In the Matter of KUEHNE MANUFACTURING COMPANY *and* LOCAL NO. 1791, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Case No. C-369.—Decided May 20, 1938

Furniture Manufacturing Industry—Employer: corporation, owning and operating plants in two cities—*Interference, Restraint, and Coercion:* expressed opposition to labor organization; threats of retaliatory action; discrediting union leader; warning to employees not to circulate petitions among themselves, but report grievances to management—*Discrimination:* closing plant, discharge of employees: for union membership and activity; discharges: for union activity; charges of, not sustained as to two employees—*Strike:* sit-down—*Lock-Out—Picketing—Violence—Conciliation:* efforts at, by U. S. Department of Labor and local Chamber of Commerce—*Substantially Equivalent Employment:* offer of reemployment in plant 60 miles distant, not considered as—*Unit Appropriate for Collective Bargaining:* production and maintenance employees in one plant, except foremen, and office and salaried employees; eligibility for membership in only organization among employees; no controversy as to—*Representatives:* proof of choice: joint application for union membership—*Collective Bargaining:* employer's duty: shut-down, effect upon; strike, effect upon, when new issues have arisen; breach of alleged agreement, effect upon; special form of remedial order: recognition as exclusive representative, if operations are resumed—*Reinstatement Ordered:* discharged employees, dismissing employees hired since lock-out, if necessary; employee temporarily laid off at time of strike; to plant where previously employed, if operations are resumed; preferential list ordered: to be followed in further reinstatement—*Back Pay:* awarded: discharged employees, from date of lock-out, discharge, or refusal to reinstate, to date of offer of reinstatement or placement on preferential list; not to include period between service of Intermediate Report and date of Decision in case of employees as to whom Trial Examiner recommended dismissal of complaint.

Mr. Jack Davis, for the Board.

Craig & Craig, by *Mr. Craig Van Meter*, of Mattoon, Ill., for the respondent.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by E. P. Theiss, a representative of the American Federation of Labor, and by Local

No. 1791, United Brotherhood of Carpenters and Joiners of America, herein called the Union, respectively, the National Labor Relations Board, herein called the Board, by Dorothea de Schweinitz, Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint, dated June 30, 1937, against Kuehne Manufacturing Company, Mattoon, Illinois, herein called 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), (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, accompanied by notices of hearing were duly served upon the respondent and the Union.

The complaint, as amended,[1] alleged in substance (1) that on April 1, 1937, the respondent closed its Flora, Illinois, plant, discharged its employees at the Flora plant for the reason that they joined the Union and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection, and moved its operations to its Mattoon, Illinois, plant to avoid its obligation to bargain collectively with the Union; (2) that the respondent discharged Harry Dean, William Loveland, Walter Barnett, and Garland Gibson, four employees at its Mattoon plant, for their sympathy with the respondent's Flora plant employees and interest in the formation of a labor organization at the respondent's Mattoon plant; (3) that the respondent persuaded and encouraged certain of its employees at its Mattoon plant and others, including public officials of the city of Mattoon, to assault and beat its Flora employees and that the Flora employees were so assaulted and beaten to discourage their activity in urging the Mattoon employees to join and assist the Union for the purposes of collective bargaining and other mutual aid and protection; and (4) that the respondent had refused to bargain collectively with the Union as the duly authorized representative of the production and maintenance employees of the respondent at its Flora plant, exclusive of clerical and supervisory employees, said production and maintenance employees constituting an appropriate bargaining unit.

On July 10, 1937, the respondent filed a motion to dismiss the complaint and also an answer to the complaint.

The motion to dismiss was based (1) on an alleged insufficiency of the allegations of the complaint; (2) upon the ground that the Board had no jurisdiction over the respondent or the subject matter of the

[1] At the hearing the complaint was amended to include an allegation that the respondent discriminatorily discharged Garland Gibson The respondent, accordingly, amended its answer, denying the allegation.

complaint; and (3) on a plea that the persons referred to in the complaint were lawfully discharged inasmuch as the Act does not interfere with the normal exercise of the right of an employer to select or discharge his employees.

The answer of the respondent repeated the allegations contained in its motion to dismiss and admitted the allegations of the complaint with respect to the nature of its business. Concerning the unfair labor practice charges, the respondent alleged in its answer that it closed the Flora plant and discharged its employees at that factory (1) because they participated in a sit-down strike, damaged company property and engaged in illegal picketing; and (2) for financial reasons wholly disconnected with the membership of the Flora employees in the Union. In addition, the answer, as amended, denied that the employment of Harry Dean, William Loveland, Walter Barnett, and Garland Gibson was terminated for the reasons stated in the amended complaint and averred that they were not discharged, but voluntarily quit work. The respondent denied the allegations of the complaint with respect to the assault and battery of the Flora employees and the refusal of the respondent to bargain collectively with the Union.

Pursuant to notice, a hearing was held on August 3, 4, 5, 6, and 9 in Flora, Illinois, before Henry J. Kent, the Trial Examiner duly designated by the Board. The Board and the respondent appeared by counsel and participated in the hearing. On motion of the respondent the hearing was adjourned when the Board rested its case and reconvened in Mattoon, Illinois, on August 10, 11, 12, and 13, 1937, to facilitate presentation of the respondent's evidence. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing counsel for the respondent pressed its motion to dismiss the complaint upon the grounds set forth in the written motion. The Trial Examiner reserved his ruling on the motion. At the close of all the testimony the respondent renewed its request that the complaint be dismissed, pleading, in addition to the original grounds set forth in its written motion, reasons embodied in an amended written motion to dismiss, which the Trial Examiner permitted it to file. In the amended motion the respondent urged, as grounds for dismissal of the complaint, that the provisions of the Act violate Article 3 of the Constitution of the United States and the Fifth Amendment thereto, and that the employees at the respondent's Mattoon plant and the Mattoon Asso-

ciation of Commerce were not made parties to the proceeding.[2] The Trial Examiner denied the motion to dismiss, as amended, in so far as it related to the question of the sufficiency of the allegations of the complaint, the constitutionality of the Act,[3] and the claimed absence of the necessary parties to the proceeding, and reserved his ruling on the motion, in so far as it related to the question of the Board's jurisdiction and the merits of the complaint in respect to the alleged discharges, until the issuance of his Intermediate Report.

Subsequently the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5), of the Act and recommending reinstatement, with back pay, for Harry Dean, Walter Barnett, and William Loveland and for the respondent's employees listed in appendix A, other than those persons named below, as to whom he recommended that the complaint be dismissed. The Trial Examiner in his Intermediate Report further recommended that the complaint be dismissed as to (1) Garland Gibson and 16 persons listed in appendix B, on the ground that no testimony was offered in the proceeding with respect to them; (2) 15 employees listed in appendix C, on the ground that they were not discharged but were retained in the respondent's employ at its Mattoon plant; (3) Carmon De Weese, for the reason that he refused to accept the respondent's offer of employment at its Mattoon plant; and (4) Peter Orschell, since his employment with the respondent terminated on March 15, 1937, which was prior to the inception of the strike and mass discharge of the Flora employees. In his Intermediate Report, the Trial Examiner denied the pending motion to dismiss the complaint. This ruling and the ruling of the Trial Examiner at the hearing upon the motion to dismiss are hereby affirmed.

Thereafter the respondent filed numerous exceptions to the findings and recommendations of the Intermediate Report. The Union also filed exceptions to certain portions of the Intermediate Report.

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[2] An existing contract, dated December 2, 1931, between the respondent and the Mattoon Association of Commerce required the respondent to employ only bona fide Mattoon residents in its Mattoon plant. Since April 1, 1937, the respondent has hired at its Mattoon plant approximately 127 additional employees. Inasmuch as, under the Act, the Board's orders run only against employers, neither the employees at the Mattoon plant nor the Mattoon Association of Commerce need be made parties to complaint proceedings to enable the Board to determine whether the respondent has violated the Act or to make an appropriate order against it. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, and *Greyhound Management Company*, 303 U. S. 261.

[3] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 57 S. Ct. 645; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 57 S. Ct. 650; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 57 S. Ct. 642.

Pursuant to notice duly served upon the parties, a hearing for the purpose of oral argument on the exceptions was held before the Board in Washington, D. C., on February 25, 1938. The respondent was represented by counsel who participated in the argument. The Union did not appear. The respondent also filed a brief to which we have given due consideration.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors have been committed. The rulings are hereby affirmed.

The Board has fully considered the exceptions to the Trial Examiner's findings in the Intermediate Report, and, save as they are consistent with the findings, conclusions and order hereinafter set forth, finds them to be without merit.

Since the 15 persons listed in appendix C were voluntarily reinstated in the respondent's employ at its Mattoon plant upon the closing of the Flora plant, we will dismiss the allegations of the complaint in respect to them. We will also dismiss the allegations of the complaint, as amended, in respect to the alleged discharge of Garland Gibson, inasmuch as there is no evidence in the record to support a finding as to him.

The Trial Examiner made no finding or recommendation in his Intermediate Report in reference to the allegations of the complaint which charge that the respondent persuaded its Mattoon employees to assault and beat its Flora employees. Since the evidence is insufficient to warrant the conclusion that the respondent instigated the beating of the strikers, we will dismiss those allegations of the complaint.

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

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The respondent is an Illinois corporation engaged in the manufacture and sale of kitchen and dinette furniture. At the time of the outbreak of the labor dispute involved in this proceeding in March 1937, it owned and operated plants in Flora and Mattoon, Illinois, a distance of approximately 60 miles apart, employing 180 and 219 employees at each plant, respectively.

The raw materials, consisting of lumber,[4] hardware, glass, stains and varnishes, cartons and other packing materials, purchased by the re-

[4] The lumber is chiefly oak, southern gum, northern hard maple, western fir, and southern soft maple. Oak and southern gum are purchased from lumber companies located in Tennessee, Arkansas, Louisiana, and Mississippi. Northern hard maple originates in Wisconsin and Michigan Western fir is obtained in Oregon, and southern soft maple comes from Indiana, Kentucky, and Illinois.

spondent in 1936 for use in its manufacturing process in both plants amounted to $594,941.33, of which more than 60 per cent represented purchases of materials in States other than Illinois.

During 1936 the respondent sold and shipped finished products from both plants in the amount of $952,547.28, of which in excess of 75 per cent represented shipments into States other than Illinois.

II. THE UNION

Local No. 1791, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization which admits to membership the production and maintenance employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The lock-out of April 1, 1937*

1. The background

Shortly prior to the passage of the National Industrial Recovery Act, the respondent prevented a strike in its Flora plant after it learned that the employees contemplated a walk-out in an effort to obtain higher wages. The plant superintendent and foremen threatened the employees with loss of their jobs if they left their machines. Two or three participants in the strike movement were discharged. Foreman Delbert Bratton instructed a trusted employee in the mill room to report any future rumors of organizational activity among the employees in that department to him, stating: ". . . they sure didn't want any union in that plant."

According to Delbert Hardy, an employee, Walter Goebel, then a foreman, approached him on several occasions about 2½ to 3 years before the hearing, inquiring whether the employees were talking "strike." We quote from Hardy's testimony:

> Well, he asked me if they had been talking it. I told him no, not that I had heard, and he said to keep listening, if I heard anybody talking it, let him know, and I asked him why. *He said they wanted no labor trouble here, and if I heard it let him know, he would fire them right now.* [Italics supplied.]

Neither Bratton nor Goebel denied this testimony.

In the fall of 1936 the employees at the Flora plant circulated a petition for higher wages inside the factory. An employee, Richey, when questioned by the supervisory staff, confessed his participation in the preparation and distribution of the petition. Two weeks later he was discharged. The respondent claimed that it dismissed Richey

because he looked at employees' time cards.[5] Superintendent Goebel instructed the employees to report grievances to him and warned them not to circulate petitions among themselves.

2. The lock-out

Fred Kuehne, Jr., the president and majority stockholder of the respondent, addressed an assembly of the employees at the Flora plant during the 1936 Christmas season. He told them that the respondent had experienced a profitable year and that he intended to grant a general wage increase to the employees shortly after the first of the coming year. However, the promise did not materialize for most of the 180 Flora employees. During the first 3 months of 1937 many of them made individual applications for pay increases to the foremen in the plant, without results. The employees were instructed by the supervisory staff not to disturb Kuehne concerning wage adjustments.

The crystallization of months of dissatisfaction with this vexed condition resulted in a sit-down strike of the Flora employees on the morning of March 22, 1937. They stopped their machines and refused to work unless they obtained the promised wage increase. The demands of the employees varied in the different departments of the plant but, in general, they included the 8-hour day, 45-hour week, time and one-half for overtime, and a 40-cent hourly minimum. The plant had previously operated on a 9-hour daily basis with pay rates ranging from 25 cents to 45 cents per hour. During that day Kuehne negotiated with departmental committeemen chosen by the employees. He acceded to their demands for the 8-hour day and 45-hour week, offered individual 10 to 12 per cent increases, refused to pay time and one-half for overtime, refused to establish a 40-cent hourly minimum, and announced that if necessary, the respondent might reduce the working day to 6 hours, add a night force and operate the plant with a double shift. Kuehne admitted to the committeemen that an acceptance of his counterproposals would have resulted in a net weekly wage lower than the prevailing scale of payment. The committeemen referred to the employees for instructions. They rejected the counterproposals and the committeemen so reported to Kuehne. Kuehne promptly halted further negotiations: "Well, just call it a strike and I will sit it out with you . . . I will go on a vacation . . . You can sit here if you want, or you can go home . . . we will keep the plant open in the morning." About 95 per cent of the employees remained in the plant until March 31.

[5] Inasmuch as the Union filed no charges and the complaint contains no allegation with reference to Richey's dismissal, we make no finding with respect thereto

When word of the sit-down reached the supervisory staff at the Mattoon plant on March 22, Superintendent Emig called an assembly of the Mattoon employees in the respondent's lumber yard adjacent to the plant. He told them that the plant was shutting down because "work was falling off a little, conditions were so that the factory had to shut for a while." When the employees sought entrance to the plant, they found the doors barred. Foreman White explained to a group of Mattoon employees that, in order to avoid "labor trouble" in the Mattoon plant, the Mattoon employees would not be recalled to work until settlement of the strike at the Flora plant.

On March 24 President Kuehne distributed a mimeographed letter to the Flora employees, enclosing checks for accrued wages, in which he expressed his assurance that he held no grievance against them by reason of the sit-down strike and promised that he would bear no resentment in the future because of the action they had taken; however he urged the employees to evacuate the plant. In the letter he also thanked the strikers for their care of plant property and expressed the hope that work might soon be resumed.

On March 23 or 24 the Flora employees made a joint application to the American Federation of Labor for membership, and on April 13 the United Brotherhood of Carpenters and Joiners of America chartered the newly organized Union.

Kuehne departed from Flora on March 25, leaving H. C. Schultz, a director and the sales manager of the respondent, in charge of affairs with authority to settle the labor dispute. Schultz directed Riley Clifton, the respondent's timekeeper, to ascertain from the employees whether they desired a conference to discuss settlement of the strike, stating to him that if they did, Schultz would meet with them, or, if they preferred, he would arrange for the employees to meet with Kuehne on the following morning. Clifton approached a group of employees, represented to them that Kuehne contemplated taking a trip, but that a meeting could be arranged with Kuehne if they desired to confer with him. The employees agreed to meet with Kuehne, stating to Clifton that they desired to communicate with their Union representative, E. P. Theiss, an organizer for the American Federation of Labor, to enable him to be present to represent the employees at the proposed conference. Thereupon, Clifton promptly answered that he did not know whether Kuehne could be reached. No arrangements were made to hold the meeting. Clifton reported what had transpired to Schultz. Schultz curtly instructed Clifton: "There is nothing more we can do."

Schultz thereupon talked to Kuehne by long-distance telephone. Among other things, he advised Kuehne that "no agreement could be

arranged" with the employees, that outsiders were visiting the strikers at the plant, and urged him to return to Flora to oust the sit-downers.

The respondent introduced in evidence the minutes of a directors' meeting, dated March 27, which purport to show the passage of resolutions authorizing Kuehne to discontinue operations at the Flora plant when "inventory and production conditions would best permit such change," and to dispose of the Flora plant and equipment to raise "much needed additional working capital." [6]

On March 29 the respondent filed a complaint in the Circuit Court of Clay County, Illinois, in which it sought a mandatory injunction to oust the sit-downers from the plant. The strikers voluntarily evacuated the plant on March 31, prior to the issuance of a temporary writ of injunction on the same day, and promptly formed a picket line at the plant, which they maintained for a period of 4 to 5 weeks thereafter.

On the following day, April 1, Kuehne notified all the Flora employees, by letter, that the respondent had abandoned its Flora operations, advised them to seek employment elsewhere, and served notice of cancellation of their group-insurance policies.[7]

The record clearly indicates that the respondent knew of the formation of the Union by its employees. Director Schultz and Timekeeper Clifton, through conversations with the employees, knew of the Union prior to March 27, and Kuehne saw Nelson, an organizer for the American Federation of Labor, in court on the day the temporary injunction issued, March 31.

During the first few days of the picket line, Leon J. Newton, an employee, approached Kuehne in reference to settlement of the controversy. Kuehne stated: "You just went too far, there is no use talking . . . the boys had a picket line, and there was absolutely nothing doing . . . going to move to Mattoon . . . closing the Flora plant permanently." Kuehne pointed to Theiss, the Union organizer, who was standing in the road: "You see that fellow out there . . . he is just leading those fellows to their ruin . . . he can just say 'baa' and every one of them will follow him . . . I will get even with them." Newton also testified that Kuehne referred to Theiss as an "outlaw." Kuehne failed to deny Newton's testimony.

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[6] It is peculiar that Director L M. Wood, who attended the meeting, testified that no proposal concerning the permanent shut-down of the Flora plant was ever submitted to the Board of Directors

[7] The letter stated: "This is to serve as a formal notice that the Flora plant has discontinued operations We felt as though it was only fair to advise you of this fact formally by letter, so you can look elsewhere for work, as we have definitely taken this action We might state that we are also canceling your Prudential Group Life Insurance, being that you are no longer an employee of our company."

About the middle of April, Walter Goebel, superintendent of the Flora plant, told Loren Mitchell, an employee, that he did not believe that the strikers would be reinstated so long as they belonged to the Union. Goebel admitted to Mitchell that "Kuehne wouldn't consider recognizing the Union."

In a conference on or about April 18 with Newton J. Branson, president of the Flora Chamber of Commerce, who interceded in the labor dispute as mediator at the request of both the respondent and the Union, Kuehne stated: "I am not recognizing the Union and their demands with the price furniture I can make." It is significant that the respondent at no time discussed wages, hours, or other conditions of employment with a Union representative. Moreover, Kuehne agreed to a proposal by Branson that the respondent deal with an unaffiliated union of its employees. Thus it is apparent that the respondent's basic objection to the continuance of normal relations with its Flora employees lay in the presence of the Union in the plant, rather than differences over substantive issues concerning wages, hours, or other conditions of employment.

At the time of the hearing the Flora plant was still closed. The respondent had moved part of the machinery to its Mattoon plant, which it reopened on April 6, following the presentation of a petition signed by Mattoon employees, pledging their allegiance to the respondent;[8] the sale of another portion of the machinery netted the respondent $22,000 in cash, but the Flora plant had not been sold. When the Flora employees went out on strike, the respondent had approximately 219 employees on its pay roll at its Mattoon plant. Prior to the reopening of the Matoon plant, the respondent had operated only a day shift at that plant. When the Mattoon plant reopened the respondent instituted and has since operated a steady day and night shift with an augmented force. In its brief, filed February 24, 1938, the respondent estimated that it employs 300 to 400 persons at the Mattoon plant.

The respondent advances two reasons for the closing of the Flora plant and the discharge of the employees of that plant: first, the sit-down strike engaged in by the employees, accompanied by damage to company property and followed by illegal picketing and acts of violence by the strikers; and, secondly, the desire of the respondent to reduce its fixed operating expenses and to raise cash by the sale of the Flora plant and equipment for use as working capital to finance its business at the Mattoon plant.

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[8] In a statement to the press, which appeared in the Flora Daily News-Record of April 5, 1937, Kuehne announced, in part: "The company decided to abandon the Flora plant after receiving evidence of the loyalty of the men employed in the Mattoon plant and after being assured that the company's pay roll in the community is appreciated . . ."

As to the first defense, it appears that the strikers committed no deliberate acts of sabotage during the sit-down. Such negligible damage as resulted to company property was incidental to plant occupation. Thus, the strikers ate their meals on tables which they obtained from inventory, taking care, however, not to place hot foods on them to prevent unnecessary injury; they used company chairs for sitting purposes and slept on lumber stock. Moreover, the sit-downers took affirmative steps to care for plant property. They swept the floors at regular intervals, set pails filled with sawdust for use as cuspidors and maintained heat in the plant whenever needed to protect stored lumber. The respondent's defense on this score must be directed to the conduct of the strikers after March 24 for on that date Kuehne expressed his gratitude to the strikers for their exemplary behavior in the plant. However, the record clearly shows that their subsequent conduct during the period of plant occupancy did not vary from the standard which the strikers had previously set.

The respondent also points to alleged acts of violence and illegal picketing as justification for the wholesale discharge of its Flora employees. John Welde, a striker, blackened an eye of Foreman John Billington, when the latter furtively emerged from the side entrance of the plant on April 12. The Circuit Court imposed a fine of 10 dollars and costs, each, upon Welde and others for violation of the injunction. Further, the respondent claims that strikers fired at Kuehne when he drove over the railroad tracks near the plant on the night of April 13. Police officers in the vicinity, hearing noise which sounded like gun fire, arrested three men, who were not employees of the Flora plant. Kuehne admitted to the police officers that a tire on his automobile "blew out." He testified that, later, the police officers found evidences of gun shot on the hub-cap and fender. However, there is no proof in the record identifying Flora strikers as participants in the alleged shooting. Also, the respondent introduced evidence tending to show that the strikers refused to permit the removal of a truckload of lumber from the Flora plant on April 8, and interfered with certain supervisory employees who sought to enter the plant on April 4 and during the period from April 7 to 10. Plainly, however, the strikers' conduct after April 1 could not have influenced the respondent in its decision to abandon the Flora plant and discharge all its Flora employees. It is a complete answer to that part of the respondent's claimed justification which is based on charges of illegal picketing and acts of violence, that they occurred, so far as they did, after the respondent had definitely announced its course of action. On April 1 the plant shut-down and mass dismissal of the Flora employees constituted an accomplished fact.

It is also significant to note that the respondent furnished work to 15 Flora employees at the Mattoon plant after the lock-out.[9] In its permanent injunction decree the Circuit Court of Clay County found that 7 of the 15 reinstated employees had participated in the sit-down and in illegal picketing. Nevertheless, the respondent did not consider their conduct as a real objection to reinstatement. Moreover, at its own expense, the respondent brought back three Flora strikers from West Virginia to resume employment at Mattoon. Yet the respondent failed to offer to Flora employees, generally, an opportunity to accept available employment at its Mattoon plant. Instead of fulfilling its obligation, which is hereinafter discussed, to treat with its newly organized employees to resolve the pending controversy, the respondent discharged them and increased its unorganized Mattoon force by the addition of more than 100 nonunion workers. The contention that the sit-down motivated the mass dismissal impresses us as a pretext to cover the respondent's real objection to the employees' concerted stoppage of work and their formation and affiliation with the Union as aids to reinforce their demands for higher wages.

We now consider the respondent's second defense. The evidence discloses that David Jones, a certified public accountant, suggested to Kuehne on three occasions, in March, August, and September, 1936, that the respondent close its Flora plant and consolidate its activities at the Mattoon plant as a means of improving the financial condition of the company. However, the idea was not seriously considered, for it was neither discussed thereafter at board of directors' meetings, nor at the annual stockholders' meeting in February 1937, nor elsewhere by anyone; nor did the respondent take any action with respect to Jones' suggestion until the happening of the labor dispute in March 1937. Kuehne admitted on the witness stand that at Christmas, 1936, he had no intention of closing the Flora plant. In reviewing 1936 operations, the respondent, in its annual report to stockholders, dated January 30, 1937, indicated its need for the facilities which the Flora plant afforded: "We have operated a good part of the time with both a day and night shift, and have added an addition to both plants to cope with this increase (in business) . . ." Moreover, at the oral argument, counsel for respondent conceded that the respondent did not formulate its intention to abandon the Flora plant until some time after the occurrence of the sit-down strike.

During the summer of 1936 the respondent had undertaken extensive improvements in the Flora plant and thereafter added expensive equipment. Thus the respondent built a 60-foot concrete and steel

[9] Although they signed applications for membership in the Union, these 15 Flora employees gained no prominence in Union activities as leaders, or otherwise.

addition to the shipping department at a cost of approximately $3,000; constructed a 40-foot by 40-foot boiler room and installed a 250-horsepower boiler at a total estimated outlay of $6,000 to $8,000; and erected a frame warehouse, costing about $1,500. The respondent also installed a $3,000 "double entennor" machine after August 1936, two spray booths in the paint room during 1936–1937, and two boring machines in the fall of 1936 at a cost of $900. In the light of its business history, hereinafter set forth, it does not appear convincing that after these extensive improvements and substantial additions of equipment, the respondent should suddenly decide that further operations at the Flora plant were economically impracticable.

Jones further testified that in his opinion the ratio of the respondent's current assets to its current liabilities as of December 31, 1936, namely about 1.5 to 1, indicated that it was not in a "healthy" financial condition.[10] However, the respondent made a net profit of $73,804.86 for 1936;[11] increased its sales during the first 3 months of 1937 over the corresponding period in 1936, by approximately $100,000, being an increase of about 85 per cent; advanced its prices in January 1937, from 10 to 15 per cent to cover additional taxes and increased costs of materials and labor; and, enjoyed a Dun and Bradstreet net worth rating of $200,000 to $300,000, "B" credit. On cross-examination, Jones conceded the Dun and Bradstreet rating to be inconsistent with his own opinion as to the respondent's financial condition. Furthermore, according to Jones' testimony, the respondent's books reflected a net worth of over $600,000 as of December 31, 1936.

In December 1936, the respondent declared a 4-dollar dividend, payable 1 dollar in cash and 3 dollars in notes, and distributed bonuses of $3,000 each to Kuehne and Schultz, in addition to smaller bonuses to other supervisory employees. Although, in the opinion of Jones, the respondent's 1936 financial statement did not warrant the extension of bank credit, the respondent succeeded in borrowing $20,000, which it used for the payment of the cash dividend to stockholders. Kuehne claims that his was a paper bonus, that he drew no salary in 1936 and that the respondent was indebted to him for cash advances, salary, bonus, and interest in the sum of approximately $120,000. However, he received his proportionate share of the abovementioned cash dividend and held the notes of the respondent, a financially responsible and solvent company, as evidence of his claims. In 1935 the respondent had paid in full, 100 cents on the dollar, its obligations under a creditors' agreement made in 1932. As of March

[10] Excluding the respondent's special liabilities to Kuehne, representing cash advances, earned and undrawn salary, interest, etc, the ratio closely approaches 2 5 to 1.

[11] Net sales for 1936 almost doubled 1935 figures, mounting from $530,789 99 to $952 547.28.

31, 1937, the respondent had on hand and in banks over $5,000 in cash and, excluding uncollectible items, more than $150,000 in accounts receivable. As of December 31, 1936, it carried an inventory valued in excess of $240,000. While the respondent claims that its current bills were approximately 90 days past due and it was not able to take discounts regularly during the first 3 months of 1937, the record does not disclose that the respondent had any pressing financial obligations.

The fact that prior to March 22, 1937, the respondent intended to institute a general wage increase for the employees at the Flora plant,[12] and granted wage increases to Mattoon employees upon the reopening of the Mattoon plant on April 6, is plainly inconsistent with the respondent's claim that it lacked capital to finance its business.

In his testimony Kuehne placed a valuation of $320,000 upon the Flora land, plant, and equipment, and admitted that its permanent abandonment would entail a loss of approximately $220,000. Considering that the respondent made no attempt to secure a purchaser for the property prior to the closing of the Flora plant, the possibility of raising cash by its disposal cannot seriously be regarded as a factor motivating its course of action.

Under all the circumstances of the case, and especially in view of the respondent's rapidly expanding business, its need for additional factory space to cope with increasing sales of its product, and the absence of a serious intention, prior to the occurrence of the labor dispute, to abandon its Flora operations, we are led to conclude that the closing of the Flora plant, coming upon the heels of successful organization of the employees at that plant by a national independent union, was not induced by financial and economic considerations unconnected with the union activities of its Flora employees. We are convinced that the respondent would not have shut down the Flora plant had it not been actuated by a desire to crush the new union.

On the basis of all the afore-mentioned considerations, we find that the respondent closed its Flora plant on April 1, 1937, and discharged all its employees at that plant because they joined the Union and engaged in union activities, and has refused to reopen its Flora plant thereafter and to reinstate its Flora employees in order to discourage their membership in the Union and to avoid its obligation to bargain collectively with the Union. By its conduct the respondent has discriminated in regard to the hire and tenure of employment of its Flora employees within the meaning of Section 8 (3), of the Act, and

[12] Kuehne testified that before the outbreak of the sit-down strike he planned to announce wage increases for employees at both plants about April 1.

has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *The alleged discharges of Harry Dean, Walter Barnett, and William Loveland*

1. Harry Dean

Harry Dean, a Mattoon employee for more than 6 years, was active in attempts to organize the Mattoon employees. He visited the strikers at the Flora plant during the sit-down and counseled with them. Upon learning from Walter Barnett, a fellow employee at the Mattoon plant, on March 29 or 30, prior to the plant's reopening, that Barnett and he had been discharged by Foreman White, on March 30 Harry Dean called at the plant for his tools. White pushed Dean out of the plant, returned his tools, and took his receipt for them, stating: "You know those boys in Flora are on strike, you shouldn't have went. You are no better off than those boys at Flora. They have got no job, nor you haven't either." Superintendent Emig of the Mattoon plant had observed Dean fraternizing with the Flora strikers. White also had knowledge of Dean's sympathetic conduct. No doubt exists that the respondent discharged Dean because of his activities on behalf of the Flora strikers and his efforts to organize a union at the Mattoon plant.

The respondent relies upon the fact that Dean ignored a letter from Kuehne dated April 2, requesting Dean to call upon Kuehne for a personal interview, as evidence of the respondent's willingness to employ Dean and of Dean's voluntary severance of his employment. In view of the fact that the respondent's letter does not constitute an unequivocal offer of reinstatement, we cannot regard it as such a bona fide offer.

We find that Harry Dean was discharged because he assisted the Union and engaged in union activities among the employees at the Mattoon plant.

2. Walter Barnett

Walter Barnett was similarly active in support of the Union. On March 28 Barnett called at the home of Foreman White. When he met Barnett at the door, White exclaimed: " . . . I hear you have been sitting down with them at Flora." Barnett answered: " . . . I don't know as I have been sitting down, but I have been down there." In reply to an inquiry as to his status, White informed Barnett: "I don't know that you will ever get back to work." Barnett likewise disregarded Kuehne's letter of April 2, similar to the one sent to

Dean, inviting Barnett to call upon Kuehne for a personal interview. Barnett never applied for reinstatement. Inasmuch as White merely expressed his opinion as to Barnett's chances for reinstatement and did not sever his employment, we find that Barnett was not discharged. The evidence does not sustain the allegation that the respondent discharged or refused to reinstate Barnett because of his activities on behalf of the Union. Accordingly, we reverse the finding of the Trial Examiner with respect to Barnett's alleged discharge, and shall order that the allegations of the complaint, so far as they pertain to Barnett, be dismissed.

3. William Loveland

Although William Loveland, a Mattoon employee, denied any activity by way of cooperation with the Flora strikers, nevertheless it is clear that the respondent suspected him. During the shut-down at the Mattoon plant, the respondent intercepted a telegram addressed to Loveland, urging him to organize the Mattoon employees. The respondent also had information that Loveland participated in conferences with Union committees. Despite the fact that statements are attributed to Loveland to the effect that he was not interested in his job, Loveland responded to Kuehne's letter of April 2, inviting him to a personal conference. On April 7 Kuehne told Loveland: "Just let it go for a few months and I will see if I can get you back on after this is settled." About May 10 Loveland approached Superintendent Emig of the Mattoon plant for work. Emig stated that he could not help Loveland "until after this Flora strike was settled." To Loveland's inquiry as to whether he was let out because of his work or because of the strike, Emig replied simply that Loveland's work was satisfactory. We find that William Loveland was discharged and refused reinstatement because the respondent believed that he assisted the Union and engaged in labor organization activities among the employees at the Mattoon plant.

C. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that the production and maintenance employees, exclusive of all foremen, office and salaried employees, employed by the respondent at the Flora plant constitute a unit appropriate for the purposes of collective bargaining. In its answer, the respondent does not admit or deny the above allegation and does not assert that any other unit is the proper one. At the hearing the respondent offered no evidence showing that any other unit is

the appropriate one. The production and maintenance employees are eligible to membership in the Union.

Accordingly, we find that the production and maintenance employees of the respondent in the Flora plant, except foremen, office and salaried employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to the employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

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

The respondent employed approximately 180 production and maintenance workers at its Flora plant in March 1937. On March 23 or 24, 179 of these employees signed a joint application for membership in the Union.[12a] It is clear that the Union represented a majority of the production and maintenance employees at the Flora plant prior to March 25. The respondent does not contend otherwise.

We find that on March 24, 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 to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

Theiss, a representative of the American Federation of Labor, arrived in Flora on April 2 to negotiate a settlement of the strike. His efforts to reach Kuehne at the plant or at the latter's home on that day were unavailing. At Theiss' suggestion, Madding, president of the local Union, by letter dated April 2, requested the respondent to recognize the Union and to set a date for a conference. Kuehne replied by letter, dated Saturday, April 3, stating that the respondent saw no need for bargaining negotiations inasmuch as it had definitely ceased operations at the Flora plant, but that Kuehne would meet with Madding in Mattoon on Monday, April 5, at 2 o'clock in the afternoon, if Madding desired. Kuehne refused the Union's request, made by telephone, to postpone the meeting to a later hour to enable Theiss to travel from East St. Louis, his headquarters, to Mattoon for the conference, and the meeting was not held.

[12a] It should be noted that the Union was the same entity throughout the period under consideration although it received its formal designation as used in this decision when it was chartered by the United Brotherhood of Carpenters and Joiners of America.

Branson, president of the Flora Chamber of Commerce, prevailed upon Kuehne to accept an invitation to meet with a committee of employees at the Chamber of Commerce headquarters on the evening of April 8. Kuehne and Branson made it clear to Theiss that his attendance was not desired. Kuehne testified that he agreed to participate in the meeting, provided the strikers would permit the respondent to move a truckload of lumber out of the Flora plant. Kuehne, however, failed to attend the Chamber of Commerce conference, claiming a breach of the alleged agreement.

In our view of the case it is unnecessary to decide whether or not there was a breach of the alleged agreement. The Act imposes an unconditional duty upon an employer to bargain collectively with the representatives designated by a majority of his employees in an appropriate unit. If we assume that the strikers interfered with the movement of the respondent's property, their misconduct, for which appropriate remedies exist under State laws, does not justify the respondent in ignoring Federal law by its refusal to bargain collectively with the Union.

On April 10, in a conference with a United States Department of Labor conciliator and Theiss, Kuehne reiterated the respondent's position that there was no occasion for collective bargaining negotiations with the Union, since the respondent had permanently closed the Flora plant.

Branson, however, continued his efforts toward reopening the plant. Having failed to bring the respondent and the Union together in a meeting, he proposed to Kuehne on or about April 18, that the respondent bargain with an "inside" union of its employees at the Flora plant. Kuehne readily agreed to act favorably upon the suggestion, if the strikers would organize a union of that type.

Since we have found that the closing of the Flora plant involved a discriminatory lock-out, the shut-down did not relieve the respondent of its obligation under the Act to bargain with its employees or their duly chosen representatives. Obviously, the respondent can neither rely upon its own wrongful "abandonment" of the plant as an excuse for its refusal to bargain collectively with the Union, nor argue with good grace that such bargaining would have been fruitless. Had the respondent met with the Union, the labor dispute might have been adjusted. By the course of action it took on April 1 and thereafter, the respondent has disqualified itself to contend otherwise.

The respondent contended that it had bargained collectively with the employees on March 22, the day of the beginning of the strike. But where in the course of a strike, supervening events, such as the organization of a union, which demands recognition, or the discharge of strikers, introduce new issues, the employer must meet with the

representatives of its employees in order to realize the full benefits of collective bargaining.[13] This the respondent refused to do.

We accordingly find that on April 5, 1937, and thereafter, the respondent refused to bargain collectively with the Union as the representative of its employees at its Flora plant in respect to rates of pay, wages, hours of employment, and other conditions of employment. We also find that by such refusal the respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and collective bargaining through representatives of their own choosing as 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 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 have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

As we have seen, the respondent locked out its Flora employees on April 1, 1937, to discourage membership in the newly formed Union. At the same time, the respondent expanded its operations at the Mattoon plant by the addition of a number of new employees, who in actuality replaced the employees of the closed Flora plant. The appropriate remedy is plainly the reinstatement of the employees of the Flora plant with back pay from the date of the lock-out to the date of the offer of reinstatement.

The remedy with respect to the cases of Carmon De Weese, Roy E. Karraker, and Peter Orschell requires separate consideration.

Shortly after the closing of the Flora plant the respondent offered employment at the Mattoon plant to Carmon De Weese, a Union striker. De Weese declined the proposal for the reason that his mother's illness rendered moving to Mattoon inadvisable at the time. De Weese is temporarily employed elsewhere at a substantial reduction in wages and desires to return to his former employment with the respondent. Reemployment at Mattoon, 60 miles away, falls short of substantially equivalent employment. Therefore, as in the

[13] *Matter of Jeffery-De Witt Insulator Company* and *Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R B. 618; *Matter of Carlisle Lumber Company* and *Lumber and Sawmill Workers Union, Local 2511, Onalaska, Washington*, and *Associated Employees of Onalaska, Inc, Intervenor*, 2 N. L R. B 248; *Matter of S. L. Allen & Company, Inc* and *Federal Labor Union, Local No. 18526*, 1 N. L. R. B. 714.

case of the other locked-out employees, De Weese is entitled to reinstatement and back pay.

The respondent contends, and the Trial Examiner found and recommended, that Peter Orschell should not be reinstated because he was not an employee on March 22. From sworn affidavits made by Orschell, it appears that he had worked for the respondent for more than 3½ years prior to the closing of the Flora plant; that he was employed by the respondent on March 15, 1937; that on that date he was temporarily laid off and instructed to report for work on March 22; that when he reported for work on March 22, the respondent's agents informed him that he was not needed that day and instructed him to return to the plant on the following day. Later that day, March 22, the strike occurred. It appears that Orschell received his last pay check from the respondent on March 15 and that he was not working at the Flora plant on March 22. The respondent, however, does not show that it discharged Orschell on March 15 or on March 22. The mere circumstance that he was not physically engaged in work at the time of the strike does not affect his employment status under the Act.

At the time of the hearing Orschell was employed on a W. P. A. project in Flora.

Since Peter Orschell did not lose his status as an employee, by reason of his temporary lay-off, we shall require the respondent to reinstate him with back pay.

The Trial Examiner made no finding or recommendation as to Roy E. Karraker. His name is not listed in the Union's charge. Karraker, however, filed an affidavit, requesting relief.[14] The respondent filed a counter-affidavit from which it appears that Karraker was employed as a foreman at the lumber yard at the Flora plant at the time of the strike on March 22, and continued to work for the respondent during the sit-down and until April 1. Karraker did not join the Union; nor does it appear that he was eligible for membership. Inasmuch as Karraker occupied a supervisory position and did not participate in collective action, we shall not require the respondent to reemploy Karraker or pay him back pay.

The Trial Examiner, in his Intermediate Report, recommended that no relief be afforded to the 16 persons listed in appendix B for the reason that they did not testify in the proceeding and failed to file affidavits. The record sufficiently discloses, however, that the 16 named individuals were members of the Union in the employ of the respondent at its Flora plant and were locked out on April 1, 1937, and we shall order them reinstated with back pay.

[14] To facilitate presentation of evidence the parties stipulated that affidavits might be filed by complaining witnesses in lieu of their oral testimony.

At the termination of the hearing in this proceeding the Flora plant was still closed. Since the respondent hired only about 127 additional employees at its Mattoon plant after the lock-out of the 180 Flora employees, it was operating its business with a reduced force. In order to effectuate the policies of the Act we shall order the respondent to offer to the Flora employees, who are listed in appendix A, immediate reinstatement to their former employment either at the Flora plant, if that plant is now operating, or resumes operation upon the issuance of this order, or, if not, at the Mattoon plant; dismissing, if necessary, employees hired since the lock-out.

Such reinstatement, at either the Flora or Mattoon plants, shall be effected in the following manner: All employees hired [14a] since the lock-out at either the Flora or Mattoon plants shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for the employees to be offered reinstatement, all available positions shall be distributed among such employees and the 15 employees named in appendix C annexed hereto, who were heretofore reinstated at the Mattoon plant, in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

Furthermore, we shall order that all the Flora employees, who are listed in appendix A, be made whole for any losses of pay that they have suffered by reason of the respondent's wrongful conduct in discharging them in closing down the Flora plant.

Having found that the respondent discriminated in regard to the hire and tenure of employment of Harry Dean and William Loveland at its Mattoon plant, we shall order the respondent to offer reinstatement to them. We shall award back pay to Harry Dean from March 30, 1937, the date of his discharge, to the date on which the respondent offers him reinstatement. We shall likewise award back pay to William Loveland from April 7, 1937, the date of the re-

[14a] This does not include employees, who were working at the Mattoon plant on March 22, when that plant shut down, and who since may have been reinstated there.

spondent's discriminatory refusal to reinstate him, to the date on which the respondent offers him reinstatement.

In all cases in which back pay is awarded, we will, in accordance with our customary procedure, order the deduction of all sums earned since the commission of the unfair labor practices which would not have been earned if the employee had been working for the respondent.

Inasmuch as the Trial Examiner recommended the dismissal of the complaint as to Carmon De Weese, Peter Orschell, and the 16 employees listed in appendix B, the respondent shall not be required to pay them back pay from January 11, 1938, when it received the Intermediate Report, to the date of this decision.[15]

We shall order the respondent to bargain collectively with the Union as the representative of all the production and maintenance employees at its Flora plant, if the respondent has reopened the Flora plant or if the respondent shall hereafter reopen that plant. If, in compliance with our directions, the respondent reinstates the discharged Flora employees at its Mattoon plant, our order shall not be construed to require the respondent to bargain collectively with the Union as the representative of the employees at the Mattoon plant, since it is now uncertain as to whether the Union will at that time represent a majority of the employees in an appropriate unit.

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. United Brotherhood of Carpenters and Joiners of America, Local 1791, is a labor organization, within the meaning of Section 2 (5), of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of its employees at its Flora plant and thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3), of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Harry Dean and William Loveland, two employees at its Mattoon plant, in order to discourage membership in labor organizations, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3), of the Act.

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[15] *Matter of E. R. Haffelfinger Co., Inc.* and *United Wall Paper Crafs of North America, Local No. 6,* 1 N. L. R. B. 760; *Matter of Cherry Cotton Mills* and *Local No. 1824, United Textile Workers of America,* 4 N. L. R. B. 731.

4. The production and maintenance employees at the respondent's Flora, Illinois, plant, excluding foremen, office and salaried employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. United Brotherhood of Carpenters and Joiners of America, Local No. 1791, was on March 24, 1937, and at all times thereafter has been, 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.

6. By refusing to bargain collectively with United Brotherhood of Carpenters and Joiners of America, Local 1791, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5), of the Act.

7. 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.

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

9. The respondent has not discriminated in regard to the hire and tenure of employment of Walter Barnett, Garland Gibson, or the 15 employees listed in appendix C because of their membership in a labor organization and thereby discouraged membership in a labor organization, within the meaning of Section 8 (3), of the Act.

10. The respondent has not persuaded its Mattoon employees or others to assault its Flora employees because of their activities in a labor organization and thereby discouraged membership in a labor organization, within the meaning of Section 8 (3), 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, Kuehne Manufacturing Company, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From discouraging membership in United Brotherhood of Carpenters and Joiners of America, Local 1791, or any other labor organization of its employees by locking out, discharging, or refusing to reinstate any of its employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term

or condition of employment of any of its employees by reason of their membership in United Brotherhood of Carpenters and Joiners of America, Local 1791, or any other labor organization of its employees, or by threats of such discrimination;

(b) From refusing to bargain collectively with United Brotherhood of Carpenters and Joiners of America, Local 1791, as the exclusive representative of the production and maintenance employees in its employ at its Flora plant, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(c) 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 purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) If the respondent has resumed operations at the Flora plant since the date of the hearing, or should the respondent reopen its Flora plant upon issuance of this order, bargain collectively with United Brotherhood of Carpenters and Joiners of America, Local 1791, as the exclusive representative of the production and maintenance employees in its employ at the Flora plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) If the respondent has resumed operations at the Flora plant since the date of the hearing, or should the respondent reopen its Flora plant upon the issuance of this order, offer to the employees listed in appendix A, immediate and full reinstatement, respectively, to their former or substantially equivalent positions at the Flora plant, without prejudice to their seniority and other rights or privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(c) If the Flora plant has not reopened or does not reopen upon the issuance of this order, offer to the employees listed in appendix A, immediate and full reinstatement, respectively, to positions at the Mattoon plant, substantially equivalent to their former positions, without prejudice to their seniority and other rights or privileges, in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(d) Offer to Harry Dean and William Loveland immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority and other rights or privileges;

(e) Make whole the employees listed in appendix A, who were locked out on April 1, 1937, for any losses of pay they will have suffered by reason of their lock-out by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages during the period from April 1, 1937, the date of the lock-out, to the date of the offer of reinstatement or placement upon the preferential list required by paragraphs (b) or (c) above, less any amount earned by him during such period; except that Carmon De Weese, Peter Orschell, and the 16 employees listed in appendix B shall not be compensated as aforesaid for the period from January 11, 1938, to the date of this order;

(f) Make whole Harry Dean for any loss of pay he has suffered by reason of the respondent's discriminatory conduct, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, March 30, 1937, to the date of the respondent's offer of reinstatement, less any amount earned by him during that period;

(g) Make whole William Loveland for any loss of pay he has suffered by reason of the respondent's discriminatory conduct, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of the respondent's refusal to reinstate him, April 7, 1937, to the date of the respondent's offer of reinstatement, less any amount earned by him during that period;

(h) Post immediately notices to its employees in conspicuous places, within and without its Mattoon plant, stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that it will take the afore-mentioned affirmative action;

(i) Post, if it has resumed operations at its Flora plant or if it resumes operations at that plant upon issuance of this order, immediately, similar notices to its employees in conspicuous places, within and without the Flora plant;

(j) Maintain such notices for a period of thirty (30) consecutive days from the date of posting;

(k) Notify the Regional Director for the Fourteenth 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, as amended, 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, with respect to Walter Barnett, Garland Gibson, and the 15 employees listed in appendix C.

And it is further ordered that the complaint, as amended, 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 (1), of the Act, by persuading its Mattoon employees and others to assault and beat its Flora employees in order to discourage their membership in a labor organization.

Appendix A

Armstrong, J. K.
Ayers, Resler
Aldrich, Carl
Akers, Frank
Altvater, Kerron
Bendorf, Ivan
Boyd, Volney H.
Bullard, Everett
Bice, Clinton
Britton, Burl
Bakel, Wilfred
Bay, Maurice
Beasley, Floyd
Bowen, Robert L.
Bauhart, Ray F.
Boose, Raymond
Boyd, James
Beard, Harold
Billington, Wallace
Bay, Sylvester
Bullard, Leonard
Barnes, Murl
Billingsley, William H.
Cross, Russell
Crum, Earl L.
Campbell, Kenneth
Carter, Emanuel
Cooper, Delbert
Crooks, Ivan
Cunningham, Robert
Carter, Leland
Cash, Dana
Crown, Elmer
Colelasure, Bert
Carter, Rolla
Chapman, Eldon
Craig, Frank
Dennis, Loren L.
Demeike, Aloysius
Delaney, E. H.
Ellis, Raymond
Erwin, Opal
Easton, Jack
Edminston, Glen
Easton, Dale
Erdman, William
Elston, Myrel
Frank, Robert
Farileigh, Perl
Fellows, Pearl
Fatheree, Henry, Jr.
Finney, John
Furry, Cecil
Fellows, Thomas E.
Franklin, Orris
Freeze, Clarence
Franklin, Roy
Goings, Chas.
Greenwood, Alto
Greenwood, Leonard
Golden, Cecil
Golden, L. J.
Griffith, Raymond
Gaskin, Carol
Greenwood, Miles
Goff, Theodore
Goff, Elza
Gibson, Wayne
Guinn, Norton
Guinn, Lyman
Hower, George, Sr.
Harper, Glen E.

Hower, George, Jr.
Hall, Rolla R.
Hackney, Arlie
Hardy, Delbert
Hardy, Henry R.
Hardy, Charles
Hardy, Herman F.
Hinman, C. F.
Hower, Walter
Hackney, Edward
Harrison, Enoch
Jones, Ernest E.
Jones, Ivan N.
Jones, Elden
Jones, Thomas
Jones, Bernard
Jackson, Frank
Johnson, Pearl
Keller, Edmund L.
Klein, David
Krutsinger, Lloyd
Karlee, Virgil
Lagle, William
Lambrich, Cecil
Lewis, Arvel
Madding, Earl
Murphy, George
Mann, Karl
Miller, William
Milner, Olin
Martin, William
Martin, Lester
McClure, Sherman
McConnel, Laclair
McGrew, Daley
McCracken, J. A.
McDaniel, Robert
Mitchell, Ted B.
Mitchell, Loren
Nelson, John W.
Newton, Leon J.
O'Shatz, Frank
Orschell, Peter
Pitchford, Frank
Payne, George C.
Powless, Alex
Pierson, W. B.
Pitchford, Leland
Rush, Garvin
Railey, Melvin
Rouchelle, Everest
Roberts, Arthur
Rudisill, Wilbert
Shuler, Everett
Strange, Forrest
Slover, Earl
Schroder, Francis
Sturner, Chester
Smith, Isaac
Strange, Delbert
Spitzner, Virgil
Staley, Carl
Smith, Leslie
Stopher, Frank
Shohorn, W. C.
Stopher, L. K.
Sinclair, Gordon
Smith, Lyman B.
Tooley, John T.
Trage, Charles
Tenney, Lewis I.
Trotter, Harold
Tibbs, Everett
Uebinger, Joe
Vaughn, Raymond
Whitt, Fred
Windle, Everett T.
Walker, Donald
Warren, Russell
Welty, Albert
Welty, John
Whitson, Glen
Walker, Arthur
Winchester, Earl
White, Ed C.
Wickiser, C. E.
Wickiser, Max D.
Young, Donald

Young, Delbert
Zimmerman, Clarence
Zimmerman, Ned E.
De Weese, Carmon

Appendix B

J. K. Armstrong
Wilfred Bakel
Wallace Billington
Robert Cunningham
Leland Carter
Glen Edminston
Perl Farileigh
Glen E. Harper
David Klein
Lloyd Krutsinger
Cecil Lambrich
J. A. McCracken
W. B. Pierson
Leslie Smith
Joe Uebinger
Earl Winchester

Appendix C

Dale Courtney
C. F. Courtney
Geo. E. Cooper
Junior Courtney
L. D. Etchison
Hayward Farileigh
Orville Hardy
Ellsworth Hardy
Perry Hargrave
Carl C. Jones
Milton M. Roe
L. D. Spender
H. S. Stanford
Donald Turner
Roscoe Woods