose A. Levy, Helen Scheideberg, Anna Morrell, and Ida Lessner took active part in the formative stages of the Employees' Group. The respondent contends that these employees cannot be considered as supervisory employees, and that their activities were entirely independent of the respondent. In particular, the respondent points out that the sole power to hire and discharge rests with its personnel manager. There can be little doubt, however, that one executive cannot pass on the merits of more than 300 employees without the advice of persons in intermediate positions, who are in close contact with those under them. The employees named above have the responsibility for discipline in their respective departments. They assign the work that is to be done and report disturbances in office efficiency to the executives. The extent to which their activities can be taken to be those of the respondent will be discussed below.

Levy, Scheideberg, Morrell, and Lessner all encouraged the employees to go to the meeting on June 21. There is conflict in the testimony as to the extent to which these employees expressed, on that and succeeding days, their preference for the new organization. Nevertheless it appears clearly from their own testimony that they did express themselves frequently on the subject, and that, as will further appear below, they were active in the organization of the Employees' Group.

The meeting on June 21 was attended by almost all of the respondent's employees, including many supervisory employees and some of the executives' private secretaries. It was opened by Gross who spoke generally in favor of the form of organization which he was proposing and against that represented by the B. S. & A. U. After he had been speaking for some time a motion was made from the floor that the employees elect their own chairman. This was done, and Cotton, the shop-chairman of the B. S. & A. U. was elected, with practically no opposition. Subsequently it was decided that there should be two chairmen, one representing each side. The meeting in general constituted little more than a debate concerning the relative merits of the two unions.

The meeting lasted one to two hours. After its close about 30 employees remained behind in the lunchroom and drew up a letter addressed to the personnel manager, Joslin, expressing a belief that the B. S. & A. U. did not represent the majority of the employees and requesting that no union be recognized until the employees had chosen between the B. S. & A. U. and the new organization which was in the process of formation. This letter was signed by 17 persons.

The following day at nine o'clock in the morning it was presented by Cohen to Joslin who promised to read it. Thereafter, several of the employees, including Cohen, Gross, Morrell, Lessner, Rubin, and Frank Cooper, met in a conference room which is located near Joslin's office. The meeting lasted for one hour or more. A leaflet was drawn up which was to be issued that day.<sup>6</sup> Those present contributed money and agreed to procure further contributions from other employees. This was subsequently done, and Morrell acted as treasurer. Gross and Cooper left the building during working hours to take the draft of the leaflet to a printer to be mimeographed. Later in the afternoon Gross again left the building on company time to call for the finished leaflets. These were distributed in the office by placing one on each desk. This distribution was done openly on company time. The same is true as to the distribution of almost all of the leaflets which the Employees' Group issued during the following weeks. The respondent raised no objections to the distribution of the leaflets in this manner, and on at least one occasion Kath was present when a leaflet was distributed in the cost and converting departments but made no objection.

Another meeting of the Employees' Group, presided over by Herbert Nachman, was held on the following Monday, June 28, immediately after working hours, in the company's lunchroom. The chairman limited discussion to the formation of the Employees' Group. Cohen made a personal appeal to the employees, based on his prior activities in their behalf, and assured them that the respondent had had nothing to do with the formation of the Employees' Group. Nachman announced that on the following day delegates would be elected in each of the departments. There is some dispute in the testimony as to whether speakers for the Employees' Group stated that the respondent would rather recognize that organization than the B. S. & A. U. At any rate, Nachman stated that the Employees' Group would give the respondent ten days in which to answer its demands. Also Cohen described to the employees the Benevolent Association which had been projected for some time by the respondent. There is credible testimony that he stated that the respondent would be more likely to put this plan into effect if the Employees' Group secured a majority and was recognized by the respondent.

On the following day membership cards in the Employees' Group were distributed and delegates were elected in some of the departments. Scheideberg and other assistant department heads helped in

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<sup>6</sup> The leaflet sets out in full the letter given to Joslin that morning and urges the employees to help in the formation of the Employees' Group. It recites the benefits which the respondent's employees had enjoyed in the past and lists eight demands for further improvement of their conditions. These demands were apparently first formulated at the conference on June 22, since they were never discussed at the meeting on Monday

the obtaining of signatures to the cards. Apparently all employees were permitted to vote for delegates whether or not they signed cards. In some of the departments the employees refused to hold elections, as for example in the cost and converting departments, where the employees considered that they were already represented by the B. S. & A. U. Since no one voted, Scheideberg was advised by Cooper to "elect" herself as delegate.

On June 30 the delegates met. Cohen and Cooper, who had not been elected as delegates, were permitted to act as advisors. The delegates elected Julian Eichler as chairman of the Employees' Group, and selected seven of their number from whom the employees were to choose an Approach Committee of three. The delegates also drew up a list of demands which were to be presented to the respondent. Leaflets were distributed by both groups.

The disturbance which had been caused by the presence of two rival groups in the office caused the respondent, on June 30, to issue a notice to all of its supervisory employees requesting them to insist on strict and undivided attention by employees to their work during office hours. Despite this notice, however, the activity on behalf of the Employees' Group continued unabated and was not checked by the respondent.

On the following day, July 1, another meeting was held by the Employees' Group in the lunchroom. As before, the meeting was openly announced in each department. The leaders of the Employees' Group entertained serious doubt at this time as to the propriety of holding a meeting on company property. They attempted to arrange for the holding of the meeting at a restaurant in the vicinity, but were unable to do so. At the commencement of the meeting, Eichler, who presided, announced that, according to legal advice which he had received, there was no impropriety in holding the meeting on company property. The demands which had been drawn up were read and the names of the delegates were announced. Before the meeting proceeded to the discussion of the demands and the election of the Approach Committee, however, Eichler received a message which led him to believe that the meeting was in fact improper, and it was thereupon adjourned.

Another meeting was held on July 6, at a restaurant in the vicinity. The demands were read and voted on. The employees elected an Approach Committee consisting of Eichler, Lessner, and Jerry Fineberg. This committee was to present the demands to the respondent.

During this period supporters of the Employees' Group had been active in securing signatures from employees to membership cards. On July 7 Cohen brought the cards to Joslin with a letter, dated July 6, claiming a majority and requesting recognition. Joslin counted the cards and found that there were 220. There is conflict in the testimony

as to whether he then stated that he would recognize the Employees' Group as sole collective bargaining agent. According to Cohen, he stated at this time that he was busy and requested Cohen to return later. According to Joslin, he did immediately grant recognition to the Employees' Group. Late that afternoon after the conference with representatives of the B. S. & A. U. and T. W. O. C., which is described below, Joslin, Harry G. Kletcher, the respondent's comptroller, Cohen, and Cooper checked the signatures on the cards against the respondent's employment cards and found that a majority of the employees were represented. On July 7 or 8, the Approach Committee presented to Joslin the demands of the Employees' Group.

It is necessary at this point to review the negotiations which took place between the respondent and the representatives of the B. S. & A. U. and T. W. O. C. during the formation of the Employees' Group. On June 17 Aronson spoke to the respondent's president on the telephone and asked for a conference. She was referred by him to Joslin who, it was stated, had complete power to act for the respondent on all matters dealing with employee relationship. It was apparently not until June 21 that Aronson was able to reach Joslin. A conference was arranged for the following day, June 22, which was attended by David Livingston and Kalb, business agents of T. W. O. C., Aronson, Kletcher, and Joslin. The two unions stated that they wished to act jointly. There was discussion of the unions generally and the contracts they had with other firms. Joslin stated that he would have to be sure that the B. S. & A. U. and T. W. O. C. were trustworthy because of the confidential work done by the respondent's employees. Each of the unions claimed a majority among the employees whom they desired to represent. Joslin demanded proof of this claimed majority, and Aronson and Livingston suggested several ways in which it could be proved, including a consent election to be held under the auspices of the Board, and a check of the union membership cards against the respondent's pay roll, to be made by a representative of the Board. Joslin, however, demanded that the union membership cards be presented to him. This the unions refused to do. Joslin pointed out that he had already been approached by another group of employees who had given him a letter that morning. He suggested that a second conference be had with the B. S. & A. U. and T. W. O. C. on June 29. Livingston and Aronson objected to the delay of one week before further negotiations and pointed out that the meeting sponsored by Gross had taken place on company property, that supervisory employees of the company had been active in supporting it, and that generally the impression had been created among the employees that the respondent favored the new organization as against the B. S. & A. U. They therefore suggested that the respondent eradi-

cate the impression which had been created among its employees by posting a notice stating that it favored neither union. Joslin stated that he felt that such a notice would be unduly favorable to the B. S. & A. U. and that the respondent desired to remain completely neutral in the situation. Livingston pointed out that this neutrality on the part of respondent was in fact partiality to the new group, since it was well-known that supervisory employees of the respondent were supporting that organization and were spreading the rumor that the respondent would never recognize the B. S. & A. U. Livingston drafted a notice which he suggested that the respondent post, and Joslin promised to consider the matter. When Aronson later telephoned Joslin to ask him whether the notice had been posted, Joslin stated that it had not been because the Employees' Group had objected.

On June 29 Joslin called Aronson and requested that the conference set for that day be postponed and that he meet her alone at some distance from the office, because of an unpleasant situation which had been caused by the distribution on the previous day of a B. S. & A. U. leaflet. At Aronson's request Louis Merrill, president of the B. S. & A. U., also attended this conference. It should be remembered that it was on this day that the Employees' Group at the office was actively procuring membership cards and holding elections of delegates. Joslin told Aronson and Merrill that the respondent resented the tone of the June 28 leaflet, and Aronson expressed regret that the language had been somewhat provocative. Beyond that, little was accomplished at the meeting. Joslin again demanded proof of majority and the B. S. & A. U. representatives again requested that a consent election be held, or an impartial check of the membership cards.

On the following day Kletcher and Joslin again met the representatives of the two unions. The respondent repeated its neutral stand and asked to see the B. S. & A. U. cards. Another draft of a notice stating that the respondent did not favor the Employees' Group was drawn up. In addition, the union representatives suggested that the Employees' Group meeting, scheduled for the following day, be postponed and that a joint meeting be held at which representatives of both sides would be present. The respondent refused to take any action, but Joslin promised to see the representatives of the Employees' Group and ask them whether they would agree to issuing a leaflet jointly with the B. S. & A. U. Joslin later informed Aronson that the Employees' Group had rejected the suggestion. There is conflict in the evidence as to whether Joslin or the union representatives suggested that there be another conference, with Leon Lowenstein, president of the respondent, present, as soon as possible. Joslin told them that July 6 was the earliest date on which such a conference could be held. It was agreed that they would meet on

that day. On July 1 Cotton saw Joslin to complain of the activity of the supervisory employees and again requested him to post a neutrality notice. Joslin insisted that he could not do so since such action would be taken as favorable to the B. S. & A. U.

The July 6 meeting was postponed, at Joslin's request, to July 7, on the ground that Lowenstein could not be present until that day. It is significant that the Employees' Group meeting on July 1 had been terminated before any action had been taken and that it was scheduled to be resumed on July 6. The union representatives suspected that the postponement of their conference with the respondent was a direct result of the postponement of the Employees' Group meeting, and they expressed their suspicions to Joslin the following day.

On July 7, Joslin, Kletcher, and Edward Goldberger, secretary and assistant treasurer of the respondent, met with Aronson and Livingston at about noon. Joslin stated that it would not be necessary to see Lowenstein since the respondent had decided to recognize the Employees' Group on the basis of the cards which had been presented to him that morning and which he intended to check that night. The union representatives protested this action on the part of the respondent and pointed out that many of the employees had signed cards in both unions. They again demanded that an election be held, but Joslin refused.

Up to this point all of the negotiations had been concerned only with the employees at the respondent's office. When Joslin stated that he intended to recognize the Employees' Group as the representative of those employees, Livingston requested recognition of T. W. O. C. as the representative of the warehouse employees. Joslin asked to see the T. W. O. C. membership cards but Livingston refused to produce them. On the following day, and on July 9 or July 12, telephone conversations took place between Livingston and Joslin, during the course of both of which Joslin refused to act unless he was shown the T. W. O. C. cards.

As has been previously noted T. W. O. C. had organized part of the warehouse employees during May and June. On July 12 the first attempt was made on the part of the Employees' Group to reach the warehouse employees. On that day, Cohen, Gross, and Cooper went uptown to the warehouse to speak in favor of their own organization. They made several visits during the course of the next week. Each of these visits was made on company time. On at least one of them, the Employees' Group representatives spent more than two hours uptown. They spoke to large groups of employees and pointed out that in case of trouble, the respondent could close down the warehouse. A leaflet was circulated uptown asking the warehouse employees to send representatives to the delegates' meeting of July 13.

This meeting was held on July 13 or 14 and three delegates from the warehouse attended. On July 19 and 20, 34 employees at the warehouse signed membership cards in the Employees' Group. Thereafter representatives of this group sent a letter to Joslin requesting him not to bargain with any union as to the warehouse employees until a majority of these employees had made their choice. On July 23 the warehouse employees' cards were brought to Joslin by Cohen and were checked against the pay roll by Cohen, Joslin, and Kletcher. Joslin at once recognized the Employees' Group as the bargaining representative for the warehouse employees.

In the meantime, Joslin and Kletcher had been considering their response to the demands which had been presented to them by the Employees' Group. On July 21 they conferred with the Approach Committee at Joslin's home and outlined the plan which was presented to the employees the following day. A meeting was called in the lunchroom on July 22. Eichler was chairman. It was suggested that Joslin and Kletcher be asked to present their plan. This was done and Joslin gave his answers to the various demands made by the Employees' Group. He described a system for the classification of the employees which provided minimums and maximums for certain types of work. He then went over the demands of the Employees' Group in detail, stating among other things that the demands for vacations would be granted in 1938, and that he would not pay extra for overtime, since he intended to eliminate it altogether. With regard to the demand for a signed contract he said, "With whom shall I sign a contract? And why?" While giving his plan he noticed Cotton taking notes and requested her to stop doing so. He also made some rather disparaging remarks about the B. S. & A. U. A few of the warehouse employees attended this meeting, but the discussion was concerned only with the office, since no demands had been presented up to that time on the part of the uptown employees.

On July 28 four of the most active B. S. & A. U. supporters, including Cotton, were asked by Kletcher to go to Joslin's office. Joslin asked them to stop their activity, in view of the fact that the Employees' Group had been recognized; requested their support for the plan; and asked that no more leaflets be distributed. He told them they were lucky to have an employer who had dealt so fairly with them, because if they had had to strike, as other employees in the neighborhood had, they would have had difficulty getting new positions, in view of the fact that they were Jewish.

At a meeting of the Employees' Group delegates on July 29 a substantial amount of dissatisfaction on the part of the employees was reported. It was decided by the delegates that the Employees' Group should take a ballot to determine whether the employees wanted to accept the plan. Joslin announced that he would not go ahead with

his plan unless the employees demonstrated confidence in him by a vote of between 85 and 90 per cent in favor of it. Both the B. S. & A. U. and T. W. O. C., realizing that an endorsement of the plan would not constitute an endorsement of the Employees' Group, advised their supporters, by means of leaflets, to vote "yes" in the ballot, in order to get the increases in salary which they desired. As a result, the vote when it was held gave an almost unanimous endorsement to the plan. The ballots for this election were printed during working hours on the company's multigraphing machine. Each ballot contained the name of an employee and a space for his signature, and unsigned ballots were not considered. The ballots were counted by employees, including among others the leader of the B. S. & A. U. forces, Cotton. The plan was put into effect by the respondent on September 1. During August, also, the Employees' Group at both the office and the warehouse elected grievance committees, in accordance with the respondent's agreement to handle grievances through such committees.

The record does not show clearly the extent to which the Employees' Group continued to function after the plan went into effect. It is significant that at the oral argument in this proceeding, on February 7, 1938, counsel for the respondent stated that the Employees' Group was no longer functioning. This contrasted strikingly with the position taken at the hearing that the Employees' Group was a bona fide labor organization which was actively engaged in furthering the interests of the respondent's employees through the activity of its grievance committees and otherwise.

The entire history of the Employees' Group both at the respondent's office and at the warehouse shows clearly that it sprang up and grew because of the encouragement of the respondent. The respondent maintains that it was in no way responsible for the acts of its supervisory employees, that these employees cannot be considered as having acted with its authority. It may well be that none of the respondent's executives ever gave instructions to any of its employees to form or to encourage an organization in opposition to the B. S. & A. U. or T. W. O. C. Nevertheless, it is normal for an employee to assume that those who are in positions of authority represent to a large extent the wishes of the employer. The respondent was informed from the start of the activity of the Employees' Group, that it was being actively supported by several employees who had positions of authority, and that its supporters were creating the impression, true or false, that the Employees' Group was the organization which the respondent favored. Yet no effort was made to correct that impression, even though the executives were specifically requested to do so, on more than one occasion. The respondent could probably have

avoided the impression created by the acts of Levy, Scheideberg, Lessner, and Morrell, as well as the other highly paid employees who professed to know the respondent's attitude toward the unions, by a simple declaration to its employees of its true position. It chose not to do so. The respondent's contention that a statement on its part that it was neutral would have been to the advantage of the B. S. & A. U. cannot be sustained; the only advantage that would have accrued to the B. S. & A. U. would have been the elimination of an advantage enjoyed by the Employees' Group which it had no right to enjoy.

That the respondent was in fact favorable to the Employees' Group is seen by the fact that company property and company time were utilized to the fullest extent by the Employees' Group and that no attempt was made at any time to curb this activity.<sup>7</sup> Gross and other employees who spent a large part of their working hours in activity in connection with the Employees' Group testified that they were somewhat concerned about the fact that they were getting behind in their work, but that they were not concerned with the loss of their jobs or, in fact, about any prejudice to them which might result in the eyes of respondent. They were never reprimanded for their extensive activities.

The activities on the part of the Employees' Group caused a large amount of discussion in the various departments of the respondent, which discussion was participated in by supervisory employees. Although this disturbance commenced on June 21, it was not until June 30 that the respondent took any action with respect to it. Until that time the open support of the Employees' Group by Cohen, Gross, and others went completely unchecked, and even after that date there was no substantial diminution in that support.

The record conclusively shows that the respondent was opposed to the organization of its employees into unions with outside affiliations, and that it welcomed the formation of an organization limited to its own employees which it felt it could control.<sup>8</sup> The Employees' Group

<sup>7</sup> In contrast to the activities of the Employees' Group, all of the B. S. & A. U. and T. W. O. C. leaflets were distributed off the premises of the respondent, except for one, which was distributed at the office, before the working day began, and after the Employees' Group had commenced its activities.

<sup>8</sup> That the respondent's hostility to the B. S. & A. U. and T. W. O. C. has continued to exist may be seen in the brief which it filed in this proceeding. On page 16, after pointing out that both of these unions were led by young persons, the respondent states:

It may well be that youth must be served, *but* we submit that the time has not yet arrived when an institution the size of respondent will be made subject to the direction and will of these children—so that they may have an opportunity to tear down what it has taken sixty years to build up. And likewise we assert that it is unthinkable that respondent's office workers—who become possessed of intimate confidential knowledge in respect of merchandise costs, sources of supply and the like, all of which has accounted for respondent's great success—should be subject to the orders of an outside group, with the result that said knowledge which these workers have gained may become known to these outsiders, who would then be in a position to use it in a manner that might destroy respondent

grew and gained membership because of the encouragement and support of the respondent and was used by the latter to frustrate the attempts on the part of its employees to organize themselves for collective bargaining.

We find that the respondent has dominated and interfered with the formation and administration of the Employees' Group and has contributed support to it.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed under Section 7 of the Act.

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

At the hearing in this proceeding both the B. S. & A. U. and T. W. O. C. refused to put in evidence their membership cards or other records showing how many of the respondent's employees had designated them as their representatives for the purposes of collective bargaining. The record, therefore, affords insufficient proof that either of the unions had been so designated by a majority of the employees in an appropriate unit. It is therefore not necessary to consider the other issues raised by the allegations made in the complaints that the respondent had engaged in unfair labor practices within the meaning of Section 8 (5) of the Act. These allegations will be dismissed.

## IV. THE QUESTIONS CONCERNING REPRESENTATION

As noted above in Section III, both the B. S. & A. U. and T. W. O. C., during June 1937, demanded recognition by the respondent as representatives of certain employees for the purposes of collective bargaining. At the hearing in this case, neither of these unions presented proof that they represented a majority of the employees in the unit found to be appropriate for the purposes of collective bargaining. The record shows, however, that both unions had a substantial number of members among the respondent's employees, and that both the B. S. & A. U. and the U. W. E., the successor to T. W. O. C., still desired sole bargaining rights. We find that questions concerning representation of employees of the respondent have arisen and that these questions can best be solved by the holding of elections by secret ballot. Those eligible to vote in the elections shall be the employees of the respondent, within the appropriate units, employed within a period to be determined

by the Board at the time that it directs the elections in this proceeding to take place.

Since we have found that the Employees' Group was dominated, interfered with, and supported by the respondent, its name will not appear on the ballot.<sup>9</sup>

#### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES AND THE QUESTIONS CONCERNING REPRESENTATION UPON COMMERCE

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

#### VI. THE APPROPRIATE UNITS

The B. S. & A. U. claims to represent all of the employees of the respondent at its Leonard Street office, exclusive of supervisory employees and private secretaries to executives. The U. W. E. claims to represent all of the employees of the respondent at its warehouse, exclusive of supervisory employees. The record sustains the conclusion that these two groups of employees constitute appropriate units. No contention to the contrary was made by any of the parties. The evidence also shows, as noted above in Section III, that assistant department heads, as well as department heads, have supervisory duties, including disciplinary powers, which associate them with the management. The same appears to be true of the converters, each of whom is in charge of a department which handles a particular type of the respondent's merchandise. The term, supervisory employees, as used herein, includes department heads, assistant department heads, and converters.

We therefore find that the employees of the respondent employed at its Leonard Street office, exclusive of supervisory employees and private secretaries to executives, and the employees of the respondent at its warehouse, exclusive of supervisory employees, constitute two units appropriate for the purposes of collective bargaining and that said units will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

<sup>9</sup> *Matter of S. Blechman & Sons, Inc. and United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15, decided November 4, 1937; *Matter of H. E. Fletcher Co. and Granite Cutters' International Association of America*, 5 N. L. R. B. 729, decided March 2, 1938.

## VII. THE REMEDY

We have found that the respondent dominated and interfered with the formation and administration of the Employees' Group and contributed support thereto. By such domination and interference the respondent has prevented the free exercise of its employees' right to self-organization and collective bargaining. Throughout its existence, the Employees' Group has been used by the respondent as a tool in preventing the organization of its employees into labor unions of their own choice. The mere withdrawal of the respondent's domination and support of the Employees' Group will not be sufficient to overcome the impression created by the circumstances which surrounded its origin. Therefore, in order to restore to the employees the full measure of their rights guaranteed under the Act, we shall order the respondent to withdraw all recognition from the Employees' Group and disestablish it as representative of its employees at either its office or its warehouse for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment. The respondent will, in addition, be ordered to cease and desist from its unfair labor practices described above.

The Board will delay the holding of the elections to determine the bargaining representatives of the respondent's employees until it is notified that the respondent has substantially complied with the terms of the Board's order. In addition, as noted above, we shall make no provision for the designation of the Employees' Group on the ballots.

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

## CONCLUSIONS OF LAW

1. Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O., United Wholesale Employees of N. Y., and the Employees' Group of M. Lowenstein & Sons, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. Textile Workers' Organizing Committee, Local No. 65, C. I. O., was, prior to the formation of the U. W. E., a labor organization within the meaning of Section 2 (5) of the Act.

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

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the

respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

6. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

7. Questions affecting commerce have arisen concerning the representation of employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

8. The employees of the respondent employed at its Leonard Street office, exclusive of supervisory employees and private secretaries to executives, and the employees of the respondent at its warehouse, exclusive of supervisory employees, constitute two units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) 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, M. Lowenstein & Sons, Inc., 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 purposes of collective bargaining and 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 Employees' Group of M. Lowenstein & Sons, Inc., or any other labor organization of its employees, and from contributing support to the Employees' Group of M. Lowenstein & Sons, Inc., or to any other labor organization of its employees.

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

(a) Withdraw all recognition from the Employees' Group of M. Lowenstein & Sons, Inc., as representative of its employees at either its office or its warehouse for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish the Employees' Group of M. Lowenstein & Sons, Inc., as such representative;

(b) Immediately post notices in conspicuous places throughout its office and warehouse, and maintain such notices for a period of thirty (30) consecutive days from the date of such posting, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that the respondent will withdraw all recognition from the Employees' Group of M. Lowenstein & Sons, Inc., as representative of its employees at either its office or its warehouse for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and that the Employees' Group of M. Lowenstein & Sons, Inc., is disestablished as such representative;

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

The allegations in the complaints as to unfair labor practices within the meaning of Section 8 (5) of the Act are hereby dismissed.

### DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is

**DIRECTED** that, as part of the investigations directed by the Board to ascertain representatives for the purposes of collective bargaining with M. Lowenstein & Sons, Inc., elections by secret ballot shall be conducted at such time as the Board will in the future direct, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among those employees of M. Lowenstein & Sons, Inc., who fall within the groups described below, who were employed by M. Lowenstein & Sons, Inc., within a period to be determined by the Board in the future:

(a) Those who were employed at the Leonard Street office, exclusive of supervisory employees and private secretaries to executives, to determine whether or not they desire to be represented by Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O., for the purposes of collective bargaining.

(b) Those who were employed at the warehouse, exclusive of supervisory employees, to determine whether or not they desire to be represented by United Wholesale Employees of N. Y. for the purposes of collective bargaining.