

In the Matter of AMERICAN SMELTING & REFINING COMPANY and  
THE INDUSTRIAL LOCAL UNION OF THE COPPER WORKERS OF THE  
COMMITTEE OF INDUSTRIAL ORGANIZATION

Case No. C-353.—Decided June 7, 1938

*Copper Smelting and Refining Industry—Interference, Restraint, or Coercion:* charges of, not sustained—*Company-Dominated Union:* charges of, not sustained.

*Mr. Reeves R. Hilton* and *Mr. Herbert O. Eby*, for the Board.  
*Mr. Paul M. Higinbotham*, of Baltimore, Md., and *Mr. R. Worth Vaughan*, of New York City, for the respondent.

*Mr. Charles H. Dorn*, *Mr. Eldridge Hood Young*, and *Mr. G. F. Sanderson*, of Baltimore, Md., for the Association.

*Mr. Spurgeon Avakian* and *Mr. D. R. Dimick*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the Copper Workers Industrial Local Union No. 398, International Union of Mine, Mill and Smelter Workers of America, affiliated with the Committee for Industrial Organization,<sup>1</sup> herein called the Industrial Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schauffler, Regional Director for the Fifth Region (Baltimore, Maryland) issued its complaint dated September 21, 1937, against the American Smelting and Refining Company, Baltimore, Maryland, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged in substance that the respondent had promoted, assisted, and sponsored the

<sup>1</sup>The name was designated in the charge and original complaint as "The Industrial Local Union of the Copper Workers of the Committee of Industrial Organization," but was corrected by an amendment to the complaint at the hearing.

formation of the Copper Smelting and Refining Employees Association, and has since dominated and interfered with the administration of the said association. Copies of the complaint and accompanying notice of hearing were duly served on the respondent, the Industrial Union, and The Copper Employees Association, Inc.<sup>2</sup> On October 4, 1937, the respondent filed its answer, denying each allegation in the complaint except specified allegations relating to its business. On October 2, 1937, The Copper Employees Association, Inc., herein called the Association, filed a motion to intervene and participate in the proceeding. This motion was granted by the Trial Examiner at the commencement of the hearing.

Pursuant to the notice, a hearing on the complaint was held in Baltimore, Maryland, commencing on October 7, 1937, before James M. Brown, the Trial Examiner duly designated by the Board. After 3 days the hearing was adjourned because of the illness of the Trial Examiner. On October 20, 1937, the hearing was resumed before James C. Batten, the Trial Examiner duly designated by the Board to conduct the remainder of the hearing. 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 produce evidence bearing upon the issues was afforded to all parties.

On October 20, 1937, counsel for the respondent and for the Association made separate objections to the designation of James C. Batten as Trial Examiner in the place of James M. Brown, and moved separately to dismiss the complaint on the ground that said designation was in violation of the Act, of National Labor Relations Board Rules and Regulations, and of the constitutional rights of the respondent and the Association, respectively. The objections were overruled and the motions denied. At the close of the Board's case counsel for the Board moved to amend the pleadings to conform to the proof adduced at the hearing. The motion was granted. At the close of the Board's case, counsel for the respondent moved to strike from the record all testimony relating to activities occurring subsequent to the date of the filing of the charge, and subsequent to the issuance of the complaint. The same motion was made by counsel for the Association. The motions were renewed at the close of the hearing. In each instance the motion was denied. At the close of the Board's case counsel for the respondent moved to dismiss the complaint on the grounds, first, that the Act as properly construed had no application to the respondent, and the Board had no jurisdiction over the respondent in this proceeding, second, that if the Act were construed to give the Board jurisdiction over the respond-

<sup>2</sup> "Copper Smelting and Refining Employees Association" was incorporated on July 30, 1937, as "The Copper Employees Association, Inc."

ent, it would violate the constitutional rights and privileges of the respondent, and third, that the evidence introduced by the Board had not sustained the allegations of the complaint. The same motion was made by counsel for the Association. The motions were denied on the first two grounds, and ruling was reserved on the third. The motions were renewed at the close of the respondent's case, and the same rulings were made. The motions were renewed at the close of the proceeding and were denied on all three grounds. The prior motions upon which rulings had been reserved on the third ground were also denied. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 29, 1937, Trial Examiner James C. Batten filed his Intermediate Report in which he found that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the Act. On January 17, 1938, the Industrial Union filed exceptions to the Intermediate Report and requested permission to argue the case orally before the Board. On April 21, 1938, the case was argued before the Board in Washington, D. C., by the Industrial Union, the Association, and the respondent.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The American Smelting and Refining Company is a New Jersey corporation having its principal office in New York City. Directly and through its subsidiaries it owns and operates about 30 smelting and refining plants and about 18 mines in the United States, Mexico, and South America. The plant involved in this proceeding is the smelting and refining plant in Baltimore, Maryland. The respondent employs about 1,250 employees at that plant, and the operations consist of smelting and refining copper. Almost all the raw materials are received from outside of Maryland, and over 95 per cent of the refined copper is shipped out of Maryland. Approximately 23,000 tons of refined copper are produced at the Baltimore plant each month.

##### II. THE ORGANIZATIONS INVOLVED

The Copper Workers Industrial Local Union No. 398, International Union of Mine, Mill and Smelter Workers of America, is a labor

organization affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees of the respondent, except employees in supervisory positions.

The Copper Employees Association, Inc. is an independent labor organization, admitting to membership all employees of the respondent who are paid on an hourly wage basis, except those employed in administrative or managerial positions. It was first formed as an unincorporated association on June 11, 1937, under the name of "The Copper Smelting and Refining Employees Association of Baltimore, Maryland," and was incorporated in Maryland under its present name on July 30, 1937.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Association*

In 1933, during the period of the N. I. R. A., the respondent organized the Employees Representation Plan, herein called the Old Plan, which functioned until the end of May 1937. L. W. Woelper the respondent's personnel manager, ordinarily attended all meetings of the representatives of the Old Plan. At a meeting of the representatives on May 26, 1937, there was some discussion of the National Labor Relations Act, and Woelper said that, pursuant to "hints" from some of the representatives, he left the meeting, which was the last one that he attended. On June 7, 1937, the representative committee of the Old Plan informed Jacob Blum, Regional Attorney of the Board for the Fifth Region, in Baltimore, Maryland, of their intention to form an independent union. Following a conference with Blum the representatives abandoned this intention and so far as the evidence shows, the Old Plan then ceased to function and the members of the representative committee participated in no further organizational activities.

On June 11, 1937 a group of seven employees, Buckley, Cooper, Hay, Hunt, Nassner, Packham, and Travers, met secretly at the respondent's plant during their lunch period and decided to form the Association. Buckley, who was chairman of the group, testified that a number of employees had spoken to him and to others of the group, stating a desire for an independent union, and expressing disapproval of the formation of a C. I. O. union in the plant. The only member of this group who had ever had any connection with the representative committee of the Old Plan was Buckley who had been elected a representative in 1934 but had resigned in 1935 because he objected to the respondent's domination of the Old Plan.

The organizing committee of the Association met again on Sunday, June 13, 1937, to map out a campaign. On the following day

Charles H. Dorn, a Baltimore attorney recommended by a cousin of his who was employed by the respondent, was retained as counsel. The committee solicited members for a time, and finally distributed circulars outside the respondent's gates advising all employees of a mass meeting of the Association on Sunday, June 27, for the purpose of electing officers. None of the officers chosen at this meeting had ever been connected with the Old Plan save Buckley, who was elected vice president of the Association.

On June 29 the Association filed a petition with the Board to be certified as the representative of the respondent's employees, but action on that petition was withheld pending the outcome of the charges giving rise to this proceeding.

Thereafter, on July 31 the Association's president, Charles L. Fisher, wrote to Karl A. Lindner, manager of the respondent's Baltimore plant, notifying Lindner that the Association represented a majority of the respondent's employees, and requesting a meeting on August 3 to discuss the question of recognition.

During the period in which the Association was being organized, the Industrial Union was also active. The latter commenced its activities in May 1937 and received its charter on June 13, 1937. On June 29 Lindner received Frank Bender, Maryland director of the Committee for Industrial Organization, and three employees, Nerf, Ryan, and O'Brien. Bender stated that the Industrial Union had been organized, and that demands for recognition would be made subsequently. He also stated that on June 15, 1937, he had filed charges against the respondent of aiding and assisting in the formation of the Association. Lindner stated that he did not care which union was designated by his employees, that since there were two organizations he would not recognize either until it had been certified by the Board, and that he hoped an election could be held soon to settle the problem.

Lindner met frequently with the representatives both of the Industrial Union and of the Association during July. The prospects of an election became remote because of the Industrial Union's refusal to participate in any election if the Association's name were also on the ballot.

When Lindner met with Fisher's committee on August 3, Fisher claimed that the Association represented 1,000 employees, and offered to submit application for membership cards as proof. Lindner immediately notified the Industrial Union representatives of this claim and asked them to submit proof of their claim of representing a majority. They replied that they would not disclose their membership for fear of discrimination by the respondent. Lindner then offered to pay a certified public accountant chosen by the Industrial

Union to check the membership cards with the respondent's pay roll, but that offer was likewise declined. Lindner's request for an election, upon the consent of all the parties, under the direction of the Board, was rejected by the Industrial Union, although the Association was willing.

On August 4 and 5 Woelper personally checked all the applications for membership in the Association with the signatures of the employees on the respondent's personnel records and accepted 857 cards as bearing genuine signatures. On August 6, 1937, the respondent recognized the Association as the representative of its employees. On August 17, following what were described as "heated negotiations," the respondent and the Association entered into a contract, the chief item of which was a general 3 cents per hour increase in wages.

There is no substantial evidence to indicate that the respondent sponsored, assisted, or dominated the Association. While the Association solicited members on the respondent's property during working hours, the Industrial Union admittedly did likewise. Lindner, Shepard, and Woelper testified that as soon as they first heard of any organizational activities at the plant they instructed the foremen to maintain strict impartiality, and to stop any solicitation they saw by either group. These instructions were repeated subsequently, and numerous foremen testified that they had been so instructed and that they had remained neutral at all times. Some of the witnesses testified that solicitation on behalf of the Association was carried on in the presence of foremen. This is denied by the foremen and by the men who allegedly made the solicitations. In addition, the witnesses who gave this testimony seem to have been mistaken in their belief that certain of the respondent's employees were foremen.

Howard Creswell, a member of the Industrial Union, testified that on one occasion Shipley, who was distributing Association circulars, went inside the respondent's gate and obtained additional circulars from the watchmen's shanty. Fisher testified that the circulars had been ordered by the Association's attorney, Dorn, who had instructed the printer to deliver them to Fisher at the plant. Shipley saw the printer leave a package at the watchmen's shanty and immediately went there and took possession of it. He stated that the watchman on duty did not know of this occurrence, and the watchman verified this on the witness stand.

We find that the respondent has not interfered with, aided, assisted, or dominated the formation or administration of the Association.

#### *B. Interference, restraint, and coercion*

All the witnesses who are members of the Industrial Union testified that the respondent's officers had been friendly with them, and that

they had no complaint against the respondent other than the recognition of the Association. Though it was contended that some of the employees were afraid that affiliation with the Industrial Union might cost them their jobs, it was admitted by all witnesses that numerous employees wore C. I. O. buttons at work without ever being reprimanded. Jorgenson testified that a fellow employee named Brooks was once reprimanded by a foreman named Stokes for wearing a C. I. O. button and never wore a C. I. O. button again. Stokes and Brooks testified that the reference to the button had been made wholly in jest, and Brooks stated that his failure to wear the button subsequently was due to the fact that he lost the button about that time and never acquired another.

Hinton testified that his foreman, Stokes, once assigned him temporarily to assist a crew supervised by Seaton and that Seaton said he would not take him because he belonged to the C. I. O. Seaton and Stokes both testified that Hinton was not needed on that particular job, and deny that such a conversation occurred. In addition, it is quite clear that Seaton was an ordinary bricklayer, and did not serve in a supervisory capacity except in so far as he directed helpers assigned to him from time to time—a thing common to all bricklayers in the plant.

On two occasions the respondent's officers told distributors of Industrial Union circulars that they were on the respondent's property and should move a few feet. Since the respondent owned a part of what seemed to be a public street, and there was no line of demarcation showing where the respondent's property began, it is not unlikely that the respondent's officers acted in good faith, and only out of a desire to prevent union activity by either group on the respondent's property.

We find that the respondent has not interfered with, restrained, or coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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

#### CONCLUSIONS OF LAW

1. The operations of the respondent occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.

2. Copper Workers Industrial-Local Union No. 398, International Union of Mine, Mill and Smelter Workers of America, affiliated with the Committee for Industrial Organization, and The Copper Em-

ployees Association, Inc., are labor organizations within the meaning of Section 2 (5), of the Act.

3. The respondent has not dominated or interfered with the formation of The Copper Employees Association, Inc., or of its predecessor, the Copper Smelting and Refining Employees Association of Baltimore, Maryland, within the meaning of Section 8 (2), of the Act.

4. The respondent has not interfered with, restrained, or coerced its employees in the exercise of their 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 or other mutual aid or protection, within the meaning of Section 8 (1), of the Act.

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board orders that the complaint against the American Smelting and Refining Company be, and it hereby is, dismissed.