

In the Matter of SUNSHINE MINING COMPANY and INTERNATIONAL
UNION OF MINE, MILL AND SMELTER WORKERS

Case No. C-364.—Decided June 29, 1938

Silver Mining and Milling Industry—Interference, Restraint, and Coercion: circulation of antiunion petition among employees; conducting election; intimidation; questioning employees regarding union affiliation; during strike: initiating and fostering antistrike sentiment; circulation of antiunion handbills; formation of antiunion committee as strike-breaking agency; sending telegrams to Governor in effort to obtain show of military force; formation and activities of "Vigilantes"; staging antiunion demonstration; precipitating violence—*Company-Dominated Union:* domination of and interference with formation and administration; support; disestablished, as agency for collective bargaining—*Discrimination:* strikers: denial of reinstatement following strike, by placing machinery for reinstatement in hands of hostile employees; discharge of strikers who served on picket line; reinstatement of non-picketing strikers conditioned upon acceptance of denial of reinstatement to strikers who picketed; discharge: charges of, not sustained—*Reinstatement Ordered:* strikers: application for reinstatement not prerequisite to order requiring, in view of employer's unlawful conduct; special forms of: displacement of employees newly hired after commencement of strike; preferential list, to be followed in further reinstatement—*Back Pay:* awarded strikers, from date of discrimination to date of offer of reemployment or placement on preferential list—*Unit Appropriate for Collective Bargaining:* mine and mill employees, excluding supervisory, clerical, and technical employees; organization of business; wage differentials; history of collective bargaining relations in industry—*Representatives:* proof of choice: comparison of pay roll with union membership books and application cards; walking through picket line held not a renunciation of union designation, where strike resulted from employer's unfair labor practice—*Collective Bargaining:* employer's refusal to accord exclusive bargaining rights and refusal to embody understandings, if reached, in a written signed agreement; special forms of remedial orders: enter into written signed agreement for definite term, if understanding is reached; recognition as exclusive representative; negotiation—*Labor Organization:* internal affairs: Board will not interfere in; employer has no right to inquire into—*Strike:* result of employer's unfair labor practices—*Picketing—Violence—Conciliation:* efforts at, by State mediator.

Mr. Daniel Baker and Mr. Paul Nachtman, for the Board.

Mr. James A. Wayne, of Wallace, Idaho, Mr. Therrett Towles, of Spokane, Wash., and Mr. John P. Gray, of Coeur d'Alene, Idaho, for the respondent.

Mr. Charles E. Horning, of Wallace, Idaho, for the Big Creek Industrial Union.

Mr. S. G. Lippman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by International Union of Mine, Mill and Smelter Workers, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a complaint, dated September 3, 1937, against Sunshine Mining Company, located between Kellogg and Wallace, Idaho, 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), (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, the Union, and the Big Creek Industrial Union, herein called the Big Creek Union, a labor organization of the respondent's employees.

The complaint, as amended at the hearing, alleged in substance that the respondent had in many ways intimidated and coerced its employees with the ultimate aim of destroying the Union; that the respondent on June 28, 1937, July 9, 1937, and August 2, 1937; refused to bargain with the Union as the exclusive representative of a majority of its employees in an appropriate unit; that on August 1, 1937, as a direct result of the respondent's refusal to bargain, the Union called a strike and established a picket line; that between August 1 and August 28, 1937, the respondent discharged and refused to reinstate approximately 216 employees, and on July 6, 1937, the respondent discharged Fred Implemens; that by the above discharges and refusals to reinstate the respondent has discriminated in regard to hire and tenure of employment; and that the respondent has interfered with the formation and administration of the Big Creek Union.

On September 8, 1937, the respondent filed its answer to the complaint, denying that it had committed the alleged unfair labor practices. The respondent also denied that it was engaged in interstate commerce within the meaning of the Act, and filed a motion to dismiss the complaint for lack of jurisdiction.

Pursuant to notice, a hearing was held in Wallace, Idaho, from September 13 through October 15, 1937, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Big Creek Union, whose motion to intervene was granted by the Trial Examiner, were represented by counsel and

were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

At the commencement of the hearing the respondent objected to the jurisdiction of the Board. The Trial Examiner overruled the objection. At the close of the Board's case, and at the termination of the hearing, the respondent moved for a dismissal of the complaint on the ground that the Board had failed to show any basis for its jurisdiction, and also on the ground that there was no showing that the respondent had committed any unfair labor practices. The Big Creek Union at the same time moved for dismissal of the allegations of the complaint stating that the Big Creek Union was a company-dominated union. The Trial Examiner denied these motions. These rulings are hereby affirmed. At the close of the hearing, the Trial Examiner granted a motion of counsel for the Board to amend the complaint to conform to the evidence. This ruling is hereby affirmed. During the course of the hearing, the Trial Examiner made various 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 January 8, 1937, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint. He accordingly recommended that the respondent cease and desist from its unfair labor practices; that it bargain with the Union as the exclusive representative of the mine and mill employees; that it offer reinstatement to Fred Implemens and 216 enumerated striking employees; that the respondent offer them and Fred Implemens back pay; and that it disestablish all relations with the Big Creek Union.

Thereafter the respondent and the Big Creek Union filed Exceptions to the Intermediate Report and to various rulings of the Trial Examiner. On February 17, 1938, oral argument on the Exceptions and the record was had before the Board in Washington, D. C., by the respondent and the Union. On April 4, 1938, the Union received leave to file its Exceptions to the Intermediate Report. The Board has reviewed all the Exceptions to the Intermediate Report and objections to the rulings of the Trial Examiner, and finds them to be without merit except as hereinafter indicated.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized under the laws of the State of Washington, and maintains its main office at Yakima, Wash-

ington, and its principal place of business in Kellogg, Shoshone County, Idaho. The respondent owns and operates 14 mining claims known as the Yankee Boy Group and the Yankee Girl Group, which total 223 acres. The respondent is rated as the largest producer of silver in the United States. During 1936, it mined and milled 215,949 dry tons of ore, producing 9,013,113 ounces of silver, and comparatively small but substantial quantities of other metals.

The respondent is engaged in subsurface mining operations.¹ After the mining operations the ore is drawn to the respondent's mill, where it is put through a process known as the flotation process. By this process the gangue material is discarded and the ore reduced into concentrates, so that it contains as nearly as possible only the ore considered recoverable. The concentrates are then hauled about 3½ miles to a railroad siding in Shont² where the concentrates are loaded in metal-lined cars and shipped to the Bunker Hill and Sullivan Smelter Company at Bradley, Shoshone County, Idaho. Upon arrival at Bradley, the concentrates are weighed and sampled by the Bunker Hill Company in the presence of Sunshine representatives. The cars are then hauled to the Bunker Hill mill at Kellogg, Shoshone County, Idaho, for the purpose of remilling, which is a step in the metallurgical treatment of the concentrates. After remilling, the Sunshine concentrates are commingled with the concentrates of other mines and shipped back to the smelter where the concentrates are subjected to roasting and other treatment. The finished bars, or bullion, are stamped with the Bunker Hill trade-mark. The silver bullion is then shipped by the Bunker Hill Company to the mint at San Francisco, California, and the gold bullion to the mint at Seattle, Washington. Copper and lead are sold in the open market. It takes about 1 month from the time the concentrates arrive at the Bunker Hill Company before they are ready to be shipped.³

The relationship existing between the respondent and the Bunker Hill Mining Company is determined by a contract of November 1, 1934, wherein the Bunker Hill Company promises to purchase at a price determined by the contract the total output of the ore and mill concentrates of the respondent for a period of 5 years.⁴ The re-

¹ For a discussion of mining operations substantially similar to that carried on by the respondent, see *Matter of Idaho-Maryland Mines Corporation and International Union of Mine, Mill and Smelter Workers of America*, *Logal* 283, 4 N L R B 784

² A railroad station exclusively used by the respondent.

³ Under the terms of its purchase agreement, the Bunker Hill Company pays to the respondent 75 per cent of the value of the concentrates at the time of sampling and assaying, and 25 per cent 30 days from the date of sampling. The price of silver and gold is fixed by Government decree; as a practical matter therefore, the Bunker Hill Company probably disposes of these metals as soon as possible.

⁴ The contract may be divided into two parts: the first portion wherein the respondent pays to the Bunker Hill Company a treatment charge of \$7.00 a ton, the second portion of the contract deals with the payment by the Bunker Hill Company to the respondent for

spondent maintains that it relinquishes title to the concentrates after delivery to the Bunker Hill Company at Bradley, Idaho, and that the subsequent remilling, treatment, sale, and marketing of the concentrates are entirely in the hands of the Bunker Hill Company. Therefore, it is contended that the Board does not have jurisdiction over the respondent, since its operations are entirely confined to Shoshone County, Idaho.

It is clear that the remilling and smelting is an essential part of the process of producing silver and other metals. Whether the respondent does its own remilling and smelting, or whether it splits the process between itself and the Bunker Hill Company is not determinative of the question of jurisdiction. The arrangements between the respondent and the Bunker Hill Company as to title and the incidents of ownership do not disturb the essential fact that the operations of the respondent and the Bunker Hill Company together constitute a direct and continuous flow of commerce across State lines to the mint and the market.

In 1936, the respondent purchased supplies, equipment, electrical current, machinery, and other materials used in its operations amounting to approximately \$700,000. Approximately 60 per cent of these purchases came from sources outside the State of Idaho.

II. THE ORGANIZATIONS INVOLVED

The International Union of Mine, Mill and Smelter Workers is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership the mine and mill employees of the respondent.

The Big Creek Industrial Union is an incorporated, unaffiliated labor organization, admitting to its membership all the respondent's

the metallic content of the concentrates. The section on silver provides: "The price to be paid for the silver contents, as determined above, shall be the price established by the United States Government under the proclamation of the President, dated December 21, 1933, for the American mined silver, which is Sixty-four and one-half ($64\frac{1}{2}$ ¢) cents per ounce, less mintage charges and other expenses involved, which amount to about Three-eighths ($\frac{3}{8}$ ¢) of a cent per ounce, thus making the net price paid for silver Sixty-four and one-eighth ($64\frac{1}{8}$ ¢) cents per ounce. In case at any time the Government should establish some other price for American mined silver, either above or below the present price, then the price paid for silver under this contract will be the Mint price so established, less Three-eighths ($\frac{3}{8}$ ¢) of a cent per ounce, as above indicated. No payment shall be made for silver when the assay of the product is under one (1) ounce per ton. In the event that during the life of this contract the Government should cease buying American mined silver at a fixed price, so that the Buyer will be forced to sell its silver in the open market, then the price paid for silver under this contract shall be the official New York price for silver as quoted by Handy & Harman, of New York, and published in the weekly market-news service (Metal and Mineral Markets) of the Engineering and Mining Journal, New York. If the Handy and Harman quotation, as above, is used, then the price shall be that quoted by them on the date of final settlement of the lot of product in question. Should, however, said settlement date fall upon a legal holiday, or one upon which no silver quotation is issued, as above described, the next preceding silver quotation shall be used."

employees, including supervisory employees, who are not given any voting rights.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion*

In January 1937 the Union launched an organizing campaign in the Coeur d'Alene mining area and was successful in organizing a substantial number of employees in the district. On May 13, 1937, it called a labor holiday at the Morning and Page mines. The labor holiday ended about June 7, 1937, when the Federal Mining Company, which owns the above-mentioned mines, signed a contract with the Union. Shortly thereafter a petition was circulated and a vote conducted at the Hecla and Star mines, also located in the Coeur d'Alene mining area. The petition contained language to the effect that the employees were opposed to outside organizers and that if "a strike or labor holiday would be called without first obtaining the consent of a majority of all the employees . . . the employees of said mines will not recognize such strike or labor holiday and will not recognize or respect any picket line which may be established. . . ."

Under the guise of an employee activity, a petition substantially similar in wording to the Hecla and Star petitions was circulated through the respondent's mine on June 23 and 24, 1937. The petition, in fact, was formulated by a group of employees who, with the permission of R. D. Leisk, the respondent's general manager, met and consulted in reference to the petition in the respondent's board room. Although denied by Leisk, it is clear from the evidence as a whole that he and A. L. Graham, general foreman, were consulted in regard to the petition and gave their permission for its circulation. The petition itself was drawn up by Bud Batzle, a supervisory mill employee, and by Pete Johnson, an engineer. The evidence is uncontradicted that foremen actively participated in the circulation of the petition throughout the mine; that foremen read the petition out loud to groups of employees; and that foremen went through the mine on company time urging employees to read the petition and, in some instances, urged and persuaded employees to sign the petition. There can be no doubt that the respondent was responsible for the petition and its circulation.⁵

On the afternoon of June 24, 1937, the same employees who arranged for the circulation of the petition posted notices in conspicu-

⁵ Fred Implemens, a shift boss, testified that on June 24, he overheard a conversation between Graham and employees who participated in the formation and circulation of the petition, in which Graham said, "This is not the time to back out. There is not any need of getting cold feet. We have got to go through with it. It is started and we have got to go through with it."

ous places throughout the mine announcing a vote by secret ballot.⁶ The employees were asked to vote on the following proposition: "Resolved that we, as Sunshine employees, want no outside interference in our relations with the Sunshine Mining Company at this time.

"That we will not respect any labor holiday, strike, or picket line unless a majority of all the Sunshine employees vote for it by a secret ballot."

The respondent denies any responsibility for the conduct of the secret ballot. However, the evidence is clear that the ballot was drafted by the same employees who circulated the petition; that the voting booths were made at the respondent's mill and at its expense; that the respondents' foremen were active in urging employees to vote; that Graham was present throughout the voting, accompanied by the respondent's timekeeper, who checked off employees as they voted. Unquestionably the respondent was responsible for the ballot and by its conduct influenced the result of the ballot. Indeed there is evidence that Lawrence Benton, a foreman, stated to an employee that "the mining company would never have allowed this vote unless they were pretty certain of what the result of this vote would be."

The extent and the manner of interference, restraint, and coercion practiced by the respondent on its employees during the period of the petition and the vote is illustrated by the representative testimony of the following employees:

James Boyd testified that Lawrence Benton, a foreman, asked him if he had signed the petition. Boyd replied that he was a union man and could not sign the petition. Benton then said that he did not want to see any strike occur, but that if there was a strike the men would receive no advance in wages and instead the wages would be cut to the level of other mines. Boyd also testified that Benton stated that "he had belonged to a union or two and that he had never seen any good come from one."

Herbert Busch testified that Graham asked him to look at the petition for a few minutes and asked him what he would do in the event of a strike. Busch replied that he would go out on the picket line. Graham then said it would be "poison" to go on strike. He also said that there was no use in going out on strike because the respondent could replace the strikers in 48 hours with men from Arizona.⁷

⁶ The notice read "Notice to all employees. There will be a secret ballot on the labor question at the Gunn Store from 3:00 to 5:00 P. M. Thursday, June 24, 1937—(today).

"Everyone please turn out as we want a 100 per cent vote.

"EMPLOYEES PROTECTIVE ASSOCIATION."

⁷ Graham denies making this statement, but states that Busch himself made such a statement.

When Busch replied that he would have trouble with the National Labor Relations Board, Graham said, "I am too wise for those fellows. I would not send for those men (from Arizona) myself. I would . . . get an outside company to bring these men in." In addition, Graham said during the course of the conversation, "Why don't you quit the C. I. O.? They are a bunch of radicals. You come along with me. Why don't you fellows form a great big union all our own. We will have a happy family right here in the Sunshine Mining Company."

Lee Windsor testified that when he came to work on the morning of June 24, 1937, he saw Benton passing the petition around. Windsor asked Benton what it was. Benton replied, "You might just as well go to work and sign it." "But," he said, "you don't have to sign it." Windsor signed the petition.

Verne E. McMahon testified that a shift boss asked him whether he read the petition. McMahon replied that he had not read it. The shift boss replied, "Well all the rest of them have signed it but two of you." McMahon then decided to sign the petition.

George Thompson testified that a shift boss asked him if he was a member of the C. I. O. Thompson answered in the affirmative. The shift boss then replied, "That's too bad. You will have to vote anyway." The shift boss took the opportunity to comment on the C. I. O., calling them a "bunch of communists."

We find that the respondent by the above conduct, including the circulation of the petition, the conducting of the vote, and the intimidation of its employees by its supervisors, interfered with, restrained and coerced its employees within the meaning of Section 8 (1) of the Act.

B. The refusal to bargain collectively

1. The appropriate unit

It is alleged in the complaint that the respondent's mine and mill employees, excluding supervisory, clerical, and technical employees, constitute a unit appropriate for the purposes of collective bargaining. The respondent urged that the appropriate bargaining unit should include office and technical employees.

It is clear from the discussion in Section I above concerning the respondent's business that the operations of the mine and mill are closely integrated. The mine and mill employees are paid on a daily or shift basis, while office and technical employees are paid on a regular salary basis. The respondent itself recognizes that a distinction exists between the mill and mine employees and the clerical and technical employees by carrying them on separate pay rolls. The unit

advocated by the Union and alleged in the complaint as appropriate is one which has prevailed in the industry for many years, and which we have found under similar circumstances to be appropriate.⁸ The evidence does not disclose any reason for departing from the unit claimed by the Union.

We find that the respondent's mine and mill employees, excluding supervisory, clerical, and technical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

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

It is alleged in the complaint that the respondent refused to bargain with the Union on June 28, 1937, on July 9, 1937, and on August 2, 1937. It is therefore necessary to determine whether the Union represented a majority of the employees in the appropriate unit on these respective dates.

We agree with the Trial Examiner that the record is not clear as to the number of employees employed by the respondent in the appropriate unit. However, the following analysis is supported by the weight of the evidence:

June 28, 1937—Total pay roll in the appropriate unit.....	578
Deductions:	
Supervisory employees.....	¹ 14
Boy Scouts	² 8
Men who have drawn their time and were not employed on June 28.....	³ 28
Men who have drawn their time and never returned....	⁴ 7
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Total deductions	57
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Total in appropriate unit.....	521

¹ This is respondent's own estimate.

² The Boy Scouts were engaged in clearing away brush during the summer months. The number indicated above is the respondent's own estimate.

³ The respondent and the Trial Examiner agree with this figure.

⁴ Both the respondent and the Trial Examiner agree with this figure.

⁸ See *Matter of Carlisle Lumber Company and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington and Associated Employees of Onalaska, Inc., Intervener*, 2 N. L. R. B. 248; *Matter of Tennessee Copper Company and A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768, *Matter of Tennessee-Schuykill Corporation and International Union of Mine, Mill and Smelter Workers, Local No. 384*, 5 N. L. R. B. 65. For exclusion of technical employees from unit see *Matter of Chrysler Corporation and Society of Designing Engineers*, 1 N. L. R. B. 164, *Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159; *Matter of Allis-Chalmers Manufacturing Company and United Electrical, Radio and Machine Workers of America, Local No. 613*, 4 N. L. R. B. 824.

The Union's majority was proved at the hearing by a check of its membership books against the respondent's pay roll. This check discloses that on June 28, 1937, the Union represented approximately 300 employees in the appropriate unit.⁹ Between the dates of June 28 and July 9, 1937, the respondent's total pay roll remained relatively stationary while the Union increased its membership to approximately 306 members and applicants. From July 9, 1937, to July 31, 1937, the number of the respondent's employees fell while the Union increased its representative strength to approximately 315 members and applicants.

Upon the respondent's request, the Union application cards were brought to the hearing and the respondent was given an opportunity to check their authenticity and to examine witnesses in reference to them. The respondent attempted to prove that certain application cards were deficient. The respondent does not raise this question in its Exceptions to the Intermediate Report. Nevertheless, it is clear from an examination of the application cards in question that the employees clearly indicated their intent to apply for membership in the Union. This act, we have held, indicates their desire to have the Union represent them as their collective bargaining agency.¹⁰

The respondent likewise attempted to prove that other employees, although they signed application cards and paid initiation fees, did so for the sole purpose of voting against the strike, and that still other employees were unaware of the effect of signing application cards, and that none of these employees intended to designate the Union as their representative for collective bargaining. It is important to note at the outset that in his Intermediate Report the Trial Examiner doubted the credibility of the employees who testified along these lines, and found that the fear of loss of employment caused by the respondent's antiunion campaign¹¹ and the presence of the respondent's supervisors at the hearing caused the employees so to testify. In any event, it is not our province to go into the mental processes of these employees who signed application cards. It is uncontradicted that these employees knew that they were applying for membership in the Union. By signing applications for mem-

⁹ In addition, lists of Union members and applicants and the respondent's pay roll were introduced into evidence. A comparison of these lists and the respondent's pay roll verifies the fact that the Union represented approximately 300 of the respondent's employees in the appropriate unit on June 28, 1937.

¹⁰ *Matter of Hood Rubber Company, Inc (Arrow Battery Products Division)* and *International Union, United Automobile Workers of America*, 5 N L R B. 165; *Matter of Clifford M DeKay, doing business under the trade name and style of D & H Motor Freight Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*, 2 N. L. R. B. 231, *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No 442*, 5 N L R B 509

¹¹ This campaign is hereinafter discussed

bership they designated the Union as their collective bargaining representative.

The respondent, in its Exceptions, makes the point that on August 2, 1937, the first day of the strike, many employees who had previously designated the Union as their collective bargaining agency revoked the agency when they walked through the picket line. The Trial Examiner found that these witnesses are not to be credited for the same reason that the testimony of the witnesses above-mentioned is not to be credited. In any event, however, the respondent by its refusal to accord the Union recognition forced it to resort to a strike, thereby causing it to alienate a number of its members. To recognize these renunciations, therefore, as defections in the Union's majority status on August 2, 1937, would be to permit the respondent to use the fruits of its unfair labor practices in refusing to bargain on June 28 and July 9, 1937, as a defense to its refusal to bargain on August 2, 1937. Thus the respondent, by two evasions of the Act, would be permitted to build up a defense for a third evasion of the Act. This, we have held, cannot be done.¹²

We find that on June 28, July 9, and August 2, 1937, and at all times thereafter the Union represented a majority of the respondent's employees in the appropriate unit.

3. The refusal to bargain

On June 26, 1937, the respondent posted on its bulletin board a notice¹³ and a document purporting to be an agreement. This so-called agreement was not the result of collective bargaining, but was in reality the respondent's voluntary statement of its labor policy. On June 28, 1937, a meeting took place between the respondent and the Union. The respondent was represented by Leisk and members of its supervisory staff; and the Union was represented by Thomas F. McGuire, its business agent and organizer, and other Union officials and employees who were members of the Union. McGuire stated that the Union represented a majority of the respondent's employees and submitted two copies of a proposed agreement. Leisk stated that

¹² *Matter of Somerset Shoe Company and United Shoe Workers of America*, 5 N L R B 486; *Matter of Bradford Dyeing Association (U S A) (a Corporation) and Textile Workers' Organizing Committee of the C I O*, 4 N L R B 604.

¹³ "TO ALL EMPLOYEES: Persistent propaganda has been circulated during the last few days to the effect that while present relations with the company were satisfactory they were merely the personal policies of the present management and not of the company. That if the management should change, there was no assurance that these policies would be continued and that therefore the employees of this company should have a *signed agreement* from the company.

Therefore in order to definitely settle this question I am posting herewith under authority of a resolution by the Board of Directors a *signed agreement* by the Sunshine Mining Company addressed to all of its employees. Everyone of the points covered in this agreement is either now in effect or has been previously agreed to in conferences with interested employees SUNSHINE MINING COMPANY, R. D. LEISK, GENERAL MANAGER "

he doubted the Union represented a majority of the respondent's employees. McGuire then offered to submit the question to the Board for the purpose of making a check. Leisk refused to do this, stating in effect that the Board did not have any jurisdiction over the respondent.

Leisk read the agreement proposed by the Union, but refused to discuss paragraphs 2, 3, and 4, declaring that the posted statement of policy set forth the respondent's position in regard to these paragraphs. The balance of the proposed agreement did not arouse any controversy. Paragraph 2 of the agreement gave the Union exclusive bargaining rights; paragraph 3 provided for a closed shop; paragraph 4 provided for a check-off arrangement. In these respects the statement of policy declared that the respondent would bargain collectively with groups of employees only to the extent of their membership and that the respondent would continue to operate on an open-shop basis. There was no reference made to any check-off in the statement of policy. At the conclusion of the negotiations, Leisk stated that he had gone to the limit of his authority in signing the statement of policy and he was certain that the board of directors would not enter into any signed agreement with the Union. However, he promised to submit the proposed written agreement to the board of directors, who would meet on July 6, 1937.

On July 9, 1937, McGuire received a letter from the respondent, stating:

Your proposal made on June 28, 1937, of a signed agreement * * * was referred * * * to the Board of Directors * * *. After thorough consideration and discussion, the Board decided that it is not to the best interest of either the employees or the Company to enter into this form of an agreement. * * * the fair and more satisfactory method is to follow the present bulletin board announcements of Company policy in these matters after an understanding has been reached through open discussion with representatives of both members of your organization and nonmembers.

On the afternoon of July 9, 1937, the Union bargaining committee met with the management. The Union asked the respondent to reconsider the position it had taken in its letter, and Leisk is alleged to have replied that if 95 per cent of the respondent's employees were members of the Union, the respondent would not recognize it as the sole bargaining agency, and that the letter clearly stated the respondent's position in the matter. Leisk denied this, but claims that he said that if the Union represented 95 per cent of its employees, the respondent would not enter into a written contract with the Union. Leisk admitted, however, that he refused to deal with

the Union as the exclusive bargaining representative, but would only deal with it to the extent of its membership.

On July 25, 1937, the Union authorized a strike vote, which was held on July 31, 1937. The results of the strike vote were tabulated at a union meeting held on August 1, 1937, where it was announced that the strike vote had carried, and plans were made for the conduct of the strike. The Union established a picket line at the crossroads about 3 miles from the respondent's mine. Later, the pickets moved up to the respondent's mine.

The respondent attempted to prove that the strike-vote count was conducted in a fraudulent manner. There is no such evidence in the record. In any event, the conduct of the strike vote is a matter only of concern to the Union and its members, and it is not the province of the respondent or the Board to delve into such internal affairs of the Union.¹⁴

On August 2, 1937, the Union bargaining committee and the management again met. McGuire stated that the strike had been called, and the mine was being picketed, but that the Union was ready to work out a settlement. After a short discussion, Leisk stated that the respondent's position was unchanged, and that McGuire had gotten the men out of work and it was up to him to get them back to work. The meeting lasted but a few minutes.

We find that the respondent, by its refusal to accord the Union exclusive bargaining rights and by its refusal to embody understandings, if reached, in a written signed agreement, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate bargaining unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the strike of August 2, 1937, was caused by the respondent's unlawful refusal to bargain.

C. The strike and events subsequent thereto

The Committee of 356 appeared on the scene about July 30, 1937, as an organization of employees who were opposed to any strike. Cliff Higgins, an employee, was primarily responsible for the formation of this organization. Higgins worked only at intervals. His pay was assigned, yet he appeared well-dressed, owned an automobile, boasted that he made as much money whether he worked or not, and in one instance denied the right of his shift boss to dis-

¹⁴ *Matter of Titan Metal Manufacturing Company and Federal Labor Union No. 19981*, 5 N. L. R. B. 577; *Matter of Aluminum Company of America and Aluminum Workers Union No. 19104*, 1 N. L. R. B. 530. Cf. *Matter of Biles-Coleman Lumber Company and Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679.

charge him. The contention that Higgins was a company spy strengthened by evidence disclosing that the Thiel Detective Agency solicited men to work for the respondent as under-cover agents.

The first meeting of the Committee of 356 was held in Hand's Boarding House, attended by about 150 employees. The boarding house, which is on the respondent's property, is under lease to Hand. Higgins acted as temporary chairman and addressed the employees. An election was then held, and Kenneth Best, an employee, was elected as chairman by acclamation. He immediately appointed Higgins and Kenneth Kulm, an employee, as his assistants.

On July 31, 1937, a notice was posted on the respondent's bulletin board, stating: "All Sunshine employees interested in their jobs are called to meeting at the boarding house, Sunday evening at 7:30—Kenneth Best, Chairman." Benton, a foreman, ordered an employee to guard the notice, saying: "If that ain't here in the morning, you will not be here. I don't give a damn if you don't do anything else, just sit down and watch this notice." On August 1, 1937, pursuant to this notice, the Committee of 356 held its second meeting at the boarding house. It was estimated that about 200 automobiles were parked outside the boarding house. At this meeting, it was announced that the Union strike vote had carried. Graham appeared and addressed the employees and made arrangements for the transportation of employees through the picket line. After the meeting, Graham and members of the Committee of 356 went over to the sheriff's office and requested him to deputize about 18 employees. The sheriff consented, but the next day changed his mind.

On the morning of August 2, 1937, the first day of the strike, the respondent delegated to the Committee of 356 the task of getting the employees through the picket line, the policing of the mine, and the conduct of matters pertaining to the strike. Best, Kulm, and Higgins were given the use of the respondent's office facilities and the use of an automobile. About August 3, 1937, a person known only as "Jones" appeared and assisted the Committee of 356 in its publicity campaign. It appears that "Jones" was an expert publicity man from Seattle, Washington. The Committee of 356 did not hire or pay him, and Best testified that he did not know who paid him. With the aid of "Jones," the Committee of 356 carried on a publicity campaign designed to influence public opinion and break down the morale of the strikers and pickets. The Committee of 356 had no treasury or income; it is therefore a fair inference that the respondent financed the publicity campaign and employed and paid "Jones" for his services.

On August 4, 1937, over 200 telegrams were sent to the Governor of Idaho, requesting the militia to protect the employees who wanted

to work, against the strikers who were said to be getting out of hand. Although the pickets may have addressed the working employees in obscene language, there was no evidence of any violence on the part of the pickets or that the strikers were getting out of hand.

The telegrams were brought to the local telegraph offices in bunches by an unidentified person who paid for them in cash. In many instances, the signatures appeared at the head of the telegram and were written in a handwriting different from that used in the body. The employees who signed the telegrams did not pay for them, but turned them over to the respondent. It is a reasonable inference that the respondent paid for and sent these telegrams in an effort to obtain a show of military force in order to break the strike.

Soon after the strike was called, John Kitkoski, the respondent's machine shop supervisor, organized an organization known as the Vigilantes. Kitkoski frankly admits that the purpose of the Vigilantes was to "break the C. I. O." and to "take care of any radical organizing the mines." About the same time, leading members of the community formed a Citizens Committee, staunchly pro-respondent, whose purpose was to remove the sheriff from office and to supplant him with somebody who would police the strike in conformity with the respondent's desires.

The respondent through the Committee of 356, and Kitkoski and his Vigilantes, arranged for a mass demonstration against the strikers and pickets. Kitkoski had Vigilante buttons made and arranged for the circulation of highly inflammatory handbills, stating that "Vigilantes are ready to take care of any radical organizers . . . ropes are ready." The Committee of 356 circulated handbills stating, "that about 1500 miners would assemble Sunday morning at the Sunshine Mine and that the men would line up in military formation. McGuire and his men would do the same. . . . Leave your women and firearms at home." About 10,000 of such handbills were distributed and undoubtedly were intended to precipitate violence and intimidate the strikers and pickets.

About August 5, 1937, the Governor of Idaho sent J. L. Balderson to the Coeur d'Alene district for the purpose of mediating the strike. On August 7, 1937, Balderson met with McGuire and the Union committee and stated that the strike was lost. Balderson then referred to the handbills saying that the demonstration had gone too far and could not be stopped. He said that the only thing to be done was to withdraw the picket line and for McGuire and G. A. Peoples, a union official, to leave the district. McGuire explained the situation to the pickets who listened in silence. Balderson then addressed the pickets, stating that he had set up a Citizens Committee who would take care of their reinstatement, but the organizers would

have to leave the district. He called for a vote which was inconclusive. He then told them to go home. His final words to the pickets were: "Get to hell out of here and go to your homes." The morale of the pickets was evidently broken and the strike ended. It does not appear that the Citizens Committee made any attempt to secure the reinstatement of the strikers.

In response to the handbills, a crowd assembled at the Sunshine Mine on August 8, 1937. The strike having ended, the respondent was forced to change its plans in reference to the demonstration and announced in its place a victory celebration. Leisk and Graham addressed the crowd of approximately 2,000 people and Leisk announced a 1-day holiday with pay for the respondent's employees. In addition, he stated that this day would mark the end of labor racketeering in the Coeur d'Alene. The whistles of mines in the district blew steadily for about 10 minutes or more. The respondent furnished beer tickets, good in any saloon, which were later redeemed by Best, Kulm, and Higgins with money furnished by the respondent. The assembled crowd then got into busses and automobiles and paraded noisily through nearby towns. One group paraded to the C. I. O. headquarters and carried away its sign. Another group of about 400, headed by Beckerleg, a shift boss, attempted to lynch Ed Baxter, an employee, who was unusually active on the picket line. Baxter, however, escaped and left the district. The night before, W. A. Heatherly, an employee active on the picket line, was threatened and intimidated by a group of Vigilantes who warned him to leave the district. Heatherly left with his family, but later returned. Fred Kenny, an employee, testified that on the night of August 7, 1937, there was a lot of drinking and carousing and the wives of two foremen threw rocks against his house, calling out, "come on out you old C. I. O. while we get at you," and that if he was not out of the house by the next morning, the house would be burned.

There can be no doubt that these acts of intimidation and violence were precipitated by the circulation of the handbills and the respondent's demonstration, which was of a definite antiunion character designed to intimidate union employees and discourage unionization.

By all of the above acts, including the formation of the Committee of 356 and its antiunion activities, the sending of the telegrams to the Governor of Idaho, the formation and activities of the Vigilantes and by staging the antiunion demonstration, the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

D. Discrimination

Subsequent to the discontinuance of the picket line approximately 60 strikers applied for reinstatement, a majority of them on August 18, 1937. The respondent took the position that its loyal employees would not work with the pickets who had called them obscene names and that it would be dangerous to work with the pickets. Many loyal employees testified that they were opposed to working with the strikers.

The respondent referred the strikers who applied for reinstatement to the Committee of 356, to which the respondent had delegated authority to pass upon the reinstatement of strikers, for an interview to determine whether they were acceptable to the respondent's loyal employees. If the applicant for reinstatement had served on the picket line the Committee of 356 denied him reinstatement; if the applicant had been a neutral employee,¹⁵ he was given a clearance slip and then reinstated by Graham. Practically no picket applied to the Committee of 356 for reinstatement since it was well known that the respondent had delegated to the Committee of 356 power to pass on the reinstatement of strikers. During the strike the Committee of 356 had placed an advertisement in local newspapers setting a dead-line for "neutral" strikers to return to work.

We have frequently held that employees who go on strike as a result of an unfair labor practice are entitled to reinstatement upon their application. The respondent cannot avoid this obligation because of friction between its striking and loyal employees engendered by the strike. It should be noted that the strike was caused by the respondent's unfair labor practices in refusing to bargain, and that the respondent, by its unlawful conduct during the strike, sought to terrorize the strikers and encouraged violence. Under these circumstances, the respondent is responsible, in a large measure, for the antagonism which exists between its employees and should not be permitted to take advantage of a situation which it created and fostered. Moreover, there was no evidence that the pickets were guilty of any violence during the tense days of the strike, and thus, there was no reason for assuming that violence would have followed the reinstatement of the pickets.

Since the striking employees ceased work as a consequence of the respondent's unfair labor practices, they were still employees of the respondent for the purposes of the Act. Under the Act the respondent was under a duty not to discriminate in regard to their hire and tenure of employment to discourage membership in the Union. Fur-

¹⁵ Employees who stayed away from work during the strike but did not participate in the picketing were referred to as "neutral" employees

ther, as pointed out above, the employees, since they went out on strike because of an unfair labor practice, were entitled to reinstatement upon application. By delegating to the Committee of 356 authority to pass on the reinstatement of the striking employees and by permitting that Committee to exclude large numbers of striking employees who applied for reinstatement, the respondent set up machinery designed and operated to deny reinstatement to striking employees because of their Union activities, thereby discouraging membership in the Union and tending to destroy it. In so doing, the respondent unlawfully discriminated in regard to their hire and tenure of employment. The intended and actual effect of the respondent's unlawful conduct was the discharge of the striking employees who served on the picket line. Under these circumstances such employees were not required to make application for reinstatement.¹⁶

The respondent's unlawful conduct was also a discrimination in regard to the hire and tenure of employment and the terms and conditions of employment of "neutral" strikers. The machinery set up by the respondent to handle the reinstatement of strikers conditioned the reinstatement of "neutral" strikers upon the denial of reinstatement to the active strikers. This interposed a discriminatory condition to the employment of the "neutral" strikers, namely, that they could return to work only upon their acceptance of the denial of reinstatement and the discharge of the active strikers, in effect, the destruction of the Union. Under these circumstances the "neutral" strikers were not required to make application for reinstatement.¹⁷

A number of the striking employees left the community prior to August 18, 1937, the date on which the respondent placed in operation the machinery of discrimination against the striking employees. There is nothing in the record to show that these employees lost contact with the community and were not fully informed of the developments in the situation at the respondent's mine. Moreover, a number of these employees left as a result of the respondent's unfair labor practices and acts of terrorization. Under all the circumstances we are of the opinion that these employees stand in the same position as the employees who remained in the community.

We find that the respondent, on August 18, 1937, and thereafter discriminated against all its striking employees in regard to their hire and tenure of employment and terms and conditions of employment to discourage membership in the Union.

¹⁶ See *Matter of Carlisle Lumber Company*, 2 N. L. R. B. 248, affirmed 94 F. (2d) 138, cert den, May 23, 1938.

¹⁷ *Supra*, note 16

E. The discharge of Fred Implemens

Implemens was a shift boss on the "Graveyard Shift"¹⁸ who did not share the respondent's opposition to the Union. This was known to the respondent, for on one occasion, early in June, Implemens remarked to Beckerleg, a shift boss, that "the time had arrived for organized labor to be recognized." When the respondent circulated the petition throughout the mine, Implemens was instructed to see that every man on his shift read the petition. The next morning in the presence of a group of employees he was asked by Benton, a foreman, how many employees had signed the petition on his shift. Implemens answered that no one had signed the petition. Benton immediately put his finger to his mouth indicating that Implemens had said the wrong thing. Implemens testified that prior to the circulation of the petition the foremen were friendly to him, but thereafter they became unfriendly.

On June 26, 1937, a copy of the statement of policy posted by the respondent disappeared from the bulletin board. Graham accused employees on Implemens' shift of destroying it and asked Implemens to find out which employees were responsible for this act, because he did not want to discharge the entire crew. Implemens asserted it would be difficult to obtain the information and in effect refused to cooperate. As Implemens came off the shift on the morning of July 4, 1937, he was handed a slip of paper which read, "Fred, from now on we will discontinue the graveyard shift. Tell all the men to go back on their shifts * * *." Nothing was said to him when he handed the keys of the locker room to Charlie Angle, a foreman. Implemens felt that the respondent, by discontinuing the graveyard shift and by its failure to give him any specific instructions, discharged him. On cross-examination Implemens admitted, however, that he was not discharged, but that he called for his "time" because he felt that he "was not wanted."

The respondent contends that Implemens was not discharged, but that he voluntarily quit. The evidence indicates that Implemens aroused the respondent's displeasure by his union sympathies. There is, however, no convincing evidence that Implemens was discharged; it appears rather that he voluntarily quit. Accordingly, we find that the respondent did not discriminatorily discharge Fred Implemens within the meaning of the Act and the complaint in this respect will be dismissed.

F. The Big Creek Industrial Union

The petition which the respondent circulated on June 23 and 24, 1937, attempted to set up an Employees Protection Association.¹⁹

¹⁸ A shift that operated between the hours of 11:00 p. m. and 7:00 a. m. the next morning, being primarily engaged in repair work.

¹⁹ See subsection A above.

The objection of the employees to signing such a petition, however, forced the respondent to abandon this venture. Thereafter, as we have above noted, the respondent formed, assisted, and sponsored the Committee of 356, which continued to function until about September 1, 1937.

About August 16, 1937, Best, the chairman of the Committee of 356, saw Charles E. Horning, an attorney who had incorporated the Burke Industrial Union.²⁰ Best entered into arrangements with Horning for the incorporation of a similar organization for the respondent's employees. Best, Kulm, and Higgins, the representatives of the Committee of 356, and two other employees served as the incorporators of this organization, known as the Big Creek Industrial Union. On August 22, 1937, Best posted a notice on the respondent's bulletin board announcing a meeting. This meeting was held in the schoolhouse and was attended by supervisory employees.

Best denies that this meeting had any reference to the Big Creek Union, but states that it was called for the purpose of reviewing the accomplishments of the Committee of 356 during the strike. It is undisputed, however, that Best, in answer to a question, discussed the incorporation of an independent union. Under all the circumstances surrounding this meeting, we agree with the Trial Examiner that this meeting was called to further the cause of the Big Creek Union.

The incorporators met in Horning's office and chose a Board of Directors for the Big Creek Union. One of the directors testified that the principal purpose of the Big Creek Union was to "combat the foreign invasion of the C. I. O. and to bargain collectively." However, the Big Creek Union has not attempted to bargain collectively, although it purports to represent a substantial number of the respondent's employees.

The Big Creek Union admits into social membership supervisory employees who are eligible for sick and death benefits, but who are not allowed to attend business meetings.

It is clear that the chairman of the Committee of 356 and his assistants organized the Big Creek Union. We have already shown that the Committee of 356 was formed and utilized by the respondent as a strike-breaking agency. The conclusion is therefore plain that the respondent, acting through the Committee of 356, formed the Big Creek Union to combat the Union and that in effect the Big Creek Union is nothing more than the incorporated version of the Committee of 356.

We find that the respondent has dominated and interfered with the formation and administration of the Big Creek Industrial Union and has contributed support to it.

²⁰ The Burke Industrial Union is an unaffiliated union at one of the respondent's neighboring mines.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

THE REMEDY

We have found that respondent has committed certain unfair labor practices. We shall, therefore, order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and restore, as nearly as possible, the situation that existed prior to the commission of the unfair labor practices.

The respondent has unlawfully formed and supported the Big Creek Union. We shall order the respondent to disestablish it as the representative of any of the respondent's employees. We shall also order the respondent to bargain collectively with the Union as the exclusive representative of its mine and mill employees, excluding supervisory, clerical and technical employees and, if understandings are reached, to embody such understandings in a written signed agreement, if requested to do so by the Union.

We have found that on August 18, 1937, the respondent discriminated against all its striking employees in regard to their hire and tenure and terms and conditions of employment. We shall, therefore, order the respondent to offer reinstatement to their former or substantially equivalent positions to all its striking employees and to give them back pay. Such reinstatement shall be effected in the following manner:

All employees hired after the commencement of the strike shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, even after this is done, there is not, by reason of a reduction in the force of employees needed, sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees, in accordance with respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, 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 in substantially equivalent positions.

as such employment becomes available and before other persons are hired for such work.

Back pay to the employees ordered to be offered reinstatement shall be computed in the following manner: A sum equal to that which each would normally earn as wages during the period from August 18, 1937, the date of the discrimination, to the date of the offer of reemployment or placement upon a preferential list mentioned in the preceding paragraph, less the amount, if any, which each has earned during that period.

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

CONCLUSIONS OF LAW

1. The International Union of Mine, Mill and Smelter Workers and the Big Creek Industrial Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. All the employees who went out on strike on August 2, 1937, were employees on August 18, 1937, the date of the respondent's discrimination against them.

3. The mine and mill employees of the respondent, excluding clerical, supervisory, and technical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. The International Union of Mine, Mill and Smelter Workers was on June 28, 1937, July 9, 1937, and August 2, 1937, and at all times thereafter has been, the exclusive representative of all such employees for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on June 28, 1937, July 9, 1937, and August 2, 1937, to bargain collectively with the International Union of Mine, Mill and Smelter Workers as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By discriminating in regard to hire and tenure of employment and terms and conditions of employment in order to discourage membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

7. By dominating and interfering with the formation and administration of the Big Creek Industrial Union and by contributing financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

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

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

10. The respondent has not engaged in an unfair labor practice within the meaning of Section 8 (3) of the Act in so far as concerns the cessation of the employment of Fred Implemens.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Sunshine Mining Company, and its officers, agents, successors and assigns shall:

1. Cease and desist:

(a) From discouraging membership in the International Union of Mine, Mill and Smelter Workers or any other labor organization of its employees by discriminating in regard to hire and tenure of employment, or any term or condition of employment;

(b) From in any manner dominating or interfering with the administration of the Big Creek Industrial Union, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Big Creek Industrial Union or any other labor organization of its employees;

(c) From refusing to bargain collectively with the International Union of Mine, Mill and Smelter Workers as the exclusive representative of its mine and mill employees, excluding clerical, supervisory and technical employees;

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

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

(a) Offer to all the employees who went on strike on August 2, 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 employ-

ment is not immediately available upon a preferential list in the manner set forth in said section;

(b) Make whole the employees ordered to be offered reinstatement for any loss of pay they may have suffered by reason of the respondent's discrimination, by payment to them of a sum equal to that which each would normally have earned as wages during the period from August 18, 1937, the date of the respondent's discrimination against them, to the date of the offer of employment or placement upon the preferential list required by paragraph (a) above, less the amount each has earned during that period;

(c) Upon request, bargain collectively with International Union of Mine, Mill and Smelter Workers as the exclusive representative of its mine and mill employees, excluding clerical, supervisory and technical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached in any such matters, embody said understanding in a written signed agreement for a definite term, to be agreed upon, if requested to do so by said International Union of Mine, Mill and Smelter Workers;

(d) Withdraw all recognition from the Big Creek Industrial Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish the Big Creek Industrial Union as such representative;

(e) Post immediately notices to its employees in conspicuous places throughout its mine and mill, stating (1) that the respondent will cease and desist as provided in paragraphs 1 (a), (b), (c) and (d) of this order; (2) that the respondent will bargain collectively with the International Union of Mine, Mill and Smelter Workers as the representative of its mine and mill employees, excluding clerical, supervisory and technical employees; and (3) that the respondent withdraws all recognition of the Big Creek Industrial Union as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment and that the respondent completely disestablishes it as such representative;

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

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

And it is further ordered that the allegations of the complaint setting forth the discriminatory discharge of Fred Implemens be, and they hereby are, dismissed.