

In the Matter of MCNEELY & PRICE COMPANY and NATIONAL LEATHER  
WORKERS ASSOCIATION, LOCAL No. 30, OF THE C. I. O.

*Cases Nos. C-354 and R-523.—Decided April 23, 1938*

*Leather Manufacturing Industry—Interference, Restraint, or Coercion:* expressed opposition to outside labor organization; threats of retaliatory action; persuading employees to refrain from forming or joining or to resign from union; engendering fear of loss of employment for union membership and for activity; inducements for repudiation of outside union; threat to liquidate plant unless union organization and/or activity cease; attempts to bribe union officers—*Collective Bargaining:* refusal to recognize or bargain with representatives of majority of employees as exclusive bargaining representative of employees—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, exclusive of clerical employees and supervisory employees with authority to hire and discharge; no controversy as to—*Representatives:* proof of choice; membership applications in union—*Discrimination:* alleged discriminatory discharge of employees; charges of, dismissed—*Strike—Rem-statement Ordered, Strikers:* upon application, displacing, if necessary employees hired since strike—*Back Pay:* awarded to strikers whose applications for reinstatement are refused by employer.

*Mr. Geoffrey J. Cunniff*, for the Board.

*Mr. Roy Martin Boyd*, of Philadelphia, Pa., for the respondent.

*Mr. William F. Regan*, of Peabody, Mass., for the N. L. W. A.

*Mr. Louis F. McCabe*, of Philadelphia, Pa., for the N. L. W. A.,  
Local No. 30.

*Mr. A. George Koplou*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges, amended charges, and second amended charges duly filed by National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, herein called the Union, the National Labor Relations Board, herein called the Board, by Stanley W. Root, Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated November 5, 1937, against McNeely & Price Company, Philadelphia,

Pennsylvania, herein called the respondent, alleging that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and accompanying notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the respondent terminated the employment of 23 named employees because of their membership in, and affiliation with, the Union; (2) that the respondent by threats, the making of speeches, the instigation of "back-to-work" movements, the curtailment of operation, the discharge of employees, and other acts, had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act; (3) that the respondent's employees engaged in production and maintenance constituted an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (4) that since about April 30, 1937, the Union had been designated by the majority of the employees in such unit as their representative for purposes of collective bargaining, and was the exclusive representative of all the employees in said unit, which fact was made known to the respondent; (5) that the respondent on certain specified dates refused to bargain with the Union as the exclusive representative of all the employees in such unit; (6) that as a result of the afore-mentioned acts of the respondent its employees went on strike on June 13, 1937, and again on July 13, 1937, the latter strike still continuing at the time of issuance of the complaint.

Thereafter the respondent filed its answer to the complaint, in which it admitted that it was engaged in interstate and foreign commerce, denied that it had engaged in or was engaging in the alleged unfair labor practices, demanded a jury trial, and asked that the complaint be dismissed. It also reserved the right to question the jurisdiction of the Board and the right to object to the vagueness of and errors in the complaint.

On or about June 3, 1937, the Union filed a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On October 25, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On the same day, the Board, acting pursuant to Article III, Section 10 (c)

(2), of the Rules and Regulations, ordered that the two cases be consolidated.

Pursuant to notice duly issued and served, a joint hearing on the complaint and petition was held in Philadelphia, Pennsylvania, on November 17 through December 2, 1937, before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the Union, and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties. After all of the testimony had been heard, counsel for the respondent renewed a motion originally made at the close of the Board's case to dismiss that portion of the complaint which charged that 23 named employees had been discharged for union membership. Counsel for the Board concurred in the motion as to 16 of the aforesaid 23 employees who did not testify, namely, Stanley Jusczyk,<sup>1</sup> Peter Koscielnak, Adam Trichocki, George Weyant, R. S. Stiles, Jr., Peter Dzawowpk, Adam Podlienski, Joseph Matuszewski, Walter Pottolow, Casimir Zagorski, Edward Schaeffer, Peter Smiecinski, Anthony Tokarski, James Kelly, Frank Rathfon, and John Hughes, and also as to Frank Zawisza. The motion was granted as to the afore-mentioned employees,<sup>2</sup> but was denied as to six other employees who gave testimony at the hearing. During the course of the hearing the Trial Examiner made numerous rulings on other 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.

On January 6, 1938, the Trial Examiner filed an Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, but recommended that the allegations in the complaint charging violation of Section 8 (3) be dismissed. The respondent and the Union filed exceptions to the Intermediate Report. Upon request of the respondent, a hearing was held before the Board in Washington, District of Columbia, on February 15, 1938, for the purpose of oral argument. The respondent and the Union were represented and filed briefs which the Board has considered. The Board has considered the exceptions to the Intermediate Report and finds them to be without merit.

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<sup>1</sup> There is some discrepancy between the spelling of names in the charge and in the transcript of the hearing. At the hearing a motion was granted to amend the complaint to conform with the proof in the matter of spelling and dates.

<sup>2</sup> In his Intermediate Report the Trial Examiner erroneously omitted the name of Peter Koscielnak from this list.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT<sup>3</sup>

The respondent, McNeely & Price Company, is a Pennsylvania corporation engaged in the manufacture of leather, with its principal place of business in Philadelphia, Pennsylvania.

The principal raw materials used by the respondent are skins and chemicals. About 95 per cent of the skins and about 10 per cent of the chemicals are shipped into the State of Pennsylvania from other States of the United States and from various foreign countries. The finished product of the respondent is glazed kid leather, of which 80 per cent is shipped from the State of Pennsylvania to other States of the United States and various foreign countries.

In the ordinary course of its business the respondent manufactures and produces 100,000 dozen of skins per year, and does a gross annual volume of business aggregating \$1,000,000, which is about 3 per cent of the total output of the entire glazed kid industry in the United States. It employs 250 persons in production and maintenance.

#### II. THE UNION

National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization,<sup>4</sup> is a labor organization admitting to its membership all production and maintenance employees of the respondent except clerical employees and supervisory employees with authority to hire and discharge. It also admits similar categories of workers from other plants in Philadelphia.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *Interference, restraint, and coercion prior to June 1, 1937*

The employees of the respondent first began to organize in March 1937. Late one afternoon during that month the employees who had not left the plant for the day were called together by George McNeely, Jr., treasurer and general manager of the respondent.

<sup>3</sup>The facts set forth in this section were stipulated for the record Board Exhibit No. 4

<sup>4</sup>When organizational work started in the respondent's plant, in March 1937, National Leather Workers Association was not affiliated with the Committee for Industrial Organization. The affiliation took place about April 27, on which date Local No. 30 was formed. Members of Local No. 30 who joined the National Leather Workers Association prior to April 27 did so by signing application cards of Local No. 27, which were not turned in to national headquarters until Local No. 30 was organized.

Two witnesses testified that McNeely, Jr. stated on this occasion that business was very poor and that the respondent would liquidate if a union were formed, and that he offered to allow meetings in the plant if an inside, instead of an outside, union were formed. McNeely, Jr. denied these statements but admitted that at this meeting he had told the employees that there had never been a union in the plant in the 40 years that the respondent had been in business and that "I told them if they had an inside union I would bond the treasurer . . . in order to protect any dues paid into it". He suggested that the employees take a vote on the question of whether they wanted an inside or an outside union, and thereupon left them to their own devices. Those remaining in the plant proceeded to vote by secret ballot. The result of the vote was 88 for an outside union and 12 for an inside union.

A week or ten days after this balloting a second vote was taken among the workers. This vote was taken by two employees, James J. Marshall and Leander Morrell, with Bruno Kozlowski, another employee, assisting them in some departments. The voting took several hours, Marshall and Morrell opening and tabulating the ballots in each department before proceeding to the next department. The results of this election were approximately 55 for an outside union, 50 for an inside union, and 85 for no union.

Bruno Kozlowski testified that the plant superintendent, Charles R. Hammell, Jr., told him to go with Marshall to take this second ballot because he could speak Polish, and to tell the Poles that if there was an outside union they might all be out of work, and that if they voted against an outside union they would get a week's vacation with pay. Kozlowski testified that he told this to about 20 employees in four departments of the plant, and that as a result the Poles said that they didn't want the union because they wanted work.

At the time of the second ballot the blues-sorting department consisted of only two men. Marshall told them that if they voted against an outside union they would get a vacation and a pay increase. After they had voted, Marshall opened their ballots and told them they had voted "the right way" when he saw that both had voted "no union". One of the two men testified that Marshall's representations had influenced his vote. Marshall made the same statements as to vacations and pay increases to some 18 men in the staking department, according to the testimony of three men from that department, two who heard the statements made and a third who was absent at that moment but heard the announcement repeated by men in the department. The respondent introduced only one employee from the staking department, who denied that he had heard such

statements, but who admitted that he was out of the room when Marshall entered. Another employee, Joseph Trojak, employed in the receiving department, voted "no union" as a result of Marshall's statements to him that if the vote were for an inside union or no union they would get a vacation and an increase in wages.

As part of its defense the respondent introduced several witnesses who testified that no attempt was made to influence their vote at this second balloting. Most of the respondent's witnesses were strikers who abandoned the strike and returned to work before the hearing. Assuming that their testimony is true, it in no way refutes the coercion proved by the testimony of the other employees.

Marshall claimed that the second vote was his own idea, and both Marshall and Morrell denied promising vacations to their fellow employees if they voted for an inside union or no union. The circumstances surrounding their activities in our opinion negative their denials.

Marshall and Morrell admitted that they had asked Hammell, the plant superintendent, for permission to take the vote, and Hammell admitted at the hearing that he had granted such permission. The balloting took several hours, during which time these men who collected the ballots were absent from their machines with no loss of pay. In each department Marshall told the foreman that he had the superintendent's permission to take the vote, and the foremen thereupon allowed him to canvass the men. When the results of the vote were against an outside union, McNeely, Jr., within a week, after first having visited the various departments of the factory to thank employees "for the confidence placed in the management", abandoned his 40-year non-vacation policy and announced vacations with pay, as Marshall and Morrell had promised during their solicitation. McNeely, Jr. denied that the vacation announcement was in any way connected with the union activity, but explained that it was given because of "a general spirit of dissatisfaction through the plant". Under the circumstances this explanation is a virtual admission that the vacation inducement announced at the precise time of incipient employee organization was proffered and granted to end such activity. The facts surrounding the entire incident compel the conclusion that the promises of vacations and pay increases for voting against an outside union were made by Marshall and Morrell as agents of the respondent acting with its knowledge, acquiescence, and authorization.

Summarizing, the respondent through its officials and authorized agents repeatedly sought to dissuade its employees from joining the union of their choice by making hostile statements against "outside" unions, and by threatening its employees with possible liquidation of the business and resultant loss of their jobs if they persisted in their

union activities. After the employees had indicated their distinct preference for an "outside" union in the first plant election despite the respondent's interference, the respondent eliminated completely the employees' free choice in the selection of representatives by arranging for a second company-supervised election. To insure the desired result, which was obtained in the second election, the respondent promised and subsequently awarded vacations with pay in return for the general repudiation of an "outside" union.

We find that by the above acts the respondent, through its officers and agents, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### *B. The refusal to bargain collectively*

#### 1. The appropriate unit

The complaint alleged that the employees of the respondent engaged in production and maintenance constitute a unit appropriate for the purposes of collective bargaining. The petition described the appropriate unit as "Production workers, exclusive of those engaged in clerical or supervisory positions; maintenance employees". The respondent did not offer any evidence showing that any other unit is an appropriate one. The Union admits to membership all of the plant employees of the respondent, except clerical employees and supervisory employees with authority to hire and discharge. "Strawbosses", or foremen with no authority to hire and fire, are eligible for membership if they actually work on the leather.

We find that the production and maintenance employees of the respondent, exclusive of clerical employees and supervisory employees with authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining, and that said unit insures to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

#### 2. The representation by the Union of a majority in the appropriate unit

As already indicated, the respondent employs 250 persons in production and maintenance, in the ordinary course of its business. There were introduced in evidence the union membership application cards of 227 employees of the respondent. Most of these cards carried no date, and many were admittedly signed not by the applicant himself but by the person soliciting the membership, upon the authorization of the applicant. The respondent's counsel objected to their introduction in evidence at the hearing, but the respondent later declared in

its brief filed at the time of the oral argument before the Board on February 15, 1937, that: "There is no quarrel with the finding that a majority of the workers belonged to Local 30. For the reasons set forth elsewhere we except to the statement that these workers sought to deal collectively with Mr. McNeely, Jr. in vain". McNeely, Jr. himself, on or about June 1, 1937, admitted that the Union had a majority.

Q. Did Mr. Wilson [member of the union's shop committee, and later shop steward] offer to show you his membership in May?

A. Yes, sir, on June 1st. . . .

Q. Did you let him do it?

A. I said "Don't bother with them".

Q. Did you believe he had a majority?

A. I could not prove it, but I was inclined to accept it as a fact.

Clyde Brindel, financial secretary and treasurer of Local 30, reading from the record books of the Union, testified at the hearing that he had received initiation fees from 8 of respondent's employees on April 27, 12 on May 3, 19 on May 7, 30 on May 11, 4 on May 14, 44 on May 18, 54 on May 25, 16 on May 28, approximately 26 on June 1, and 42 on June 24. The total figure on May 25 was 171 members; on June 24 there were 255, of whom approximately 35 were former employees of the respondent who were unemployed when they applied for membership. Accepting these figures, and deducting the maximum of 35 members alleged to have been unemployed when they joined the Union, there was a clear majority of the respondent's approximately 250 production employees in the Union on and after May 25, 1937.

We find that on May 25, 1937, and at all times thereafter, the Union was the duly designated representative of the majority of the employees in the appropriate unit, and pursuant to Section 9 (a) of the Act was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment.

### 3. The refusal to bargain

On May 18, 1937, at a union meeting, representatives from the various departments were elected as a shop committee to bargain with the respondent. It is not clear from the record whether the first conference of the committee in its official capacity, with McNeely, Jr. representing the management, occurred in the last week of May or on June 1. Arthur Wilson, who was later elected shop steward, and

Joseph F. Cunningham, president of the Union, together with other members of the committee, attended this conference, which was held in McNeely, Jr.'s office. Wilson asked McNeely, Jr. if he would recognize the Union as the representative of the employees in the plant and McNeely, Jr. gave an equivocal answer. McNeely, Jr. then produced a pamphlet of the American Federation of Labor and asked the committee why the employees did not join that organization, suggesting that he would be agreeable to such affiliation. Wilson replied that employees have a right under the law to join a union of their own choosing.

At this point Harry Nelson Monck, an organizer for the Union, who had been waiting in the outer office, was brought in and introduced to McNeely, Jr. Monck demanded to know whether or not the respondent recognized the Union as the bargaining agency of its employees. McNeely, Jr. was again noncommittal in his reply, stating that he did not know if the Union had a majority. Monck thereupon asked if the respondent would consent to an election to be held under the supervision of the Board. Again McNeely, Jr. was noncommittal in reply, saying that he did not know whether he would or not. McNeely, Jr. at this juncture produced a yellow circular, attacking the respondent in strong language, copies of which circular had been distributed at Monck's direction among the employees of the respondent. When he was asked who was responsible for this circular Monck refused a reply satisfactory to McNeely, Jr. and then Monck left the room. Immediately afterward McNeely, Jr. said he would "never do any dealing with an organization like that. . . . They are a bunch of radicals; they are Communistic". This was the beginning of the respondent's persistent refusal to bargain with the Union as the representative of its employees.

On June 9 there was a conference between the Union and the respondent at the offices of the Regional Director for the Fourth Region. At this conference the Union's representative refused permission to Roy Martin Boyd, attorney for and director of the respondent, to inspect the membership cards of the Union. The Union's representative was willing to allow the agents of the Board to examine the cards, and in the alternative was willing to have an election conducted by the Board's Regional Director upon consent of the parties to settle the matter. The respondent's counsel would not agree to either proposal. Nothing was done at this conference; a later meeting was planned but never materialized. The next day Daniel J. Boyle, national secretary and treasurer of the Union, spoke to McNeely, Jr. in front of the plant. McNeely, Jr. there reiterated his refusal to recognize the Union and said that he would liquidate the business rather than bargain with the Union. The following day, June 11, at another conference with the shop committee of the Union,

McNeely, Jr. reiterated his refusal to recognize the Union and canceled the promised vacations of one-third of the employees who had not yet received them, agreeing to restore these vacations to them "if the men behaved properly. . . ." McNeely, Jr. also told them that he was under instructions to shut the factory down.

Because McNeely, Jr. would neither recognize nor make an agreement with the Union, on the morning of June 14 the employees held a meeting in the plant and voted almost unanimously to strike unless something were done immediately. An hour after this meeting two trucks started to haul raw hides from the plant, making it appear that production was to stop altogether. After fruitless attempts to reach McNeely, Jr., who was out of town, the employees started a sit-down strike at noon on June 14, refusing to work or to leave the plant. Efforts to come to an agreement the next day were unsuccessful, but the strike was terminated by an agreement, on June 16. This agreement signed by McNeely, Jr. and three members of the committee from the Union, was addressed "To the Committee of the National Leather Workers Association, Local 30," and specified that the respondent would continue to operate at the current rate of production as long as there were skins. Continuance of production after that was to depend on business conditions. This was the only occasion on which McNeely, Jr. addressed himself to the Union directly.

In the ensuing few weeks several conferences were held between McNeely, Jr. and Wilson, who was sometimes accompanied by one or two other members of the shop committee, the conferences being mostly discussions about plant and working conditions. At the hearing McNeely, Jr. indicated that during these conferences he dealt with Wilson and the committee as individuals and employees rather than as representatives of the Union.

Q. And after telling him that (i. e. admitting the Union's majority) did you henceforth deal with the National Leather Workers as representatives of the majority of your help?

A. I dealt with Wilson.

Q. All right. Did you continue to deal with Arthur Wilson as an individual?

A. No, I did and I didn't.

As a result of these conferences Wilson submitted to McNeely, Jr., on July 12, a paper setting forth the Union's demands. After some discussion certain provisions were tentatively agreed upon between Wilson and McNeely, Jr. and embodied in a proposed agreement between the respondent and its employees. McNeely, Jr. had this proposed agreement typewritten, and the following day, July 13, he

handed it to Wilson through Koenig, the respondent's foreign salesman. The proposed agreement started with these words:

AGREEMENT BETWEEN McNEELY & PRICE CO. AND ITS EMPLOYEES

The Management of McNeely & Price Co. and the employees of McNeely & Price Co., speaking through their committee which is duly authorized to represent them, agree as follows:

The Management agrees without any outside representation on the workers' part, to the following. . . .

A meeting of the workers was held in the factory at once and a demand was made that the agreement be addressed to Local No. 30, National Leather Workers Association. McNeely, Jr. at the hearing admitted that he flatly refused this demand, and when he was told that this meant a strike vote he told Cunningham, "Go ahead and strike the plant, then." The sit-down strike started immediately, on July 13, 1937. On July 19, 1937 the strikers were evicted from the factory by order of the Common Pleas Court of Philadelphia, but the strike is still in progress.

On July 23 the president of the Union attempted to speak with McNeely, Jr., but he replied that he was at that time too busy on salvaging operations in the plant. On July 26 the Union sent a telegram to the respondent suggesting a conference, but received no reply. Again, during the months of August and September, representatives of the Union approached McNeely, Jr., but he told them that the rumors that he wanted to talk to them were untrue. In a conversation with the respondent's attorney in August the Union representatives were told that nothing could be done until the directors of the respondent had met. There is no indication in the record that such a meeting was held by the directors, or that the respondent's attorney took any steps toward settlement of the strike.

The strikers, apparently on their own initiative, held a meeting on September 17, at which some of the foremen were present.<sup>5</sup> They invited McNeely, Jr. to address them. At the meeting McNeely, Jr. offered to reopen the plant and put them back to work "under the same conditions as they had before the strike; the same hours, the same pay." On September 29, the respondent mailed a letter to each of the employees on the pay roll as of June 14, 1937, stating that the management "will entertain the application for employment of every person who applies for work". Although the strike was still in progress, the respondent made no effort to communicate with the Union in attempting to get employees to return to work, but instead solicited the employees individually. Nevertheless, approximately 150 workers were still on strike at the time of the hearing.

<sup>5</sup> There is some indication in the record that this meeting was actually part of a "back-to-work" movement instigated by the respondent, but there is not sufficient evidence to warrant such a finding

The respondent denies that it refused to bargain collectively with the Union and construes its actions as bona fide efforts at collective bargaining. It attributes the failure of these efforts to the Union. In support of its position the respondent asserts that the Union's representatives were never refused permission to confer with the management in an attempt to reach an agreement.

The facts are not consistent with the respondent's position. When the Union first sought recognition about June 1 McNeely, Jr. was evasive and terminated the conference with a tirade against the organization as "radical and communistic". At the next conference on June 9, the respondent continued to withhold recognition on the ground of uncertainty concerning the extent of the Union's membership, but rejected two reasonable methods of resolving the alleged uncertainty. At two successive meetings with Union spokesmen on June 10 and 11, the respondent flatly refused to recognize the Union, and coupled its refusal with a threat of liquidation of its business, and in the June 11 meeting with the cancelation of vacations, which it indicated a willingness to restore upon the employees' virtual abandonment of their efforts to bargain collectively. This conduct provoked the two-day strike from June 14 to 16. It is plain from these facts that although the respondent met with the Union representatives and discussed terms with them, it neither recognized nor bargained with the Union as the representative of its employees. We have repeatedly held that to meet with Union representatives and to discuss terms does not satisfy the requirements of the Act if Union recognition is withheld as it was in this case.<sup>6</sup>

It is true that this first strike ended with a truce agreement which was addressed to the Union. That this recognition was only nominal and was not intended by the respondent as actual recognition of the Union is established by the respondent's subsequent conduct. It is plain that in so far as this truce agreement may have constituted recognition of the Union as the bargaining representative of the respondent's employees, it was promptly repudiated by the respondent's refusal in the ensuing weeks to accord the Union such recognition.

After a series of discussions with Union representatives, McNeely, Jr. and Wilson arrived at the proposed agreement of July 13 mentioned above, which was addressed not to the Union but to the respondent's employees. The employees' request that the document be addressed to the Union was flatly rejected by McNeely, Jr. with full knowledge that the denial of formal recognition to the Union meant another strike, which commenced on the same day. In justification

<sup>6</sup> See *In the Matter of The Griswold Manufacturing Company and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1197*. 6 N L R B 298.

of this refusal the respondent urges that the proposed agreement addressed to the respondent's employees was in accord with a final understanding between McNeely, Jr. and Wilson, the Union's agent. Wilson admits the understanding but denies its finality. His denial is supported by the language of the agreement as originally drafted by McNeely, Jr. and Wilson, which clearly establishes that any agreement was conditional upon ultimate acceptance by the Union.<sup>7</sup>

It is unnecessary for us to decide what the effect of a waiver by the Union's agent would have been, since we find that there was no such waiver. Accordingly, the respondent was under a clear duty to accord the Union recognition when it was demanded on the next day, when the proposed agreement was submitted for ratification. By refusing to readdress the proposed agreement as requested the respondent attempted deliberately to ignore the Union in order to deprive it of any credit or advantage which might have accrued from having conducted the negotiations. After the second strike began the respondent sought unsuccessfully to deal with the strikers on an individual basis and persists in its refusal to recognize or bargain with the Union.

The above-described acts of the respondent clearly constituted a refusal to recognize and to bargain collectively with the Union as the representative of its employees. This refusal was the sole and direct cause of both strikes. We find, therefore, that on or about June 1, 1937, and thereafter, the respondent refused to bargain collectively with the Union as the representative of its employees in respect to rates of pay, wages, hours of employment, and other conditions of employment, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

### *C. The discharges*

The complaint alleged that from June 1, 1937 to July 13, 1937, the respondent terminated the employment of 23 named employees because of their membership and activity in the Union. At the hearing the Trial Examiner granted a motion to dismiss the complaint as to the 16 employees who did not appear to testify, and as to Frank Zawisza. In his Intermediate Report the Trial Examiner recommended that the complaint be dismissed as to the remaining six men, who were discharged during the aforesaid period.

An examination of the nature of the respondent's operating processes is helpful in the consideration of the lay-offs in issue. It takes 6 weeks for a cut in production to be completed throughout the re-

<sup>7</sup>The relevant portion of the agreement provides: "The committee representing the workers of McNeely and Price Co. agree, and the workers by a raised-hand vote confirm this agreement in its entirety. . . ." Board Exhibit No. 8.

spondent's plant, which is the length of time required to convert skins into finished leather. It had been the custom in the plant to lay off men in the various departments when production was cut, beginning first with those engaged in the early stages of the tanning process and proceeding on through the successive departments in this manner for six weeks. The unit of work in the plant is the "soak", each "soak" consisting of approximately 100 dozen skins. During May the plant was operating at the rate of 5 "soaks", which amounts to approximately 500 dozen skins per day. Production was cut to 4 "soaks" on May 26, and 3 "soaks" on June 7. The 23 aforementioned men were laid off from the various departments from June 1 to July 13. There is no evidence that any rules of seniority were violated in the lay-offs, nor were the union activities of the afore-mentioned men particularly outstanding.

The Union contended in its brief and oral argument that since there was almost 100 per cent union membership among the plant employees at the time the lay-offs occurred, these discharges constituted a more subtle attempt to discourage membership in a labor organization by pursuing a threatened policy of liquidation rather than recognize the Union. This view gains a certain plausibility from the fact that on May 24 and again on June 1 the Union asked McNeely, Jr. for union recognition, and on May 26 production was cut from 5 "soaks" to 4 "soaks" and on June 7 to 3 "soaks". There are other circumstances which must be considered, however. Conditions were poor in the black-kid industry at this time, due to a trend toward the use of other materials, such as gabardine, in the manufacture of women's shoes. It is also true that the optimistic business outlook in the winter of 1936, and the failure of the respondent's 1937 spring business to measure up to expectations, resulted in the respondent's carrying an unusually large inventory and being short of working capital at the beginning of the summer of 1937. It was consonant with sound business practice, therefore, to decrease production at that time. The respondent's plant had never operated at more than 5 "soaks" per day since January 1936. From February 15, 1936 to April 2, 1936, and again from October 30, 1936 to March 8, 1937, the plant had operated at the rate of only 3 "soaks" per day. Therefore, this cut in production to 3 "soaks" per day was neither unusual nor unprecedented.

The record convinces us that the curtailment of production and the attendant termination of employment of the 23 persons named in the complaint were the result of poor business conditions rather than an attempt to discourage membership in a labor organization. We find that the respondent has not discriminated in regard to the hire and tenure of employment of the 23 afore-mentioned persons to discourage membership in a labor organization.

*D. Other acts of interference, restraint, and coercion subsequent to June 1, 1937*

On or about July 1, 1937, McNeely, Jr. introduced Wilson to Walter Koenig, a foreign salesman for the respondent, saying that Koenig wanted to have a private conversation with Wilson. On that occasion, Koenig told Wilson that McNeely, Jr. would never "sign up in any way, shape, or form with the National Leather Workers, a C. I. O. affiliate", but that he would "go right along" with any other organization. Again on July 7 Koenig, with John Sutton, assistant sales manager of the respondent, met with Wilson and Cunningham, the union president, and attempted to bribe them to change their affiliation. Koenig repeated this attempt on July 8. Neither Koenig nor Sutton was called by the respondent to testify.

We find that by the above acts the respondent interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, A, B, and D 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.

V. THE REMEDY

The respondent will be required to cease and desist from the unfair labor practices described above. It will in addition be ordered to bargain collectively with the Union. Since the strike which is still in progress was caused by the respondent's unfair labor practices, the respondent is under a duty to restore the status quo as it existed prior to the strike. Therefore we shall order that the respondent offer to those employees who went on strike on July 13, 1937, reinstatement to their former or equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary employees hired after that date.

If, after reinstating its employees pursuant to our order and dismissing employees hired since July 13, 1937, the respondent determines that the services of its staff as then constituted are not required for the operation of its plant, it may reduce its staff, providing the reduction is made without discrimination against any employee because of union affiliation or activities, following a system of seniority to such an extent as has heretofore been applied in the

conduct of the respondent's business, subject to any modification introduced by agreement with the Union.

### THE PETITION

In view of the findings in Section III above as to the appropriate unit and the designation of the Union by a majority of the respondent's employees as their representative, it is not necessary to consider the petition of the Union for certification of representatives. Consequently the petition for certification will be dismissed.

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

### CONCLUSIONS OF LAW

1. National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, is a labor organization within the meaning of Section 2 (5) of the Act.

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

3. The production and maintenance employees of the respondent, exclusive of clerical employees and supervisory employees with authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, is, and has been at all times since May 25, 1937, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. The respondent, by refusing to bargain collectively with National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, as the exclusive representative of all its employees in such unit, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

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

7. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

## ORDER

On the basis of the above 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, McNeely & Price Company, Philadelphia, Pennsylvania, and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, as the exclusive representative of its production and maintenance employees, exclusive of clerical employees and supervisory employees with authority to hire and discharge; and

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining 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) Upon request, bargain collectively with National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, as the exclusive representative of its production and maintenance employees, exclusive of clerical employees and supervisory employees with authority to hire and discharge;

(b) Upon application, offer to those employees who went on strike on July 13, 1937, immediate and full reinstatement to their former or equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner described in Section V above;

(c) Make whole all employees who went on strike on July 13, 1937, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph, by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(d) Post immediately in conspicuous places in its plant at Philadelphia, Pennsylvania, and maintain for a period of at least thirty (30) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid;

(e) Notify the Regional Director for the Fourth 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 complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

The petition for certification of representatives, filed by the National Leather Workers Association, Local No. 30, affiliated with the Committee for Industrial Organization, is hereby dismissed.