

In the Matter of JEFFERSON ELECTRIC COMPANY and UNITED
ELECTRICAL AND RADIO WORKERS OF AMERICA

Case No. C-336.—Decided July 14, 1938

Electrical Equipment Manufacturing Industry—Interference, Restraint, and Coercion: furnishing facilities for formation of labor organization and effecting transfer of such organization to company-favored union; permitting organizational activities on company property; urging, persuading, and warning employees to join one labor organization and not to join or assist another—*Contracts:* closed-shop, with labor organization which has attained majority status after receiving assistance from employer's unfair labor practices, and which is not free choice of majority of employees, invalid; employer ordered to cease giving effect to—*Discrimination:* discharges, for union membership and activity—*Reinstatement Ordered—Back Pay:* awarded—*Order:* employer ordered to cease and desist from recognizing company-favored union as exclusive bargaining representative unless and until same is certified as such by Board.

Mr. Stephen M. Reynolds, for the Board.

Mr. Otto A. Jaburek, of Chicago, Ill., for the respondent.

Mr. James B. Carey, of New York City, for the United.

Mr. Joseph A. Padway, *Mr. D. W. Tracy*, and *Mr. E. D. Bieretz*, of Washington, D. C., and *Soelke, Koehn & Loewy*, by *Mr. Charles H. Soelke*, of Chicago, Ill., for the I. B. E. W.

Mr. Richard A. Perkins, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed July 2, 1937, by United Electrical and Radio Workers of America, herein called the United, the National Labor Relations Board, herein called the Board, by Leonard C. Bajorck, Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint, dated October 15, 1937, against Jefferson Electric Company, Bellwood, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and an accompany-

ing notice of hearing were duly served upon the respondent and upon the United.

The complaint alleged in substance that from about May 12, 1937, to the date of the complaint the respondent had solicited and encouraged its employees to join the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and by threats of discharge had discouraged its employees from joining the United and that the respondent had discharged Edward J. Phelan, Nikols Franzen¹ and William McMahon on June 11, and Alfred Wittersheim on June 18, 1937, for assisting in the formation of the United and refusing to join the I. B. E. W.

Pursuant to notice, a hearing was held in Chicago, Illinois, from October 21 to October 26, 1937, before William Seagle, the Trial Examiner duly designated by the Board. On October 21, 1937, the respondent moved to dismiss the complaint for the reason that delay in issuance of the complaint after the filing of the charge would prejudice the respondent in the event that it should be ordered to reinstate employees with back pay. The motion was denied. This ruling of the Trial Examiner is hereby affirmed. The respondent on October 21, 1937, filed its answer, admitting the allegations of the complaint regarding the nature of the respondent's business, denying that it had committed or was committing any of the unfair labor practices set forth in the complaint and averring that Wittersheim, Franzen, and McMahon were laid off for lack of work, rather than discharged, and that Phelan was discharged for insubordination.

Evidence was adduced at the hearing relating to a contract between the respondent and the I. B. E. W. The I. B. E. W. on October 22, 1937, the second day of the hearing, moved for leave to intervene and for a continuance. The motion for leave to intervene was granted, and the motion for a continuance denied. On the same day counsel for the Board moved and the Trial Examiner allowed an amendment to the complaint alleging a further violation of Section 8 (3) of the Act in that the respondent had entered into a closed-shop agreement on May 17, 1937, with the I. B. E. W. after that organization had been unlawfully assisted by unfair labor practices on the part of the respondent. The respondent on October 25, 1937, filed an amended answer to the complaint to meet the issues raised by the amendment and affirmatively alleged that the I. B. E. W. represented a majority of the respondent's employees at the date of the May 17 contract. On October 26, 1937, upon motion of the Board's counsel the allegations of the complaint were dismissed as to William McMahon. On the same day, over the objections of the respondent

¹ Franzen's given name is spelled variously in the record as "Nikols," "Miklos," "Niklos," and "Nikolas." Franzen could not spell his name for the reporter.

and the I. B. E. W., a further amendment to the complaint was allowed alleging that at the time the contract of May 17, 1937, was made the I. B. E. W. did not represent a majority of the respondent's employees. Since this issue was first raised in the respondent's amended answer and all parties introduced evidence pertaining thereto, we cannot regard the Trial Examiner's ruling as prejudicial, and it is hereby affirmed.

The Board, the respondent, and the I. B. E. W. were represented by counsel and the United by one of its officials. All participated in the hearing. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Trial Examiner refused to permit the respondent to introduce in evidence copies of circulars distributed among its employees by the United. The offer was made to explain prior testimony which had been admitted at the instance of the United. While the Trial Examiner might have admitted the circulars on the same basis upon which he received similar evidence tendered by counsel for the Board and the United, the exclusion was not prejudicial because we regard all such evidence as irrelevant to the issues. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial errors were committed. All such rulings are hereby affirmed.

On December 23, 1937, the Trial Examiner filed an Intermediate Report, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) of the Act. Exceptions to the Intermediate Report and requests for oral argument were filed by the I. B. E. W. on January 3 and by the respondent on January 5, 1938. Pursuant to notice, a hearing was held before the Board on February 10, 1938, in Washington, D. C., for the purpose of such oral argument. The respondent, the I. B. E. W., and the United participated. We have considered the exceptions to the Trial Examiner's Intermediate Report and find them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, an Illinois corporation, has its principal office and operates a manufacturing plant at Bellwood, Illinois, a suburb of Chicago, and is engaged in the production, distribution, and sale of electrical supplies, including transformers, electrical protective devices, fuses, outlet boxes, fuse wire, fuse bases, and various metal stampings.

Raw materials to the value of about \$125,000 each month are used in the respondent's manufacturing processes. Of such materials, 75 per cent are obtained outside Illinois, from Indiana, Ohio, Pennsylvania, New York, and the New England States. The respondent's annual gross sales range from \$4,000,000 to \$6,000,000. Distribution of the products manufactured by the respondent is as follows: Illinois, 10 per cent; States other than Illinois, 85 per cent; foreign countries, 5 per cent.

II. THE ORGANIZATIONS INVOLVED

United Electrical and Radio Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It admits employees of the respondent to membership.

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. The I. B. E. W. has chartered Local 1031-B which admits to membership employees of the respondent.

The Independent Union, herein called the Independent, an unaffiliated labor organization, was formed among the respondent's employees on May 10, 1937, but its existence terminated the following day.

III. THE UNFAIR LABOR PRACTICES

A. Background of labor organization among the respondent's employees

Prior to 1937, no labor organization existed among the respondent's employees. There was an association known as the Jefferson Social Club which admitted the employees to membership and which occupied rented quarters across the street from the respondent's plant. It appears, however, that the Jefferson Social Club existed solely for purposes of recreation and never attempted to function or to hold itself out as a labor organization.

In January 1937, J. M. Marquis, business agent for the I. B. E. W., approached James C. Daley, vice president of the respondent, and announced his intention to organize the respondent's employees. Daley referred him to Enos A. Hamer, who was foreman of the shipping department of the respondent's plant and president of the Jefferson Social Club. Marquis requested a list of the respondent's employees. Hamer refused to furnish such a list. Marquis proceeded to carry on organizing activities and on April 28, 1937, informed Daley that the I. B. E. W. claimed to represent 240 of the respondent's employees. Daley reminded Marquis that the respondent employed over 900 persons, and the conference ended with no action taken.

Meanwhile in April 1937, the United commenced to solicit the employees to join that organization. Daley testified that the organizing activity of the United came to the attention of the respondent as early as May 1, 1937, although the United did not approach the respondent's officers until several weeks later. During the first 2 weeks in May, United organizers were actively engaged in distributing membership applications among employees of the respondent, and circulating handbills urging the employees to join the United. These activities were carried on near the plant but off the respondent's premises.

B. The formation of the Independent and its transfer to the I. B. E. W.

On May 10, 1937, during working hours, William Furey, Angelo Kosto, Russell Keller, and Buddy Pierce circulated through the respondent's plant a petition calling for the organization of the Independent and protesting any attempt to affiliate with an outside group. These men are described by a United witness as assistant foremen. The respondent admits that Kosto and Pierce are gang bosses, supervising about 40 employees each, but claims that Furey and Keller are supply clerks without supervisory functions. At Furey's request, Daley caused the plant to be shut down early at about 2:30 p. m. on that day, May 10, so that the employees might attend an organization meeting to be held by the Independent at the Jefferson Social Club rooms.

The Independent convened at the meeting as scheduled, with Gene Sadt, a shipping clerk, presiding. Sadt appointed about 25 delegates from among the employees to work out a plan of organization. United organizers attempted to speak in behalf of their organization but were ruled out of order, whereupon a number of those present adjourned to the sidewalk to hold a meeting of their own.

The 25 Independent delegates planned to meet at 10 o'clock the next morning, May 11, in the cafeteria located in the respondent's plant. This meeting was postponed until 2 p. m. the same day. The Independent group met in the cafeteria and then adjourned to the respondent's board of directors' room. While the Independent group was holding its meeting, Marquis, the I. B. E. W. business agent, called on Daley at the respondent's offices. Marquis informed Daley at this meeting that the I. B. E. W. claimed to represent a majority of the respondent's employees but Daley expressed a doubt concerning this claim. Marquis did not offer at this time to furnish any proof of authority to represent employees of the respondent. Daley sent for Hamer who, at Daley's suggestion, introduced Marquis to the Independent delegates assembled in the board of directors' room.

Marquis addressed the delegates in behalf of the I. B. E. W. After Marquis' speech, the Independent delegates signified their desire to have further information and the meeting so ended. From this time on the Independent group ceased to function as such and some of the delegates became organizers for the I. B. E. W.

C. The I. B. E. W. membership campaign

On either the afternoon of May 11 or the morning of May 12, Marquis got permission from Daley to hold an I. B. E. W. organization meeting at noon on May 12 on an enclosed lot owned by the respondent adjacent to its plant. Daley also agreed, at Marquis' request, to extend the employees' lunch period from a half hour to a full hour for the convenience of the I. B. E. W. in holding the meeting. A notice of the meeting appeared on the respondent's bulletin board. At noon on May 12 the I. B. E. W. organizers brought a sound truck on the respondent's premises and set up a public-address system over which I. B. E. W. organizers and Harry Rudnik, the respondent's chief electrician, spoke in favor of the I. B. E. W. Several foremen attended the meeting but took no active part. M. J. Ruler, maintenance foreman and head of the respondent's police system, stood on guard with one of his force at the locked gate leading from the lot to the street. Four or five hundred of the respondent's employees attended the meeting.

Thereafter on various occasions Marquis used the plant cafeteria as headquarters to enroll members and collect dues. Marquis testified that he was there first on May 18, but four other equally credible witnesses, including two for the respondent, testified that he was in the plant cafeteria on various occasions between May 12 and May 18. We conclude that Marquis did in fact use the cafeteria for campaign purposes during the period from May 12 to May 18.

There is evidence that during this period several foremen, among whom M. J. Ruler is identified, distributed I. B. E. W. membership applications among the employees. Ruler denied taking part in such activity, but he admitted that he did join the I. B. E. W., and at least 11 other foremen also joined. There is also testimony that the foremen disparaged the United and urged membership in the I. B. E. W. This activity is denied by the respective foremen. However, their membership in the I. B. E. W. indicates the attitude of the respondent's supervisory staff and renders it likely that the foremen solicited membership for the I. B. E. W. and used their influence in its behalf.

All this activity took place while the United was conducting a membership campaign, and after Daley had notice of the United's efforts to organize the employees. On May 17 the respondent and

the I. B. E. W. signed a short-form closed-shop contract, which will be discussed in Section D below.

The I. B. E. W. takes the position that it had been chosen representative by a majority of the employees by May 11 and that the acts of the respondent in furnishing facilities for its campaign thereafter, although admittedly of assistance to the I. B. E. W., were permissible under the Act. This is an incorrect application of the law. The Act guarantees to employees the freedom to choose representatives, and this freedom involves the liberty to change representatives. Clearly, an employer may not lawfully recruit membership among his employees for any labor organization, save indirectly through a closed-shop contract which falls within the proviso of Section 8 (3) of the Act. The contracts in this case were executed, as we shall see, after the I. B. E. W. had benefited by the unfair labor practices committed by the respondent.

The respondent claims that although it furnished the I. B. E. W. facilities for organization, yet it remained neutral throughout and was ready to grant such favors to any labor organization. This claim is not consistent with the facts. In the first place the respondent's conduct, which we have reviewed, cannot be construed as an expression of neutrality between competing labor organizations. The favoritism shown the I. B. E. W. by the respondent unquestionably aided the I. B. E. W. materially and injured the United. A mere uncommunicated willingness on the part of the respondent to extend equal treatment to other labor organizations could not cure the effect of the favors granted the I. B. E. W. Secondly, we cannot find that the United was prejudiced only by its omission to demand such extraordinary favors. The conduct of the respondent on the sole occasion when it dealt with the United indicates the respondent's partiality. On May 20, two United organizers called on John Bennis, president of the respondent, and inquired how far the respondent had progressed in its dealings with the I. B. E. W. Although the short-form closed-shop agreement with the I. B. E. W. had been signed May 17, Bennis professed to know nothing about it, and made no attempt to find out.

It is plain from the above-described course of events that the I. B. E. W. received the active and patent cooperation and assistance of the respondent. In January 1937, when Marquis first sought a list of employees from the respondent, the request was refused. This action was in marked contrast to the reception given Marquis by Daley and Hamer in May 1937, after the United had commenced its organization campaign. At that critical juncture in the organizational activity of its employees, the respondent brought its full influence and pressure to bear on behalf of the I. B. E. W. In the

brief 2-day existence of the Independent the respondent closed the plant early on May 10 to permit an Independent organization meeting, and several of its gang bosses recruited membership for the projected organization. On May 11, the next day, the new organization was virtually transferred to Marquis when Hamer, at Daley's suggestion, introduced Marquis to the 25 Independent delegates and the locale of organization activity was temporarily changed from the plant cafeteria to the respondent's board of directors' room. Having effected the transfer of the Independent to the I. B. E. W., the respondent permitted Marquis to perfect his organization through the sound-truck meeting on May 12 and through his cafeteria membership campaign from May 12 to May 18. As we have indicated, we do not construe these actions as mere innocuous gestures of friendliness consonant with a policy of strict neutrality. On the contrary, the respondent's actions gave the vital stimulus to employee organization in the direction desired by the respondent and to that extent deprived its employees of the right of free choice of representatives guaranteed by Section 7 of the Act.

We find that by furnishing facilities for the formation of the Independent, permitting gang bosses to participate therein, transferring the Independent to the I. B. E. W., furnishing facilities for the I. B. E. W. organization meeting on May 12 and for the I. B. E. W. membership campaign following May 12, and permitting supervisory officials to assist the I. B. E. W., the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The contracts of May 17 and June 29, 1937

On May 15, 1937, during the cafeteria organizing campaign, Marquis exhibited to Daley, vice president of the respondent, a certificate executed on that day by John J. Slora, a notary public, to the effect that on that date Slora had been shown 703 I. B. E. W. membership applications signed by employees of the respondent. Slora did not testify and there was no showing that he had a pay roll of the respondent or any genuine signatures before him with which to compare the applications to ascertain that the I. B. E. W. applicants actually were employees of the respondent on the date of application. Daley accepted the majority showing made by the I. B. E. W. in the manner described and on May 17 recognized that organization as exclusive bargaining agent for the respondent's employees and executed a short-form closed-shop agreement with it. The short-form agreement recited that the parties should meet within 10 days and negotiate a further contract.

Meetings between the respondent's officials and I. B. E. W. representatives ensued and a proposed further agreement was drafted. After the membership of the I. B. E. W. voted by post-card ballot to ratify the proposed agreement, a long-form closed-shop contract was entered into on June 29, 1937, between the respondent and the I. B. E. W. This contract was to run until December 31, 1938. Thus, after having sponsored the I. B. E. W.'s organizational efforts, the respondent entered into a short-form closed-shop contract with the I. B. E. W. on May 17 in order to eliminate the United, and to preclude even the semblance of any further exercise of choice of representatives by its employees. Thereafter the necessity for haste was obviated and the final contract was ultimately signed on June 29.

The respondent's amended answer and the I. B. E. W.'s motion to intervene allege that prior to the execution of the May 17 contract the I. B. E. W. had been authorized to represent a majority of the respondent's production and maintenance workers. We have heretofore decided, and the I. B. E. W. has not in this proceeding denied, that an employer cannot lawfully make a closed-shop contract with a labor organization, which has attained majority status after receiving assistance from the employer's unfair labor practices.²

Counsel for the I. B. E. W. urges that it represented a majority of the employees by May 11 before the respondent rendered it any assistance. Having thus had the right to make a closed-shop contract with the I. B. E. W. when the latter allegedly obtained a majority on May 11, the respondent could not, it is argued, be inhibited from later making such a contract even though unlawful assistance had occurred in the interim. We have not had occasion to decide the precise legal question raised by the I. B. E. W., nor is it necessary to decide that question here for reasons hereinafter stated.

Specifically, the I. B. E. W. claims that on or before May 10 it was authorized to represent a majority of the employees. Marquis testified that 600 employees had applied for membership in the I. B. E. W. by May 10. The I. B. E. W. introduced in evidence a number of membership application cards in support of its claim. There are 618 cards in all. It appears from the face of 17 of the cards that they were signed by employees of the Wells-Gardner Company, which so far as the record shows is not connected with the respondent. Deducting these 17 cards introduced by inadvertence, 601 remain. As stated above, Slora certified to counting 703 cards on May 15. This discrepancy is not explained in the record. There is no claim that any cards were lost. Possibly Slora counted the Wells-Gardner and other cards which should have been excluded. At any rate, there

² *Matter of Lenoa Shoe Company, Inc. and United Shoe Workers of America*, 4 N. L. R. B. 372. See also, *Matter of Mine B Coal Company and Progressive Miners of America, Local No. 54*, 4 N. L. R. B. 316.

were never more than 601 cards in existence, so far as the record shows. The cards bear a space for employees to fill in their occupation. Cards totaling 47 were signed by persons whose duties are supervisory or clerical. In the absence of special considerations, these persons would be excluded from a unit appropriate for collective bargaining, where, as here, the unit consists largely of mass-production workers. Most of the cards are undated. Only 44 cards came through the mails, and they are all postmarked on or after May 13. Thirty-three were dated before and 11 after May 15, the date of Slora's certificate.

Subtracting from the 601 cards the 47 signed by clerical and supervisory employees and the 11 dated after May 15, there remain a total of 543 as the highest number of valid application cards which could have been in existence on May 15 when Slora made his count. There were 962 production and maintenance employees of the respondent during the week ending May 17. The number required for a bare majority on May 10 is 482. On April 28, the I. B. E. W. had no more than 240 members, according to Marquis. In order to reach a majority by May 10 the I. B. E. W. must have doubled its membership of April 28. The only definite evidence of any accession of members during this period is Marquis' testimony that between May 1 and May 10 International Association of Machinists relinquished to him the right to represent 28 employees who had joined that organization. In addition to these 28, the I. B. E. W. must have gained 214 members from April 28 to May 10, if it had even a bare majority on the latter date. The most that I. B. E. W. could have had on May 15 was 543, as we have seen. If it had a bare majority on May 10, then it could have gained only 61 members between May 10 and May 15. Yet it is precisely between May 10 and May 15 that the respondent furnished the I. B. E. W. with the valuable assistance described above. Marquis addressed the Independent group on May 11, and on May 12 held a mass meeting on the respondent's premises. To believe that routine organizing activity brought the I. B. E. W. 214 members between April 28 and May 10, although the I. B. E. W. had gained only 240 from the month of January until April 28, and that the vigorous campaign of May 11-May 15 accounted for only 61 recruits, is to do violence to common sense. We cannot believe that the I. B. E. W. campaign conducted on the respondent's premises was so ineffective, or that it was a work of supererogation.

When Daley asked Marquis for proof of a majority on May 11, no evidence was then forthcoming. Later on the same day Marquis met the Independent group, and on May 12 the mass meeting occurred. On May 15 Marquis furnished Daley with Slora's affidavit. The rea-

sonable inference is that on and after May 11 Marquis undertook, with the respondent's assistance, to enlist a majority of the employees so as to satisfy Daley's request for proof, and we so find.

In so holding, we credit Slora's affidavit to the extent that it is supported by membership application cards in evidence. We doubt the accuracy of Marquis' statement that 600 had joined the I. B. E. W. by May 10. Marquis had no personal knowledge of most of the cards, and his testimony purported to be only an estimate. Thus, he said he had 800 cards by May 17, and 1,000 by the time of the hearing. Yet only 618 application cards of any description are in evidence.

We find that the respondent entered into its contracts of May 17 and June 29, 1937, with the I. B. E. W. after assisting that organization by unfair labor practices, and at a time when the I. B. E. W. was not the free choice of a majority of the respondent's employees, and that in entering into said contracts the respondent encouraged membership in the I. B. E. W. and discouraged membership in the United by discrimination in regard to hire and tenure of employment and the terms and conditions of employment, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

At some time in July 1937, the I. B. E. W. notified the employees that all would have to join the I. B. E. W. by August 10. It does not appear that the respondent has enforced the closed-shop provisions of the contracts, but Daley testified that the respondent intended to enforce them if requested by the I. B. E. W. to do so. There is no claim that the employees whose discharges are in issue were discharged pursuant to the closed-shop agreements or that the I. B. E. W. ever requested the respondent to enforce the agreements against them.

E. The discharges

Alfred Wittersheim. Alfred Wittersheim worked for the respondent for 3½ years prior to his discharge on June 18, 1937, and for the last year of his employment had worked as a tester in Department 136 under Foreman Glen Wilson. Wittersheim joined the United May 5, 1937, but successively took part in organizing activity for the Independent, the I. B. E. W., and the United, definitely going to the last when he became dissatisfied with the terms of the contract proposed by the I. B. E. W. He acted as a representative from his department in all three organizations. When the Independent petition was circulated on May 10, 1937, Wittersheim refused to sign it. He testified that he objected to his foreman that the petition was being circulated during working hours, whereupon Wilson said he knew that Wittersheim was a United

sympathizer and, "We will beat you at your own game." Wilson denied having any such conversation. Wittersheim was one of several hourly paid employees whose working hours were curtailed in the latter part of May 1937, and who thought that this action represented a penalty for United activity. Wittersheim claims that he voiced his objections to Henry Kasper, plant superintendent. According to Wittersheim, Kasper denied that there had been any discrimination and stated, "Well, you fellows wanted a union; you have one now (meaning the I. B. E. W.). Why don't you join the union?" The regular shift was resumed the day after this conversation, according to Wittersheim. Kasper testified that no such conversation was ever had. The Trial Examiner, who saw and heard the witnesses, found Wittersheim's account to be correct, and we accept his finding.

On June 17, 1937, Wittersheim called a meeting of the employees in his department and advised them not to return the post-card ballots ratifying the proposed I. B. E. W. contract. On June 18 he was discharged. Wittersheim says Wilson stated that he had orders to let Wittersheim go. Wilson denies this and says that Wittersheim was not discharged but was simply laid off for 1 week, and that Wittersheim happened to be selected for the lay-off for disciplinary reasons because he had been guilty of horseplay in the shop.

The respondent's answer makes no reference to any disciplinary reason for the discharge, nor does Wittersheim's employment record from the files of the respondent; both documents attribute the lay-off to "lack of work." Neither the answer nor the employment record limits the duration of the lay-off to 1 week. At the hearing the respondent claimed that Wittersheim's lay-off was one of a large number effected contemporaneously due to slack production. Examination of the pay-roll changes for that period reveals a number of lay-offs, but most of such lay-offs related to female employees. Furthermore, Wilson admitted that Wittersheim was the only man laid off in his department other than McMahan. When Wittersheim was laid off, the respondent retained one tester who was his junior in point of service. Since Wittersheim's discharge, the respondent has hired one tester.

We do not feel that Wilson's denials can be credited. Although he testified that he took no action with reference to signing and returning a post-card ballot to the I. B. E. W. when the proposed contract was voted on, his signed card is among the cards introduced in evidence by the I. B. E. W. Kasper's attitude toward the alleged 1-week lay-off of Wittersheim is made clear in Kasper's admission that he refused to discuss Wittersheim's grievance with a United representative a few days after the lay-off occurred. In view of

these facts and also considering the inconsistencies in the reasons assigned by the respondent for his lay-off, we can only conclude that Wittersheim was discharged because of his union activities and not laid off as a disciplinary measure.

Under all the circumstances heretofore reviewed, we find that the respondent discharged Alfred Wittersheim on June 18, 1937, for joining and assisting the United.

Edward J. Phelan. Edward J. Phelan had worked for the respondent for about 7 years prior to his discharge on June 11, 1937, and was most recently employed as receiving clerk in the shipping room. Phelan refused to sign the Independent petition when it was circulated and never did join the I. B. E. W. He joined the United in the middle or latter part of May 1937, and took an active part in that organization. On June 10, at a United organization meeting, Phelan was chosen a member of a temporary organizing committee and made a speech in favor of the United and against the I. B. E. W. On the next day Hamer, foreman of the shipping room, told Phelan that he was to be laid off. Phelan, with some profanity, uttered his suspicion that his lay-off was due to his United sympathies and Hamer thereupon discharged him, allegedly for insubordination. Phelan testified that Hamer said, "I got orders to let you go." Hamer denied making this statement, but Kasper, the plant superintendent admitted that he had discussed Phelan's proposed lay-off with Hamer. It seems likely that Kasper had ordered Hamer to lay off Phelan.

The respondent asserts that Phelan's original lay-off was part of a general reduction in force owing to decreased production. However, the respondent laid off only Phelan in his department and in laying him off preferred to retain one Van Lewren, a young man who was Phelan's junior in service and who had previously done only part-time work in the shipping department. Hamer testified that Phelan was incapable of doing the work done by Van Lewren, but admitted that Van Lewren had since been transferred to another department and had been replaced by one Herman, and that Phelan could have done the work Herman was doing.

We do not regard Phelan's discharge on the day after his anti-I. B. E. W. speech and his appointment as an employee organizer for the United as merely coincidental. This explanation is particularly implausible in view of Phelan's record of 7 years of satisfactory service and the fact that after a short period he was admittedly replaced by a man with no better qualifications.

We find that Edward J. Phelan was discharged by the respondent on June 11, 1937, for joining and assisting the United. Phelan earned \$308.72 between the date of his discharge and the time of the hearing.

Nikols Franzen. Nikols Franzen was discharged on June 11, 1937, the date of Phelan's discharge, after working for the respondent about 4 years, recently at common labor. Like Phelan, Franzen was chosen a temporary committeeman for the United at its June 10 meeting and spoke in favor of the United and against the I. B. E. W. Franzen testified that prior to his discharge John Chrabot, his foreman, once said to him, referring to the I. B. E. W., "What is the matter with you, Nick? Why don't you join?" Franzen stated that he replied that he did not like that organization, whereupon Chrabot said, "You might find yourself out of work." Franzen also testified that on June 11 Chrabot said, "I have orders to lay you off." Chrabot denied making the statements attributed to him by Franzen. The Trial Examiner found in accordance with Franzen's testimony, and we are disposed to accept this finding. Kasper admitted that he had discussed Franzen's case with Chrabot before the discharge took place. Franzen stated that at the time of his lay-off there was plenty of work to be done in his department despite the respondent's claim that his lay-off was due to slack production.

The respondent asserts that it selected Franzen for a lay-off as part of its reduction in force because Franzen was illiterate and constituted a hazard to his fellow employees by reason of his inability to read danger signs. There is evidence that about 7 months prior to Franzen's discharge he started up a conveyor and endangered the safety of other employees through his failure to comprehend a warning notice. It appears that after this occurrence, Franzen was transferred to another operation. There was no showing that after this transfer, Franzen's illiteracy constituted any safety hazard. Examination of Chrabot concerning Franzen's discharge elicited the following significant reply:

Q. It was not till seven months later that you decided that was a good reason for laying him off?

A. (By Chrabot) It wasn't until seven months later we got told.

The respondent's suddenly conceived safety measure is, under the circumstances unpersuasive, since the respondent retained Franzen for 7 months after a specific act of negligence and then proceeded to discharge him for the alleged deficiency, on the day after he was selected as a temporary committeeman for the United. We conclude that his discharge was directly attributable to his United activities and not to his illiteracy. Accordingly we find that the respondent discharged Nikols Franzen on June 11, 1937, for joining and assisting the United. Franzen earned only \$3.50 between the date of his discharge and the time of the hearing.

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

V. THE REMEDY

Since we have found that Alfred Wittersheim, Edward J. Phelan, and Nikols Franzen were discharged because of their membership in the United and their activity in its behalf, we shall order the respondent to offer them reinstatement and to make them whole by paying to each of them the amount that he would normally have earned from the date of his discharge to the date of such offer of reinstatement, less any amount earned by him in the interim.

We have found that the respondent by entering into closed-shop agreements with the I. B. E. W. on May 17 and June 29, 1937, after that organization had been materially assisted by the respondent's unfair labor practices, and at a time when the I. B. E. W. was not the free choice of a majority of the respondent's employees, discriminated in regard to hire and tenure of employment and the terms and conditions of employment and thereby encouraged membership in the I. B. E. W. and discouraged membership in the United. It will not suffice for the respondent merely to cease and desist from these unlawful activities. To restore the status quo prior to the commission of the unfair labor practices the respondent must cease giving effect to its contracts with the I. B. E. W. and recognizing the I. B. E. W. as the exclusive representative of the respondent's employees for the purposes of collective bargaining unless and until the I. B. E. W. has been certified by the Board as the exclusive representative of its employees.³

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. United Electrical and Radio Workers of America and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the

³ *Matter of Lenox Shoe Company, Inc. and United Shoe Workers of America*, 4 N. L. R. B. 372.

Act has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. The respondent by discriminating in regard to the hire and tenure of employment of Alfred Wittersheim, Edward J. Phelan, and Nikols Franzen, 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.

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

ORDER

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

1. Cease and desist from:

(a) Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(b) Encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(c) Recognizing International Brotherhood of Electrical Workers as the exclusive bargaining representative of its employees unless and until International Brotherhood of Electrical Workers is certified as such by the Board;

(d) Giving effect to its contracts of May 17 and June 29, 1937, with International Brotherhood of Electrical Workers;

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

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

(a) Offer to Alfred Wittersheim, Edward J. Phelan, and Nikols Franzen immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

(b) Make whole Alfred Wittersheim, Edward J. Phelan, and Nikols Franzen for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less any amount earned by him during such period;

(c) Post immediately notices to its employees in conspicuous places throughout its plant at Bellwood, Illinois, and maintain such notices for a period of at least thirty (30) consecutive days, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that in order to secure or continue his employment in the plant, a person need not become or remain a member of International Brotherhood of Electrical Workers; and (3) that the respondent's contracts with the International Brotherhood of Electrical Workers, dated May 17 and June 29, 1937, are void and of no effect;

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

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it relates to the discharge of William McMahon.