

In the Matter of SEMET-SOLVAY COMPANY and DETROIT COKE OVEN
EMPLOYEES ASSOCIATION and INTERNATIONAL UNION, UNITED AUTO-
MOBILE WORKERS OF AMERICA, LOCAL 174

Cases Nos. R-547 and C-384.—Decided May 28, 1938.

Coke and Coke Byproducts Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; discrediting union; questioning employees regarding union activity; threat to close plant—*Company-Dominated Union:* domination of and interference with formation and administration; activities of supervisory employees; disestablished, as agency for collective bargaining—*Discrimination:* lay-offs or discharges; charges of, not sustained—*Collective Bargaining:* charges of refusal to bargain collectively, not sustained—*Investigation of Representatives:* controversy concerning representation of employees—*Strike:* sit-down—*Picketing—Unit Appropriate for Collective Bargaining:* hourly paid employees, excluding office, clerical, and supervisory employees and watchmen; no controversy as to—*Election Ordered*

*Mr. Harold A. Crane*field and *Mr. George J. Bott*, for the Board.
Butzel, Eaman, Long, Gust & Bills, by *Mr. R. T. Gust*, of Detroit,
Mich., for the respondent.

Mr. William S. McDowell, of Detroit, Mich., for the Association.
Mary Lemon Schleifer, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 5, 1937, International Union, United Automobile Workers of America, Local 174, herein called the U. A. W., filed a petition with the Regional Director for the Seventh Region (Detroit, Michigan) alleging that a question affecting commerce had arisen concerning the representation of employees at the Detroit plant of Semet-Solvay Company and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On the same date, the U. A. W. filed a charge with the said Regional Director alleging that Semet-Solvay Company, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting

commerce within the meaning of the Act. On June 10, 1937, the U. A. W. filed an amended petition and an amended charge.

On June 14, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director for the Seventh Region to conduct it and to provide for an appropriate hearing upon due notice, and acting pursuant to Article III, Section 10 (c), of said Rules and Regulations, further ordered that the two cases be consolidated for the purposes of hearing.

On June 22, 1937, the said Regional Director issued a complaint and notice of hearing, which were duly served upon the respondent, the U. A. W., and Detroit Coke Oven Employees Association, herein called the Association, another labor organization claiming to represent the employees of the respondent. The complaint alleged, in substance, that the respondent had dominated and interfered with the formation and administration of the Association; that the respondent on or about March 27, 28, and 29, 1937, had discharged 40 named employees because of their union activities and thereby discouraged membership in the U. A. W.; that the respondent on or about March 16, 1937, and on various dates thereafter refused to bargain collectively with the U. A. W., which had been designated as the collective bargaining agent by a majority of the employees in an appropriate unit; and that by these acts and further acts, the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7), of the Act.

On June 28, 1937, the Association filed an answer to the complaint, denying that the U. A. W. had been selected as the collective bargaining agent by a majority of the employees in an appropriate unit or that the formation or administration of the Association had been dominated or interfered with by the respondent. The answer also alleged that the Association had been selected as the collective bargaining agent by a majority of the employees in the unit which had been alleged to be appropriate by the U. A. W.

The respondent filed an answer to the complaint on July 2, 1937. The respondent admitted in the answer that its business was of such character as to subject it to the provisions of the Act and admitted that the persons named in the complaint had been laid off, but denied that the respondent had engaged in any unfair labor practices within the meaning of the Act.

Pursuant to a subsequent notice of hearing duly served upon all the parties, a hearing was held in Detroit, Michigan, between July 6

and 24, 1937, inclusive, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board, the respondent, 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 introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made numerous rulings on motions and on objections to the introduction of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Subsequent to the hearing, briefs were filed by counsel for the respondent, counsel for the Association, and counsel for the Board.

On January 19, 1938, the Trial Examiner issued an Intermediate Report finding that the evidence failed to sustain the allegations of the complaint and recommending that the complaint be dismissed. Thereafter, the U. A. W. filed exceptions to the Intermediate Report. The Board has considered the exceptions and, to the extent indicated below, sustains them.

On March 9, 1938, a stipulation signed by the respondent, the Association, International Union, United Automobile Workers of America, Local No. 174, Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, and the Regional Attorney for the Seventh Region, was made a part of the record in the case. The stipulation states that subsequent to the hearing, the employees of the respondent who were members of Local 174, surrendered their memberships in Local 174 and thereupon applied for and received a charter from United Mine Workers of America, likewise affiliated with the Committee for Industrial Organization. The charter created Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, to which the employees of the respondent who were formerly members of Local 174, now belong. This change of affiliation was that contemplated at the time when International Union, United Automobile Workers of America, Local 174 undertook organization of the respondent's plant, which is discussed hereafter. The stipulation further provided that the Board might enter an order upon the stipulation that Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, be substituted for International Union, United Automobile Workers of America, Local No. 174 in any further proceedings had in this matter.

On May 5, 1938, the Board notified the parties of the right, within 10 days, to apply for oral argument or permission to file briefs. No such requests were made by any of the parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Semet-Solvay Company, a New York corporation, with its principal office in New York City, is engaged in the manufacture of coke and coke byproducts at plants located in Buffalo and Syracuse, New York; Ensley, Alabama; and Detroit, Michigan.

The answer of the respondent admitted that allegation of the complaint which stated:

The respondent in the course and conduct of its business causes and has continuously caused most of the raw materials used in the manufacture of its products, principally bituminous coal, to be purchased and transported in interstate commerce from and through States of the United States other than the State of Michigan to its Detroit plant in the State of Michigan, and causes and has continuously caused a large part of the products manufactured by it to be sold and transported in interstate commerce from its Detroit plant in the State of Michigan into and through States of the United States other than the State of Michigan and into foreign countries.

We so find. The record discloses that at the time of the hearing, the Detroit plant of the respondent was using approximately 3,500 tons of coal per day, none of which was obtained in the State of Michigan. The record does not indicate the exact proportion of the coke and coke byproducts manufactured at the Detroit plant which are shipped outside the State of Michigan.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 174, a labor organization, is a local of International Union, United Automobile Workers of America, affiliated with the Committee for Industrial Organization. Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, is a labor organization, which also is affiliated with the Committee for Industrial Organization.

Detroit Coke Oven Employees Association, a non-profit corporation chartered under the laws of the State of Michigan, is an unaffiliated labor organization admitting to membership hourly paid employees in the Detroit plant of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Chronological development of the labor dispute*

Early in March 1937 some of the employees of the respondent solicited aid in organizing from the Detroit headquarters of the Committee for Industrial Organization, herein called the C. I. O. There had been no organization among the employees in the respondent's Detroit plant prior to this time. The employees were referred to the offices of the International Union, United Automobile Workers, who it was stated, had been given authority by the C. I. O. to organize miscellaneous groups of workers until such time as the C. I. O. set up organizations for workers in these industries.

The first meeting of the respondent's employees for the purpose of organizing was held on March 12, 1937. About 100 of the 320 hourly paid employees then employed in the Detroit plant signed cards applying for membership in Local 174 at this meeting. Subsequent meetings of the respondent's employees were held on March 15, 19, and 29. The record shows that the respondent knew of these activities on or shortly after March 15 and knew, at least, the identity of the employees most prominently engaged in these activities.

On March 22, 1937, Frank E. Hartung, a C. I. O. organizer, called R. E. Exum, superintendent of the Detroit plant, by telephone. E. B. Conklin, assistant superintendent, talked with Hartung. Hartung stated that he wished to talk with Exum concerning some demands or proposals for an agreement which had been drawn up by the employees who had joined the U. A. W. Conklin stated that Exum was out of town and would not return until the end of the week or the beginning of the following week and that he, Conklin, had no authority to grant such a request. Hartung left his name and number, requesting that a message be left for Exum to call him.

On March 27, 28, and 29, the respondent laid off or discharged 41 employees; telling at least all but a few that when operations picked up and work was available they would be recalled.

During the day of March 29, Hartung, not having heard from Exum, again called the respondent's office and was told that Exum was not there at the time. Hartung again stated his reason for calling and left his name and number with the request that Exum communicate with him.

On the evening of March 29, the U. A. W. held a special meeting to determine what action should be taken concerning the lay-offs or discharges, which the members felt to have been discriminatory. A committee of five was elected at the meeting to whom power was given to take any action which the committee deemed necessary or appropriate. The committee, having decided to take strike action, recruited 17 per-

sons, who went to the powerhouse of the respondent and cut off the power necessary to the operation of the plant. Various members of the respondent's supervisory force attempted to persuade the 17 men, who had stationed themselves in the powerhouse, to come out, but they refused unless Exum, who was then in the plant, would deal with them concerning the laid-off or discharged employees. Exum refused and requested the city police to evict the men, stating that a majority of the 17 were no longer employees of the respondent since they had been laid off in the previous 2 or 3 days. The police commissioner refused on the ground that the men wore badges, which are normally required to be surrendered to the respondent when an employee is laid off or discharged. After this refusal, the respondent's officers ceased their efforts to regain possession of the powerhouse and directed their activities towards shutting down the plant in such manner as to protect the property from the dangers of fire and explosion, dangers which are inherent in the shutting down of coke ovens.

The seizure of control of the powerhouse by the strikers took place about 11 p. m. on March 29. By the following morning the members of the U. A. W. had taken possession of the entire plant, establishing and maintaining guards and pickets, and other groups or committees deemed necessary to conduct the strike. A limited number of foremen and supervisory employees were granted passes by the strikers and allowed to come into the plant during the following week. These persons, accompanied by guards appointed by the U. A. W., directed or aided in the complete shut-down of the plant. As soon as this was accomplished, the U. A. W. took up the passes and allowed no one, except members of the U. A. W. engaged in patrolling and guarding, to enter the plant.

Hartung testified that between March 29 and April 15 he made several efforts to talk to Exum by telephone, but was unable to reach him. On April 15, 1937, Frank H. Bowen, Regional Director for the Seventh Region of the National Labor Relations Board, in the course of investigating the charge and the petition which had been filed by the U. A. W. on April 5, arranged for Conklin to go into the plant on the following day to hear the demands of the U. A. W. Conklin and two or three foremen were accordingly admitted to the plant and received the collective bargaining committee of the U. A. W. Conklin stated that he had authority only to receive the demands, which were presented to him, and refused to negotiate with the committee concerning the demands. The following day, the U. A. W. again denied the respondent's supervisory employees access to the plant.

On April 20 Thomas Frisbee, an employee of the respondent, called Conklin by telephone. Frisbee stated that he represented the Detroit Coke Ovens Employees Association, an organization which, he said,

a majority of the respondent's employees had joined, and that the Association had drawn up demands which they wished to present to the respondent. He asked Conklin to arrange to receive their committee. Conklin communicated with William Wingert,¹ general superintendent of all the respondent's plants, who was in Detroit in connection with the labor dispute, and was instructed by Wingert to make arrangements to receive the Association's demands. Conklin called Frisbee and arranged to meet the Association's committee the following day. Conklin likewise stated to this committee, when he met them, that he had no authority to negotiate but had met them only for the purpose of receiving their demands.

On April 21 Conklin made arrangements with both committees for separate meetings on April 24 to discuss their respective proposed agreements. On April 24 Conklin, Wingert, and G. E. Brandon, general manager of the respondent, met with both committees, and spent approximately 2 to 3 hours with each. Both meetings were adjourned with the understanding that subsequent meetings would be held at any early date for the purpose of attempting to reach an agreement. On April 27 the respondent's representatives again met with the committee of the Association. On April 28 the respondent submitted identical proposed agreements to each of the committees, and again 2 to 3 hours were spent by each group with the respondent's representatives. Both organizations accepted the proposed agreement. Immediately after the committee of the U. A. W. had agreed to accept the respondent's proposals, the agreement was submitted to the members of the U. A. W. in the respondent's plant. The strikers, after voting to accept the proposed agreement, evacuated the plant.

The respondent began the following day to put the plant in condition to reopen. Within approximately 3 weeks, all the men who had been employed on March 27 and who wished employment, including the 41 who had been laid off, were reinstated.

B. Interference with and domination of the formation and administration of the Association

According to the testimony of Thomas Frisbee, the possibility of forming an inside organization primarily for the purpose of ending the strike was first discussed on April 14 by Frisbee and Henry Bray. No action seems to have resulted directly from this conversation. On April 16, Volmer and Hampton, also employees of the respondent, requested Frisbee to assume the leadership in forming such an organization. Frisbee testified that he replied he would consider the re-

¹ Pursuant to arrangements completed just prior to the strike, Exum had meanwhile been transferred to the New York office of the respondent.

quest. On the morning of April 17, a group of 15 to 20 nonunion employees met in the garage at Frisbee's home and decided to see how many persons would be interested in such an organization, and thereby test the strength of the U. A. W. Papers headed "Detroit Employees Association of the Semet-Solvay Company" were circulated by the group which had met in the garage and over 100 signatures obtained by April 19. On April 19 word was circulated that a meeting open to all employees of the respondent would be held that evening. Frisbee secured a hall for the meeting and arranged to have an officer of the inside organization then in existence at the Michigan Alkali Company address the men. During the same day, Frisbee, Charles McFarland, Carroll McFarland, Harden Hill, and Samuel Tait, all employees of the respondent, engaged the services of William S. McDowell, an attorney, to aid them in the formation of the organization. Henry Bray, the employee with whom Frisbee talked on April 14, is alleged to have suggested the employment of McDowell.

About 175 persons attended the meeting held on April 19. The Michigan Alkali plan was read and explained, and McDowell read and explained the rights of employees under the National Labor Relations Act. The meeting was then temporarily adjourned for the purpose of securing members. The meeting, limited to the 120 persons who joined the Association at this meeting, continued for the election of temporary officers and representatives.

The officers and representatives of the Association, pursuant to authority granted at the meeting of April 19, drew up a proposed agreement on April 20, for submission to the respondent. The meetings which followed between the Association and the respondent, resulting in the acceptance of the respondent's proposed agreement by the Association on April 28, have been described previously.

In addition to the employees already named, John Abel, Sidney Hughes, Percy Gambrell, and William Smith were identified as employees who had been instrumental in aiding in the formation of the Association or in securing members subsequent to its formation. The respondent admits that, of the employees named, Frisbee, most prominent in the formation of the Association, as well as Bray, Abel, Hughes, Gambrell, and Smith were not ordinary production employees. The respondent sought to show, however, that the positions of these persons were not of such supervisory character that the respondent would be bound by their actions.

Documentary proof and testimony introduced at the hearing indicate that certain supervisory employees at the Detroit plant receive a salary, do not work with employees, attend regular meetings of foremen, and have authority to hire and discharge employees. These employees are designated as foremen or assistant foremen by the respondent. It is clear that Frisbee, Bray, Abel, Hughes, Gambrell,

and Smith did not come within this group. All were hourly paid, worked with the men whose work they supervised, did not attend meetings of salaried foremen, and were referred to at the hearing by the respondent as "gang leaders." It does not follow however, that these employees are not supervisory employees.

Several employees testified that Abel, Hughes, and others named were their "foremen." McCain, a salaried foreman superior to Abel, likewise referred to Abel as a "foreman" and admitted that the employees call him "foreman." Exum, superintendent, testified that Hughes was a "good foreman" and Bastian, a salaried foreman, testified that Hughes was "foreman" of the track gang. Time cards used by the respondent which were introduced in evidence designated Abel as "Mason Fore," Hughes as "Track Frm," Gambrell as "Shop Frm," and William Smith as "Dock Foreman." It is obvious, therefore, that contrary to the position taken at the hearing, these men even though not salaried employees, were considered foremen by both the respondent and the employees whose work they supervised. Such a designation alone is sufficient to indicate the supervisory character of the positions which they occupy. Other evidence in the record substantiates such a conclusion.

Abel receives orders concerning the work to be done from a salaried foreman or the superintendent. He then carries these orders to the men in his gang and directs their performance of the work. The record shows that some time prior to the hearing, Abel reported Etter, one of the discharged employees, for being absent from work without notice and that Etter was laid off for a period of 2 weeks as a disciplinary measure. Although Abel testified that Conklin had determined that this disciplinary action should be taken, Abel admitted that he had signed the form, in the space designated for the signature of a foreman, which notified Etter that he was laid off. Abel admitted also that he had signed such forms at other times, though he persistently denied that he was the person who had determined that the employee should be laid off or discharged. Whether or not Abel made final decisions in the matter of lay-offs or discharges, McCain admitted that Abel made recommendations such as "other foremen" made. The record also shows that Abel receives 20 to 25 cents per hour more than other employees in his gang and that he can come into the plant and do his work at any time, not being limited, as are other employees, to a particular shift.

The respondent admitted that Hughes and Gambrell occupied positions in their respective departments which are of about the same type and scope as Abel occupied in the brick mason department. Although the exact duties of Frisbee and the other gang leaders named are not set forth in the record, it is a reasonable assumption

from the respondent's designation of all these employees as gang leaders that their positions are similar to those occupied by Abel, Hughes, and Gambrell. Further, the record does show that in the absence of Goodwin, chief electrician and foreman, Frisbee acts in Goodwin's place.

Whether Frisbee, Abel, and the others are called gang leaders, assistant foremen, or given some other title, it is clear since they give orders to the men, report employees for infractions of rules, and make recommendations concerning the men, that they exercise supervisory powers. Since they are supervisory employees, their acts in connection with the formation and administration of the Association were the acts of the respondent.

We find that the respondent has dominated and interfered with the formation and administration of the Association and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. Interference, restraint, and coercion

In addition to the respondent's interference with the rights of self-organization by virtue of its domination of the formation and administration of the Association, other acts of interference are indicated in the record. Dobson, shift foreman, did not deny testimony that in a conversation with Ray, an employee, he insinuated that the C. I. O. was composed of a "bunch of radicals" or that he told another employee, Leonard Young, that the respondent would shut down and never open up again if a union were organized. Vickerman, also a foreman, admitted that during a conversation with two employees concerning a strike in a General Motors Corporation plant, he stated that "I don't think these big companies would stand for C. I. O. or any other union." Marr, a foreman, failed to deny that he had had a conversation with Keeton in which, according to Keeton, Marr stated that the respondent would shut down if the plant were organized. Whitemore, an employee, testified that Gilbert, his foreman, asked Whitemore "how is the union coming" and when Whitemore denied any knowledge of its activities, replied, "They ain't a dam one of you fellows knows a thing about it." Although a witness, Gilbert failed to deny that he had questioned Whitemore concerning the union or made the further remarks attributed to him.

We find that the respondent by questioning its employees concerning the U. A. W., by stating that the respondent would close down rather than deal with the U. A. W., and by otherwise indicating antagonism toward the C. I. O., has further interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The alleged discriminatory lay-offs or discharges

The respondent alleges that the 41 men were laid off because of a change in operations instituted by the respondent solely because of business reasons. The record shows that prior to November 15, 1936, the respondent supplied 25,000,000 cubic feet of gas per day to the City of Detroit for illuminating purposes. Gas is necessarily produced in the burning of coal to produce coke; so at all times in the respondent's operations both coke and gas and other byproducts have been produced. However, prior to the expiration of its contract with the city in November 1936, the respondent's activities, according to the testimony of the respondent's officials, were primarily governed by the requirements of the contract, the nature and disposition of the coke produced being of secondary importance. On loss of the contract in November 1936, caused by the bringing of natural gas into the city, the respondent's primary consideration became the production of marketable coke. In January 1937 the respondent began changing operations on No. 1 battery, one of three sets of ovens in which coal is burned to produce coke, in such manner as to change the product from domestic to foundry coke. The change involved the gradual lowering of oven temperatures with a corresponding prolongation in the coking period. Domestic coke, used for household and similar purposes, requires a 12-hour coking period at a temperature of 1200° to 1500°, whereas foundry coke, used in industrial plants, is produced by coking for a 24-hour period at a temperature of 800° to 900°. The longer coking period, according to the respondent, requires fewer men for operation than are required for a shorter coking period. In January 1937, when the change of operations was completed, 12 to 15 employees were released and the balance not needed were distributed throughout other departments in the plant. The respondent alleges that business reasons subsequently prompted it, beginning about March 15, to change over also the second set of ovens, No. 2 battery, to the production of foundry coke. We are unable to find on the record that the change begun on March 15 which culminated in the lay-off or discharge of 41 men on March 27, 28, and 29, was motivated by any reasons other than business policy.

The complaint names 40 persons who are alleged to have been discharged because of their union activities. At the hearing, the complaint was amended by striking the names of two persons who were established not to have been employees of the respondent.² The record indicates that, with two exceptions, the foremen upon being informed of the change of process, and in some cases of how many men they would be expected to lay off, chose the men to be laid off within their

² F. Jankaez and A. H. Peterson.

respective departments. The respondent admitted that with one or two exceptions the men laid off were competent workmen and would not have been laid off or discharged except for the change in operations.

Only 28 of the employees named in the complaint testified. In every case but one of these 28, the foreman or person who had selected the employee to be laid off, testified as to the reasons for their choice. In no way, other than by testimony to the fact of membership or interest in the U. A. W., were these reasons challenged or shown not to have been the real ones. In the case of one employee, Conklin, who had made the selection, gave no reason but testified that he had not known of the union affiliation of the employee at the time the employee was laid off. Moreover, although this employee testified he had joined the U. A. W., his name does not appear on its membership roll. He had, however, attended a meeting of the U. A. W. on March 15. Under these circumstances, we are unable to find that any one of the persons who testified was laid off or discharged because of his individual union activity.

Of these 28 witnesses, 22 testified they had joined the U. A. W. prior to their lay-off or discharge, although only 15 of them are listed by the U. A. W. as having joined by that time. Two others testified they had attended a meeting or meetings of the U. A. W. although not members. One other witness testified that he had told a fellow employee, prior to the date on which he was laid off, that he intended to join the U. A. W. Three of the 13 who did not testify are shown by the membership list to have become members of the U. A. W. prior to the date they were laid off. While the number of persons laid off who had shown at least some interest in the U. A. W. was proportionately greater compared with the total number laid off than the ratio of union members to the total number of employees, other circumstances in the case prevent this fact from being as significant as it might otherwise be.

We conclude upon all the facts in the case that there is not sufficient proof in the record that the respondent selected the employees to be laid off on the basis of union affiliation or activity.

We find that the respondent in the selection of men for lay-off or discharge on March 27, 28, and 29, did not discriminate in regard to the hire and tenure of the employees named thereby discouraging membership in a labor organization.

E. The alleged refusal to bargain collectively

1. The appropriate unit

In the petition, the U. A. W. states that it considers all employees of the Detroit plant, except those employed in the office or otherwise in

a clerical or supervisory capacity, to constitute an appropriate unit. The complaint, in connection with the alleged refusal of the respondent to bargain collectively, alleges that the appropriate unit consists of "all departments of Detroit plant of respondent, excepting only the office and plant protection department, and all hourly paid employees engaged at said plant, excepting only those employees engaged in the office or plant protection department or otherwise in a clerical, managerial, or supervisory capacity." The allegation of the complaint varies from the allegation of the petition only in the exclusion of watchmen. Evidence in the record indicates that the U. A. W. believes that watchmen should not be included in the unit. We will, accordingly, find the unit alleged in the complaint to constitute an appropriate unit.

We find that the hourly paid employees at the Detroit plant of the respondent, excluding office, clerical, and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to the 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.

2. The alleged majority

At the time of the strike there were between 305 and 320 persons employed by the respondent within the unit which we have found to be appropriate. At the time of the hearing approximately 337 persons were employed in such capacities. The total number of the respondent's employees who joined the U. A. W. both prior and subsequent to the strike and up to the time of hearing did not exceed 148 persons, less than a majority of the total eligible. Since the Act compels an employer to bargain only with the representatives selected by a majority of the employees in an appropriate unit, the allegations of the complaint which allege that the respondent refused to bargain collectively with the U. A. W. must be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in

Section 7 of the Act. We shall order the respondent to cease and desist from such interference, restraint, and coercion.

We have also found that the respondent has dominated and interfered with the formation and administration of Detroit Coke Oven Employees Association. We shall, accordingly, order the respondent to cease and desist from so doing, to withdraw all recognition from the Association as a collective bargaining representative, and, further, to disestablish the Association as a collective bargaining representative.

VI. THE QUESTION CONCERNING REPRESENTATION

Although, as previously stated, there is no proof in the record that a majority of the employees at the Detroit plant had joined the U. A. W. at any time prior to the hearing, it is not clear how many other employees may desire the U. A. W. to represent them for the purposes of collective bargaining. This is particularly so, since the Association, which we have found was dominated and interfered with in its formation and administration by the respondent, must be disestablished as a collective bargaining representative.

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

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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII. THE DETERMINATION OF REPRESENTATIVES

The question which has arisen concerning the representation of employees at the Detroit plant can best be resolved by the holding of an election by secret ballot. Since the employees who formerly belonged to the U. A. W. are now members of Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, which has taken the place of the U. A. W. at this plant as the organization affiliated with the C. I. O., we will direct that the employees choose whether or not they wish to be represented for the purposes of collective bargaining by Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America. Since we have found that Detroit Coke Oven Employees Association

has been dominated and interfered with in its formation and administration by the respondent, its name will not appear on the ballot.

Because of the length of time which has elapsed between the time of the filing of the petition and the hearing, and between the hearing and this Direction of Election, we will direct that the employees eligible to vote will be those employees who were employed during the pay-roll period immediately preceding the date of this Direction of Election. We do not intend thereby to exclude from voting persons who have been laid off between the time of the hearing and the time of the election, as distinguished from persons who have quit or been discharged for cause.

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. International Union, United Automobile Workers of America, Local 174, Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Automobile Workers of America, and Detroit Coke Oven Employees Association are labor organizations, within the meaning of Section 2 (5), of the National Labor Relations Act.

2. By its domination and interference with the formation and administration of Detroit Coke Oven Employees Association, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2), of the National Labor Relations 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 National Labor Relations Act.

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

5. The respondent in the lay-off or discharge of 41 employees on March 27, 28, and 29, 1937, did not discriminate in regard to hire or tenure of employment thereby encouraging or discouraging membership in a labor organization, within the meaning of Section 8 (3), of the National Labor Relations Act.

6. The respondent has not refused to bargain collectively with the representative of its employees, within the meaning of Section 8 (5), of the National Labor Relations Act.

7. A question affecting commerce has arisen concerning the representation of employees of the respondent at the Detroit plant, within

the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.

8. All hourly paid employees at the Detroit plant of the respondent, excluding office; clerical, and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations 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, Semet-Solvay Company, Detroit, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of Detroit Coke Oven Employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to Detroit Coke Oven Employees Association, or any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or 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) Withdraw all recognition from Detroit Coke Oven Employees Association, as a representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish Detroit Coke Oven Employees Association as such representative;

(b) Post notices immediately in conspicuous places throughout the plant stating (1) that the respondent will cease and desist as aforesaid, and (2) that Detroit Coke Oven Employees Association is disestablished as the representative of any 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 respondent will refrain from any recognition thereof; and keep said notices posted for a period of at least thirty (30) consecutive days from the date of posting;

(c) Notify the Regional Director for the Seventh 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, in so far as it charges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) and (5), of the National Labor Relations Act, be, and it hereby is, dismissed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with Semet-Solvay Company, Detroit, Michigan, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among those persons who were hourly paid employees at the Detroit plant of the respondent during the pay-roll period immediately preceding the date of this Direction, excluding office, clerical, and supervisory employees, and watchmen, to determine whether or not they desire to be represented by Gas, By-Product Coke and Chemical Workers, Local 12082, District 50, United Mine Workers of America, for the purposes of collective bargaining.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

June 7, 1938

On May 28, 1938, the National Labor Relations Board, herein called the Board, issued its Decision, Order, and Direction of Election in the above-entitled proceedings. The Direction of Election directed that "an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region".

The Board, having been informed by the said Regional Director that additional time will be required for the holding of said election,

hereby amends the Direction of Election issued on May 28, 1938, by striking therefrom the words, "within fifteen (15) days from the date of this Direction", and substituting therefor the words, "within thirty (30) days from the date of this Direction".

[SAME TITLE]

SECOND AMENDMENT TO DIRECTION OF ELECTION

June 25, 1938

On May 28, 1938, the National Labor Relations Board, herein called the Board, issued its Decision, Order, and Direction of Election in the above-entitled proceedings. The Direction of Election directed that "an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region." On June 7, 1938, the Board issued an Amendment to Direction of Election in the above-entitled proceeding providing that the election should be held within thirty (30) days from the date of the Direction of Election.

The Board, having been informed that Semet-Solvay Company, herein called the respondent, has not complied with the Board's order of May 28, 1938, but has petitioned the United States Circuit Court of Appeals for the Sixth Circuit for review of the Board's order, and believing under these circumstances an election held at such time as directed by the Direction of Election, as amended, may not reflect a free choice of representatives of the employees involved, hereby amends the Direction of Election, as amended, by striking therefrom the words "within thirty (30) days from the date of this Direction" and substituting therefor the words "at such time as the Board shall hereafter direct after it is satisfied that there has been sufficient compliance with its order to dissipate the effects of the unfair labor practices of the respondent."

CHAIRMAN MADDEN took no part in the consideration of the above Second Amendment to Direction of Election.