

In the Matter of NATIONAL LICORICE COMPANY and BAKERY AND
CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA,
LOCAL UNION 405, GREATER NEW YORK AND VICINITY

Case No. C-410.—Decided May 31, 1938

Licorice Products Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; antiunion statements; threat to close and transfer plant; persuading employees to refrain from forming or joining or to resign from union; circulation of antiunion petition among employees—*Company-Dominated Union:* abortive attempt to initiate and form; domination of and interference with formation and administration; support; coercion to join; disestablished, as agency for collective bargaining—*Contract:* collective, with organization found to be company-dominated, void; individual contracts of employment, void, as contrary to provisions of the Act; coercion and intimidation to sign; "yellow dog"; employer ordered to cease and desist from giving effect thereto—*Strike—Picketing—Unit Appropriate for Collective Bargaining:* production employees, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers; no controversy as to—*Representatives:* proof of choice: applications for union membership—*Collective Bargaining:* employer's duty; negotiation in good faith: meeting with representatives but with no bona fide intent to reach an agreement; refusal to recognize union, as bargaining agency representing employees; special forms of remedial order: recognition as exclusive representative; enter into agreement with representatives of employees, if understanding is reached.

Mr. Charles E. Graham, for the Board.

Kotzen, Mann & Siegel, by Mr. Abraham Mann and Mr. Joseph Yaspan, of New York City, for the respondent.

Mr. Kalman Sklar, of New York City, for the Union.

Mr. Wallace M. Cohen, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On July 21, 1937, Bakery and Confectionery Workers International Union, Local Union No. 405, Greater New York and Vicinity, herein called the Union, filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees at the Brooklyn, New York, factory of National Licorice

Company, Brooklyn, New York, herein called the respondent, 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 August 13, 1937, the Union, having previously filed a charge, duly filed an amended charge with the afore-mentioned Regional Director, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2) and (5), of the Act. On October 7, 1937, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, the said Regional Director, duly issued and served its complaint and notice of hearing upon the respondent and the Union. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (5), and Section 2 (6) and (7), of the Act.

In respect to the unfair labor practices, the complaint alleged in substance (1) that from on or about July 15, 1937, the respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by persuading and coercing its employees to refrain from becoming members of the Union, and to sign individual contracts of employment, by threatening to close down its Brooklyn plant and move to another city if the employees joined or assisted the Union, by making raises of pay conditional upon nonmembership in the Union, by threatening discharge and other reprisals if they became members of the Union and not members of an organization formed and sponsored by the respondent, and by keeping under surveillance the meetings and meeting places of the employees who were members of the Union; (2) that on or about July 16, 1937, the respondent initiated, formed, sponsored, dominated, and contributed support to a labor organization, known as The Collective Bargaining Committee of National Licorice Company, herein called the Committee; (3) that although the Union has been, since on or about July 28, 1937, the exclusive representative of the production employees, excluding the clerical and supervisory employees, the respondent on that date and at all times since then refused to bargain collectively with the Union as the exclusive representative of such employees; and (4) that, by reason of the afore-mentioned acts, substantially all of the employees of the respondent went on strike on August 2, 1937, and have remained on strike from said date to the date of the issuance of the complaint.

On October 13, 1937, the respondent duly filed its written answer, denying all of the allegations of the complaint except those relating

to its corporate existence and the allegation that its employees went on strike on August 2, 1937. The respondent urges as a separate and distinct defense (1) that the Board has no jurisdiction over the respondent or the subject matter of the complaint herein, and that this proceeding is therefore irregular and void; (2) that at no time has the Union submitted or supplied to the respondent proof that it represented a majority of the respondent's employees; (3) that the respondent conferred with representatives of the Union on or about July 19, 1937, and bargained with the Union on July 28, 29 and August 2, 1937; that the Union failed to appear on August 5, 1937, and bargain further as agreed upon, but instead, without justification, caused a strike to be called in the respondent's plant; that on August 25, 1937, the employees voluntarily and without solicitation commenced to return to the plant and practically all had returned by September 20, 1937; that, on September 9, 1937, the employees in writing voluntarily disaffirmed and repudiated their alleged membership in the Union and the designation of the Union as their bargaining agent, and voluntarily chose a committee to represent them in collective bargaining with the respondent; that the strike was terminated and almost all of the employees have returned to work; that the respondent has bargained with the aforesaid committee and, as a result thereof, has entered into contracts signed and executed by the respondent, the committee, and the employees of the respondent; (4) that the Board in issuing the complaint is actually interfering with and undermining the business of the respondent; and (5) that the complaint is defective in that the original charge is not annexed to the complaint¹ and that the amended charge does not contain clear and concise statements of the facts constituting the alleged unfair labor practices. The answer concluded by moving that the complaint be dismissed. Prior to the hearing, the respondent filed a written notice of motion for a verified bill of particulars of the amended charge and complaint.

On October 8, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued an order directing an investigation and hearing on the petition. This order was served at the hearing.² On October 9, 1937, pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, the Board ordered a consolidation of the petition and charge for the purposes of hearing, and designated H. R. Korey, Trial Examiner.

¹ It should be noted that the amended charge in this proceeding was not supplementary to the original charge but in substitution therefor.

² The respondent's objection to the insufficient notice resulted in postponement of the hearing on the petition.

Pursuant to notice, duly served, a hearing was held in New York City from October 13, 1937, to and including October 20, 1937, before the Trial Examiner. The Board, the respondent and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing, counsel for the Board served an answer to the bill of particulars requested by the respondent, setting forth answers to the demands relating to the allegations in the complaint but declining to answer the demands relating to the allegations in the charge, "because the sole moving paper in this procedure is the complaint and not the charge." The respondent's motion for further bill of particulars was subsequently denied during the hearing. The respondent raised certain objections to the consolidation of the petition and charge, but counsel for the Board agreed not to consider the petition at this hearing.³ The respondent moved to dismiss the complaint because it did not contain a copy of the original charge. This motion was denied by the Trial Examiner. At the conclusion of the Board's case and again at the conclusion of the respondent's case, the respondent moved for the dismissal of the complaint on the further ground that the Board had failed to prove its case. This motion was also denied.

During the course of the hearing, the Trial Examiner made a number of rulings on objections to the admission and exclusion of evidence. The Board has reviewed these rulings and rulings made with respect to the afore-mentioned motions and other motions made by the parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The respondent requested leave to submit a memorandum on the case. Leave was granted and the memorandum was submitted.

On February 8, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (5), and Section 2 (6) and (7), of the Act. He recommended that the respondent cease and desist from these violations and that the respondent proceed to bargain collectively with the Union.

Thereafter, the respondent filed exceptions to the Intermediate Report. On May 4, 1938, the parties were given leave to request oral argument and file briefs. The Union duly filed a request for oral argument, but argument was subsequently waived by agreement of the parties. The Board has considered the exceptions, and

³ On May 11, 1938, the Board ordered the petition severed from the charge *nunc pro tunc* as of October 13, 1937.

the respondent's memorandum to the Trial Examiner, and finds the exceptions to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

National Licorice Company is a New York corporation, incorporated in June 1902, and having plants in Brooklyn, New York; Philadelphia, Pennsylvania; Moline, Illinois; and Montreal, Canada. The proceedings herein involve only the Brooklyn plant. The respondent is engaged in the business of manufacturing and selling licorice products and confections for drug, confectionary, grocery, and allied trades. The chief raw materials utilized are licorice, flour, sugar, cane molasses, chocolate, anise oil, color, flavorings, oils, cartons, and tins. Approximately 48 per cent of such raw materials are purchased from points outside the State of New York. About 41 per cent of the finished products of the respondent are sold and shipped outside the State of New York to points in 27 States.

Excluding clerical and supervisory employees, the respondent normally employs approximately 140 persons in its Brooklyn plant.

II. THE ORGANIZATIONS INVOLVED

The Bakery and Confectionery Workers International Union of America, Local Union No. 405, is a labor organization, affiliated with the American Federation of Labor, and successor, in May 1937, to the Inside Bakery Workers' Federal Labor Union No. 19585, also affiliated with the American Federation of Labor. It admits to membership all employees of the respondent, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers.

The Collective Bargaining Committee of National Licorice Company is a labor organization admitting to membership all employees of the respondent, including working foremen, but excluding executive, supervisory and office employees, salesmen, and truck drivers.

III. THE UNFAIR LABOR PRACTICES

A. *The chronology of events*

Early in July 1937, the Union began to obtain signatures of employees to applications for membership in the Union. By the evening of July 14, 1937, after 99 of approximately 140 employees had signed applications, William A. Galvin, president of the Union, sent a tele-

gram to the respondent, advising that the Union represented the employees of the respondent as "their sole collective bargaining agency" and suggesting a conference "looking toward an agreement covering the wages, hours and working conditions" of the employees. Although the respondent received this telegram on the morning of July 15, no reply was ever made. During working hours on either the afternoon of July 15 or July 16 and as a result of the receipt of the telegram, the respondent called a conference of its employees in the lunch room of the plant. David D. Sanford, president, Walter J. Healey, assistant secretary, and Dorsey, superintendent of the plant, addressed the employees. In addition to reading from a prepared statement (not introduced in evidence), Sanford, who was in complete charge of the plant, chided the employees about going to "outsiders" with their labor problems, declared that the respondent would not recognize an outside union, and advised them to pick their own committee and "come to my office and bargain with us." After the officials of the respondent had withdrawn, the foremen and foreladies reiterated Sanford's suggestion, urging, "Why don't you do what the boss said?" The employees, however, at a meeting that evening expressed their opposition to selecting a committee.

On or about July 20, Galvin and August Picariello, a trustee of the Union, went to the offices of the respondent, presented a proposed contract embodying the demands of the Union, and sought to confer with the officials of the respondent. Sanford, Healey, Carpenter, and Smylie were present in behalf of the respondent. Although Galvin showed his credentials, the officials professed ignorance concerning his identity, and denied that the Union represented the employees of the respondent. Galvin offered to show the original applications for membership, which he had brought with him, but withdrew the offer when Sanford, in refusing to receive them as proof of representation, said, "Anyway it would not make any difference what you have there." That afternoon during working hours approximately 14 employees, selected as "the most intelligent in our plant that could grasp what we were trying to say to them," were summoned to Sanford's office, where they were informed that "two very lovely young gentlemen who purported to be representatives of yours" had visited Sanford that morning. Sanford proceeded to offer his employees a 5-per cent increase, time and a half for overtime and a week's vacation, with pay, beginning July 1, 1938. He directed this group to convey his offer to the employees "and speak to him after we had got together." The offer was unsatisfactory to the employees.

Within a day or two after this incident, it appears, Dorsey selected a committee of approximately eight employees to circulate a petition

nominating a committee to "supersede" the Union as bargaining representative of the employees. There is evidence that Dorsey was present while a number of signatures were obtained. The attempt proved abortive, since the signers deleted their signatures immediately upon discovering the import of the document, and returned it to Dorsey, who, after taking the paper into Sanford's office, returned and said, "It is all off."

The Union, on July 21, 1937, filed a petition for investigation and certification with the Regional Director for the Second Region. As a result of the filing, the Regional Office arranged a conference for July 28, 1937, between Sanford and Healey, for the respondent, and Galvin and Sklar, for the Union. John T. McCann, of the Regional Office, examined the signed applications. When asked by the respondent "if in his opinion" the Union represented a majority of the respondent's employees, Healey testified that McCann replied that he was "convinced in his mind that they did." According to Healey: "We said we were willing to accept Mr. McCann's say-so that these men did represent our employees. We would agree to confer with them at any time and place convenient to both sides." A conference was arranged for July 29, 1937. Sanford, Smylie, Healey, and a stenographer were present representing the respondent, and Galvin, Anderson, Sklar, and Picariello represented the Union. Sanford, reading from a carefully prepared statement, disposed of substantially all the demands contained in the proposed contract, which the Union had left with the respondent on or about July 20, by eliminating them one by one as being "impossible," "impractical," "preposterous," or "unworkable." He then presented counterproposals very similar to those made to the group of employees on or about July 20, 1937. The meeting was conducted by Sanford in a manner designed to preclude the Union from discussing or arguing its demands. He stated that he would not recognize the Union as the collective bargaining agency for the employees and that he would make no written contract with the Union, but would talk with the Union representatives and ask them "to bring back the results of the conference to his employees and thereafter it would be required of his employees that they individually sign contracts with them and that he deal directly with his employees and not with the Union." Galvin remarked to Sanford that his statements were familiar to him, to which Sanford replied, "I admit the Brooklyn Chamber of Commerce is advising us in these proceedings." Upon conclusion of this parley, Galvin said, "We'd better get together for a further conference," but no further arrangements were made.

On the morning of August 2, 1937, Anderson, acting for Galvin during his absence, telephoned Sanford concerning the stenographic

notes of the meeting of July 29, which were to have been made available to the Union. Sanford informed him that the notes had been jumbled in the transcription, and that in any event the stenographer had left on her vacation. On Anderson's request that a date be fixed for further negotiations, August 5 was agreed upon. At the plant a conspicuous unrest among the employees throughout the morning culminated in a "stoppage" of work following the noon hour. All of the employees gathered in the shipping room away from the machines and remained there throughout the afternoon. Conflicting testimony obscures the real facts surrounding the matter of the employees' occupation of the premises that afternoon; but it appears that the police and armed guards were called, and that the girls left at 3 o'clock, and the men left around 4:30 following a speech read by Smylie. According to Healey, this speech was prepared "following our practice of being very, very careful of what we said in any stage of this procedure." Smylie told the employees to vacate the premises or the guards would forcibly remove them. There was no violence. The strike appears to have been a spontaneous expression of dissatisfaction with the trend of the negotiations between the Union and the respondent.

Anderson received notice of the strike shortly before 1 o'clock and immediately called Sanford on the telephone. Anderson denied Sanford's accusation that the Union had called the strike, and said that he would do anything in his power to settle it. Sanford refused to talk to Anderson and turned the telephone over to Michael Richter, a police captain, who suggested that Anderson come down to the plant and talk things over. At the plant, Anderson spoke to Healey, reiterated his denial that the Union had called the strike, and repeated his offer to negotiate a settlement of the dispute. Healey consulted Sanford and afterwards informed Anderson that there was nothing he could do and that the meeting of August 5 was canceled. The evidence shows that Anderson invoked the assistance of several outside sources to obtain a settlement of the strike, but that his efforts were unsuccessful, due to Sanford's refusal to meet with the Union representatives. In the evening of August 2, Anderson wrote to the respondent stating that the Union was ready to meet with it at any time or place which the respondent would designate "in order to mediate the dispute and through collective bargaining arrive at a mutually satisfactory agreement." The respondent replied to this letter declaring that it believed the Union had called the strike. It canceled the meeting of August 5, and asserted that it would not "set any further time for negotiations until we have had a letter from you informing us as to whether or not

this strike was instigated, ordered or approved by your Union or officials of the Union." The Union alleged that its failure to reply to this letter was due to a feeling that the respondent desired to use any reply it might make to enable the respondent to alienate the employees from the Union.

The strike lasted until August 25, 1937, during which time the plant was shut down and constantly patrolled by guards and picketed by striking employees. According to the testimony of Nicholas Andretta, employed by the respondent for about 7 years prior to the strike, of Carmela Tesora, employed about 9 years, and of James Landriscina, a Union organizer, the guards bought lunches and beer for the girls. They continually rebuked the pickets, calling them "damn fools to keep out so long," urging them to go back to work, and claiming "the employees were only wasting their time," and "they were going to lose the strike anyway because the boss had no intentions whatsoever of bargaining with union officials." The guards to whom these statements were attributed did not testify. It is alleged that Healey told the pickets that "there was no way they could win the strike because the Union was no good. They was a racketeer and they were satisfied to close up the plant than to talk to the Union," and "that they were going to close the plant and take the machinery down to Philadelphia." Healey denied making these statements and claimed that he had never requested the employees to return to work, but in the light of all the evidence, we cannot credit this portion of Healey's testimony.

The respondent reopened its plant on August 25, and sent letters to its employees requesting them to return to work and informing them that "the Company has arranged to provide all available means of protection to its employees in and out of the plant and will use all necessary legal methods to insure the rights of its employees to work unmolested." The employees drifted back to work from August 25 until September 20. On or about August 27, in reply to an anonymous telephone call, Healey met William McGann and two other employees in the Y. M. C. A. They expressed a desire to return to work, but stated that they were afraid to do so. They asked if it would be "possible for us to have our bargaining committee and do our own negotiating with you people." Healey said they could have their bargaining committee if they obtained a majority. He then arranged for their transportation to and from work. A few days after his return to work, McGann, upon making further inquiries, was directed by Healey to form a committee which could be demonstrated to represent a majority of the employees. Shortly thereafter, McGann reported that a "group" of employees had elected a committee, of which he was a member, and wanted to know what steps to take to gain recognition.

Healey referred him to Sanford for assistance in drawing the form ⁴ which Sanford prepared and dictated. It was circulated by McGann on or about September 9, 1937, and returned with approximately 110 signatures besides those of the 8 members of The Collective Bargaining Committee of the National Licorice Company. On or about September 3 the respondent held a "victory party" at its plant for the benefit of the employees who had returned to work. Beer and other refreshments were served.

The Committee sought to bargain with the respondent on September 10, 1937. (It does not appear that any question was raised as to the authenticity of the signatures on the petition nominating the Committee to bargain for the employees.) The Committee asked what could be done in the way of increased wages. The respondent read and explained to them the terms of a form of contract which it is alleged the officers of the Company had prepared. The concessions in the contract were in substance the same as those offered to the employees in the conferences of July 20 and July 29.

The Committee's only requests related to pay for holidays and reduction of the contract terms from 5 to 3 years. The contract, in substance, provided for a 5-per cent increase in pay, entitled the employer to place any of the employees on a piece-work basis, gave employees a 40-hour week, a week's vacation between June 1 and July 20, 1938, and time and one-quarter for overtime, empowered the employer to discharge employees for any reason, regardless of union affiliation, permitted an employee to join any union but precluded him from demanding a closed shop or a signed agreement or striking until July 10, 1940, and prevented solicitation of memberships on company property or time. The contract required the signatures of the respondent, the Committee, and the individual employee. The Committee circulated mimeographed copies of the contract, which were signed in duplicate and returned to the respondent.

⁴ Respondent Exhibit No. 10:

SEPTEMBER 9, 1937.

NATIONAL LICORICE COMPANY,
106 John Street, Brooklyn, N. Y.

Attention: Mr. D. D. Sanford, President

GENTLEMEN: We, the undersigned employees of the National Licorice Company, hereby notify you that we have this day elected a committee of our fellow workers, whose signatures are affixed hereto, as our representatives in collective bargaining with you. We authorize these representatives to enter into and sign a contract with the employer provided it contains substantially the provisions outlined to us by the Management.

You are also notified that the authority given to our fellow workers to represent us in collective bargaining supersedes any authority that any of the undersigned may have given to any other group, organization or individual, and no one except the collective bargaining committee consisting of our fellow workers is authorized to represent us in collective bargaining.

Very truly yours,

COMMITTEE.

On or about September 20, 14 employees, desiring to return to work, met with the Committee in Sanford's office. Frank J. Garone, employed in the plant 8 years, inquired as to whether or not any of the 14 would be placed on the Committee. He was informed that he would have to see Mr. Sanford. When Sanford came into the room, Garone said, "Mr. Sanford, the simple reason is this why we want one of us to be on that committee, we are afraid we might be left out in the cold. We don't know what is going on in the shop." Sanford replied, "I am sorry, the committee has been picked already. There is enough right now on the committee." This testimony was substantiated by Healey. Subsequently, McGann was asked by Garone to inquire about a raise for him, to which McGann replied, "We can't argue for you." According to Carmela Tesora, Sanford told the 14 returning employees that "he would not protect our jobs and that we would not get that five per cent if we didn't sign." It was stipulated that several other witnesses would testify to the same effect. Tesora further testified that it was her present wish to be represented by the Union.

The evidence discloses that a number of picketers were arrested during the strike, and that charges were dropped with respect to all but two. Carmela Tesora claimed that Healey agreed to drop the charges if she would return to work. She returned to work and the charges were dropped.

B. Interference, restraint, and coercion

Immediately upon receiving the Union's telegram of July 14, the respondent started an active campaign in an effort to induce its employees not to permit an outside union to represent them for the purposes of collective bargaining. The respondent's superintendent unsuccessfully attempted to obtain the appointment of a committee to supersede the Union. The selection by the respondent, on or about July 20, of a committee of the employees, who were to acquaint the employees with an offer from the respondent, failed in its endeavor to discourage membership in the Union. Although continuing to deny the Union recognition, the respondent reluctantly entertained the Union's requests to negotiate. However, after the strike began, the respondent categorically refused to meet with representatives of the Union. There is evidence that officials, supervisory employees, and armed guards spoke disparagingly of the Union, threatened to close and move the plant, and offered gratuities to the pickets in their efforts to halt the strike and induce the employees to return to work. The respondent encouraged the preparation of and drafted the petition circulated on or about September 9, nominating the Committee to supersede the Union as the collective bargaining agency of the em-

ployees. The Committee chosen was dominated by Sanford and used by him to obtain the signatures of the employees to the individual contracts. As a condition of reemployment, the returning employees were required to sign individual contracts. From the foregoing, we must conclude that the officials, supervisory employees, and other agents of the respondent pursued a course of coercion, intimidation, and interference clearly designed to discourage and restrain its employees from affiliation with an outside union.

We find, therefore, that the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. Domination of and interference with the Committee; the signing of individual contracts

The respondent assumed an active role in furthering the creation and development of the Committee. Healey advised McGann, obviously inexperienced in labor matters, as to the *modus operandi* of forming the Committee. Sanford dictated the petition which was circulated selecting the Committee. The signatures on the petition were not challenged by the respondent, and no further proof was demanded of the Committee as to whether it represented a majority of the employees. This action is in marked contrast to the incredulity with which the respondent in the first instance received the claim of the Union that it represented a majority of the employees in the respondent's plant. When Garone sought representation on the Committee for the 14 employees returning to work on September 20, he was informed by McGann that it was a matter for Sanford's determination. When he sought a raise in wages, a member of the Committee referred him to Sanford. It appears conclusively that ultimate control of the activities of the Committee rested with Sanford.

The contract is directly between the respondent and the individual employee, and under it the Committee, as such, has no rights or duties. The Committee actually functioned only for so long as it was necessary to obtain the individual signatures on the contracts. So far as the record shows, its activities ceased thereafter.

The record fails to disclose what demands, if any, were presented by the Committee. The changes which it suggested in the contract proffered by Sanford were relatively of such little consequence that it may be inferred that the Committee was not unreceptive to the respondent's idea of obtaining individual contracts with its employees. The respondent admits that it is a member of the Brooklyn Chamber of Commerce. Healey testified that he thought that the respondent consulted L. L. Balleisen, industrial secretary of the Chamber, concerning labor difficulties. It is therefore significant that the respond-

ent should have offered to its employees a contract almost identical in form with contracts emanating from Balleisen and considered by us in a number of cases heretofore decided.⁵ We have held these contracts to be discouraging to membership in a labor organization and invalid. The benefits of the contract under consideration were limited to those employees who signed. In return, the signers relinquished the right to strike and the right to demand a closed shop or signed agreement with any union. They also agreed to accept a procedure not necessarily involving the Union in the settlement of labor disputes, thereby eliminating the Union as a possible agency for collective bargaining.

The actions of the respondent's officials in advising the employees to elect representatives, prepare demands, and meet with the management initiated the organization of the Committee. In exercising its authority over the Committee and directing its activities, the respondent dominated the administration of the Committee.

Upon the basis of the foregoing facts, we find that the respondent, by its officers and agents, sponsored and dominated the formation of the Committee and thereafter dominated its administration and contributed support to it. By these acts and by the limitations on union activity imposed by the individual contracts we further find that the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

D. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that all the respondent's employees engaged in receiving, manufacturing, packing, and distribution of the respondent's products, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. This allegation is not denied in the respondent's answer and remains uncontroverted upon the record.

The president of the Union testified that those employees engaged in receiving, manufacturing, packing, and distribution of the respondent's products are production employees, and contends that all production employees, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck

⁵ See *Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292; *Matter of Hopwood Retinning Company, Inc.*, 4 N. L. R. B. 922; *Matter of Cating Rope Works, Inc.*, 4 N. L. R. B. 1100; *Matter of Metropolitan Engineering Company, Inc.*, 4 N. L. R. B. 542; *Matter of The Jacobs Bros Co., Inc.*, 5 N. L. R. B. 620; *Matter of Federal Carton Corporation and Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879; *Matter of David E. Kennedy, Inc.*, 6 N. L. R. B. 699.

drivers, should be included in the appropriate unit. This contention is unopposed by the respondent or the Committee.

We find, therefore, that all the production employees of National Licorice Company, at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to employees the full benefit of their right to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the majority in the appropriate unit

Although no pay roll was introduced, the undisputed evidence indicates that on or about July 14, 1937, and until the strike on August 2, 1937, there were approximately 135 or 140 employees in the appropriate unit. On the evening of July 14, 1937, 99 employees had signed applications for membership in the Union. By August 3, 1937, this number had been increased to 121. Applications for membership in the Union were received in evidence over the objection of the respondent, who claimed that they had not been properly identified. Landriscina testified that all the applications had been signed in his presence and that he was "familiar with the names of the individuals" signing. The respondent introduced no evidence to substantiate its contention that the signatures were not those of the persons they purported to be, despite the fact that such evidence, if it existed, was available to and within the control of the respondent. On the other hand, it appears that on July 28, 1937, at the conference between the parties at the Regional Office, Sanford admitted that the Union represented a majority of the respondent's employees and agreed to meet with its representatives for the purposes of collective bargaining. Accordingly, under the circumstances, we conclude that the signatures on the application blanks are authentic, and we find that on July 14, 1937, and at all times thereafter the Union was the duly designated representative of a majority of the employees in the appropriate unit. By virtue of Section 9 (a) of the Act it was, therefore, the exclusive representative of all of the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of work.

3. The refusal to bargain

The respondent admitted that it called the meetings of the employees as a result of the Union's telegram of July 14 and the visit of the Union representatives of July 20. That its attitude toward an outside union was antagonistic is clearly exhibited by the attempts of the

respondent's officials to influence the employees to select a bargaining committee within the plant, by their statements that they would not recognize an outside union, by the respondent's failure to respond to the telegram of July 14, and by the summary treatment of the Union representatives in the conference of July 20. When the respondent finally consented to meet with representatives of the Union on July 29, the discussion that ensued was completely dominated by Sanford. The Union officials were to all intents and purposes relegated to the position of bystanders and were permitted scant opportunity to present their demands. Sanford said he would not recognize the Union, but would permit the results of the conference to be conveyed to the employees, who would be required to sign individual contracts of employment. The terms offered were essentially the same as those previously offered to the employees and rejected by them and those incorporated in the individual contracts subsequently signed by the employees. Healey was asked on cross-examination:

Q. So that on the 29th at the conference and in the conference with the officers themselves had before drawing up this contract, the Company was opposed to setting a signed agreement with any union?

A. That is right.

The record shows that the Union attempted to continue negotiations following the conferences of July 29 and August 2, but the respondent resisted all efforts to effect a settlement of the strike and bargain collectively.

The respondent urges, in justification of its refusal to negotiate with the Union after the strike of August 2, that the Union called the strike despite an agreement that it would not call any strikes pending negotiations following the conference of July 29. The evidence fails to establish the contention that such an agreement existed. Furthermore, it is conclusively proven that the Union did not call the strike.

The respondent's allegation that it bargained collectively with the Union either before or after July 29 cannot be sustained upon the record. The Act imposes upon employers the duty not only to meet with the duly designated representative of their employees, but also to recognize and to bargain in good faith with such representative in a genuine attempt to achieve an agreement.⁶ At the meeting of July 29, the respondent announced that it did not intend to recognize the Union. It based its subsequent refusals to negotiate upon the specious ground that the Union had called the strike. It sought to eliminate the Union as the collective bargaining agency of its em-

⁶ See *Matter of United States Stamping Company and Enamel Workers Union*, No. 18630, 5 N. L. R. B. 172.

ployees by fostering the Committee and imposing individual contracts upon its employees. These facts, considered in conjunction with the respondent's conduct at its meetings with the representatives of the Union, compel the conclusion that the respondent did not recognize or bargain in good faith with the Union. The position of the respondent throughout its dealings with the Union constituted an evasion of its duties under the collective bargaining provisions of the Act. By its conduct it foreclosed any bona fide consideration of the various terms and conditions of employment which were proposed by the representatives of the Union.

We find that on July 20 and 29, 1937, and thereafter, the respondent refused to recognize and to bargain collectively with the duly designated representatives of a majority of its employees in a unit appropriate for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, and other conditions of work.

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

Since the respondent has engaged in unfair labor practices, we shall order the respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and restore as nearly as possible the condition that existed prior to the commission of the unfair labor practices.

We have found that the respondent dominated and interfered with the formation and administration of the Committee and contributed support thereto. In order to remedy this unlawful condition the respondent must withdraw all recognition from the Committee as an organization representative of the respondent's employees for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment. We will, therefore, order the immediate disestablishment of the Committee as such representative.

We have previously found that the limitations on union activity imposed by the contracts interfered with, restrained, and coerced the respondent's employees in the exercise of their rights to self-

organization and collective bargaining. Such contracts are necessarily void as contrary to the provisions of the Act. Moreover, these contracts are void on other grounds, namely, the character of the instrumentality through which they purported to be negotiated and the means by which the signatures of the employees were obtained. The Committee was under the domination of the respondent and was therefore not a proper bargaining representative for its employees. Furthermore, the signatures to the contracts were procured by coercion and intimidation. The respondent must cease to give effect to its contracts with its employees and the Committee.

The respondent urges that the Union is no longer the collective bargaining agent of the employees of the respondent, since by the petition of September 9, 1937, the Union's authority was superseded when the employees designated the Committee as their agent. We find this argument to be without merit. Since the petition was drawn by the Company and circulated at its instance in order to effectuate the illegal acts of the respondent, we find that the petition has no significance as an expression of the employees' choice of an agency for collective bargaining. To give effect to the policies of the Act the Board must disregard the continuing effects of the unfair labor practices and, in restoring the status quo, base its order upon the majority existing on the date of the refusal to bargain.

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

CONCLUSIONS OF LAW

1. Bakery and Confectionery Workers International Union of America, Local Union No. 405, and The Collective Bargaining Committee of National Licorice Company are labor organizations within the meaning of Section 2 (5), of the Act.

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

3. The respondent, by dominating and interfering with the formation and administration of, and by contributing support to The Collective Bargaining Committee of National Licorice Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2), of the Act.

4. All the respondent's production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, consti-

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

5. Bakery and Confectionery Workers International Union of America, Local Union No. 405, was on July 14, 1937, and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. By refusing and continuing to refuse to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its employees in the above-stated 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 aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7), 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, National Licorice Company, and its agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of The Collective Bargaining Committee of National Licorice Company or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to The Collective Bargaining Committee of National Licorice Company or any other labor organization of its employees;

(b) From recognizing The Collective Bargaining Committee of National Licorice Company as the representative of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(c) From giving effect to its contracts with The Collective Bargaining Committee of National Licorice Company and its individual contracts of employment with its employees;

(d) From refusing to bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but ex-

cluding executive, supervisory, and office employees, salesmen, and truck drivers;

(e) 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 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 The Collective Bargaining Committee of National Licorice Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish The Collective Bargaining Committee of National Licorice Company as such representative;

(b) Personally inform in writing the members of The Collective Bargaining Committee of National Licorice Company and each of its employees who has signed an individual contract of employment, that such contract constitutes a violation of the National Labor Relations Act and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment; and the employees are released from its obligations and the respondent will no longer demand its performance;

(c) Upon request bargain collectively with Bakery and Confectionery Workers International Union of America, Local Union No. 405, as the exclusive representative of its production employees at its Brooklyn, New York, plant, including working foremen, but excluding executive, supervisory, and office employees, salesmen, and truck drivers, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any of such matters, embody said understanding in an agreement for a definite term to be agreed upon, if requested to do so by said Union;

(d) Immediately post notices to its employees in conspicuous places throughout the respondent's Brooklyn, New York, plant, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondent will cease and desist as aforesaid; (2) that The Collective Bargaining Committee of National Licorice Company is disestablished as the representative of any of its employees for the purposes of dealing with it

with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that the respondent will refrain from recognition thereof; (3) that the individual contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and void and of no effect; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees;

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