

In the Matter of SHELLABARGER GRAIN PRODUCTS COMPANY and FLOUR  
AND CEREAL WORKERS UNION, No. 20765

*Case No. C-453.—Decided July 18, 1938*

*Soy Bean Processing Industry—Interference, Restraint, and Coercion:* conduct of ballot by employer—*Company-Dominated Union:* interference with administration; assistance and support; disestablished, as agency for collective bargaining—*Contract:* with company-dominated union, void and of no effect; employer ordered to cease giving effect to—*Discrimination:* discharges; refusals to reinstate; policy of submitting hire and tenure of strikers to group of employees; charges of, not sustained as to four persons—*Strike:* result of discriminatory discharge of union members—*Reinstatement Ordered:* discharged employees; employees refused reinstatement; strikers—*Back Pay:* awarded; not to include period between date of Intermediate Report and date of Decision in case of employees as to whom Trial Examiner recommended dismissal of complaint—*Collective Bargaining:* charges of failure to bargain collectively not sustained.

*Mr. Stephen M. Reynolds*, for the Board.

*Vail, Mills & Armstrong*, by *Mr. Robert P. Vail*, of Decatur, Ill., for the respondent.

*Mr. Bliss Daffan*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Flour and Cereal Workers Union, No. 20765, herein called the Union, the National Labor Relations Board, herein called the Board, by Leonard C. Bajork, Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint, dated October 28, 1937, against Shellabarger Grain Products Company, Decatur, 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), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

The complaint, as amended,<sup>1</sup> alleged in substance (a) that on June 9, 1937, and at all times thereafter the respondent refused to bargain collectively with the Union as the exclusive representative of the respondent's employees in an appropriate unit; (b) that the respondent through its officers and agents discouraged its employees from joining the Union and from engaging in Union activities and encouraged, urged and coerced its employees to authorize a certain committee of employees to bargain collectively with the respondent, that on or about May 20, 1937, the respondent entered into an agreement with such committee respecting hours, wages, and working conditions, and that subsequently this committee became the Employees' Soy Bean Processing Association; (c) that at various times between April 23, 1937, and June 27, 1937, the respondent discriminated in regard to the hire and tenure of employment of 17 named employees, thereby discouraging membership in the Union; and (d) that by all of the above acts and conduct the respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and to engage in concerted activities for their mutual aid and protection as guaranteed in Section 7 of the Act. On November 2, 1937, the respondent filed its answer denying all the material allegations of the complaint and also setting forth affirmative matter.

Pursuant to the notice, a hearing was held at Decatur, Illinois, from November 4 to 13, 1937, inclusive, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the close of the presentation of its case the Board moved to amend the complaint to conform to the evidence. The Trial Examiner granted the motion. At the same time the respondent moved to dismiss the case for want of jurisdiction and, in the event of the denial of the motion, to dismiss the complaint as to each of the 17 persons alleged to have been discriminatorily discharged within the meaning of Section 8 (3) of the Act. The Trial Examiner granted the respondent's motion to dismiss the complaint in so far as it alleged discriminatory discharges of Al Mowry, Ivan Perry, and P. J. Cobb, and overruled the motion with respect to the other persons named in the complaint. All the respondent's other motions were overruled. At the close of the presentation of all the evidence the respondent in substance renewed these motions and they were over-

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<sup>1</sup> The complaint was amended by order of the Board on June 16, 1938, to allege a violation of Section 8 (2) of the Act so as to conform the allegations of the complaint to the proof adduced at the hearing.

ruled by the Trial Examiner. These rulings are hereby affirmed. During the course of the hearing the Trial Examiner made other rulings on motions and on objections to the admission of evidence. The Board has reviewed these rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 16, 1938, the Trial Examiner filed his Intermediate Report, copies of which were duly served upon the parties. He found 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 Act, by discharging and refusing to reinstate seven of the persons named in the complaint because of their union activity and by committing other acts proscribed by Section 8 (1) of the Act, but that the respondent had not committed any unfair labor practice by discharging and refusing to reinstate the 10 other persons named in the complaint. He further found that the respondent had not engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act. He recommended that the respondent cease and desist from the commission of the unfair labor practices, and, affirmatively, offer full reinstatement with back pay to the seven employees found to have been discriminatorily discharged. He further recommended that the allegations of the complaint with respect to the discriminatory discharges of 10 of the employees named therein and with respect to the unlawful refusal to bargain be dismissed.

Thereafter the respondent filed Exceptions to the Intermediate Report and to various rulings of the Trial Examiner. The Board has considered these exceptions and finds them to be without merit. The respondent also submitted a document entitled "Analysis of Evidence at Hearing" and a brief, to both of which the Board has given due consideration.

On May 5, 1937, the Board notified the respondent and the Union that they were entitled to apply for oral argument before the Board in Washington, D. C., or for permission to file briefs. Neither party applied for oral argument. As stated above, the respondent had previously filed a brief.

On June 16, 1938, the Board issued an amendment to the complaint to conform the allegations to the proof. The respondent filed an answer denying the amendment to the complaint, but qualifying its denial with an admission of certain facts which it set forth affirmatively.

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 with its principal office and place of business at Decatur, Illinois, is engaged in the manufacture and sale of byproducts of soy beans, consisting of oil, feed, grits, sausage seasoning, and flour. Practically all of the soy beans used in the respondent's operations are obtained within the State of Illinois. The market value of finished products manufactured by the respondent during July, August, and September of 1937 was \$223,433.43. The respondent shipped from 80 to 90 per cent of this amount out of the State of Illinois. At the time of the hearing the respondent employed between 45 and 50 employees in its plant.

## II. THE ORGANIZATIONS INVOLVED

Flour and Cereal Workers Union, No. 20765, is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. Prior to the reception of its charter from the A. F. of L. the Union was known as the Labor Adjustment Board, as will appear hereinafter. It admits to membership all production and maintenance employees of the respondent, except supervisory and clerical employees, timekeepers, and chemists.

Employees' Soy Bean Processing Association is a labor organization unaffiliated with any other labor organization. Its membership is limited exclusively to employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

*A. Background of the unfair labor practices*

In 1935 a number of the respondent's employees joined an American Federation of Labor local union which had been organized at a neighboring milling company at Decatur. James O. Wright, an employee and leader of the union movement after its revival among the respondent's employees in 1937, testified that in 1935 two of the respondent's employees were discharged because of their union activity. He also testified that all the employees, including himself, were warned by the respondent that membership in the Union would result in their discharge. W. L. Shellabarger, the respondent's president, admitted at the hearing that he talked to the employees at the time and told them that there were good and bad unions and that a good union would keep the employees working as they had been.

On cross-examination with respect to the discharges of the two employees in 1935, he admitted that they had been discharged, but not for union activity. Although unable to recall the incident in detail, he admitted, however, that a Mr. Schalman, a representative of the Department of Labor, had requested him to reinstate the men, that he had "tentatively" agreed to do so, but that the two men were never reinstated. In any event, the respondent's employees who signed applications for membership in the American Federation of Labor local union in 1935 abandoned their memberships and there was no further union activity among the respondent's employees until April 1937.

*B. Interference, restraint, and coercion*

In the early part of April 1937 a number of the employees of the respondent decided to organize for the purposes of collective bargaining. They convened at the home of James O. Wright, one of the employees, on April 18, but nothing in particular was accomplished. On April 23 another meeting was held, at which a petition, which stated in its caption that the employees signing agreed to organize for the purposes of collective bargaining, was circulated among the employees in attendance. Thirty-eight signatures were obtained to this petition. The next day a committee representing this organization called upon Shellabarger and informed him of their decision to organize. In answer to a question Shellabarger stated that he had no objection to the employees organizing and offered the services of his attorney to assist in the organization. This offer was rejected. Shellabarger then questioned the committee as to whether they were going to run their own affairs or seek outside assistance. The record does not disclose what answer was given him, but after a short discussion the committee retired.

On April 30 another meeting of the newly formed organization was held with 25 or 30 employees present. The name and form of organization were agreed to, bylaws were adopted, and officers and committee chairmen were elected. A list, which refers to the organization as the Labor Adjustment Board, containing the names of the officers and committee chairman, was furnished Shellabarger on May 5, coupled with a request for a conference on May 7 between him and a committee representing the Labor Adjustment Board. This request was granted. At the conference on May 7 the committee stated that the Labor Adjustment Board had not fully completed its organization and requested suggestions from Shellabarger concerning further proceedings. Shellabarger stated that the respondent could not participate in the formation of an employees' organization and, therefore, could not make any suggestions to the

committee. At this conference the committee offered no evidence as to its representation of a majority of the employees and stated to Shellabarger it had no demands at that time.

During the course of these early organizational activities among the employees it appears that the respondent realized the inevitability of some form of organization among its employees. Nevertheless, even at that time the respondent's determination to prevent the development of any labor organization along lines objectionable to it is revealed by the policy which it adopted and which was designed to convince the employees of the futility of unionization by inspiring them with a feeling of insecurity with respect to their employment. On April 23, the day on which the second organization meeting of the employees was held, three employees were discharged. On May 5, the day on which the list disclosing the names of the officers and of the committee chairmen of the Labor Adjustment Board was handed to Shellabarger, V. L. Balding, chairman of the grievance committee of this organization, was discharged. The following day L. J. Garver, a millwright and also a member of the organization, was laid off. These discharges were followed by a bulletin posted in the respondent's plant on May 8. The following is an excerpt from the bulletin:

Since the price of beans advanced so greatly a few months ago it has been questionable as to whether the Company would be justified in carrying on its business. In the effort to reduce costs, to secure greater efficiency and to continue its business, and thereby give employees steady work without reduction in wages, the Company in the last sixty days has reduced its force by laying off the following employees.

Following this statement was a list of the employees whose employment had been terminated up to that date. It is clear from the surrounding circumstances that this bulletin was designed to discourage union organization by an implied threat of further force reduction.

The effect of the respondent's policy on the youthful organization is clearly apparent from the record. James O. Wright, feeling that nothing was being accomplished by the Labor Adjustment Board, began to advocate affiliation with the A. F. of L. because of the need of a stronger and more militant organization. On the other hand, a number of the employees had become convinced by the respondent's attitude and actions that the respondent would oppose any outside organization. They, therefore, were opposed to such affiliation. The record clearly reveals that the feeling was current among the employees that the respondent would not tolerate affiliation with an out-

side union and it was common talk among the employees that "Shellabarger didn't want any outside organization."

At a meeting of the Labor Adjustment Board on May 13 a vote was taken on a motion to affiliate with the A. F. of L. The employees present voted 16 to 1 in favor of such affiliation, Paul Strausbaugh casting the only dissenting vote and then leaving the meeting. Before he left, however, he took down the names of all the employees who had voted in favor of affiliation. By the vote taken to affiliate with the A. F. of L. the Labor Adjustment Board ceased to exist and this organization became the Union. The next day a committee representing the Union met with Shellabarger and presented him with the written demands of the Union, among which was a demand for a 10-cent hourly wage increase for all employees. The petition of April 23, containing the signatures of the 38 employees who had originally joined the organization that became the Labor Adjustment Board, was presented to Shellabarger as evidence that the Union represented a majority of the employees. Shellabarger stated that it might be possible for him to grant a 5-cent hourly wage increase, but that his business was in a very bad condition. A general discussion regarding the condition of the respondent's business followed and the meeting adjourned when Shellabarger agreed to give the committee an answer to its demands by May 20.

Paul Strausbaugh was the only man who attended the meeting of the employees on the night of May 12 who was not in favor of affiliation with the A. F. of L. An employee named Macrafic, who had voted in favor of affiliation, asked the other employees not to disclose how he had voted because he was afraid of losing his job. There are indications that the small number of employees in attendance at this meeting as compared with the number who had previously joined the Union was caused by fears similar to those expressed by Macrafic and to a growing opposition, based on such fears, to the movement to affiliate with the A. F. of L. Thus, on May 14 several employees, who were members of the Labor Adjustment Board and who had not attended the meeting on the night before, held a meeting as a result of which they began to circulate a petition bearing a caption to the effect that the signers were opposed to an outside organization or to any form of representation other than an employees' representation plan such as had been originally planned. On the same day, after the Union committee had met with Shellabarger, this petition containing 22 signatures was presented to him by the group opposing affiliation with an outside organization. On May 18 the same group circulated another petition which designated William Nichols, Paul Strausbaugh, and Cecil Kopp, three of the employees, as the bargaining representatives of the employees whose signatures appeared there-

on. Twenty-two signatures were also obtained to this document, and it was also presented to Shellabarger.

While the evidence does not show that the respondent openly fostered the formation of the organization of the employees opposing outside affiliation, Henry Stevens, one of the employees participating in circulation of the petition on May 14 in opposition to affiliation with the A. F. of L., testified that he accompanied Lucas, leader of the movement, in soliciting signatures to this petition, and that, in each instance, Lucas told the employee approached that he had better sign if he wanted to keep his job because Shellabarger did not want an outside labor organization.

Both Shellabarger and Sesenbaugh, the mill superintendent, denied that they even knew of the movement to affiliate until June 7, after the Union had received its charter from the A. F. of L. This is highly improbable in view of the close relationship between the management and the comparatively small number of employees in the plant. Furthermore, Shellabarger must have understood the significance of the caption of the petition presented to him by the group of employees opposed to affiliation with the A. F. of L., since the petition stated that the signers thereof were opposed to affiliation with an outside labor organization. Shellabarger and Sesenbaugh also denied that they had anything to do with the formation of the opposition group or with the selection of the bargaining committee composed of Strausbaugh, Kopp, and Nichols. Although Strausbaugh, who had cast the only vote against affiliation with the A. F. of L. on May 13, lived next door to Sesenbaugh, both testified that Sesenbaugh had not received any information concerning the vote to affiliate from Strausbaugh. William Nichols, also a member of the committee opposed to affiliation with the A. F. of L., admitted that he had stated at one of the meetings that Sesenbaugh had been his bread and butter for 20 years and that he would not go against his wishes. It is at least very unusual that employees in the exercise of an unfettered choice of representatives should have selected men so closely connected with the management. In any event, when the denials of Shellabarger and Sesenbaugh are considered in their context with other facts appearing in the record, which we shall now discuss, the only conclusion that can be reached is that Shellabarger and Sesenbaugh were kept fully informed of the organizational activities of the employees and that the respondent's actions were deftly calculated and timed to discourage activity by the Union.

On May 19 James O. Wright, leader of the Labor Adjustment Board from its inception and principal proponent of affiliation with the A. F. of L., was discharged. His discharge assumes a special significance from the respondent's ensuing conduct. At about the time of Wright's discharge Sesenbaugh distributed a mimeographed

combined statement and questionnaire among the employees. The record is not altogether clear as to when these were distributed, but they are in evidence and the date of May 20 appears in the lower right-hand corner of each. The testimony does not indicate whether May 20 is the date on which they were distributed among the employees or returned to Sesenbaugh, but it is clear they were in the hands of the employees after Wright's discharge. These documents contained a statement giving a summary of the meetings between Shellabarger and the two rival groups of employees, namely, that each of the groups was claiming to represent a majority of the employees and that the respondent was willing to bargain with the group which represented a majority, but was unable to determine this fact because of their conflicting claims. The questionnaire followed the statement and was in the form of a ballot upon which employees were to designate their choice of representatives. The following is a sample form of the questionnaire:

1. Name of employee -----
2. Are you willing that a committee selected by a majority of the mill employees represent all of the employees for bargaining purposes? Answer -----
3. If an agreement is reached between the Company and any bargaining committee selected by a majority of the mill employees respecting conditions and hours of work and pay, will you abide by such agreement? Answer -----
4. If you wish to be represented by a committee of the employees for collective bargaining, please give the names of the members of the committee you wish to represent you. Answer -----

Sesenbaugh requested the employees to fill in the blank spaces and return the questionnaire to him within 24 hours. The result of this ballot was not known until the afternoon of May 20 when the committee of Strausbaugh, Kopp, and Nichols again met with Shellabarger. Together a tabulation was taken of the questionnaires returned by the employees. This tabulation showed that a majority of the employees had selected as their representatives the three members of the group opposing affiliation with an outside labor organization. It is significant that these three men assisted Shellabarger in making the tabulation. Shellabarger then announced that he would bargain with this committee and agreed to give all the employees an increase in wages of 5 cents an hour. He also stated that due to the condition of the respondent's business the hours of work would have to be cut from 48 to 40 hours per week.

When we view this selection of representatives conducted under the auspices of the respondent in connection with Wright's discharge,

it is not surprising that a committee composed of Strausbaugh, Kopp, and Nichols was selected as the bargaining representative of the employees. The statement that was a part of the document upon which the employees were to designate their choice of representatives refers to two committees that had met with Shellabarger, one composed of Davidson, Lucas, and Konrad, three of the leaders of the organization in opposition to the Union, and the other composed of Wright, Snoke, and Grabb, a committee from the Union. The discharge of Wright, who was the acknowledged leader of the latter organization, on the preceding day for union activity, as set forth hereinafter, was clearly intended by the respondent to influence the employees in their choice of representatives. Unquestionably, Wright's discharge could leave no doubt in the minds of the employees as to the organization favored by the respondent and necessarily operated as a restraint on their free choice of representatives.

When the Union committee met with Shellabarger on May 20, the same afternoon that the tabulation of the votes cast in the election conducted by the respondent was taken, for an answer to its demands, they were informed by Shellabarger that the committee of Strausbaugh, Kopp, and Nichols had been selected by a majority of the employees as their representatives, and that he had entered into an agreement with them. Here again appears the deftness in timing its election to produce a selection of representatives who were favorable to it and who could be used as a pretext for not bargaining with the Union.

Shellabarger and the three members of the committee representing the group opposed to outside affiliation all testified that there was no difficulty in arriving at an agreement on May 20. As a matter of fact, it appears from the record that no actual bargaining took place, since Shellabarger merely stated that he would grant a 5-cent hourly wage increase which the committee accepted. Since the decrease in the hours of work was proportionate to the increase in wages, it is clear that no benefit in increased compensation inured to the employees by reason of the grant of the hourly wage increase.

The employees were required to affix their names to the respondent's election questionnaires, thereby apprising the respondent of the names of the employees who refused to renounce their allegiance to the Union. Consequently, on June 1, Snow, Scammahorn, and Glen Wilber, three of the employees named in the complaint, were discharged. All three employees were active in the Union and had refused to sign either of the petitions which were circulated by the Strausbaugh, Kopp, and Nichols group. Scammahorn designated Wright, Grabb, and Snoke on the questionnaire as his choice of a committee; Snow signed the questionnaire and returned it to Sesenbaugh without designating representatives; and Glen Wilber did not

return his questionnaire. No other employees were discharged at the time. The facts surrounding the discriminatory discharges of these three employees as well as of those to whom we have already referred will be discussed fully in Section C below. The discharges are mentioned here because they reveal the discriminatory manner in which the respondent used the information obtained by the respondent by means of the questionnaires.

The next meeting between the Union committee and Shellabarger occurred on June 7, after the Union had received its charter from the A. F. of L. Lumbert Betson, an A. F. of L. representative, was present, and a demand was made for recognition of the Union as the bargaining representative of the respondent's employees. In support of this demand a document signed by a number of the employees was presented to Shellabarger. This document having been lost at the time of the hearing, there was considerable conflict in the testimony as to the number of employees whose names were signed to it. Shellabarger, however, testified that he had copied the names from the document and had the list of names with him at the hearing. He testified that this list showed that 15 employees had signed this document. Shellabarger stated to the representatives of the Union that he needed time to consider the Union's demands and the Union representatives agreed to return on June 9 for his answer. When they met again on June 9 the committee of Strausbaugh, Kopp, and Nichols was present also and Shellabarger informed the representatives of the Union that he had entered into an agreement with this committee as representing the employees.

The day following this meeting Sesenbaugh, in accordance with instructions he had received from Shellabarger, met with the committee of Strausbaugh, Kopp, and Nichols for the purpose of effecting a reduction in the number of employees, which, according to Sesenbaugh and Shellabarger, had become necessary by reason of the condition of the respondent's business. On the same day Sesenbaugh notified several of the employees, all members of the Union, that they were to be laid off. When the Union members received this information a meeting of the Union was called for that night. At the meeting the members of the Union voted to strike. The following morning the Union members went out on strike and picketed the plant.

An examination of the method adopted on June 10 by Sesenbaugh and the committee of Strausbaugh, Kopp, and Nichols to determine which employees should be dispensed with, clearly reveals the respondent's intention to discharge its employees who were members of the Union. Indeed, the delegation of this authority to Strausbaugh, Kopp, and Nichols, under the circumstances, was sufficient, even though not accompanied by specific instructions, to insure the "weed-ing out" of Union members from the respondent's employ. The

“working schedule” fixed by this committee in conjunction with Sesenbaugh is in evidence and speaks for itself. From an examination of this document it appears that all the employees to be retained in their regular capacity were members of the group who had selected Strausbaugh, Kopp, and Nichols as their representatives. All of the other employees were placed on what was termed an “Extra Board.” The record shows that many of the members of the Union placed on the “Extra Board” had more seniority with the respondent than employees retained in a regular capacity. According to the testimony of the committee and Sesenbaugh, only the last seven employees on the “Extra Board” were to be dismissed. Among those seven there were three who were members of the organization represented by Strausbaugh, Kopp, and Nichols. These three were employees who had been in the respondent’s employ for only a few months and were evidently placed there to create some semblance that seniority had been considered. The remaining four were members of the Union. On the same day that the “working schedule” was completed several of the employees were notified by Sesenbaugh that they were to be dismissed. Sesenbaugh, however, went even further than the schedule, and Harold Wilber, George Snoke, and Wayne Hill, all members of the Union, were advised that they were being laid off, whereas, according to the “working schedule,” they were not to be. Furthermore, the three employees who were members of the group represented by Strausbaugh, Kopp, and Nichols, who were to be laid off according to the “working schedule,” remained in the employment of the respondent and were still employed at the time of the hearing. Strausbaugh was questioned on cross-examination regarding this departure by Sesenbaugh from the “working schedule” and could offer no explanation for it.

A brief summary of the foregoing findings will be helpful in presenting a clear picture of the respondent’s interference with the rights of its employees guaranteed under the Act. At the commencement of the union activities among the respondent’s employees, when there was only one union, the respondent’s policy was designed primarily to discourage any kind of organization of its employees. This policy, which is reflected in a series of discriminatory discharges coupled with various other unlawful acts which were clearly calculated to inspire the employees with the fear of the loss of their jobs, unquestionably gave birth to the employees’ organization opposing the Union. Upon the advent of the rival organization the respondent immediately utilized it as a means of thwarting the activities and organization of the Union to which the respondent was opposed. Thereafter, all the respondent’s actions were directed at the destruction of the Union and substituting in its place bargaining representatives for the employees who were bargaining representatives in name

only. The respondent achieved its objective largely by itself conducting the election for the bargaining representatives. Wright was discharged on the day preceding the election so that the psychological effect of the discharge of the leader of the Union would be fresh in the minds of its employees, thereby insuring the selection of the representatives of the rival organization. The election conducted by the respondent served several purposes. It furnished the respondent with bargaining representatives from the rival organization who were favored by the respondent and who could be used as a pretext for not bargaining with the Union at a time when bargaining with the Union could be deferred no longer. In addition, it provided the respondent with full information concerning its employees who had remained loyal to the Union. This information was utilized discriminatorily to discharge Union members, culminating in the discharges on June 10, hereinafter discussed in detail, which virtually eliminated from the respondent's employ all employees who had indicated their choice of the Union for their bargaining representative or had failed to return the questionnaire or had returned it without indicating any choice. By delegating on that date to the committee of the rival organization authority to determine which employees should remain in the respondent's employ, the respondent assured itself that it dealt an effective death blow to the Union.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

### *C. The discharges*

The complaint alleged that the respondent discriminatorily discharged 16 named persons and discriminatorily refused to reinstate one named person. For the sake of clarity, we will first deal with the discharge of James O. Wright, since the circumstances surrounding his discharge are peculiar to him alone. We will then consider collectively the discharge of seven employees and the refusals to reinstate two employees, since the respondent asserts the same defense as to all of them. Thereafter we will discuss the discharges of four employees, as to three of whom the Trial Examiner dismissed the complaint at the hearing upon motion by the respondent, and as to the fourth of whom he recommended dismissal in his Intermediate Report. Finally, we will consider the cases of the three employees named in the complaint who are shown by the

evidence not to have been discharged prior to the strike but who went out on strike on June 11 and were thereafter discriminated against by the respondent.

1. *James O. Wright*

*James O. Wright* had been employed by respondent as a bean processor for nearly 5 years prior to his discharge on May 19, 1937. He joined the local of the A. F. of L. in 1935 and was warned by Shellabarger at that time to discontinue his membership. From the inception of the Union movement among the respondent's employees in 1937 he was the acknowledged leader and chief proponent of affiliation of the Labor Adjustment Board with the A. F. of L.

On May 19 Sesenbaugh called on Wright at his home and stated that Wright was discharged because he had left his post and had allowed the temperature of the beans to become too high. He also told Wright that "you have had your clothes rolled up to go home ever since this thing started." Wright testified that no complaint regarding his work had ever been made to him individually at any prior time by either Sesenbaugh or Shellabarger and that all the bean processors had been warned collectively at times to be careful about permitting the beans to become too hot, but that the condition of the machinery made it almost impossible to prevent the overheating of the beans at times. He also testified that Sesenbaugh had been following him around in the plant for 2 weeks prior to his discharge watching every movement that he made.

Shellabarger testified that Sesenbaugh had frequently complained to him about Wright's work, but that some time prior to Wright's discharge he, Shellabarger, had consulted his lawyer who had advised him not to discharge Wright because such action might be misconstrued because of Wright's union activity. This advice gave Wright a few days' grace, according to Shellabarger, but shortly thereafter the situation again became acute and Wright was discharged.

Overheating the beans was not an uncommon occurrence among the employees engaged in processing them. Sesenbaugh admitted that there were occasions when other employees had permitted the beans to become overheated and that these employees were not discharged. Balding, whose duty it was to keep the water-cooling system, which controlled the temperature of the beans, in proper repair, testified that on various occasions he was called upon three or four times a day to adjust this machinery so that it would operate properly. In view of Wright's long period of satisfactory service the reason given for his discharge is not persuasive. On the other hand the evidence shows that Wright was the leader and most active member of the

Union and that his discharge occurred on the day preceding the day on which the respondent conducted its election, namely, at a time when the psychological effect of his discharge could not fail to operate as a restraint on the employees in their choice of representatives.

Wright has been employed since his discharge but the employment is not regular. He desires reinstatement.

We find that the respondent in discharging Wright discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. *V. L. Balding, L. J. Garver, Clifford Snow, James R. Scammahorn, Glen Wilber, Harold Wilber, Wayne Hill, Carl Grabb, and Paul Spain*

We will first discuss the employment history, the union activity, and the circumstances surrounding the discharge of the above employees separately and then the respondent's defense, which is the same as to all of them.

*V. L. Balding* was employed by the respondent on April 10, 1935, and was discharged on May 5, 1937. According to the respondent he occupied the position of boiler room foreman. He was not a supervisory employee in a strict sense and his wages were the same as other engineers employed by respondent, but he was considered to be in charge of the boiler room. Balding was very active in the organization of the Labor Adjustment Board and was made chairman of its grievance committee. On the same date that he was discharged Shellabarger had received the list from Wright which showed that Balding was chairman of this committee. When he was discharged he was offered a position as a common laborer at 45 cents an hour, which he refused. He was earning 60 cents an hour at the time of his discharge.

According to the respondent's own testimony Balding was considered as being in charge of the boiler room. A necessary force reduction would ordinarily eliminate employees with less seniority and employees in a lower classification. Nevertheless, at the time of Balding's discharge, James Scammahorn, whose rate of pay was the same as Balding's, was retained, although he had less seniority and Balding was his superior. No explanation of this circumstance was offered by respondent at the hearing. Balding has had no regular employment since his discharge.

*L. J. Garver*, a millwright, was employed on March 1935, and "laid off" on May 6, 1937. The reason given him by Sesenbaugh for his dismissal was a reduction in force. He was offered work as

a common laborer at 45 cents an hour, which he refused. Garver was earning 60 cents an hour at the time of his discharge.

Garver was a member of the Union from its inception. At the time of his discharge Sesenbaugh stated that he "didn't know how you stand on this union business" but that "you wouldn't want Shellabarger to tell you how to plant apple trees." This reference was made because Garver had an apple orchard at his home. About 2 weeks later Garver was called back and given a contract to do some work at an agreed price of \$16. While he was engaged in this work he was told that he would replace Ivan Perry who was about to be discharged. Garver was requested by Lucas, a leader of the group opposing outside affiliation, to sign the petition which was being circulated among the employees because "Shellabarger did not want the American Federation of Labor." Garver refused to sign. A day or two after his refusal to sign the petition Sesenbaugh informed him that Shellabarger had decided against reemploying him to replace Perry. Perry was discharged on May 11, but Garver was not allowed to replace him.

At the time of the hearing Garver had earned approximately \$200 in other employment. The employment is not regular and he desires reinstatement.

*Clifford Snow* had been in the respondent's employ as a maintenance employee for nearly 7 years prior to his discharge on June 2, 1937. On that date he was told that his position was being abolished, but that there might be part-time work for him at some future date.

Snow was very active in the formation of the Labor Adjustment Board and in the activities of the Union. The second organization meeting of the Labor Adjustment Board was held at his home. Snow refused to sign either of the petitions which were circulated by the group opposing affiliation with the A. F. of L. and returned the questionnaire given him by Sesenbaugh without designating any representative. He was one of the three employees discharged by Shellabarger on June 1, which was shortly after the questionnaires were returned to Shellabarger. It is also significant that, according to the bulletin posted in the respondent's plant on June 17, which is set forth below in Section D, the respondent had found it necessary to employ "one or two maintenance men" because of the condition of the machinery. It is apparent from this bulletin that the respondent could not dispense with the services performed by Snow for any length of time and it became necessary to employ someone to take his place a little over 2 weeks after he was discharged. Snow was never offered reemployment.

During the period from his discharge to the time of the hearing Snow has earned \$1,050 in other employment. It was not regular

employment and had terminated at the time of the hearing. He desires reinstatement.

*James R. Scammahorn*, an engineer, was employed by the respondent on May 6, 1936, and was discharged on June 2, 1937. He was told that he was being laid off because the force was being reduced. Scammahorn was active in the Union and at its meeting held on May 13, 1937, made the motion to affiliate with the A. F. of L. The circumstances surrounding his discharge were similar to the circumstances surrounding the discharge of Snow. Scammahorn refused to sign either of the petitions presented by the group opposing the Union, voted for a committee composed of Wright, Grabb, and Snoke, and was discharged on June 2, 1937. Scammahorn testified that he desires reinstatement.

Scammahorn has not received any regular employment since his discharge.

*Glen Wilber* had been in the respondent's employ for only a few months prior to his dismissal on June 1, 1937. He was told that the reason for his discharge was a force reduction. Two men who were employed in the same capacity but whose term of employment with the respondent was less than Wilber's were retained at the time of his discharge. The significant facts surrounding his discharge are similar to those surrounding the discharges of Snow and Scammahorn. He refused to sign either of the petitions presented by the group opposing affiliation with the A. F. of L. and did not return the questionnaire given by Sesenbaugh. At the time of the hearing he had earned approximately \$20 since his discharge. He desires reinstatement.

*Harold Wilber*, a mill helper, was employed by respondent on January 4, 1935. On June 10, 1937, Sesenbaugh left word with Wilber's father-in-law that he would be laid off. He was secretary-treasurer of the Union. According to the "schedule of work" prepared by the committee of Strausbaugh, Kopp, and Nichols, and Sesenbaugh on June 10, he was placed on the "Extra Board," but was not listed among the seven to be laid off. Nevertheless, he was laid off.

Wilber testified that he had earned approximately \$1,075 in other employment since his discharge up to the time of the hearing, but that this employment had ceased at the time of the hearing. He desires reinstatement.

*Wayne Hill* was an oil expeller employed by the respondent on January 12, 1935. Sesenbaugh left a note at his home on June 10, 1937, stating that he would be laid off. He was a member of the Union, voted to strike, and joined the picket line when it was established on June 11. According to the "schedule of work" he was not to be laid off. He has earned approximately \$450 in other em-

ployment since his discharge up to the time of the hearing. He desires to be reinstated.

*Paul Spain* entered the respondent's employ on August 15, 1936. He was told by Sesenbaugh on June 10, 1937, that he would be placed on the "Extra Board," but, nevertheless, to report for work on June 11. At the Union meeting on the night of June 10 he voted to strike and did not return to work the next morning. After the picket line was withdrawn in August he applied for reinstatement and was told by Sesenbaugh that the matter of his reemployment would have to be left to the employees who were then working. Later he was informed by Sesenbaugh that the employees voted against his reemployment. Spain desires reinstatement.

*Carl Grabb* was a mill helper who began his employment with the respondent on March 13, 1934. He was earning 57 cents an hour on June 10, 1937. Although Grabb was not notified on that date that he was to be laid off, he voted to strike with the other members of the Union at the meeting held that night. The following morning he requested a leave of absence from Sesenbaugh, which was granted. Grabb was a member both of the Union and the organization opposing the Union. Apparently he requested a leave of absence to retain the good will of both groups of employees. This was due to the fact that his wife operated a store and credit had been extended to many of the employees. After 2 weeks, Grabb concluded that the money due him was not going to be collected and applied for reinstatement. He was told by Sesenbaugh that "it was up to the employees" who were then working. The employees voted against his reemployment about 30 days after his application for reinstatement.

Grabb has had no regular employment since the date of his application for reinstatement. He desires reinstatement.

*The respondent's defense as to the above nine employees.* The respondent's defense to the above discharges is that there had been a failure of the soy bean crop in the spring of 1937, and that early in April of that year the beans reached a prohibitive price, thereby causing nearly all the plants engaged in the business of manufacturing byproducts of soy beans to shut down. Therefore, it is claimed, Shellabarger and Sesenbaugh decided to dispense with the services of every employee who did not perform absolutely necessary work. Although several employees were discharged or laid off in April and May, no definite policy respecting force reductions was adopted until after the respondent received its May bank statement which disclosed that the plant had operated at a loss for that month. Sesenbaugh was then requested by Shellabarger to work out some plan for a general force reduction. In accordance with these instructions, on June 10, Sesenbaugh and the committee of Strausbaugh, Kopp, and Nichols worked out a plan for the operation of the plant

on a basis which necessitated laying off some of the employees. The respondent's witnesses testified that the order in which employees were to be laid off was determined by such considerations as seniority and the number of dependents supported by each individual employee, and that no consideration was given to membership in any particular organization.

When this testimony is examined in the light of the findings set forth above and the facts surrounding the individual discharges, the conclusion is inescapable that the condition of the respondent's business was not the real reason for the discharges. According to the testimony of the respondent's own witnesses there were enough beans on hand to keep the plant running until September without a reduction of the force. In addition, it appears that on September 8, 1937, the respondent was able to enter into a contract with the Employees' Soy Bean Processing Association, which was the name assumed by the employees' organization opposing affiliation with an outside union, providing for a general wage increase for all of the employees. This raise was made possible, Sesenbaugh testified, by reason of a bumper soy bean crop which had materialized in September. Only 17 employees were laid off by the respondent, and yet, from the date of the strike up to the date of the hearing 18 new men were employed. None of the employees who were laid off by the respondent were ever offered reemployment, and those who applied for reinstatement were refused employment. These facts coupled with the respondent's policy of consulting the group opposing the Union in determining its force reductions, which resulted in the discharge of Union members only, compel the conclusion that the condition of the respondent's business was not the real reason for the lay-offs and discharges.

We find that the respondent in discharging Balding, Garver, Snow, Scammahorn, Glen Wilber, Harold Wilber, and Wayne Hill, and in refusing to reinstate Spain and Grabb, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act.

### 3. *Ivan Perry, P. J. Cobb, Al Mowry, and Guy Stevens*

*Ivan Perry*, a millwright, had been employed by the respondent for approximately 4 years prior to his discharge on May 11, 1937. It appears that he had a physical examination shortly before his discharge which disclosed that he was suffering from a highly infectious disease. He was requested by the respondent to take medical treatment. Perry testified at the hearing that he had not done so

because of the expense. Upon his refusal to take the treatment he was discharged.

*P. J. Cobb, Al Mowry, and Guy Stevens.* These three employees were discharged on April 23, 1937. In the case of Cobb no evidence was introduced at the hearing. The reason given for the discharge of Al Mowry was that he was 67 years of age and was suffering from arthritis to such an extent that he was unable to do his work. Guy Stevens was discharged because he only had one eye. While it is apparent that this fact was known to the respondent for some time, the matter was brought to its special attention just prior to the time of Stevens' discharge with reference to the respondent's liability insurance. His son, Gaylor Stevens, was employed to replace his father 2 weeks after his father's discharge.

*Conclusion.* None of these four employees had been active in any labor organization at the time of their respective discharges. Upon motion of the respondent at the hearing the Trial Examiner dismissed the complaint as to the last three of these employees on the ground that the evidence did not show that they were discharged for union activity. As to the fourth, the Trial Examiner in his Intermediate Report recommended the dismissal of the allegations of the complaint setting forth his discriminatory discharge.

We concur in the Trial Examiner's conclusion that these four employees were not discharged for union activity.

#### 4. *Snoke, Fortner, and Gaylor Stevens*

*George Snoke* began his employment with the respondent on December 27, 1934, as a millhelper. He was a member of the Union and was told by Sesenbaugh on June 10, 1937, that he was being laid off. On the morning of June 11, after the beginning of the strike (discussed in Section D, *infra*), he was requested by Sesenbaugh to go to work. He reminded Sesenbaugh that he had been told that he was to be laid off and stated that he had made other arrangements. At the Union meeting held the preceding night he had voted to strike. He went out on strike with the other Union members. He has never made application for reinstatement and at the time of the hearing was regularly employed. He testified, however, that he desired reinstatement to his former position with respondent.

*Glen Fortner* has been in the respondent's employ as a laborer since October 1936. Like Snoke, he was told by Sesenbaugh on June 10 that he would be laid off, but was requested by Sesenbaugh the next day to go to work shortly after the strike began. He did not return to work but joined the strikers. Fortner was a member of the Union and has never made application for reemployment. At the time of

the hearing he was regularly employed but testified that he wanted his position with the respondent back.

*Gaylor Stevens* was employed as a laborer after his father was discharged on April 27, 1937. He was not laid off but voted to strike and joined the picket line. Stevens has had no regular employment since the strike began and has never made application for reinstatement to his former position with the respondent.

Further findings with respect to these three men, based on the respondent's discriminatory acts against them during the course of the strike are set forth below in Section D.

*D. The strike of June 10 and the discrimination against the striking employees*

When the members of the Union who were still in the respondent's employ learned on June 10 of the discriminatory discharges of their members on that date, the feeling was prevalent among them that it was only a matter of time before all of those who remained loyal to the Union would be discharged. A meeting was called for that night and the members voted to strike. The next morning the Union began to picket the plant. A number of the employees who had not participated in the strike vote, some of whom were members of the rival organization, quit work and joined the picket line. The evidence is clear that the strike was caused by the respondent's discriminatory discharges of Union members.

After the strike had been in progress approximately a week the following bulletin was posted in the respondent's plant:

June 17, 1937.

**BULLETIN TO ALL EMPLOYEES**

The condition of the machinery in the plant requires now that we reemploy one or two maintenance men, also possibly in the near future, we will be able to give work to one or two mill hands.

The question arises as to whether or not we should offer maintenance work to the men who were laid off sometime ago and who are now on the picket line. Before making any decision on this question, the Management wishes to know the attitude and desires of the Employees Committee and accordingly the question was put to your Employees Committee as to whether or not the Management should offer to rehire one or two of the maintenance men who are now on picket duty.

After due deliberation, the Employees Committee advised the Management that they were opposed to the rehiring of any of the maintenance men who have been on picket duty and sug-

gested that the Management look elsewhere for new men to perform the duties of maintenance work as required:

The Management also advised the Employees Committee that at least one of the striking former employees had requested that he be reinstated and re-employed inasmuch as he had changed his mind relative to which employees organization he desired to become affiliated with. The Management also told the Employees Committee that they were going to leave this question up for decision with the employees of the company and requested that the Employees Committee canvass the members of their organization and report back their advice as to the method of handling this problem.

Yours very truly,

SHELLABARGER GRAIN PRODUCTS COMPANY,  
(Signed) W. L. SHELLABARGER,  
*President.*

This bulletin and the circumstances described above, surrounding the applications of Carl Grabb and Paul Spain for reinstatement, show conclusively that it was the respondent's intention not to reemploy any of the striking employees. The delegation of authority by the respondent to the group opposing the Union to assist the respondent in determining a reduction of forces having proved successful in eliminating Union members from the respondent's employ on June 10, the respondent again delegated to that group authority to commit further acts of discrimination against the striking employees by empowering them to determine which striking employees, if any, should be reinstated. The group decided not to rehire employees who had been on picket duty. Thus, as shown above, Carl Grabb and Paul Spain, the only employees who made application for reinstatement, were rejected by the members of the Strausbaugh, Kopp, and Nichols organization, which rejection was upheld by Sesenbaugh. There can be no doubt that the applications of any of the striking employees would have met the same fate at the hands of the Strausbaugh, Kopp, and Nichols organization as the applications of Spain and Grabb, and that such was respondent's premeditated design in adopting this policy. The respondent thereby conclusively and effectively precluded any possibility of the striking employees' obtaining reemployment with the respondent.

None of the members of the Union whom the respondent claimed were "laid off" because of the condition of its business, nor any of the striking employees, were ever offered reemployment. Some of the striking employees sought and obtained new employment elsewhere, thus clearly evidencing that they had interpreted the action of the respondent as signifying that they were discharged. To say, under

these circumstances, that because the striking employees did not make application for reinstatement they were not refused employment would be to penalize them for not going through a vain procedure.<sup>2</sup>

Under the Act the striking employees retained their status as employees. The same obligation was imposed upon the respondent by the Act not to discriminate in regard to their hire and tenure of employment that had existed while they were still working and not participating in the strike. In addition, we have held that employees who go out on strike because of an unfair labor practice are entitled to reinstatement upon application. Therefore, the imposition of the condition, which had the effect of denying the striking employees employment if and when they ceased striking, was discrimination in regard to their hire and tenure of employment.

As we have shown under Section 4 above, George Snoke, Glen Fortner, and Gaylor Stevens, all named in the complaint, were not discharged in the first instance, but were among those who joined the strike as a protest against the discriminatory discharge of union members. We find, however, that the policy adopted by the respondent on June 17, 1937, of submitting the hire and tenure of employment of the striking employees to the Strausbaugh, Kopp, and Nichols group constituted a discrimination in regard to the hire and tenure of these three men.

The record discloses that there were other striking employees not named in the complaint. Since they were subject to the same policy of discrimination as the three men named in the complaint they are also entitled to reinstatement to their former positions with respondent.

*E. The respondent's relations with the Employees' Soy Bean Processing Association; the contract*

In the early part of September 1937, the loosely formed association of employees represented by Strausbaugh, Kopp, and Nichols assumed a more formal organization. A lawyer was consulted and bylaws and a constitution were drafted. Thereafter, at a meeting in the "Specialty House," a part of the respondent's plant, the constitution and bylaws were voted upon and adopted, and this organization became the "Employees' Soy Bean Processing Association." The evidence adduced at the hearing discloses that this was the only meeting ever held by the Association or its predecessor. At least one of the employees admitted that he attended the meeting during working hours without loss of pay.

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<sup>2</sup> *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, 94 Fed. (2nd) 138, cert. den., 304 U. S. 575.*

Coincidental with the official organization of the Association the respondent entered into a written contract on September 8 with the Association, providing for a wage increase and outlawing strikes during the life of the contract. According to its terms this contract is to remain in force until October 1, 1938.

Under the circumstances which we have already set forth, it is clear that the contract of September 8 with the Association is invalid. The growth of this organization was largely, if not entirely, due to the respondent's acts of interference, restraint, and coercion in pursuance of its design to destroy the Union. It is clear that the granting of the contract was the consummation of the respondent's unlawful course of conduct and as such constituted an interference with the rights of self-organization guaranteed to the employees under the Act.

We find that the respondent, by discriminatorily discharging James O. Wright, the leader of the Union, on May 19, 1937, and conducting an election among its employees on the following day when the psychological effect of the discharge would operate as a restraint upon the free choice of representatives by the employees; by discriminatorily discharging Union members with the assistance of the committee of Strausbaugh, Kopp, and Nichols and its successor organization, the Employees' Soy Bean Processing Association; by entering into the contracts with said committee and said Association; and by other acts, has discouraged membership in the Union and encouraged membership in the Association, thus assisting and contributing support to the Association, 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 contract of September 8, 1937, between the respondent and the Employees' Soy Bean Processing Association is void and of no effect.

#### *F. The alleged refusal to bargain collectively*

##### 1. The appropriate unit

The respondent in its answer admitted the allegations of the complaint that its production and maintenance employees, except supervisory and clerical employees, timekeepers, and chemists, constitute a unit appropriate for the purposes of collective bargaining. At no time was the propriety of this unit questioned by any of the parties.

We find that the production and maintenance employees of the respondent, except supervisory and clerical employees, timekeepers, and chemists, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to the employees the full benefit of their right to self-organization and collective bargaining, and otherwise effectuates the policies of the Act.

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

An examination of the facts which we have already set forth fails to show that the Union represented a majority of employees in the appropriate unit on any of the dates on which it is alleged that the respondent refused to bargain collectively with the Union. The meeting on May 14 between Shellabarger and the Union committee was the first time that the Union made demands and requested the respondent to bargain collectively with it. At that time the Union submitted the petition of April 28, containing 38 names as evidence that it represented a majority of the respondent's employees. Shellabarger and the committee of the Union agreed that the committee would return on May 20, for an answer to the Union's demands.

While there is no doubt from the record that the respondent's attitude and conduct was largely responsible for the formation of the group in opposition to the Union, the 38 employees who signed the petition of April 28 had agreed to participate in an employee representation plan which later was named the Labor Adjustment Board. Only 15, less than half of the original signers of the petition of April 28, voted to affiliate with the A. F. of L. on May 13, and thus became members of the Union. Therefore, there is nothing in the record to indicate that the Union, when it requested the respondent to bargain on May 14, represented employees other than the 15 who had voted to affiliate with the A. F. of L. Since this was less than a majority of the respondent's employees, we cannot say that Shellabarger's action on May 14 and May 20 constituted a refusal to bargain with the representative of a majority of the respondent's employees. The same is true of the meetings on June 7 and June 9, after the Union had received its charter from the A. F. of L. The evidence presented to Shellabarger on those dates was not sufficient to show that the Union represented a majority of the employees.

Inasmuch as the evidence does not warrant the conclusion that the Union represented a majority of the employees within the appropriate unit on the pertinent dates on which a refusal to bargain could have taken place, we find that the respondent did not refuse to bargain collectively with the exclusive representative of its employees, within the meaning of Section 8 (5) of the Act. In consequence, the allegations of the complaint that the respondent unlawfully refused to bargain collectively with the Union as the exclusive representative of its employees within the meaning of Section 8 (5) of the Act will be dismissed.

#### IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the re-

spondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from further engaging in such practices. Moreover, we shall order the respondent to take certain affirmative action which we deem necessary to effectuate the policies of the Act.

We have found that James O. Wright, V. L. Balding, L. J. Garver, Clifford Snow, James R. Scammahorn, Glen Wilber, Harold Wilber, and Wayne Hill were all discriminatorily discharged. In accordance with our usual practice we will order their full reinstatement with back pay. Since, however, the Trial Examiner in his Intermediate Report found that V. L. Balding, L. J. Garver, and Wayne Hill were not discriminatorily discharged and did not recommend their reinstatement, we will exclude from the computation of their back pay the period from February 16, 1938, the date of the Intermediate Report, to the date of the order herein. This follows our rule that the respondent could not have been expected to reinstate the discharged employees after it received the Intermediate Report recommending the dismissal of the complaint as to these three employees.<sup>3</sup>

Since we have found Carl Grabb and Paul Spain were discriminatorily refused reinstatement upon application therefor, we will order their full reinstatement with back pay.

We have found that the strike commencing on June 11 was the direct result of the respondent's unfair labor practices. We have further found that on June 17, 1937, the respondent discriminated in regard to the hire and tenure of employment of the striking employees. We will, therefore, order the full reinstatement with back pay of George Snoke, Glen Fortner and Gaylor Stevens. Since the Trial Examiner did not recommend the reinstatement of these persons in his Intermediate Report, we will exclude from the computation of their back pay the period from February 16, 1938, the date of the Intermediate Report, to the date of the order herein.

We have found that the respondent's unlawful course of conduct interfered with and contributed support to the Association. We shall, therefore, order the respondent to withdraw all recognition

<sup>3</sup> *Matter of E. R. Heffelfinger Company, Inc and United Wall Paper Crafts of North America, Local No. 6, 1 N. L. R. B. 760.*

from and to disestablish the Association and not to give effect to the contract of September 8, 1937, with this organization.

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

#### CONCLUSIONS OF LAW

1. Flour and Cereal Workers Union, No. 20765 and Employees' Soy Bean Processing Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. All the employees who went out on strike on June 11, 1937, were employees on June 17, 1937, the date of the respondent's discrimination against them.

3. The respondent, by discriminating in regard to the hire and tenure of employment of James O. Wright, V. L. Balding, L. J. Garver, Clifford Snow, James R. Scammahorn, Glen Wilber, Harold Wilber, Wayne Hill, Paul Spain, Carl Grabb, and George Snoke, Glen Fortner, and Gaylor Stevens and other striking employees, and each of them, and thereby discouraging membership in the Flour and Cereal Workers Union, No. 20765, and its predecessor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. The respondent, by interfering with the administration of the Employees' Soy Bean Processing Association and contributing support thereto, has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (2) of the Act.

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

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

7. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act; and, in discharging Ivan Perry, P. J. Cobb, Al Mowry, and Guy Stevens, has not engaged in unfair labor practices, within the meaning of Section 8 (3) 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, Shellabarger Grain Products Company, Decatur, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Flour and Cereal Workers Union No. 20765, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment because of membership or activity in connection with such labor organization;

(b) In any manner interfering with the administration of the Employees' Soy Bean Processing Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Employees' Soy Bean Processing Association or any other labor organization of its employees;

(c) Giving effect to its September 6, 1937, contract with Employees' Soy Bean Processing Association;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, 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.

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

(a) Offer to James O. Wright, V. L. Balding, L. J. Garver, Clifford Snow, James R. Scammahorn, Glen Wilber, Harold Wilber, Wayne Hill, Carl Grabb, and Paul Spain immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole James O. Wright, Clifford Snow, James R. Scammahorn, Glen Wilber, and Harold Wilber, for any loss of pay they have suffered by reason of their respective discharges, by payment to each of them of a sum of money equal to the amount 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) Make whole V. L. Balding, L. J. Garver, and Wayne Hill for any loss of pay they have suffered by reason of their respective discharges, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to February 16, 1938, the date of the Intermediate Report of the Trial Examiner, and from the date of this order to the date of such offer of reinstatement, less any amounts earned by him during such periods;

(d) Make whole Carl Grabb and Paul Spain for any loss of pay they have suffered by reason of the respondent's refusal to reinstate

them, by payment to each of them a sum of money equal to that which he would normally have earned as wages from the date of the respondent's refusal to reinstate him to the date of such offer of reinstatement, less any amounts earned by him during such period;

(e) Offer to George Snoke, Glen Fortner, and Gaylor Stevens and all other employees who were on the last pay roll prior to June 11, 1937, and who went on strike on June 11, 1937, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges;

(f) Make whole George Snoke, Glen Fortner and Gaylor Stevens for any loss of pay they have suffered by reason of the respondent's refusal to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from June 17, 1937, the date of the respondent's refusal to reinstate them, to February 16, 1938, the date of the Intermediate Report of the Trial Examiner, and from the date of this order to the date of such offer of reinstatement, less any amount earned by him during such period;

(g) Make whole all other employees who were on the last pay roll prior to June 11, 1937, and who went out on strike on June 11, 1937, for any losses they may suffer by reason of any refusal or failure to offer them reinstatement in accordance with paragraph 2 (e) of this order, by payment to them of a sum of money equal to that which each would normally have earned as wages during the period from the date of this order to the date of such offer of reinstatement, less the amount earned by him during such period;

(h) Withdraw all recognition from the Employees' Soy Bean Processing Association as the representative of any of its employees for the purpose of dealing with it in respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish said organization as such representative;

(i) Immediately post notices to all its employees in conspicuous places in its plant, 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 set forth in paragraph 1 (a), (b), (c), and (d); (2) that the respondent withdraws all recognition of Employees' Soy Bean Processing Association as a representative of its employees and completely disestablishes it as such representative; and (3) that the contract executed with Employees' Soy Bean Processing Association is void and of no effect;

(j) 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 herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that respondent had engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act; and that the allegations of the complaint stating that the respondent discriminatorily discharged Ivan Perry, P. J. Cobb, Al Mowry, and Guy Stevens within the meaning of Section 8 (3) of the Act be, and they hereby are, dismissed.