

In the Matter of WARD BAKING COMPANY and COMMITTEE FOR  
INDUSTRIAL ORGANIZATION

In the Matter of WARD BAKING COMPANY and BAKERY AND CONFEC-  
TIONERY WORKERS INTERNATIONAL UNION OF AMERICA

Cases Nos. C-492, C-493, and R-322.—Decided July 23, 1938

*Bakery Industry—Interference, Restraint, and Coercion:* urging, persuading, and warning employees to join one labor organization and not to join or assist another; soliciting membership by supervisory employees an unfair labor practice although such employees are members of or eligible to membership in the union—*Closed-Shop Contract:* with company-favored union not the free choice of a majority of the employees; respondent ordered to cease and desist giving effect thereto unless and until such labor organization is certified by the Board as the exclusive bargaining representative; closed-shop contracts not set aside where unions signing contracts were not served with notice of hearing, did not appear nor participate at the hearing, and did not benefit from unfair labor practices of the respondent—*Investigation of Representatives:* request for withdrawal of petition for, denied; controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* inside production and maintenance employees, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, and all outside employees—*Election Ordered:* election not postponed to allow time for dissipation of effects of unfair labor practices since all parties request that election be held forthwith; request that name of one of labor organizations be omitted from ballot, denied—*Certification of Representatives.*

*Mr. Jacob Blum and Mr. Herbert Eby, for the Board.*

*Semmes, Bowen & Semmes, by Mr. Jesse N. Bowen, and Mr. William D. MacMillan, of Baltimore, Md., for the respondent.*

*Mr. John K. Keane, of Baltimore, Md., and Mr. Patrick J. Taft, of Washington, D. C., for the International.*

*Mr. Frank J. Bender, of Baltimore, Md., and Mr. Anthony Wayne Smith, of Washington, D. C., for the United.*

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

*Mr. Harry E. Selekman, of counsel to the Board.*

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges duly filed on August 6, 1937, by the Committee for Industrial Organization on behalf of United Bakery Workers Indus-

trial Union Local No. 196, herein called the United, the National Labor Relations Board, herein called the Bóard, by Bennet Schaufler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated September 29, 1937, against Ward Baking Company, Baltimore, Maryland, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and notice of hearing thereon were duly served upon the respondent and the United.

In respect to the unfair labor practices the complaint alleged in substance that the respondent sponsored, dominated, and supported a labor organization known as Bakery and Confectionery Workers International Union of America, Local No. 68, herein called the International, and that the respondent by such acts and other acts has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

On October 6, 1937, the respondent filed its answer to the complaint admitting its interstate activity, but denying all the allegations of unfair labor practices.

On August 25, 1937, the International filed a petition with the same Regional Director, alleging that a question affecting commerce had arisen concerning the representation of employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 24, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, and ordered the proceedings consolidated for purposes of hearing. Notices of the hearing on the petition were served upon the respondent, the United, and the International.

Pursuant to the notices of hearing, a joint hearing on the complaint and the petition was held in Baltimore, Maryland, on October 11 and 12, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board, the respondent, and the International were represented by counsel; the United appeared by an official. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on all the issues was afforded to all the parties. At the commencement of the hearing, the International's motion to intervene in the complaint proceeding was granted by the Trial Examiner. At the conclusion

of the Board's evidence, counsel for the Board moved that the pleadings be conformed to the proof. The Trial Examiner granted this motion. The respondent and the International moved that the complaint be dismissed. These motions were denied by the Trial Examiner in his Intermediate Report.

Upon additional charges filed on December 23, 1937, by the Committee for Industrial Organization on behalf of the United, the Board by its Regional Director, issued its second complaint dated January 13, 1938, against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. In respect to the unfair labor practices, the complaint alleged in substance that the respondent had entered into a closed-shop contract with the International subsequent to the hearing and before the issuance of a decision on the proceedings involved in the complaint and the petition; that the respondent entered into the contract for the purpose of intimidating, coercing, and influencing its employees either to refrain from joining the United or to withdraw as members from that organization; that the respondent by such acts interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed to them under Section 7 of the Act.

On January 20, 1938; the respondent filed an answer, admitting the signing of the contract, but denying that this was an unfair labor practice for the reason that the employees threatened to strike the plant on November 13, 1937, unless such a contract was signed.

On December 13, 1937, the Board issued an order consolidating the second complaint with the prior petition and complaint. Pursuant to the notice of hearing served upon the respondent and the United, a hearing was held on January 24, 1938, in Baltimore, Maryland, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on all the issues was afforded all the parties.

During the course of both of the hearings the Trial Examiners made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiners and finds that no prejudicial errors were committed. Their rulings are hereby affirmed.

On March 23, 1938, the Trial Examiner, Earl S. Bellman, filed his Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. The respondent,

the International Brotherhood of Teamsters and Chauffeurs, herein called the Teamsters Union, the International Union of Operating Engineers, herein called the I. U. O. E., and the International Association of Machinists, herein called the I. A. M., filed exceptions to the Intermediate Report,<sup>1</sup> which the Board has considered, and, except as indicated hereinafter, finds them to be without merit:

The Trial Examiner, in his Intermediate Report, recommended that respondent notify each of its supervisory personnel that he was to cease and desist from membership in any labor organization of the respondent's employees. The International and the I. A. M. objected to this ruling on the ground that it interfered with the internal affairs of their unions because some of the supervisory personnel were eligible to membership in their organizations. We are of the opinion that mere membership of supervisory employees in a labor organization is not objectionable and does not constitute an unfair labor practice on the part of the employer. The ruling of the Trial Examiner is, therefore, hereby reversed.

On April 7, 1938, the International filed with the Board a motion to withdraw its petition for investigation and certification, stating that conditions had changed substantially since August 25, 1937, so that it was no longer necessary to invoke the provisions of Section 9 (c). On April 25, 1938, the United filed with the Board a motion to expedite the election, stating that the motion of the International to withdraw its petition should be denied, that a question concerning representation of the employees of the respondent had existed since August 25, 1937, that this question should be decided as quickly as possible, and that if the petition of the International was withdrawn, the United would file a petition on its own behalf. Accordingly, the motion of the International is hereby denied.

Pursuant to notice, a hearing was held before the Board on June 21, 1938, for the purpose of oral argument. The respondent, the International, the United, and the I. A. M. were represented and participated therein.

Upon the entire record in the three cases, the Board makes the following:

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<sup>1</sup> The Trial Examiner in his Intermediate Report recommended that the four closed-shop contracts signed by the respondent with the I. A. M., the I. U. O. E., the Teamsters Union, and the International be set aside. Although the I. A. M., the I. U. O. E., and the Teamsters Union were not parties to the case and did not participate in the hearings, they considered themselves aggrieved by the recommendation of the Trial Examiner and requested that they be allowed to file exceptions to the Intermediate Report. Such permission was granted. We have considered the exceptions and hereby reject the recommendation of the Trial Examiner in so far as it recommends that the contracts of the I. A. M., the I. U. O. E., and the Teamsters Union be set aside. The disposition of these contracts will be discussed in Section III (B), *infra*.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The respondent, Ward Baking Company, is a wholly owned subsidiary of Ward Baking Corporation, a holding company which controls 21 plants in the eastern, southern, and middle west portions of the United States. Ward Baking Company operates 26 bread and 14 cake ovens having a daily capacity of over 2,000,000 pounds of bread and 900,000 cakes in the bakeries.

The Baltimore plant, the one involved in these proceedings, is engaged in manufacturing and distributing bread, cakes, buns, and rolls. It receives raw materials from sources outside Maryland and ships its products to States other than Maryland. The distribution of bread and cakes is effected by trucks which deliver to retail grocery and delicatessen stores and directly to restaurants, hospitals, and public institutions.

In its answer and at the hearings the respondent conceded that it was engaged in interstate commerce.

## II. THE ORGANIZATIONS INVOLVED

United Bakery Workers Local Industrial Union No. 196 is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership inside production and maintenance employees of the respondent, excluding supervisors, clerical and office employees, and outside employees.

Bakery and Confectionery Workers International Union of America, Local No. 68, is a labor organization affiliated with the American Federation of Labor. It admits to membership production and maintenance employees, excluding supervisors, and clerical and office employees.

## III. THE UNFAIR LABOR PRACTICES

*A. Interference, restraint, and coercion*

In 1933, the International secured a considerable number of the employees of the respondent as members. However, the employees soon left the International, and it lapsed into complete inactivity until some time subsequent to the appearance of the United in the plant.

In June 1937, the United began an organizing campaign and on June 19, Frank Bender, the regional director for the Committee for Industrial Organization, sent a letter to John Flanigan, general manager of the plant, stating that the United represented a majority of

the employees of the respondent and requesting a conference to discuss the possibility of arriving at a collective bargaining agreement. A conference was held on June 28, during the course of which Flanigan asserted he had no authority to negotiate such an agreement as was desired by the United and suggested that the United submit a copy of its demands for the approval of the New York office.

After a lapse of some time, Bender sent a second letter dated July 24, requesting that Flanigan arrange for the presence of Jackson, the general sales manager of the respondent, at a conference with United officials.

On July 28, another meeting took place and was attended by Jackson, Clyde Mayer, the district manager, and Flanigan, for the respondent, and by Bender, Robert Glenn, a field representative of the Committee for Industrial Organization, and Ernest Drohan, president of the United. At this conference Bender stated that the United represented a majority of the employees and desired to discuss a collective bargaining agreement with the respondent. There is some dispute as to the exact nature of certain statements made by Jackson. Bender and Drohan testified that Jackson requested the United to withdraw from the plant in favor of the International and that he stated that the International was the proper and better union because of its longer history in the baking industry. Flanigan and Mayer denied that Jackson requested the withdrawal of the United, but Flanigan admitted that Jackson said he was desirous of obtaining the union he thought best for the respondent's employees. After some further discussion Jackson agreed to take a typewritten list of the members of the United and a proposed agreement of the United to the New York office.

On August 6, the United filed charges that the respondent was interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act. On August 11 another conference was held, at which officials of the respondent urged that the United withdraw its charges and participate in an election. The United refused to take part in any election until a decision was issued by the Board on the charges filed by it.

It appears that shortly after the United began to organize, supervisory officials of the respondent began actively to interfere with its organizational activities and to give aid and support to the International. These efforts of the supervisory officials increased after the negotiations on July 28. Numerous witnesses testified as to such activities on the part of Charles Fuchs, Glenn Strachan, and Jack Kelly, who, as shown herein, are clearly supervisory officials.

John Gibson, a scaler in the cake department, testified that in June he was informed by Fuchs that he had orders to discharge any-

body distributing cards of the United, and that on August 19 Fuchs asked him to allow Milton Michael, Fuchs' nephew, to sign him into the International. Frank Fowler, a greaser in the same department, stated that during the first week in June Fuchs instructed him not to join any union, and that about the middle of August Fuchs informed him that the International was the best union and that someone would see him with reference to signing an International card. The following morning Michael requested him to join the International. Fuchs denied that he made the statements attributed to him, but he conceded that on one occasion he stated to three employees that if he was compelled to join either union, he would choose the International on account of its reputation. In view of the number of witnesses giving similar testimony with reference to Fuchs' activities and of his own admission that he preferred the International to the United, we see no reason for discrediting this evidence.

John Breivogel, a bread wrapper, stated that early in June his supervisor, Glenn Strachan, had, in denying his request for a promotion, informed him that this would not be possible unless he joined the International. Albert Fountain, a bench worker, testified that Strachan prevented him from speaking on behalf of the United, although he did not interfere with the International in the plant.

Several witnesses, in testifying about the activity of Jack Kelly, the chief engineer, in promoting the International in the plant, stated that he notified them that he had application cards for anybody who desired them. Robert Varnedoe, a set-up man, said that he was informed by Kelly that if the United won out, the respondent would postpone making any agreement until its members became dissatisfied and joined the International. Kelly denied that he made these statements and said that he was referring to his own application card when speaking to the employees. The evidence as a whole, however, refutes Kelly's denial and explanation.

The respondent and the International contended that Fuchs, Strachan, and Kelly were not supervisory employees because they had no power to hire and discharge, and that since these men were either members or eligible to membership in the International, they were fostering their own organization without any authority from the respondent. They alleged that the acts of these employees could not bind the respondent.

An examination of the record clearly establishes the supervisory status of these men, even though they may not have the power to hire and discharge. Charles Fuchs is an assistant foreman in charge of the night shift. According to his testimony his duties are to "oversee the whole place and see that things run as they should run, from the third floor down into the basement, outside of the shipping depart-

ment." Fuchs gives orders to the employees under his supervision, and during the foreman's absence he assumes his position.

Jack Kelly is the chief engineer in charge of the engineers and firemen. Although he does not have the power to hire and discharge, Kelly stated that the respondent followed his recommendations and that four employees had been dismissed pursuant to his suggestions.

Glenn Strachan is an assistant foreman at the plant. At the time he had the conversation with Breivogel, Strachan's foreman was away on a vacation. During his absence Strachan had been ordered to install a new shift and given the authority to transfer any men he desired.

We are of the opinion, moreover, that the respondent is not relieved from responsibility for the union activity of its supervisory employees by virtue of membership of such employees in a labor organization. A corporate employer in its relations to its ordinary employees necessarily acts through and must be held responsible for the acts of its supervisory employees. Where such employees actively interfere with one labor organization and promote another, the employer itself must be deemed to have engaged in such interference and promotion.

We find, therefore, that the respondent, by the acts of its supervisory employees above set forth, has intimidated, restrained, and coerced its employees in the exercise of their rights guaranteed to them in Section 7 of the Act.

#### *B. The closed-shop contracts*

On October 25, 1937, the respondent orally agreed to increase the wages of its truck drivers. Thereafter, on November 10, certain of the other employees informed Frank Ellis, International organizer, that they would strike unless the respondent gave them similar wage increases and shorter hours. Ellis then arranged a conference with Flanigan, the general plant manager, at which the strike threat was repeated. Flanigan persuaded the employees to postpone any definite action until after another conference on November 13.

On the evening of November 13, about 120 employees of the respondent gathered in the American Federation of Labor hall. Mayer and Flanigan represented the respondent. Mayer addressed the men, told them that certain proceedings were pending before the Board, and asked that they postpone any action until the Board issued its decision. A vote was taken, and the employees decided to strike the following morning if they were not granted their demands. Mayer called the president of the respondent in New York, and the vice-president in Chicago, but both were out. He then called the general sales manager in Boston and was told by him to come

to terms with the men. Thereafter, the president gave him the same instructions. Mayer agreed to a general wage increase of \$3 per week, which was to be retroactive from October 25, and to a reduction in the hours.

The parties continued to negotiate until December 8, 1937, at which time the respondent signed closed-shop contracts with locals of the I. A. M., the Teamsters Union, the I. U. O. E., and the International.<sup>2</sup> The record is somewhat vague as to the circumstances surrounding the appearance of the I. A. M., the Teamsters Union, and the I. U. O. E., and the part they played in the negotiations. In the representation proceeding at the first hearing the International claimed to represent all the employees covered by these contracts. However, Flanigan testified at the second hearing that during the negotiations he was informed by the various officials of the different unions that it was customary to sign separate agreements with the individual unions.

The I. A. M., the I. U. O. E., and the Teamsters Union were not served with notice and did not appear or participate in either hearing before the Trial Examiners. Nor does the evidence disclose that the activities of the supervisory employees discussed above were in aid and support of these labor organizations. Under the circumstances, we shall not here pass upon the validity or effect of the closed-shop contracts with these three unions. The issue remains, however, as to the validity of the closed-shop contract between the International and the respondent.

The respondent contends that the International represented a majority of the production and maintenance employees at the time the closed-shop agreement was signed. Flanigan testified that about the middle of September the International submitted to him a petition signed by 197 employees of the approximately 220 employees in the respondent's plant and that he spent 2½ days asking each person whose name appeared on the petition whether it was his signature which was on the petition and whether he desired the International to act as his bargaining representative. This petition, circulated among the employees in the plant during the latter part of August, designated the International as bargaining agent and stated that it revoked all prior authorizations. It is to be noted in this connection that the United during the meeting on July 28 submitted to the respondent a typewritten list of its members and that the respondent agreed to "check it." However, the record does not disclose that

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<sup>2</sup> Although the contracts with the I. A. M. and the I. U. O. E. are dated December 15, 1937, and that with the Teamsters Union is dated October 25, 1937, counsel for the respondent stated they were all signed on December 8, 1937, in the presence of officials of all four unions.

such action was taken. A comparison of the names appearing on the United membership list and those on the International's petition reveals a duplication of 76 names. This petition, furthermore, was signed after the supervisory officials of the respondent gave active aid and support to the International. It is clear, therefore, that at the time the closed-shop agreement was signed the International as a bargaining representative was not the free and uncoerced choice of a majority of the production and maintenance employees of the respondent. The closed-shop contract is, therefore, null and void, and the action of the respondent in signing it under the circumstances here presented clearly constitutes an unfair labor practice within the meaning of Section 7 of the Act.

The respondent seeks to defend the signing of the closed-shop agreement on the ground that it was forced to do so by threat of a strike in the plant. It is not necessary to determine herein whether or not such a threat actually existed. It is clear that the imminence of a strike does not justify the respondent in engaging in an unfair labor practice.<sup>3</sup>

Counsel for the respondent and the International stated at the oral argument before the Board that the closed-shop contract had been rescinded. These statements are the only evidence relative to a rescission of the contract. Moreover, a mere rescission would not necessarily correct the harmful effects resulting from the respondent's unfair labor practices. We shall, therefore, incorporate in our order the usual provisions designed to remedy such unfair labor practices.

Despite the fact that the respondent and its supervisory employees must have known that the International did not represent a free and uncoerced majority of the employees of respondent at the time that the closed-shop contract was signed, the supervisory employees seized upon it as another means to promote the membership of the International and to intimidate and coerce the employees of the respondent. The contract contained the provision that all employees had to join the International within 30 days from the date it was signed. On December 9, George Whittingham, the general foreman, informed Charles Gosnell that he would have to sign with the International if he wanted to work at the plant because a closed-shop contract had been signed with that organization the night before. On December 17, Kelly told Varnedoe that if he did not join the International by January 15, 1938, he would be dismissed. On December 28, Fountain was warned by Strachan that if he did not join the International by January 15, 1938, a new man would take his place. Other employees of the respondent also testified they had received similar warnings.

<sup>3</sup> See *National Labor Relations Board v. Star Publishing Company*, 9th Cir., 97 F. (2d) 465, decided June 14, 1938.

Another provision of the contract allowed Ellis access to the premises of the plant merely upon reporting to the front office. On pay days Ellis would sit on a desk near the cashier's cage, collect dues for the International, and talk to the employees after they received their wages.

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

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

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

#### V. THE QUESTION CONCERNING REPRESENTATION

The respondent refused to recognize the United as bargaining agent during the conferences held in June, July, and August, 1937, described in Section III above. The International notified Flanigan of its claim to represent a majority of the employees in July 1937. The respondent entered into negotiations with the International after November 13, and signed a closed-shop contract with it on December 8, 1937. We have found that on December 8 the International did not represent a free and uncoerced choice of the majority of the employees and that the closed-shop contract is null and void. Both labor organizations now desire an immediate election to determine a bargaining representative.

We find that a question has arisen concerning representation of employees of the respondent.

#### VI. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

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

#### VII. THE APPROPRIATE UNIT

The International alleged in its petition that the appropriate unit should consist of the inside and outside production and maintenance employees, including watchmen, but excluding supervisors and the clerical and office force. At the hearing the International contended that the truck drivers should be included in the bargaining unit. The United argued that the drivers should be excluded on the ground that they were members of the Teamsters Union. Both parties stipulated that foremen, clerical and office workers, and other employees in a supervisory capacity should be excluded.

At the oral argument before the Board both the United and the International stated they were willing to exclude machinists, firemen and engineers, and outside employees from the bargaining unit. However, they disagreed as to what supervisory employees should be excluded. We have held in our previous decisions that supervisory employees should be excluded from the bargaining unit if a participating labor organization objects to their inclusion. However, the record here does not show clearly what employees are within this category. Accordingly, if either labor organization objects to any individual participating in the election on the ground that the employee is a supervisory employee, the ballot of that employee will be segregated as a challenged ballot. Further, if the outcome of the election is dependent upon our determination of these votes, we shall prior to any certification conduct a further investigation as to the actual status of such employees.

We find that the inside production and maintenance employees of the respondent, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, and all outside employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VIII. THE DETERMINATION OF REPRESENTATIVES

At the hearing the United submitted 140 application cards, most of which were signed during June and July. The International introduced no cards at the hearing but requested that the record be left open so that it could later submit them. It subsequently filed with the Board 150 cards, 7 of which were signed by members of the I. A. M. A comparison of the cards of the United and the International

reveals that the names of 93 employees appear as members in both organizations. It is clear, therefore, that neither organization has established a clear and undisputed claim to represent a majority of the employees in the appropriate unit. We believe that, under these circumstances, the question concerning representation can best be resolved by the holding of an election by secret ballot. Those employees in the appropriate unit who were on the pay roll of the respondent immediately preceding the date of the second hearing on January 24, 1938, excluding those who have since quit or been discharged for cause, shall be eligible to vote.

The United, in its motion to expedite the proceedings filed with the Board, requested that the Board omit the name of the International from the ballot. This request is hereby denied.

Where the respondent is found to have interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, we have ordinarily postponed the election until sufficient time has elapsed for compliance with the Board's order relative to such activities and for the dissipation of the effects of such unfair labor practices. However, all parties have here requested the Board to order an election forthwith, and we shall grant this request.

Upon the basis of the above findings of fact and upon the record in all three cases, the Board makes the following:

#### CONCLUSIONS OF LAW

1. United Bakery Workers Local Industrial Union No. 196, and Bakery and Confectionery Workers International Union of America, Local No. 68, are labor organizations within the meaning of Section 2 (5) of the Act.

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

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

4. A question affecting commerce has arisen concerning the representation of the employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

5. The inside production and maintenance employees of the respondent, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, and all outside employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) 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, Ward Baking Company, Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Urging, persuading, warning, or coercing its employees to join the Bakery and Confectionery Workers International Union of America, Local No. 68, or any other labor organization, or threatening them with discharge if they fail to join such labor organization;

(b) Giving effect to its December 8, 1937, closed-shop contract with Bakery and Confectionery Workers International Union of America, Local No. 68;

(c) Recognizing Bakery and Confectionery Workers International Union of America, Local No. 68, as the exclusive representative of its employees unless and until said labor organization is certified as such by the Board;

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

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

(a) Immediately post notices to its employees in conspicuous places throughout its plant and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondent; and (3) that in order to secure or continue his employment in the plant, a person need not become or remain a member of the Bakery and Confectionery Workers International Union of America, Local No. 68;

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

## DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Rela-

tions Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with Ward Baking Company, Baltimore, Maryland, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the inside production and maintenance employees of the respondent employed during the pay-roll period immediately preceding the date of the second hearing on January 24, 1938, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, all outside employees, and those who have since quit or been discharged for cause, to determine whether they desire to be represented by United Bakery Workers Local Industrial Union No. 196, or by Bakery and Confectionery Workers International Union of America, Local No. 68, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES

*August 29, 1938*

On July 23, 1938, the National Labor Relations Board, herein called the Board, issued a Decision, Order, and Direction of Election in the above-entitled proceeding. The Direction of Election provided that an election by secret ballot be held among the inside production and maintenance employees of Ward Baking Company, Baltimore, Maryland, employed during the pay-roll period immediately preceding the date of the second hearing on January 24, 1938, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, all outside employees, and those who had since quit or been discharged for cause, to determine whether they desired to be represented by United Bakery Workers Local Industrial Union No. 196, or by Bakery and Confectionery Workers International Union of America, Local No. 68, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction, an election by secret ballot was conducted on August 4, 1938, under the direction and supervision of the Acting Regional Director for the Fifth Region (Baltimore, Maryland). Full opportunity was accorded all the parties to the investi-

gation to participate in the conduct of the secret ballot and to make challenges. Thereafter, the said Acting Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Acting Regional Director reported as follows:

Total number eligible to vote.....	160
Total number of ballots cast.....	157
Total number of ballots cast in favor of Bakery and Confectionery Workers International Union of America, Local No. 68.....	91
Total number of ballots in favor of United Bakery Workers Local Industrial Union No. 196.....	58
Total number of challenged ballots.....	7
Total number of ballots cast for neither union.....	1
Total number of blank ballots.....	0
Total number of void ballots.....	0

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Bakery and Confectionery Workers International Union of America, Local No. 68, has been designated and selected by a majority of the inside production and maintenance employees of Ward Baking Company, Baltimore, Maryland, excluding supervisory employees, clerical and office workers, machinists, engineers and firemen, and all outside employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, Bakery and Confectionery Workers International Union of America, Local No. 68, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Mr. EDWIN S. SMITH took no part in the consideration of the above Certification of Representatives.