

In the Matter of ELKLAND LEATHER COMPANY, INC. and NATIONAL  
LEATHER WORKERS' ASSOCIATION, LOCAL NO. 37

*Case No. C-317.—Decided July 23, 1938*

*Leather Tanning Industry—Interference, Restraint, and Coercion:* declaration of individual bargaining policy; acquiescing in and assisting the solicitation of signatures of employees to petitions expressing preference for local organization; bringing about and stimulating anti-union campaign in community—*Company-Dominated Union:* domination of and interference with formation and administration; result of employer's hostility to union and anti-union campaign attributable to employer; disestablished, as agency for collective bargaining—*Contract:* with company-dominated union, void and of no effect; employer ordered to cease giving effect to—*Discrimination:* lay-offs; charges of, not sustained as to certain persons; refusal to reinstate: charges of, not sustained—*Collective Bargaining:* charges of failure to bargain collectively, not sustained—*Strike:* provoked by employer's unfair labor practices—*Violence—Employee Status:* employees laid off; strikers—*Conciliation:* efforts at, by U. S. Commissioner of Conciliation and Pennsylvania Department of Labor and Industry—*Reinstatement Ordered:* employees laid off; strikers, upon application, dismissing newly hired employees if necessary; preferential list ordered: to be followed in further reinstatement—*Back Pay:* awarded employees laid off; not to include period between date of service of Intermediate Report and date of Decision, in case of employees as to whom Trial Examiner recommended dismissal of complaint; ordered, to strikers not reinstated or placed on preferential list within 5 days of application for reinstatement.

*Mr. Geoffrey J. Cunniff, Mr. Joseph F. Castiello, and Mr. Samuel G. Zack,* for the Board.

*Mr. G. Mason Owlett,* of Wellsboro, Pa., *Mr. John W. Morgan,* of Boston and Lynn, Mass., and *Mr. Chester H. Ashton,* of Knoxville, Pa., for the respondent.

*Mr. Roger F. Williams,* of Elkland, Pa., and *Mr. Edmund M. Toland,* of Washington, D. C., for the Association.

*Mr. William F. Regan,* of Peabody, Mass., for the Union.

*Mr. Emory Rockwell,* of Wellsboro, Pa., for the Local.

*Mr. Robert Burstein,* of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by National Leather Workers' Association, Local No. 37, herein called the Local, the National Labor Relations

Board, herein called the Board, by Stanley W. Root, Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated August 21, 1937, against Elkland Leather Company, Inc., Elkland, Pennsylvania, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and accompanying notice of a hearing to be held on September 7, 1937, were duly served upon the parties. Thereafter, the complaint was amended in several material respects, and a copy of it in its amended form was sent to the respondent by registered mail on September 14, and was received by it on September 15.

After several continuances, a hearing was held at Wellsboro, Pennsylvania, commencing on September 23, 1937, and concluding on October 27, 1937, before Henry T. Hunt, the Trial Examiner duly designated by the Board. The Board, the respondent, Elkland Leather Workers' Association, herein called the Association, National Leather Workers' Association, herein called the Union, and the Local were all 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 commencement of the hearing, counsel for the Board formally moved to amend the original complaint by including the new allegations contained in the amended complaint with which the respondent was served on September 15. The respondent filed an answer to the amended complaint on October 12, 1937, during the course of the hearing.

In respect to the unfair labor practices, the amended complaint alleged in substance (1) that the respondent, during June 1937, through its officers and agents, brought about the establishment of the Association, a labor organization, and dominated and interfered with its administration and operation and contributed financial and other support to it; (2) that the respondent by various threats and acts of intimidation discouraged membership in the Union; (3) that in or about June 1937 by reason of the aforesaid acts of the respondent, many of its employees went out on strike, which strike continued to the date of the issuance of the amended complaint; (4) that at various times during the month of June 1937 and thereafter the respondent refused to bargain collectively with the Union as the exclusive representative of the production employees of the respondent, said employees constituting an appropriate bargaining unit; (5) that in or about June 1937 the respondent terminated the employment of and thereafter refused to reinstate 28 named individuals for joining and

assisting the Union and engaging in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection; and (6) that in or about July 1937 the respondent refused to reinstate 230 named employees, who had gone out on strike, for the reason that they had joined and assisted the Union.

The respondent filed an answer dated September 15, 1937, and an amended answer dated October 7, 1937, denying in substance that the respondent had engaged in or was engaging in the alleged unfair labor practices, and requesting that the amended complaint be dismissed. In addition the answer, as amended, set forth certain affirmative matter relating to the allegations of the complaint, including an averment that the respondent, pursuant to the strike settlement agreement of July 10, 1937, offered reinstatement to the 230 employees named in the complaint.

At the commencement of the hearing, the Association asked leave to intervene and to file a petition of intervention at a later date. This was granted. The petition for intervention, dated October 7, 1937; among other things, denied that the Association had at any time been dominated or interfered with by the respondent; alleged that the Association was an independent organization incorporated under the laws of Pennsylvania, that it had been designated by a majority of the respondent's production employees as their representative, and that it had entered into a contract with the respondent regarding conditions of employment; and requested that an election pursuant to Section 9 (c) of the Act be held to determine the exclusive representative of the respondent's employees.

At the conclusion of the hearing, counsel for the Board moved to amend the complaint to conform to the proof. The motion was granted. At the conclusion of the Board's case and at the close of the hearing, counsel for the respondent moved that the complaint be dismissed on the ground that its allegations were not sustained by the evidence. The motion was denied. Counsel for the respondent similarly urged separate motions that the several allegations of the complaint be dismissed. These motions also were denied. The Trial Examiner granted the motion of counsel for the respondent to dismiss the complaint in so far as it charged the respondent with discrimination against named individuals concerning whom no evidence was submitted. The motion of counsel for the Association that the complaint be dismissed to the extent that it affects the Association was denied.

We have reviewed these rulings and all the other rulings made by the Trial Examiner on motions and on objections to the admission of evidence, and find that no prejudicial errors were committed. The rulings are hereby affirmed.

On November 29 the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act but not within the meaning of Section 8 (5) of the Act, and recommended that the respondent cease and desist its unfair labor practices, reinstate with back pay 115 employees alleged in the complaint as having been discriminated against, and withdraw recognition from the Association. Thereafter the respondent and the Association filed numerous exceptions to both the rulings and the findings of the Trial Examiner. The Union also filed exceptions to certain of the findings of the Intermediate Report.

A hearing for the purpose of oral argument on the exceptions was scheduled to be held before the Board on January 11, 1937. Counsel for the respective parties appeared before the Board on that day but waived hearing and agreed to submit briefs in lieu thereof. We have given due consideration to the briefs which were thereafter filed.

One of the Association's exceptions to the Intermediate Report was to the failure of the Trial Examiner to find and conclude that the request of the Association for an election should be granted. We find no merit in this exception. The request of the Association is tantamount to a petition for certification of representatives and should have been filed with the Regional Director in accordance with Article III, Section 1, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

The Board has fully considered all the exceptions of the respective parties to the findings made in the Intermediate Report and, save to the extent that the findings below depart from those of the Trial Examiner, finds that the exceptions are 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 is a Massachusetts corporation, engaged in the business of tanning hides for sole leather at its plant in the Borough of Elkland, Tioga County, Pennsylvania. The respondent's plant constitutes the largest sole-leather producing unit in the industry. The volume of the respondent's tanning business for 1936 totaled between \$2,500,000 and \$3,000,000. Prior to the strike of June 26, 1937, the respondent employed 944 production employees.

The respondent is known in the industry as a "contract tanner." It does not itself own the hides processed by it but processes hides belonging to others. All of the respondent's business is handled by Proctor Ellison Company, a Delaware corporation, through its office

in Boston, Massachusetts. This company acts in the capacity of broker or factor and enters into contracts with other companies, engaged in marketing sole leather, for the tanning of their hides by the respondent. The respondent also tans hides owned by the Proctor Ellison Company. The latter company pays the respondent on a poundage basis for all the leather tanned and purchases and ships to the respondent the raw materials used in the tanning process.<sup>1</sup>

In the course of a normal year the respondent processes approximately 22,000,000 pounds of sole leather. About 90 per cent of the raw hides come from outside Pennsylvania and approximately 85 per cent of the tanned leather is shipped to points outside Pennsylvania. The consignees of the shipments are designated by the Proctor Ellison Company.

The respondent uses annually in its operations approximately 2,000,000 pounds of tanning materials, consisting principally of barks, extracts, fillers, and mineral oil. Approximately 75 per cent of these materials are shipped to the respondent's plant from outside Pennsylvania, most of them originating in foreign countries.

The entire process of tanning hides normally requires about 70 days. For the first 6 or 7 days the hides are kept in the "beam house" where they are first subjected to the soaking process and then to the liming process. Thereafter the hides are moved to the "yard" where they are suspended on rocker frames and immersed in tanning liquors of gradually increasing strength. The whole process in the "yard" requires between 3 and 4 weeks' time. The next process takes place in the "scrub house" where the hides are dried, cleaned, and lubricated. Finally, the hides are removed to the finishing department and made ready for shipping. During the first 14 days after the hides are placed in the soak they are in a highly perishable condition and subject to rapid deterioration in the absence of normal attention. The perishable state continues, although to a lesser extent, while the hides are in the weaker tanning liquors. They reach a completely preserved state at the end of about 28 days when they are "laid away" in the heavy tanning liquors.<sup>2</sup>

In addition to the various departments in which the tanning processes take place, the respondent's plant contains a cut-sole department where leather owned by Proctor Ellison Company is stripped, cut, sorted, and graded for shipment and sale. This department is

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<sup>1</sup> A large majority of the capital stock of both companies is held by members of the Ellison family. As to the respondent, approximately  $\frac{1}{4}$  is held by Eben H. Ellison, Jr., its president,  $\frac{1}{8}$  by Eben H. Ellison, and  $\frac{1}{8}$  by Harriet Ferris, the latter's daughter.

<sup>2</sup> From time to time, and particularly when the number of hides placed in soak daily approaches 4,000, bellies are removed from a certain percentage of hides at the end of the soaking and liming process. These bellies are not tanned or finished but are made into "pickled bellies."

under the management of Daniel E. Watson, an employee of Proctor Ellison Company, who gives orders from Boston to Gordon Clark, the foreman directly in charge of the employees in the department. Although the relation of the cut-sole department to the respondent is not altogether clear, the record shows that the men employed there—normally about 60 in number—are considered by the respondent as its employees. They are originally paid with checks of the respondent, although the respondent is thereafter reimbursed by Proctor Ellison Company, and they are included in the lists of the respondent's employees which were furnished by Clark Prindle, the manager of the respondent.<sup>3</sup> Gordon Clark testified that he considers himself an employee of the respondent. He further testified that at least some new employees in the department communicate with Kyofski, the personnel manager of the respondent, before reporting to work.

## II. THE ORGANIZATIONS INVOLVED

National Leather Workers' Association is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O. Local No. 37 was organized on June 15, 1937, and received a certificate of affiliation with the National. The Local apparently admits to membership all the production employees of the respondent.

Elkland Leather Workers' Association, Inc., is a labor organization affiliated with the Independent Federation of Labor. It admits to membership all non-executive employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *Relation of the respondent to the borough of Elkland*

The borough of Elkland has a population of about 3,000. The respondent plays a dominant role in the economic life of the town's inhabitants, workers, businessmen, and public officials alike. The respondent's tanning business constitutes practically the borough's only industry and, in the words of J. O. Pattison, president of the Pattison National Bank, its "life's blood." The pay roll of the respondent's plant furnishes the town with its chief source of income and is the basis of credit extended to employees in the plant by Elkland merchants.

The respondent owns about 125 houses which it rents to its employees. In addition the respondent enters into a so-called "land contract" with employees pursuant to which it furnishes materials

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<sup>3</sup> See Respondent Exhibit Nos 25 and 26, which list the number of employees in the various departments and include the cut-sole department.

and labor for the construction of houses and sells such houses to employees on a rental basis, allowing them an almost unlimited number of years in which to pay.

The general store operated by the Elkland Trading Company is generally known as the "tannery store." Although the present stock ownership of this company is not clear,<sup>4</sup> the record shows that its policies are controlled by Eben H. Ellison. There is similarly a close relationship between the respondent and the Elkland Electric Company, which is located on property of the respondent and to which the respondent sells part of the electric power generated by it. Most, if not all, of the capital stock of the Elkland Electric Company is owned by Eben H. Ellison, Jr., and Clark Prindle.<sup>5</sup> The respondent is also connected with the Elkland Lumber and Supply Company through Prindle, who together with Ordway, the manager of the Elkland Trading Company, owns its stock. Bills incurred by the employees of the respondent at the Elkland Trading Company and Elkland Electric Company are often deducted from their pay checks by authorization of the employees.

The most influential citizens of Elkland are closely associated with the respondent through business relationships. Thus J. O. Pattison is the president of the Pattison National Bank, which carries a substantial account of the respondent. A. W. Button, the owner and publisher of the Elkland Journal, the only newspaper in Elkland, handles 90 per cent of the respondent's job printing. C. E. Irons, one of the two justices of the peace, and tax collector, collects through the respondent borough occupational taxes assessed against employees and general merchandise bills owed by employees to merchants.

Supervisory employees of the respondent hold important public positions in the town. C. W. Campbell, the office manager, is a member of the Borough Council. W. G. Myers, foreman of the outside department, is the borough's burgess and chief of police. Richard Snyder, "yard" foreman, is president of the school board of directors.

### *B. Background of the unfair labor practices*

Until May 1937, no labor organization had gained a foothold in the respondent's plant. An attempt at organization made by the American Federation of Labor in 1933 proved fruitless. Walter Johnson, an employee of the respondent, testified that he and four other employees who had joined the American Federation of Labor at that

<sup>4</sup> In December 1922, when the Elkland Trading Company was incorporated, 73 out of the 100 shares of its capital stock were held by Eben H. Ellison.

<sup>5</sup> In December 1925, when the Elkland Electric Company was incorporated, Eben H. Ellison, Jr., received 88 shares and Prindle received 10 shares of the 100 shares constituting its capital stock.

time and endeavored to organize the plant were laid off as a consequence.

Sometime in April 1937, after the constitutionality of the Act had been upheld by the Supreme Court of the United States, Prindle, pursuant to a conference with Eben H. Ellison, warned the foremen of the various departments not to interfere with the organizational activities of the employees. He instructed them to inform him immediately of any indication of organizing, stating that he "would take care of the situation personally."

Organizational activities among the respondent's employees began early in May 1937 when a group of employees, including Elmer Backes, Hiram Davis, Elwin Wright, John Creeley, Lee Russell, John Russell, and George Houghtaling, met to discuss plans for the organization of the plant. The group dispatched a message to the headquarters of the Union, and on May 24 Joseph F. Drummey, a member of the Union's executive board and a temporary organizer, arrived in Elkland. Drummey testified that he first conferred with the organizing group on a side street in the dark, because the men were afraid that it "wouldn't be very healthy" for them to be seen talking with him. The men believed that a majority of the respondent's employees were in favor of establishing a local affiliated with the Union. Drummey thereupon furnished the group of men with 500 union application cards, and a membership campaign was launched.

In May or June 1937, pursuant to orders from Prindle, Joseph Kyofski, the personnel manager, directed the clerks to attach to the pay checks of the employees printed statements reading as follows:

You are under no obligation to join any union and cannot be forced to do so as this tannery will always operate as an open shop.

This company will deal individually with any employee that wishes to do so at any time.

ELKLAND LEATHER CO., INC.

Drummey received orders from the Union's headquarters to leave Elkland temporarily on June 2. Prior to his departure he formed an organizing committee comprised of the men in the original group.

On June 15 Joseph F. Massida, another union organizer, came to Elkland to assist in the organizational drive. The same night a meeting attended by about 50 or 60 employees was held at the home of Elmer Backes, at which Local No. 37 was organized and temporary officers elected. Backes was elected president, Woodbeck, vice president, Davis, secretary-treasurer, and Harvey Roach, recording secretary.

The Local subsequently found it difficult to secure a meeting place. It was refused both the school auditorium and the Italian Hall, ordinarily utilized for public meetings. Finally it was decided to hold a mass meeting in the borough park on June 20. However, on the night of June 19, Massida heard rumors of a plot to cause a riot and place the blame on the Local. Consequently the meeting place was changed to a field beyond the borough limits. Later daily meetings were held at the "Chicken Coop," a structure just outside the borough limits.

In the meantime Drummey had returned to Elkland. He testified that Massida turned over to him 461 union application cards and that the organization work continued and additional members were secured.

*C. Interference, restraint, and coercion*

1. Events preceding the strike of June 26

Shortly after the arrival of the union organizers there began a series of events which discouraged membership in the Union and resulted in the defeat of its organizational efforts.

On May 29 and June 1, respectively, occurred the lay-off of Rush Woodbeck and John Creeley, employees in the rolling loft, who were both in the Union's original organizing group.<sup>6</sup>

On about June 16, Herman Kilburn and Ed Woodward, "beam house" employees, met with a group of about 12 other employees to discuss the formation of an independent organization. Kilburn prepared for signature sheets of paper bearing the following statement:

We, the undersigners, prefer a local to a national union.

Kilburn and Woodward circulated these papers and solicited signatures in the various departments of the plant for about 2 or 3 days. Although they were not on their working shifts at the time, they solicited the signatures of other employees during working hours. Several employees testified that, according to Kilburn and Woodward, the purpose of signing the paper was to start a "company union." Thus, Harold Smith, a mechanic in the scrub house, testified that Woodward handed him the paper, asked him what he thought about "this company union" and remarked that the respondent was backing it. Similarly, Byron Case, a "beam house" employee, testified that Woodward asked him to sign the paper in the presence of other employees saying, "It is for a company union."

Other employees testified that they were warned by the employees engaged in circulating the papers that failure to sign them would

<sup>6</sup> See *infra*, Part III, F.

endanger their jobs and were told that the purpose of obtaining signatures was to help keep the plant running. Thus, according to Delos Bruce and John Minso, Kilburn admonished them that they would have no jobs if they did not "sign a company union." Similarly, Frank Minso testified that he was advised by Roy Davis, a "beam house" employee, to sign the paper if he wanted to keep his job.

There is evidence that the papers were circulated by employees with the acquiescence and with the support of the respondent's foreman. Several foremen were admittedly aware of the circulation of the papers but nevertheless made no efforts to stop it. Floyd Smith, foreman of the beam house, and George Davenport, assistant foreman of the outside department, signed one of the papers themselves. Floyd A. Clark, a rolling loft employee, testified that Clyde Heitznenrater, assistant foreman in the loft, asked Gene Royer, an employee in the rolling loft, if he had obtained his (Clark's) signature to the paper "to help to keep the tannery running." He also testified that in Heitznenrater's presence Gene Buck, a "beam house" employee, and Royer warned him that if he did not want to sign the paper and did not think he ought to keep the tannery running, he might just as well quit.

Charles Finnerty, an employee in the rolling loft, testified to the following incident: As he was working, Walter Parsells, another employee, threw a paper on his machine, explained that it was for a company union and said, "Charlie, you better sign that." Finnerty replied, "To hell with it. I don't want to join it." Parsells thereupon went to the office in the loft. A little later Jesse Jones, the assistant foreman, came in and said, "Charlie, did you mean what you said?" Finnerty replied, ". . . if I hadn't meant it I wouldn't have said it." Jones remarked, "Well, you have a large family and have a hard time getting along. You better sign that paper. Go down to the office and sign it . . ."

Mack Scott, a yard employee, testified that on about June 15 or 16 Andrew Snyder, the foreman, called him in as he passed by the office and asked him to sign the paper. He told him about the Industrial Council at the Corning Glass Company, and said that the respondent would deal with the employees if they had an inside union but that it would have nothing to do with the C. I. O. Snyder further stated that if he did not sign the paper he would know what side he was on. Scott's version of the conversation is in substance corroborated by George Hall, another employee in the yard, who was present. Snyder's version is as follows: He asked Scott what he thought about the paper. When Scott said he would not join a company union Snyder asserted the paper was not for that purpose. He then told Scott about the Industrial Council at the Corning Glass Company, read a few para-

graphs from its bylaws, and commented that it was a nice set-up. He added, however, "You understand that there cannot be any such organization any more. As I understand it it is barred by the Wagner Act." Snyder further testified that he found the paper on his desk without knowing who placed it there. He admitted however that he asked about 10 or 12 employees to sign it in order to find out whether some of his friends would remain at work in the event of a walk-out.

The solicitation of signatures to the petition continued until June 19. According to Woodward and Kilburn over 600 signatures had been procured by that time.

There is also some evidence that, independently of the paper, foremen suggested to employees that they form an "inside" organization. Edward Maxwell testified that on June 17 Charles Norton, the foreman of the shipping department, said to him, "Clark (Prindle) thought you would help us organize a company union." Ernest P. Stocum, an employee in the cut-sole department, testified that on June 21, the day after the first public meeting of the Local, Gordon Clark, the foreman, remarked to him, ". . . they tell me you are active in the organization of the C. I. O." He then inquired whether Stocum was signed up and, upon receiving a reply in the affirmative, said, "I did not think you would do that. I thought you would kind of wait to see how things turned out . . . I thought maybe you would join an independent union." Stocum asked, "What do you mean, independent union—company union?" and Clark replied, "Yes."

On about June 17, A. W. Button, the publisher of the Elkland Journal, prepared a draft of an anti-C. I. O. manifesto and gave it to Enoch Blackwell, treasurer of the Pattison National Bank, to obtain signatures thereto. Blackwell obtained signatures from depositors at the bank. It was signed by 53 persons, including the leading business and professional men of Elkland. On June 19 Button printed at his own expense 750 or 800 copies of the manifesto with the attached signatures. Copies were mailed to all the post office boxes in Elkland. The cost of the postage was defrayed by the Pattison National Bank. The manifesto stated that many employees were refusing to affiliate with the C. I. O., and preferred the organization of a local union of workers, set forth the advantages of a local union, and expressed the belief that such a union would be acceptable to the respondent. The manifesto continued:

The choice of C. I. O. or local union is entirely a matter for the workers themselves to decide. Under the terms of the new Wagner Labor Act, tannery officials are forbidden to enter into bargaining in any way, except to approve the militant demands of an organization that is interested only in securing dues and assessments for furthering what has all the earmarks of a Com-

munistic regime, and the support of a trouble making organization . . .

Last but not least. What if the tannery should shut down permanently? The result would be a calamity to every person who owns a dollars worth of property in Elkland. *And from a reliable source it is understood that the tannery will shut down before the demands of the C. I. O. will be accepted.* . . [Italics supplied.]

Before workers align with the movement on foot that may result in disaster to every property owner or married man with family, they should consider the existing situation thoroughly.

In this town that depends solely upon the operation of an industry employing upwards to a thousand men, a shut down will be disastrous, and if such occurs Elkland will become just another ghost town, a wide place in the road that once boasted the largest sole leather tannery on earth.

It is apparent that the respondent made no effort to refute in any manner the statement in the manifesto that "the tannery will shut down before the demands of the C. I. O. will be accepted."

An event of far-reaching importance occurred on June 18. On that day the respondent placed in soak a very small number of hides and on the next day discontinued soaking hides altogether. The stoppage of the soak involved a gradual cessation of operations and, if not resumed, a possible shut-down of the plant after the hides already in soak went through the various processes. At any rate, it necessitated the closing of the "beam house," employing about 160 men, within a few days. In anticipation of such closing, the respondent, on June 19 and on June 21, laid off about 13 single men from the shipping department in order to provide positions for married men employed in the "beam house." Included among those laid off were Edward Maxwell and Louis Cevette,<sup>7</sup> who were in the group which initiated the organizational activities within the plant. On June 24 "beam house" operations ceased and all the men were laid off, except for a certain number transferred to other departments. Hiram Davis, financial secretary of the Local, and Elwin Wright, a member of the organizing group, were among those laid off and not transferred.<sup>8</sup>

On the night of June 22, Drummey, Massida, and Lehane, another union organizer, were run out of town by a group of men. Del Allen, a timekeeper in the "beam house," and subsequently president of the Association, acted as spokesman for the group. According to his

<sup>7</sup> See *infra*, Part III, F.

<sup>8</sup> See *infra*, Part III, F.

testimony, he heard some of the men who were listening to a broadcast of the Louis-Braddock fight near Serena's service station suggest that Massida and Drummey be beaten up and driven out of town. Allen thereupon communicated with the organizers and advised them to leave town and avoid trouble. Drummey, however, testified that Allen warned him, "If you will get out of town, there is nothing going to happen. If you do not get out of town, it is going to be too bad for you." Drummey also testified that he saw Booth and Webster, the two police officers of Elkland, run the other way and disappear. The organizers left Elkland in their automobile and were followed by about 20 other automobiles.

After Kilburn ceased circulating the papers expressing a preference for a local organization, he began to plan a "loyalty" meeting to be held on June 24 at the Italian Hall. He enlisted the services of Del Allen, who undertook the organization of the "loyal" employees. Allen communicated with Roger Williams, the borough counsel and only attorney in Elkland, and requested his assistance in conducting the meeting. Williams agreed to act as chairman. At the meeting Williams stated that he was interested in the continued operation of the plant and suggested that the employees, if they desired the soaking of hides to be resumed, appoint a committee representing the different departments for the purpose of preparing a petition to the respondent. This was done. On the following day the committee met and adopted the form of a petition drafted by Williams. The petition was signed, "Elkland Leather Workers' Association, Adelbert E. Allen, chairman, William Searle, vice chairman, and attorney Roger F. Williams, secretary," and stated, in part, as follows:

We, the undersigned employees of the Elkland Leather Company, Inc., have through causes in which we have had no part been released or fearing that we will be released from our employment by the company, whereby not only we but the entire community of Elkland and its outlying districts have suffered materially and will be put to greater hardships should the present situation continue, have therefore associated ourselves into the Elkland Leather Workers' Association and declare our position and objective to be:

We hereby state and emphasize our past and our continued loyalty to both the Elkland Leather Company and to its management and we deplore and denounce any and all agitation and activity from whatsoever source leading or directed towards a severance of the friendly and cooperative associations that have always existed between the company and its management and the employees, believing such agitation and activity to be subversive of our rights, antagonistic and destructive of our separate

and collective interests, and contrary to the judgment and wishes of the vast majority of our fellow workmen . . .

We denounce and condemn the attempt of any person or persons, whether those persons be from among our fellow workmen or from outside sources, to intimidate or coerce the company or any of ourselves into a situation where that cooperation and our friendly relationship with the company would be disrupted . . .

Of the Elkland Leather Company, Inc., we demand that our right to a job be acknowledged, that our interests and those of the company itself be not jeopardized and imperiled by the unconsidered and fanatic agitation of a handful of malcontents; that the company accept this assurance of our loyalty and cooperation and that steps be taken immediately to increase production in the company plant to the point where we will each and every one of us be returned to the employment from which we have without our wish or consent been released.

It was testified that by noon of June 26 about 500 or 600 employees had signed this petition.

At about the same time C. E. Irons, justice of the peace and borough tax collector, conceived the idea of helping employees to withdraw from the Union. He had printed at his own expense a considerable number of withdrawal forms,<sup>9</sup> some of which he gave to Williams, and then passed word among the employees that the forms were available for use. Both Irons and Williams notarized the forms free of charge.

## 2. The strike of June 26 and succeeding events

On the night of June 24 a meeting of the Local was held at the Chicken Coop, and Massida, who had in the meantime returned to Elkland, instructed the appropriate committee to formulate demands for presentation to the respondent. On June 25 the members of the Local voted to present the demands to Prindle the following morning and, in the event of a refusal to grant a conference, to strike at 2 o'clock of the same day.

About 9:30 on Saturday morning, June 26, Massida telephoned Prindle from Elmira and requested that a conference be arranged for the purpose of collective bargaining. Prindle replied that he could take no action until 4 o'clock in the afternoon since he had to go out of town. Massida acquiesced. At about 11 o'clock John

<sup>9</sup> The form was addressed to the Union and read as follows:

I the undersigned, hereby withdraw my application for membership in the National Leather Workers Association, affiliate of the C. I. O. and direct that my name be stricken from any roll of applicants for membership.

Creeley phoned Massida and told him that the employees in the cut-sole department had been laid off.<sup>10</sup> Massida believed that the respondent was acting in bad faith. He therefore instructed Creeley to have the demands presented to Prindle and, if Prindle would not consent to a conference, to call the strike. At about 12:30 a committee of four or five members of the Local, including Backes, Maxwell, and Davis, called at Prindle's office with a sealed letter containing the Local's demands. Prindle being absent, the letter was delivered to his secretary. Prindle returned about 1:50 and was apprised of the impending strike. He was given the letter but put it in his pocket unread. At 2 o'clock about 103 men at work on the shift ending at 4 o'clock walked out on strike. The foremen were instructed by Prindle to clean up the work on the present shift and notify the men on the night shift to report to work Monday morning. At 4 o'clock Prindle telephoned Massida. According to the latter's testimony it was agreed to let matters remain in statu quo until Monday morning in order to enable Prindle to get in touch with his superiors in Boston. Prindle testified that Massida told him to forget about the conference they were supposed to arrange.

On June 27 another back-to-work or "loyalty" meeting was held at the school auditorium. Roger Williams, who had arranged the meeting and procured the use of the auditorium, discussed the progress of the back-to-work or "restore-the-soak" movement. An announcement was made that all the men were to report to work the following morning. At the close of the meeting a committee was formed by the business and professional men who were in attendance. Its purpose was to assist in the maintenance of peace and order during the strike, if called upon to do so by Burgess Myers. It does not appear, however, that the committee was ever summoned by Myers or that it ever functioned.

On June 28 Myers, pursuant to a resolution passed by the Borough Council empowering him to secure all the additional police he deemed necessary, telephoned the Burns Detective Agency in Philadelphia and retained the services of 12 operatives, who arrived in Elkland on June 29 and were sworn in as borough police officers.<sup>11</sup>

The employees in the cut-sole department remaining after the layoffs on June 5 and 19 were laid off shortly before the strike, and it was stated that the department would be shut down for 2 weeks. However, at about 7 o'clock on the morning of June 28, approxi-

<sup>10</sup> As set forth hereafter (infra, Part III, F), because of surplus stock on hand and a decline in the shoe market, 23 employees in the cut-sole department were laid off on June 5, 15 more on June 19, and the remaining 22 on June 26, when it was announced that the department would be shut down for 2 weeks.

<sup>11</sup> Several additional officers had been procured by Myers during the period between June 18 and June 28.

mately 22 cut-sole employees, including certain ones who had been laid off on June 5 and June 19, reported to work pursuant to the announcement at the "loyalty" meeting the day before. Gordon Clark, the foreman, advised them to stay around in case anything turned up. He testified that about 8 o'clock the same morning Watson telephoned him from Boston, informed him that an order for sole leather had just come in from a customer at Columbus, Ohio, and told him to put the available men to work. Clark explained that although they had a large inventory on hand, it was necessary to fill in certain grades and weights specified in the order. However, neither the order itself nor any other written evidence concerning its contents was produced in evidence.

On June 30 the respondent resumed soaking hides. On June 26 Williams told Prindle that over 400 employees had signed the back-to-work petition and inquired what action the respondent would take in response to it. At that time Prindle replied he would do nothing until he consulted Proctor Ellison Company. On June 29 Williams again urged Prindle to take action, informing him that the number of signatures had increased to more than 650. Prindle then said that he had received orders to resume the soak on the following morning. On that morning 713 hides were placed in the soak. The number was gradually increased to 1,440 on July 10 and to 2,160 on July 13.

### 3. Conclusions with respect to interference, restraint, and coercion

The union membership drive, as appears from the various events set forth above, was frustrated by certain anti-union activities directly engaged in by the respondent and by the general anti-union campaign in Elkland.

Reference has already been made to the printed statements attached to the employees' pay checks in which the respondent announced that it would always deal with individual employees. This declaration of intention was manifestly designed to discourage organizational efforts. It has been our experience that such statements of policy are ordinarily made by employers who are hostile towards unions and who seek to avoid dealing with them in any manner. We have also seen that at the height of the organizational drive of the Union, signatures to petitions expressing a preference for a local organization were solicited within the plant with the acquiescence and support of the respondent's supervisory employees. By these acts the respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

These acts showed the respondent's attitude towards the organizational efforts of its employees and, by virtue of its dominant economic

position in the community, undoubtedly brought about the anti-union campaign in Elkland. The respondent made no efforts to stop the campaign. It did not even contradict the statement in Button's manifesto that it was understood from a reliable source that the plant would be shut down before the respondent would accede to the demands of the C. I. O. On the contrary, a few days after the manifesto was drafted the respondent stopped soaking hides. To the whole population of Elkland the stoppage of the soak, taken in connection with Button's manifesto, could only mean that the entire plant would gradually shut down unless the efforts of the Union were defeated. It thus proved effective in aligning the members of the community into a unified group actively opposed to the Union.

It is contended by the respondent that it stopped soaking hides because of its fear of a strike which, if successful, might result in damaging the hides which had not yet reached a safe state in the tanning process. Prindle testified that he heard rumors of a strike as early as the first part of June and that on June 18 Ellison approved his recommendation to discontinue soaking hides. Prindle further testified that his anxiety was enhanced by reports of a sit-down strike at the Ohio Leather Company and the loss incurred as a result.

In the light of the attendant circumstances we are not convinced that this was the real cause inducing the respondent to discontinue soaking the hides. We rather believe that the respondent was motivated by a desire to foment anti-union activities in Elkland and to defeat the efforts of the Union. Prindle testified that his fears of a strike were based merely on general rumors in Elkland. He admitted that no employees nor anyone connected with the Union spoke to him about a contemplated strike. Moreover, at the time of the stoppage of the soak the Union had not even formulated any demands, and its activities were confined to a membership campaign. It is unlikely that Prindle was unaware of the stage of the Union's activities.

Even assuming that the real reason for the stoppage of the soak was the fear of an impending strike and damage to the hides, the respondent, under the circumstances, is nevertheless responsible for the anti-union activities which followed. There is not a word of evidence that the respondent sought in any way to allay the fear of the community that the plant would close or to quiet the situation by a straightforward announcement that the discontinuance of the soak was not due to its hostility towards the Union, that its employees had a right to self-organization, and that it did not desire the use of intimidation to break up the Union. That is the least the respondent could have done if its intentions had not been to create a situation stimulating anti-union activity.

This anti-union drive resulted from the respondent's attitude towards the Union as shown by its declaration of individual bargain-

ing policy and by the assistance rendered by foremen in the circulation of papers expressing a preference for a local organization. It was further stimulated by the unexplained stoppage of the soak.

We find that the respondent's conduct in bringing about and stimulating the anti-union campaign in Elkland constitutes interference, restraint, and coercion of its employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for collective bargaining and other mutual aid and protection.

#### D. *The strike settlement agreement*

##### 1. The events of July 10-12

As a result of negotiations carried on through the efforts of W. C. Liller, United States Commissioner of Conciliation, and George L. Hummel, Mediator, Pennsylvania Department of Labor and Industry, the representatives of the respondent, the Union, and the Local entered into a strike settlement agreement on July 10. The agreement, signed by Prindle, Massida, and Emory Rockwell, counsel for the Local provided as follows:

#### Memorandum of Strike Settlement at Elkland Leather Company

1. The strike at the Elkland Leather Company shall terminate at once and the National Leather Workers' Association shall immediately cause all pickets to be removed from the Company premises and elsewhere in the Borough of Elkland.

2. All of the employees of the Elkland Leather Company who have been on strike at the tannery, except those who have been engaged in acts of violence, shall be returned to their former positions, without discrimination, as work progresses through the factory.

3. The Company asserts that no new employees or strike breakers have been hired at the Elkland Leather Company during the strike period and, therefore, no new employees shall be hired to fill the occupations of the striking employees as of June 26, 1937, until all such striking employees have been offered reemployment, except those who have engaged in acts of violence during the strike.

4. All State and Federal laws pertaining to industrial relations between employer and employee shall be complied with by the Company and the Employee—parties hereto.

At a meeting of the Local on Sunday evening, July 11, Massida read the terms of the agreement, and the strike was called off.

Massida testified that he instructed all the men to report the following morning to their respective bosses, who would inform them when to come to work. According to the testimony of Harold Turner, a yard employee, Massida told all the men to go back to work the following morning.

On Sunday morning Prindle instructed Kyofski, the personnel manager, to ascertain the available positions and the number of strikers who could be put back to work. Kyofski examined the pay rolls and concluded that about 35 or 40 men, whose names he listed, could be returned to work on Monday morning, July 12. There is no evidence, however, that any instructions had been given to foremen regarding the return of the strikers.

At about 6:30 or 7:00 o'clock on the morning of July 12, the strikers began to return to the plant. At the bridge connecting the public street with the respondent's plant, they were confronted by five or six Burns men and special deputies, who prevented them from crossing. Gradually about 200 strikers assembled at the bridge. Kyofski came out of the office and without consulting his list pointed to some of the men to report to work. He testified, "They happened to be the first ones right there in front of me." Somebody shouted that Kyofski was trying to "pull a trick." Somebody else said that everybody was going back to work. Kyofski thereupon told Prindle that there was apparently a misunderstanding. Prindle called into his office a committee of strikers including Backes, George Hall, and Harold Roach. It was the position of the committee that, pursuant to the agreement, strikers were to be returned to their former positions and non-strikers occupying such positions were to be displaced. Prindle and William Ellison, an officer of the respondent, maintained, however, that strikers were to be taken on only as additional jobs became available but that non-strikers were not to be removed. Ellison explained that the soak would be increased and the men taken back as soon as possible. Ellison further stated that he did not have a copy of the agreement with him and would have to communicate with Hummel and Liller concerning the interpretation of the agreement. Prindle testified that he could not get as far as to talk about the 40 available positions because Backes had a totally different conception of the agreement. The committee reported the result of the conference to the men, who proceeded forthwith to the "Chicken Coop" and voted to resume the strike.

Beginning at some time after July 12 and continuing until about September 23, the respondent sent letters to its striking employees offering them jobs. Prindle testified that all strikers, except those guilty of violence, have thus been offered their former positions without discrimination. The record indicates that strikers received

two or three letters each, the first ones offering them temporary jobs until their former positions were available and the last letter offering them their former jobs. There is no evidence that any new employees were hired by the respondent. Between July 12 and the date of the hearing further conferences were held between representatives of the parties regarding the settlement of the strike.

2. The alleged discriminatory refusal to reinstate 230 employees

The complaint, as amended, alleged that in July 1937 and at all times since the respondent refused to reinstate 230 named employees because of their membership in the Union. The respondent in its answer denied this allegation and asserted that, in accordance with the agreement of July 10, it had offered to reinstate each of these employees to their former positions.

It was apparently the theory of counsel for the Board that the respondent by its conduct of July 12 deliberately violated the agreement and refused to reinstate the employees because of their union membership and activity. The evidence is conflicting with respect to the intended meaning of the terms of the agreement. Massida testified as follows:

I would not agree on that (agreement) unless it meant that a man working days who went out on strike, and a loyal worker working nights was on his job, that the man working nights on the day man's job would be moved off. And Mr. Liller says, "If it does not mean that, it does not mean anything." I says if it means that, it is O. K. with me.

Massida admitted, however, that he did not expect Prindle to take all the strikers back at the same time. Massida's testimony as to the conciliators' understanding of the agreement is in substance corroborated by Fred Thurston, a demoted foreman, who was present at the conference. According to Daniel Close, an employee, who also attended, "everybody was supposed to go back to their former position, providing they were working at that time, and they were open." He also testified that Morgan, counsel for the respondent, explained the impossibility of taking all the strikers back at the same time and that there was some discussion about doing so in 30 days.

According to Prindle's testimony it was definitely understood that no men were to be discharged to make room for strikers but that the strikers were to be taken back as rapidly as production picked up in the plant. It was also his understanding that a representative of the Union was to be sent to the plant to find out the number of

men needed from time to time and to cooperate with him in carrying out the agreement.

In the course of the hearing, counsel for the respondent called as witnesses Charles G. Webb and Benjamin B. Bastian, two Wellsboro attorneys, the latter associated with G. Mason Owlett, and offered to prove through them that at a conference on about August 23, in Owlett's office, attended by Hummel, Liller, Bastian, Webb, Regan, and Rockwell, counsel for the Local, who signed the agreement, Rockwell admitted that his understanding of the agreement coincided with that of the respondent. This offer of proof was rejected.<sup>12</sup> At no time during the hearing were either Hummel or Liller called by counsel for the Board to testify regarding the agreement nor were, as far as appears, any attempts made to obtain their presence at the hearing.

Although the failure of Prindle, whose decisions controlled the progress of work within the plant, to prepare and submit to the Union a schedule regarding the reinstatement of the men on Monday and following days, and the retention of the police at the plant in spite of the strike settlement agreement, seem to indicate that the respondent was carrying out its obligations under the agreement, even as it saw them, in a haphazard and cavalier fashion, we are unable, under all the circumstances, to find that the refusal to reinstate on July 12 all the striking employees or to reinstate those whose positions were then held by non-strikers and remove such non-strikers constituted a discrimination against such persons and thus an unfair labor practice within the meaning of Section 8 (3) of the Act. The allegations of the complaint with respect to the refusal to reinstate the 230 employees named therein will therefore be dismissed.

*E. Elkland Leather Workers' Association, Inc.*

On July 2, a group of employees, including Del Allen, William Searl, Roy Rice, and Frank Surina, communicated with Williams and asked his advice concerning the establishment of a labor organization for the respondent's employees. On the morning of July 5, Williams advised the men that it would be preferable to have an incorporated organization. He was instructed to draw up the papers necessary for incorporation. Beginning at 9 o'clock on the same morning and continuing throughout the day groups of employees came into Williams' office and signed the articles of incorporation. Williams explained to them that the organization was to be administered by the employees themselves and that by signing the articles

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<sup>12</sup> In excluding such evidence, the Trial Examiner was in error. In view, however, of our finding with respect to the alleged discriminatory refusal to reinstate 230 employees, the error is not prejudicial.

they became charter members. On July 6 a meeting was held at the school auditorium at which Williams read the articles and made them available for signature. It was testified that by July 7 over 600 men had signed the articles. Williams then drafted a letter to the respondent advising it that the Association represented a majority of the employees and requesting that it recognize the Association as the collective bargaining agency for the employees. The letter was signed by the directors of the Association, Allen, Searl, Paul VanCise, Ned Kizer, and Roy Rice, and delivered to the respondent on July 8.

On July 9 Williams informed Prindle that the Association wished to enter into a collective bargaining agreement with the respondent. He was referred to Morgan, the respondent's counsel. At a meeting of the Association on July 13, a draft of the agreement prepared by Williams was approved. The agreement was signed the same evening by William P. Ellison, a director of the respondent, and the directors of the Association who had been elected temporary officers. The agreement provided for the recognition of the Association and the arbitration of disputes.

At subsequent meetings delegates were appointed to attend the convention of the Independent Federation of Labor at Hershey, Pennsylvania, and the Association affiliated with it. On August 26 Williams received a certificate of registration of the Association.<sup>13</sup> On August 29 permanent bylaws were adopted. On October 19 the Association elected permanent officers, Allen being elected president, Searl, vice president, and Rice, financial secretary. The main features of the bylaws are that membership is limited to non-executive employees of the respondent; that supervisory employees shall be "non-active members and . . . not entitled to a vote on any question or policy of the Association and shall be ineligible for appointment to any office or committee" but shall "be entitled to share in the benefits of the Association as fully as active members"; and that grievances shall first be presented for adjustment, through appropriate committees, to the foreman, the superintendent, and the management, in the order named, and in the absence of a settlement; to arbitration.

Many of the foremen became "non-active" members of the Association. The record shows that one foreman acted as a member of the bylaws committee, although it was testified that his position at

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<sup>13</sup> A protest against the approval of the Association's articles filed by the Union with the Tioga County Court was overruled by Judge Crichton who signed a decree approving the articles. On October 7 the Supreme Court of Pennsylvania dismissed the Union's petition for supersedeas, although at the conclusion of the hearing in this case it had not yet ruled on the merits.

the plant was not known when he was appointed to the committee and that he was thereafter removed.

It was also testified that notices for Association meetings were posted on the time clocks within the plant.

The complaint alleges that the respondent brought about the establishment of the Association, dominated and interfered with its administration and operation, and contributed financial and other support to it.

The record indicates that the first step in the establishment of the Association was the circulation of the papers within the plant regarding preference for a local organization. We have seen that supervisory employees acquiesced in and, in some instances, participated in this action, and some even asked employees to sign, thus indicating the desires of the respondent. The next step involved the holding of a "loyalty" meeting planned by Kilburn and the formation of the Elkland Leather Workers' Association, functioning as a back-to-work or "restore-the-soak" movement. It will be recalled that the back-to-work petition, signed by the Association, denounced the C. I. O. and expressed loyalty to the respondent, and that its presentation to the respondent was followed by a resumption of the soak. The final step was the formal organization and incorporation of the Association. It is contended that the original Association merely functioned as the back-to-work movement, ceased to exist upon accomplishing its purpose, and was in no way connected with the present incorporated Association. All the circumstances in the case lead to the conclusion, however, that the incorporation of the Association was merely the final stage in the establishment of a "local" organization. Allen and Searl, who signed the back-to-work petition as officers of the original Association, became officers of the incorporated Association. Williams who was secretary of the former became counsel for the latter. It is certainly unlikely that the employees would see any distinction between the two organizations, bearing the same name and having the same leaders.

From the whole record it is clear that the incorporated Association, in existence at the time of the hearing, came into being in response to the respondent's wishes and as a result of the anti-union campaign brought about and stimulated by the respondent.

The fact that many foremen became members of the Association and that notices for Association meetings were posted on the time clocks within the plant undoubtedly served further to impress upon the employees the respondent's approval of the Association and disapproval of the Union. It is true that the record does not show any direct participation by the respondent in the organization and administration of the Association as incorporated other than mem-

bership therein by foremen. But the Board has recognized on a number of occasions that an employer may lead others to bring into existence an organization which is favorable to his wishes, and has held that such conduct on the part of an employer is likewise prohibited.

Upon all the evidence we cannot believe that the Association has been freely selected by the employees, unfettered by company interference. We must conclude that the Association is a result of the respondent's hostility to the Union and the anti-union campaign attributable to it.

We find that the respondent has dominated and interfered with the formation and administration of Elkland Leather Workers' Association, Inc., and has thereby engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

*F. The alleged discriminatory termination of employment of 28 named individuals*

The complaint, as amended, alleged that the respondent, in or about June 1937, terminated the employment of 28 named individuals and has since refused to reinstate them because of their union membership and activity.

*Rush Woodbeck* and *John A. Creeley*. Woodbeck had worked for the respondent approximately 32 years. At the time of his lay-off he was employed in the rolling loft. He is married and has one daughter. He testified that he had never been laid off before, that he had formerly held the position of foreman, and that, to his knowledge, only 1 employee out of the 188 in the loft had greater seniority.

Woodbeck started "talking union" in the fall or early winter of 1936. He was in the group which first began organizing the plant in May 1937. He testified that Mitchell, his foreman, heard him talking about the Union although he never molested him.

On May 29 Woodbeck, together with two other rollers, William Baker and Kidon Sayre, was laid off. Mitchell offered Woodbeck no explanation other than saying, "I have to lay you off."

Creeley, also employed in the loft, had worked for the respondent for 8 years. According to his testimony, he had never been laid off during the past 7 years. He has a wife and seven children.

Creeley belonged to the original organizing group. He testified that he was seen talking to Drummey by Prindle and Kyofski.

Creeley had obtained permission to be off on Saturday, May 29, and Monday, May 31. He reported, however, on May 31. Jesse Jones, the assistant foreman, told him he was glad he came to work, because they were short a roller. A few minutes later Mitchell told

him he had to lay him off. Mitchell at first declined to give any reason, and then he said that business was slack and he had to lay off some of the employees. Creeley inquired whether he was laying off the older men. Mitchell did not answer and walked away.

The following testimony given by Louis Cevette, an employee in the shipping department, is significant: On about June 13 or 14, when Cevette was at Prindle's house, Prindle asked him whether several men, including Creeley and Woodbeck, were active in the Union and how many employees they had signed up.

It was testified that about May 25 the respondent received a large order for unfinished leather, thus diminishing the number of hides to be finished and necessitating the lay-off of a number of rollers. Mitchell testified that Woodbeck, Baker, and Sayre were laid off because they had small farms.

Upon all the evidence credence cannot be given to the respondent's contention that the real reason for the lay-off of Woodbeck is that he had a farm. It is asserted by the respondent that whenever it is necessary to reduce the staff, its policy is always to lay off single men first. There is no evidence that except in this instance the respondent selected for lay-offs married employees who owned farms. Moreover, although a system of seniority is not applied in the business of the respondent, it is only reasonable to expect that some special consideration would be given to a man like Woodbeck who had been in the respondent's employ for 32 years and who was admittedly a competent workman. It is true that two others who had farms, Baker and Sayre, were also laid off. But there is no evidence as to their family status, competence or length of service.

Mitchell testified that in making the lay-offs in connection with the order for unfinished leather Creeley was picked, because he was an irregular worker who stayed away from work about 3 or 4 days after every pay day, and had thus taken off 27½ days in the 4 months prior to May 31. Mitchell further testified that Creeley had previously been warned about his conduct, had been laid off about 2 or 3 years before for being drunk, and had been retained at Prindle's suggestion because of his large family. It appears, however, that Harry Doran, who replaced Creeley on June 1, was also an unsteady worker and had for that reason been laid off early in January 1937 for about 10 days or 2 weeks. Mitchell testified that Doran was steadier after he had thus been penalized but not too steady.

We are not convinced that the reason for Creeley's lay-off was his irregularity. It is difficult to believe that his employment would not have been terminated long prior to May 31 if he had been as irregular as contended by the respondent. Moreover, it is odd that at this time no consideration was given to Creeley's large family, and that an

extra roller who was also irregular was retained and placed on his job.

On the basis of all the evidence we find that Woodbeck and Creeley were in fact laid off because of their affiliation with and activity in the Union. We find that the respondent discriminated in regard to hire and tenure of employment, thereby discouraging membership in a labor organization, and it interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

During the strike, Woodbeck received from the respondent three letters offering him work. In the last letter, which he received the last part of August or the first of September, he was offered his former position. At the time of his lay-off, he was averaging about \$60 for a 2-week period.

During the strike, Creeley received three letters from the respondent offering him work, the first one in the latter part of July and the last one August 27. At the time of his lay-off he was averaging about \$60 every 2 weeks.

*James Potter.* Potter had been in the respondent's employ for 10 years. He testified that he had never during that time been laid off because of slackness or curtailment of production and that he had never received any complaints concerning his work. About 3 weeks before his lay-off on June 2 or 5, he was transferred at his own request from the shipping department to the "beam house" where he worked on pickled bellies. Potter is married and has a child.

On June 2 Floyd Smith, his foreman, told him there was no more work and laid him off. Smith advised him to see Kyofski. Potter was referred by the latter to Norton, foreman of the shipping department, but did not meet any success in securing a transfer.

Potter testified that he joined the Union on June 3 and was active in signing men up with the Union. There is no other evidence of his union activity, however, and it does not appear that he was a member of the organizing group.

Prindle testified that Potter was laid off with the whole pickled-belly crew because the respondent at that time discontinued the manufacture of pickled bellies.

Upon the evidence in this case we find that the respondent did not discriminate against Potter in regard to hire and tenure of employment, thereby discouraging membership in a labor organization.

*Edward Maxwell and Louis Cevette.* On June 19 and 21, after the respondent discontinued soaking hides, about 13 single men were laid off from the shipping department in order to permit the transfer of married men from the "beam house" which would be shut down

in several days. Among those laid off on June 19 were Maxwell and Cevette.

Maxwell had been in the respondent's employ on and off for about 25 or 26 years. He is single but he has dependents and, according to his testimony, has always been treated as a married man.

Maxwell had belonged to the organizing group, had served on the committee which unsuccessfully endeavored to procure a hall for union meetings, and was active in soliciting membership in the Union. Charles Norton, the foreman of the shipping department, who had been informed about Maxwell's activity within the plant, warned him not to "carry it too far" for his own good. Maxwell testified that about a week before he was laid off, Norton met him in the street and said, "There is that C. I. O. organizer over there. Go over and talk to him and see what he has to say. Don't sign up because Prindle is going to fire everybody who signs up." He also testified that on about June 17 Norton remarked to him, "Clark Prindle thinks you are pushing the C. I. O. down here too heavy. . . . Clark thought you would help us organize a company union."

When he was laid off Maxwell remonstrated that he had dependents and was always classed as a married man. His foreman replied; "Well, that is not my doings."

Louis Cevette is single and had worked for the respondent on and off for 5 years. He joined the Union on June 3 and was active in soliciting members.

Cevette testified to the following incident: On about June 12 he met Prindle in Skip Spencer's saloon. Prindle treated him to a drink and said, "I understand you are getting some of the boys to sign up . . ." He then said he wondered why they did not have a union of their own. As already indicated, the following night or the night after, when Cevette was at Prindle's house, Prindle inquired whether Creeley, Woodbeck, and Maxwell were active and how many men they had signed up. He then speculated upon whether the men would sign again if the application cards were lost. The next day Dempsey, the master mechanic, said to Cevette, "What about last night? . . . Do you really think you can get hold of these cards," and suggested that Cevette might take the cards away from the men who had custody of them by getting them drunk. When they met in town that night pursuant to Dempsey's suggestion, Cevette convinced Dempsey that the idea was too risky.

Prindle denied talking to Cevette in Spencer's saloon. He testified that Cevette came to his house under cover of night and requested that the curtains be drawn because he did not want other employees to see him. Cevette then said he was "getting sick and tired of this union business" and suggested the possibility of obtaining the union cards

and burning them. But Prindle said, "Don't try to hook me," and refused to have anything to do with the suggestion.

Dempsey also denied Cevette's story. He admitted, however, that he asked Cevette whether his father and two uncles, who worked under his (Dempsey's) supervision, belonged to the Union, because they held important positions in the maintenance of the fire-protection system in the plant and he wanted to know whether they would go on strike.

Harvey Roach, an employee in the shipping department, testified in rebuttal that shortly before the strike was called on June 26, Norton, the foreman, said, "If any of you fellows figure on going out on strike, you will be black balled like Ed. Maxwell and Louis Cevette."

Norton testified that, in view of the shortage of shipping orders, he was instructed by Prindle to lay off single men in the shipping department and thus provide work for married men in the "beam house." Accordingly, he laid off all the single employees with the exception of two, Gus Sodenberg, who did sorting work and could not be replaced easily, and John Curtis, who was thought to be a married man. Among the men thereafter transferred from the "beam house" was Blair Clement, who told Norton that he was engaged to be married.

Although there is no evidence that the general lay-off in the shipping department was directed against union members, it seems to us that some consideration would normally have been extended to a man like Maxwell who had been in the respondent's employ for 25 or 26 years and was, because of his dependents, always classed as a married man.

On the basis of the whole record, we find that Maxwell was laid off because of his union membership or activity. We find that the respondent discriminated in regard to hire and tenure of employment, thereby discouraging membership in a labor organization, and it interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Upon all the evidence we find that the respondent did not discriminate against Cevette in regard to hire and tenure of employment, thereby discouraging membership in a labor organization.

At the time of his lay-off Maxwell was earning about \$48 every 2 weeks. He received one letter offering him work but not at his former position.

*Hiram Davis and Elwin Wright.* Davis and Wright were laid off on June 23 when the "beam house" was shut down because of the stoppage of the soak.

Davis is married and had been in the respondent's employ 7½ years. He was a member of the organizing group and joined the Union the first week in June. From June 15 he held the position of financial secretary in the Local. He testified that although other "beam house"

employees had been transferred he was neither offered any work nor asked whether he wanted to work elsewhere.

Wright had worked for the respondent for 11 years. He is married. He joined the Union about the first of June and was active in soliciting members. According to his testimony both Russell Stebbins and Floyd Smith, the foremen of the "beam house," knew of his union activities through his conversation with them concerning the Union.

Wright testified that, upon being laid off, he complained to Stebbins that others were placed on different jobs whereas he was not, although he had worked at the plant a long time and had a large family. Stebbins replied, "Well, you have talked too much about union; I am afraid I can't do it." Also, about the same time, Del Allen, who subsequently became president of the Association, said to him, "I think if you would join up with the company union and join up with the vigilante committee, we could place you somewhere else in the tannery, and you wouldn't get laid off; you would have steady work all the time." Wright also testified that no union men in the "beam house" were transferred to other departments.

Prindle testified that six men were transferred from the "beam house" to the shipping department on June 24, four on June 25, and one on June 26. It is significant that the names of only two of these employees appear in the union application cards submitted in evidence.<sup>14</sup> One of these two, however, withdrew from the Union on June 26 and was transferred on the same day. Another employee transferred was Paul VanCise, who was active in organizing the Association and is now its recording secretary.

There is no evidence that the employees who were transferred had larger families or greater seniority than Davis and Wright. Although, as already noted, the respondent did not apply the system of seniority, it is reasonable to believe that employees who had served as long as Davis and Wright would normally be given greater consideration than younger employees.

On the whole record we find that Davis and Wright were laid off and were not transferred to other jobs because of their union membership and activity. We find that the respondent discriminated in regard to hire and tenure of employment, thereby discouraging membership in a labor organization, and it interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of their lay-offs Davis and Wright were each averaging about \$52 every 2 weeks.

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<sup>14</sup> John Russell is another of the employees transferred. There is an application card bearing the name of John H. Russell but as an employee in the "loft." Apparently, therefore, the two are not the same.

*Gerald Short.* Short was employed in the outside department as a carpenter on company houses. He himself testified that he was not laid off or discharged. He worked on June 25. He had a day off on June 26 and did not return.

We find that the respondent did not discriminate against Short in regard to hire and tenure of employment thereby discouraging membership in a labor organization.

*Galen Brownell.* Prior to his lay-off Brownell had worked for 3 months in the outside department as a carpenter on company houses. He testified that he joined the Union about June 1 and was active. On June 19, Kilgren, his foreman, said to him, "You are all done" and gave him his pay check in full. Gerald Short testified that Kilgren told him that Brownell and Charles Wilson, another carpenter, were laid off because they had signed up with the Union. The record shows, however, that Wilson was not a union member.

Kilgren denied that he ever attributed Brownell's lay-off to his union membership. He testified that he was ordered to stop working at that time and that he laid off Brownell and Wilson because they were the youngest men in the gang, Brownell being only a temporary employee.

There is no evidence other than Brownell's statement that he was an active union member.

Upon the evidence in this case, we find that the respondent did not discriminate against Brownell in regard to hire and tenure of employment thereby discouraging membership in a labor organization.

*Jesse Russell.* Russell was employed in the outside department as a common laborer. He joined the Union about 2 weeks before the strike. He testified that on June 25 George Davenport, assistant foreman of the outside department, told him he was aware of his union membership and that he had better change or he might not be working. The record shows, however, that Russell struck on June 26 and was not discharged or laid off.

We find, therefore, that the respondent did not discriminate against Russell in regard to the hire and tenure of his employment thereby discouraging membership in a labor organization.

*George W. Button.* Button, an employee in the scrub house, continued to work after the strike was called. He testified that a few days after the commencement of the strike, he requested Mac Chilson, one of his bosses, for a transfer from the night shift to the day shift. Chilson replied, "George, you are badly fooled if you think we are going to favor you C. I. O. guys." Button worked for about 2 weeks thereafter and left when his mother became ill. He did not return.

Upon the evidence we find that the respondent did not discriminate against Button in regard to hire and tenure of his employment thereby discouraging membership in a labor organization.

*George Biaby.* For about 6 months prior to June 25 Bixby had been employed in the water-softening department under the supervision of Theodore Oberlander, the chemical engineer.

Bixby joined the Union on about June 18. He testified that on June 25, Farnham, an older employee in the same department, said to him, "Oberlander said for you not to come back . . . we can't trust you since you joined the C. I. O." He further testified that on the evening of June 25 Oberlander tried to communicate with him with respect to returning to work the following day, but that when he appeared at the plant shortly after the strike began, Oberlander said to him, "You can go over to Chris Irons; . . . most of the fellows went to Chris Irons and signed off from the C. I. O. . . . You can go over and sign up, and if you want to, then you can come back to work." Bixby declined to do so.

Oberlander denied the conversation attributed to him by Bixby. He testified that Bixby was not laid off or discharged; that in view of the imminence of the strike and the great importance of the work in his department, he needed reliable men on all shifts; and that he therefore instructed Farnham, another employee, to replace Bixby temporarily. He admitted that prior to the strike Bixby's services had been satisfactory. Oberlander further testified that he had in fact told Bixby on the night of June 25 that he was not discharged but that there was simply a temporary change in working shifts, that Bixby returned the following day after the commencement of the strike and said that the Union ordered him not to work, and that he (Oberlander) then said, "In that case I will have to get some one else to take your place."

We do not believe that the evidence sustains the allegation that Bixby's employment was terminated because of his union affiliation. Although we credit Bixby's testimony that he was urged by Oberlander to withdraw from the Union, we also believe that Bixby did not wish to return to work but chose to participate in the strike. We find that the respondent has not discriminated against Bixby in regard to hire and tenure of employment thereby discouraging membership in a labor organization.

*Rome Theodore Bixby.* Rome Bixby had worked for the respondent for about 6 or 7 years. At the time of his lay-off on June 27 he was employed as a night watchman.

He joined the Union about a week or two before the strike. He testified that he made no secret of his membership and often talked about it.

Bixby did not go out on strike but was laid off on June 27. Myers, the foreman of the outside department, testified that he did not believe Bixby was a member of the Union since he failed to go out on strike and that he gave instructions to lay Bixby off because he needed

a reliable man during the strike. He further testified that Bixby was very nervous and unreliable, that he had been warned with regard to these characteristics a number of times since they were first observed about 2 years before, and that Charlie Thomas, the subforeman, was instructed to lay him off before the strike, but had not done so because he felt sorry for him. Myers did not know, however, whether his nervousness had interfered with his work during the previous 2 years.

The evidence with respect to Bixby's unreliability and incompetency is not entirely convincing, and it may be that Bixby was in fact laid off because the respondent feared that he was too sympathetic towards the Union's cause to be a trustworthy watchman during the strike. However, on the basis of the evidence, we do not feel warranted in making such a finding since Bixby's failure to go out on strike lends support to Myers' testimony that he was unaware of Bixby's union membership at that time. It is therefore unnecessary to decide for the purposes of this case whether laying off a watchman during the strike for this reason constitutes an unfair labor practice within the meaning of Section 8 (3) of the Act. We find that the respondent has not discriminated against Bixby in regard to hire and tenure of employment thereby discouraging membership in a labor organization.

During the strike Bixby received three letters from the respondent offering him work, the last one on September 23. He did not return to work pursuant to these offers because he did not wish to be a strikebreaker.

*Employees in the cut-sole department.* Nine of the men named in the complaint as having been discriminated against are employees in the cut-sole department. These are Harold Folsbee, Dominic Cevette, and Harold Creeley, who were laid off on June 19, and Ernest Stocum, Anthony Zajackowski, Wayne Hendrickson, Lee Russell, Anderson Wyatt, and Charles Forsberg, who were laid off on June 26.

Pursuant to a program of curtailment in the cut-sole department occasioned by a decline in the shoe market and excess inventory, 23 employees were laid off on June 5, 15 more on June 19, and the remaining 22 on June 26. On June 26 the men were notified that the department would be shut down for 2 weeks. There is no evidence that there was any discrimination between union and non-union men in these lay-offs. Nor is there any evidence of any discrimination when operations in the department were resumed on June 28. In fact, Lee Russell testified that five or six of those who returned to work were union members.

On the testimony we find that the respondent did not discriminate against these nine men in regard to hire and tenure of em-

ployment thereby discouraging membership in a labor organization.

*Jesse Bartoo, Caspar Carr, Raymond Ray, Clarence White, Merle Davis, and William Rumberger.* The only evidence with respect to Bartoo is that the last day he worked was May 3, 1937. Carr was never laid off, but walked out on strike and did not return. No evidence was offered as to the other four employees.

On the record we find that the respondent did not discriminate against these employees in regard to hire or tenure of employment thereby discouraging membership in a labor organization.

#### G. *The alleged refusal to bargain*

##### 1. The appropriate unit

The complaint alleges that all of the production employees of the respondent constitute a unit appropriate for the purposes of collective bargaining. The respondent does not assert that any other unit is the proper one. All the production employees are apparently eligible to membership in the Local.

Under the usual rule, supervisory and clerical employees are excluded from the unit of production workers in the absence of any evidence with respect to their inclusion. We find that the production employees of the respondent, excepting supervisory and clerical employees, constitute a unit which is appropriate for the purpose of collective bargaining, and that such unit insures to the employees the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

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

Drumme testified that on June 16 Massida turned over to him 461 union application cards, which he classified according to the departments in which the men whose names appeared on the cards were employed. He proceeded to secure further signatures and, according to his testimony, had over 600 on June 22, although he could not state the precise number. He further testified that when he was compelled to leave Elkland on that day he forgot to take with him 180 or 200 unclassified cards which he could not thereafter find. It does not appear that any record was ever made of the names of the employees who had signed these cards. It is entirely possible that individuals who had signed the allegedly lost cards thereafter signed other cards which are among those submitted in evidence. The inclusion of these lost cards, therefore, for the purpose of determining whether the Union represented a majority is not warranted.

As already stated the respondent employed 944 production employees prior to the strike. There were submitted in evidence 490 union application cards in addition to 13 cards which were not submitted but were conceded to be valid by counsel for the respondent, thus making a total of 503 cards. It appears, however, that at least 8 of these cards were signed after June 26, and that 74 of the employees who had signed these cards withdrew from the Union on June 25 and 26. It also appears that 7 of the cards are duplicates, 9 bear the signatures of persons who had never been in the respondent's employ, 11 have the names of employees who had not been on the respondent's pay rolls since April 1, 1937, and at least 6 who were not on the pay roll at the time of the strike. Thus, even assuming that the 74 employees who withdrew from the Union may properly be counted, there, nevertheless, remains a total of only 462, constituting less than a majority of the employees in the appropriate unit.

On the basis of all the evidence we do not believe that the burden of proving that the Union had been designated by a majority of the employees in the appropriate unit as their representative for the purpose of collective bargaining has been sustained. It is therefore not necessary to consider the other issues raised by the allegations made in the complaint that the respondent had engaged in unfair labor practices within the meaning of Section 8 (5) of the Act. These allegations will be dismissed.

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

We find that the activities of the respondent set forth in Section III, C, E, and F above, occurring in connection with the operations 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 and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

We have found that Elkland Leather Workers' Association, Inc., came into existence as a result of the respondent's unlawful course of conduct and was dominated and interfered with by the respondent. Such an organization cannot, in view of the circumstances, operate as a true representative of the employees. We shall therefore order the respondent to withdraw recognition from it and to disestablish it as such representative. Further, the respondent must cease to give effect to its contract with the Association, which is void as made with an organization not entitled to represent the respondent's employees.

The respondent has discriminated in regard to the hire and tenure

of employment of Rush Woodbeck, John A. Creeley, Edward Maxwell, Hiram Davis, and Elwin Wright. Normally we would order the respondent to reinstate these employees and give them back pay from the date of their lay-off until the date of the offer of reinstatement. However, Rush Woodbeck was offered his former job during the strike. John A. Creeley was also offered reinstatement and there is no evidence that such offer was not to his former position. These two employees, by refusing to accept the offer of reinstatement, have indicated their desire to participate in the strike and have been, from the date of such offer, in the same position as the other striking employees. Furthermore, since the Trial Examiner failed to find in his Intermediate Report that these five employees were laid off because of union activities, the respondent should not be required to pay any of them back pay from the date of the receipt of the Intermediate Report (November 30, 1937) to the date of this Decision. Our order with respect to these five employees will be as follows: Edward Maxwell, Hiram Davis, and Elwin Wright shall be offered immediate reinstatement to their former positions and shall be given back pay from the date of their lay-offs to November 30, 1937, and from the date of this Decision to the time of such offer of reinstatement, less any amounts earned by them during such periods. Rush Woodbeck and John A. Creeley shall, as in the case of the other striking employees and in the manner set forth below, be offered reinstatement, upon application, to their former or substantially equivalent positions, and shall be given back pay from the date of their lay-offs to the date they were offered reinstatement during the strike and from the date of any refusal of reinstatement in accordance with our order to the date of reinstatement, less any amounts earned by them during such periods.

As we have seen, the strike at the respondent's plant was called on June 26 when the anti-union campaign brought about and stimulated by the respondent was at its height. Strike action was evidently thought necessary to halt the demoralization of the union members. In the words of Backes, the strike "was to show our strength." According to Massida's testimony, strike action was precipitated on June 25 because of the lay-offs and the fear that "if they had delayed action much longer, he (Prindle) might have gotten rid of the leaders and broken the morale of the organization." On the basis of the whole record, we believe that the Union, faced with the anti-union conduct engaged in and provoked by the respondent, called the strike because it conceived that no other course remained open to it. The strike was called off for 1 day on July 11. Such action was taken, however, pursuant to the strike settlement agreement in which, as we have seen, the minds of the parties never met. It is clear that the strike, which

was still in effect at the time of the hearing, was not a new strike but a continuation of the one called on June 26.

The strike having been caused by the respondent's unlawful course of conduct, we shall in accordance with our usual practice order the respondent, upon application, to offer reinstatement to their former or substantially equivalent positions 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. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

Included, of course, among the number of strikers to be reinstated in accordance with our order are those employees who were laid off prior to the strike because of the stoppage of the soak and the curtailment in the cut-sole department, and who did not return to work during the strike upon resumption of operations in their departments, but chose to participate in the strike. Also to be included are George Bixby, who, as we found, went out on strike on June 26, and Rome Theodore Bixby who was laid off after the commencement of the strike and thereafter refused to return to work when asked to do so.

The record shows that the strike was accompanied by some violence. On July 6 stones were thrown at automobiles of "loyal" employees on their way to the plant, and windows were broken. Seven employees were arrested as a result and charged with rioting, inciting to riot, and participating in an "aggravated riot." They were taken to the Elkland jail, and bail was fixed. Thereafter they were transferred to the county jail. Although it is not altogether clear, the record indicates that most of these men were released on their own recognizance. At the time of the hearing the men were awaiting trial. The Board has on former occasions considered evidence of convictions and pleas of guilty to acts of violence committed by indi-

vidual strikers as relevant on the issue whether it is equitable to order their reinstatement. Without condoning violence by any party to a labor dispute, we do not consider the offenses charged to these seven employees of sufficient gravity to warrant their exclusion from our order of reinstatement.

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

#### CONCLUSIONS OF LAW

1. National Leather Workers' Association, National Leather Workers' Association, Local No. 37, and Elkland Leather Workers' Association, Inc., are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Elkland Leather Workers' Association, Inc., the respondent has engaged in and is engaging in an unfair labor practice, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Rush Woodbeck, John A. Creeley, Edward Maxwell, Hiram Davis, and Elwin Wright, 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. 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.

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

6. The respondent has not engaged in and is not engaging in unfair labor practices within the meaning of Section 8 (3) of the Act with respect to James Potter, Louis Cevette, Gerald Short, Galen Brownell, Jesse Russell, George W. Button, George Bixby, Rome Theodore Bixby, Harold Folsbee, Dominic Cevette, Harold Creeley, Ernest Stocum, Anthony Zajackowski, Wayne Hendrickson, Lee Russell, Anderson Wyatt, Charles Forsberg, Jesse Bartoo, Caspar Carr, Raymond Ray, Clarence White, Merle Davis, and William Rumberger, and with respect to the alleged refusal to reinstate 230 employees named in the complaint in this case.

7. The respondent has not engaged in and is not engaging in unfair labor practices within the meaning of Section 8 (5) 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, Elkland Leather Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Leather Workers' Association or any other labor organization of its employees, by terminating the employment of its employees, or otherwise discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) Dominating or interfering with the administration of Elkland Leather Workers' Association, Inc., or with the formation or administration of any other labor organization of its employees, or contributing support thereto;

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

(d) Giving effect to its contract with Elkland Leather Workers' Association, Inc.

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

(a) Withdraw all recognition from Elkland Leather Workers' Association, Inc., as a representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish said Association as such representative;

(b) Offer to Edward Maxwell, Hiram Davis, and Elwin Wright immediate and full reinstatement, respectively, to their former positions without prejudice to any rights and privileges previously enjoyed by them; and make them whole for any loss of pay they have suffered by reason of their lay-off by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the periods from the dates of their respective lay-offs to November 30, 1937, and from the date of this Decision to the time of such offer of reinstatement, less any amount earned by each of them, respectively, during such periods;

(c) Make whole Rush Woodbeck and John A. Creeley for any loss of pay they have suffered by reason of their lay-off by payment to each of them, respectively, of a sum equal to that which each of

them would normally have earned as wages during the period from the dates of their respective lay-offs to the date they were offered reinstatement, less any amounts earned by each of them, respectively, during such period;

(d) Upon application, offer to those employees who went out on strike on June 26 and thereafter, including Rush Woodbeck and John A. Creeley, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "Remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(e) Make whole the employees ordered in paragraph 2 (d) above to be offered reinstatement for any loss of pay they will have suffered by reason of any refusal of reinstatement or placement upon the preferential list required by paragraph 2 (b) above 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 application to the date of offer of reinstatement or placement upon the preferential list, less the amount, if any, which each would have earned during that period;

(f) Post immediately notices to its employees in conspicuous places throughout its plant, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent withdraws all recognition from Elkland Leather Workers' Association, Inc., as a representative of its employees, and completely disestablishes it as such representative; and (3) that the agreement signed with Elkland Leather Workers' Association, Inc., is void and of no effect;

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

(h) Notify the Regional Director for the Fourth 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 (1) in so far as it alleges that the respondent has discriminated against persons other than the five referred to in paragraph 2 (b) and (c) above, and (2) in so far as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.