

In the Matter of MARKS BROTHERS COMPANY and UNITED TOY AND NOVELTY WORKERS LOCAL INDUSTRIAL UNION No. 538, AFFILIATED WITH THE C. I. O.

Cases Nos. C-464 and R-619.—Decided May 13, 1938

Toy Manufacturing Industry—Interference, Restraint, and Coercion—Company-Dominated Union: domination of and interference with formation and administration; support; discrimination in favor of, in recognition as representative of employees; disestablished as agency for collective bargaining—*Discrimination:* discharge and refusal to reinstate; charges of, not sustained—*Investigation of Representatives:* controversy concerning representation of employees: employer's refusal to grant recognition of union—*Unit Appropriate for Collective Bargaining:* production employees, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, and employees in maintenance department and machine shop—*Contract:* repudiated by employer as not having been executed under its authority—*Strike—Election Ordered:* company-dominated union excluded from ballot.

Mr. Norman F. Edmonds, for the Board.

Mr. Jeremiah W. Mahoney and *Mr. Arthur L. Sherin,* of Boston, Mass., and *Mr. Henry A. Meyers,* of Holliston, Mass., for the respondent.

Mr. Sidney Grant, of Boston, Mass., for the United.

Mr. Hyman H. Rovner, of Chelsea, Mass., for the Association.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 3, 1937, Toy and Novelty Workers Organizing Committee of the C. I. O., herein called the Organizing Committee, filed a charge with the Regional Director for the First Region (Boston, Massachusetts), alleging that Marks Brothers Company, Boston, Massachusetts, 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 November 8, 1937, an amended charge was filed by United Toy and Novelty Workers Local Industrial Union, No. 538, affiliated with the C. I. O., herein called the United.¹ On the same day the National Labor Relations Board, herein called the Board, by the Regional Director, issued its complaint and notice of hearing, copies of which were duly served upon the respondent and upon Marks Brothers Employees Association, herein called the Association, a labor organization which is described and discussed in Section III B below.

The complaint alleged that the respondent had committed unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act in that (1) it had dominated and interfered with the formation and administration of the Association and had given aid thereto, while at the same time discouraging its employees from becoming members of the United; and (2) it had discharged, and had since refused to employ, Carmella Sanella, an employee, for the reason that she joined and assisted the United and engaged in activities for the purpose of collective bargaining. The respondent filed an answer dated November 12, 1937, in which it admitted certain of the allegations concerning the character of its business, but denied all the other material allegations of the complaint. With respect to the alleged discriminatory discharge of Sanella, the respondent averred affirmatively that she had not been reemployed because of lack of work in the department in which she had been previously employed.

On November 8, 1937, the United also filed with the Regional Director 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 November 12, 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 provide for an appropriate hearing upon due notice, and, acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of said Rules and Regulations, further ordered that this case be consolidated for the purposes of the hearing with the case arising upon the charges filed by the United.

¹ The name which appears in the amended charge is "United Toy and Novelty Workers, L. I. Union No. 538, affiliated with C. I. O." In the petition, referred to below, the name of the United appears as "United Toy & Novelty Workers Local Industrial Union No. 538 of the C. I. O."

The relationship between the Organizing Committee and the United is described below in Section II.

On November 12, 1937, the Regional Director issued a notice of hearing in the consolidated cases, copies of which were duly served upon the respondent and the Association, which claimed to represent employees directly affected by the investigation.

Pursuant to the notice of hearing and to a postponement of the hearing agreed to by counsel for all parties, a hearing was held in Boston, Massachusetts, on November 26 and 27, 1937, before Eugene Lacy, the Trial Examiner duly designated by the Board. The Board, the respondent, the United, and the Association 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.

During the course of the hearing, counsel for the Board moved to amend the complaint as to the date of the alleged discharge of Carmella Sanella. The motion was granted. Counsel for the respondent moved to dismiss the complaint, and counsel for the Association moved to dismiss one paragraph of the complaint, for failure to comply with the requirements of the Rules and Regulations. These motions were denied. Each of the above rulings is hereby affirmed.

On February 28, 1938, the Trial Examiner duly filed his Intermediate Report, in which he found 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, but that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act. He recommended that the respondent cease and desist from its unfair labor practices and, affirmatively, that it offer to Sanella reinstatement with back pay.

The United filed exceptions to that portion of the Intermediate Report which found that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act. The respondent, after obtaining an extension of time, filed its exceptions to the Intermediate Report and to the record, excepting specifically to the Trial Examiner's failure to dismiss the complaint at the hearing and to his findings and recommendations with regard to the alleged unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the Act. The Association filed a motion to dismiss the exceptions filed by the United to the Intermediate Report.

Pursuant to notice, a hearing was held before the Board in Washington, D. C., on April 19, 1938, for the purpose of oral argument. The Association was represented by counsel, and the respondent by its plant superintendent. The United filed a brief which has been given due consideration by the Board.

During the course of the hearing before the Trial Examiner, a number of rulings were made on motions and on objections to the admission of evidence. The Board has reviewed these rulings of the Trial Examiner and finds that no prejudicial errors were committed. These rulings, one of which is discussed below in Section III B, are hereby affirmed.

The motion of the Association to dismiss the exceptions filed by the United to the Intermediate Report is hereby denied, and these exceptions are hereby sustained. The exceptions filed by the respondent to the Intermediate Report are likewise sustained in so far as they are directed at the Trial Examiner's finding and recommendation respecting the alleged discriminatory discharge of Carmella Sanella.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Marks Brothers Company, is a Massachusetts corporation engaged in the manufacture of various kinds of toys and novelties. It occupies part of a building in Boston, Massachusetts, the remainder of which is occupied by Keystone Manufacturing Company, herein called Keystone. Some of the officers of the latter company, which also manufactures toys and novelties, are also officers of the respondent.

The respondent uses a wide variety of raw materials, including steel, cloth, lumber, electric wire, and various rubber parts. The total value of the raw materials purchased by the respondent between November 1, 1936, and November 1, 1937, was approximately \$80,000. Over 55 per cent of these purchases were made outside of the State of Massachusetts. During the same period, the total value of the respondent's sales was \$200,000. More than 60 per cent of its finished products were shipped outside the State of Massachusetts to purchasers situated in every State in the United States and in the possessions.

The respondent has salesmen operating in New York City and in San Francisco, California. It distributes advertising catalogues on a nation-wide basis and advertises in magazines which are circulated in all the States.

II. THE ORGANIZATIONS INVOLVED

United Toy and Novelty Workers Local Industrial Union No. 538 is a labor organization affiliated with the Committee for Industrial Organization, from which it received its charter on September 10, 1937. It admits to membership production workers employed by the

respondent and by Keystone. It was organized by the Toy and Novelty Workers Organizing Committee, a labor organization which is also affiliated with the Committee for Industrial Organization.

Marks Brothers Employees Association is an unaffiliated labor organization. Its membership is limited exclusively to employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The strike*

The Organizing Committee started to organize the respondent's employees during the latter part of July 1937. On August 13 Sandberg, its organizer, sent a letter to the respondent requesting that a conference for the purpose of collective bargaining be arranged. This letter, which was received, was never answered.

On Monday, August 16, a large number of the employees met on the fourth floor of the respondent's building, during the lunch hour, to discuss whether or not to go out on strike. The employees of Keystone had struck on August 14, and the building was being picketed. In a vote, which was taken after some discussion, a majority of those present voted in favor of a walk-out. This decision was put into effect at 1:15 that afternoon, and the strike thus commenced almost completely halted the operations of the respondent's plant during the ensuing week.

The strike was settled on August 23, at a conference at the Regional Office of the Board in Boston, Massachusetts, which was attended by representatives of the Organizing Committee and by an attorney named Greer, who purported to represent the respondent. A written agreement was executed by the Organizing Committee and by Greer on behalf of the respondent, which provided, among other things, for the return to work of all employees pending settlement by the Board of certain matters at issue. Most of the employees returned to work the following day. The contract signed by Greer was later repudiated by the respondent under circumstances described below.

B. *The Marks Brothers Employees Association*

The first activity on the part of the Association took place on Saturday, August 14, the day after the United first communicated with the respondent. None of the officials of the Association were able to state definitely who first decided to form an organization within the plant. Thus Donald S. Bloch, secretary, and later vice president of the Association, testified:

Well, a few of the fellows had heard that Keystone was forming a company union and I believe they decided to follow

them and they decided to see what they could do about forming their own company union and they asked if whether I would cooperate and I told them yes. After a while they asked me if I would be secretary.²

Carl Braverman, who was one of the most active supporters of the Association, testified also that he did not know who first inspired the idea of its formation. He did hear that one could be formed, however, and when he saw Isadore Marks, the respondent's president walking through the plant at 11 o'clock on August 14, he asked him whether it would be all right to form an independent union. Marks replied that he would have to recognize any union that had a majority.

Thereafter, at 11:30, Braverman called a meeting of employees in the stockroom. He called this meeting during working hours, without procuring permission to do so, although he had never done such a thing before. The meeting lasted 20 to 25 minutes. Braverman spoke to the gathering, and then passed around slips of paper for them to sign. According to his testimony, Braverman told the signers that they were signing "for an independent union and not the C. I. O." The slips, however, had nothing written at the top and were in fact blank except for the signatures placed on them.

Braverman and another employee, Slutsky, took the slips immediately to Marks and requested recognition as the collective bargaining agency for the plant. According to Marks' testimony he was told that the slips contained the signatures of 80 employees. He did not examine the slips in any way. He made no effort to count the names or to compare them against his pay roll. Apparently, he did not even ascertain with what organization he was dealing. But he at once granted the recognition requested.³

In fact, it is difficult to believe that the slips presented to Marks actually contained the names of 80 of the about 100 employees at the plant. It appears that they were circulated only at the meeting called by Braverman. The latter testified that a majority of the employees were present at that occasion and that he procured 75 signatures. Yet he was unable to explain how employees working on floors other than that on which the stockroom is located were summoned, and no other witness who testified recalled this meeting or any

² At the hearing in this proceeding the Trial Examiner excluded all testimony with regard to events in the Keystone plant. Counsel for the Board contended that the two companies occupy the same plant and are to some extent at least under the same management, and that hence testimony as to the conduct of the executives of Keystone had a bearing on the conduct of the same individuals with regard to the respondent. While we believe that this ruling of the Trial Examiner was erroneous, in view of our decision we do not find that it was prejudicial error.

³ Neither Marks nor the officials of the Association were able to produce the slips at the hearing.

other activity on that day for the purpose of getting signatures. It is very doubtful whether more than a handful of the employees signed the blank pieces of paper on which Marks based his recognition of the newly formed organization.

Thus Marks gave the organizers of the Association the tremendous advantage of the status of a recognized bargaining agency, although he did not know how many persons had signed the slips presented to him, how many of those who signed were employees of the respondent, what the signers thought they were authorizing when they put their names on the blank slips of paper, or what the organization was that was claiming recognition; and he did this despite the fact that he knew that the United had also organized some of his employees. Subsequent events show that this hasty action on the part of the respondent's president was taken with the purpose of erecting a barrier to the attempt of the United to secure recognition as the bargaining agency for the respondent's employees.

By August 16 the temporary officers of the Association had been chosen. The record is not clear as to how this was accomplished, but apparently a few of the leaders of the movement agreed among themselves to take the responsibility of the various offices. Robert Austin Sweeney, who was later elected president, first heard of the Association when he was asked to be its chairman, on August 16. He was not sure who made this request, but he testified that he believed it was Bloch. He told Bloch that he would serve on condition that a regular election be held as soon as possible. This election was not held until October 7, and the temporary officers served until that time. Although delegates were elected in some of the departments during the strike, they never held any meetings.

On August 16 or 17 Marks and his brother decided, partly because of the fact that a strike was in progress, to announce an 18-per cent raise in wages, a reduction of the workweek to 44 hours, payment of time and one-third for overtime, and the elimination of Saturday work. According to Marks' testimony, this decision was made entirely by the respondent. Nevertheless, Marks decided to go through the form of having it accepted by the Association. He accordingly wrote out the terms of the wage change and, on August 17, submitted them to a committee of that organization. At one point in his testimony he stated that he told the committee that they could accept or reject the proposal, and in case of rejection, they could make their own demands. He also testified, however, ". . . as I remember, it was sort of a granting—sort of telling them that they were going to get this increase. There were no demands made. It was simply passing that information to them." The "offer" was accepted on the same day that it was made. Marks was not sure who was on the committee

that received the sheets of paper on which the wage change was described, or who signed them. They were not produced at the hearing.

On August 18 the respondent notified all of its employees of the raise in wages. Although Marks was unable to produce a copy of the letter which was sent out, he testified that it read in substance as follows:

I wish to announce that we have just issued the following new working conditions to all production workers: 18 per cent increase to both day workers and piece workers; time and a half for overtime; work week 44 hours; no work on Saturdays. We will guarantee to maintain these rates at least until January 1, 1938, effective at once.

Those who have been out of work for any reason whatsoever may return immediately to their jobs.

It has come to my attention that some of our employees have been threatened bodily. This we believe is only a rumor but we want to assure all employees that the police department is cooperating with us and will protect every workman. Anyone who intimidates or threatens anyone in any way will be arrested and prosecuted to the full extent of the law.

Following the strike the Association appears to have engaged in little activity, except the procuring of signatures to membership cards, until its first meeting on October 7. One other act of the respondent prior to that date, however, requires consideration. The contract signed by Greer on August 23 on behalf of the respondent, which ended the strike, has already been referred to. This contract was repudiated by the respondent as not having been executed under its authority. The letter which contained this repudiation was posted in the respondent's plant on September 2, and reads as follows:

Circulars have been given to our employees stating that the Company signed an agreement with T. & N. W. O. C. affiliated with the C. I. O.

Mr. Marks and Mr. Swartz did not sign any agreements with the T. & N. W. O. C. affiliated with the C. I. O.

The only agreements that were signed were those with the Marks Brothers Company Employees' Association as the only bargaining agency we recognize under the Wagner Act and we will continue to do so as long as you have the majority.

No attorney has been given the right to sign any agreements for us with any union.

We sign only our own agreements.

At the time this letter was posted, no agreement of any kind had in fact been signed between the respondent and the Association. Sweeney, the president of the Association, so testified at the hearing, and this position was adopted by counsel for the Association at the oral argument before the Board. Thus the respondent, which had given the Association, almost before it started, the advantage of recognition as collective bargaining agency, gave it an additional advantage by creating the false impression that it had procured a signed agreement.

The first formal meeting of the Association took place on the evening of October 7, 1937, in a hall in Boston which was rented for the purpose. There were 25 persons present. The record does not disclose what took place at this meeting beside the election of officers; but apparently as a result of the meeting, the newly elected secretary, Rose Bottaro, typed out a list of four propositions which were to be presented to Henry A. Meyers, the superintendent of the respondent's plant, who had been given authority by the respondent to deal with the Association. The propositions dealt with such matters as loss of time while waiting for assignment to a new job and loss of pay because of improper timing on the various operations.

Bottaro gave the list to Sweeney, the president of the Association, who had it signed by the other three officers. He then took it to Meyers. Meyers looked over the suggestions and made changes limiting the effect of each of them. There was some attempt by Sweeney to create the impression at the hearing that the changes were in part made by him. Meyers' testimony shows quite clearly, however, that he made the changes himself, with little or no discussion, and that he gave the "corrected demands" back to Sweeney to accept or reject. It appears also that at some time Meyers discussed the propositions with Marks.

Sweeney gave the "corrected demands" to Bottaro and told her to retype them as changed by Meyers. She did so without, however, changing either the date or the heading, which read:

We, the employees of the Marks Brothers Co. as represented by the . . . Association, do herewith bring these propositions, to be effective immediately, for your approval and signature.

Sweeney signed the retyped list of propositions and, after it had been signed by the other officers, presented it to Meyers who also signed it. Sweeney told Bottaro not to show the revised list to any other member of the Association because he did not think it was necessary for them to know the result of his actions until the next meeting, which did not take place until the end of October.

We have already pointed out the extremely shadowy nature of the Association's organization up to October 7. No one at the hearing

was able to state just how it was started, or how its temporary officers were selected. The membership cards, which were circulated during and after the strike, were paid for by one of the officers of the Association 2 or 3 weeks after they were procured; but this officer did not know, and no other officer explained, at whose request the cards were printed or how the credit which was advanced was procured.

Even after the Association started to have meetings, its organization continued to be of a somewhat elusive nature. At the time of the hearing, it had procured 93 signed membership cards, but it had no constitution or bylaws. Its method of dealing with the respondent, as described by Marks, was as follows:

The contacts were made by our superintendent who would talk it over with me and we then decided what demands to grant and what not to grant and then passed it to the . . . Association.

This description fits extremely well the only instance which appears in the record, and which is described above, of the Association's dealings with the respondent.

The Association was supported from the very day of its inception by the respondent's recognition of it as the sole bargaining agency of its employees, recognition based on the most inadequate sort of evidence of majority status. Before it assumed the shape and character even of a budding organization, it had been assured of a status which excluded its rival, the United, from effective action on behalf of its members. The Association never engaged in collective bargaining in any true sense of the term. Instead, it permitted itself to be used by the respondent, as it was used in the case of the letter repudiating the Greer contract, as a means of inducing its employees to abandon the United and to rely on the good graces of Marks and the other executives of the respondent as a substitute for collective bargaining.

We find that the respondent has dominated and interfered with the formation and administration of the Association and has contributed support to it.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced 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 and other mutual aid and protection as guaranteed under Section 7 of the Act.

C. The alleged discriminatory discharge

Carmella Sanella commenced her employment with the respondent on June 16, 1937, in the pyrography department. On August 13 she was laid off by her foreman, Melvin Penansky, who told her to return on August 17. When she appeared on that day, she found the plant surrounded by pickets. She thereupon joined the picket line and became a member of the United. It was not until August 24, the date on which the strikers returned to work at the plant, that she applied to Penansky for further work. Both she and the two girls who accompanied her were told that there was no work for them on that day. Those two girls were taken back a few days later, but Sanella was never put back to work, although she requested reinstatement on several occasions.

It appears that the pyrography department, which employed 23 girls at the time of the strike, had been formed only recently. Its personnel consisted chiefly of employees who, unlike Sanella, had worked for the respondent in other departments. After the strike, this department was greatly curtailed, and the employees were shifted back to their former jobs. The respondent explained that its failure to reinstate Sanella was due to the fact that she had no experience in any work other than that which it was in large part eliminating. It should be noted, however, that while there were about 100 employees on the respondent's pay roll at the time of the strike, the number of employees had been increased to over 150 at the time of the hearing. A large part of the increase represented new employees taken on in departments such as general assembly where no experience was needed.

It does not appear in the record that Sanella was unusually active on the picket line or in any other union activity until September 4, when she was elected secretary of the United. Other union members were returned to work on August 24 without discrimination.

While the case is not free from doubt, we are unable to find that the record sustains the allegations of the complaint that Sanella was discharged or refused reinstatement because of her union activity. That portion of the complaint will accordingly be dismissed.

We find that the respondent has not discriminated in regard to the hire and tenure of employment of Carmella Sanella because of membership in a labor organization, and thereby discouraged membership in a labor organization.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III B above, occurring in connection with the operations of the respond-

ent, 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

We have found that the respondent dominated and interfered with the formation and administration of the Association and contributed support thereto. By such domination and interference the respondent has prevented the free exercise of its employees' right to self-organization and collective bargaining. The mere withdrawal of the respondent's domination and support of the Association will not be sufficient to overcome the impression created among the employees that it represented the wishes of the employer. Therefore, in order to restore to the employees the full measure of their rights guaranteed under the Act, we shall order the respondent to withdraw all recognition from the Association and disestablish it as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment. The respondent will, in addition, be ordered to cease and desist from its unfair labor practices described above.

VI. THE QUESTION CONCERNING REPRESENTATION

As noted above in Section III, the United attempted, on August 13, to secure a conference with the respondent with regard to collective bargaining. Since that date further efforts by the United to secure the status of sole collective bargaining agency have been prevented by the respondent's position that it would deal only with the Association.

At the hearing in this proceeding, the membership cards of the United were produced and examined by counsel. It appeared that on August 13 it had 34 members and, at the time of the hearing, 66 members, who, an official of the United testified, were employees of the respondent. The names, however, were not checked against the pay roll, nor is there anything in the record to show how many of the members were within the unit found below by the Board to be appropriate. Moreover, although there were under 100 employees in the appropriate unit on August 13, there were in the neighborhood of 150 at the time of the hearing. Since it is impossible to certify the United as the representative of a majority of the respondent's employees in the appropriate unit, it is not necessary to consider the effect of the signatures on the Association's membership cards or on a petition which was circulated by the Association before the hearing

whereby the signers stated that they did not wish to be represented by the United.

We find that a question concerning representation of employees of the respondent has arisen, and that this question can best be resolved by the holding of an election by secret ballot. Those eligible to vote in the election will be employees of the respondent within the appropriate unit employed during the pay-roll period next preceding November 8, 1937, the date of the filing of the petition in this case, exclusive of those who have quit or have been discharged for cause between that date and the date of the election.

Since we have found that the Association was dominated, interfered with, and supported by the respondent, we shall make no provision for its designation on the ballots.

VII. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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

VIII. THE APPROPRIATE UNIT

The United contends that the appropriate unit for collective bargaining should include the production workers of the respondent, with certain exceptions. These exceptions are involved in the only issues which have been raised with regard to the extent of the appropriate unit.

The respondent has two foreladies whose work is clearly supervisory. It has, in addition, three working or assistant foremen. The latter engage in the duties of set-up men and teach employees how to perform the various operations. During normal periods their only productive work is that done in the course of setting up jobs and teaching. They occasionally have as many as 20 employees under them. They will be excluded from the appropriate unit.

The United contends for the inclusion of the shipping-room employees in the appropriate unit and for the exclusion therefrom of the employees in the stockroom. Although they do not contribute directly to the manufacture of the product, the employees in both departments handle the raw materials and products of the respondent. We find that both groups of employees should be included in the appropriate unit. The head shipper, however, will be excluded,

since the record shows that his duties are of a supervisory nature. He routes the material in the shipping room and apportions the work of the employees under him.

The maintenance employees, the machinists, and the clerical employees will likewise be excluded from the appropriate unit, in view of the desire of the United to exclude them and the absence of any evidence to show that they should be included.

We find that the production employees of the respondent, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, and employees in the maintenance department and machine shop, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Toy & Novelty Workers Organizing Committee of the C. I. O., United Toy and Novelty Workers Local Industrial Union No. 538, affiliated with the C. I. O., and Marks Brothers Employees Association, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By its domination and interference with the formation of the Association, and by contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the 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 afore-mentioned 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 discriminated in regard to the hire and tenure of employment of Carmella Sanella because of her membership in a labor organization and thereby discouraged membership in a labor organization within the meaning of Section 8 (3) of the Act.

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

7. The production employees of the respondent, excluding supervisory employees, foremen, assistant foremen, clerical and office employees, and employees in the maintenance department and machine

shop, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Marks Brothers Company, Boston, Massachusetts, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Marks Brothers Employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to Marks Brothers Employees Association, 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 and for 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) Withdraw all recognition from Marks Brothers Employees Association as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish Marks Brothers Employees Association as such representative;

(b) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days from the date of such posting, stating (1) that the respondent will cease and desist as provided in paragraph 1 of this order, and (2) that the respondent will withdraw all recognition from Marks Brothers Employees Association as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and that the Marks Brothers Employees Association is completely disestablished as such representative;

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

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 (3) of the Act by discharging and thereafter refusing to employ Carmella Sanella are hereby dismissed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Marks Brothers Company, Boston, Massachusetts, an election by secret ballot shall be conducted within forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, Boston, Massachusetts, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the production employees of Marks Brothers Company, employed during the pay-roll period next preceding November 8, 1937, excluding those who have quit or have been discharged for cause between that date and the date of the election, and excluding supervisory employees, foremen, assistant foremen, clerical and office employees, and employees in the maintenance department and machine shop, to determine whether or not they desire to be represented by United Toy and Novelty Workers Local Industrial Union No. 538, affiliated with the C. I. O., for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

May 31, 1938

On May 13, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within forty-five (45) days from the date of the Direction, under the supervision of the Regional Director for the First Region (Boston, Massachusetts). At the request of the Regional Director, we shall postpone the election for the present.

The Board hereby amends its Direction of Election by striking out the words "within forty-five (45) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct."