

IN THE MATTER OF CARROLLTON METAL PRODUCTS COMPANY and AMALGAMATED ASSOCIATION OF IRON, STEEL, & TIN WORKERS OF NORTH AMERICA, LOCAL NO. 1571

Cases Nos. C-307 and R-307.—Decided April 14, 1938

Cooking Utensil Manufacturing Industry—Interference, Restraint, or Coercion—Discrimination: discharges and lay-offs because of union membership and activity; charges of, as to certain employees, dismissed—*Reinstatement Ordered:* of employees discriminatorily discharged—*Back Pay:* awarded, to employees discriminatorily discharged and laid off—*Investigation of Representatives:* controversy concerning representation of employees: refusal to recognize petitioning union for fear of antagonizing rival organization—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, except clerical and supervisory employees, office employees, foremen, and assistant foremen—*Prior Election Voided:* election previously ordered without findings of fact, and held in an atmosphere surcharged with threats and intimidation by supervisory employees, declared void—*Election Ordered:* time to be set by Board, after compliance with accompanying order and after disposition of new charges.

Mr. Harry L. Lodish and Mr. Peter Di Leone, for the Board.

Mr. James M. Aumgst and Mr. John P. Walsh, of Canton, Ohio, and *Mr. David Kaplan,* of Washington, D. C., for the Machinists.

Mr. Marion F. Lemen, of Carrollton, Ohio, and *Mr. Aaron A. Cohen,* of Canton, Ohio, for the Amalgamated.

Lynch, Day, Pontius & Lynch, by *Mr. H. C. Pontius,* and *Mr. John G. Ketterer,* of Canton, Ohio, for the respondent.

Mr. Harry Cooper, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

On May 17, 1937, International Association of Machinists, Local No. 1280, herein called the Machinists, filed a petition with the Regional Director for the Eighth Region (Cleveland, Ohio) alleging that a question affecting commerce had arisen concerning the representation of employees of Carrollton Metal Products Company, Carrollton, Ohio, 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 June 7, 1937, Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571, herein called the

Amalgamated, filed a similar petition with the Regional Director. On August 6, 1937, the National Labor Relations Board, herein called 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, and further ordered that the cases be consolidated for purposes of such hearing.

On August 5, 1937, Marion F. Lemen filed a charge against the respondent, and on August 13, 1937, the case thus sought to be instituted was consolidated for the purpose of hearing with the cases arising on the petitions. On August 24, 1937, the Board, by the Regional Director issued and duly served its complaint and notice of hearing on the respondent, the Machinists and the Amalgamated.

Pursuant to notice a hearing was held at Carrollton, Ohio, on September 2, 1937, before William P. Webb, the Trial Examiner duly designated by the Board. The case arising on the complaint was postponed. The Board and the Machinists were represented by counsel. The Amalgamated was represented by Marion F. Lemen, its president. The respondent did not appear. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

The Board has reviewed the rulings of the Trial Examiner on objections to the introduction of evidence during the course of the hearing and finds no prejudicial errors were committed. The rulings are hereby affirmed.

At the beginning of the hearing counsel for the Machinists moved for permission to withdraw the petition filed by the Machinists. The Trial Examiner granted the motion, no objection being made. The Trial Examiner was without power to grant this motion. However, in its order dated January 7, 1938, the Board granted the request of the Machinists to withdraw its petition. Counsel for the Machinists also moved that the petition filed by the Amalgamated be dismissed on the ground that no question affecting commerce had arisen in the case. At the end of the Amalgamated's case, he renewed his motion on the same ground and also on the ground that the evidence did not warrant the holding of an election. Decision on both motions was reserved by the Trial Examiner. For reasons indicated below we hereby deny these motions.

Amended charges having been duly filed by the Amalgamated, the Board, on September 21, 1937, by said Regional Director, issued and duly served its amended complaint and notice of hearing upon the respondent, the Machinists, and the Amalgamated. In substance the complaint as amended alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce,

within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. The complaint as amended specifically alleged the discharge for membership and activity in the Amalgamated of Marion F. Lemen, Frank Morrell, Jack Keane, Mervin Guess, Harold Vasbinder, Joseph Blazer, Eugene Davis, Roy Henry, and Henry Smallwood. On August 31, 1937, and September 27, 1937, the respondent filed its answer and amended answer to the complaint and amended complaint, respectively. In its amended answer the respondent admitted that it caused a large part of its raw materials to be purchased in interstate commerce and a large part of its products to be sold and transported in interstate commerce, but denied the jurisdiction of the Board on other grounds. The amended answer denied that Marion F. Lemen, Frank Morrell, and Harold Vasbinder were discharged. It also denied that the other named employees were discharged for membership in the Amalgamated and alleged that they were discharged for cause.

Notice of postponement of the hearing was duly served on the respondent, the Amalgamated, and the Machinists. Pursuant to notice a hearing was held on October 11 and October 12, 1937, at Carrollton, Ohio, before William P. Webb, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Neither the Amalgamated nor the Machinists appeared. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. At the end of the Board's case, counsel for the respondent moved to dismiss the complaint on the ground that the evidence did not establish that it had engaged in any of the unfair labor practices complained of, and also on jurisdictional grounds. This motion was renewed at the end of the case, and the Trial Examiner twice reserved ruling on the motion. In the Intermediate Report which he subsequently filed, the Trial Examiner denied the motion. For reasons indicated below we affirm this ruling. During the hearing other rulings on motions and on objections to the admission of testimony were made. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of employees of the respondent at its Carrollton, Ohio, plant, and on the basis of such conclusion, and acting pursuant to Article III, Section 8, of its Rules and Regulations, issued a Direction of Election¹ on November 18, 1937, in which it found that all of the production employees of the respondent at its Carrollton, Ohio, plant, except

¹ 4 N L R B. 142

clerical and supervisory employees, office employees, foremen and assistant foremen, constituted a unit appropriate for the purposes of collective bargaining. For the purpose of expediting the election and thereby insuring to the employees of the respondent at its Carrollton, Ohio, plant the full benefit of their right to collective bargaining as soon as possible, the Board directed the election without at the same time issuing a decision embodying complete findings of fact and conclusions of law. The Board further directed that in the conduct of the election the following employees named in the case arising on the complaint, to wit: Mervin Guess, Harry Smallwood, Marion F. Lemen, Frank Morrell, Jack Keane, Harold Vasbinder, and Joseph Blazer, alleged to have been discharged pursuant to an unfair labor practice within the meaning of Section 8 (3) of the Act, be permitted to vote, and that the ballot of each of the above-named employees be segregated pending decision of the complaint case.

On November 29, 1937, the Trial Examiner filed his Intermediate Report, finding that Eugene Davis, Roy Henry, Harry Smallwood, Marion F. Lemen, Harold Vasbinder, and Joseph Blazer were discharged because of membership in and activity for the Amalgamated, recommending that the respondent make whole each of the employees named for any loss of pay each suffered by reason of his discharge, and that the respondent reinstate Lemen, Vasbinder, and Blazer to their former positions. He also found that the evidence did not sustain the allegations of the complaint with respect to Frank Morrell, Jack Keane, and Mervin Guess. On December 4, 1937, the respondent filed exceptions to the Intermediate Report, which we have considered and find to be without merit except with respect to the case of Vasbinder.

Pursuant to the Board's Direction of Election, an election by secret ballot was conducted on November 29, 1937, by the Regional Director for the Eighth Region among the employees of the respondent constituting the bargaining unit found appropriate by the Board. On December 2, 1937, the Regional Director issued his Intermediate Report upon the secret ballot, which was duly served upon the parties to the proceeding.

As to the balloting and its results, the Regional Director reported the following:

Total number of employees eligible.....	102
Total number of ballots counted.....	87
Total number of votes for International Association of Machinists, Local No. 1280.....	53
Total number of votes for Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571.....	30
Total number of votes for neither organization.....	4
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of challenged votes.....	13

Since the challenged votes, which included the votes ordered segregated by the Board in its Direction of Election, could not affect the results of the election, we need not consider those votes.

On December 6, 1937, the Amalgamated filed objections to the ballot and a petition for a new election. The objections in substance alleged that prior to the election the respondent through its supervisory employees and by other means waged a campaign of coercion and intimidation against the Amalgamated and its members, and thereby interfered with the freedom of the election. On January 4, 1938, it appearing to the Regional Director for the Eighth Region that the objections raised a substantial and material issue with respect to the conduct of the ballot, he issued and caused to be served upon the respondent, the Amalgamated, and the Machinists, a notice of hearing on the objections. Notices of two postponements of hearing were duly served upon the parties. Pursuant to notice a hearing was held on January 26 and 27, 1938, at Carrollton, Ohio, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board, the respondent, the Machinists, and the Amalgamated were represented by counsel and all participated in the hearing. Full opportunity to be heard, to examine and to 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 several 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 Machinists, on January 29, 1937, and the Amalgamated, on February 2, 1937, requested an opportunity for oral argument before the Board on the record and exceptions taken at the hearing on the objections to the ballot. Pursuant to notice, a hearing was held before the Board on February 9, 1938, in Washington, D. C., for the purpose of such oral argument. Neither the Amalgamated nor the respondent appeared at the hearing. The Machinists participated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Carrollton Metal Products Company is an Ohio corporation with its principal office and plant in Carrollton, Ohio. The respondent maintains a sales office in Chicago. The business of the respondent is the manufacture of stainless steel cooking utensils and tin ware. Approximately 50 per cent of the raw materials utilized by the respondent in manufacture are purchased outside of the State of Ohio. At least 80 per cent of the finished product of the respondent is

shipped outside of the State of Ohio. The total amount of purchases and sales by the respondent in the course of a year is more than \$50,000.

In its answer to the complaint the respondent admitted that it purchased a large part of the raw materials which it used in manufacture, in interstate commerce, and that it sold a large part of its manufactured product in interstate commerce. At the hearing the respondent admitted that it was engaged in interstate commerce.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571, is a labor organization affiliated with an international union, Amalgamated Association of Iron, Steel, & Tin Workers of North America, which is in turn affiliated with the Committee for Industrial Organization. The Amalgamated admits to membership production and maintenance employees of the respondent, except foremen, assistant foremen, and office employees.

International Association of Machinists, Local No. 1280, is a labor organization affiliated with an international union, International Association of Machinists, which is in turn affiliated with the American Federation of Labor. The Machinists admits to membership clerical, supervisory, and office employees, in addition to production and maintenance employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Discrimination in hire or tenure of employment*

1. Background

About the middle of March 1937, the Amalgamated began to organize the employees of the respondent. Soon after the commencement of organization by the Amalgamated, employees of the respondent formed the Carroll Metal Workers' and Decorators' Association, herein called the Association.

On April 28, 1937, the Amalgamated notified Pfefferkorn, president of the respondent, that it desired to meet with him for purposes of collective bargaining and to discuss the reinstatement of several discharged employees. The request was granted and Pfefferkorn met with a committee representing the Amalgamated. He demanded a list of members of the Amalgamated. The request was refused, whereupon he refused to negotiate further with the committee. Because of the refusal to negotiate, the Amalgamated called a strike on April 29, 1937. The strike lasted for 4 weeks. Several attempts were made by the Amalgamated during that time to contact Pfefferkorn

and Stevens, superintendent of the respondent. These attempts were vain.

On or about May 12, 1937, while the strike was in progress, the Association was dissolved and at the meeting at which the dissolution took place, an organizer for the International Association of Machinists received from employees of the respondent there present, applications for membership in his organization. The organizer testified that he had been called to Carrollton by four employees of the respondent, two of whom he knew to be machinists. At the same time a charter was apparently applied for, though the record is not clear on this point, and a new organization, the Machinists, was formed.

A meeting between Pfefferkorn and Stevens and representatives of the Amalgamated and the Machinists took place during the last week in May 1937, when an agreement was reached whereby the respondent agreed to take back all striking employees without discrimination because of union activity, pending a settlement of the strike. Following the agreement, on or about June 1 the plant resumed operations and employees returned to work. Within a few hours after the renewal of operations, because of alleged violations of the agreement, employees began a sit-down strike in the plant.

On July 3, 1937, following the granting of an injunction against the strikers by the Common Pleas Court of Carroll County, Ohio, the sit-down strike was terminated.

On July 6, through the efforts of the Regional Director for the Eighth Region, an agreement was reached between the management of the respondent and representatives of the unions involved whereby the respondent agreed "to return all the usual workers to their regular jobs under regular conditions, as quickly as the completion of inventory is made." Most of the employees returned to work pursuant to this agreement.

The discharges discussed below must be considered in the light of the record as a whole. From the whole record, the antagonism of Pfefferkorn and supervisory employees of the respondent toward the Amalgamated and its members is clear. This antagonism was most clearly revealed at the hearing on the objections to the election of November 29, 1937, hereafter discussed. Several of the supervisory employees directly concerned with the discharges set forth below are members of the Machinists and active in its behalf, whereas those employees alleged to have been discriminatorily discharged are members of a rival organization. Moreover, the record indicates that previous to the formation of the Machinists, members of the Association, the purpose of which appears to have been to "keep the outside union out of the plant", were permitted to solicit for the

Association during working hours. Foremen in the plant also solicited for the Association. The financial secretary of the Machinists, and a member of the executive committee testified that they had previously been active in the Association. All of the above considerations throw light on the motivating factors behind the lay-offs and discharges as set forth below.

2. The lay-offs and discharges

Eugene Davis. The amended complaint alleges that Eugene Davis was discharged on November 27, 1936, because of his membership in and activity for the Amalgamated. The answer alleges that he was temporarily laid off for disciplinary reasons.

Davis' testimony reveals that he was employed by the respondent on July 31, 1935. At the time he was laid off, no union was in existence at the plant of the respondent, but Davis testified that he had been talking to employees about organizing one. Lemen, president of the Amalgamated, corroborated this testimony. Lemen testified that he and Davis had conferred on the matter of union organization at that time. According to Davis' testimony he had been "called" twice by the respondent for talking about unions before his lay-off. Immediately before his lay-off Davis' name had headed a petition for higher wages which was circulated in his department. On November 25, 1936, he was laid off by Stratton, his foreman, who gave as a reason that "your name headed that petition that was circulated there for higher wages." Although the Amalgamated was not yet in existence it is evident that Davis' organizational activity at that time was a step in the direction of the formation of the Amalgamated.

Davis was reinstated on January 4, 1937. He testified that after he was reinstated, Stratton, his foreman, told him that his name had been brought up at the office in connection with the Amalgamated, and that "he would bet his last dollar that I wouldn't give him any trouble . . . and he said the coal miners had a wonderful organization, but he said we didn't need one in the shop." Davis joined the Amalgamated when it was first formed about March 20, 1937.

Stratton, foreman of the polishing department, testified that 2 or 3 weeks before Davis was laid off he had been lax in polishing and had polished too roughly. Complaints had been received by those who handled the work after him. No such complainants, however, testified at the hearing. He also testified that Davis had been rehired in spite of his bad work because Davis was a friend of his, and had promised to do good work. It seems that, after being rehired, Davis' work was satisfactory, until a few weeks before the hearing, when, according to Stratton's testimony, it began to get bad again.

Although Stratton would not admit that Davis was his best inside polisher, he did admit that he would sometimes take Davis, along

with other inside polishers, to set the piece-rate price. Stratton could not remember saying anything to Davis with respect to the circulation of the petition. Stratton did not deny the conversation with Davis after the latter's reinstatement concerning the fact that his name had been brought up at the office in connection with organization by the Amalgamated. Nor is Davis' testimony that he was "called" twice to the office for talking about unions, before his lay-off, controverted.

McLaughlin, assistant foreman of the polishing department, also testified that Davis did poor work before his lay-off. On cross-examination McLaughlin could not remember when Davis started to make mistakes. McLaughlin admitted that a petition for higher wages was circulated in his department and that some of his men signed it, but as to whether or not Davis' name headed the list, he "couldn't say to that." McLaughlin testified that he had seen Davis on the picket line and knows "it was C. I. O." Both Stratton and McLaughlin are members of the Machinists and previously belonged to the Association.

Stratton's admission that he would sometimes take Davis to set the piece-rate price is inconsistent with his other testimony and that of McLaughlin concerning Davis' poor work. In view of that fact and in view of the circumstances of Davis' lay-off, as set forth above, we are of the opinion that Davis' allegedly bad work was not the real motive behind his lay-off. We find that the respondent laid off Eugene Davis on November 25, 1936, because of his activity on behalf of organization in the plant looking toward the formation of the Amalgamated, and thereby discriminated against him with respect to hire and tenure of employment, for the purpose of discouraging membership in the Amalgamated.

Roy Henry. The amended complaint alleges that Roy Henry was discharged by the respondent on March 22, 1937, because of membership in and activity for the Amalgamated. The answer alleges that Henry was laid off temporarily for disciplinary reasons.

Henry testified that he was employed by the respondent in October 1934, that he joined the Amalgamated in March 1937, being the fifth one to join, that he was active in recruiting for that organization, and that he was known by the respondent to be a member of it.

Henry was laid off on March 26, 1937. According to his testimony, his foreman, Algeo, told him he was asked to lay him off, that "There was union talk going around the shop . . . that 'they'² had arrived at the conclusion" that it was Henry. Algeo also told him that someone had made a trip to Canton to see an organizer, and that "they" had come to the conclusion that it was Henry. Henry told him he had not made the trip and asked him if his work was all right, and

² Quotation marks supplied.

Algeo said it was. Henry testified that his brother had made the trip to Canton.

Algeo testified that the reason for Henry's lay-off was that he bothered other men on the presses by talking to them during working hours, and that that was strictly prohibited. When asked what he said to Henry when he laid him off, Algeo testified as follows: "I told him a few times before he was doing too much talking around to the men on the presses and I was just going to lay him off. That was all that there was to it." In spite of the "strict prohibition" against talking in the plant, Algeo admitted that others in the department talked, though not as often as Henry did, and he "saw Henry do it more than other fellows." At the time of the lay-off Algeo had Henry's check all ready for him, and admitted telling Henry that he had been "told" to give him his check.

Stevens, superintendent of the plant, reinstated Henry on April 27, 1937, and told him that he had not been laid off for union activity. Stevens had been absent from the plant when Henry was laid off. Henry testified that between the time of his lay-off and the time of his reinstatement, he had "filed charges" with the Board.

Algeo did not deny that Henry's work was satisfactory. In view of that fact, the length of Henry's tenure of employment, the minor nature of his offense in the light of Algeo's testimony, and the other circumstances of his discharge as set forth above, we are led to believe that the reason advanced by Algeo for his discharge was not the real motive behind such discharge. That Henry was active for the Amalgamated is uncontroverted. It should be noted that Algeo at the time of Henry's discharge was a member of the Association and that at the time of the hearing of October 11, 1937, Algeo was a member of the Machinists.

For the reasons indicated above, we find that the respondent laid off Roy Henry on March 26, 1937, and thereby discriminated against him with respect to hire and tenure of employment, in order to discourage membership in the Amalgamated.

Mervin Guess. The amended complaint alleges that the respondent discriminatorily demoted Mervin Guess on July 6, 1937, discharged him on July 16, 1937, and has since refused to reinstate him. The answer alleged that Guess was hired on March 29, 1937, and laid off on April 5, 1937, due to lack of work; that shortly thereafter he was employed by a concern which was installing a sprinkler system in the plant, that he worked for that concern until the strike of April 29, 1937, that he returned to work for the concern July 6, 1937, and that his employment with the concern terminated upon the completion of the installation of the sprinkler system.

The testimony of Guess reveals that he was employed by the respondent from March 28, 1937, to April 4, 1937, and that he had

never before been employed by it. On April 5, 1937, he was laid off and told there was no work. Within a few days, his foreman sent word to him that a sprinkler system was being set up in the plant and that he had been recommended for a job with the concern engaged in setting it up. He reported to his foreman who in turn recommended him to the foreman of the sprinkler job.

Before the strike of April 29, 1937, the superintendent of the respondent had asked him about taking a job spraying in the paint shop. Guess worked on the sprinkler job until the strike. As soon as the strike was over he went to the superintendent to ask him about the paint shop job. He was told to finish the sprinkler job, and that he would then be put to work in the paint shop. About 10 days after the strike and a day after the completion of the sprinkler job, Stevens told him there was no place for him at present, but that he would be the next man hired in the paint shop. Guess testified that he had never heard from Stevens since that time. He also testified that another man had been hired for the paint shop job.

It does not appear that Guess was active for or even a member of the Amalgamated. From the facts set forth above, we are unable to find that the respondent, by laying off Guess, discriminated against him in regard to hire and tenure of employment, to discourage membership in the Amalgamated.

Harry Smallwood. The amended complaint alleges that Harry Smallwood was discriminatorily discharged on April 16, 1937. The answer alleges that he was laid off temporarily for disciplinary reasons. Smallwood testified that he was employed by the respondent on March 26, 1934, as a trimmer and beader on a lathe, that he ranked first in seniority in the tin plate department, and that he was laid off indefinitely on April 16, 1937. He joined the Amalgamated in the middle of March 1937. He testified that he was recruiting members for the Amalgamated 2 days before being laid off, and that he at that time had approached "two members of the A. F. L." who had been in the plant for years and asked them to join the Amalgamated. At the time he was laid off, Algeo told him, according to Smallwood's testimony, that the reason for it was that he left his department before the whistle blew. Smallwood testified that everyone in the department had been leaving before the whistle blew for a period of 6 months, ever since the building in which they were working had been built. Smallwood admitted that he had been going outside for a smoke, but testified that other employees also did it, and that Algeo had not cited that offense as the reason for his discharge.

After the end of the strike, on July 6, 1937, Smallwood returned to work, and he was employed by the respondent at the time of the hearing.

Algeo, his foreman, was a member of the Association at the time Smallwood was laid off, and at the time of the hearing was a member of the Machinists. Algeo testified that Smallwood would stop his work "and go and smoke" and that he had informed him "different times" about that, but "that, of course, wasn't exactly what I laid him off for." He testified that the reason for his lay-off was his habit of leaving the building before the whistle blew, and that he had told him about that at various times. Algeo did not deny that other employees were in the habit of leaving the department before the whistle blew as frequently as Smallwood did. Nor did he deny that other employees went out for a smoke, as well as Smallwood. Nor is it controverted that Smallwood was active for the Amalgamated, although Algeo denied that he knew of Smallwood's activity.

In view of Smallwood's length of tenure of employment, his seniority in his department, the fact that other employees were in the habit of leaving the department before the whistle blew, and other circumstances of his lay-off as set forth above, we are of the opinion that the real motive behind his lay-off was not the one advanced by Algeo. We find that the respondent laid off Harry Smallwood on April 16, 1937, and thereby discriminated against him with respect to hire and tenure of employment to discourage membership in the Amalgamated.

Marion F. Lemen. The amended complaint alleges that Marion F. Lemen was discharged by the respondent on or about July 6, 1937, because of membership in and activity for the Amalgamated, and has at all times since that date been refused reinstatement. The answer denies that Lemen was discharged and alleges that he quit.

From Lemen's testimony it appears that he was employed by the respondent on January 21, 1937, and that prior to the strike of April 29, 1937, he was engaged in working as a punch press operator and shears man at 40 cents per hour. Lemen was instrumental in organizing the Amalgamated in the middle of March 1937 and about that time was elected president. He has since been extremely active in organizational activity on behalf of the Amalgamated. He was the spokesman for the collective bargaining committee which attempted to negotiate with the respondent on behalf of the Amalgamated, and to discuss with it alleged discriminatory discharges of its members prior to the strike of April 29, 1937.

Prior to the dissolution of the Association, Lemen had been solicited by supervisory employees of the respondent to join the Association and to sign a petition in favor of it. He had refused. Carmen, his foreman, admitted having invited Lemen to go to a meeting of the Association about April 1, 1937. Best, his assistant foreman, asked him to go to an Association meeting at that time, and he did. Lemen testified that discussion at that meeting concerned the proposition

that an organization was necessary to "keep the outside union out of the plant."

In view of his position with and activity for the Amalgamated and his meetings with the respondent on its behalf, there is no doubt that Lemen was well-known to the respondent and its supervisory employees as organizer and president of the Amalgamated. He testified that on April 1, 1937, Carmen told him to "use his head and get out" of the Amalgamated. At that time, upon indicating his refusal to leave the Amalgamated and to join the Association, he was laid off for a day.

According to the agreement of July 6, 1937, among the respondent, the Amalgamated, and the Machinists which ended the sit-down strike previously referred to above, the respondent agreed to "return all the usual workers to their regular jobs under regular conditions as quickly as the completion of inventory is made." The respondent further agreed that there would be "no discrimination of any kind made against those who have been participating in the recent labor disturbances." Lemen went back to his old job on the punch press on July 7, 1937. There were two punch press operators in his department at that time. Lemen testified that prior to the strike of April 29, 1937, he had spent most of his time on punch presses or on shears. He had also spent about 8 hours per month oiling and wiping steel. It is undisputed that he had never operated an annealing furnace prior to July 7, 1937.

Lemen worked one-half day on the punch press. On the afternoon of July 7, 1937, Carmen requested him to work on the annealing furnace. The furnace was not in the same department where Lemen worked, although it was in the same room and under Carmen's jurisdiction at that time. Carmen told him that he was short-handed and that he was going to put him on the furnace. Albright, the former furnace man, had not returned after the strike. Lemen testified that Carmen said to him at that time "he wasn't doing this to me to try to be dirty, but he had to have a man on there, and I had to be it." It is undisputed that Zurcher, another employee in the department, had formerly regularly substituted for Albright in the latter's absence. Lemen asked Carmen why he did not put Zurcher on the job, and Carmen answered that Zurcher was engaged at the time in doing an important job. It is undisputed that Zurcher at the time was oiling and wiping steel. Lemen testified that oiling and wiping steel was the most common job in the plant, and that he had often performed that job. According to Lemen's testimony "the job (annealing furnace) paid forty cents an hour. At better times during the past six months men had been asked to take that job and it was refused." Lemen objected to being

put on the furnace because "it was too hard; too much work for one man, a new man at that." He agreed, however, to work the furnace that afternoon. Carmen told him "he would give me help on it, and he told me he knew it was too much work for one man, and he said he would help me, and . . . he helped me move one crate of ware and suddenly found there was a lot of things to do." Lemen worked for 4½ hours on the furnace that afternoon.

The next morning he went to work on shears. About an hour after he had started shearing, Carmen told him to go back to the furnace. Lemen told him he did not want the job, that he could not stand it. Carmen again said "he was putting me on it—not because he wanted to be dirty, but because he had to. Lemen told him that "under the terms of my agreement, my old job was there waiting for me, nobody on it, and I wanted it." Carmen told him if he did not want the furnace job he could go home. Thereupon Lemen did so, on July 8, 1937.

Curtis Smith, employee of the respondent, testified that when his foreman, Pauli, came to notify him after the strike to return to work, Pauli said in a conversation with Smith and his wife, that Lemen would be returned to employment with the respondent but that "he would have to work."

Charles Davis, another employee of the respondent, testified that at a picnic in July 1937 Stevens' (the superintendent's) son stated to him "that they had got rid of Lemen and that when Vasbinder got back from his trip . . . and as soon as they got rid of Kempthorne, they would be rid of the three men causing trouble in the union there."

On July 20, 1937, Lemen went to see Stevens, superintendent in the plant, and was told that he had no work for him. On July 25, Lemen went to the plant to obtain 2 days' pay owing to him, and he was told by the janitor to get outside the building. At the time of the hearing Lemen was employed by the Allied Products Corporation, Cleveland, Ohio. His employment there had begun 3 weeks before the hearing. It does not appear how much he earned at that employment.

Carmen, foreman of Lemen's department, testified that Lemen refused to run the furnace and that he gave as a reason for this refusal that the job did not pay enough, that "he wouldn't take it at that price." Campbell, an employee in that department, testified that Lemen told him the first afternoon during which he ran the furnace, that he would not run it for 70 cents an hour and that he would "quit his job first." Both Carmen and Campbell were previously active in the Association, and Campbell is a member of the Machinists. Carmen denied that a man had to have considerable experience in running a furnace in order to avoid ruining material

put in it. However, he admitted that he took the trouble of teaching Lemen how to run it because he "didn't want him to upset a load in that furnace." He admitted that Lemen had never run the furnace before. Lemen's testimony with respect to the strenuousness of the work of operating the furnace and the fact that that work was less desirable than the operation of a punch press does not seem to be controverted. Moreover, Lemen's testimony that "during the last six months men had been asked to take that job and it was refused" is not disputed. It is significant that Campbell, who took Lemen's place when the latter left, worked on the furnace for one-half day only. The respondent had, by the end of that time, hired a new inexperienced man to run it.

Carmen and Campbell testified that oiling and wiping steel were important operations in the plant, and that Zurcher, being engaged in those operations, could therefore not be placed on the furnace. Carmen and Campbell admitted, however, that Zurcher had formerly substituted for Albright on the furnace in the latter's absence. Moreover, it appears that Lemen had formerly oiled and wiped steel, according to his testimony, and Campbell admitted he had oiled and wiped ware. Carmen, however, denied that Lemen had formerly oiled and wiped "those plates" before (referring to plates Zurcher was engaged in wiping). Whatever the importance of oiling and wiping steel may be in the plant, and its importance is in dispute on this record, it may be doubted that the operation of oiling and wiping steel is as important as the operation of an annealing furnace; nor is such a contention made by the respondent.

Carmen admitted soliciting Lemen to go to the Association meeting; he, however, denied the conversation of April 1, 1937, in which, according to Lemen, he had told Lemen to "get out of the Amalgamated." He admitted knowing Lemen was president of the Amalgamated. The fact that Lemen was active on behalf of the Amalgamated is uncontroverted. The fact that his activities were known to the respondent is clear. The statement of Pauli as testified to by Curtis Smith is uncontroverted. The statement of the superintendent's son as testified to by Charles Davis is uncontroverted.

From all the facts and circumstances set forth above and from the record as a whole, we are led to believe that Lemen was intentionally transferred to the operation of an annealing furnace, a job which was clearly one of the most strenuous and one of the least desirable jobs in the plant, for the sole purpose of bringing about a severance of his employment with the respondent because of his union activity. Several considerations point to that conclusion. The respondent's antagonism to the organizational activities of members of the Amalgamated is clear. Lemen was at the forefront of those activities. With respect to the circumstances surrounding the choice of him as

the one to operate the furnace, especially with respect to the availability of Zurcher, an experienced operator, for that job, the testimony of Lemen has the tone and detail about it which compels credit. Moreover, the testimony of Curtis Smith and Charles Davis concerning statements which indicate the respondent's motives is uncontroverted and worthy of belief when considered in the light of the record as a whole. From all the circumstances we conclude that the selection by the respondent of Lemen for the operation of the furnace constituted discrimination against him with respect to the terms and conditions of his employment. The respondent thereby having caused him to leave his employment with it, in effect discriminated against him with respect to hire and tenure of employment in order to discourage membership in the Amalgamated, and we so find.

Harold Vasbinder. The amended complaint alleges that Harold Vasbinder was discharged on July 25, 1937, because of membership in and activity for the Amalgamated. The answer denies that he was discharged and alleges that he left on a vacation on July 27, 1937, when told not to on pain of losing his job.

Vasbinder testified that he was employed by the respondent in March 1931 in the shipping department. He joined the Amalgamated in April 1937. He was first in seniority in his department. He was notified by the foreman of his department to return to work after the strike which ended July 6, 1937. He worked to July 29 and on that date left on a vacation.

He first told his foreman that he was going on a vacation in June 1937. A week before going, his foreman asked him whether he had not better reconsider it, and said that being out on strike was enough vacation for anyone. Two days before he left, his foreman told him "he would be sorry" if he took the contemplated vacation. Vasbinder admitted that he knew what the foreman meant but testified that he did not think he would lose his job, because of his seniority in his department. It does not appear from the record that he was entitled to a vacation as a matter of right, or that the respondent had any schedule of vacations. It appears rather that Vasbinder originally planned a vacation by voluntary arrangement with his foreman. When he returned from his vacation on August 9, 1937, he was told by his foreman that he was discharged.

We are unable to find from the above facts that the respondent discriminated against Vasbinder with respect to hire and tenure of employment in order to discourage membership in the Amalgamated.

Joseph Blazer. The amended complaint alleges that Joseph Blazer was discharged by the respondent on September 2, 1937, because of membership in and activity for the Amalgamated, and that the respondent has at all times since refused to reinstate him. The answer alleges that Blazer was discharged for cause.

Blazer testified that he was employed by the respondent in October 1936 in its shipping department, and that at the time of the alleged discharge, there were ten employees in the department, and Blazer ranked fifth in seniority. Blazer joined the Amalgamated in April 1937 and thereafter was elected financial secretary. He was a member of the grievance committee of the Amalgamated and as a member of that committee had met with the management of the respondent. His foreman, Pauli, was present at one of these meetings, and also admitted having seen him on the picket line.

Blazer was discharged on September 2, 1937. He was told by Pauli that he had made mistakes in taking inventory, and that "they were letting those go who made mistakes in inventory." Blazer testified that he began to work for the respondent at 35 cents per hour, that within 2 months his wage was raised to 38 cents, that after the strike ending July 6, 1937, his rate of pay was raised to 46 cents and that 1 month before his discharge he received 50 cents. His pay increases were given to him without his asking for them.

Blazer testified that taking inventory was part of his job, that the last time was the third time he had taken inventory, that the first two times he had taken inventory together with another employee, but that the last time he had been ordered to take inventory alone. He admitted making four mistakes in taking inventory the last time. He testified, however, that he had also made mistakes before, but nothing had been said to him with respect to them. Davis, another employee in the same department, testified that he had taken inventory in the same department the same day that Blazer did, and had made half a dozen mistakes, and that at the time of the hearing he was still employed by the respondent. Davis also testified that all employees made mistakes in taking inventory. It does not appear that other employees were discharged for making mistakes. Blazer also admitted that he had been reprimanded once before soon after he started to work because "a few of the orders got mixed up." He testified, however, that at the time of his discharge, Pauli told him that his work other than that of taking inventory was all right.

Pauli testified that Blazer made some mistakes in shipping and that the last time inventory was taken, Blazer made six mistakes. With respect to previous inventories, Pauli testified that it was "pretty hard to check up on who made the mistakes. I have caught mistakes on the inventory. Some of them are Joe's (Blazer's). I didn't keep any special record of them." Pauli thus admitted that mistakes were previously made by others. He testified that it was usually difficult to check on the person who made the mistakes because two men were usually assigned to the job of taking inventory together. At the last inventory, however, Blazer, Davis, and another

employee were assigned individually to take inventory of different parts of the same department. Pauli did not deny that Davis had also made a half dozen mistakes in inventory in the same department the same day that Blazer did.

Pauli's testimony reveals that he was well aware of Blazer's activity for the Amalgamated. In view of Blazer's seniority and the increases in pay which he had received and which were not denied by Pauli, it is difficult to believe that the motivating cause for his discharge was the making of mistakes in taking inventory. It appears reasonable to conclude from the testimony discussed above that such mistakes are not unusual nor serious. Similar mistakes were not considered sufficient to cause discharge of other employees.

We find that the respondent discharged Blazer because of his membership in and activity for the Amalgamated, and that the respondent thereby discriminated against him with respect to hire and tenure of employment to discourage membership in the Amalgamated.

Since his discharge Blazer has not found other regular employment. He has earned about \$10.

Frank Morrell. The amended complaint alleges that Frank Morrell was discharged by the respondent on July 6, 1937 because of membership in and activity for the Amalgamated, and that at all times since that date the respondent has refused to reinstate him. The answer alleges that Morrell took other employment after the strike which ended July 6, 1937, and continued to work there, without applying for his former position until a period of several weeks had elapsed and another had been hired in his place.

Morrell testified that he had been employed by the respondent 3 years as a sprayer, that he was first in seniority in a department of five employees, and that he had never been told that his work was unsatisfactory. He joined the Amalgamated about the middle of March. He testified that Stevens, superintendent, had once asked him whether "he was C. I. O.," and he had said "yes."

Morrell admitted that before the strike of April 29, 1937, he told Stevens he was thinking of quitting and going to work at a brickyard in which he owned stock. About 2 weeks after the strike began he did go to work for the brick company. On July 6, and within a few days thereafter, most employees of the respondent went back to work upon the reopening of the plant. Morrell testified that "the way we understand, the agreement was made, we all supposed to be called back, notified." Although it appears from the record that several employees were called back to work by foremen of the respondent, it does not appear that only those so notified were taken back, nor does the agreement itself indicate that the respondent took

the initiative of calling back its employees.³ Morrell was not called to work. He did not apply for his former position until a period of 2 months had elapsed after the strike. Upon application he was told that the plant was "filled up," but that he should file a new application.

From the facts set forth above, we are of the opinion that Morrell's failure to secure reinstatement to his former position was due to his own neglect to apply for such reinstatement. We, therefore, find that the respondent has not discriminated against Morrell with respect to hire and tenure of employment in order to discourage membership in the Amalgamated.

Jack Keane. The amended complaint alleges that Jack Keane was discharged by the respondent on July 6, 1937 because of membership in and activity for the Amalgamated. Keane was not available to testify at the hearing, and no evidence was introduced in support of the allegation of the complaint with respect to him. We, therefore, do not find that the respondent discriminated against Jack Keane with respect to hire and tenure of employment in order to discourage membership in the Amalgamated.

It is significant in the light of its antagonism to the Amalgamated that by the discharges found to be discriminatory as set forth above, the respondent severed from employment with it the president and the financial secretary of the Amalgamated. It also temporarily severed the employment of three active members of the Amalgamated. It does not appear in the record that any employees were discharged or laid off by the respondent during the period covered by the discharges set forth above, other than those employees named in the complaint. We find that the respondent discharged Marion F. Lemen and Joseph Blazer and laid off Roy Henry, Eugene Davis, and Harry Smallwood, because of their membership in and activity for the Amalgamated, and thereby has interfered with its employees in the exercise of their 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 tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

³ The relevant portion of the agreement reads as follows: "In order to effect the terms of this mutual agreement the Company agrees to return all the usual workers to their regular jobs under regular conditions as quickly as the completion of inventory is made. The Company further agrees there will be no discrimination of any kind . . . On behalf of the workers . . . the labor representatives assure the Company that the workers who are returning to their jobs will faithfully perform their usual duties, etc."

V. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated filed its petition under Section 9 (c) of the Act, on June 7, 1937, during the sit-down strike referred to above, claiming to represent 80 employees in the plant, and stating that the respondent refused to negotiate with it, on the alleged ground that the respondent was afraid to antagonize the Machinists in so doing.

In the agreement of July 6 discussed above, the respondent stated that it would present an answer on July 20, as to whether or not it would submit to a consent election. At the time of the hearing on the petition of the Amalgamated, the respondent had not yet consented to an election. Lemen, president of the Amalgamated, stated at the hearing that his organization desired that an election be held.

No evidence other than oral testimony was introduced at the hearing of September 2, 1937, with respect to membership in either labor organization.

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

VI. 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.

VII. THE APPROPRIATE UNIT

The Amalgamated contends that all employees of the respondent except office employees, foremen, and assistant foremen, constitute an appropriate unit for the purposes of collective bargaining. The financial secretary of the Machinists testified that his organization admitted to membership and included among its membership clerical employees, foremen, and assistant foremen. However, no objection is made to the appropriateness of the unit contended for by the Amalgamated. No other evidence with respect to the appropriate unit appears in the record. Under these circumstances, in accordance with our usual procedure, we will exclude clerical and supervisory employees, office employees, foremen, and assistant foremen from the unit.

We find that the production and maintenance employees of the respondent at its Carrollton, Ohio, plant, except clerical and supervisory employees, office employees, foremen, and assistant foremen,

constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

VIII. THE DETERMINATION OF REPRESENTATIVES

Upon the basis of the facts set forth above, the Board issued its Direction of Election on November 18, 1937. Since the employees of the respondent were out on strike from April 29 to July 6, 1937, the Board directed that employees of the respondent on its pay roll as of April 28 be entitled to vote.

In view of the intimidation at the plant during the week preceding the election as set forth below, it is clear that the question of representation which has arisen, has not yet been resolved. A new election is therefore necessary. On December 28, 1937, the Amalgamated filed new charges against the respondent, alleging that since July 1, 1937, the respondent has been engaged in a deliberate campaign of discrimination and intimidation against members of the Amalgamated and has been removing, laying off, and discharging such members.

We shall not at this time set the date for holding an election but shall direct that the election be delayed until such time as the Board is satisfied that there has been sufficient compliance with its order and until such time as disposition is made of the new charges.

IX. INTIMIDATION AND COERCION PRIOR TO THE ELECTION OF NOVEMBER 29, 1937

Pursuant to direction of the Board as stated above, an election was conducted on November 29, 1937. Evidence adduced at the hearing on the objections to the ballot reveals an atmosphere in the plant during the week prior to the election which was surcharged with intimidation and threats by supervisory employees of the respondent against members of the Amalgamated. The events recited below took place during that week.

About November 22, 1937, the purchasing agent of the respondent brought into the shipping department of the plant about 10 copies of the issue of the Cleveland Plain Dealer for November 22, 1937. This issue carried on its front page a news article which recited the impending liquidation of the Federal Knitting Mills Company, Cleveland, Ohio. The article stated that a contributing cause for the liquidation was a jurisdictional dispute between the Committee for Industrial Organization and the American Federation of Labor, resulting in an election conducted by the Board which was won by the former organization.

Copies of the paper appeared in several departments of the plant. Bernard Pauli, foreman of the shipping department, had the article cut out of the paper, and showed it to Curtis Smith, an employee in that department and member of the Amalgamated. Pauli asked Smith to read the article and to pass it around the department, which Smith did. Karns, a foreman in the plant, showed the article to Vern Miller, employee and member of the Amalgamated, asked him to read it, and told him that the respondent would liquidate "if it goes C. I. O." in the coming election. Robert Illingsworth, member of the Machinists and foreman of the spraying room, brought a copy of the paper into his department and asked three employees there, all members of the Amalgamated, to read the article. Carmen, foreman of the press room, asked Zurcher, employee in that department and member of the Amalgamated, to take a copy of the paper home with him, and told him that everyone else in the department had read the article. Zurcher was told that "if it went C. I. O., they would liquidate, they would do just like in that paper here." Copies of the paper also appeared in the tin plate department, the polishing room, and other departments.

Thus the threat of a shut-down if the Amalgamated won came first from supervisory employees of the respondent. It was taken up and spread by others in their efforts to restrain the Amalgamated.

On November 24 and 25, 1937, there appeared on the front page of the Free Press Standard and the Carroll Journal, respectively, newspapers of Carrollton, Ohio, a letter signed by the Machinists and attacking the Amalgamated. The letter was headlined "Can Carrollton Afford To Lose Metal Products." Among other things, the letter said, "If the C. I. O. dominates the election it means the plant will probably close its doors in Carrollton and retire from business and liquidate." C. A. Kerr, member of the Machinists, factory steward, and head of the Shop Committee, was seen showing the above issue of the Free Press Standard to employees in the plant during working hours a few days before the election.

Kerr testified that he wrote the letter and that it was printed by the local newspapers without charge. He testified that shortly before the letter was printed, he mentioned to Pfefferkorn, president of the respondent, that he intended to have a letter published in the local papers for the purpose of arousing sentiment in favor of the Machinists. Pfefferkorn at that time, according to his testimony, asked Kerr not to make representations in the letter that any of the statements therein were statements of the respondent. Pfefferkorn denied that he had ever made any statements which would justify the headline which appeared over the letter. Pfefferkorn, however, testified as follows: "I would say the headline was only assumed. The Com-

pany made no such statement, that they were going to liquidate or go out of business but that could be assumed that if we were going to be controlled by a radical element that possibly we couldn't survive." His other testimony clearly indicates that by "radical element" he was referring to the Amalgamated.

While the respondent may not have directly participated in this particular publication and its distribution, they were the normal result of the previous activity of the respondent's supervisory employees and of its attitude toward the Amalgamated, expressed by Pfefferkorn at the hearing, which, according to his own testimony, was presumably common knowledge.

The record discloses several other instances of threats by the respondent during the week prior to the election that the plant would shut down if the Amalgamated won. Algeo, foreman in the plant and member of the Machinists, came to Vern Miller's home on the Saturday before the election and told Mrs. Miller that "if it went C. I. O., they would liquidate the shop." Zurcher was similarly threatened several times before he was told to read the article above referred to. Still other instances of intimidation appear in the record.

Charles May, employee of the respondent, during the week preceding the election was told by his foreman, Karns, on November 26, 1937, "to use his head" before voting in the election. May let him know that he would vote for the Amalgamated. Karns thereupon told him that if he "voted C. I. O., they would liquidate the plant and shut her down." When May reported for work on the morning of November 29, 1937, the day of the election he was discharged by Karns and told that he "talked too much." Also on the morning of the day of the election, Karns came to Vern Miller and said, "I want you to vote for the A. F. L. If the C. I. O. wins . . . there will be no work tomorrow." Miller asked him if that applied to everyone and the answer was "yes." Miller told him that he could not vote for the Machinists. Miller testified that that was "the last day I worked."

It is significant that most of the facts set forth above were not controverted at the hearing on the objections to the election. It is clear from such facts that the atmosphere in the plant during the week prior to the election was full of threats and acts of intimidation of supervisory employees of the respondent. An election conducted under these circumstances could not reflect the free and independent choice of the respondent's employees. We conclude that such employees were not afforded an opportunity to choose representatives, free from intimidation and coercion on the part of the respondent, and that, therefore, the election of November 29, 1937, is null, void, and of no effect.

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

CONCLUSIONS OF LAW

1. Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571, and International Association of Machinists, Local No. 1280, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Marion F. Lemen, Joseph Blazer, Roy Henry, Eugene Davis, and Harry Smallwood, and thereby discouraging membership in Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. 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.

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. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, with respect to Harold Vasbinder, Frank Morrell, and Mervin Guess.

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

7. The production and maintenance employees of Carrollton Metal Products Company at its Carrollton, Ohio, plant, except clerical and supervisory employees, office employees, foremen, and assistant foremen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

8. The election of November 29, 1937, is null, void, and of no effect.

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, Carrollton Metal Products Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Association of Iron, Steel, & Tin Workers of North America, or any other labor

organization of its employees, or encouraging membership in International Association of Machinists, Local No. 1280, or any other labor organization of its employees, by discriminating against them in regard to hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the 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 purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Marion F. Lemen and Joseph Blazer immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Marion F. Lemen and Joseph Blazer for any loss of pay they have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages during the period from the date of such discrimination to the date of the offer of reinstatement pursuant to this order, less any amount earned by him, during such period;

(c) Make whole Eugene Davis, Roy Henry, and Harry Smallwood for any loss of pay they have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages during the period from the date of such discrimination to the date of his reinstatement, less any amount earned by him during such period;

(d) Post immediately notices to its employees in conspicuous places throughout its plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of the posting, stating that the respondent will cease and desist as provided in paragraph 1 (a) and (b) of this order;

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

And it is further ordered that the allegations of the complaint that the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act by discharging Harold Vasbinder, Frank Morrell, Mervin Guess, and Jack Keane, be, and they hereby are, 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, 49 Stat. 449, 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 directed by the Board to ascertain representatives for the purposes of collective bargaining with Carrollton Metal Products Company, Carrollton, Ohio, an election by secret ballot shall be conducted at such time as the Board shall hereafter direct as stated in Section VIII of the above decision, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as the agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production and maintenance employees of Carrollton Metal Products Company at its Carrollton, Ohio, plant, excluding clerical and supervisory employees, office employees, foremen, and assistant foremen, and excluding those employees who have since quit or been discharged for cause, to determine whether they desire to be represented for the purposes of collective bargaining by Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571, or by International Association of Machinists, Local No. 1280, or by neither.