

IN THE MATTER OF AMERICAN RADIATOR COMPANY, A CORPORATION *and*
LOCAL LODGE NO. 1770, AMALGAMATED ASSOCIATION OF IRON, STEEL
AND TIN WORKERS OF NORTH AMERICA, AFFILIATED WITH THE COM-
MITTEE FOR INDUSTRIAL ORGANIZATION

Case No. C-444.—Decided June 24, 1938

Heating and Radiation Equipment Manufacturing Industry—Interference, Restraint, and Coercion: antiunion statements; expressed opposition to outside labor organization; by public officials and businessmen—*Company-Dominated Union:* sponsorship; domination of and interference with formation and administration; support; continuation of Employees' Representation Plan; circulation of petition for, in plant during working hours; respondent ordered to refrain from recognition of, and to disestablish, as agency for collective bargaining—*Discrimination;* discharges: charges of, not sustained as to one employee; lay-offs—*Collective Bargaining:* refusal to negotiate with representatives—*Unit Appropriate for Collective Bargaining:* production and maintenance employees—*Representatives:* proof of choice: comparison payroll with union list—*Lock-Out—Reinstatement Ordered:* discharged employee; employees laid off—*Back Pay:* awarded to discharged employee, from time of discharge to time plant closed; not awarded to employees laid off, because of evidence indicating that plant would have had to close down for business reasons; ordered, to employees laid off who are not reinstated, if operations have been resumed, or placed on preferential list, within 5 days after issuance of this order.

Mr. David C. Shaw, for the Board.

Mr. George B. Logan and *Mr. Samuel W. Fordyce,* of St. Louis, Mo., for the respondent.

Mr. Dennis J. Godfrey, of Litchfield, Ill., for the Association.

Miss Anne E. Freeling, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Fourteenth Region (St. Louis, Missouri), issued a complaint, dated August 27, 1937, against American Radiator Company, Litchfield, Illinois, herein called the respondent, alleging that the respondent had en-

gaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and upon the Union.

The complaint alleged in substance that the respondent (a) dominated and interfered with the formation and administration of a labor organization known as the Litchfield Radiator Workers Union of Litchfield, Illinois,¹ and contributed financial and other support to it; (b) discriminated in regard to hire and tenure of employment of all its employees by locking them out and discharging and refusing to reinstate them; (c) discriminated in regard to the tenure of employment of Charles Coatney, Joe Eskra,² and Clarence Allen, to discourage membership in the Union; (d) refused to bargain collectively with the Union as the exclusive representative of all the respondent's employees (with certain specified exceptions), said employees constituting an appropriate bargaining unit; and (e) by these and other specified acts and conduct interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and to engage in concerted activities for their mutual aid and protection.

The respondent filed an answer, dated September 14, 1937, admitting that its business at the Litchfield plant, when that plant was operating, affected interstate commerce, but asserting that since the Litchfield plant was closed for proper business reasons, the respondent had no employees at that plant, and hence there was no controversy over which the Board had jurisdiction. For this reason the respondent prayed that the complaint be dismissed. The answer also denied that the respondent had engaged in the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Litchfield, Illinois, from September 21 to October 8, 1937, before Herbert Wenzel, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. At the outset of the hearing Litchfield Radiator Workers Association, herein called the Association, filed a written motion to intervene, which motion was granted by the Trial Examiner. This ruling is hereby affirmed. Thereafter the Association was 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 all the parties.

¹ The name of this organization has been changed to Litchfield Radiator Workers Association.

² Incorrectly designated as Joseph Eskra in the complaint.

During the course of the hearing, counsel for the Board moved to dismiss the allegations of the complaint setting forth the discriminatory discharge of Clarence Allen. The Trial Examiner granted the motion and his ruling is hereby affirmed. At the opening and at the close of the hearing, and at various times during the hearing, the respondent moved to dismiss the complaint for lack of jurisdiction, or to dismiss the complaint or specific allegations thereof on the ground that they were not sustained by the evidence. The Association joined in the respondent's motion in so far as the complaint alleged that the Association was company-dominated. The Trial Examiner reserved decision on these motions. During the course of the hearing the Trial Examiner made other rulings on motions and on objections to the admission of evidence. He also granted a motion presented by counsel for the Board at the close of the Board's case to amend the pleadings to conform to the evidence. The Board has reviewed these rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 1, 1938, the Trial Examiner filed an Intermediate Report, copies of which were duly served upon all the parties, denying the motions of the respondent and the Association to dismiss the complaint, and finding that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7) of the Act, but finding that the alleged lock-out of the respondent's employees and the discharge of Joe Eskra were not unfair labor practices within the meaning of the Act. Accordingly, the Trial Examiner recommended in his Intermediate Report that the respondent cease and desist from its unfair labor practices; refrain from recognizing the Association as the representative of its employees for the purpose of collective bargaining; notify the Union when it intends to reopen its Litchfield plant; upon request, bargain collectively with the Union as the exclusive representative of the production and maintenance employees of its Litchfield plant; upon reopening its Litchfield plant, offer to reemploy Coatney in his former position, and make Coatney whole for any loss of pay he may have suffered by reason of his discharge from the date of his discharge to May 7, 1937, the date of the closing of the Litchfield plant. The Trial Examiner further recommended that the complaint be dismissed in so far as it alleged that the respondent had discriminatorily locked out all its employees and had discriminatorily discharged Joe Eskra. Exceptions to the Intermediate Report were thereafter filed by the respondent, the Union, and the Association, to which we have given due consideration.

On May 6, 1938, the Board notified the parties to this proceeding that they were entitled to request oral argument before the Board in

Washington, D. C., but none of the parties availed themselves of this opportunity.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, American Radiator Company, was incorporated under the laws of the State of New Jersey on February 10, 1899. American Radiator & Standard Sanitary Corporation, a holding company incorporated in Delaware, owns 99.9 per cent of the stock of the respondent. The executive offices of the holding company, as well as of the respondent, are located at 40 West 40th Street, New York City. The manufacturing headquarters of the respondent are at 8007 Jos Campau, Detroit, Michigan.

The respondent is engaged in the manufacture, production, assembly, sale, and distribution of heating equipment, boilers, radiators, water heaters, Arcola Heaters, hot-water supply heaters, steel castings, malleable castings, and enameled sheet products. The respondent is the leading manufacturer of heating apparatus in the United States, with upwards of 25 factories in this country, Canada, and Europe. It has representatives and sales agencies in many of the leading cities of the world.

The respondent owns the following plants: In Buffalo, New York, two plants for cast-iron radiators, one plant for boilers, one plant for malleable and steel castings, one plant for non-ferrous products, and one plant for enameled sheet products; in Bayonne, New Jersey, one plant for cast-iron radiators; in North Birmingham, Alabama, one plant for cast-iron radiators; in Kansas City, Missouri, a combination boiler and radiator plant for cast-iron boilers and radiators; in St. Paul, Minnesota, one plant for cast-iron radiators; in Detroit, Michigan, one plant for cast-iron boilers; in Springfield, Illinois, one plant for Corto metal pipe and refrigeration and materials, cast-iron sections; in Ypsilanti, Michigan, one plant for recessed Convector cast-iron radiators; in Litchfield, Illinois, one plant for cast-iron radiators.

This case involves only the Litchfield, Illinois, plant, at which the respondent manufactures steam and hot-water heaters. The materials used in such manufacture include pig iron, stove plate, coal, coke, core sand, fuel oil, limestone, nipples (threaded), fire clay, ground coal, fluor spar, fire brick, fire stone, lumber, linseed oil, ferro silicon, paint, chaplets, and oleum spirits. About half of these materials are received from outside the State. The respondent ships about 80 per cent of its manufactured products to points outside the

State. On May 7, 1937, the respondent employed 268 men at the Litchfield plant and a total of 3,093 men at all its plants.

II. THE ORGANIZATIONS INVOLVED

Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership production and maintenance employees of the respondent, exclusive of supervisory, clerical, and salaried employees.

Litchfield Radiator Workers Association is an unaffiliated labor organization, limiting its membership to employees of the respondent at its Litchfield plant.

III. THE UNFAIR LABOR PRACTICES

A. *The respondent's formation and domination of labor organizations*

The complaint alleged that the respondent, since a date prior to July 5, 1935, down to and including the date of the issuance of the complaint herein, fostered, dominated, and interfered with the formation and administration of a labor organization, known as the "Litchfield Radiator Workers Union of Litchfield, Illinois," and gave financial and other support to it. As stated above, the name of this organization was subsequently changed to Litchfield Radiator Workers Association.

1. The Plan; and respondent's interference, restraint, and coercion

In August 1933, the respondent inaugurated a Plan of Employees' Representation, herein called the Plan, among its employees at the Litchfield plant, apparently as a means of purported compliance with the National Industrial Recovery Act. Booklets explaining the Plan were distributed to the employees. Shortly thereafter, the respondent ordered its employees to vote for their representatives under the Plan, without having first afforded them an opportunity to vote for or against the adoption of the Plan.

The Plan provided for both employee and company representatives, who conferred during working hours without deduction in pay. All expenses incurred in the operation of the Plan were borne by the respondent. A company representative kept the minutes of the Plan representatives' meetings, and copies of the minutes were forwarded to the Detroit office of the respondent.

At a meeting of Plan representatives held in August 1934, one of the employee representatives made a motion for an increase in wages. At the request of Benedict, the plant manager, the motion was with-

drawn. About a year later, after the Act had become effective, Whitley, an employee representative, made a motion for a 25-per cent wage increase. Benedict testified that some of the employees whom Whitley represented complained that Whitley was too radical. Benedict referred them to the booklet explaining the Plan, which provided for the removal of a representative by petition. Benedict thereafter informed Coatney, chairman of the employee representatives, that he had in his possession a petition for the removal of Whitley, and requested Coatney to conduct an election for a representative to replace Whitley. Coatney refused to participate in removing or replacing Whitley. Coatney was discharged a few days later. The employee representatives elected to succeed Whitley and Coatney suited the respondent's purposes better, for on January 28, 1936, in a letter to Locke, vice president in charge of manufacturing at Detroit, Benedict stated:

We attach hereto minutes of the Works Committee meeting held on Monday, January 27th. You will note this was the first meeting of the newly elected members and we have every reason to feel this committee should not cause us any great concern.

Several employees testified that bargaining negotiations under the Plan were ineffectual. Grievances which they presented were never adjusted. Some employees testified that they did not present grievances because they were convinced that it was futile.

Attempts to organize the respondent's employees apart from the Plan met with little success until 1937. One of these attempts was made in 1935 by an employee named Puckett. Puckett testified that at a conference held with Benedict just before Whitley was removed as a Plan representative, Benedict told Puckett and Whitley that he knew that they were trying to organize apart from the Plan and assured them that an outside organization would never get them anywhere in that plant. After Coatney was discharged, the men became discouraged and gave up their attempt to organize. In January 1937 Puckett again began organizing the employees by having the men sign blank slips of paper at his house. Because his previous efforts at organizing the employees had been thwarted, Puckett tried to keep this attempt at organization secret. However, the men who had signed the slips discussed the matter with others whom they thought they could trust, and as a result it became generally known. Some of the foremen questioned the employees concerning their meetings, having been informed about them by other employees.

Puckett and Whitley, who had been elected a Plan representative again in January 1937, conferred with Benedict on April 26, 1937, concerning additional work which had been imposed on certain employees without a corresponding increase in wages. Puckett testified

that during this conversation he told Benedict that he knew how to get an agreement with the respondent and that his organization had the necessary majority. Benedict went to Detroit on the evening of April 27, where he conferred with Locke, vice president in charge of manufacturing. He returned to Litchfield on the evening of April 29 with the following announcement which he read aloud to his assembled employees on the morning of April 30:

Our understanding of Wagner Labor Act is, and we must advise committee—

1. We must withdraw management representatives from Works Committee;
2. Works Committee must meet on own time, and can no longer meet on Company time and be paid.

You have the right to continue your present organization, or to join, or assist, any labor organization.

You have the right to choose your own representatives for collective bargaining, just as you have done in the past.

If any other organization claims the right to represent the men of Litchfield Plant, you have the right to ask the National Labor Relations Board to hold an election by secret ballot to decide whether you or some other organization has the right to represent the men of Litchfield Plant for collective bargaining.

You now have a committee representing the men which was elected at your own election, and if you wish this committee to continue for collective bargaining you have the right to do so.

If anyone else claims the right to represent the men, then if this committee is to continue it will need to be prepared to meet the claim of others that they represent the men of Litchfield Plant.

You will need to be prepared to get a majority vote in an election by secret ballot by the National Labor Relations Board.

Any employee or group of employees, or representative of another labor organization, may ask the National Labor Relations Board for an election to decide by majority vote who represents the men of Litchfield Plant.

It is for you to decide whether the committee of your present organization shall handle your own business with us, or whether some other organization shall decide your business matters with us for you.

Benedict testified that since the Act had been declared constitutional, the respondent had decided to discontinue the policy pursued under the Plan. Benedict stated that he went to Detroit for the purpose of getting the above announcement. This announcement was never posted in the plant, although Benedict testified that "Ordinary

narily, I suppose it would be" but "this was extraordinary. It was a complete change in regard to the dealings with the men."

Immediately after reading the announcement, Benedict called a conference of his foremen, and told them they were not to interfere with the organizing efforts of the employees, but, as one foreman testified, Benedict wanted them to "keep our eyes and ears open and our mouths shut."

A few days later a petition for an independent union was circulated in the plant during working hours. The respondent had posted a notice that, contrary to its previous policy, it was going to give its employees a vacation with pay. At Benedict's suggestion, a vote of thanks for the vacation with pay was circulated among the men for signature at about the same time as the petition for an independent union. One of the men who circulated this petition was James Moore, who did so at the request of Henry Mummé, son of one of the foremen and a company representative under the Plan. Mummé requested several employees to aid him in the formation of an independent union, explaining that he himself could not get anywhere with it because his father was a foreman. Easterly, one of the employees on whom Mummé called for assistance, hung the petition up where it was available for several days to anyone who wanted to sign it.

Moore acted as foreman in the absence of the regular foreman in his department. Moreover, in his usual work of checking orders that were ready for shipment, he had several men who helped him. He was paid 67 cents per hour, although the regular rate in his department was 47 cents. Most of the orders he checked were sent directly to him from the office, and he reported on them directly to the office. A number of employees testified that they considered Moore to be a strawboss or an assistant foreman. We conclude that Moore was a supervisory employee performing duties similar to those of an assistant foreman.

Several employees testified that when Moore asked them to sign the petition for an independent union, he told them they could use their own judgment about signing it, pointing out, however, that he believed that the respondent, rather than recognize an outside organization, would close this plant and reopen one of its closed plants elsewhere. Several employees testified that their supervisors made comments to the same effect, and, in general, expressed opposition to outside labor organizations and a conviction that the respondent would close its plant before it would deal with such an organization. The respondent's plant, as the secretary of the Chamber of Commerce testified, is one of the largest industries in Litchfield, and one upon which many persons were dependent for a livelihood. Threats that the plant would close down if the employees

joined an outside organization, therefore, carried much weight not only with the employees, but also with the businessmen of the town.

On May 1, 1937, encouraged by Benedict's statement that the respondent was withdrawing its support from the Plan, and having about 100 slips signed by employees, Puckett went to Peoria, Illinois, and arranged for union organizers to address a meeting at Litchfield on May 6. He also obtained application cards, many of which were signed before the meeting. About 200 employees attended the meeting, which had been advertised in the newspaper. By the end of the meeting a majority of the eligible employees in the Litchfield plant had signed application cards for membership in the Union.

Benedict spent most of the following day, May 7, visiting the manager of the Springfield, Illinois, plant. When he returned to Litchfield about 3:30 in the afternoon, there was a message for him to call Locke in Detroit. He telephoned Locke immediately. Locke dictated a notice, which he told Benedict to post in the plant, which read as follows:

TO ALL EMPLOYEES:

Our Company regrets that due to lack of orders for the product made at Litchfield Plant and the large inventory now on hand, this Plant will be closed until further notice.

E. M. BENEDICT,
Manager, Litchfield Plant.

Benedict waited until practically all the employees had left the plant before he posted the notice. The plant shut down as stated and was still closed at the time of the hearing.

We find that the respondent has dominated and interfered with the formation and administration of the Plan, and has contributed support to it.

We find that the respondent, by inaugurating, sponsoring, and dominating the Plan, by circulating the petition for an independent union in the plant during working hours, and by antiunion statements, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

B. *The Association*

Easterly, who took the lead in organizing the Association, testified that the idea of an unaffiliated labor organization was derived from the petition that was passed around in the plant after the respondent had announced its withdrawal from the Plan. Moreover, it was his understanding that other plants of the respondent were operating with unaffiliated unions and, therefore, he supposed that work would be divided up with the Litchfield plant if it had an un-

affiliated union. Furthermore, Easterly testified, he knew that the respondent had always been opposed to outside organizations and, although the statement read by Benedict purported to give the employees a right to join any organization they chose, Easterly pointed out that "he [Benedict] didn't say they would operate under it." The attitude of Easterly and of many other employees was also colored by the fact that the respondent, by its continuance of the Employees' Representation Plan after the effective date of the Act, had deliberately and flagrantly flouted the Act from its enactment until its constitutionality was upheld by the Supreme Court of the United States.

Easterly, who had been employed at the plant more than 20 years, was on rather intimate terms with some of the officials of the plant. During the time the plant was closed down, Easterly and Fellers, chief clerk of the plant, made neighborly calls on each other. Easterly also called on Benedict, who bought coal from Easterly's son. Although it was well known throughout Litchfield, from newspaper items and general talk, that Easterly was organizing an unaffiliated union, Easterly denied that Fellers or Benedict discussed the subject with him during the several visits.

The first meeting of the unaffiliated union took place at Easterly's house on May 20. Some question was raised at this meeting about the labor organizations at other plants of the respondent. Strehle, secretary of the Litchfield Chamber of Commerce, who attended the meeting at Easterly's invitation, telegraphed the Chambers of Commerce in other cities where the respondent had plants. Replies were received from Springfield, Buffalo, and Bayonne that the plants there were operating under unaffiliated unions. The Litchfield News-Herald carried an item about the respondent's plants which "have been operating steadily and without labor trouble under the independent union plan."

During their campaign, Easterly and the other organizers urged employees to sign up by assuring them that the respondent would never recognize a C. I. O. union, that the plant would reopen when their organization had a majority, and, what was more, they would get a raise and vacation with pay when the plant reopened. Some of the employees testified that they signed up only because they were convinced they would not get back to work otherwise. James Moore contacted those who he remembered had signed the petition circulated in the plant after the respondent had announced its withdrawal from the Plan.

At the second meeting of the unaffiliated organization, which was held on May 24, it was voted that a petition should be prepared requesting the management to reopen the plant just as soon as orders

would permit. Such a petition was prepared. It was presented on May 25 to Fellers, chief clerk of the plant, since Benedict was out of town. It is clear that the organizers of the unaffiliated union were anxious to take no step that would meet with the disapproval of the respondent. For example, they stated in their petition: "The committee is now drafting bylaws to cover the operation of this union and upon completion a copy will be placed in your hands." Fellers gave Benedict this petition on May 26. Benedict went out of town again, but while out of town sent Fellers a letter acknowledging the petition and stating that he would be pleased to use his "influence in having the plant reopen just as soon as there is sufficient demand for our product and justification for so doing." On May 28, Fellers wrote Dale Timmons, president of the Association, quoting the letter he had received from Benedict.

The Union filed its charges with the Board on June 1. On June 2 Benedict received a copy of a letter which the Regional Office of the Board had sent to Locke. Locke called Benedict to Detroit, where conferences were held with the respondent's attorney from Buffalo, who had come to Detroit. Benedict returned to Litchfield on the evening of June 4.

On Saturday morning, June 5, Easterly and Timmons went to the Springfield plant to find out about the independent union which had been organized at that plant and which had been recognized by the respondent. They went to the office of the plant and explained to Charles Hensen, the cashier, that they were seeking help in organizing an independent union at Litchfield and that they needed "ten or twelve more members in order to swing this thing over." Hensen had copies of the bylaws and working agreement of the Springfield organization in the company safe, but told Easterly and Timmons he could not give them copies. However, he referred them to Paul Howell, one of the organizers of the Springfield organization, who promised to send them copies of the bylaws and other organization papers. Howell gave them "some pointers on how to organize lawfully." He also told them he had been advised by counsel to change the name of the Springfield organization from Union to Association, and advised them to do likewise. The Springfield documents were subsequently adapted to the use of the Litchfield organization with but a few minor changes.

The Litchfield organization held a meeting on the evening of June 9. The minutes of that meeting read in part as follows:

Reading of bylaws approved and accepted also suggested by Mr. Easterly that we change the name of our organization to read Litchfield Radiator Workers Association instead of Litch-

field Radiator Workers Union. No objection voiced so approved and accepted

Reading of demands and agreement approved and accepted

Meanwhile the Regional Office of the Board had been trying to arrange a conference between the respondent and the Union. Finally, on the afternoon of June 9, Benedict and Fellers met with a Union committee. However, between the time that the appointment was made and the time it was kept, Benedict testified that he had been waited on by a delegation from the independent organization, which presented him with a proposed agreement requesting recognition as bargaining agency and claiming to represent a majority of the employees. The agreement purported to be made with Litchfield Radiator Workers Association, and was no doubt the "agreement approved and accepted" by the Association at the meeting on the evening of June 9.

The bylaws adopted on June 9 called for regular monthly meetings and for the payment of dues. However, the next meeting was not held until August 24, and no dues were collected, expenses being paid by means of collections or by the organizers. After the Union had filed its charges, the Association decided that it ought to be incorporated. Its certificate of incorporation is dated September 16. Bill Davis, who had previously been a temporary foreman and who was one of the organizers, contributed the 10 dollar filing fee. He referred to the Association, when he was on the witness stand, as "a sort of a union." Easterly testified that the Association had delayed becoming incorporated and holding meetings because it had not yet been recognized by the respondent and would not function if for any reason the respondent did not recognize it. It is clear that Easterly and his associates organized the Association only because they expected it to be a means of inducing the respondent to reopen the plant and not because of their interest in a labor organization as such.

Some of the people who were invited to attend meetings of the Association included the mayor of Litchfield; the secretary of the Litchfield Chamber of Commerce; the head of the First National Bank, where the respondent does its banking; the supervisors of North and South Litchfield Townships, who are in charge of administering public relief; the chief of police and a police officer. The mayor attended several of these meetings and, in addition, arranged conferences between the Union and the Association, one of which was attended by representatives of the Board. The mayor sought at some of these joint meetings to persuade both organizations to give up their union activities, and to persuade the Union to withdraw its charges. The mayor expressed the belief that if they would consent

to do this, the plant would reopen, they could return to work and, at some future date, possibly hold an election. Some of the Association representatives were, of course, willing to accede to the mayor's suggestion, since they had organized the Association solely for the purpose of inducing the respondent to reopen the plant and thereby returning to work. However, the Union representatives were not willing then to withdraw their charges.

The feeling prevalent among the employees that the respondent would rather close the plant than recognize an outside labor organization was shared by the town officials, businessmen, the press, and others who would be affected by the closing of the plant. That they shared this feeling is shown by their activity on behalf of the Association. They were able to, and did, exert considerable pressure on the respondent's employees to discourage their signing up with the Union. George Strehle, son of the Chamber of Commerce secretary, collected dues once a month for an association of downtown businessmen. One of these businessmen testified that Strehle, when he made his rounds at the beginning of May, just before the plant closed down, asked him if any of respondent's employees traded at his store. On being told that they did, Strehle requested him to use his "influence to get them to form a union of their own." Strehle testified that he did not "recall making that statement," but he did remember telling him "to do all he could to keep this plant going."

Police Officer Goddin, who received his pay from the town and from the First National Bank, was interested in the formation of the Association because he did not have "a bit of faith in the C. I. O." and he expected there would be trouble at the plant if any "but a company or local union" were to be organized.

The newspaper items quoted below are further examples of the outside pressure exerted upon the respondent's employees to join an unaffiliated union. The following item appeared in the Litchfield News-Herald of May 24:

Dissension in the ranks of the S. W. O. C. Local appeared today when the Litchfield Radiator Workers' Union, a group opposing the C. I. O. affiliate, called an organization meeting for tonight at 7:30 o'clock at Parkview ballroom.

The Radiator Workers Union leaders claim to have an independent organization opposed to C. I. O. domination, and representing at least 45 per cent of the employes of the Litchfield plant of the American Radiator company.

John Easterly, 401 North Montgomery avenue, organizer for the Radiator Workers, told the News-Herald that his organization has between 110 and 120 members. There are approximately

250 employes of the American Radiator plant, excluding foremen and office workers ineligible for membership in either union.

"We have reason to believe that when we obtain the necessary 138 members, the American Radiator plant (closed two weeks ago) will reopen soon after," Easterly said.

The following item appeared in the Litchfield News-Herald of May 25:

Members of the newly formed Litchfield Radiator Workers Union, opposed to C. I. O. domination, elected officers in their first meeting last night at Parkview ballroom and named a by-laws committee to draw up rules for the organization.

A large crowd attended the meeting. Organizers claim nearly majority representation at the Litchfield plant of the American Radiator company. They also said that if a majority is obtained by the independent union, similar to those at Springfield, Buffalo, and Bayonne, N. J., plants of the company, the Litchfield plant, closed two weeks ago Saturday, will reopen. A membership of 115 is claimed and 138 is the majority.

Officers elected last night are:

President, Dale Timmons.

Vice President, William Davis.

Secretary, William Schmuck.

Treasurer, John Rill.

Members of the by-laws committee are Henry Mumme, Fred Andres, R. Finke, William Houlihan and John Easterly.

The new union claims to have secured at least a third of the membership of the Lewis' S. W. O. C. organization, and leaders say that more will be obtained. They claim that members of the C. I. O. affiliate are dissatisfied with the organization and dislike the "high handed" attitude of the local officers.

Besides Henry Mumme, several other relatives of foremen aided in the formation of the Association. Sometime after the Association adopted its bylaws, they were amended to provide that "No direct relation of a foreman or official of Litchfield plant shall be an officer of this Association."

The Association bylaws provide that "Any person who may appear on the list of employees of the American Radiator Company on file with the Secretary of this Association" shall be eligible to membership. It is interesting to note that the membership list contains the names of all the employees in the Ware (Shipping) Room, which is the department where James Moore, the supervisory employee who had circulated the petition in the plant, was employed. This fact is an indication of the influence he had upon those employees.

Although the actual formation of the Association began after the plant had closed down, the respondent's connection therewith is clearly evident. The idea of organizing an independent union stemmed from the respondent's activities in connection with the Plan; from the statements of supervisors that the respondent would close the plant before it would recognize a C. I. O. union; from the reading of an announcement which, despite its avowed purpose, seems clearly to indicate that the respondent desired the continuance of the Plan or the formation of a similar organization; and from the petition which was circulated in the plant, before it closed down, during working hours. The organizers were motivated by a realization, as a result of the statements and actions of the respondent, that the respondent was strongly opposed to outside labor organizations. The domination of the respondent is further indicated by the classes of employees who helped to organize, and became members of, the Association. Furthermore, the activities of the public officials and businessmen on behalf of the Association must be directly attributed to the respondent's expressed hostility toward outside labor organizations and its threats to close the plant rather than deal with one.

We find that the respondent has dominated and interfered with the formation and administration of the Association, and has contributed support to it.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and 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 purposes of collective bargaining and other mutual aid and protection as guaranteed under Section 7 of the Act.

C. *The discharges*

Joe Eskra was discharged on April 15, 1936. He had been employed at the Litchfield plant for about 10 years before his discharge. It was his job to charge the cupola with coke, pig iron, and gates. A cupola is a type of furnace in which metal is melted to make iron. It is approximately 30 feet high and 6 feet in diameter. The charging floor is "sort of a second floor to the plant." On the charging floor are small supplies of the materials used in charging the cupola and the scales where the materials are weighed before they are cast into the cupola. A crew of five works on the charging. One man always works on the ground floor. It is his job to load the pig iron into the cars. Two men work both on the ground floor and the charging floor. One of them loads coke, the other stove plate, into wheelbarrows.

The first step in the process is to place on the elevator a truck of pig iron and a wheelbarrow of coke. One of the men goes up on the elevator with the material and wheels it off the elevator onto the scales. The scale man weighs it and makes the necessary adjustment in quantity. After the weighing of this material, Eskra wheeled it to the cupola and put it in. Another man then goes up on the elevator with the stove plate and throws it in himself after it has been weighed. Eskra kept all this material in the cupola leveled off. This is an important step in the process, since if the coke is not properly distributed, the heat is uneven, which causes the iron to melt unevenly, resulting in "cold iron." This process was a continuous one throughout the day.

An employee who had injured his foot and, therefore, could not do his regular work, was given a temporary job as weigher. He was instructed to watch the scales, take down the weights on a sheet of paper, and keep track of the total charges. Due to his injured foot, however, he was unable to balance the weights, which made it necessary for Eskra and the two men who go up on the elevator with the material to perform additional work. Since all five of the cupola workers were paid on a piece-work basis, the respondent arranged to compensate them for the additional work as follows: The weigher was to be paid 40 cents an hour, and the difference between that amount and the piece-work wages he would ordinarily have received was to be divided among the three men doing the additional work. Tibbs, the cupola foreman, explained this arrangement to the men involved. Eskra complained vehemently to Tibbs about the additional work. Tibbs told Cashen, the foundry foreman, about Eskra's dissatisfaction. Benedict happened to be talking to Cashen at the time. The three of them went upstairs where, as Cashen testified, "Joe came over to me hollering—I wouldn't say he was hollering—'Do you want me to do this?' and that was after Tibbs had told him what to do. Benedict said 'I wouldn't monkey with that fellow, I would just put another fellow in his place' so I just told Tibbs to replace him."

It appears from the evidence that Eskra was not a satisfactory worker, that he was frequently guilty of improper charging of the cupola. Eskra admitted that Tibbs had often criticized his work; in fact, that "it wasn't every day but towards the last it seemed like it got to be every day" and "this lasted for quite a while." Cashen testified that neither he nor Tibbs had ever reported to Benedict the unsatisfactory nature of Eskra's work. Benedict, however, testified that he knew of Eskra's reputation as an unsatisfactory worker.

Eskra had been a miner before coming to work for the respondent, and had been a member of the United Mine Workers. He testified that he discussed union organization with Puckett "quite a bit" and

“told him any time he had a charter and wanted members, I was willing to join it.” That appears to have been about the extent of his participation in any of the various efforts that were made to organize a genuine union in the plant.

Although it appears that Benedict and Cashen might have acted with undue haste in ordering Eskra's discharge, upon weighing all the evidence we do not find that Eskra was discharged for union activity. The allegations of the complaint, in so far as they are based on the discharge of Joe Eskra for union activity, will, therefore, be dismissed.

Charles Coatney was discharged on September 10, 1935. He had been employed at the Litchfield plant for about 20 years, off and on. He had been setting chaplets for about 15 years before his discharge. Chaplets are small wires about $\frac{3}{4}$ of an inch long, which go around the pattern to hold the cores and thereby regulate the thickness of the pipe. Chaplet setters work in groups of three. The pattern is placed on a wagon, which runs along a track. The No. 1 man walks back and forth within a range of about 20 feet and sets as many chaplets as he can. The No. 2 man and the No. 3 man set down the flask, which is a steel rim about 4 inches high that goes around the top of the pattern. They also set the chaplets that the No. 1 man missed. The No. 2 man kicks off the pattern with an air kicker. The No. 3 man holds it under the facing hopper and pulls the lever which sprinkles facing sand onto the patterns to a depth of about 4 inches. The two parts of the pattern, the cope and the drag, are always run down in pairs, the cope following the drag. When the cope has been cast, it is lifted up and swung around, so as to fit book fashion, and set down gently on the core and the drag. When it is all put together, the hot metal is poured in at the bottom and consumes the core. The core lasts just long enough to regulate the thickness of the radiator, which is $\frac{3}{16}$ of an inch. If the chaplets are not set properly, the metal will rise and there will be more thickness on top.

On the day Coatney was discharged, Hull, assistant foreman in the foundry, marked a pattern on which he claimed he observed Coatney, who was the No. 2 man, leave out some chaplets. Hull told Cashen about the pattern he had marked so that Cashen could go up and see it. Cashen testified that he was interested in finding out how that pattern came out, that in fact he was “always interested in the welfare of the castings.” Hull and Cashen permitted the pattern to go through, although they knew that to do so would result in a bad casting being made. After the pattern had gone through, Hull called Coatney in and showed it to him and told him the pattern was ruined because he had left out some chaplets. Coatney examined the pipe as

best he could, since it was red hot, and testified that he was unable to see anything wrong with it. However, he said he would watch the chaplets more carefully in the future, but Hull told him that he was discharged.

There is considerable evidence that Coatney's work had always been satisfactory. It is significant that the two men working with Coatney were Easterly and James Johns, the first of whom became the leader in organizing the Association, and the second of whom was the son of a foreman and a member of the Association. A number of witnesses testified that a few chaplets might be, and frequently were, left out with no resultant damage. The men were sometimes reprimanded for leaving out chaplets, but it was most unusual for anyone to be discharged or even threatened with dismissal for this reason. Furthermore, there was testimony that the chaplets could, and sometimes did, fall out when the pattern was kicked off, or during some of the subsequent operations.

Coatney had worked in the mines in 1920. He became a member of the United Mine Workers at that time, and retained his membership ever since. He explained to the employees at the Litchfield plant "what better things they could have if they got organized." He was active in some of the attempts to organize the Litchfield plant and was one of a small group of employees who, shortly before his discharge, had each paid \$1.00 to send for an American Federation of Labor charter. His ideas as to the advantages of an outside union were well known to his supervisory officials. He had openly criticized the respondent's Plan, when it was inaugurated, to Alex Johns, who at that time was his foreman, and to Gross, who was then superintendent of the plant. Coatney was an employee representative from the beginning of the Plan to the date of his discharge, and was chairman of the Works Committee during the last year of his employment. He had always been a very active representative. He had taken up a number of grievances for the men, and had been energetic in seeking to obtain wage increases for them. Just before his discharge, as set forth above, he had refused, despite Benedict's request, to participate in removing or replacing Whitley as a representative.

From the above facts we conclude that the respondent discharged Coatney because of his attempts to influence the respondent's employees to join an outside labor organization. Before his discharge he was earning an average of \$21.00 a week. He earned \$294.00 between the date of his discharge and the date of the hearing.

We find that, by the discharge of Charles Coatney, the respondent has discriminated in regard to his hire and tenure of employment, thereby discouraging membership in a labor organization, and

thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. *The lock-out*

The complaint alleges that the respondent on May 7, 1937, discriminated in regard to the hire and tenure of employment of all its employees by locking them out and discharging and refusing to reinstate them. The respondent maintains that it closed its Litchfield plant because of the state of its inventory and because of business conditions, and expects to reopen the plant as soon as business conditions warrant.

There was evidence of previous shut-downs which were occasioned by business conditions, the taking of inventory, and other reasons. However, the shut-down of May 7 differs from these other shut-downs in various ways. In previous shut-downs, it was customary to stop the core maker's first, since core making is the initial step in the manufacture of radiators, and to stop the other operations as each succeeding step in the manufacture of radiators was completed. However, on May 7 the various processes of the work had gone forward all day. Closing down as suddenly as the respondent did on May 7, therefore, resulted in leaving quantities of partially completed products on hand, some of which, the cores for example, would be valueless if kept too long, since they deteriorate. The respondent also had on hand large supplies of raw materials. There were orders outstanding for additional quantities of raw materials, which came in after the plant was closed.

The assembly room employees were called in a few times after the shut-down to finish assembling some of the stock on hand. Thereafter the foremen did whatever work was necessary in connection with sending out orders, calling in a few men to assist them from time to time. The office force also continued to work. James Moore worked until the week of June 18.

It appears that other long shut-downs were preceded by reduced schedules. On this occasion the plant had been working at full production for a considerable period before May 7. Moreover, in previous shut-downs the respondent usually gave the employees notice ranging anywhere from a few hours to a few days. On this occasion the employees had no notice. Benedict received the notice after the first shift of employees had left the plant, but deferred posting it until practically everyone had gone home. The men received notice in the course of the week end by word of mouth or through the newspaper. A picnic and a series of softball games had been scheduled for the employees during the coming summer. The respondent denied

any direct connection with these matters. However, there was much testimony to the effect that the respondent participated in and, in fact, took the lead in arranging these recreational activities, even to the extent of foremen selling tickets for the ball games during working hours. The announcement about vacations with pay was made just a few days before the plant closed down. Several employees testified about orders their foremen showed them just before the plant closed down, some of them marked "RUSH RUSH RUSH." However, the respondent claimed that these were shop orders, to complete their stock on certain products, and not customers' orders. Furthermore, a number of orders which came into the Litchfield plant after it was closed were transferred to other plants. The respondent's production manager gave several reasons for the transfer of such orders, namely: That there was a surplus of the products ordered at some other plant or warehouse; that it might be possible to ship the entire order from one point rather than ship part of it from the Litchfield plant and part from another point; that the orders in question might have been sent to the Litchfield plant from one of the branch offices by mistake; or that it was necessary to conserve the stock at Litchfield in order to maintain a balanced inventory there.

A number of employees testified about statements made by their foremen to the effect that the respondent would close down the plant if they organized an outside union. Furthermore, one of the foremen testified that when he asked Benedict about certain new equipment, Benedict remarked, "When we see what our C. I. O. friends do, we may not need it." Whitley went to the plant about 2 weeks after it had closed down to get back the deposit he had made on his goggles. Fellers, when he refunded the deposit, asked Whitley if he would like to go back to work. Whitley replied that he certainly would, whereupon, Whitley testified, "He said, 'you guys ought to have had better sense than to do what you have done.' I said, 'What?' He said, 'Signing up with John L. Lewis.'"

The respondent introduced in evidence quantities of statistics and various kinds of data indicating that the Litchfield plant was closed because of business conditions. Besides the radiation kept at the plants where it is manufactured, the respondent stated that it has about 30 warehouses and about 150 consigned stocks. At the end of 1936 the respondent had about 20 million square feet of radiation. The production estimates sought to bring the inventory figure down to about 12 million at the end of 1937. However, the actual sales for the first 3 months of 1937 were almost 11 per cent below the estimates, so that by the end of March the inventory was up about 4½ million feet. The respondent then decided to cut down production by about one million feet a month. At that time the Bayonne plant, the

Clarence Wooley plant in Buffalo, and the Litchfield plant were making the same type of radiation. The production schedule at the beginning of 1937 was 1,400,000 feet a month for Bayonne, 750,000 feet a month for Clarence Wooley, and 450,000 feet a month for Litchfield. The respondent closed down the Clarence Wooley plant on April 8, 1937, thereby reducing production about 30 per cent. At the end of April the actual sales were still considerably under the estimates, and the inventory continued to increase to such an extent that the respondent claims it became necessary to close down the Litchfield plant, thereby further reducing production by about 25 per cent, making a total decrease of about 45 per cent. The seeming disproportion of these percentages is due to the fact that the respondent was seeking not only to reduce production, but also to reduce its inventory carry-over by about 8 million feet.

The Springfield plant, which does not make the same product as is made at Litchfield, but at which an independent organization was functioning, closed about July 1, 1937, because of excessive inventory. Other plants of the respondent, which make the same kind of radiation as is made at Litchfield, have been closed for years, some of them since about 1929. The only plant making the same kind of radiation that is still in operation is the Bayonne plant, which is the largest of these plants and makes many different kinds of radiation not made at either the Clarence Wooley or the Litchfield plants. Although the respondent claims that a plant cannot profitably be operated at partial capacity, the output at Bayonne has been greatly reduced since the closing of the Clarence Wooley and Litchfield plants. May usually marks the beginning of the seasonal upswing in the building industry, and hence in the radiator industry. However, the fact is that the respondent's business grew steadily and progressively worse during the summer months. The respondent's inventory in the kind of radiation made at Litchfield was, at the end of May 1937, larger than it had been in several years. Moreover, the discrepancies between the estimates and actual sales were wider each succeeding month. This decrease in sales the respondent claims it was able to predict by means of reports it receives from its jobbers, as well as by means of information and forecasts issued by various government departments and private agencies.

There are other unusual features about the May 7 closing which indicate the suddenness with which the respondent determined to close the plant. For example, it appears that neither the treasurer of the respondent, who is in charge of making up the budgets and estimates of sales and production, nor the director of production control, who is in charge of looking after the distribution of products and maintaining balanced inventories at the various stocking points, nor the

secretary of the manufacturing division, whose duties include analyzing cost reports as issued from the plants each month and handling general plant accounting between the plants and the treasurer's department, knew of the closing of the Litchfield plant until a few days after it was closed. The closing of a plant necessitates a revision of some of these estimates and schedules. Therefore, it appears that the treasurer, at least, would be notified ahead of time about the closing of a plant, particularly since he performs his duties in the New York office, from which the order to close the Litchfield plant was issued. In connection with the Clarence Wooley plant, for example, the treasurer testified as follows: "I knew they were going to close the Clarence Wooley plant a day or two before it was closed. I knew that they actually closed it, I have forgotten whether it was the day they closed it or the day afterwards. My president told me first they were going to close it and then that it had been closed." It appears that the order to close the Litchfield plant was transmitted by telephone from Clarence Wooley, chairman of the Board, from New York, to Locke in Detroit, and from Locke to Benedict.

Although the evidence indicates that the respondent would have closed the Litchfield plant for business reasons shortly after May 7, 1937, it clearly appears from all the evidence that the respondent on that date precipitately closed its plant and laid off its employees for the purpose of discouraging membership in the Union and frustrating effective functioning by it as an agency for collective bargaining.

We find that the respondent, by laying off its employees on May 7, 1937, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The refusal to bargain collectively

1. The appropriate unit

The complaint alleged that the production and maintenance employees, exclusive of all foremen, office employees, and salaried employees, employed in the Litchfield plant of the respondent, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The unit set forth in the complaint is the normal industrial unit. The record discloses no reason for deviating from that unit. Accordingly, we find that the production and maintenance employees, exclusive of foremen, office employees, and salaried employees, employed in the Litchfield plant of the respondent, constitute a unit appropriate for the purposes of collective bargaining, and that such unit will insure to the

employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

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

The respondent introduced in evidence a pay roll for a 4-week period ending May 1, 1937, and also a list of its employees with their classifications. The respondent stated in its stipulation on interstate commerce that it employs 268 men at the Litchfield plant when the plant is operating. The pay roll contains 257 names. The classified list contains 275 names. Of these 275 employees, the classifications indicate that about 239 are production and maintenance employees.

At the hearing, the Union submitted its application cards and a typewritten list of its members, with permission to withdraw the cards after the names had been checked. All the parties were given an opportunity to check this list against the cards. The respondent admitted that the names on the list were the same as the names on the cards, but questioned the genuineness of the signatures and that the members were all employees of the respondent.

Puckett and Murphy, president and secretary of the Union, testified that they had personally witnessed the signing of all but about 15 of the cards, and in the absence of any evidence to the contrary, we may assume that the signatures were all genuine. The application cards originally contained the name of a different company. The handwriting changing such name to the name of the respondent was the same on all the cards. Furthermore, Puckett wrote in the dates on the cards when the men signed them, so that the dates on many of the cards were in the same handwriting. This likeness of handwriting on the cards was the basis of the respondent's question as to the genuineness of the signatures. The question as to whether or not all the members of the Union were employees was probably due to the fact that the list of members contains the names of "former" employees, such names being Eskra and Coatney.

We have checked the names on the Union list against the names on the pay roll submitted by the respondent, and find that, with the exception of Eskra, all the members on the list submitted by the Union were employees of the respondent during the pay-roll period ending May 1, 1937.

The list submitted by the Union contains 172 names, and the dates on which the application cards were signed. According to this list, 137 had signed up with the Union up to and including May 6.

The Association also submitted a list of its members. It appears from a comparison of the lists that a number of Union members, influenced by the assurance of the Association organizers that they would get back to work only by signing up with the Association, did,

on or after May 20, sign up with the Association also. However, we have found above that the Association was organized as a result of the unfair labor practices of the respondent. The respondent cannot, by unfair labor practices, operate to change the bargaining representative previously selected as the unfettered choice of the majority of its employees. We cannot, therefore, recognize the change in designation of their bargaining representative by some of the employees as indicating a free expression of choice by those employees. Consequently we give no weight to such change, and hold that the Union remained the representative of the majority.

We find that on May 6, 1937, the majority of the respondent's employees in the Litchfield plant in an appropriate unit had designated the Union as their bargaining agent. Accordingly, we find that on May 6, 1937, and at all times thereafter, the Union, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in the appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

On May 20, 1937, the executive committee of the Union called at the plant. Benedict was out of town. Fellers was present, but was reluctant even to discuss the matter in Benedict's absence. The Union's representatives offered to return to work without any demands if the respondent would consent to an election, but Fellers would give them no answer. Since he told them that Benedict might be back the following day, the Union committee called at the plant again on May 21, but Benedict had not yet returned. The Union committee spoke to Fellers again, and told him this time that Union members would refuse to continue to work, a few at a time, with the foremen doing work ordinarily done by the employees.

On June 7 Benedict and George B. Logan, the respondent's attorney, had a conference with the Board's Acting Regional Director. The Union did not succeed in contacting Benedict until June 9, at a conference arranged by the Board. The Union at that time claimed to represent a majority of the respondent's employees at the Litchfield plant. Benedict, however, had been presented by the Association that afternoon with its claim to represent a majority of the employees. Benedict flatly refused to bargain with the Union committee, stating two reasons for his refusal: (1) that since both the Union and the Association claimed to represent a majority of the employees, the respondent did not know which organization actually represented a majority; and (2) that there was nothing to bargain about in any event since the plant was closed and the respondent,

therefore, had no employees at Litchfield. The first reason is clearly without merit since we have found that the Union represented a majority of the employees on June 9, 1937, and that the Association is a company-dominated organization. It was obviously futile for the Union to offer proof at the conference of its majority in view of the second reason given by the respondent for its refusal. This reason is also without merit since we have found that the respondent discriminatorily laid off its employees. Since their work ceased as a consequence of an unfair labor practice, they were and still are employees for the purposes of the Act. Furthermore, despite the position taken with the Union committee, the respondent considered that the plant was closed only temporarily and would reopen as soon as business conditions warranted, and so stated at the hearing. On June 23, 1937, the respondent sent letters to its employees stating, "If you have a Group Life Insurance Policy, our company has made arrangements so that it can be continued through the present lay-off, provided the monthly premium is paid by you on or before the 25th of each month." The men employed at the Litchfield plant can reasonably expect to return to work when the plant reopens after such a temporary lay-off. Since these individuals have retained their status as employees of the respondent, they had and still have a right to bargain with the respondent concerning the reopening of the plant, the terms and conditions thereof, and other related matters.

We find that the respondent, on June 9, 1937, and thereafter, refused to bargain collectively with the Union as the representative of its employees in respect to rates of pay, wages, hours of work, and other conditions of employment.

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

V. THE REMEDY

We have found that the respondent has dominated and interfered with the formation and administration of the Association and contributed support thereto. By such domination and interference the respondent has prevented the free exercise of its employees' right to self-organization and collective bargaining. In order to restore to the employees the full measure of their rights guaranteed under

the Act, and in order to remedy the respondent's unlawful conduct, we shall order the respondent to refrain from recognizing the Association and to disestablish it as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment.

We have found that the employees of the respondent who were laid off on May 7, 1937, ceased work as a result of the respondent's unfair labor practices. They would therefore normally be entitled to reinstatement with back pay. However, we have also found that the respondent would have closed the plant for business reasons shortly after May 7, 1937, even if the respondent had not indulged in these practices; and at the time of the hearing the plant was still closed down. Since it is impossible to determine from the record precisely how soon after May 7, 1937, the respondent would have closed the plant for business reasons, except that it would have been a short time, we shall not require the respondent to pay the employees back pay during the time the plant was closed down. However, we shall order the respondent, as jobs become available, to offer reinstatement to their former or substantially equivalent positions to the employees laid off on May 7, 1937. Inasmuch as several months have elapsed since the date of the hearing and the respondent may have reopened its plant with employees who were not employed prior to May 7, 1937, such reinstatement shall be effected in the following manner: All employees hired after May 7, 1937, shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If thereupon there is not sufficient employment available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activity, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution for whom no employment is immediately available shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence and shall thereafter, in accordance with such list, be offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work.

If the respondent has not reopened its plant, reinstatement shall be effected by placing the employees who were laid off on May 7, 1937, upon a preferential list, to be offered employment as jobs become

available at the plant in accordance with the principles set forth in the preceding paragraph.

We have found that the respondent discharged Charles Coatney because of his attempts to influence the respondent's employees to join an outside labor organization. Since his discharge constitutes an unfair labor practice, we shall order the respondent to offer him reinstatement in the same manner as the employees who were laid off on May 7, 1937, and to award him back pay for the period from the date of his discharge up to and including May 7, 1937, and for the period from 5 days after the issuance of this order to the date of offer of employment or placement upon the preferential list mentioned in the previous paragraphs, less the amounts, if any, which he has or will have earned during those periods.

Since a majority of the respondent's employees in the unit which we have found appropriate designated the Union as their bargaining agent before the respondent's unfair labor practices caused some of them to change their designation to the Association, we shall order the respondent, upon request, to bargain collectively with the Union as the representative of its employees.

We shall also order the respondent to cease and desist from its unfair labor practices.

The allegations in the complaint with respect to Joe Eskra will be dismissed.

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. Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, and Litchfield Radiator Workers Association are labor organizations, and the Plan of Employees' Representation was a labor organization, within the meaning of Section 2 (5) of the Act.

2. All of the employees at the Litchfield plant laid off by the respondent on May 7, 1937, were, at the time of their lay-off, and at all times thereafter have continued to be, employees of the respondent, within the meaning of Section 2 (3) of the Act.

3. The production and maintenance employees, exclusive of foremen, office employees, and salaried employees, employed at the Litchfield plant of the respondent, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, was on May 6, 1937, and

at all times thereafter has been the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. The respondent, by refusing to bargain collectively with Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, as the exclusive representative of its employees in an appropriate unit, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. The respondent, by dominating and interfering with the formation and administration of the Plan of Employees' Representation and Litchfield Radiator Workers Association, and by contributing support to them, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

7. The respondent, by discriminating in regard to the hire and tenure of employment of the employees laid off on May 7, 1937, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

8. The respondent, by discriminating in regard to the hire and tenure of employment of Charles Coatney and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

9. The respondent, by interfering with, restraining, and coercing 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 activity for the purposes of collective bargaining or other mutual aid and protection as 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.

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

11. The respondent, by discharging Joe Eskra, has not engaged in and is not engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

ORDER

Upon the basis of the foregoing 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, American Radiator Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From refusing to bargain collectively with Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, as the exclusive representative of its production and maintenance employees, exclusive of foremen, office employees, and salaried employees;

(b) From in any manner dominating or interfering with the administration of Litchfield Radiator Workers Association, or with the formation and administration of any other labor organization of its employees, or contributing support to said Association or to any other labor organization of its employees;

(c) From discouraging membership in Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, or any other labor organization of its employees, by discharging, laying off, and refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(d) From in any other manner interfering with, restraining, or coercing 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 and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Refrain from recognizing Litchfield Radiator Workers Association 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 work, or other conditions of employment, and completely disestablish said organization as a representative of its employees;

(b) Offer to the employees who were laid off on May 7, 1937, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges in the manner set forth in the section entitled "Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(c) Make whole the employees ordered to be offered reinstatement for any loss of pay they will have suffered by reason of the respond-

ent's refusal to reinstate them following the issuance of this order by payment to them respectively of a sum equal to that which each would normally have earned as wages during the period from 5 days after the issuance of this order to the date of the offer of employment or placement upon the preferential list required by paragraph (b), less the amount, if any, which each will have earned during that period;

(d) Offer reinstatement to Charles Coatney in the manner provided in paragraph (b);

(e) Make Charles Coatney whole for any loss of pay he has suffered by reason of his discharge by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge up to and including May 7, 1937, and for the period from 5 days after the issuance of this order to the date of offer of employment or placement upon the preferential list required by paragraph (b), less the amounts, if any, which he has or will have earned during those periods;

(f) Upon request, bargain collectively with Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, as the exclusive representative of the production and maintenance employees, exclusive of foremen, office employees, and salaried employees, at its Litchfield, Illinois, plant, in respect to rates of pay, wages, hours of work, or other conditions of employment;

(g) Post immediately notices to its employees in conspicuous places throughout its Litchfield, Illinois, plant and upon its gates, stating (1) that the respondent will cease and desist in the manner set forth in paragraphs 1 (a), (b), (c), and (d) of this order; and (2) that the respondent will refrain from any recognition of Litchfield Radiator Workers Association as a representative of any of its employees and completely disestablishes it as such representative;

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

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

It is further ordered that the allegations of the complaint setting forth the discriminatory discharge of Joe Eskra be, and they hereby are, dismissed.