

In the Matter of SIMPLEX WIRE AND CABLE COMPANY *and* WIRE & CABLE WORKERS FEDERAL LOCAL UNION 21020, AFFILIATED WITH THE A. F. OF L.

In the Matter of SIMPLEX WIRE AND CABLE COMPANY *and* WIRE & CABLE WORKERS FEDERAL LOCAL UNION 21020, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

In the Matter of SIMPLEX WIRE & CABLE Co. *and* SIMPLEX EMPLOYEES ASSOCIATION

*Cases Nos. C-359, R-396, and R-397.—Decided March 29, 1938.*

*Electric Wire and Cable Manufacturing Industry—Interference, Restraint, and Coercion:* anti-union statements, circulated among employees—*Company-Dominated Union:* domination of and interference with formation and administration of; encouragement and support given to; disestablished as representative of employees—*Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize union until certified by Board—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; functional coherence; hourly rate; community of interests—*Election Ordered:* company-dominated union excluded from ballot.

*Mr. Norman F. Edmonds*, for the Board.

*Mr. Bartholomew A. Brickley*, *Mr. Malcolm Donald*, and *Mr. Noel Morss*, of Boston, Mass., for the respondent.

*Mr. Frank P. Fenton* and *Mr. John W. Cussen*, of Boston, Mass., for the Federal Local.

*Mr. James J. Morris*, of Cambridge, Mass., for the Association.

*Mr. Abraham J. Harris*, of counsel to the Board.

## DECISION

### ORDER

AND

### DIRECTION OF ELECTION

#### STATEMENT OF THE CASE

Charges and amended charges having been filed on September 9 and October 23, 1937, respectively, by Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, herein called the Federal Local, the National Labor

Relations Board, herein called the Board, by A. Howard Myers, Regional Director for the First Region (Boston, Massachusetts), issued and duly served its complaint dated October 25, 1937, against Simplex Wire and Cable Company, of Cambridge, Massachusetts, the respondent herein, alleging 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. In substance, the complaint alleged that the respondent dominated and interfered with the formation and administration of the Simplex Employees Association, herein called the Association, and that it interfered with, restrained, and coerced its employees in the exercise of their right to self-organization. The respondent filed its answer to the complaint denying all the material allegations of the complaint.

On September 23, 1937, the Federal Local petitioned the Board for an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 24, 1937, the Association filed a similar petition.

On October 18, 1937, the Board directed the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, 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. On the same date, pursuant to Article III, Section 10 (c), (2) and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board issued an order consolidating the complaint case and the representation cases for purposes of hearing.

Pursuant to a notice served upon the respondent, the Federal Local, and the Association, a hearing was held in Boston, Massachusetts, from November 1 to November 6, 1937, before Eugene Lacy, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Association were represented by counsel. The Federal Local was represented by a duly authorized representative as well as by counsel. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

Briefs were filed with the Trial Examiner by the respondent, the Federal Local, and the Association. On January 11, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had dominated and interfered with the administration of the Association and had restrained and coerced its employees in the exercise of their right to self-organization.

On January 21, 1938, the respondent and the Association each filed its exceptions to the Intermediate Report, in which each excepted to the Trial Examiner's findings that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint.

On February 16, 1938, pursuant to request therefor and notice to the representatives of the respondent, the Federal Local, and the Association, a hearing was had before the Board in Washington, District of Columbia, for the purpose of oral argument. Counsel for the respondent, the Association, and a representative of the Federal Local participated, and counsel for the respondent filed a brief. The Board has fully considered the exceptions filed and the arguments presented at the oral argument as well as those contained in the briefs filed with the Trial Examiner and that of the respondent filed with the Board. The Board has also reviewed the various rulings of the Trial Examiner on motions and objections to the admission of evidence. The Board finds that no prejudicial errors were committed and that the exceptions filed are without merit. The rulings of the Trial Examiner are hereby affirmed.

Upon the entire record in the three cases, the Board makes the following:

### FINDINGS OF FACT

#### I. THE RESPONDENT AND ITS BUSINESS

The respondent, Simplex Wire and Cable Company, is a corporation, organized under the laws of the State of Massachusetts, with its principal office and place of business in Cambridge, Massachusetts. The respondent is engaged in the manufacture and sale of electric wire and cable and is one of the 12 largest producers of such products in the United States. Its raw materials consist principally of copper, rubber, lead, cotton yarns, steel, chemicals, jute and various fabrics, tars, and glues. Purchases of these amount to over \$1,000,000 annually, 65 per cent of such purchases being made outside the State of Massachusetts. The respondent's sales average \$2,500,000 annually, 90 per cent of the products sold being shipped outside the State of Massachusetts, to every State in the United States, to various United States possessions, and to foreign countries.

#### II. THE ORGANIZATIONS INVOLVED

Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, is a labor organization admitting to its membership the production and maintenance employees of the respondent, excluding clerical and supervisory employees.

Simplex Employees Association is a labor organization admitting to membership all employees of the respondent, excluding supervisory employees.

### III. THE UNFAIR LABOR PRACTICES

Organization of the Federal Local began in June 1937. A charter was obtained from the American Federation of Labor, and officers were elected on August 9.

On August 12 and 13, 1937, there appeared in various departments of the respondent's plant petitions, circulated by employees, which stated that "the undersigned are satisfied with working conditions in our department." Numerous signatures to these petitions were obtained, and it was the intention of those who circulated the petitions to present them to the management. Although it was testified that the petitions were circulated surreptitiously so that the foremen would not notice the activity, it appears that the management heard of the circulation of the petitions and, on August 13, 1937, called a meeting of the Factory Committee.<sup>1</sup> The management's attitude at this meeting was that it did not want to see the petitions or have anything to do with them, and this attitude was expressed so forcefully that one of the members of the Factory Committee who had been instrumental in instigating the circulation of the petitions, and who had taken the signed petitions to the Factory Committee meeting with him for the purpose of presenting them to the management, did not attempt to present them.

During the following fortnight the members of the Factory Committee held two informal meetings on their own time from which representatives of the respondent were absent. At one of these meetings the resignation of the chairman of the Committee, who had been elected president of the Federal Local, was requested and obtained. The remaining members discussed the formation of an independent union. During the same period, application slips for membership in such an organization were passed out among those who had signed the petitions and their signatures obtained. About August 24, 1937, two employees interested in the formation of an independent union consulted the president of the respondent regarding their right to form such a union and were assured that they had such a right. The respondent's president thereupon obtained reprints of an article which appeared in the August 1937 issue of *Factory Management and Maintenance* magazine. These reprints

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<sup>1</sup>The Factory Committee was a body that had been in existence in the respondent's plant since 1910; was composed of representatives from the various departments; met only at the call of the management, and then only with the management; and was organized and maintained solely for the purpose of administering a so-called "profit-sharing" plan, although occasionally other matters were discussed with the members of the Committee by the management.

assumed two forms: (1) a poster which the respondent on August 26 placed on approximately 20 bulletin boards about its plant, the boards being located close to the employees' time clocks; (2) a small pamphlet. Of the latter, the respondent bought 550 or 650, called a meeting of its foremen on August 27, gave each foreman several, and told the foremen that the pamphlets were not to be distributed to any employees except upon their request. It appears that the foremen placed the pamphlets on their desks, and in the succeeding day or two the pamphlets were picked up by employees and thus distributed.

The posters and the pamphlets contained, with the exception of a deletion hereinafter mentioned, identical material. They were entitled, in large bold-face type, "Employees Can Form Factory Unions". They purported to state what the rights of employees are under the Act and contained a model constitution for a "factory union". They were replete with statements such as the following:

The labor leader has an ax to grind, because he wants to build up his union and the income of his union.

There is nothing in the law to require an employee to join a union that is unfriendly to the employer, or to start trouble with the employer.

They (employees) can choose outsiders if they wish. They can run their own affairs without the help of outsiders if they wish.

If they want an organization of their own, instead of a C. I. O. or A. F. L. union, the course for them to pursue is simple. . . .

From the posters, the respondent made a deletion, which, the president of respondent testified, was done on advice of counsel because the deleted part was "strong" or "argumentative". No deletion, however, was made of the identical statements contained in the pamphlet. The deleted part reads as follows:

If they (employees) have a fair employer, they will probably not care to turn their problems over to outsiders. If employees want to fight, by resorting to strikes, picketing and such activities, they may feel a desire to call in outside leaders and prepare for trouble.

The Federal Local requested recognition as the bargaining agent of respondent's employees by letter dated August 28, 1937. The respondent replied on August 30, setting September 2 as a date for a conference between the representatives of the respondent and of the Federal Local. On the night of August 31 a meeting was held at the Elks Building, Cambridge, at which the Association was organized. Not more than 250 employees attended. Applications for member-

ship were received at the meeting from 309 employees, together with 25 cents each for the first month's dues, some of the applications having been signed prior to the meeting by persons not attending. A Mr. Proctor, one of the respondent's employees, presented a constitution to the meeting. This constitution, later adopted by the Association membership, is, with a few minor and insignificant changes, verbatim the model constitution contained in the posters and pamphlets posted and distributed by the respondent. Proctor testified that he had seen the pamphlets but that he had copied the constitution which he proposed not from them but from a copy of *Factory Management and Maintenance* magazine itself which he had seen in the shipping office where he worked.

The following day, September 1, the Association addressed a letter to the respondent, notifying it of the formation of the Association and requesting a hearing. This letter was delivered to the respondent and answered on the same day, the answer setting September 3 as date for meeting the representatives of the Association.

When the respondent met with representatives of the Federal Local on September 2, it advised them that the Association had also asked for recognition and that therefore the respondent could recognize neither. On September 3, the same advice was given to the Association representatives. Thereafter, several conferences were held among the representatives of the respondent, of the Federal Local, and of the Association. At some of these conferences there were present representatives of the Regional Director's office. At one such conference the accusation was made that the respondent's foremen were interfering with the self-organization of the employees. At the respondent's request, a member of the Regional Director's staff drafted a notice which was posted by the respondent on its bulletin boards on September 8. This notice set forth Section 7 of the Act and stated that respondent's policy was to abide by the letter and spirit thereof.

It is evident from what has been related that the respondent, after hearing of the organization activities of the Federal Local, and at a time when the organizational activity of the Federal Local was at its height, suggested and fostered the formation of the Association. The posters and pamphlets posted and distributed by the respondent could have had no other effect. The timing of the formation of the Association and the large number of membership applications procured at its very first meeting must be attributed to the stimulus furnished by the respondent.

The posters and pamphlets not only impressed the employees with the fact that they could form a factory union, but also indicated quite definitely that the respondent favored the formation of such a union and looked with disfavor upon any outside organization. To

publish, under the existing circumstances, among its employees a spirited argument in favor of an inside union was such interference, restraint, coercion, and support as the Act declares unlawful. The Association, formed and administered with such encouragement and support from the respondent, became an organization of the employer's choice.

The respondent has argued, both orally and in its briefs, that if, in response to its employees' requests for information as to their right to self-organization, it had maintained silence rather than post and distribute the posters and pamphlets, such silence might have been "construed as an expression of disapproval or hostility to the attempt of the employees to exercise their right of self-organization." We do not find it necessary to pass on the question of what the effect of a discreet silence on the part of respondent would have been. Here there was not silence, but statements boldly publicized.

The notice posted by respondent on September 8 could not undo the harm already wrought. Such a formal statement of policy could neither dissolve the Association nor erase from the employees' minds the unequivocal statement theretofore published favoring the formation of the Association.

We find that the respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of their right to self-organization and that it has dominated and interfered with the formation and administration of the Association and has contributed and is contributing support thereto.

#### IV. THE QUESTION CONCERNING REPRESENTATION

As pointed out hereinabove in Section III, the respondent refused to recognize the Federal Local for the purposes of collective bargaining. This refusal was based, first, upon the ground that the Association also claimed to represent a majority of the employees, and second, upon the ground that the Federal Local did not prove that it represented a majority. At the hearing, the Federal Local, still claiming a majority membership, introduced no clear and convincing proof thereof.

The respondent has indicated in its arguments, both orally and in its briefs, that it desires an election to be conducted by the Board to determine its employees' representatives for the purposes of collective bargaining, and that in the absence of such an election it will not feel free to recognize any union as representing its employees.<sup>2</sup>

We find that a question has arisen concerning representation of employees of the respondent.

<sup>2</sup> At the close of the hearing, the respondent filed with the Trial Examiner a written motion for the determination of the appropriate unit, the employees' representatives in such unit, and for an election for such purpose. These matters being already under consideration by the Board pursuant to the filing of the petitions for investigation and certification of representatives, the motion is hereby denied.

## V. THE APPROPRIATE UNIT

The respondent's employees fall into the following categories: Production and maintenance employees, factory clerks, factory-office clerks, printers, shipping-office clerks, general-office clerks, and other clerical employees.

The Federal Union in its petition claims that the appropriate bargaining unit consists of the production and maintenance employees, excluding supervisory employees. The work of these is closely related, they are all paid on an hourly basis, and their interests as regards relationship with the respondent are practically identical. This is disputed by no one. There is also no dispute over the exclusion from the unit of the supervisory employees: foremen, assistant foremen, superintendents, and assistant superintendents. The only question arises with reference to whether one or more of the other groups of employees should be included in the unit.

*Factory clerks.* These employees, although paid on an hourly basis, the same as are the production and maintenance employees, are engaged in a different sort of work. Their work is clerical and performed at desks, usually in the foreman's office. Their work consists of keeping records of production, stock, employees' time, etc., and of transmitting the foreman's orders to the production employees in the department. The immediate interests and problems of these workers are not those of actual production workers.<sup>3</sup> We find that the factory clerks should not be included in the unit.

*Factory-office clerks.* These employees are paid on a weekly salary basis. Their work is performed in a factory office located in a different building from those in which the production departments are located. In large part, their work consists of assembling the data collected by the factory clerks, maintaining costs data, and similar clerical tasks. The exclusion of the factory clerks from the unit requires, *a fortiori*, the exclusion of the factory-office clerks, and we find that they should be so excluded.

*Printers.* The respondent maintains its own print shop where it employs a number of printers. These print the stationery, sales letters, catalogs, and various forms used by the respondent in its business, as well as the labels applied to its products. The Federal Union contends that the printers are "a high type of man." If it is meant by this that they are skilled craftsmen, we find no distinction between them and, say, the maintenance electricians employed by the respondent whom the Federal Local agrees should be included in the unit. The Federal Local would also exclude the printers for the reason that the labels printed by them are "used after the finished

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<sup>3</sup> See *Matter of R C A Manufacturing Company, Inc and United Electrical & Radio Workers of America*, 2 N. L. R. B. 159.

product is completed." To exclude the printers for such a reason and include the painters who paint the machinery on which production has taken and will take place, is, we feel, drawing a tenuous distinction.

In the absence of any further evidence, we are not warranted in excluding the printers from the unit.

*Shipping-office clerks.* These employees are to the shipping department what the factory clerks are to the several production departments. We exclude the shipping-office clerks from the unit for the same reasons for which we have excluded the factory clerks.

*General-office clerks and other clerical employees.* In the general office, the executive, sales, purchasing, pricing, and accounting departments are located. It is obvious that these departments are closely related to management. In line with our practice, in the absence of convincing reason being shown for so doing, we will not include the general office clerks and other clerical employees in the unit.

We find that the production and maintenance employees of the respondent, including printers, but excluding supervisory employees, factory clerks, factory-office clerks, shipping-office clerks, general-office clerks, and other clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policy of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

The Federal Local claims to represent a majority of the employees in the appropriate unit, but no clear or convincing evidence was introduced at the hearing upon the basis of which we can make a finding that a majority of the employees in the appropriate unit have designated and selected said organization as their representative for the purposes of collective bargaining. We, therefore, find that an election by secret ballot is necessary to resolve the question concerning representation.

The Federal Local desires that those eligible to vote at such election be determined as of a date not later than August 28, 1937, the date on which it first asked for recognition.

The respondent desires eligibility to vote to be determined as of the date of the direction of election or as of a date close thereto. The respondent experienced an unusual increase in business early in 1937 necessitating employment by it of over 200 additional workers. In the summer of 1937 there was a marked recession in respondent's business, and by fall the employment of most of the extra employees

had been terminated. The respondent's evidence that this was not a seasonal or temporary lay-off is uncontradicted. The respondent desires only its normal force to participate in the election.

Under the circumstances, and in the absence of clear and convincing reason for not doing so, we see no reason for not adopting our usual rule of determining eligibility and shall direct that the employees in the appropriate unit on September 23, 1937, the date the Federal Local filed its petition for investigation and certification of representatives, excluding those who have since quit or been discharged for cause, shall be eligible to vote.

#### VII. THE EFFECT OF THE UNFAIR LABOR PRACTICES AND THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, and the question concerning representation which has 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.

#### VIII. THE REMEDY

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of their right to self-organization. We shall order the respondent to cease and desist from so doing.

We have also found that the respondent has dominated and interfered with the formation and administration of the Association and has contributed support thereto. We shall order the respondent to cease and desist from so doing and to disestablish the Association. Since the Association will be disestablished, in directing an election we shall make no provision for the designation of the Association on the ballots.

We shall also order the dismissal of the Association's petition for investigation and certification of representatives.

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. Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the National Labor Relations Act.
2. Simplex Employees Association is a labor organization, within the meaning of Section 2 (5) of the National Labor Relations Act.

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

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

6. A question affecting commerce has arisen concerning the representation of employees of Simplex Wire & Cable Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

7. The production and maintenance employees of Simplex Wire & Cable Company, including printers, but excluding supervisory employees, factory clerks, factory-office clerks, shipping-office clerks, general-office clerks, and other clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations 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, Simplex Wire and Cable Company, Cambridge, Massachusetts, its officers, agents, successors, and assigns shall:

1. Cease and desist:

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

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

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

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

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

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

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

The petition for investigation and certification of representatives filed by Simplex Employees Association on September 24, 1937, is hereby dismissed.

#### DIRECTION OF ELECTION

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 hereby

**DIRECTED** that, as part of the investigation ordered by the Board to ascertain representatives for collective bargaining with Simplex Wire and Cable Company, an election by secret ballot be conducted within fifteen (15) days from the date of this Direction under the direction and supervision of the Regional Director for the First 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 the production and maintenance employees of Simplex Wire and Cable Company, Cambridge, Massachusetts, who were employed by it on September 23, 1937, including printers but excluding supervisory employees, factory clerks, factory-office clerks, shipping-office clerks, general-office clerks, other clerical employees, and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, for the purposes of collective bargaining.