

In the Matter of THE FALK CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, LODGE 1528

Cases Nos. R-278 and C-293.—Decided April 18, 1938

Machinery Manufacturing Industry—Interference, Restraint or Coercion: expressed opposition to labor organization—*Company-Dominated Union:* domination and interference with formation and administration; support of—*Discrimination:* discharge: settlement effected; charges of, dismissed—*Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit—*Unit Appropriate for Collective Bargaining:* where other considerations determinative of appropriate unit are evenly balanced, decisive factor is the desire and choice of employees involved; determination of, dependent upon election results—*Collective Bargaining:* refusal to recognize representatives: charges of, dismissed—*Election Ordered:* to be held upon further order of Board, after compliance with this order.

Mr. Robert R. Rissman and Mr. S. G. Lippman, for the Board.

Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom and Mr. A. J. Engelhard, of Milwaukee, Wis., for the respondent.

Mr. A. G. Goldberg, of Milwaukee, Wis., for the Operating Engineers.

Alexander, Burke & Clark, by Mr. Giles F. Clark, of Milwaukee, Wis., for the Independent.

Mr. Daniel J. Harrington, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 24, 1937, the Steel Workers Organizing Committee, herein called the S. W. O. C., filed a charge, in behalf of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, herein called the Amalgamated, with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) and on August 2, 1937, filed an amended charge alleging that The Falk Corporation, Milwaukee, Wisconsin, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the

meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 4, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twelfth Region, 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), (2), (3), and (5) and Section 2 (6) and (7) of the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices the complaint alleged in substance (1) that all the employees of the respondent at its Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees of the pay-roll department, constituted an appropriate unit for the purpose of collective bargaining; (2) that a majority of the employees in such unit had designated the Amalgamated as its representative for the purpose of collective bargaining with the respondent; (3) that the respondent at various times, when requested by the Amalgamated, refused to bargain with the Amalgamated as the exclusive bargaining agency for all the employees in such unit; (4) that the respondent, on or about December 31, 1936, discharged Anton Kinch for engaging in concerted activities with other employees for their mutual aid and protection; (5) that the respondent refuses to reinstate Anton Kinch for the same reason; (6) that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of a labor organization known as the Independent Union of Falk Employees and has contributed and is now contributing financial and other support thereto; (7) that the respondent, by the foregoing acts, had interfered with, restrained, coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

S. W. O. C. filed a petition, dated August 2, 1937, requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On August 6, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 12, 1937, the respondent filed an answer to the complaint, in which it denied that it had engaged in the alleged unfair labor practices and requested that the complaint be dismissed, but admitted certain allegations as to the nature of its business.

The Independent Union of Falk Employees, herein called the Independent, filed a petition to intervene on August 13, 1937, and on the same date, International Union of Operating Engineers, Local No.

311, herein called the Operating Engineers, also filed a petition to intervene, charging therein additional violations of Section 8 (1), (2), (3), and (5) of the Act by the respondent.

On August 14, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), of the Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for the purpose of hearing and that James C. Batten act as Trial Examiner.

Pursuant to notice, a hearing was held in Milwaukee, Wisconsin, on August 16, 17, 18, 19, 20, 23, 24, and 25, 1937, before James C. Batten, the Trial Examiner duly designated by the Board. At the hearing both the Independent and the Operating Engineers orally renewed their petitions for intervention and both petitions were granted. The Operating Engineers, however, was required by the Trial Examiner to serve on respondent's counsel an amended petition containing a more specific statement of the charges included in its original petition to intervene, and the respondent filed an answer thereto. At the conclusion of the hearing the respondent moved that the amended petition for intervention, filed by the Operating Engineers, be dismissed. The motion was denied by the Trial Examiner.

The Trial Examiner erred in allowing the Operating Engineers to intervene on the basis of the additional charges included in its petition and amended petition and in denying the respondent's motion to dismiss the amended petition. Those rulings are hereby reversed. Since the Board's complaint was not amended to include the additional charges, they were not in issue. Evidence, which was introduced under the charges in the petition as amended, is admissible only in so far as it is within the allegations of the complaint and we have considered such evidence only to that extent.

The Board, the respondent, the Operating Engineers, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the conclusion of the Board's case, counsel for the Board moved to amend the complaint to conform with the proof thus far adduced, which motion was granted. Counsel for the respondent moved that both the petition and the complaint be dismissed and that each charge of the complaint be dismissed. The Trial Examiner denied the motions for dismissal of the petition and of the complaint and reserved ruling on the motions to dismiss the separate charges of the complaint. At the conclusion of the hearing, the respondent renewed its motion to dismiss the petition and complaint. The Independent moved that the portion of the complaint alleging that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of the Inde-

pendent and contributed financial and other support to it be dismissed. These motions were denied. Counsel for the Board moved that the complaint be amended to conform with the proof. The motion was granted, but limited in its application to the correction of minor variances between the proof and the allegations of the complaint.

The Board has reviewed the rulings of the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed, except the rulings on the Operating Engineers' petition for intervention as hereinabove stated.

In his Intermediate Report, filed November 2, 1937, the Trial Examiner found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3)¹ and Section 2 (6) and (7) of the Act, and further found that the respondent had not committed unfair labor practices within the meaning of Section 8 (5) of the Act. Exceptions to the Intermediate Report were filed by the respondent on November 27, 1937, and by the Independent on November 29, 1937. On February 25, 1938, the respondent and the Independent presented oral arguments before the Board in support of their exceptions, while the Operating Engineers presented arguments in support of the findings of the Trial Examiner. Thereafter, briefs were submitted by the respondent and by the Independent, which have been considered by the Board. The Board has fully considered the exceptions to the findings of the Intermediate Report and finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Falk Corporation, the respondent herein, is a Wisconsin corporation, with its main office and plant in Milwaukee, Wisconsin. It is engaged in the design, production, sale, and distribution of steel castings, helical gears, speed reducers, speed increasers, motoreducers, marine drives, rolling drives and pinion stands, flexible couplings, contract machine work, and various other products.

In the operation of its plant the respondent uses large quantities of pig iron and scrap steel, bar steel, coal, gray iron castings, silica sand and fireclay, nuts, bolts, screws, rivets, electric and gasoline

¹ Subsequent to the filing of the Trial Examiner's Intermediate Report, a settlement agreeable to all parties was effected in respect to the discharge of Anton Kinch. The settlement thus effected was approved by the Board on January 27, 1938. We will, therefore, dismiss the complaint in so far as it alleges that the respondent violated Section 8 (3) of the Act through the discharge of Kinch.

motors, lumber, copper, tin, sheet metal, chemicals, and various other raw materials. Of these raw materials approximately 65 per cent originate outside the State of Wisconsin. Approximately 75 per cent of the respondent's sales are to points outside the State of Wisconsin.

II. THE UNIONS

Steel Workers Organizing Committee is a labor organization authorized to act on behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America for collective bargaining purposes.

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O., through the Steel Workers Organizing Committee. It admits to membership all production employees in the respondent's plant, exclusive of supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department.

International Union of Operating Engineers, Local 311, is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. admitting to its membership the powerhouse employees and steam-driven locomotive crane operators of the respondent.

Independent Union of Falk Employees is an unaffiliated labor organization, which admits to membership all employees of the respondent, excluding officials, superintendents, assistant superintendents, foremen, and assistant foremen.

III. THE UNFAIR LABOR PRACTICES

A. *The background of the unfair labor practices*

Prior to 1933, there was no form of employee representation in the respondent's plant. In the summer of 1933, after the enactment of the National Industrial Recovery Act, a Works Council was set up at the suggestion of Harold Falk, vice president and works manager of the respondent. Falk told the employees that it would be inadvisable to choose an outside labor organization and that the respondent would not allow a closed shop. At an election held subsequently ballots cast for outside representatives were not counted. The Works Council was composed of Employee and Management Representatives, the chairman and secretary being appointed by the management. Some time after its formation, the Employee Representatives, at their request, were allowed to meet alone to decide what they wished to discuss at the regular meeting with the Management Representatives. Employee Representatives were compensated at their respective hourly rates for time spent at meetings of the Works Council.

B. The formation of the Independent

In April 1937, it seems to have been generally agreed between the Works Council and the respondent that the Works Council would have to be disestablished because of the provisions prohibiting company-dominated labor organizations in the Act and also in the so-called Severson Bill, then pending in the Wisconsin Legislature. On April 8, 1937, the Works Council held its last meeting at which meeting Harold Falk was present. There is testimony that he told the employees that they could form an independent union and that they could meet on the respondent's property to make arrangements for forming it, but that they would have to meet off the respondent's property after it was formed. Although Falk denied that he had made these statements, he admitted that at that meeting he had discussed the situation in another company's plant where there was trouble between the A. F. of L. and the C. I. O. He also admitted that at that meeting he had told the men that a raise which had been agreed on between the respondent and the Works Council to become effective June 1, 1937, would stand as long as the Works Council stood, but that, if another group came into being, the arrangements would be canceled and new negotiations would have to be entered into with the new group. In view of the respondent's hostility to outside unions, its domination of the Works Council, and Falk's admitted statements concerning the C. I. O. and A. F. of L. activities in another plant in conjunction with his discussion of the wage increase, his denial of his express approval of a prospective inside union and acquiescence in such a union's preliminary use of company facilities is not convincing.

On April 12, 13, and 14, 1937, a group of past and present Employee Representatives on the Works Council held four meetings in the basement of the plant hospital during working hours and discussed the formation of an inside union. Hydar, the personnel manager of the respondent, was instrumental in notifying employees of the meeting held on April 12. He did not remember who had asked him to notify these employees, but was certain that the person who had made the request was an employee.

Harold Falk was called into the meeting on April 12. He testified that he gave his impressions of the Wagner Act to the men as "near as he could." At this meeting Falk agreed to advance the date of the wage increase from June 1, 1937, to May 1, 1937, if it would make the men "feel any better" and to show the respondent's good faith. There is evidence that this action was suggested and taken as a means of keeping the C. I. O. out of the plant. Although the evidence is conflicting on this point, Falk's willingness, under the circumstances discussed, to advance the date of the wage increase, indicates that

such a suggestion was made and acted upon to influence the men in their choice of a labor organization.

On April 13, the men again sent for Harold Falk. He was not in the plant, but his son, Richard, addressed the meeting as did Connell, a vice president of the respondent. Connell told the men that his interpretation of the Wagner Act was that the respondent could not help the men either financially or in an advisory capacity. The meeting was then adjourned. After the meeting, some of the men met Harold Falk in the plant. Falk told the men that it was all right to go ahead with the inside union. There is also evidence that he told the men that they would have to incorporate as quickly as possible because the C. I. O. was working in the plant, which statement was denied by Falk. At any rate, the men held another meeting at which it was decided to secure the services of an attorney. A committee was sent to Harold Falk for suggestions as to an attorney. Falk named two or three attorneys whereupon Greget, one of the committee, said that Burke, one of the attorneys suggested by Falk, would be satisfactory. Falk then made an appointment with Burke for the men. Landry, president of the Amalgamated and one of those present at the meetings, claims that he objected strenuously to having Harold Falk suggest the attorney and that after his objection the men began to make up a story to tell in case anybody asked who suggested the attorney. Greget did not remember any protest being made by Landry, nor did he recall any discussion among the men to the effect that they would have to make up a story to tell if anyone asked who suggested the attorney.

A committee was appointed on April 13, 1937, to confer with Burke relative to the organization of an inside union. Burke told the committee at a conference on April 14 that if the inside union became established he would charge a fee, but that otherwise there would be no fee. Three members of the committee went to Burke's office the next day, but did not sign incorporation papers, which he had drawn up for the inside union, having previously decided that they would first organize as an association and incorporate later.

On April 18, 1937, the Independent held an organization meeting in a hall, which was not on the respondent's property. When asked who suggested the attorney, Greget answered that he had suggested him, having heard of him through an automobile accident in which he had been involved. Greget's failure to disclose the fact that Falk had suggested the attorney seems to confirm Landry's testimony and indicates that the organizers of the Independent both realized the company domination and influence involved in this incident, and feared that its disclosure would have a disastrous effect on their organizational activities. Nothing definite as to the form of organization that the inside union was to adopt was decided at the April 18

meeting. One of those present testified that they decided to "run along as an association and then later on incorporate." This amounted to a ratification of the decision on incorporation made by the committee when it had conferred with Burke.

When the meeting had been adjourned, three employees, who had attended it, discussed incorporation of the Independent with the attorney. They were joined by another employee, who said that, if he could get two other signers, he would go to the attorney's office next day and sign articles of incorporation. One of those present admitted, at the hearing, that the reason the Independent is a corporation today is because of "a little intimate talk" between three employees and the attorney.

The next day, April 19, 1937, the three employees, who had attended the meeting on the previous day, went to Burke's office and signed the articles of incorporation, although they had not been given authority to do so. The articles of incorporation were immediately taken to the State Capitol at Madison, Wisconsin, and filed. On April 20, 1937, they were filed in the Register of Deeds Office at Milwaukee. On the same day the three incorporators notified the respondent by letter that the Independent was incorporated, that approximately 400 employees were members of it, and that a time and place was requested to discuss collective bargaining.

The three incorporators met with the respondent on April 23, 1937, and, on their statement that they represented a majority of the employees, the respondent recognized the Independent as bargaining agency for all the employees. No proof that it represented a majority was offered and none was required by the respondent.

During March, April, and May, 1937, both the Amalgamated and the Independent conducted an intensive campaign for members, at times doing so during working hours. Some of the foremen, in discussions with the men, expressed their hostility to the C. I. O. and told them that an inside union would be better for them. At the hearing, the foremen testified that the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinions in "friendly" talks with the men.

Prior to and coincident with the active organization efforts of the Amalgamated and the Independent, the Operating Engineers had undertaken to organize a smaller group of the respondent's employees.

The Operating Engineers began to organize the powerhouse employees of the respondent in February 1937, and by April had succeeded in obtaining application cards, signed by 14 of the 17 employees in the powerhouse. On or about April 12, 1937, Kingsland, the business representative of the Operating Engineers, conferred with Harold Falk and asked recognition of the Operating Engineers as bargaining agent for these employees. Falk replied that he wanted to

know how the men in the powerhouse felt about it first. After the conference he interviewed the men individually to ascertain how many desired to be represented by the Operating Engineers. At the hearing Falk testified that he may have expressed an opinion unfavorable to the Operating Engineers, when talking to the men at that time.

The Operating Engineers then sent post cards to the powerhouse employees stating that the conference between Falk and Kingsland had been favorable, that only working hours remained to be settled, and that a meeting for these employees was to be held on April 18, 1937. When Falk learned of these post cards, he sent to each employee in the powerhouse a letter stating: "(1) we are not in favor of a union (2) we will not agree to recognize Mr. Kingsland as bargaining agent for you unless you as a group signify your desire to have us do so (3) we are ready at all times to meet with you as a group or individually to discuss your problems." On April 28, 1937, counsel for the Operating Engineers accused Falk of coercing these employees. After this accusation, Falk called the powerhouse employees to his office individually to find out whether or not they had been intimidated by his former conversation with them. Although several of the powerhouse employees assured Falk in these individual conversations and later testified at the hearing that they were not intimidated by the conversations or letter, it is significant that no one appeared at the next meeting of the Operating Engineers held on April 18, 1937. Letters of withdrawal, which were prepared in the office of the attorneys for the Independent, were subsequently received about May 6, 1937, by the Operating Engineers from five of the engineers.

The sequence of events from the disestablishment of the admittedly company-dominated Works Council to the recognition of the Independent by the respondent compels the conclusion that the formation and continued functioning of the Independent were directly attributable to the above-described activities of the respondent. The respondent's antipathy to outside unions was amply demonstrated to the employees. At the last meeting of the Works Council, Falk's remarks respecting the establishment of an inside union disclosed to the employees the respondent's preference for such a union. This preference was further emphasized by the foremen's expressions of hostility to the C. I. O. and their advice that an inside union would be better for the employees. These opinions, expressed by persons in supervisory capacities, were intended to and did restrict the employees in their choice of a labor organization. The respondent translated this verbal preference into action. It permitted the meetings for the formation of the Independent to be held on its property during working hours. Hydar notified the employees to attend the first of these meetings, which were addressed by Harold Falk and Connell, two of the respondent's principal officials, and by Falk's son, Richard.

Harold Falk promised to advance the date of the wage increase as an inducement to the employees to form and join the Independent and gave them his sanction. The attorney, retained by the employees, was selected from among those suggested by Harold Falk and the appointment with him was arranged by Falk. The effectiveness of the respondent's interference with the administration of the Independent is further evidenced by the employees' abrupt decision to incorporate although they had previously decided to postpone such action. With the form of the Independent perfected in accordance with its desires, the respondent recognized it as the bargaining agent for all its employees on the mere statement of its incorporators that it represented a majority of such employees, without requiring any other proof of a majority. This hasty recognition of the Independent enabled the respondent to utilize it within 2 weeks as a pretext for denying collective bargaining to the Amalgamated.

We find that, by the above-stated acts, the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it and thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. The refusal to bargain collectively

1. The appropriate unit

The complaint alleged that all employees in the respondent's Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department, constituted an appropriate unit. In support of this allegation the Amalgamated pointed out at the hearing that the problems and interests of the production employees are different from those of the draftsmen and clerical employees. The basis of pay is likewise different as are the working hours. These differences are of such a nature as to preclude effective bargaining by one group for the other.

The Operating Engineers contends that the powerhouse employees of the respondent, including operators of steam-driven locomotive cranes, constitute an appropriate unit. These employees are required by the City of Milwaukee to have a license in order to perform their duties. Other employees cannot take their positions unless they are licensed engineers. The powerhouse is a separate building. The powerhouse employees are paid on a monthly salary basis.

In view of the facts described above, it appears that the powerhouse employees can be considered either as a separate unit, as claimed by the Operating Engineers, or as part of the large unit composed of production employees, as claimed by the Amalgamated. Falk

testified that, for purposes of collective bargaining, the interests of the powerhouse employees could be effectively served either by representation with all the employees in the plant or by separate representation for these employees.

The Amalgamated and the Operating Engineers recognized this situation as is evidenced by the fact that at the hearing they entered into a stipulation, by which they agreed that, if the Board should direct an election, the employees in the power plant and the crane operators would vote separately to determine whether they desired to be represented by the Amalgamated or the Operating Engineers for the purpose of collective bargaining. This stipulation was to be effective only if, in such an election, the Independent were excluded from the ballot and only the names of the Amalgamated and the Operating Engineers appeared.

In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves.² On this point the record affords no help. There has been a swing toward the Operating Engineers on the part of the powerhouse employees and then away from it. We shall, therefore, order an election on the basis of the stipulation between the Amalgamated and the Operating Engineers. Upon the result of this election will depend the determination of the appropriate unit or units for purposes of collective bargaining. If the powerhouse employees choose the Operating Engineers, they will constitute a single appropriate unit and the other production employees will constitute another appropriate unit. Otherwise all the production workers, including the powerhouse employees, will constitute a single appropriate unit.

2. Representation in the unit claimed to be appropriate

The financial secretary of the Amalgamated testified at the hearing that there were between 585 and 615 applications to membership in the Amalgamated around May 5, 1937, which was the date on which the Amalgamated requested collective bargaining from the respondent. He later testified, however, that the Amalgamated had about 677 application cards on May 5, 1937. The Amalgamated did not produce any records at the hearing to prove that it represented a majority of the employees, although the respondent demanded that the financial secretary produce his membership records. The minutes of the first meeting of the incorporators of the Independent, held on April 24, 1937, disclose that there were on that date 693 applications to membership in the Independent, while the minutes of a meeting on June 5, 1937, contain a statement by the secretary that there were 800 or more members. Figures submitted by the super-

² See *Matter of Globe Machine and Stamping Company*, 3 N. L. R. B. 294.

visor of the respondent's cost and pay-roll department, taken from the pay roll as of May 5, 1937, show that there were 1,316 employees, exclusive of miscellaneous employees, office and pay-roll employees, and drafting and engineering employees.

Since there was no clear showing that the Amalgamated represented a majority of the employees within an appropriate unit at the time it sought to bargain with the respondent, there was no violation of Section 8 (5) of the Act and the allegations of the complaint to that effect will, accordingly, be dismissed.

IV. THE QUESTION CONCERNING REPRESENTATION

It is apparent from the foregoing that a dispute exists concerning the appropriate unit or units and the representation of employees within such unit or units. Both the Amalgamated and the Operating Engineers have advanced conflicting claims.

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

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

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

THE REMEDY

We have found that the respondent dominated and interfered with the formation and administration of the Independent and has contributed support to it. Since its inception, and especially since the question concerning the representation of the respondent's employees has arisen, the respondent has used the Independent as a convenient weapon to prevent the exercise of its employees' rights to self-organization and collective bargaining. The respondent, in order to remedy its unlawful conduct, must withdraw all recognition from the Independent and completely disestablish it as a collective bargaining agency.

We have found that there is a question affecting commerce concerning the representation of the respondent's employees. We shall, therefore, order an election to be held among the employees of the respondent, who were in its employ during the pay-roll period.

immediately preceding our Direction of Election in order to determine the appropriate bargaining unit or units and the representation of employees within such unit or units. We shall direct that such election be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order. In such election we shall make no provision for the designation of the Independent on the ballot.

CONCLUSIONS OF LAW

1. Steel Workers Organizing Committee; Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528; International Union of Operating Engineers, Local 311; and Independent Union of Falk Employees are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of their right to self-organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and administration of the Independent and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. The unfair labor practices referred to in paragraphs 2 and 3 above, constitute 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 the representation of employees of The Falk Corporation, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the foregoing 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, The Falk Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other labor organization of its employees, and from contributing

support to the Independent Union of Falk Employees or to any other labor organization of its employees;

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

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

(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Independent Union of Falk Employees as such representative;

(b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;

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

The complain is hereby dismissed (1) in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act in discharging Anton Kinch, and (2) in so far as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act.

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 authorized by the Board to ascertain representatives for the purposes of collective bargaining with The Falk Corporation, Milwaukee, Wisconsin, an election by

secret ballot shall be conducted within such time as we may hereafter direct, under the direction and supervision of the Regional Director for the Twelfth 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 (1) among the employees of said Company, exclusive of supervisory employees, draftsmen, employees in the general office, employees in the pay-roll department, powerhouse employees, and steam-driven locomotive crane operators, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, excluding those who since have voluntarily quit or have been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, (2) among the powerhouse employees and steam-driven locomotive crane operators of said Company, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, or by International Union of Operating Engineers, Local 311, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.