

In the Matter of EAGLE MANUFACTURING COMPANY and STEEL WORKERS ORGANIZING COMMITTEE

Cases Nos. C-478 and R-390.—Decided April 7, 1938

Oilers and Oil Containers Manufacturing Industry—Interference, Restraint, or Coercion: efforts to discredit "outside" labor organization; prior attempts to institute employee representation plan; employer-conducted election to poll strength of "outside" union—*Strike:* precipitated by refusal to sign contract with recognized majority representative—*Company-Dominated Union:* suggesting formation of "inside" union; domination and interference with formation and administration of; support of; recognition of, as representative of majority of employees; contract with, signed without prior negotiations or discussions of terms; disestablished as agency for collective bargaining—*Contract:* ordered to cease giving effect to—*Investigation of Representatives:* controversy concerning representation of employees: prior recognition of petitioning union as exclusive representative withdrawn and recognition refused—*Unit Appropriate for Collective Bargaining:* all employees except foremen, assistant or subforemen, supervisory employees, office and clerical workers, watchmen, guards, policemen, and salaried employees—*Election Ordered*

Mr. Henry Shore, for the Board.

Mr. A. Pinsky, of Wellsburg, W. Va., for the respondent.

Mr. W. F. Elcessor, *Mr. W. E. Pyle*, and *Mr. Wilmore Kenney*, of Wellsburg, W. Va., for the Alliance.

Mr. Paul Rusen, of Steubenville, Ohio, and *Mr. Thomas Frew*, of Toronto, Ohio, for the S. W. O. C.

Mr. David Y. Campbell, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 13, 1937, Steel Workers Organizing Committee, herein called the S. W. O. C., on behalf of Lodge No. 1318, Amalgamated Association of Iron, Steel and Tin Workers of North America, herein called the Lodge, filed with the Acting Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) a petition alleging that a question affecting commerce had arisen concerning the representation

of employees of Eagle Manufacturing Company, Wellsburg, West Virginia, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On October 6, 1937, Paul Rusen, the subregional director of the S. W. O. C., filed with the Acting Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the Act. Thereupon, on October 27, 1937, the National Labor Relations Board, herein called the Board, by Charles T. Douds, its Acting Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. On October 18, 1937, the Board, acting pursuant to Article II, Section 37 (b), and Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the cases be consolidated for the purposes of a hearing, and acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, ordered an investigation on the petition and authorized the Acting Regional Director to conduct it and to provide for an appropriate hearing upon due notice. Notices of hearing on the complaint and the petition were issued and duly served, together with copies of the complaint, upon the respondent, the S. W. O. C., and upon the Eagle Employees Alliance, herein called the Alliance, a labor organization alleged in the complaint to be dominated by the respondent.

The complaint alleged in substance (1) that during the period from March through July 1937, the respondent, through its officers and agents caused the formation of the Alliance among its employees, at the same time expressing opposition to other labor organizations, and at all times has dominated the same, and has contributed financial and other support thereto; and (2) that the respondent by such acts and other acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 3, 1937, the respondent filed its answer, admitting the allegations of fact as to the interstate character of its business, admitting that it had bargained with the S. W. O. C. as the exclusive bargaining agent of its employees until it recognized the Alliance as majority representative upon the presentation of proof of its membership by the latter, admitting that it entered into a contract with the Alliance on October 4, 1937, as representing the majority of

the respondent's employees, but denying that it had engaged in unfair labor practices, and denying that these activities affected commerce. On the same date, the respondent also filed separate motions to dismiss the complaint and the petition on the ground that the Board lacked jurisdiction, also stating as grounds for the motion to dismiss the complaint, that the complaint was improperly issued in violation of Article III, Sections 3 and 5, of said Rules and Regulations, since the charge failed to state properly the address of the respondent and was not sworn to until 2 days after it was filed (although the charge was sworn to prior to the issuance of the complaint, and although the complaint properly stated the correct address of the respondent). These motions having been renewed orally at the hearing, both were overruled by the Trial Examiner on all grounds assigned. On November 3, 1937, also, the Alliance filed a denial, in the nature of an answer, of those allegations of the complaint that it was dominated and caused to be formed by the respondent. On November 10, 1937, the Alliance filed its motion to intervene, which was granted by the Trial Examiner at the hearing. These rulings are hereby affirmed.

Pursuant to notice, a hearing was held on November 11, 12, 13, and 15, 1937, at Wellsburg, West Virginia, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, and the S. W. O. C. and the Alliance were represented and participated in the hearing. The respondent, while participating in the hearing, declined to introduce any evidence other than the testimony of one of its officers which apparently was intended to go to the issues of the Board's jurisdiction and the appropriate unit, evidently relying on its prior motions to dismiss on jurisdictional grounds, which were renewed at the close of the Board's case in a motion to dismiss that assigned also the Board's failure to sustain the burden of proof, and a number of other grounds. The motion was overruled by the Trial Examiner, which ruling we hereby affirm. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Trial Examiner's Intermediate Report was duly filed with the Acting Regional Director and duly served on all the parties. The S. W. O. C. and the Alliance filed no exceptions thereto. The Board having granted an extension of time for the filing of exceptions to the Intermediate Report by the respondent, the respondent filed its

exceptions thereto on March 24, 1937. No opportunity for oral argument was requested. We have considered the respondent's exceptions to the Intermediate Report and find them to be without merit except as hereinafter indicated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Eagle Manufacturing Company, is a corporation organized in 1897 and existing under the laws of the State of West Virginia, having its office and principal place of business at Wellsburg, West Virginia. Since 1924 the respondent has been engaged in manufacturing and selling oilers, of the types used on railroads and for oiling various kinds of machinery, oil containers with spouts, of the type used in garages and filling stations, and certain specialties, such as florists' stands. During 1936 the respondent's volume of sales was \$750,499.14, and during the first three quarters of 1937, was \$663,477.25. The industry is a small one, employing not more than 1,000 persons, about 23 per cent of whom are employed by the respondent.

The respondent's products enjoy a national and foreign distribution through sales agencies located in 24 cities in various States other than West Virginia and in Hamilton, Ontario, and in Mexico City, Mexico. About 75 per cent of the raw materials used by the respondent, principally sheet metal, paints, lacquers, and cartons, are received at the respondent's plant from sources outside the State of West Virginia. About 95 per cent of the products of the respondent are shipped from its plant into other States and to foreign countries.

II. THE ORGANIZATIONS INVOLVED

Steel Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, representing Lodge No. 1318, Amalgamated Association of Iron, Steel and Tin Workers of North America, a labor organization also affiliated with the Committee for Industrial Organization through the S. W. O. C., admitting to its membership all employees of the respondent except supervisory employees (including foremen and subforemen), office and clerical workers, watchmen, and salaried employees.

Eagle Employees Alliance is an unaffiliated labor organization, admitting to its membership only employees of the respondent, except foremen, subforemen, office workers, and salaried employees.

III. THE UNFAIR LABOR PRACTICES

A. *The events prior to the strike*

Prior to March 1937 there had been no labor organization of any kind among the respondent's employees. On March 7, 1937, Enix Postelthwait, an employee of the respondent, visited Thomas Frew, a representative of the S. W. O. C., in Wheeling, West Virginia, as a preliminary step to forming a local union at the respondent's plant. Frew informed Postelthwait as to the procedure to be followed and gave him some membership application cards, which designated the S. W. O. C. as the collective bargaining agent. In accordance with arrangements made at that time, an open meeting was held at Wellsburg on March 10, 1937, at which time 87 members were obtained, officers were elected, and application was made for the Lodge's charter, which was subsequently granted. Among the officers elected were Enix Postelthwait, as president, and W. E. Pyle, as treasurer.

On the following afternoon, March 11, the respondent, through its foremen, called a meeting on the plant premises of all its employees 15 minutes before their regular quitting time. John Paull, the treasurer of the respondent, addressed the gathering, saying in substance that the respondent was a small concern in a small town and asking the nature of the controversy or agitation among the employees. No one answered his question. Then Paull addressed Pyle and asked him substantially the same question. Pyle replied that he did not care to discuss it pro or con, and that there was a great deal of movement over the country for labor organization. The meeting then broke up. The employees were paid for the time spent in the meeting.

About March 12, 1937, a notice was posted in the plant, over the signature of H. W. Paull, the respondent's president, in the following terms:

Notice

This Company recognizes the right of its employees to form a Company Union. That is, a Union composed only of the employees of this Company.

We will willingly and gladly meet with such a Union, or a Committee representing the same, at any time for the purpose of adjusting to the complete satisfaction of its employees, in so far as it is possible to do so, any and all differences that may arise between this Company and its employees.

EAGLE MANUFACTURING COMPANY
(signed) H. W. PAULL

On March 15, 1937, the respondent, by its foremen, notified its employees of a second meeting, held in the stockroom of the plant 1 hour

before regular quitting time. No deduction from pay was made for attendance at this meeting. John Paull again addressed the employees, substantially in the same terms as at the prior meeting, adding a suggestion that there was no need for the employees to pay dues to an outside labor organization. He then said that S. O. Paull, the respondent's secretary, had a few words to say and a paper to read to the employees. S. O. Paull then took charge of the meeting and suggested the formation of an independent union, in that connection reading from a paper in his hand. This paper was not introduced in evidence by the respondent, who appears to have possessed the sole copy, but apparently it was in the form of a petition or agreement for the formation of an inside union. In reading from the paper and making his remarks, S. O. Paull suggested that the proposed inside union might well be called the "Employees Alliance." The paper was then placed on a barrel head for the employees to sign, which a few did.

Later the same day, or the next day, S. O. Paull called the Lodge's committee, composed of Postelthwait and others, into his office and suggested they sign the above-mentioned paper. This they refused to do. On March 16, the day following, various foremen solicited the employees at work to sign the paper. One employee, Pollock, testified that his foreman, Elwood Cawthon, approached him and asked him to sign "the Company Union thing that Sam Paull had yesterday." Cawthon also remarked to Pollock, "Walter, you should be smart enough to know they don't want no outside union."

None of these facts are refuted by the respondent. It is clear, therefore, that the respondent knew immediately of the formation of the Lodge, and quickly set out on a campaign to influence its employees against it, at the same time starting a counter-movement to establish a company-dominated union.

These actions of the respondent were followed by a so-called "secret" election conducted by the respondent early in April. The paymaster of the respondent gave to each of the employees, while at work, ballots on which they were to mark their choice for the "company union, C. I. O., or no union." The ballots were collected by the foremen and taken to the respondent's office. The results of the election were never announced, and the respondent fails both to deny these facts and to throw any light upon the results of the election. In view of the respondent's purpose as evidenced by its prior actions, it may be inferred that the results were unfavorable to the outcome of its plan to establish an inside union. In any event, the respondent's activities in this direction were abruptly suspended at this point.

In the meantime, the Lodge, acting through the S. W. O. C., began to represent the employees in several grievances against the respondent. At least one grievance was adjusted satisfactorily, at the behest

of the S. W. O. C. On April 16, 1937, the S. W. O. C. submitted to the respondent by letter a proposed contract, and the respondent replied, indicating a willingness to negotiate. Both from the admissions in the respondent's answer and from the testimony, it is clear that respondent recognized the S. W. O. C., acting on behalf of the Lodge, as the exclusive bargaining agent of its employees. At no time during the various conferences and negotiations which took place in the period beginning March 16, 1937, and ending about August 5, 1937, within which time the strike occurred, did the respondent question the right of the S. W. O. C. to act as exclusive bargaining agent, and at no time did the respondent request proof that a majority of its employees were members of the Lodge. Rather, the respondent appeared to have been satisfied with the claims of the S. W. O. C. and the Lodge. It is significant that during the early months of union activity the respondent kept in touch with the development of the organization movement by questioning Postelthwait and other members of the Lodge regarding events at Lodge meetings. It may be safely assumed, therefore, from the uncontradicted testimony as to the respondent's attitude and actions, that at the time of the strike, on June 11, 1937, the Lodge had a substantial majority of the respondent's employees in its membership.

On June 3, 1937, a conference was held between the officers of the respondent and the Lodge committee and representatives of the S. W. O. C., for the purpose of discussing the contract submitted to the respondent in April. Wages, hours, and other conditions and terms of employment were discussed, but the conference adjourned upon the unqualified refusal of the respondent to sign a contract with the S. W. O. C. or any other labor organization. This flat refusal to sign a contract fomented dissatisfaction among the members, so that at a meeting of the Lodge that evening, June 3, the S. W. O. C. representatives with difficulty restrained the members from a strike vote.

On June 11, 1937, employees in the moulding department went on strike as the result of the respondent's refusal to grant certain pay increases. This was the spark that struck the smouldering dissatisfaction of the employees, quickly resulting in a spontaneous strike of the entire plant. At a meeting that evening, the Lodge officially recognized and took charge of the strike. On that night also, the representatives of the S. W. O. C. visited H. W. Paull, S. O. Paull, and John Paull, the respondent's president, secretary, and treasurer, respectively, again requesting the respondent to enter into negotiations for a contract, so as to keep the plant in operation. Again the request was denied, these officials of the respondent refusing even to discuss the matter.

The strike continued until July 20, 1937, with other efforts being made by the S. W. O. C. and the Lodge to obtain a settlement. During

this period the operations of the respondent were at a standstill. On July 20 the strike was settled on the basis of the reinstatement of the strikers and memoranda given to the Lodge by the respondent covering employees in the several departments. The memorandum for the pressing department, which is in evidence, specified certain hourly rate increases, a \$5 daily minimum for operators on piece work, the granting of seniority rights, and the recognition of certain holidays; it refused to grant vacations with pay. Other memoranda were substantially similar in contents. The employees then returned to work, beginning on July 21, 1937, without, however, obtaining a reversal of the respondent's position against entering into a signed contract.

During the strike, the settlement was delayed by the disinclination of the respondent to meet with representatives of the S. W. O. C. On several occasions during the strike, Gail Postelthwait, the brother of Enix, and likewise an active member of the Lodge, attempted to arrange conferences with the respondent, each time being told that the respondent would be glad to meet with the committee from the Lodge, so long as no S. W. O. C. representatives were present.

B. The domination of the formation and administration of the Alliance

On July 9, 1937, during the strike, a back-to-work meeting was called by W. E. Pyle and Wilmore Kenney, both employees of the respondent, later elected vice president and committee secretary, respectively, of the Alliance. Pyle was the employee singled out by John Paull at the first stockroom meeting on March 11 to state the cause of the unrest. Pyle, who had been elected the original treasurer of the Lodge, had meanwhile relinquished his office. This meeting was held at one of the city's fire houses, which was obtained rent-free for the occasion. Employees attending the meeting were asked to vote in favor of returning to work, without terms being specified, and 60 so voted. Balloting was conducted under the auspices of an ex-mayor of Wellsburg, the city fire chief, and a hardware merchant. The ballots were taken away by Pyle and Kenney and the results later announced in the newspaper.

The next day, July 10, Pyle and Kenney circulated a petition among the employees which was headed as follows:

We the undersigned do hereby agree that we will return to work with union recognition other than the C. I. O., the union to be decided by majority of employees signing this petition.

A total of 121 signatures were obtained, which was a majority of the employees. Among the signers were a subforeman and W. F. Elcessor, another supervisory employee.

Elcessor is shown on the respondent's pay roll for October 9, 1937, which is in evidence, as the foreman of the printing department. The respondent, however, contends that this designation is incorrect, and that Elcessor is head printer. It appears that Elcessor is paid on an hourly basis while other foremen are paid by the month. Nevertheless, it is clear that Elcessor occupies the same position with respect to other employees in the printing department as do other foremen with respect to their subordinates. He is paid at a higher rate than other printing department employees. He is responsible for the work of the department. He supervises and directs the work and recommends the hiring and discharging of employees. He is, therefore, the immediate representative of the respondent in dealing with that portion of its working force in the printing department. Elcessor was elected president of the Alliance at its organization meeting on July 18, 1937.

The testimony is uncontradicted that in circulating the petition Pyle and Kenney represented that it came from the respondent, who they stated had professed to them a willingness to sign a contract with the American Federation of Labor. It appears from the evidence that these representations were the bases for obtaining a number of the signatures.

Some of the members of the Lodge, however, became suspicious that the petition was in the nature of a trap set by the respondent to bring about the establishment of a company-dominated union. Accordingly, on July 11, 1937, a group of such employees called upon S. O. Paull to confirm the rumor that the respondent was willing to sign a contract with the American Federation of Labor. In response, Paull stated that the respondent would not sign such a contract with the American Federation of Labor or any other labor organization. Paull then said that he did not know much about the American Federation of Labor except that it was a recognized labor organization. Further, Paull asked why the employees paid dues to an outside labor organization, for which they received no returns. Then he said, "I would suggest we get a plan of our own, something like the Weirton plan," and extolled the virtues of such a plan. The employees understood his reference to the Weirton plan, with which they were familiar, inasmuch as Weirton is located only 12 miles from Wellsburg and since some of the employees had had personal contact with similar employee representation plans in other plants. During the conversation Paull at first denied knowledge of the petition being circulated by Pyle and Kenney, and later admitted to having read it.

On July 18, 1937, another meeting was held in one of the fire houses. Admission was restricted to the employees who had signed

the petition and those who wished to sign at the door. At this time Pyle and Kenney addressed the meeting to the effect that they had talked to a representative of the Weirton Security League and to a representative of the American Federation of Labor, that the dues in the latter organization were too high and therefore they recommended a plan patterned after the former organization. A vote was then taken as between the American Federation of Labor and the employees union, with the latter winning by a count of 54 to 22. The vote was then made unanimous upon motion. Officers were then elected and an organization formed, no name as yet having been chosen.

On the morning of July 19, 1937, Kenney visited the secretary of the Weirton Security League, discussed the formation of the organization at Wellsburg, and obtained copies of the League's grievance procedure and forms. Kenney then returned to Wellsburg where he met Elcessor, Pyle, and apparently others, and reported the results of his visit to Weirton. It was then decided to have some application cards printed. At this time, so it is testified by Elcessor, when they were casting about for a name for the new organization, someone suggested the title, Eagle Employees Alliance. Elcessor disclaims any connection with the almost identical name suggested by S. O. Paull at the second stockroom meeting on March 15, when the respondent rather openly attempted to cause the formation of an inside union. The application cards were then printed by a printer at the personal expense of Elcessor, Pyle, and Kenney, according to their testimony. This fact we are inclined to doubt, since Elcessor as head printer must have had access to the facilities in the respondent's printing department, and must have known that the respondent would have had little or no objection to his so using the facilities in view of the obvious favor with which the respondent had looked upon the establishment of an inside union among its employees. It is reasonable to assume that the three men, all wage earners, would ordinarily adopt such an apparent economy, particularly since the Alliance had just been formed and as yet had no treasury.

By the end of July the Alliance was alleged to have been sufficiently strong to ask the respondent to recognize it as the majority representative. Thus, within 20 days after the idea was first formulated, according to Elcessor's testimony, the Alliance was formed and had grown to represent a majority of the respondent's employees. Although no definite examples of individual discriminations are shown in the record, it is obvious that the respondent's wishes were communicated to its employees by the actions and general attitude of its officers. It is, we think, highly significant that Elcessor admitted, upon cross-examination, that he first heard of the inside-union idea about a week be-

fore the organization was formed, that is about July 11, the date on which S. O. Paull remarked to a group of employees in connection with the Pyle and Kenney petition that he suggested "we get a plan of our own, something like the Weirton plan." It is also important to note that the rumors accompanying the circulation of the petition on July 10 dealt not with an inside union, but with the American Federation of Labor.

From these facts it is clear that, having unsuccessfully attempted to sow the seed of a company-dominated inside union (tentatively designated as the "Employees Alliance") in March, and having observed the growing strength of the Lodge through questioning certain of the members as to its development and, in reasonable probability, through the results of its employer-conducted election in April, it resolved to bide its time and to change its strategy of attack against the Lodge. Thus, the respondent's officers met with representatives of the Lodge and of the S. W. O. C. and recognized their authority to bargain, but refused to grant their requests, except concerning minor grievances. The respondent finally held the long-awaited conference to discuss the negotiation of a contract, after delaying for over a month, but then refused the union requests and unqualifiedly denied the union's fundamental demand for a signed contract, thus creating discontent and dissatisfaction among the members of the Lodge. During the strike the respondent unnecessarily prolonged the strike by refusing to discuss the negotiation of a contract and failing to meet with outside S. W. O. C. representatives, the duly chosen collective bargaining agents of the majority of its employees. We think the purpose of this course of action was to discredit the S. W. O. C. among the employees, and to lay the foundations for a second attempt to establish a company-dominated inside union by first engendering impatience and dissatisfaction among the members of the Lodge with the failure of the S. W. O. C. to secure tangible results. This conclusion is corroborated by the fact that, as soon as the new inside union was safely launched, with one of the respondent's foremen installed as its president, the respondent quickly settled the strike. Further, the respondent settled the strike, not with the S. W. O. C., but with Enix Postelthwait, thus inferentially emphasizing that its employees were better able to bargain collectively when acting independently of an outside labor organization. It is interesting also to note that the terms of the strike settlement memoranda contain substantially the same terms and conditions of employment as the corresponding clauses in the contract submitted by the S. W. O. C. in April, a fact which would seem to indicate that these requests were not considered unreasonable by the respondent.

When the Alliance requested recognition as the majority representative it turned over to the respondent its only records of membership, the application cards. Within 4 or 5 days the respondent granted the Alliance recognition, without prior opportunity being afforded the Lodge to produce proof of its membership. About August 5, 1937, S. O. Paull called the president of the Lodge to his office and informed him that he, Paull, had locked in his desk the membership cards of the Alliance as proof of the latter's majority, and that the respondent would no longer recognize the S. W. O. C. on behalf of the Lodge as bargaining agent. At the same time Paull asked Postelthwait if he would sign with the Alliance, which the latter refused to do. The membership cards of the Alliance were kept by the respondent, although the Alliance was granted recognition on August 5, until October 5, 1937, when they were returned to the Alliance for use in preparation for the instant proceeding.

The petition having been filed on August 13, 1937, the S. W. O. C. and the Lodge made numerous attempts to confer with the respondent's officials in order to arrange for an election to be held by the Board's Acting Regional Director for the Sixth Region upon the consent of all the parties. The S. W. O. C., however, was unable to reach an official of the respondent until about the middle of September. On September 18, 1937, the S. W. O. C. in a letter to the respondent claimed to represent a majority of its employees and formally requested the making of an agreement for a consent election. The respondent replied by letter on September 21, 1937, stating that the proposal had been taken under advisement. The following day, September 22, the Alliance voted a resolution appointing Kenney, Pyle, and Elcessor as a committee to negotiate a contract with the respondent. On September 23, 1937, the respondent wrote to the S. W. O. C., stating that it was neutral in regard to the proposed election and that it was a question to be decided by the S. W. O. C. and its employees.

This committee of the Alliance proceeded to draft a contract, patterned after the information and data previously secured from the Weirton Security League, and on Saturday, October 2, 1937, submitted the contract to the respondent, without any prior negotiations or discussions whatsoever with the respondent. The latter asked for time to study the proposed contract, and had it retyped. On Monday, October 4, 1937, at about 11 a. m., the respondent called in the committee of the Alliance and again without discussion of its terms or any change therein both parties signed the contract.

Thus was reached the climax of the 8 months' campaign of the respondent to discredit the Lodge and the S. W. O. C. and to bring about the establishment of a company-dominated and company-controlled inside union.

The terms of the contract grant no substantial concession not already possessed by the employees through the efforts of the S. W. O. C. and the Lodge. A procedure for settling grievances, which is of doubtful practicability, is provided. On the other hand, the question of wages is left open pending the findings of efficiency experts employed by the respondent, over whose findings the Alliance has no control.

We find that by the foregoing acts the respondent has dominated and interfered with the formation and administration of the Eagle Employees Alliance and has contributed support to it, and that by such acts, and by other acts described in Section III A, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Inasmuch as we have found that the respondent has dominated and interfered with the formation and administration of the Eagle Employees Alliance and has contributed support to it, in addition to ordering the respondent to cease and desist from its unfair labor practices, we shall affirmatively require the respondent to withdraw all support and recognition from the Alliance and to disestablish it as an organization representing the respondent's employees for the purposes of dealing with the respondent in matters of collective bargaining, and to cease giving effect to its contract with said organization.¹

VI. THE QUESTION CONCERNING REPRESENTATION

The respondent recognized the S. W. O. C., on behalf of the Lodge, as the representative of a majority of its employees and as the exclusive bargaining agent therefor, until August 5, 1937. On such date the respondent notified the president of the Lodge that the Alliance had proven its right to represent a majority of the employees and that the respondent would no longer recognize the

¹ In *Matter of Cating Rope Works, Inc. and Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100; In *Matter of The Jacobs Bros. Co., Inc. and United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620; In *Matter of Titan Metal Manufacturing Company and Federal Labor Union No. 19981*, 5 N. L. R. B. 577

right of the S. W. O. C. on behalf of the Lodge to represent a majority of the employees. Subsequently, on October 4, 1937, the respondent entered into a contract with the Alliance, which we have found had its inception in the unfair labor practices of the respondent. This contract was entered into at a time when the S. W. O. C. was claiming to act as majority representative, and without any investigation by the respondent of the validity of the claims advanced by the S. W. O. C.

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

VII. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII. THE APPROPRIATE UNIT

The S. W. O. C. and the Alliance both request the plant unit as the appropriate one. The S. W. O. C. contends that such unit should include all employees of the respondent except supervisory employees, foremen, assistant or subforemen, office and clerical workers, watchmen, guards and policemen, and salaried employees. The Alliance contends that only foremen, assistant foremen, office and clerical workers, and salaried employees should be excluded from the appropriate unit.

There is a dispute about the eligibility of W. F. Elcessor, the president of the Alliance. Since we have found that he is in fact the foreman of the printing department, he will be excluded from participation in the election.

The Lodge does not admit to membership supervisory employees and watchmen. Inasmuch as we are ordering the disestablishment of the Alliance, the eligibility to membership in the Lodge, since it is fixed by standards that appear to be reasonable, should be controlling.

We find that all employees of the respondent, except foremen, assistant or subforemen, supervisory employees, office and clerical workers, watchmen, guards, policemen, and salaried 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 policies of the Act.

IX. THE DETERMINATION OF REPRESENTATIVES

We have found that at the time of the strike, on June 11, 1937, the S. W. O. C., on behalf of the Lodge, represented a majority of the respondent's employees, a fact that was acquiesced in by the respondent according to the admissions in its answer. That right to represent the majority of the employees was reasserted by the S. W. O. C. in its letter of September 18, 1937, to the respondent. Inasmuch as we are ordering that the respondent withdraw recognition from the Alliance and that the Alliance be disestablished as a collective bargaining agency, no other labor organization will exist to contest the claims of the S. W. O. C. However, no signed application cards or other similar documentary proof of membership were introduced in evidence. At the hearing, the respondent assumed a neutral position with respect to the holding of an election.

We believe that, under these circumstances, the question concerning representation can best be resolved by the holding of an election by secret ballot. The S. W. O. C. requests that the pay roll of October 9, 1937, which is in evidence, be used as a basis for determining eligibility to vote in the election, and there is no testimony indicating that another date is more suitable for the purpose. Accordingly, we shall direct that all employees in the appropriate unit whose names appear on the pay roll as of October 9, 1937, shall be eligible to vote in the election. We shall not order said election to be held, however, until we are satisfied that the effects of the respondent's unfair labor practices have been dissipated.

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. Steel Workers Organizing Committee, Lodge No. 1318 of Amalgamated Association of Iron, Steel, and Tin Workers of North America, and Eagle Employees Alliance are labor organizations, within the meaning of Section 2 (5) of the Act.

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

3. The respondent, by dominating and interfering with the formation and administration of the Eagle Employees Alliance, and by contributing support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

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

5. A question affecting commerce has arisen concerning representation of employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

6. All employees of the respondent, except foremen, assistant or subforemen, supervisory employees, office and clerical workers, watchmen, guards, policemen, and salaried employees, constitute a unit 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 Eagle Manufacturing Company and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Eagle Employees Alliance, or with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to the Eagle Employees Alliance or any other labor organization of its employees;

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

(c) Giving effect to its contract with Eagle Employees Alliance.

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

(a) Withdraw all recognition from the Eagle Employees Alliance 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 the Eagle Employees Alliance as such representative;

(b) Post immediately in conspicuous places throughout the plant, and maintain for a period of at least thirty (30) consecutive days, notices stating (1) that the respondent will cease and desist as aforesaid; and (2) that the respondent withdraws and will refrain from

all recognition of ^EEagle Employees Alliance as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish it as such representative;

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

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 authorized by the Board to ascertain representatives for collective bargaining with Eagle Manufacturing Company, an election by secret ballot shall be conducted upon further order of the Board under the direction and supervision of the Regional Director for the Sixth 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 employees of Eagle Manufacturing Company, whose names appear on the pay roll of October 9, 1937, except foremen, assistant or subforemen, supervisory employees, office and clerical workers, watchmen, guards, policemen, salaried employees, and those who since have quit or been discharged for cause, to determine whether or not they desire to be represented by Steel Workers Organizing Committee, on behalf of Lodge No. 1318 of Amalgamated Association of Iron, Steel, and Tin Workers of North America, for the purposes of collective bargaining.