

In the Matter of THE HELLER BROTHERS COMPANY OF NEWCOMERSTOWN
and INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS,
AND HELPERS

Cases Nos. C-370 and R-569.—Decided June 4, 1938

File, Rasp, and Small Tool Manufacturing Industry—Interference, Restraint, and Coercion: engendering fear of loss of employment for union membership; expressed opposition to labor organization; threats of retaliatory action; questioning regarding organization meeting; circulation of antiunion statement among employees for signature; threat to close plant—*Company-Dominated Union:* initiation; domination of and interference with formation and administration; financial and other support; discrimination in favor of, in recognition as representative of employees; activities on company time and property—*Check-Off:* agreement for, with members of company-dominated union; acquiescence in, not free choice of employees; employer ordered to reimburse employees for amounts deducted from wages as dues for company-dominated union—*Investigation of Representatives:* controversy concerning representation of employees; employer's refusal to grant recognition of union—*Prior Election:* conducted by employer; designation of company-dominated union on ballot, illegal; results of, disregarded—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding foremen, assistant foremen, clerical employees, timekeepers, and watchmen; no controversy as to—*Representatives:* proof of choice: comparison of pay roll and union charter sheet and application cards—*Certification of Representatives:* upon proof of majority representation.

Mr. Max W. Johnstone, for the Board.

Mr. N. C. Murray, of Newark, N. J., for the respondent.

Mr. James A. Glenn, of Coshocton, Ohio, for the Union.

Mr. Russell E. Lyons, of Coshocton, Ohio, for the Independent.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

ORDER

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

Charges and amended charges having been filed by International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, herein called the Union, the National Labor Relations Board, herein called the

Board, by James P. Miller, Regional Director for the Eighth Region (Cleveland, Ohio) issued and duly served its complaint dated November 8, 1937, against The Heller Brothers Company of Newcomerstown, Newcomerstown, Ohio, the respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 16, 1937, the respondent filed its answer denying the essential allegations concerning the unfair labor practices, but admitting that its business affects commerce within the meaning of the Act.

Concurrently with the filing of the charges and the amended charges herein, on September 2, and November 6, 1937, respectively, the Union also filed with the same Regional Director a petition and an amended petition, alleging that a question affecting commerce had arisen concerning the representation of the respondent's employees and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act.

On October 18, 1937, the Board, acting pursuant to Article III, Sections 3 and 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of the proceedings and authorized the Regional Director to conduct an investigation of representatives and to provide for an appropriate hearing upon due notice.

Pursuant to notice, duly served upon the respondent, the Union, and File and Tool Workers Union, herein called the Independent, a labor organization purporting to represent employees directly affected by the investigation of representatives, a hearing on both the petition and the complaint was held at Coshocton, Ohio, from December 6 to 10, 1937, before Charles B. Bayly, the Trial Examiner duly designated by the Board. At the commencement of the hearing, the Independent's motion to intervene in the proceedings was granted by the Trial Examiner to the extent that its interests appeared in the petition and in the allegations of the complaint. All the parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the hearing, both the respondent and the Independent filed memoranda on the evidence adduced at the hearing.

On January 17, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint. He accordingly recommended that the respondent cease and desist

from engaging in the unfair labor practices; that it cease giving recognition to and that it disestablish the Independent as the collective bargaining representative for any of its employees, and that it reimburse the members of the Independent for the dues it had deducted from their wages on behalf of the Independent, out of money in the respondent's possession or under its control.

Thereafter, the respondent and the Independent filed exceptions to the Intermediate Report and to various rulings of the Trial Examiner, and together with the Union, presented oral argument before the Board. In addition, the three parties filed briefs. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence, and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the exceptions to the Intermediate Report, and finds them to be without merit.

On February 10, 1938, the respondent petitioned the Board to make part of the record herein a notice which it had posted on its bulletin boards in its plant on December 28, 1937, advising its employees that they might join or not join any labor organization without fear of discrimination; that no solicitation by any labor organization would be permitted on company time, and that supervisory employees were forbidden to engage in any form of union activity. The respondent's petition is hereby granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, The Heller Brothers Company of Newcomerstown, is an Ohio corporation engaged in the manufacture and sale of files, rasps, and small tools in its plant at Newcomerstown, Ohio. The respondent is a subsidiary and operates as a plant of Heller Brothers Company, a corporation having its principal offices and another plant at Newark, New Jersey.

The respondent's annual purchases of raw materials, which consist principally of file steel, amount to approximately \$650,000. Approximately 60 per cent of such steel is shipped to the plant from points outside Ohio. The respondent's annual sales of finished products amount to \$2,055,000, approximately 90 per cent of which are shipped outside the State to dealers and distributors in all of the principal cities of the United States.

The respondent normally employs about 800 workers and has an average monthly pay roll of from \$50,000 to \$70,000.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Blacksmiths, Drop Forgers and Helpers is a labor organization affiliated with the American Federation of Labor. It admits to membership all the respondent's production and maintenance employees, except supervisory employees, clerical employees, and watchmen.

File and Tool Workers Union is an unaffiliated labor organization admitting to membership all employees who are on the respondent's pay roll for a period of not less than 30 days, except supervisory employees.

III. THE UNFAIR LABOR PRACTICES

A. Interference with the formation and administration of the Independent

Union activity in the respondent's plant commenced in June 1935. Although the conduct of the respondent before July 5, 1935, the effective date of the Act, cannot constitute unfair labor practices within the meaning of the Act, it foreshadows and explains the events and activities which occurred thereafter and which are subject to the Board's jurisdiction.

On Friday, June 28, 1935, the Union held a mass meeting in the town of Newcomerstown. Some 300 of the respondent's employees attended, elected temporary officers, and listened to an address by a Union organizer. On the following Monday morning, Ethel Buchanan, an employee who had attended the meeting and who later became an officer of the Independent and of the Union, was called to the office of Byron Crater, the respondent's superintendent. Crater discussed the Union meeting, advised Miss Buchanan that the respondent would close its plant if the employees joined, and stated that the respondent wanted an inside organization.

The same afternoon, with the temporary officers of the Union, Miss Buchanan was called to the office of A. G. Heller, the general manager, for a discussion of working conditions in the plant. The employees at first discussed the Bedaux system, which had been recently introduced into several departments and which was evidently causing considerable dissatisfaction among the employees. The conference was then directed to the subject of union activity, and the respondent made clear that it did not desire such activity in the form of outside union organization. The employees present were told that they were "free American citizens," that they could join the Union but would be replaced if they did, that if they formed a "local" organization, the respondent would donate \$5,000 to it. The testimony of Board witnesses with respect to this conference was not denied.

Presumably the respondent's words of caution had the desired effect and for the next 5 months there was little union activity among the respondent's employees. On November 12, 1935, however, another Union mass meeting was called and addressed by an American Federation of Labor organizer. Miss Buchanan's testimony regarding the respondent's reactions to this meeting is typical of the testimony of other witnesses and was not controverted by the respondent. On the following day, Clarence Bricker, her foreman, approached her with a long list of names and clock numbers and asked her if she had attended the Union meeting. He then made a notation on the paper and proceeded to question other employees. Later the same day some 15 employees were discharged. Howard Burris, one of the employees so discharged, testified that he was laid off by his foreman because he washed his hands too many times.¹

Three days later the power was shut off during working hours and the employees were instructed by their foremen to attend a meeting in the box room of the plant. Both Crater and Heller addressed this meeting. After Crater had described how union organization and a strike had led to violence at a Cleveland file factory, he introduced Heller. Miss Buchanan's version of Heller's remarks is not denied:

Well, he talked pretty much on the same lines that he had back in June 1935. He stated that we were free American citizens and could still join the American Federation of Labor but we would be replaced if we did, and that they didn't want the American Federation of Labor in their plant and that they would fight that organization to the bitter end; if we would join another organization, not the American Federation of Labor, to be known as the Heller Brothers Fraternal Association he would donate \$5000.

Immediately following the meeting, foremen throughout the plant solicited the employees to sign the following statement:

As an employee of Heller Brothers Company I am opposed to organizing with or to become affiliated with any outside labor organization. I am in favor of a company employees association to negotiate through a duly authorized committee of my fellow workers.

On the following Monday shop representatives were elected in each department and dispatched to the box room of the plant by foremen to initiate an employees organization. Howard Wolfe, who was so elected and who later became the first president of the Independent,

¹ These employees were later reinstated and their discharges are not in issue in this proceeding.

testified, when called as a witness for the Independent, that he was elected representative of the machine shop and then sent to the box room by his foreman. His complete ignorance of the reason for the election is amply shown in his own testimony:

I went over into what is known as the box department . . . When I went over there, there was perhaps 10 or 12 others in there. When I went in there, we sat down on the lumber wherever we could find a seat and I talked to the rest of them. Since I didn't know why I was there, and I found out that the rest of them didn't know why they was there. After we talked a little another group came in until there was in the neighborhood of some 19 in that building, and after a while Mr. Crater, the Superintendent, came up to that meeting and he said: "Have you fellows organized?" He said, "Do you know anything about organizing?" And that is the first that I knew that that was the purpose that they wanted us to organize. He said, "If you don't, maybe I can help you." And I said, "I can organize you." And he said, "Very well; the meeting is yours."

Wolfe was then appointed chairman of the meeting, and after securing Heller's approval, called a mass meeting in the box room on the evening of November 19. This meeting, as were the others, was held on company time. It was attended by about 300 employees including those on the night shift, who were paid for this time during their attendance. Wolfe announced that 439 employees had signed up to cooperate in forming an organization; officers and an executive board were elected.

Thereafter meetings were held in the school at Newcomerstown, and the Independent within 2 months obtained 467 dues-paying members. Meanwhile the officers and the executive board were preparing a constitution and bylaws. Wolfe, who had been elected president of the Independent, admitted consulting the respondent 10 or 12 times during the preparation of these documents and receiving from the respondent a copy of a Plan of Employee Representation of the Carnegie Steel Company as a form to follow. In addition, the Independent desired the approval of the respondent before adopting a final constitution and bylaws. The minutes of the meeting of December 13, 1935, contain the following statement:

Meeting was opened by Pres. H. Wolfe who explained reason for calling off mass meeting scheduled for this date. Reason being that By-laws presented to Heller Bros. for signature had not yet been acted on and since everyone was interested in that question it was decided to postpone mass meeting until some definite decision had been made by the Company.

During the month of January 1936, negotiations for the respondent's approval of the organization still continued. At the respondent's suggestion a clause in the constitution providing for appeal to this Board was deleted. On January 11, Heller, by letter to the Independent, approved the revised bylaws and offered the organization substantial gifts:

We have noted your revised bylaws and it appears to us that we will be able to accept same as we note you have added a beneficial and fraternal feature to same, under which we further understand we will be able to accept a check-off system.

Furthermore, under these conditions we are willing to contribute to the treasury of such an organization, and also will build a club house for you and if the town does not build a swimming pool in the near future, we will also furnish such a pool.

Although the record is not clear, it appears that the constitution and bylaws were approved in final form some time in February. On March 31, 1936, the respondent transferred to the Independent a stock certificate of 50 shares of 7 per cent preferred stock valued at \$5000, and paying an additional 1 per cent bonus dividend.²

In April 1936, the Independent hired an employee, who had been temporarily laid off by the respondent, to solicit signatures. These signatures were obtained on cards which on one side authorized the respondent to deduct dues of 50 cents a month from the signer's wages, and on the other, designated the member's beneficiary under the benefit provisions of the Independent's constitution. Such solicitation was conducted during working hours, and the cards so signed were introduced at the hearing as proof of membership in the Independent. Several of the cards were not signed, although the respondent used them as authorizations for the check-off.

For the next year the Independent flourished with but little competition from the Union. Union members likewise joined the Independent, several of them testifying that it was necessary in order to continue working for the respondent. In October 1936, and again in January 1937, the Independent negotiated general wage increases; seniority rules were established and individual grievances presented. The wage increase in January amounted to 5 cents an hour, although the Independent had requested a 10-per cent increase.

On May 25, 1937, the Union again commenced a membership drive, and on that day notices of a Union meeting for the following day appeared throughout the plant. At the same time the respondent posted a bulletin defending the Independent and calling the employees'

² In 1937 the Independent received \$400 as a dividend on this stock.

attention to their right to organize any form of "employee organization." The first two paragraphs of this bulletin emphasize its contents:

Since the action of the Supreme Court upholding the validity of the National Labor Relations Act, reports have come to us from some of our employees that they are being told they must join a labor organization and that their independent association known as The File & Tool Workers Union is illegal.

Any such statements are entirely false. The Supreme Court did *not* declare that independent employees associations are illegal.

Some 350 employees attended the Union meeting on May 26, and a formal charter application was signed. By July 16, the Union had approximately 325 members and was gradually gaining the support of the majority of the respondent's employees, despite the respondent's efforts to discourage Union membership. In July 1937, Everett McElhaney, an employee, signed a statement prepared by his foreman, Walter McPherson, to the effect that he had been solicited during working hours to join the Union. Margaret Miller, another employee, testified that she had signed a similar statement prepared by McPherson, several days before the hearing in this case. In August a notice of a Union meeting was followed by notices distributed by foremen advising Union members that those employees on the night shift were "expected to be on the job." Such conduct of the respondent is significant in revealing the respondent's preference for the Independent. As we have indicated above, solicitation for the Independent was permitted to be carried on during working hours; furthermore, absences from work for the purpose of attending Independent meetings were never discouraged. Indeed, the respondent's preference was openly expressed, the minutes of the Independent meeting of August 10, 1937, containing the following statement:

Pres. Neff announces that H. B. Co. are not in favor of the A. F. of L. This was announced by request of Heller Bros. Co.

The respondent made no effort at the hearing to deny the authenticity of this announcement.

Competition between the Union and the Independent apparently reached its height in September and October 1937. On September 27 the Union, claiming a majority of employees, requested recognition from the respondent and asked that an election be held among the employees, without the name of the Independent on the ballot. The respondent refused to consent to an election on such terms, but on October 22 arranged and conducted an election in which the names of both Unions appeared on the ballots. The record shows that the respondent must have known that a petition had been filed by the

Union with this Board. It chose, however, to proceed with the election in the face of Union protests against the use of its name on the ballots, and despite advice from the Regional Director for the Eighth Region that such election would be unlawful and the results void.

B. Conclusions with respect to the activities of the respondent

An analysis of the record together with the respondent's brief clearly establishes the facts recited above, many of which are admitted by the respondent. The respondent contends, however, that its activities do not constitute unfair labor practices within the meaning of the Act, that its conduct does not amount to domination and interference with the administration of a labor organization as proscribed by the Act, and finally, that to disestablish the Independent as a collective bargaining agency would deprive the respondent's employees of their right to join a labor organization of their own choosing as guaranteed under the Act. An examination of these contentions in the light of the record indisputably reveals their lack of merit.

The respondent admits that it "inspired" the idea for the organization of its employees and initiated the first mass meeting of November 15, 1935. Its patent desire to have its employees organize into an inside association within 3 days after the Union had held a meeting leads unmistakably to the conclusion that the respondent realized the value of such an organization in combatting the Union. Its subsequent actions in fostering the Independent and discouraging membership in the Union confirms this conclusion.

The respondent admits that it was consulted in the drafting of the Independent's constitution and bylaws, but maintains that its approval was necessary because of the provisions contained therein regarding the arbitration of disputes, the check-off of dues from wages, the benefit plan, and the closed shop, this latter provision being rejected by the respondent.³ That such provisions, more properly the subjects of collective bargaining, were drafted into the constitution and bylaws in the form prescribed by the respondent is eloquent testimony of the respondent's solicitude for the Independent, and the latter's unconcealed concern that its organization meet with the approval of the respondent. With a donation of \$5,000 in the balance, the Independent readily subordinated the employees' interests to those of the respondent.

The respondent's additional contention that the Independent secured many substantial benefits in the form of wage increases, seniority rules, the abolition of the Bedaux system, and the settle-

³ Although the respondent adopted the check-off of Independent dues, no provision therefor appears in the constitution and bylaws as introduced at the hearing.

ment of grievances, is equally without merit in proving the absence of domination or control over the affairs of this organization. We recognize that the employer frequently makes some concessions to such a labor organization in order to secure and retain control over it.

The respondent further admits its contribution of \$5,000 to the Independent, and the illegality of this gift under the Act, but offers the following defense:

True, the contribution may have had the effect of making the employees more friendly to Respondent as they would be made more friendly if Respondent doubled their wages or bettered their lot in any other way . . . and *encouragement* of friendliness is not "coercion", "domination", or "control".⁴

However, the Act specifically defines as an unfair labor practice the contribution of financial or other support by an employer to any labor organization. The respondent's contribution here falls directly within this proscription of the Act.

Finally, the respondent protests that if its activities from 1935 to April 1936, did constitute unfair labor practices, it has ceased supporting or otherwise interfering with the organization efforts of its employees; that today the Independent is a genuine union completely representing the untrammelled desires of its members. As we have indicated above, however, the respondent's unfair labor practices did not cease after its gift of \$5,000 to the Independent; it continued unmistakably to show its favoritism for it and to discourage Union organization at every opportunity. The respondent continued to permit the solicitation of members for the Independent during working hours, yet denied the same privilege to the Union; it ignored absences of Independent members to attend meetings, yet discouraged its employees from attending Union meetings. In May 1937, to offset a Union drive for members, it posted bulletins announcing the legality of the Independent under the Act. Finally, in October, with full knowledge that the machinery of the Board had been invoked to determine the representative of its employees, it chose to ignore Union and Board protests, and without permission used the name of the Union in sponsoring and conducting an election of its own. In the face of such discriminatory conduct, the respondent's contentions are without merit. No cease and desist order alone could possibly remove the effects of the respondent's discriminatory activities which it has carried on for the past 3 years. The notice posted by the respondent on its bulletin boards on December 28, 1937, is neither adequate enough to destroy the respondent's domination of the Independent, nor complete enough to be considered as a substitute for the posting of a notice which we ordinarily require

⁴ Brief on Behalf of Respondent, p. 17.

in our orders. The Independent has been indelibly branded as the respondent's organization and must accordingly be disestablished as a collective bargaining agency for any employees.

We find that the respondent, by its activities described above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; has dominated and interfered with the formation and administration of the Independent and has contributed financial and other support to it; and that by its conduct it has discouraged membership in the Union.

The record discloses that the respondent engaged in the check-off of dues from the wages of Independent members on the basis of authorizations secured from such employees, for the most part, during working hours. As we have indicated above, the wages of several employees were thus subject to the check-off, even though they had not signed such authorizations. The Trial Examiner recommended that the respondent "make an equitable financial adjustment out of moneys in its hands or under its control by reimbursing such members of (the Independent), employees of the respondent, who have thus paid dues, in an amount at least equal to the sums so paid."

It seems plain to us that the authorization by an employee for the check-off of dues owed to an organization which his employer has formed and continues to dominate cannot be considered as having been voluntarily given by the employee. When check-off authorizations are sought under such conditions the employee is placed in the position of permitting the check-off or of putting himself squarely upon record as openly opposed to the Company's wishes. No employee confronted with such an option can be regarded as having exercised free choice. Thus the same pressures by the respondent which compelled its employees to abandon their free choice of representatives enforced their acquiescence in the check-off. Under these circumstances we will restore the status quo by ordering the respondent to reimburse its employees for amounts deducted from wages as dues for the Independent.

We shall not, however, require the Independent to restore to the respondent the \$5,000 stock certificate or the dividends received therefrom. The respondent and the Independent stand *in pari delicto* and any disposition of assets as between the two would have no effect upon the restoration to the employees of the rights of which they have been deprived.

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 operations of the re-

spondent 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 QUESTION CONCERNING REPRESENTATION

As indicated in Section III above, the respondent refused to recognize the Union for the purposes of collective bargaining in September 1937, and refused to consent to an election among its employees without the participation of the Independent. Instead, after the Union had filed a petition with the Board, and over the protests of the Union and the Regional Director, the respondent conducted an election on October 22, 1937. The evidence shows that of 742 employees eligible to vote, 367 cast ballots for the Independent and 192 cast ballots for the Union. It is unnecessary, however, to consider whether or not this election reflects the true desires of the respondent's employees. We have found that the respondent has dominated and interfered with the formation and administration of the Independent, and that such domination and interference continued and was effective at the time of the election. It follows that the designation of the Independent on the ballots was illegal.⁵ Moreover, we have invariably followed the policy of disregarding the results of elections conducted by employers. Experience has shown that the presence of supervisory employees at the polls, the conduct of the election on the employer's property, the possibility of hidden identification marks on the ballots, taken together with prior manifestations of preference for a particular labor organization, preclude the casting of a ballot which registers the free and independent choice of the employee. Although in the instant case, the mechanics of the balloting were not impugned, we shall not depart from our usual policy.

We find that a question has arisen concerning representation of the respondent's employees.

VI. 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

⁵ See *Matter of S. Blechman & Sons, Inc. and United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15

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.

VII. THE APPROPRIATE UNIT

At the hearing all of the parties agreed and we so find that all of the respondent's production and maintenance employees, excluding foremen, assistant foremen, clerical employees, timekeepers, and watchmen, constitute a unit appropriate for the purposes of collective bargaining. We further find that said unit will insure to the respondent's employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VIII. THE DETERMINATION OF REPRESENTATIVES

It was agreed at the hearing by all the parties that the pay-roll period ending July 31, 1937, represented a normal period of the respondent's business operations. Of a total of 864 employees on that pay roll, it was further agreed that 735 of them were included in the unit we have found appropriate for the purposes of collective bargaining.

During the examination of the Union's financial secretary, the Union ledger was introduced into evidence listing the names of members copied from the charter sheet and application cards since July 2, 1937. At the same time the charter sheet and application cards were marked for identification. Full opportunity was accorded all parties to examine the charter sheet and application cards and to compare them with the respondent's pay-roll record. Equal opportunity was accorded all parties to cross-examine the Union's financial secretary, who had custody of these documents, and to cross-examine the Union's president and recording secretary, both of whom participated in securing the signatures of Union members. An analysis of the testimony and the exhibits on the basis of the July 31 pay roll shows that as of August 15, 1937, and at the time of the hearing the Union had 390 members,⁶ which is a majority of the 735 employees in the appropriate unit.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore, the

⁶ There was no showing that the respondent's pay roll changed between July 31 and August 15, 1937.

exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Brotherhood of Blacksmiths, Drop Forgers, and Helpers, and File and Tool Workers Union are labor organizations, within the meaning of Section 2 (5), of the Act.

2. The respondent, by dominating and interfering with the formation and administration of File and Tool Workers Union, and by contributing financial and other support to that organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2), of the Act.

3. 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.

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

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

6. All of the respondent's production and maintenance employees, excluding foremen, assistant foremen, clerical employees, timekeepers, and watchmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

7. International Brotherhood of Blacksmiths, Drop Forgers, and Helpers is 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.

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, The Heller Brothers Company of Newcomerstown, Newcomerstown, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of File and Tool Workers Union, or with the formation or administration of any other labor organization of its employees, and from con-

tributing financial or other support to File and Tool Workers Union or any other labor organization of its employees;

(b) From recognizing File and Tool Workers Union 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;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Withdraw all recognition from File and Tool Workers Union as a representative 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 File and Tool Workers Union as such representative;

(b) Reimburse the employees who were members of File and Tool Workers Union for the dues it has deducted from their wages on behalf of File and Tool Workers Union;

(c) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist as aforesaid, and (2) that the respondent withdraws and will refrain from all recognition of File and Tool Workers Union as a representative of its employees for the purposes of collective bargaining and completely disestablishes it as such representative;

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

CERTIFICATION OF REPRESENTATIVES

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

IT IS HEREBY CERTIFIED that International Brotherhood of Blacksmiths, Drop Forgers, and Helpers has been designated and selected by a majority of the production and maintenance employees, exclud-

ing foremen, assistant foremen, clerical employees, timekeepers, and watchmen, of Heller Brothers Company of Newcomerstown, Newcomerstown, Ohio, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Brotherhood of Blacksmiths, Drop Forgers, and Helpers is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.