

In the Matter of *HARTER CORPORATION and INTERNATIONAL ASSN. OF MACHINISTS*

Cases Nos. C-396 and R-340.—Decided July 19, 1938

Furniture Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to union; questioning employees concerning membership in union; persuading employees not to join union; intimidation—*Company-Dominated Union:* initiation; domination of and interference with formation and administration; soliciting membership in; support; disestablished, as agency for collective bargaining—*Discrimination:* discharges, for union membership and activity; charges of, not sustained as to one person—*Strike:* result of, and prolonged by, employer's unfair labor practices—*Employee Status:* discharged employees; strikers—*Unit Appropriate for Collective Bargaining:* production and maintenance including engineering employees, excluding clerical and supervisory employees and watchmen—*Representatives:* proof of choice: comparison of pay roll with union designation and testimony as to membership—*Collective Bargaining:* employer's refusal to bargain collectively with union as exclusive representative of employees in appropriate unit; employer's duty: majority rule, effect upon; special form of remedial order: recognition as exclusive representative; negotiation—*Reinstatement Ordered:* discharged employees; strikers, including discharged employees who refused reinstatement and joined strike; not ordered, as to one discharged employee who refused reemployment; dismissal of newly hired employees, if necessary; preferential list ordered: to be followed in further reinstatement—*Back Pay:* awarded; discharged employees, from date of discharge to date of offer of reinstatement; strikers, who are not reinstated or placed on preferential list within 5 days of application for reinstatement—*Investigation of Representatives:* petition for, dismissed, in view of order to employer to bargain.

Mr. Oscar H. Brinkman, for the Board.

Mr. Raymond H. Dresser, of Sturgis, Mich., and *Mr. Harry C. Howard*, of Kalamazoo, Mich., for the respondent.

Mr. Paul P. Hutchings, of Washington, D. C., for the I. A. M.

Cowell & Frankhauser, by *Mr. W. Glen Cowell*, of Coldwater, Mich., for the Shop Union.

Mr. Victor A. Pascal, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 5, 1937, Lodge No. 1523, International Association of Machinists, herein called the I. A. M., filed charges and, on Septem-

ber 20, 1937, filed amended and supplemental charges with the Regional Director for the Seventh Region (Detroit, Michigan), herein called the Regional Director, alleging that The Harter Corporation, Sturgis, Michigan, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 22, 1937, the National Labor Relations Board, herein called the Board, by the said Regional Director, issued its complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. On September 22, 1937, the complaint and notice of hearing were duly served upon the respondent, the I. A. M., and the Employees Shop Union, which is referred to in the complaint and is herein called the Shop Union. Thereafter, the respondent filed its answer, verified^o September 27, 1937, in which it denied that it had engaged or was engaging in unfair labor practices as alleged in the complaint.

On May 5, 1937, the I. A. M. filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 27, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for the purposes of hearing and also, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On September 30, 1937, the Regional Director issued and duly served upon the respondent, the I. A. M., and the Shop Union a notice of hearing on the question concerning representation.

Pursuant to notice, a hearing was held on the consolidated cases in Sturgis, Michigan, on October 7, 8, 9, 11, 12, 14, 15, and 16, 1937, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Shop Union were represented by counsel and participated in the hearing. On about October 11, 1937, the Shop Union filed with the Regional Director a petition pursuant to Section 9 (c) of the Act for leave to intervene. At the hearing, the Trial Examiner granted the Shop Union's motion to intervene. He also granted the motion, made by counsel for the Board, to amend the complaint to allege that the I. A. M. was

the bargaining representative of a majority of the employees in the appropriate bargaining unit on April 6, 1937, instead of March 25, 1937, and to allege the discriminatory discharge of Gale Lintemoot on or about March 11, 1937. These rulings are hereby affirmed. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing, the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 3, 1938, the Trial Examiner filed an Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act, but not within the meaning of Section 8 (5) of the Act. He recommended that the respondent cease and desist from engaging in the unfair labor practices, offer full reinstatement with back pay to the discharged employees named in the complaint, and withdraw all recognition from and disestablish the Shop Union as the bargaining representative of its employees. On February 15, 1938, the Trial Examiner filed a Supplemental Intermediate Report recommending that the respondent offer those employees who were on strike on August 13, 1937, immediate and full reinstatement to their former positions. Exceptions to the Intermediate Report were thereafter filed by the I. A. M., the respondent, and the Shop Union.

Pursuant to notice, a hearing was held before the Board on February 24, 1938, in Washington, D. C., for the purpose of oral argument. Counsel for the respondent appeared, filed briefs, and participated in the oral argument. In lieu of oral argument, the I. A. M. filed a brief and the respondent filed a brief in answer thereto. The Board has considered the briefs which have been filed herein. The Board has also reviewed the exceptions to the Intermediate Report, and save as they are consistent with the findings, conclusions, and order set forth below, finds 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, a Michigan corporation, has its office and factory in Sturgis, Michigan, where it is engaged in the business of manufacturing and selling upholstered and steel furniture. In its manufacturing operations it uses leather, which it receives from Ohio and

New Jersey, cartons, mostly from Indiana, steel from New York, wood, stains, and varnishes from Wisconsin and Michigan, and other materials. Although the exact quantity of the raw materials obtained by the respondent from sources outside the State of Michigan is not set forth in the record, in its answer the respondent admits that it causes large quantities of the raw materials which it uses to be transported in interstate commerce to the plant in Michigan. Approximately 85 per cent of the respondent's manufactured products are shipped to points outside the State of Michigan.

II. THE ORGANIZATIONS INVOLVED

Lodge No. 1523 International Association of Machinists is a labor organization, affiliated with the American Federation of Labor, herein called the A. F. of L., which admits to its membership the respondent's as well as other employees.

Employees Shop Union¹ is an unaffiliated labor organization admitting to its membership, according to its Articles of Association, "all employees of the Chair Division of the Harter Corporation of Sturgis, Michigan; excepting, however, that no officers of the said Harter Corporation shall be members of or hold any office in this Association."

III. THE UNFAIR LABOR PRACTICES

A. *Domination of and interference with the Shop Union and discrimination against the I. A. M.*

About the middle of February 1937, a group of employees in Sturgis asked L. O. Thomas, grand lodge representative of the International Association of Machinists, for information concerning the manner in which they could establish a lodge of that organization. About March 1, 1937, an organizational meeting of the I. A. M. was held, at which 35 of the respondent's employees signed a paper designating the International Association of Machinists as their bargaining agent and indicating their desire to be members of the organization. Subsequently Lodge No. 1523 was chartered by International Association of Machinists.

On March 4, 1937, the employees in the respondent's upholstery and welding departments, as well as a few other employees from other departments, stopped working for a short period in order to induce the respondent to take some action with reference to their request for increased wages. The stoppage does not appear to have been directed by the I. A. M. Frank B. Harman, the respondent's superintendent, and Lester D. S. Finney, its assistant superintendent

¹ The Shop Union is also known as "Employees Shop Union of Sturgis, Michigan."

and foreman of the final-assembly department, instructed the employees to select a committee to confer with E. C. Harter, the respondent's president, about their grievances. The committee was selected and, the same day, met with E. C. Harter, who promised to give the employees an answer the next day at noon. About 2 o'clock in the afternoon of the next day work in the factory ceased at the respondent's direction and the employees assembled in the factory to listen to E. C. Harter's answer to the committee's request for increased wages. In the course of his speech, E. C. Harter stated that the hours of work in the factory would be increased from 40 hours a week to 50 hours a week and that the employees would be paid one and a half times their usual hourly wages for the extra 10 hours of work. He also stated that some of the employees would have to be laid off because of the increased production which would result from lengthening the hours. Although E. C. Harter denied that he then stated that the lay-offs would be governed by seniority, it appears from testimony of many of the employees that he said that those employees most recently hired would be the first to be laid off.

On March 27, 1937, Thomas wrote the respondent stating that a majority of the employees had chosen the I. A. M. as their bargaining agent and requesting an interview for collective bargaining. On March 29 or 30, 1937, the employees were again assembled by the respondent in the factory during working hours and were addressed by E. C. Harter. According to Arthur B. Persing, one of the employees, Harter stated that the employees would have to pay smaller dues in a shop union and that he thought it better for them to have an organization of their own. Harter admitted that he had told the employees that he saw no reason for their paying dues to an outside organization. He asked the employees to indicate by a show of hand whether or not he should answer Thomas' letter, but at the request of one of the employees, the vote was taken by written ballot. The result of the vote appears to have been 28 to answer the letter and 47 not to do so. However, it is apparent that the result did not reflect the free choice of the employees. No opportunity for voting in secret was afforded them and no voting booths were provided. There was ample opportunity for those officials present to observe the manner in which the ballots were marked, and some of the foremen, including Edward Persing, foreman of the upholstering department, participated in the vote. Upon the basis of the vote, Harter answered Thomas' letter on April 1, 1937, stating that there was no justification for a meeting between them in connection with the matters referred to in the Union's letter of March 27, 1937.

The first meeting of the Shop Union was held in a building in Sturgis on April 28, 1937, pursuant to notice given in the factory. Although the respondent disclaims responsibility for the organiza-

tion of the Shop Union, the respondent's participation in and domination of it is apparent from its inception. The meeting was attended by Maynard Marker, foreman of the shipping and receiving department, Noble Taylor, foreman of the machine shop, Ray Booher, foreman of the finishing department, Edward Persing, foreman of the upholstering department, and Lester D. S. Finney, the respondent's assistant superintendent and foreman of the final-assembly department. Marker opened the meeting, stating that he thought there should be a union limited to the respondent's factory employees, that the employees would be able to obtain better working conditions through such a union than through the I. A. M., and that such a union would be more advantageous because the dues would be small. Although he testified at the hearing, Marker did not deny these statements. Finney nominated John Mowry, an employee at the experimental bench, as chairman, and he was elected by acclamation.

The next day, Finney, the assistant superintendent, had the following heading typed on sheets of the respondent's correspondence paper: "We, the undersigned Employees of The Harter Corporation, attach our signatures to the effect we have formulated a Shop Union to be run and governed by the employees." These sheets were circulated among the employees during working hours by Mowry, Finney's nominee, and by other employees. Many signatures were secured. The list is headed by the signatures of Booher, Marker, Finney, Edward Persing, and Taylor. Although Finney testified that at the time these sheets were circulated Harman was away on a business trip, Harman testified that he observed Mowry walking about with the sheets and told him not to do so. It is evident that the sheets were circulated and signed in the presence of the respondent's supervisory employees and with their assistance. After some signatures had been secured, Mowry gave the petition to Finney, who took it to Harter. In marked contrast to his refusal to bargain with the I. A. M., Harter on the same day signed a statement, which appears on the first sheet of the petition, reading: "The Harter Corp. hereby recognizes this association representing a majority of its employees. The Harter Corp. will bargain with proper committees of this association regarding all employee-employer relations." Although Harter claimed that a majority of the employees had signed the petition before Finney gave it to him, all the signatures had not been affixed to the petition when he recognized the Shop Union as the employees' bargaining agent.

Throughout the period of organization, the respondent and its agents openly expressed their hostility to the I. A. M. and preference for the Shop Union in their contacts with the employees. According to Frank Kenney, one of the employees, the morning after an

I. A. M. meeting, Edward Persing said to him, "You fellows want to look out. I know every one of you that belongs to that Union." Although Persing testified that he did not know that Kenney was a member of the Union, he did not deny having made the statement attributed to him by Kenney. George Brown, who was employed in the assembling department, testified that his foreman, Noble Taylor, had asked him to tell him what had transpired at an I. A. M. meeting. When respondent's counsel questioned him on the stand concerning this testimony, Taylor stated that he did not recall having asked Brown if he had been to an A. F. of L. meeting. Brown further testified that Ray Booher, another foreman, had told him that he would "get further" with a shop union than with "the A. F. L.," and Freeman Yoder, who was employed as a welder, testified that Booher had told him that "Harter would do more for us in the Shop Union than the American Federation of Labor would do for us." In testifying, Booher stated that he did not remember if he had made this statement to Yoder, but he offered no testimony with reference to his alleged remarks to Brown. In view of Persing, Taylor, and Booher's activities in behalf of the Shop Union, we are of the opinion that they made the above statements attributed to them by Kenney, Brown, and Yoder respectively.

Donald Marks, another employee, testified that at the meeting of employees on March 29 or 30, Harter had told them that "he couldn't see why we should go on and pay \$1.20 a month for protection outside of town when we could go ahead and organize together" and that he had told a committee of the employees that "before he would sell his men out for \$1.20, that he would close up his shop, throw away his keys and go fishing." Harter admitted that he told the employees that he saw no reason for their paying dues to an outside organization but he testified that he told a Shop Union committee that "if any time the wage question went entirely out of reason, it would necessitate such high costs that our prices would be too high and we could not meet competition, and regardless of what organization, whether it was the A. F. of L. or shop organization or whatever the organization might be, it would be necessary for them to close up and we might just as well put the key in the door, throw it away, and go fishing." We are inclined to accept Marks' version of the incident, as it is consonant with Harter's repeated acts of hostility to the I. A. M.

Other employees testified that they were questioned by supervisory employees regarding their membership in the I. A. M. and were otherwise discouraged from joining or continuing their membership in the I. A. M. These statements, made to employees by the respondent's officials and supervisory employees, lead us to the conclu-

sion that the respondent carried on a persistent campaign in the factory to restrain the employees from joining or continuing their membership in the I. A. M. and to foster the growth of the Shop Union.

The Strike

On August 11, 1937, the respondent discharged 14 employees, 11 of whom were affiliated with the I. A. M.² On the evening of August 12, 1937, the respondent's employees who were members of the I. A. M. voted to strike in protest against the respondent's alleged unfair labor practices. On August 13, 1937, the strike became effective, when picket lines were established, and the respondent's factory was unable to operate. Commencing August 14, 1937, a number of conferences were held between Harter and a committee of the I. A. M. at which the parties sought to resolve their differences, but without success.

About August 26, 1937, a suit was brought by members of the Shop Union for an injunction to restrain the pickets from alleged actual or threatened acts of violence against employees who desired to return to work. While this proceeding was instituted nominally by the Shop Union on behalf of its members, there are indications that it was actually directed by the respondent. A group of employees who desired to return to work secured an attorney in Coldwater, Michigan, to institute the injunction action. They rode to the attorney's office in an automobile owned and driven by Wyatt Mick, one of the respondent's clerical employees, who was the leader of the group. The attorney requested a written authorization to commence the injunction action. This authorization was prepared and was subsequently signed by members of the Shop Union, including supervisory employees. When the application for a temporary injunction came on for hearing, the Court refused to allow the attorney for the plaintiffs to withdraw it and, after testimony was taken, the bill was dismissed.

The factory reopened on September 7, 1937, and the respondent resumed its operations when some of the strikers returned to work. The strike continued.

From the facts set forth above it is apparent that the Shop Union was initiated and used by the respondent to restrain the employees in their efforts to organize. After the I. A. M. had commenced its activities, the respondent created the Shop Union and diverted the employees to it and away from membership in the I. A. M. The

² The respondent claims that the 14 employees were not discharged but were temporarily laid off due to a decrease in business. These and the other discharges will be discussed below.

notice of its first meeting was given in the respondent's factory. The meeting was opened by Marker and its proceedings were conducted under the observation and with the assistance of the respondent's supervisory employees. In fact Finney, the assistant superintendent, nominated Mowry who was elected president. The next day the signatures of the respondent's foremen headed a petition prepared by Finney designating the Shop Union as the employees' bargaining agent. The petition was then circulated by Mowry and others during working hours among the employees for their signature with the knowledge, acquiescence, and sanction of the respondent. As soon as the petition was presented to him, Harter recognized the Shop Union as the employees' exclusive bargaining agent. As noted above, in conjunction with the Shop Union's campaign, the respondent refused recognition to the I. A. M., and its supervisory employees discouraged membership in the I. A. M. by hostile statements and criticisms of the organization. Having served its purpose in diverting many of the employees from the I. A. M. to the Shop Union, it appears that after meeting in the spring of 1937, the Shop Union did not meet again until after the service of the complaint herein.

We find that the respondent has participated in, dominated, and interfered with the formation and administration of the Shop Union, and has contributed support to it, and has thereby interfered with and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. The discharges

The respondent contends that many of the discharges referred to in the complaint were occasioned by a decrease in the volume of its orders. No direct testimony as to the actual amount of the respondent's orders on hand is contained in the record. However, it appears that, from January through July 1937, the value of the respondent's monthly shipments were approximately 37.5 per cent to 133 per cent greater than during the corresponding months in 1936 and that the value of its total sales during the first 8 months of 1937 was greater than its sales during the entire year of 1936. Harter testified that the respondent's sales from January 1 to October 1, 1937, were greater in both volume and value than during 1936. The record fails to sustain the respondent's contention that a decrease in the amount of its business coupled with an increase in the employees' working hours necessitated its reduction in force.

In spite of E. C. Harter's assurance to the employees on March 5, 1937, that in any lay-off, employees hired last would be the first to be laid off, the respondent admitted that none of the lay-offs or discharges in issue had been made on the basis of seniority. Moreover, many of the laid-off or discharged employees under consideration had

been retained in the respondent's employ during 1936, when the amount of the respondent's sales was substantially less than at the time such employees were laid off or discharged in 1937.

Don Brew³

Brew entered the respondent's employ in its upholstering department in about 1932. After working for about 2 years and 2 months, he was discharged. The respondent claimed that he was discharged on that occasion because he had been away from his bench for too long a period. Brew admitted the absence from his bench but maintained that he had been looking for wood which he needed in his work. In any event the respondent sent for Brew and he was rehired approximately 10 months later and thereafter worked for the respondent until his discharge on March 4, 1937. On that day, according to Brew, he was given six pieces of leather and was directed to use them in covering the seats of the chairs upon which he was working. Brew testified that he selected one of the pieces of leather and told his foreman, Edward Persing, that it was too poor in quality to be used; that Persing directed him to use the leather, and after the chair was completed passed it as satisfactory; that after Harman saw the chair he complained to Persing and Brew about it, and that Edward Persing's answer to Harman, who asked what would be done about it, was "You either get his (Brew's) check or get mine;" and that Harman thereupon discharged Brew before the stoppage on March 4, 1937.

Arthur B. Persing, a cousin of Edward Persing and an employee in the finishing department, testified that at his home Edward Persing told him that he and Harman had planned Brew's discharge because Brew was "always keeping things stirred up." Edna Persing, who worked in the sewing room and was Arthur B. Persing's wife, testified that Edward Persing told her that the circumstances surrounding Brew's discharge had been planned in advance because he was "agitating the first strike." She further testified that Edward Persing, in accordance with his usual practice, had selected the leather that morning during which time she had not seen Brew select any leather. Clyde Harter, another employee, testified that Edward Persing told him that he and Harman had "framed" Brew in order to get rid of him because he was "agitating these strikes."

The respondent's witnesses substantially denied these assertions as to planning Brew's discharge. Edward Persing testified that many times before the discharge he had complained to Brew about his poor work, that he had never told Arthur B. Persing or his wife that Brew had been "framed," that he had not selected the leather for Brew, and that Brew had not complained about the quality of

³ In the record, his name also appears as "Donald Brew."

the leather before he used it. Edward Persing further testified that Brew had not been "framed," that he had not seen the seat after it had been finished until Harman called it to his attention, and that, after Brew's discharge, the seat was covered satisfactorily with the same piece of leather. Harman also testified that Brew's work had been unsatisfactory, that he had spoken to Brew twice about it, and that he had not planned the circumstances surrounding Brew's discharge. Burnice White, one of the respondent's witnesses, testified that, while she was working on cutting leather, Brew told her that the piece of leather in question was "all right for a seat."

It is clear from the testimony of Arthur and Edna Persing and Clyde Harter, which we credit, that Brew was an active participant with the other upholsterers in the concerted activity which culminated in the stoppage of March 4, 1937. It is equally clear, from their testimony, that Edward Persing and Harman knew of this activity and resented it. There is a conflict in the evidence as to whether or not Brew made application for membership in the I. A. M. before or after his discharge, but in our view the date is immaterial since the basis of the respondent's objection to this employee was his concerted activity with other employees which resulted in the organization of the I. A. M.

The respondent's contention that Brew was habitually inefficient is not persuasive since the respondent voluntarily rehired him after his original discharge and retained him in its employ for more than a year thereafter, during which period he received two increases in salary. In view of the evidence that Edward Persing and Harman "framed" the incident which precipitated his discharge, we find that Brew's allegedly faulty workmanship on the chair was no more than a pretext for his discharge.

In our opinion, the weight of the evidence establishes that, in discharging Brew, the respondent discriminated against him because of his concerted activity with other employees for their mutual aid and protection.

Clyde Harter, Virgil Harter, and Frank Kenney

Clyde Harter was hired by the respondent as an upholsterer on July 2, 1936, at a wage of 35 cents an hour. He was receiving 42½ cents an hour at the time of his discharge. Clyde Harter was an active participant in the stoppage which occurred on March 4, 1937, and served as spokesman for the upholsterers on the committee which met with E. C. Harter on that day to discuss the employees' grievances. Apparently, E. C. Harter resented this activity as, subsequently, he addressed Clyde Harter as "the committeeman." Clyde Harter made application for membership in the I. A. M. on April 6, 1937.

On March 19, 1937, Clyde Harter was discharged by his foreman, Edward Persing, although eight or nine employees in the upholstery department were his juniors in service. Clyde Harter testified that, after Edward Persing discharged him, Persing informed him that he had been instructed to do so because of his connection with the strike. Edward Persing denied this statement and asserted that he had simply told Clyde Harter that he was going to lay him off. However, Edward Persing's denial is negated by other evidence in connection with Clyde Harter's discharge. Sargent testified that he had overheard Edward Persing tell Marker that Harman had instructed him to discharge Clyde Harter because of his activity in connection with representing the employees, which he feared would result in another strike. Frank Kenney testified that when Clyde Harter returned for his tools, he had heard E. C. Harter say to Edward Persing, who had been in the stockroom, "Why in hell don't you get out and watch that fellow? You know he is a labor organizer." Although Edward Persing denied in general terms that he had stated to any employees or in their presence that anyone would be laid off for union activities, neither he nor E. C. Harter denied these specific statements attributed to them, which we believe.

The respondent's witnesses denied that Clyde Harter's activity in connection with the stoppage on March 4, 1937, had motivated his discharge but testified that he had been laid off at a time when the respondent was reducing the number of its employees because he was less efficient than other employees. We cannot accept this explanation of his discharge since he had greater seniority than eight or nine other employees and his work had apparently been satisfactory, as is evidenced by the fact that he had received two increases in pay. It is also significant that the respondent did not deem Clyde Harter's alleged failings to be of sufficient importance to warrant his discharge until shortly after he had conspicuously participated in the stoppage on March 4, 1937. We find that the respondent discharged Clyde Harter because he engaged in concerted activity with other employees and was an active participant in the March 4, 1937, stoppage.

Virgil Harter, a brother of Clyde Harter, was hired by the respondent as an upholsterer in January 1937. He performed some of the work on the respondent's samples and Edward Persing, his foreman, complimented him upon his work. Virgil Harter made application for membership in the I. A. M. on approximately March 1, 1937, and was discharged at the same time as his brother, Clyde, on March 19, 1937. He was in the upholstery department when that entire department stopped work on March 4, 1937. Although Virgil Harter was one of the recently hired employees in the upholstery department, he had more seniority than several other employees in

the department at the time of his discharge. The respondent maintained that he had been discharged because of his inefficiency. There was no showing to support the testimony concerning his alleged inefficiency. Under the circumstances, we conclude that his affiliation with the I. A. M., his concerted activities with other employees, and his relationship to Clyde Harter, another active participant in such activity, caused the respondent to discharge him simultaneously with his brother.

Kenney, who is related to Clyde and Virgil Harter, was hired by the respondent in January 1937, as a retoucher of leather. During the course of his employment, *Kenney's* initial salary of 25 cents an hour was increased by 5 cents and he was promised a further increase. *Kenney* applied for membership in the I. A. M. on March 1, 1937. In February 1937, he asked his foreman, Edward Persing, to be transferred to upholstering work in order to earn more money, and subsequently he was so transferred. *Kenney* testified that he received no instruction in connection with his new work; that, after he had been working for an hour or two, Edward Persing complained to him that he was not working with sufficient speed; and that the next morning, April 17, 1937, Harman discharged him, stating that he had been working too slowly. Edward Persing testified that *Kenney* had worked at upholstering for 2 or 3 weeks before his discharge, that he had received instruction in his new work, and that he was unable to handle it. He further stated that he had no knowledge of *Kenney's* union membership or that he was related to Clyde and Virgil Harter.

Persing's explanation does not convince us. In the first place, Persing on cross-examination stated that he thought Clyde Harter had helped *Kenney* on the upholstering work and presumably furnished the instruction. When confronted with the fact that Clyde Harter had been discharged before *Kenney* had been assigned to upholstery work, he admitted his uncertainty. In the second place, as noted in Section A, Persing had warned *Kenney* concerning his I. A. M. membership about 3 weeks before *Kenney* was discharged.

Under all the circumstances we find that the respondent did not give *Kenney* an adequate opportunity to learn the new and unfamiliar work to which he was transferred in an effort to be rid of him because of his activity in connection with the I. A. M.

S. E. Mitch,⁴ J. G. Pickles, and L. A. Sargent⁵

S. E. Mitch had been employed by the respondent since about July 1935. His initial salary of 40 cents an hour was subsequently increased to 45 cents an hour. At the time of his discharge, he worked

⁴ In the record, his name also appears as "Sherman E. Mitch."

⁵ In the record, his name also appears as "Lester Sargent."

as a millwright and fireman. About March 1, 1937, Mitch applied for membership in the I. A. M. and, at the time of the hearing, was its financial secretary.

About 11:20 p. m. on April 7, 1937, Mitch, accompanied by Pickles and Sargent, endeavored to see LeRoy Van Zile at the factory to let him know what had happened at an I. A. M. meeting held that night. Apart from Orcie L. Bolley, the night watchman, Van Zile was the only employee working in the factory that night. Although Mitch had keys to all parts of the factory, he rang the outer bell and asked Bolley for permission to see Van Zile, whereupon Bolley escorted them to the paint room, where Van Zile was working. The evidence as to the conversation after they met Van Zile is conflicting, but apparently they recounted the events at the I. A. M. meeting and sought to induce Bolley and Van Zile to join the I. A. M., as the two latter testified. However, it is uncontradicted that they created no disturbance and that they did not remain in the factory for a long period.

The next morning E. C. Harter discharged Mitch, Pickles, and Sargent. Before Mitch started to work, he was discharged and directed to return later for his tools and check. Mitch testified that when he returned that day as directed, "Mr. Marker said to me, he said, 'Mr. Harter wants to see you in his office.' So I went to Mr. Harter's office and we set there and we talked and he asked me why the hell I was out trying to organize the employees in his business, that they're getting along good enough the way things were going, and I told him that I didn't organize them, but I told him that the employees were organized, the biggest majority of them, and he told me that I wasn't nothing but a damn back-stabber." Harter insisted that in his conversation with Mitch he had assured him that the discharge should not be construed as having anything to do with his union activities, but he did not deny Mitch's version of the conversation.

Pickles was hired by the respondent in January 1936, as a polisher and was subsequently transferred to upholstering work. He applied for membership in the I. A. M. on March 1, 1937, and subsequently served as one of its officers. Pickles and Sargent were discharged by Harter at the same time. Pickles testified that Harter told them on that occasion that they were being discharged for "slipping into the factory at night and talking about him the way we did." Since Sargent corroborated this testimony, in substance, and Harter did not deny it, we find that the statement was made.

During the latter part of April 1937, Pickles was offered reemployment but not back pay by the respondent and he refused to return to work because he had placed his case in the hands of the Shop Union for adjustment.

Sargent was employed by the respondent in its upholstering department from January 1936 until April 8, 1937, except for a 2-week interval in the fall of 1936. He was hired at the salary of 40 cents an hour and was earning 47½ cents an hour at the time of his discharge. *Sargent* applied for membership in the I. A. M. on March 1, 1937, and solicited members for it.

The answer alleges, and the respondent's witnesses testified, that *Mitch*, *Pickles*, and *Sargent* had been discharged "for trespassing on the respondent's property and for interfering with other employees in their work . . . against the rules and regulations of the respondent's factory." There is no contention that these men were in any manner unsatisfactory in their work. *E. C. Harter* maintained that he told *Mitch*, *Pickles*, and *Sargent* that he had not discharged them because of their union activity, but rather for the alleged infractions of the rules. The evidence shows that *Mitch*, *Pickles*, and *Sargent* entered the factory with the permission of the night watchman in charge. It appears that, in so doing, they violated none of the respondent's rules or regulations and that it was not unusual for employees to enter the factory at night for purposes which were unrelated to their work. Apparently *Bolley*, the night watchman, neither interpreted their conduct as improper nor as against instructions. There is no showing that the respondent had disciplined or reprimanded *Bolley* for neglect of duty in permitting them to enter.

Under these circumstances, we are impelled to conclude that the respondent's actual reason for discharging *Mitch*, *Pickles*, and *Sargent* is because of their suspected activity in soliciting membership for the I. A. M.

Gale Lintemoot

Lintemoot was hired by the respondent in January 1937. He was the only employee in the polishing department, where he was then employed, who participated in the stoppage of work on March 4, 1937. He was appointed to the committee which met with *E. C. Harter* on March 4, 1937, although another employee served in his stead. On March 11, 1937, *Lintemoot* was discharged by his foreman, *Taylor*, who told him that he was being laid off temporarily at *Harman's* direction "until we get more work." When *Lintemoot* complained that another employee, who was his junior in service, had not been laid off before him, *Taylor* answered, "Well, I don't know why they didn't lay him off first." *Lintemoot* asked the respondent for reinstatement several times thereafter but *Harman* refused to rehire him.

The respondent maintained that *Lintemoot* had been discharged because he worked too slowly and was irregular in his attendance

but it failed to produce its attendance or other written records to substantiate these general contentions. We cannot give credence to these excuses as it appears that the respondent did not deem Lintemoot's alleged deficiencies to be of sufficient moment to warrant his discharge until he had participated in the stoppage of work on March 4, 1937.

Upon the entire record in this case, we find that Lintemoot was discharged and refused reinstatement because he engaged in concerted activity with his fellow employees for the purpose of collective bargaining and other mutual aid and protection.

Edna Persing

Edna Persing, the wife of Arthur B. Persing, was employed by the respondent in August 1936 in the sewing room of the upholstering department and continued in this position until she was discharged on June 21, 1937. Mrs. Persing became a member of the I. A. M. about April 8, 1937, as did Sarah Linkhauer, who was employed in the same department and performed the same type of work. Mrs. Persing and Mrs. Linkhauer appear to have been the only two doing this particular type of work. Stanton Harter, E. C. Harter's son, asked Mrs. Persing if she was a member of the I. A. M. but told her that she was not obliged to answer his question. Edward Persing told her that Harman knew of her interest in the I. A. M.

On June 21, 1937, she was discharged by her foreman who told her that work was slack, that it would be necessary for each employee to be laid off one day a week, that she would be the first to be laid off because her machine was broken, and that he would let her husband know when her machine was repaired so that she could return to work.

In an effort to secure reemployment, Mrs. Persing saw Harman about a month after her discharge and he told her that she had been discharged because she talked too much, because she did not work with sufficient speed, and because the respondent's interests demanded that Mrs. Linkhauer, who was Mrs. Persing's junior in service, be retained because she was earning less money than Mrs. Persing. She told Harman that the poor condition of her machine had slowed down her work and that her discharge had been in disregard of E. C. Harter's assurance that seniority would govern the lay-offs. However, upon cross-examination, Mrs. Persing testified that the whole department had "slowed down" and that there was not sufficient work to keep her and Mrs. Linkhauer busy.

Harman testified that Mrs. Persing was laid off while her sewing machine was being repaired, that "when we did get it fixed, the work was slack we didn't need anybody else, so we didn't call her," and

that the respondent hired no one to replace her until after the strike of August 13, 1937. He further testified that Mrs. Linkhauer was retained because she was a "faster woman and did less talking, stayed at her job more steady." Edward Persing testified that, after Mrs. Persing was laid off, Mrs. Linkhauer performed all the sewing work which formerly had been done by both women.

While the case is not free from doubt, since there was admittedly a curtailment in her type of work, and since Mrs. Linkhauer, another union member, earning less money was retained to do the work of both women, we find that the respondent discharged Mrs. Persing for legitimate business reasons and not because of her union membership and activity.

D. H. Mitch, Arnold Whistler,⁶ Fern Wygant, Carl Jordan, Elmer Randol,⁷ Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz

D. H. Mitch was hired by the respondent in January 1936, and was employed in its final-assembly department at the time of his discharge. He applied for membership in the I. A. M. on March 1, 1937. On August 11, 1937, he was discharged by Marker, who told him that he would have to take a vacation for an indefinite period. Mitch was not the junior in his department in point of service.

Whistler was first hired by the respondent in November 1936, in its final-assembly department. About March 30, 1937, he was laid off until about May 6, 1937, at which time he was reinstated. Whistler applied for membership in the I. A. M. on March 1, 1937. He was discharged by the respondent on August 11, 1937, although he had more seniority than other employees in his department. In addition to claiming that the discharge was due to a necessity for a reduction in force, the respondent asserted that Whistler was less efficient than the employees who were retained, but presented no convincing proof in support of the assertion.

Wygant was hired by the respondent about August 7, 1936, and applied for membership in the I. A. M. on March 1, 1937. His foreman, Taylor, discharged Wygant on August 11, 1937, at which time he was operating a punch press. The respondent retained two or three employees in his department who were not members of the I. A. M. although they had less seniority than Wygant had. Harman claimed that Wygant had been laid off because he was sick occasionally, was irregular in his attendance, and was "antagonistic with the foremen." Taylor simply asserted that Wygant was laid off because of "slack of orders." In spite of Taylor's opportunity to observe Wygant more closely than Harman, it appears that the

⁶ In the record, his name also appears as "Arnold Whisler."

⁷ In the record, his name also appears as "Elmer Randall."

alleged deficiencies assigned by Harman created little or no impression upon Taylor.

Jordan was hired by the respondent about May 1, 1937, and was employed in its polishing room. He was laid off in June 1937, and rehired about July 11, 1937. Jordan became a member of the I. A. M. on June 14, 1937. Jordan testified that he was discharged by his foreman, Taylor, on August 11, 1937, although he had greater seniority than others in his department. The respondent contended that it laid off Jordan because he was inefficient. However, this contention does not persuade us since the respondent had rehired Jordan after it had laid him off on a prior occasion.

Randol was hired by the respondent on February 22, 1937, and was employed in its welding department. He applied for membership in the I. A. M. on March 1, 1937. Randol was discharged by his foreman, Taylor, on August 11, 1937, who told him that he was being laid off for 2 or 3 weeks because "work was slack." Randol testified that other employees in his department with less seniority who were not members of the I. A. M. were not laid off at that time. Harman and Taylor testified that Randol had been laid off because he was inefficient.

Yoder was hired by the respondent in February or March 1935, and was employed in its welding department. He applied for membership in the I. A. M. on March 1, 1937. On August 11, 1937, Yoder was discharged by his foreman, Taylor, who first told him that he was being laid off because he needed a rest and, later, that he was being laid off because he had been late a few times. Yoder was the senior employee in his department. Harman testified that Yoder had been laid off because "He was tardy quite a little bit, wasn't dependable, and we was way ahead on his particular line of work." It appears, however, that shortly before the respondent reopened its factory on September 7, 1937, Taylor requested Yoder to return to work. Yoder refused to return because the strike was still in progress.

Jacobs was hired by the respondent as a metal polisher in July 1936. He applied for membership in the I. A. M. in April 1937, and subsequently served as chairman of its bargaining committee. On August 10, 1937, Jacobs asked his foreman, Taylor, for permission to be away for 2 days in order to make a report for the Church of the Nazarene of which he was a minister. According to Jacobs, Taylor answered that he could have only 1 day off as the respondent was too busy to allow him to leave and that a night force might have to be put on in his department. The next day, Taylor discharged Jacobs stating that the "work was falling off." At the hearing, the respondent contended that Jacobs had been laid off for a short period so as to give him the vacation he had requested.

Harman testified that he believed Jacobs to be a "man who tells the truth" and we credit Jacobs' testimony. We are not persuaded that the reduction in work was the reason for Jacobs' lay-off as it is wholly inconsistent with Taylor's statement to him on the preceding day that a night force might have to be added to his department.

Arthur B. Persing, a cousin of Edward Persing, was hired by the respondent on September 18, 1935, in its finishing department at a salary of 40 cents an hour and subsequently received two increases. He applied for membership in the I. A. M. on April 6, 1937. There was only one man with more seniority than Arthur B. Persing and at least five or six employees in his department with less seniority. On August 11, 1937, he was discharged by his foreman, Booher, who informed him that "there was no more graining to be done" and that "they were pretty well caught up with the staining and filling." No other employee in this department was laid off at that time.

Hostetler was hired by the respondent as a receiving clerk in January 1937. He applied for membership in the I. A. M. on March 1, 1937, and was laid off by the respondent on March 19, 1937. Hostetler was rehired in April and served as a general utility man, working at various jobs in the respondent's factory. He was discharged by Marker on August 11, 1937, at which time he was engaged in packing chairs. Harman testified that Hostetler was "laid off because he was less efficient and wasn't as capable of handling some of the jobs and put out as much work," but adduced no convincing proof in support of this testimony. About 10 or 15 employees were hired by the respondent in the factory after he had been hired. On October 1, 1937, of its own volition, the respondent sent him a letter asking him to return to work. He refused to return as the strike was still in progress.

Hayes was hired by the respondent in its upholstering department on January 11, 1937, after having worked for the respondent on prior occasions. He applied for membership in the I. A. M. on March 1, 1937. On August 11, 1937, Hayes was discharged by his foreman, Edward Persing, who told him that he was being laid off because "orders were getting kind of low." In testifying as to the cause of Hayes' discharge, Harman stated that "he was a very slow worker; he was a fairly good worker but he didn't produce the amount of work the average man should." However, Edward Persing had told Hayes that his work was good and assigned him to do different jobs including assisting some new men.

Busz was hired by the respondent in 1933 and was employed in its upholstering department. He applied for membership in the I. A. M. on March 1, 1937. On August 11, 1937, Busz was discharged by his foreman, Edward Persing, who told him that he could stand a vaca-

tion and he hoped that the vacation would not be permanent. At the hearing, Harman stated that, in laying off Busz, he was acting pursuant to E. C. Harter's instructions to lay off the less-efficient men. Busz assisted other employees with their work and, when Edward Persing was away on his vacation during part of the summer, he acted as foreman of the department. At the time of his discharge, Busz was the senior employee in the department.

Conclusions with respect to the discharges of August 11, 1937

The respondent maintained that, except in the case of Walter Jacobs, efficiency was the criterion applied to determine the employees to be laid off on August 11, 1937, and, in some instances, prior to that date. However, Harman stated that, at the time these employees were discharged, the respondent had no written records from which it could accurately ascertain their efficiency and that he relied largely upon the recommendations of the foremen in determining the employees to be laid off.

By August 11, 1937, substantial inroads in the I. A. M. membership had been effected through the company-sponsored Shop Union, which we have discussed above. By the end of April 1937, the Shop Union claimed that its membership included most of the employees in the factory. Presumably, the same proportion of Shop Union members was at least retained with the respondent's aid and support during the successive months. Yet, on August 11, 1937, when the respondent claims it became necessary to reduce the force, 11 of the 14 employees laid off were members of the I. A. M. The three non-I. A. M. members included in the lay-off were E. C. Harter's and Harman's sons and a friend of theirs. The great proportion of I. A. M. members laid off under the circumstances which we have discussed, makes it plain to us that their selection was not fortuitous, but was rather an unjust discrimination against them because of their union affiliation.

As noted above, the discharges on August 11, 1937, precipitated a strike by the I. A. M. which became effective on August 13, 1937. Between August 14 and 17, 1937, conferences were held between E. C. Harter and an I. A. M. committee at which the I. A. M. sought exclusive recognition and the parties sought to resolve their differences. On August 17, 1937, E. C. Harter, in the presence of the committee, prepared a letter which he delivered to the committee for submission to the union members. In the letter he offered to grant the employees seniority rights after four months' employment, offered reinstatement to the 14 employees discharged on August 11, 1937, and stated that any future lay-off of the 14 employees or "their sympathizers" would be subject to the approval of himself and a com-

mittee of the I. A. M. members, but he failed to grant the I. A. M. exclusive recognition as the bargaining representative of the employees. The committee caused the letter to be read at the picket line and deliberated over its contents. Subsequently, a vote was taken by the I. A. M. and the respondent's offer was rejected, although it does not appear that the respondent was informed of the result of the vote. It does not appear that any of the striking or discharged employees returned to work pursuant to this letter because of the respondent's refusal to accede to the I. A. M.'s request to recognize it as the exclusive bargaining representative of all the employees in the appropriate unit. After delivering the letter to the strike committee, E. C. Harter spoke on the telephone with Jacobs, one of the I. A. M. members, and told him that he "was agreeing as far as I possibly could to every request that had been made and we just couldn't carry it on any farther . . ." Not receiving a definite acceptance or rejection of his proposal, E. C. Harter sent the strike committee another letter on August 18, 1937, in which he revoked his prior proposals. The strike continued.

Although the respondent was under a duty to accord the I. A. M. exclusive recognition at this time, as is hereinafter discussed, its refusal to fulfill that duty did not operate to invalidate its offer of reinstatement to the 11 discharged I. A. M. employees, who could have returned to work and sought an adjudication of their rights through the medium of the Act but who elected to remain away from work with the strikers in protest against the respondent's refusal of exclusive union recognition. By reason of their election to continue on strike rather than return to work in accordance with the respondent's offer of August 17, their status changed after that date from discharged employees to strikers.

Upon the entire record in the case, we find that the respondent discharged S. E. Mitch, Whistler, Wygant, Jordan, Randol, Yoder, Jacobs, Arthur B. Persing, Hostetler, Hayes, and Busz on August 11, 1937, because of their affiliation with the I. A. M.

We find that, by discharging Don Brew, Gale Lintemoot, Clyde Harter, Virgil Harter, S. E. Mitch, J. G. Pickles, L. A. Sargent, Frank Kenney, D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz, the respondent has discriminated against its employees with respect to hire and tenure of employment for the purpose of discouraging membership in the I. A. M. and that by such acts the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. Refusal to bargain collectively

1. The appropriate unit

In its petition for investigation and certification of representatives the I. A. M. stated that the appropriate unit was "the plant unit excluding clerical, engineering, and supervisory forces." The Shop Union maintained the appropriate unit to be the "plant unit, excluding only office, managerial, and supervisory forces." The essential difference between these claims appears to be that the I. A. M. desires to exclude from the unit the employees engaged in engineering work and the Shop Union wants them to be included. The record does not clearly indicate the duties of the employees engaged in engineering work and none of the employees on the respondent's April 6-8, 1937, pay roll were identified as performing this type of work. The complaint alleged that the appropriate bargaining unit consisted of all the production and other workers at the respondent's plant, exclusive of maintenance, engineering, supervisory, and managerial employees. As the record fails to indicate either that a substantial number of the employees are engaged in maintenance work, including engineering employees, or that there is in the plant any other bona fide union to which those employees are eligible to membership, we shall include such employees, if any, within the bargaining unit so as not to deprive them of the right to bargain collectively with their fellow employees. In accordance with our usual practice, we shall exclude clerical and supervisory employees and the watchmen from the unit.

We find that the production and maintenance including engineering employees of the respondent, excluding clerical and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the I. A. M. of the majority in the appropriate unit

The complaint alleges that on or about April 6, 1937, the I. A. M. had been designated as their bargaining representative by a majority of the employees in the bargaining unit therein stated to be appropriate, and that between March 27, 1937, and August 13, 1937, the I. A. M. had informed the respondent of its majority and attempted to bargain with it without success. The respondent's factory pay roll for April 6-8, 1937, was introduced into evidence. The pay roll lists the names of 87 employees, 5 of whom have been identified as foremen, 5 as assistant foremen or strawbosses, and 1 as a watchman.

In the appropriate unit there were, therefore, 76 employees whose names appear on the pay roll. However, the names of the four employees who we have found had been discharged in violation of the provisions of the Act prior to April 8, 1937, do not appear on the pay roll. After their discriminatory discharge these employees retained their status as employees of the respondent. On April 6-8, 1937, therefore, there were 80 employees within the unit which we have found to be appropriate for the purposes of collective bargaining.

On March 1, 1937, 35 of the employees signed a paper designating the I. A. M. as their bargaining agent. The financial secretary of the I. A. M., testifying from his records, read off the names of eight additional employees who had applied for membership in the I. A. M. on or before April 8, 1937. In addition, four other employees testified that they had applied for membership in the I. A. M. on or before that date, making a total of 47. The names of 6 of these employees do not appear on the April 6-8 pay roll but 4 of the 6 retained their status as employees of the respondent because of their discriminatory discharge, making a total of 45. It appears, therefore, that 45 of the 80 employees in the appropriate unit had designated the I. A. M. as their bargaining agent on or before April 8, 1937.

Some of the employees testified that, after affiliating with the I. A. M. they became members of the Shop Union and that they desired it as their bargaining agent. In fact, the Shop Union's membership includes employees who had previously applied for membership in the I. A. M. As the Shop Union was organized about April 28, 1937, it is apparent that none of the employees had altered their designation of the I. A. M. as their bargaining agent on April 8, 1937, which we find below is the date when the respondent first refused to bargain with the I. A. M. Since we have found that the Shop Union was created and administered under the domination of the respondent and that it obtained its membership as a result of the respondent's coercive acts, we cannot give any effect to membership in the Shop Union.⁸

We find that on April 8, 1937, the I. A. M. had been designated and selected by a majority of the employees in the appropriate unit as their agent for the purposes of collective bargaining and it was, therefore, on said date and hereafter, the exclusive representative of all employees in such unit for the purposes of collective bargaining.

3. The refusal to bargain

Between March and July 1937, Thomas wrote to E. C. Harter and met with him in an effort to induce him to recognize the I. A. M. as

⁸ See *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation) and Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

the employees' exclusive bargaining representative or to consent that the Regional Director conduct an election among the employees to determine their bargaining representative. E. C. Harter refused to consent to either request. As noted above, after the strike of August 13, 1937, conferences were held between E. C. Harter and an I. A. M. committee. Although the respondent offered on August 17, 1937, to reinstate the employees who had been discharged on August 11, 1937, it refused to accede to the I. A. M.'s request to recognize it as the exclusive bargaining representative of all the employees in the appropriate unit. The respondent's proposal was rejected by the I. A. M. because of its refusal to accord the I. A. M. the exclusive recognition to which it was entitled as representative of a majority of the employees within an appropriate bargaining unit. At the hearing E. C. Harter stated, as he had stated in the past, that he was willing to recognize the I. A. M. as the bargaining representative of its members. This qualified offer of recognition did not satisfy the respondent's duty under the statute. We have consistently held that exclusive recognition of the representative selected by the majority of the employees in an appropriate bargaining unit is an indispensable prerequisite to genuine collective bargaining and that such recognition cannot be withheld as the respondent sought to do in this case.⁹

Accordingly, we find that the respondent at all times since April 8, 1937, has refused to bargain collectively with the I. A. M. as the exclusive representative of the employees in an appropriate unit.

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 affecting commerce and the free flow of commerce.

THE REMEDY

As we have found that the respondent has dominated and interfered with the formation and administration of the Shop Union and has contributed support to it, we shall order the respondent to withdraw recognition from the Shop Union, to disestablish it as representative of its employees for the purposes of collective bargaining, and to cease contributing support to it.

We shall order the respondent to offer to reinstate to their former positions Don Brew, Gale Lintemoot, Clyde Harter, Virgil Harter,

⁹ See *Matter of The Griswold Manufacturing Company and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1197*, 6 N. L. R. B. 298.

S. E. Mitch, L. A. Sargent, and Frank Kenney, and to pay to each of them a sum of money equal to that which he would have received as wages from the date of his discharge to the date of such offer of reinstatement, less any amount earned by him during said period.

J. G. Pickles, who was discriminatorily discharged on April 8, 1937, rejected the respondent's offer of reinstatement about April 30, 1937, although he was not then on strike. We shall therefore order the respondent to pay him a sum of money equal to that which he would have received as wages from April 8, 1937, to April 30, 1937, but we shall not order the respondent again to offer to reinstate him.

As we have found that D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz, were discriminatorily discharged on August 11, 1937, and that they rejected the respondent's offer of reinstatement on August 17, 1937, because they were then striking against the respondent's unfair labor practices, we shall order the respondent to pay them back wages for the period between the date of their respective discharges and the aforesaid offer of reinstatement.

Since the strike was both caused and prolonged by the respondent's unfair labor practices we shall, in accordance with our usual custom, order the respondent, upon application, to offer reinstatement to their former or substantially equivalent positions to D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz, who rejected the respondent's previous offers of reinstatement and to those employees who went out on strike and have not since been fully reinstated. Such reinstatement shall be effected in the following manner: All employees hired after the commencement of the strike shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such em-

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

As we found that it has been designated as such, we shall order the respondent to recognize the I. A. M. as the exclusive bargaining representative of the respondent's production and maintenance employees, except clerical and supervisory employees, and to bargain with it as such representative.

We shall also order the respondent to cease and desist from the unfair labor practices in which it has engaged.

THE PETITION

We have determined the appropriate bargaining unit and found that a majority of the respondent's employees within that unit had designated the I. A. M. to be their representative for the purposes of collective bargaining. Accordingly, we shall dismiss the I. A. M.'s petition for certification.

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. Lodge No. 1523 International Association of Machinists and Employees Shop Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Employees Shop Union and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

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

4. The production and maintenance including engineering employees of the respondent, but excluding clerical and supervisory employees and watchmen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. Lodge No. 1523 International Association of Machinists is and has been at all times since April 8, 1937, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. By refusing to bargain collectively with Lodge No. 1523 International Association of Machinists as the exclusive representative of all its employees in such unit, the respondent has engaged in and is

engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

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

8. The aforesaid 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 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, The Harter Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Lodge No. 1523 International Association of Machinists or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any terms or conditions of employment;

(b) Dominating or interfering with the administration of Employees Shop Union or dominating or interfering with the formation or administration of any other labor organization of its employees or contributing support to Employees Shop Union or to any other labor organization of its employees;

(c) Recognizing Employee Shop Union as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(d) Refusing to bargain collectively with Lodge No. 1523 International Association of Machinists as the exclusive representative of its production and maintenance including engineering employees, excluding clerical and supervisory employees and watchmen, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing 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 purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer Don Brew, Gale Lintemoot, Clyde Harter, Virgil Harter, S. E. Mitch, L. A. Sargent, and Frank Kenney, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Don Brew, Gale Lintemoot, Clyde Harter, Virgil Harter, S. E. Mitch, L. A. Sargent, and Frank Kenney, for any loss of pay they will have suffered by reason of their discharge, by payment to them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less the amount, if any, which each has earned during said period;

(c) Upon application, offer to D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz and to those employees who went out on strike on August 13, 1937, and thereafter, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "The Remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(d) Make whole J. G. Pickles for any loss of pay he will have suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from April 8, 1937, the date of his discharge, to April 30, 1937, less the amount, if any, which he has earned during said period, and make whole D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz for any loss of pay they will have suffered by reason of their discharge, by payment to them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from August 11, 1937, the date of his discharge, to August 17, 1937, less the amount, if any, which he had earned during said period;

(e) Make whole the employees ordered to be offered reinstatement, as set forth in paragraph 2 (c) above for any loss of pay they will have suffered by reason of the respondent's refusal to reinstate them, upon application, following the issuance of this order, by payment to them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from five (5) days after the date of such application for reinstatement to the date of the offer of employment or placement upon the prefer-

ential list required by paragraph (c) above, less the amount, if any, which each will have earned during that period;

(f) Withdraw all recognition from Employees Shop Union as representative of its employees for the purpose of dealing with the respondent in respect to labor disputes, grievances, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish Employees Shop Union as such representative;

(g) Upon request, bargain collectively with Lodge No. 1523 International Association of Machinists as the exclusive bargaining representative of its production and maintenance including engineering employees, excluding clerical and supervisory employees and watchmen, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(h) Immediately post notices to its employees in conspicuous places throughout its factory stating that the respondent will cease and desist in the manner aforesaid, and maintain said notices for a period of at least thirty (30) consecutive days;

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

It is further ordered that the complaint be, and it hereby is, dismissed, to the extent that it concerns the discharge of Edna Persing.

And it is further ordered that the petition for certification of representatives, filed by Lodge No. 1523 International Association of Machinists be, and it hereby is, dismissed.

[SAME TITLE]

SUPPLEMENTAL DECISION

AND

ORDER

August 12, 1938

On July 19, 1938, the National Labor Relations Board, herein called the Board, issued its Decision and Order in the above-entitled proceeding in which the Board ordered the Harter Corporation, Sturgis, Michigan, herein called the respondent, to cease and desist from certain unfair labor practices and to take certain affirmative action.

On August 1, 1938, Lodge No. 1523 International Association of Machinists, herein called the I. A. M., filed a protest to the Board's Decision and moved for amendment of the Board's Deci-

sion and Order. On August 9, the respondent filed a reply in opposition to the I. A. M.'s protest and motion for amendment of the Decision and Order.

In its decision the Board found, inter alia, that the respondent had discriminatorily discharged D. H. Mitch, Arnold Whistler, Fern Wygant, Carl Jordan, Elmer Randol, Freeman Yoder, Walter Jacobs, Arthur B. Persing, Tyrus Hostetler, Laban Hayes, and Clayton Busz on August 11, 1937; that a strike was caused on August 13, 1937, by the respondent's unfair labor practices including the discriminatory discharges; that on August 17, 1937, the respondent made a valid offer of reinstatement to the afore-mentioned 11 employees, which offer was rejected by them because the respondent would not grant the I. A. M. exclusive recognition as the employees' bargaining agent, to which the I. A. M. was entitled and that by rejecting the offer and electing to continue on strike the status of these employees changed from discharged employees to strikers. The Board further found that J. G. Pickles, S. E. Mitch, and L. A. Sargent were discriminatorily discharged on April 8, 1937, and that during the latter part of April, the respondent offered Pickles reinstatement which he refused. On the basis of its findings the Board ordered the respondent to pay back pay to the afore-mentioned 11 employees and J. G. Pickles from the date of the respective discriminatory discharges to the date of the respective offers of reinstatement.

In its protest the I. A. M. urges that the Board erred in treating the respondent's offer of reinstatement to the 11 employees as valid during the pendency of the strike, in treating the offer to Pickles as valid in the absence of a similar offer to Sargent and Mitch, in limiting back pay awarded to such employees to the period from the date of discharge to the date of the respective offers of reinstatement and in failing to order the respondent again to offer reinstatement to Pickles.

The Board has considered the I. A. M.'s protest, motion and arguments in support thereof and finds no reason to alter its Decision and Order.

IT IS HEREBY ORDERED that the I. A. M.'s motion for amendment of the Decision and Order be, and it hereby is, denied.