

In the Matter of THE SERRICK CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL NO. 459

Cases Nos. C-460 and R-604.—Decided July 27, 1938

Bolt, Screw, Automobile Moldings, Refrigerator Parts, and Office Machine Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; distribution of anti-union circulars among employees; surveillance of union meetings; threats to close plant and discharge employees; persuading employees to refrain from joining union; company-favored union: soliciting membership in, by supervisory employees; persuading employees to join—*Company-Dominated Union*: domination of and interference with administration; support; discrimination in favor of, by endorsement; soliciting membership in; participation of supervisory employees; directing and permitting organizational activities during working hours; special form of remedial order: employer ordered to cease and desist from recognizing or dealing with as a labor organization—*Contract*: closed-shop, with company-favored organization not free choice of the majority of employees, invalid; employer ordered to cease giving effect to—*Discrimination*: discharges for nonmembership in favored labor organization; for union membership and activity; charges of, not sustained as to 28 employees, dismissed as to 5 employees in view of substantial compliance with Trial Examiner's Intermediate Report recommending their reinstatement with back pay—*Strike—Conciliation*: efforts at, by Indiana State Labor Board—*Unit Appropriate for Collective Bargaining*: production employees, including toolroom employees, and excluding buffers and polishers and supervisory and office employees of a clerical nature; community of interest; company assistance in establishment of craft union; organization of production and craft employees in separate locals, by company-favored union, held to constitute organization on plant-wide basis; existence of substantial membership of craft employees in industrial union—*Representatives*: proof of choice. application for membership in union, as—*Collective Bargaining*: refusal to recognize representatives as exclusive representative; employer's duty to cooperate with union to determine fact of majority representation; meeting with union representative and making of counterproposals with view of contract for members only, not compliance with duty under Act, State Court order based on truce agreement providing for bargaining negotiations for members only and suspending strike until election may be ordered under pending Board petition, not waiver of employer's prior and subsequent unjustifiable refusal to bargain—*Reinstatement Ordered*: discharged employees, dismissing employees hired since their discharge, if necessary—*Back Pay*: awarded discharged employees; not to include period between date of Intermediate Report and date of Decision in case of employees as to whom Trial Examiner recommended dismissal of complaint—*Investigation of Representatives*: petition for, dismissed, in view of order to employer to bargain.

Mr. George Rose and Mr. Colonel C. Sawyer, for the Board.

White & Haymond, by Mr. Walter D. White and Mr. William T. Haymond, of Muncie, Ind., for the respondent.

Mr. Paul S. Brady, of Muncie, Ind., for the U. A. W.

Mr. H. T. Hamilton and *Mr. C. F. McDonald*, of Washington, D. C., for the I. A. M.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by International Union, United Automobile Workers of America, Local No. 459, herein called the U. A. W.,¹ the National Labor Relations Board, herein called the Board, by Robert H. Cowdrill, Regional Director for the Eleventh Region (Indianapolis, Indiana), issued its complaint dated October 5, 1937, against The Serrick Corporation, Muncie, Indiana, 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) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent, the U. A. W., and upon the Acme-Lees Welfare Association, Inc., the successor to Acme Welfare Association, herein called the Association, a labor organization alleged in the complaint to have been dominated by the respondent.

The complaint as amended alleged in substance (1) that the respondent discriminated in regard to the hire and tenure of employment of the 17 production employees listed in appendix A below and 17 other named production employees to discourage membership in the U. A. W.; (2) that the respondent discriminated in regard to the hire and tenure of employment of 18 toolroom employees listed in Appendix B below and 2 other named toolroom employees by discharging them on August 13, 1937, and refusing to reinstate them because of their failure or refusal to become members of International Association of Machinists, herein called the I. A. M.; (3) that the respondent has since July 5, 1935, interfered with, dominated, and contributed financial and other support to the Association; (4) that the respondent refused to bargain collectively with U. A. W. as the exclusive representative of the employees in an appropriate bargaining unit composed of all production employees at the Muncie

¹ In the original complaint and in the notice of hearing upon the petition referred to below, the name of the U. A. W. appeared as "United Auto Workers of America, Local No. 459." At the hearing the Trial Examiner granted the Board's motion to correct the erroneous designation of the U. A. W.'s name wherever it appeared in the pleadings and papers filed in the proceedings.

plant, exclusive of buffers and metal polishers, foremen, supervisory officials and office employees of a clerical nature; and (5) that the respondent, at various times since April 1, 1937, by threats, the making of speeches, the circulation of handbills, conversations with individual employees, and in other ways, attempted to discourage and discouraged its employees from membership in the U. A. W. and interfered with their free choice of representatives for the purposes of collective bargaining and other mutual aid and protection.

The respondent filed an answer, which was amended at the hearing, denying the alleged unfair labor practices and stating certain affirmative matter, including the defense that on or about August 6, 1937, it entered into a closed-shop agreement with the I. A. M., covering the employees in its toolroom at the Muncie plant, and that it terminated the employment of the 20 toolroom employees named in the complaint, except Isaac Newton Garrett, in accordance with the provisions of the closed-shop agreement and that Isaac Newton Garrett quit his employment.

On August 16, 1937, the U. A. W. filed a petition with the Regional Director alleging that a question affecting commerce had arisen concerning the representation of the production employees of the respondent at its Muncie plant and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 27, 1937, the U. A. W. filed an amended petition, enlarging the unit which it claimed to be appropriate to include toolroom employees. On the same day the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice; and, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the petition be consolidated for purposes of hearing with the case arising out of the charges filed by the U. A. W. and upon which, as stated above, the Board on October 5, 1937, issued its complaint against the respondent. Notice of the hearing upon the petition was duly served upon the respondent, upon the U. A. W., upon the I. A. M., and upon the Acme-Lees Welfare Association, Inc.

On October 12, 1937, the I. A. M. filed with the Regional Director a motion to intervene in the proceedings, stating facts as to its designation as bargaining agent by a substantial number of production employees at the respondent's Muncie plant and questioning the U. A. W.'s claim that it represented a majority of such employees. On October 14, 1937, pursuant to Article II, Section 19, of the Rules and Regulations, Series 1—as amended, the Regional Director issued and

served upon the parties his order permitting such intervention for the purpose of presenting evidence with respect to the designation of the I. A. M. as the representative of the respondent's employees, and with respect to the question of the appropriate bargaining unit.

Pursuant to notice, a joint hearing on the complaint and petition was held in Muncie, Indiana, from October 18 through November 15, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board, the respondent and the U. A. W. were represented by counsel, the I. A. M. by its grand lodge representatives, and all participated in the hearing. Counsel purporting to represent the Acme-Lees Welfare Association, Inc., attended at the hearing, but inasmuch as that organization did not seek to intervene, the Trial Examiner ordered the reporter not to note his appearance. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the hearing counsel for the Board moved to strike from the respondent's answer certain allegations which charged that the international organization of the U. A. W. was engaged in a nation-wide illegal conspiracy to seize plants in various parts of the country, including the Muncie plant of the respondent, under the guise of collective bargaining activity. The Trial Examiner ordered these irrelevant allegations stricken from the answer and, accordingly, denied an application by the respondent for the issuance of subpoenas to compel the attendance of Homer Martin, and other officers of the international organization of the U. A. W., and the production of the books and records of that organization, and the attendance of the chief of police and chief of detectives of the city of Detroit, Michigan, and the sheriff of Genesee County, Michigan, in order to sustain those allegations. The rulings of the Trial Examiner are hereby affirmed. At the hearing counsel for the Board moved to dismiss without prejudice, the complaint with respect to 6 of the production employees named therein and joined in a motion by the respondent to dismiss the complaint with respect to 11 other production employees named therein. The Trial Examiner granted these motions. His rulings are hereby affirmed. The persons listed in appendix A below are the 17 production employees named in the complaint as to whom the complaint was not dismissed. The Trial Examiner also granted a motion by the respondent to dismiss the complaint for want of evidence with respect to two toolroom employees named therein. His ruling is hereby affirmed. The 18 persons listed in appendix B below are the toolroom employees named in the complaint as to whom the complaint was not dismissed. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence.

The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 4, 1937, the Trial Examiner served upon the parties his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and had not engaged in and was not engaging in unfair labor practices, within the meaning of Section 8 (2) and (5) of the Act. More specifically, he found that the respondent discriminatorily discharged 5 of the 17 production employees, and recommended that the respondent reinstate 4 of them and give back pay to all 5,² and that the allegations of the complaint be dismissed as to the other 12 production workers. He also found that the respondent did not discriminatorily discharge the 18 toolroom employees and recommended the dismissal of the complaint as to them. He further recommended the dismissal of the complaint in so far as it alleged violations of Section 8 (2) and (5) of the Act.

Thereafter, the U. A. W. filed exceptions to portions of the Intermediate Report. The respondent filed no exceptions.

Subsequently the Board notified all the parties that they had a right to apply for oral argument before the Board or for permission to file briefs. None of the parties exercised this right.

The Board has considered the U. A. W.'s exceptions to the Intermediate Report, and for the reasons hereinafter stated, sustains the exceptions in most respects.

Upon the entire record in the proceedings the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is an Ohio corporation, operating plants at Defiance, Ohio, and Muncie, Indiana. Only the Muncie plant is involved in the present proceedings. In November 1936, the respondent purchased the business and certain of the assets of the Acme Machine Products Company, Muncie, Indiana. In January 1937, the respondent acquired all the assets and the business of The John Lees Company, Indianapolis, Indiana, and installed the machinery and equipment of The John Lees Company in the plant of the Acme Machine Products Company, and thereafter operated its business under a single roof at its Muncie plant as the Acme-Lees Division.

² Maurice Slaughter, the employee included in the group of five production workers as to whom the Trial Examiner did not recommend reinstatement, testified that he had secured other employment and did not desire to resume his place with the respondent.

The respondent is engaged in the manufacture of bolts and screws in the Acme Division and automobile moldings, refrigerator parts, and stenotype machines in the Lees Division.

The principal raw material used by the respondent is steel. The value of the steel used by it during the first 10 months of 1937 was between \$600,000 and \$800,000. During the first 6 months of 1937 the respondent imported from sources outside the State of Indiana 10,000 tons of steel, valued at approximately \$400,000, for use as raw material in its manufacturing. During the first half of 1937 the respondent manufactured 75,000,000 cap screws, valued at \$200,000, and an unstated quantity of moldings, valued at \$400,000. The respondent shipped approximately 70 per cent of these products direct to customers outside the State of Indiana.

The respondent employs over 800 persons at its Muncie plant, including the supervisory and clerical employees. Its gross semi-annual pay roll for the first half of 1937 was approximately \$500,000.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, is a labor organization affiliated with the Committee for Industrial Organization. Local No. 459 received its charter from the international organization on June 8, 1937. It admits to membership all employees at the respondent's Muncie plant, except buffers and polishers, and supervisory, clerical, and office employees.

International Association of Machinists is a labor organization affiliated with the American Federation of Labor. It chartered Tool and Die Makers Local No. 35, which admits to membership the employees in the toolroom at the respondent's Muncie plant. The I. A. M. also granted a charter to Production Lodge No. 1200 on October 15, 1937, the charter to bear date, September 14, 1937. Lodge No. 1200 admits to membership all production employees at the respondent's Muncie plant, except buffers and polishers, tool and die makers, and supervisory and clerical employees.

Acme Welfare Association, a dissolved body, was a labor organization, unaffiliated with any other labor organization. It admitted to membership all employees at the respondent's Muncie plant, except supervisory employees having authority to hire and discharge. In September 1937, the Association transferred its assets to Acme-Lees Welfare Association, Inc., incorporated under the laws of the State of Indiana on September 16, 1937, as an organization without power to act as a labor organization.

III. THE UNFAIR LABOR PRACTICES

A. *The Association*

In the spring of 1934 a group of Acme Machine Products Company employees, led by John D. Lewis, a machinist in the plant, organized the Acme Welfare Association to assume control of an employees' distress fund which had previously been administered by the Company comptroller to the dissatisfaction of the employees who contributed to it. Lewis, its first president, became personnel director of Acme Machine Products Company in July 1935. He occupied a dual role as the head of the Association and as a supervisory official of the Acme Machine Products Company until December 1936, and, when the respondent purchased the business and certain assets of that Company at that time, he served in the same dual capacity for the respondent until July 1937.

At its inception in 1934 the Association adopted bylaws which provided machinery for the adjustment of grievances concerning conditions of work. In actual practice, however, the Association did not adjust grievances. It devoted its energies to social and athletic activities and to the loaning of funds to needy employees. Without previous consent of the employees, the Acme Machine Products Company and the respondent in turn, checked off for the Association 10 cents a week from the pay of all employees, except those who made specific objection. Both the Acme Company and the respondent allowed the Association to use a portion of the plant, without charge, for the operation of a cafeteria and furnished garage quarters, rent-free, to the Association which it operated on a fee rental basis as a parking space for employees' automobiles. The proceeds of these enterprises were applied to Association purposes. The Association committeemen held weekly meetings on company property, after working hours, to discuss loans and shop conditions. The Association membership met monthly outside the plant.

After the respondent acquired the business of the Acme Machine Products Company it gave its approval to the Association. At an Association meeting in February or March 1937, Charles R. Poole, the respondent's general manager, and Lewis advised the employees that "outside" labor organizations were unnecessary in the plant, praised the work of the Association, and informed them that the Association could handle their grievances. At about the same time the Association began a reorganization campaign for the purpose of enrolling as members the employees of the Lees Division who had come to the respondent's plant at Muncie from Indianapolis in February when the respondent purchased all the assets and business of The John Lees Company. When the U. A. W. began organizing in the plant in May,

the Association intensified its membership drive to resist the entry of the U. A. W. into the plant.

About June 1, Lewis addressed an Association meeting of two to three hundred women employees at the large log cabin in Heekin Park to warn them against a C. I. O. "invasion." Supervisory employees, including Warren Leet, foreman of the packing department, and Frank Truax, night foreman of the Acme division, solicited membership in the Association during working hours in the plant. Foreman Dewey Patton distributed copies of the Association bylaws to the employees while at their jobs. Walter Fouts, a supervisory employee in the toolroom, urged his fellow workers to join the Association in order to defeat the C. I. O. Lewis assigned Harold Sharpe, Association committeeman for the toolroom, the task of persuading the employees in that department to join the Association. Ordinary employees participated in the Association membership drive during working hours and on company property. Nina Sample, Association committeewoman, passed through the plant during working hours, telling the employees to join the Association because it was Personnel Director Lewis' organization to combat the C. I. O. Lester Nichols, an Association committeeman, warned Cletus Garrett, an employee, that if he did not join the Association, he would be soon hunting another job. Garrett, a member of the U. A. W. and the son of the U. A. W.'s temporary president, refused. Nichols' prediction materialized the following week with Garrett's discharge.

Nevertheless, the attempt to transform the Association into an effective organization to compete with the U. A. W. proved abortive. Walter Fouts deplored Harold Sharpe's lack of enthusiasm for the Association. He complained to Lewis that he "didn't see how the hell we could sell the Welfare Association to the employees in the toolroom when the committeeman himself didn't believe in it." Sharpe admitted to Lewis that Fouts was justified in his criticism and resigned as Association committeeman about July 8-15. He told Lewis: "It looks too much like a company union." About the same time Lewis resigned as president of the Association pursuant to instructions from A. F. Westlund, the respondent's works manager and Poole's successor, who thought that Lewis' position as personnel director identified him with the management and hence was inconsistent with his position as president of the Association.

In the latter part of July or early part of August, the respondent refused to sign an agreement, providing merely for recognition and covering the subject of vacations, which the Association suggested. Lewis testified that the respondent rebuffed the Association because the Association committee presented the proposed contract with the offensive argument that its acceptance would head off "other contracts."

Some of the leaders in the Association filed Articles of Incorporation for the Acme-Lees Welfare Association, Inc., a nonprofit corporation organized to lend financial and other aid to its members, with the Secretary of the State of Indiana on September 8, which were approved on September 16, 1937. The Association transferred its assets to the new corporation and dissolved. By express provision contained in its Articles of Incorporation the corporation has no power to act as a labor organization.³ Since its organization the corporation has operated the cafeteria in the plant, paying rent for the quarters it occupies and hiring its own help. The respondent has discontinued the check-off. The record indicates that the corporation has severed the ties which previously existed between the Association and the respondent, and, at the time of the hearing, had no improper connection with the respondent.

It is clear, however, that the Association during its 3 years' existence acted as a labor organization by holding itself out to the employees as an agency for the adjustment of grievances concerning terms and conditions of employment, by requesting recognition by the respondent as a collective bargaining representative, and by seeking improved working conditions for its members.

We find that the respondent, since December 1936 and until September 16, 1937, dominated and interfered with the administration of the Acme Welfare Association and contributed support to it. We further find that, by such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

B. The alleged discriminatory discharges

1. The toolroom employees

The complaint as amended alleges that on August 13, 1937, the respondent discriminatorily discharged 18 persons listed in appendix B, employees in the toolroom at the respondent's Muncie plant, because of their refusal or failure to become members of the International Association of Machinists. The respondent admits the allegation

³ The Articles of Incorporation provide: "This Corporation shall not have the right to bargain with any employer relative to wages, hours, or working conditions for its members and shall not in any way be or become any kind of union. It is understood that this Corporation is not a union, and has no rights as a union to bargain for itself or any of its members with any person, firm, or corporation. And this Corporation shall not exercise or attempt to exercise any rights given to any labor unions of any kind or nature whatsoever."

and relies upon a closed-shop contract⁴ with the I. A. M.,⁵ dated August 6, 1937, as justification for the discharges, except in the case of Isaac Newton Garrett, who, the respondent asserts, quit his employment.

(a) Background of labor organization among the respondent's employees.

Prior to April 1937, the employees at the respondent's Muncie plant, except the buffers and polishers, were not organized in any affiliated union. However, in March 1937, Metal Polishers, Buffers, Platers and Helpers International Union, Local 453, affiliated with the American Federation of Labor, obtained a 1-year contract, dated March 29, covering approximately 75 employees in the buffing and polishing department. This contract is not involved in these proceedings; its validity is admitted by all parties; and neither the U. A. W. nor the I. A. M. admit buffers and polishers to membership.

As found above, prior to the spring of 1937, Lewis, the respondent's personnel director, and Poole, the respondent's works manager, sought to strengthen the Association as a labor organization dominated by the respondent. At an Association meeting Poole urged the employees to utilize that organization, rather than an independent national body, as a medium for the adjustment of their labor relations. Lewis echoed this sentiment. He asserted his dislike for "unions and unionism" and threatened to quit his position if he became involved in a labor dispute with a union.

Shortly thereafter the U. A. W. began its organizational campaign among the employees at the respondent's Muncie plant. At a meeting of Association committeemen, called about June 1, to discuss the Association's reorganization program, Lewis declared: "Boys, we don't want the C. I. O. in this plant, and the fact of the matter is I have got a couple of spotters up to the C. I. O. hall every meeting they have." Membership in the U. A. W. grew during May and June. Walter Scott Garrett, a set-up man in the drill press department, alone signed up 22 employees as members on May 28.

⁴ Section 8 (3) of the Act provides: ". . . that nothing in this Act shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made."

⁵ The pertinent sections of the I. A. M. contract read: ". . . 'Whereas, the employer agrees to recognize Tool and Die Makers Lodge No. 35 . . . as the sole bargaining agency for all the employees in their toolroom at the Muncie plant . . . (Article 5). It is agreed that all employees covered by this agreement shall be members in good standing in their organization. If additional help is required the employer may consult with the secretary of said organization or the shop committee who will offer their services in supplying this help, but in the event that they are unable to do so, then the employer shall have the right to hire such additional help as he may require, but after a trial period of thirty (30) days, it will be necessary for said new employees to become members of the organization.'

Garrett acted as temporary president of the U. A. W. for 1 month. On June 17, he was discharged after a service of more than 10 years with the Acme Machine Products Company and the respondent. The respondent also discharged Maurice Slaughter, temporary vice president of the U. A. W., in charge of organizing the employees in the Lees Division of the plant, on June 23, 3 days after his attendance at a union meeting where he was entrusted with these important duties. On Saturday, June 19, before the commencement of work that morning, Cletus Garrett, son of Walter Scott Garrett, posted a notice⁶ of an employees' meeting on the respondent's bulletin board. Superintendent Jess Stillwagon promptly called him to task: "Do you know you can be laid off for that? What good (is) the C. I. O. . . . going to do anybody . . . they caused a bunch of strikes and trouble . . ." Stillwagon threatened to call Works Manager Westlund's attention to the matter. Lewis also reproached Garrett: "You can be fired for those bills." Lewis asked Garrett whether he belonged to the C. I. O. On Monday, the next workday, Garrett was discharged for alleged inefficiency. Thus in the course of a week the respondent eliminated from its employ three U. A. W. leaders.

Aware of the activity of the U. A. W., the respondent took steps to defeat organization by the U. A. W. About June 1, the Association invited two to three hundred women employees to a "beer party" at the Heekin Park Cabins to hear an address by Lewis, the respondent's personnel director. He strongly warned them against the C. I. O.: "It is just merely a union coming into our plant to take over the management . . . we don't want nothing like that in here . . . if it gets into this plant, all your privileges will be taken away from you . . . you won't be allowed to leave your machines and go to the cafeteria and get anything to eat or drink during working hours, and there will be no candy boy coming down through the shop during working hours as there is at present, and you will be questioned . . . when you leave your department and go to another department . . . if this union comes in, all this would be taken from you and it would be just merely a place to work . . . if your job goes down, you will not go to the rest room and wait until it is started up again, but you will just merely be sent home and would not work any more that day. . . . Where is there a plant in the State of Indiana that you have the privileges you have in this plant? Let us go on and make this plant, this Acme-Lees plant, just like the old Acme plant was, and co-operate,—not let this union come in." Thereupon Lewis called for two rising votes: "How many girls here . . . favor keeping the Welfare Association?" Almost all present registered an

⁶The poster read: "Notice Important Meeting of John Lees and Acme employees at Lido Ballroom Corner Walnut and Howard Sunday 10 A. M. June 20."

affirmative vote. "How many want to see the C. I. O. come in and take over the plant?" Only a few arose from their seats.

The Association conducted a poll to ascertain the relative strength of the C. I. O. and the Association. About July 1-15, Lewis handed Harold Sharpe, Association committeeman for the toolroom, application cards for Association membership and directed him to solicit the toolroom employees. Sharpe secured the permission of Oscar McCoy, the toolroom foreman, to proceed. McCoy not only granted his permission but also instructed Sharpe to take the application of Joe Bolander, the third shift toolroom foreman, adding: "Well, we have got to do something; if the C. I. O. gets in here the place will go to hell." Neither McCoy nor Bolander denied this testimony.

In June and July the Association circulated in the plant, during working hours, a paper among the employees for signature. Lewis assured Katherine Webb and another employee of the propriety of signing the paper. He admitted "it was to keep other unions out." Inasmuch as the U. A. W. was the only labor organization engaged in a campaign for members in the plant at the time, Lewis' reference applied unmistakably to it.

Despite the respondent's efforts to build the Association into an effective instrument to bar the U. A. W. from its plant, the Association failed to secure the adherence of the bulk of the employees. The decline of the Association as a labor organization has been noted above in the resignation of Lewis, as its president, Sharpe's relinquishment of his office as Association committeeman for the toolroom employees, and the respondent's rejection of the Association's tendered contract. We consider now the entry of the I. A. M. into the plant.

(b) Events leading to the execution of the contract with the I. A. M.

When the respondent's utilization of the Association as a company-dominated labor organization in opposition to the U. A. W. proved unsuccessful, word that the respondent's high executive officials would not acknowledge the C. I. O. as the employees' representative and that they favored the American Federation of Labor reached the ears of the rank and file toolroom employees. Shortly prior to July 15, Sharpe told Cecil B. Shock, a supervisory employee who was in charge of the toolroom in Foreman McCoy's absence and who later became the first president of the I. A. M. Tool and Die Makers Local No. 35, that he contemplated resigning as Association committeeman. Shock observed that the Association was the "lesser of two evils." He informed Sharpe that Murphy, the vice president of the respondent and its general manager at its Muncie plant, would not recognize

the C. I. O. and that he would close the plant rather than deal with the U. A. W. "Murphy told me," said Shock, "that he hasn't had a vacation anyhow, and that he would lock up the plant, get on his yacht and take a nice fishing trip." Robert Bunch, a tool and die employee, testified that Shock made a similar statement to him about the middle or latter part of July. Both Shock and Murphy appeared as witnesses for the respondent, but neither denied the above testimony. We find that they made the statements accredited to them.

About July 26, Wayne Shimer, the night superintendent, told Erskine Allison, a toolroom employee, that "Mr. Serrick would recognize an A. F. of L. but he would not recognize a C. I. O. union." Shimer denies Allison's testimony regarding this conversation, claiming he did not know Serrick, president of the respondent, at this time, but admits discussing the subject of unions with Allison. Serrick did not testify in the proceedings. The Trial Examiner, who saw and heard the witnesses, specifically found that Shimer made the statement in question to Allison. We find that Shimer made the statement.

The movement to organize the toolroom employees in the I. A. M. took definite form in the middle of July. About July 15-20, Walter Fouts, a supervisory employee in the toolroom, with two toolshop employees, Moses Byroad⁷ and Arthur Baker, broached to Shock the proposal to organize a union of toolmen to be affiliated with the American Federation of Labor. Shock promised his cooperation if a majority of the toolroom employees favored such a union. During working hours Byroad ranged through the shop, ostensibly to ascertain the union preferences of the toolmen. According to Byroad's estimate, about 80 per cent of the toolmen favored the American Federation of Labor, and 20 per cent favored the Committee for Industrial Organization or were undecided. Byroad notified the employees of the result of his oral interrogation. However, Byroad did not question the employees on all three shifts. On August 10, the day before the execution of the I. A. M. contract, the I. A. M. had only 34 members of 63 eligible toolmen.

Fouts, Shock, and Baker sent Byroad to communicate with C. F. McDonald, an I. A. M. organizer, about July 25-28, during working hours. Byroad claims he told McCoy that he was leaving the plant but did not disclose to him the purpose of his mission. He also testified that Fouts, Shock, and Baker reimbursed him \$1.68 for lost time.

On the night of July 28, McDonald held an organization meeting at the City Hall Building in Muncie. Thirty-four toolroom employees signed applications for membership in the I. A. M. on that date. At

⁷ Also referred to in the record as Moses Birod

the meeting an application for a charter was executed and the applicants for membership authorized McDonald to present a proposed contract to the respondent on their behalf. McDonald tendered the proposed contract to the respondent on August 2. It was signed on August 11.

In its organizational campaign the I. A. M. was aided by a corps of supervisory toolroom employees, chiefly, Walter Fouts. He was in charge of the roll department in the toolroom, working alongside certain machinists whom he directed. Although he had no power to hire or discharge, he made recommendations to higher officials as to the suitability for their jobs of employees under his direction. In his testimony Levi Benn described Fouts as "his boss."

Fouts solicited Francis Witmer, Chester Kirby, Floyd Stevenson and Levi Benn, all toolmen and members of the U. A. W., for I. A. M. membership, at various times. All refused to join. Fouts called Witmer to his work bench, just prior to the time the I. A. M. began organizing in the tool shop, and told him that he had arranged with an American Federation of Labor organizer to establish a local in the plant for the toolmen. Subsequently on frequent occasions, Fouts requested Witmer to sign an application for "the A. F. of L. so that we could abolish any C. I. O. organization in the shop." About August 1, Fouts discussed the I. A. M. with Benn. Fouts asked Benn if he did not think "it would be" his "job" if he did not join. On approximately the same date Shook tried to persuade Benn to join the I. A. M. In May or June Fouts had failed to prevail upon Benn to become a member of the Association. In June Fouts had made similar efforts to secure Floyd Stevenson's application for Association membership, informing him that he "would like to get all of us into that in order to beat the C. I. O. . . . would like for" Stevenson "to get into the company union just in order to beat the C. I. O." About August 1, Fouts urged the same reason in attempting to induce Stevenson to join the I. A. M.: ". . . anything to beat it (the U. A. W.), and if" Stevenson "would go in (the I. A. M.) and did not want to stay, that would be all right, just as long as they got in enough to beat them out,—we could all help."

Others in a supervisory capacity also helped the I. A. M. organization drive. Otis Wheeler, I. A. M. committeeman, invited several employees to the desk of Joe Bolander, toolroom foreman on the third shift, to sign I. A. M. applications. In Bolander's presence, Floyd Stevenson questioned Wheeler's right to solicit union memberships on company premises during working hours. This incident happened 2 or 3 weeks prior to Stevenson's discharge, which occurred on August 13. Bolander, and Russell Dininger, toolroom foreman on the second shift, were in charge of the men on their shifts. Although they had no power to hire or discharge, they assigned work to the employees

and were responsible for its proper distribution. They also relayed Foreman McCoy's orders to the employees. Charles J. Fensel, a tool repairman, in his testimony referred to Dininger as "the boss on the second trick." On August 10, Dininger offered Fensel "a good rating if" he "would join the A. F. of L." Fouts, Bolander, and Dininger belong to the I. A. M. Although a union may admit minor supervisory employees to its ranks, yet when, pursuant to the known desires of the employer, they engage in activities to establish a labor organization favored by the employer, they must be regarded as acting in behalf of the employer.

On August 6, Lewis asked Witmer and Sharpe, while they were at their machines, why they did not "join the A. F. of L." They testified that Lewis advised them "to straighten things out and have one organization in here."

In addition, ordinary employees assisted the I. A. M. under circumstances that show the respondent's approval. Byroad spent considerable company time during the week prior to August 13, the date of the mass discharge of the toolmen, soliciting memberships for the I. A. M. in the shop. Wheeler, an I. A. M. committeeman, and Baker, both ordinary employees, left their benches in the toolroom during working hours to aid in the task of securing I. A. M. adherents. Although Foreman McCoy himself did not participate in actual solicitation, he knew of the union activities of the others in the toolroom in behalf of the I. A. M. In a conference in Murphy's office on August 3, hereinafter referred to, McCoy admitted he was aware of such solicitation. While he testified that he scolded members of the rival organizations for excessive talking, the record does not disclose that he reprimanded the active employees for obtaining signatures to I. A. M. application cards in the shop. On the other hand, there is no showing that any plant activity by the U. A. W. occurred comparable in extent to that of the I. A. M. Indeed, the respondent discouraged U. A. W. activity in the plant whenever it occurred. The respondent's hostility to U. A. W. organization is illustrated by the prompt disciplinary attention Stillwagon and Lewis gave Cletus Garrett when he posted a notice of a U. A. W. meeting on the plant bulletin board. A considerable amount of the I. A. M. solicitations was done openly during working hours under circumstances which compel the conclusion that Foreman McCoy knew and approved the procedure Fouts solicited for the I. A. M. frequently in the latter part of July and through August 10 during working hours when McCoy was present in the toolroom. When Byroad solicited Stevenson's application for I. A. M. membership, McCoy stood 6 to 8 feet away. McCoy's desk was located only about 6 feet from Stevenson's bench. In the course of a discussion of his union activity, Byroad stated to Harold Sharpe, a former Association committeeman: "Mack (foreman

McCoy) knows what I am doing. He is an old A. F. of L. man himself. He wants us to get into the A. F. of L. but he doesn't want us to have anything to do with the C. I. O."

Witnesses for the respondent testified that at foremen's meetings the works manager and the plant superintendent discussed the Act with the foremen and instructed them to refrain from interference with union activities of the employees. Nevertheless, it was not until after the signing of the contract with the I. A. M. that the respondent posted rules in its plant banning supervisory activity in connection with labor organizations.

(c) Execution of the contract with the I. A. M.; and the discharges

Westlund, the respondent's works manager at its Muncie plant, who conducted the negotiations leading up to the closed-shop contract with the I. A. M., testified that the course of dealing was as follows: His first contact with the I. A. M. occurred on August 3, when McDonald, the I. A. M. representative, called on him at the plant and advised him of his intention to organize the respondent's toolroom employees. McDonald informed Westlund that the toolroom employees were not dissatisfied with their wages or working conditions, but that they merely wanted "an organization of their own." They discussed the provisions of a proposed agreement, which McDonald presented, and agreed on all its terms, except two, the closed shop and the provision relating to working hours, as to which Westlund reserved decision pending a conference with Murphy. Westlund aided McDonald in making slight changes in the draft and suggested that it be rewritten. McDonald offered no evidence at that time of an I. A. M. majority. Westlund contented himself with McDonald's assurance that satisfactory proof would be furnished at a later time.

That afternoon a conference was held in Murphy's office, with Westlund, R. A. Wise, tool supervisor, McCoy, Shock, Fouts, and Rudolph Keil, a tool and die worker, present. Murphy inquired as to the need for a union contract. Shock acted as spokesman for the I. A. M. According to Keil's testimony Shock explained: "They didn't need a union in the toolroom, but they were drawing that up and trying to get it signed by the Company in order to keep the C. I. O. out of the toolroom." Murphy announced that he had no objection to negotiations for a contract with the I. A. M., if it represented a majority, but that the respondent was "not extremely anxious" to sign a closed-shop contract or a contract which limited the normal working week to 40 hours. Shock again assumed leadership. Keil testified that Shock pointed to a "controversy . . . raging in the toolroom at the time, due to the organizational activities of both U. A. W. and the A. F. of L. . . . inasmuch as their group had a clear majority

. . . it would clear the atmosphere and make for peace, harmony, and efficiency in the department if one organization could be in there." McCoy corroborated Shock's assertion as to the existence of union activity in the toolshop. Shock assured the respondent's officials that there would be no difficulty concerning the provision relating to hours in the contract negotiations. And, "after the trouble was settled," Shock added, according to Keil, "they could tear up the contract." Although Murphy and Shock deny this testimony, the occurrence of two independent incidents lend support to Keil's version.⁸ In the course of a conference on September 22, 1937, Barney Maynard, a U. A. W. committeeman, asked Westlund, if it was not a fact that, when the I. A. M. representatives presented its proposed contract to the respondent, they asserted that "after they had gotten the contract and got the C. I. O. out of the plant, kept them out of the plant, they could just tear the contract up, they wouldn't need no union there." Westlund replied: "Well, no, not in just that many words, but the statement was made." The other incident occurred when those who participated in the August 3 conference emerged from Murphy's office. Floyd Stevenson testified: ". . . They seemed to have a meeting there between Rudy Keil and Shock and Walter Fouts and McCoy one day in the office, and when they came back Walter Fouts told me that the C. I. O. was not as strong as they thought . . . the A. F. of L. would beat them easily . . . they said if I would get in . . . *I could drop it just as soon as the trouble was over with, as they was going to do it too.*" [Italics supplied.]

Under these circumstances, we find that Shock made the statements attributed to him by Keil. It is apparent, therefore, that the I. A. M., by suggesting that it would not actually function as a collective bargaining agency after it was recognized, lent itself to the respondent's plan to prevent the organization of its employees in the U. A. W. Nor did the respondent in the early stages of negotiation with the I. A. M., when it indicated its willingness to sign a closed-shop agreement with that organization, intend to consummate the proposed arrangement. Rather the respondent hoped that the toolroom employees would be induced to join the favored union when they learned that the respondent "contemplated" an exclusive I. A. M. toolshop. Thus, when Levi Benn called at the paymaster's office for his check on August 13, Personnel Director Lewis stated: "Benn, I am sorry this happened. When this thing first started it was only for a bluff

⁸ Wise did not testify in the proceedings. McCoy, although a witness, was not interrogated on this point. On direct examination, as a witness for the respondent, Westlund denied Keil's testimony. On cross-examination, he qualified his denial to the extent of saying that it was his "recollection" that no mention was made of the C. I. O. at that meeting. Fouts testified that he "didn't hear" Shock make the statements in question. Shock claims that he merely asserted, in support of his organization's negotiations, that an I. A. M. contract "would relieve the tension" and "clear up the situation in the toolroom."

. . . the fellows called the bluff and we had to go on and do it."

At the August 3 conference, Murphy expressed satisfaction with the I. A. M. proposals, except for the provision as to the 40-hour week, and stated that he would submit them to President Serrick in New York. Murphy testified that Shock converted him into a closed-shop adherent during the brief session in his office.

On August 4, McDonald returned with a revised draft and discussed wage rates with Westlund. They agreed on wage increases, ranging from 5 to 15 cents an hour, for 18 employees, which would raise their income to the prevailing general minimum in the shop, and postponed for later negotiation the question of increases for 15 others. The same day Murphy departed for New York to confer with Serrick, taking with him a copy of the I. A. M.'s proposed contract, which did not specify wage rates. On August 5 or 6, McCoy handed Westlund a typewritten list of I. A. M. members who were employed in the toolroom. McCoy testified that he secured the list from an I. A. M. committeeman whose name he did not recall. Thirty-eight names, including those of Fouts, Shock, Bolander, and Dininger, appeared on the list. It is significant that, although Westlund did not forward the information as to the I. A. M.'s majority to New York, nevertheless, on August 6, Murphy wired Westlund: "Agreement Satisfactory Except Forty Hours. Make It Forty-Four." That night the I. A. M. membership approved the respondent's modification of the proposed agreement at a union meeting, and so notified the respondent the following morning. On August 11, the day after the U. A. W. presented to the respondent its written proposals, covering all production employees, including toolmen, the respondent signed the I. A. M. agreement.

On August 13, 1937, the respondent's foreman asked the employees in the toolroom who had not already joined the I. A. M. if they intended to apply for membership. Those employees who answered in the negative were discharged that day.

On August 14, the respondent and the Metal Polishers, Buffers, Platers and Helpers International Union, Local 453, affiliated with the A. F. of L., amended the buffers' and metal polishers' contract to provide for a closed shop in the respondent's buffing and polishing department at the Muncie plant.

Conclusions with respect to the respondent's relations with the I. A. M. and the discharges of the toolroom employees

The I. A. M. contract was the culmination of a design on the part of the respondent to select the I. A. M. as the exclusive representative of the employees in the toolroom as a means of destroying the U. A. W.,

which it opposed. In its persistent efforts to thwart the self-organization of its employees, the respondent, after the failure of the Association as the instrument to effectuate its purposes, coerced and induced its toolroom employees to establish the I. A. M. local by clear indications of uncompromising hostility to the U. A. W. and friendliness for the I. A. M., by assisting in the enlistment of the I. A. M. membership, and by concluding a closed-shop contract with that organization at a time when the U. A. W. had requested an exclusive bargaining contract covering all the production employees in the plant, including toolroom employees.

The respondent cannot justify the assistance which it rendered the I. A. M. subsequent to August 6 on the ground that, as of that date, it had consummated the formation of the closed-shop contract. The argument does not bear inspection. Although the contract is dated August 6, the parties thereto did not actually sign it until August 11. Further, the contract expressly provides that it "shall become binding upon the signature hereto, and become effective immediately." Nor did the minds of the parties meet upon all its terms until August 11, for it was not until then that they agreed upon wage increases for 15 employees. In any case, the respondent, prior to August 6, had amply assisted the growth of a labor organization of its employees favored by it.

Inasmuch as the membership of the I. A. M. must be deemed vitiated by the interference of the respondent in the solicitation of such membership, the I. A. M. did not represent an uncoerced majority of the toolroom employees at the time of the execution of the closed-shop contract. The contract was made with a labor organization which had been assisted by unfair labor practices. For these reasons, and because of our later finding in regard to the appropriate bargaining unit, which we hereinafter discuss in Section III, C, 1, the contract does not fall within the proviso to Section 8 (3) of the Act. It cannot, therefore, operate as a justification for the discharge of the 18 toolroom employees listed in appendix B.

Accordingly, we find that the respondent discriminated in regard to the hire and tenure of employment of the 18 toolroom employees listed in appendix B who were discharged by the respondent because of their failure to join the I. A. M., thereby encouraging membership in one labor organization and discouraging membership in another labor organization, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent contends that Isaac Newton Garrett, one of the 18 toolmen listed in appendix B, quit his employment. The evidence discloses that Paul Shimer, brother of the respondent's night super-

intendent, reported to Garrett, on the evening of August 11, that the Acme Division, in which he was employed, had shut down indefinitely. Garrett confirmed this message with the gate watchman at the plant. Consequently he did not report for work for several days. On August 19 or 20 Garrett consulted Lewis in the employment office and requested an opportunity to return to his work. Lewis told Garrett "the International Machinists Association had the closed shop," and that Garrett could not "go back unless" he "joined up with them." Therefore, as in the case of the other employees listed in appendix B, Isaac Newton Garrett was discriminatorily discharged. His dismissal, unlike the others, occurred on August 20.

2. The production employees

The complaint alleged that the respondent discriminated against 34 named production employees in regard to their hire or tenure of employment because of their union membership or activity. As above noted, the charges with respect to 17 of these persons were dismissed at the hearing.

Of the remaining 17 employees, the Trial Examiner found that the respondent discriminated against 5 production workers by discharging them because of their union affiliation or activity. The respondent has filed reliable evidence with the Board of substantial compliance with the recommendations of the Trial Examiner with respect to these 5 persons by settlements with them. Accordingly, the allegations in the complaint with respect to Walter Scott Garrett, Cletus Garrett, Edward Johnson, Wilbur C. Mitchell, and Maurice Slaughter, will be dismissed.

The remaining 12 employees were relatively new employees, having commenced their employment with the respondent in February or March 1937. In several instances these individuals had resumed their employment with the respondent at the time of the hearing. The evidence discloses that the respondent, in the production of automobile moldings, is engaged in a seasonal business which causes inactivity in certain departments of its Muncie plant at certain times. The record also reveals that since the acquisition of the Acme Machine Products plant in December 1936 and during the first 10 months of 1937 the respondent hired numerous new employees, requiring the elimination of many employees found inefficient or unsuitable for the available work. It also appears that in some cases, because of the disruption caused by the strike of August 25, discussed below in Section III, C, and the necessity for the preparation of new dies for the manufacture of parts for the 1938 Buick model, delay ensued in the reinstatement of certain employees. In every case but one of

these 12, the foreman or other supervisory employee who had selected the employee for lay-off or discharge, testified as to the reasons for his choice; and in no way, other than by testimony to the fact of membership or minor activity in the U. A. W., were these reasons shown not to have been the genuine ones. Under these circumstances, we conclude that there is not sufficient evidence in the record to show that the respondent selected these 11 production employees, namely, Carl Carmen, Isabelle Barrett, Wilbur Garrett, Catharine Long, Martha Keener, Katherine Webb, Clea Watts Crutcher, Agnes Holland, Curtis Landers, Richard Cameron and Edward Youngman, to be laid off or discharged on the basis of their union affiliation or activity.

We find that the respondent did not discriminate in regard to the hire and tenure of employment of the 11 employees named above to discourage membership in a labor organization.

The case of Mona Armstrong, however, is different. She was employed by the respondent for the first time in February 1937 in the packing department. She joined the C. I. O. in June. In July Lewis requested Mona to circulate an Association paper among the girls in the plant for their signatures. Mona refused to comply with Lewis' wish. She wore her C. I. O. button in the shop for the first time on August 18. On that day, Warren Leet, her foreman, advised her ". . . better take it off and join up with the Company or the A. F. of L., . . . the C. I. O. wouldn't get (you) any place." Mona replied, in substance, that she had sufficient sense to follow the dictates of her own mind.

Leet had warned her on August 17 against taking an excessive number of days of leave. On the 19th, according to Leet's own testimony, he granted her permission to take the day off. Mona, however, testified she was sent home by Leet on the 19th, because of slack work and told to report on the 24th. Mona did not report to work on the 20th or the 21st. Leet extracted her card from the time rack on the 21st, and discharged her. On the 24th, when she found her card missing from the rack, Mona sought out Lewis. Lewis explained: ". . . Sorry, . . . Leet has canned you . . . He pulled your card . . . came in here and said that he couldn't use you any longer, that you said something very smart to him on the day before." Lewis also observed: ". . . if you had got those papers signed that I gave you about a month ago, you would be still working." During the strike Mona participated in the picket line. When she applied for reinstatement after the strike, Lewis reminded her that she had been discharged. Since then she has been unemployed.

We find that the respondent discharged Mona Armstrong on August 21, 1937, because of her union affiliation and activity.

We further find that the respondent has discriminated against Mona Armstrong in regard to her hire and tenure of employment, thereby discouraging membership in a labor organization and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The refusal to bargain collectively

The complaint as amended alleges that on or about August 10, 1937, and thereafter, the respondent refused to bargain collectively with the U. A. W., although on and prior to August 10 and at all times thereafter, the U. A. W. had been designated by a majority of the employees in an appropriate unit to represent them in collective bargaining.

1. The appropriate unit

Both the complaint as amended and the amended petition allege that an appropriate bargaining unit consists of all the production employees at the respondent's Muncie plant, exclusive of the buffers and metal polishers, and exclusive of foremen, supervisory officials, and office employees of a clerical nature. The I. A. M. and the respondent contend that the toolroom employees constitute a separate and distinct appropriate unit. The respondent urges also that the production employees in the Acme Division and the production employees in the Lees Division constitute two separate appropriate units.

The buffers and metal polishers have a closed-shop contract with the respondent. All parties agree that they should not be included in the unit or units found to be appropriate.

The Acme Division produces bolts and screws. In the Lees Division the respondent fabricates automobile moldings, refrigerator parts, and stenotype machines. Both divisions are housed under one roof, divided only by an aisle. Although separate checks, bearing the name of the particular division, are issued to the employees in each division, the respondent makes the distinction merely for accounting purposes. It is significant that the respondent in its negotiations with I. A. M. did not regard the toolroom as two units although it also consists of both Acme and Lees employees and makes tools for both divisions. Neither the I. A. M. nor the U. A. W. regard a division of the production employees into two separate units as appropriate. The production employees have interests in common with respect to rates of pay and conditions of work, which require a single unit for their protection in dealing with a common employer. We, therefore, reject the respondent's proposal for two separate production units as clearly untenable.

The question remains whether the toolroom employees constitute an appropriate bargaining unit. The toolroom employees prepare tools and dies for use in the production departments of the plant and are responsible for keeping the machinery of the plant in working order. Although the toolmen are more skilled and receive higher rates of pay than the production workers generally, both the U. A. W. and the I. A. M. admit to membership and in this instance endeavored to organize all of the production employees at the respondent's Muncie plant, except buffers and polishers. According to the testimony of its financial secretary, the I. A. M. Production Local No. 1200, began organizing the production employees on or about August 10. The international issued a charter to it on October 15, to bear date, September 14, 1937. While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well-defined craft as to the form of organization they desire, in the present case the respondent's conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units. Furthermore, for the purposes of the Act, and under the circumstances of the present case, the division of the respondent's employees by the I. A. M. international into two locals for organizational purposes must be deemed artificial. Since the I. A. M. sought to organize the toolroom employees separately and, at approximately the same time, solicited and carried on organizational activity among production employees and continued to do so up to the time of the hearing, in fact, its method of organization must be regarded as an attempt to enroll all the respondent's production employees in direct competition with the U. A. W., which was organizing on an industrial basis. Therefore, the I. A. M. cannot be heard to maintain that the craft unit is appropriate. We also regard as significant the existence of a substantial U. A. W. membership among the toolmen in spite of the respondent's assistance in building up the present membership in the I. A. M.

For these reasons, we find that the production employees at the respondent's Muncie plant, including toolroom employees and excluding buffers and polishers and supervisory and office employees of a clerical nature, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent at its Muncie plant the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the U. A. W. of the majority in the appropriate unit

The respondent employed 577 workers in the appropriate unit on August 10, 1937. Of these, 54 employees signed authorizations desig-

nating the I. A. M. as their representative for collective bargaining purposes or application cards for membership in the I. A. M. and 384 employees applied for membership in the U. A. W. on or before August 10. These figures show clearly that the U. A. W. represented a majority of the employees in the appropriate unit when the U. A. W. presented its proposed contract to the respondent.

The respondent contends that not all these employees had become members of, or had designated, the U. A. W. as their representative, since there was no showing that they had taken the U. A. W. obligation or had paid their initiation fees for membership required by the U. A. W. bylaws. We have previously held that applications for membership in a labor organization are sufficient to designate that organization as the representative of employees for purposes of collective bargaining and that the Act does not require union membership as a condition precedent to such designation.⁹

Accordingly, we find that on August 10, 1937, and at all times thereafter, the U. A. W. was the duly designated representative of the majority of the employees in a unit appropriate for collective bargaining and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The alleged refusal to bargain

On August 10, the U. A. W. committee, consisting of Gilbert Clark, an organizer, and Clay Collins, an employee, presented a proposed written contract, providing for recognition of the U. A. W. as the exclusive bargaining agency, to Westlund, the respondent's works manager, Lewis, the personnel director, and Stillwagon, the plant superintendent.¹⁰ The committee informed the respondent's officials of the U. A. W. majority in the plant. Westlund stated he did not believe the U. A. W. represented a majority in the Lees Division. He characterized the C. I. O. as an irresponsible organization. Westlund hastily glanced at the document and expressed disapproval. To the committee's inquiry as to when the respondent's reply could be expected, Westlund answered that he could not set a date for the an-

⁹ *Matter of Clifford M. De Kay, doing business under the trade name and style of D. & H Motor Freight Company and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*, 2 N. L. R. B. 231; *Matter of American Furniture Company and Textile Workers Organizing Committee*, 4 N. L. R. B. 710; *Matter of Zenite Metal Corporation and United Automobile Workers of America, Local No 442*, 5 N. L. R. B. 509; *Matter of National Motor Bearing Company and International Union, United Automobile Workers of America, Local No 76*, 5 N. L. R. B. 409.

¹⁰ Westlund refused entry of Martha Keener, Luther Crutcher, William Clifford, Andrew Chandler, Rudolph Keil, and Harold Sharpe to his office, stating that the size of his room did not permit their participation in the conference

nouncement of its decision inasmuch as it was necessary to submit the U. A. W. proposals to the respondent's board of directors. Clark pointed out that a delay of one week was customary in similar negotiations with corporations necessitating submission of suggested contracts for board approval. Westlund remained adamant, refusing to set a reasonable period of time for the respondent's deliberations. The committee thereupon departed, stating that a reply would be expected from the respondent within the week.

On August 11, the next day, the respondent signed the closed-shop contract with the I. A. M. covering the toolroom employees, and, two days later, discharged more than 20 toolmen who refused to join the I. A. M.¹¹

About August 15, the respondent distributed to its employees a mimeographed circular, over the signature of Vice-President and General Manager Murphy, which announced, in part:

During the past few weeks it has become increasingly apparent the high morale and spirit of cooperation which existed among our employees has been displaced by a general feeling of dissatisfaction and unrest. We frankly believe *this change has been brought about by the activities of outsiders*, who are unfamiliar with the various conditions surrounding our type of business.

It must be obvious that . . . continuance of . . . dissatisfaction will result inevitably in . . . loss of business to the company. . . . Should we be confronted with the necessity of making a choice between operating at a loss, or ceasing operations entirely, it would be definitely to the advantage of the company . . . to stop operations and . . . salvage . . . the assets . . . rather than . . . continue . . . unprofitable operations.

It is our understanding *strangers have come to you and have promised to secure for you certain increases in wages* and other benefits, the net result of which will be an increase in the cost of the products manufactured by this company. *We sincerely hope you will not be fooled by these promises*, because the management has not authorized anyone to make such promises and we will say, very frankly, the company can not fulfill same and still continue in business.

We, who are responsible for the operations of this plant, know far better than any outsider just how profitable, or non-profitable these operations are, and we will tell you it is impossible to pay the higher wage scale which has been promised. . . .

¹¹A few, later, joined the I. A. M. and resumed their employment with the respondent. They are not involved in the complaint proceeding.

You may be definitely assured we will not at this time, or at any time in the future enter into any agreement, written or verbal, with irresponsible organizations, or associations. There is no place in our picture for groups whose only method of securing desired results is by the use of lawlessness, violation of property rights, or violence of any kind, and we will not operate this plant, if any of these conditions prevail . . . [Italics supplied.]

In the answer which it filed to the complaint in this proceeding, the respondent charged that the U. A. W. was engaged in an illegal conspiracy to seize the manufacturing plants of the nation by means of force and violence and alleged that the U. A. W. seized the respondent's Muncie plant, all under the pretense of enforcing supposed bargaining rights of its members. In view of the U. A. W.'s demand upon the respondent, embodied in its proposed contract, for recognition as exclusive bargaining representative and for wage increases only a few days before the distribution of the mimeographed circulars and the nature of the disparaging charges contained in the respondent's pleadings in this proceeding, and in view of the fact that the respondent had just entered into a closed-shop contract with the I. A. M., there can be no reasonable doubt that the respondent had reference in its circular to the U. A. W. as the "outsider," the "strangers," the "irresponsible organization," and as the group "whose only method of securing desired results is by the use of lawlessness, violation of property rights or violence."

The U. A. W. committee, consisting of Clark and Davis, organizers, next conferred with Murphy and Westlund on August 17. Fox, a mediator for the Indiana State Labor Board was also present. Clark complained about the discharge of the toolmen. He advised the respondent's officials that the dismissals had caused unrest with a consequent desire on the part of the employees to strike. Clark proposed that the toolmen be returned to work, pending an election of employee representatives or a hearing to determine the rights of the toolroom employees discharged under the closed-shop contract. To meet Westlund's reply that the I. A. M. contract barred Clark's proposal, Fox suggested that it be submitted to the I. A. M. members in the toolroom for approval. The parties agreed. In reference to the contract which the U. A. W. had proffered on the 10th, Murphy stated that it was not acceptable in its then form. However, both sides agreed to negotiate further at another time.

The next morning, August 18, the I. A. M. members in the toolroom voted to continue the exclusion of non-I. A. M. members from the shop. Later that day, the parties resumed their talks, with Clark, Davis, and Andrew Chandler, president of the U. A. W., representing that organization, and Murphy, alone, present for the respondent.

The committee advised Murphy that the employees were dissatisfied and persistent in their strike threat. Clark testified that Murphy, admitting that perhaps too short a notice was afforded the dismissed toolmen, agreed to indemnify them for loss of 3 weeks' wages, acknowledged U. A. W.'s majority among the production employees, and agreed to give U. A. W. sole collective bargaining rights for production employees, excluding the toolmen. Because his stenographer had left for the day, Murphy promised to reduce his undertaking to writing the following day. In his testimony Murphy denied that he consented to recognize the C. I. O. as the exclusive bargaining agent for the respondent's production workers. However, Chandler confirms Clark's version, testifying that Murphy conceded that "there was no question in my mind but what you represented a majority." Davis did not appear as a witness.

On the following day, Murphy met with Clark and Davis. Murphy stated that in the interval he had telephoned Serrick; that Serrick had given him "hell"; that Serrick's limit was 2 weeks' pay for the discharged toolmen and recognition of the U. A. W. for its members only. Murphy produced a document embodying Serrick's ultimatum with respect to damages for the aggrieved toolmen. Davis pointed out that the existence of two labor organizations in the plant would lead to friction. Murphy replied that he knew of no other organization attempting to gain a foothold in the plant. He said: ". . . don't worry, there won't be any other organization in the production department." When Murphy's attention was called to his promise to pay 3 weeks' wages and to grant exclusive bargaining rights to the U. A. W., he claimed that the committee misunderstood him and said he was sorry, but that he was acting under Serrick's orders. As a result the dismissed toolmen accepted the agreement. However, the respondent has not paid the indemnity for which it provides. Murphy claims that the parties stipulated as a condition to payment that no strike be called and that the U. A. W. breached the alleged condition. It may be noted that such a provision, which originally appeared in the agreement, was deleted prior to its execution by mutual consent.

The U. A. W. filed its petition herein on August 16. S. Thomas Watson, a field examiner attached to the Regional Office in the Eleventh Region, within a few days thereafter obtained the consent of the I. A. M. and the U. A. W. to an election among the production workers at the respondent's Muncie plant, the result not to affect the separate contracts relating to the toolmen and to the buffers and polishers. Murphy refused to sign such an agreement, claiming that the Lees and Acme Divisions each should be treated as an appropriate unit. We have previously determined in Section III, C, 1, that his

position was unsound. However, the U. A. W. agreed with the respondent to participate in such an election upon terms otherwise similar to the I. A. M.-U. A. W. agreement referred to above. But this time the I. A. M. refused to sign.

August 25, on receiving the news that the consent election would not be conducted, the U. A. W. called a strike, which effectively closed the plant for a period of approximately 2 weeks, and established a picket line. Despite this show of strength, the respondent persisted in its denial to the U. A. W. of its right to act as exclusive bargaining representative. Both before and after the strike, Murphy rejected the U. A. W.'s offer to submit its membership application cards to the Regional Director for comparison with the respondent's pay roll to prove its majority. The respondent voiced no objection to the Regional Director acting in such capacity. Neither did it suggest any other mode of proof. Murphy claimed, however, that the U. A. W.'s cards were too old to reflect the current sentiment of the employees and expressed a fear of possible duplications in membership. In view of the fact that the U. A. W. began organizing in the plant but 2 or 3 months previously, and Murphy's statement on August 19 that he did not know of any other union in the plant among the production workers, we can give little credence to the respondent's contention that its objections to the U. A. W.'s proposal to establish its majority were made in good faith. We are convinced that, in its negotiations with the U. A. W., the respondent did not attempt to perform its duty to cooperate in determining who represented its employees, but sought to obstruct and delay the U. A. W.'s efforts to bargain for the employees. The respondent's claimed ignorance of the U. A. W.'s status, therefore, can not constitute an excuse for its failure to bargain with the U. A. W. as the employees' exclusive representative.

On August 27 the respondent filed a bill for an injunction to restrain the picketing of its plant in Muncie. The plant reopened on September 7 under a court order entered September 4 based on a truce agreement signed by the respondent and the U. A. W. on September 3. The truce provided, among other things, for the suspension of the strike "pending an election to be held at such time and place as the Labor Relations Board may determine,"¹² for the return to work of employees on the August 10 pay roll to the extent of available work and the early conduct of negotiations by the respondent with the U. A. W. for an agreement for its members. However, the truce cannot operate as satisfaction of the respondent's duty to bargain collectively.¹³ The

¹² Our findings that the U. A. W. represented a majority of the employees in an appropriate unit renders unnecessary the conduct of such an election.

¹³ Section 10 (a) of the Act provides.

"The Board is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code law, or otherwise."

respondent's willingness to bargain with the U. A. W., which had as members a majority in the appropriate unit, as the representative of its members only does not constitute compliance with respondent's duty to bargain collectively within the meaning of Section 8 (5) of the Act, since the U. A. W. was the exclusive representative of the employees, making it incumbent upon the respondent to recognize and negotiate with it as such, upon its request.

Thereafter the respondent and the U. A. W. held several conferences for the purpose of negotiating such contract. The negotiations terminated as the result of the inability of the parties to agree on wage rates. In the meetings the respondent made counterproposals to the Union's demands, but at no time during these conferences, did it recognize the U. A. W. as the exclusive bargaining representative of its employees.

We find that the respondent, on August 10, 1937, and at all times thereafter, refused to bargain with the U. A. W. as the representative of all its employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

D. Interference, restraint and coercion

In addition to the respondent's interference with the rights of self-organization by virtue of its domination of the administration of the Association, its discriminatory discharges of the toolroom employees because of their refusal to join the I. A. M., the discriminatory discharge of Mona Armstrong for her union activities, and its refusal to bargain collectively with the U. A. W., the respondent, by other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

At the height of the C. I. O. organizational campaign in the plant, about July 1, Lewis stated to Allie Locke, a production employee, that he need not join any labor organization in order to remain in the respondent's employ. Lewis did not deny testimony that in a conversation with Dorothy Hilton, an employee in the Association cafeteria, he stated: ". . . if the C. I. O. got in," she "wouldn't have a job." Nor did Wright, the cafeteria manager, take the witness stand to deny that he told Dorothy's mother, Mary Worster, an employee in the drill-press department, that he had "a notion to discharge" Dorothy "because she belonged to the Union." Wright likewise failed to deny that he warned Bessie Price and Christena Kitchen, cafeteria employees, to remove their C. I. O. button from their persons.

After the U. A. W. presented its proposed contract, covering all production employees, to the respondent on August 10, its foremen and other supervisory employees assisted the I. A. M. in its drive for members in its production local which that union then instituted.

Theodore Fouts, an assistant foreman in the hand form department, on various occasions solicited the membership of Everett Collins, Elree Bryant, George Cole, and Charles Welch, employees in that department, during working hours in the plant. About a week prior to the strike Fouts informed Collins that the respondent expected the employees to strike and proposed that he enlist with the respondent under an agreement to remain at his post in the plant 24 hours a day in return for a stipulated rate of compensation plus "free eats." Fouts attempted to induce Collins to join the I. A. M. by a promise to secure for him "a ten cent raise" in pay. Fouts held in his hands, at the time, cards bearing the name of the I. A. M. at the top. Elree Bryant had a similar experience with Fouts, who told him: "If you want to join the A. F. of L. and stay in here and work, we will pay you for twenty-four hours a day for all of the time that you are in here and then free eats and a place to sleep."

About September 10, Heiss, a tool repairman, asked James Mills, an employee in the heading department, in the presence of Truax, Mill's foreman, whether Mills was ready to join the American Federation of Labor. Truax turned to Heiss: "Give me one of those cards and I will have him sign it up."

In Section III, C, 3, above, we have set forth the contents of the mimeographed anti-U. A. W. circular which the respondent distributed to its employees.

We find that the respondent by its assistance to the I. A. M. in that organization's drive for members among the production employees at the respondent's Muncie plant, by stating that the respondent would close down rather than deal with the U. A. W., and by otherwise expressing antagonism to the C. I. O., has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

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, and commerce among the several States, and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow thereof.

THE REMEDY

The respondent will be required to cease and desist from the unfair labor practices described above. We shall order the respondent henceforth to refuse to accord the Acme-Lees Welfare Association, Inc., since it does not purport to be a labor organization, or the

Acme Welfare Association, if it ever returns to an active existence under its old name and form or any other name or form, any recognition as a collective bargaining agency. The respondent will in addition be ordered to bargain collectively with the U. A. W. as the exclusive representative of all its production employees, including toolroom employees, and excluding buffers and polishers, supervisory and clerical employees. Since the membership of the I. A. M. was procured with the assistance of the respondent's unfair labor practices, the I. A. M.'s contract with the respondent is void and of no effect. We will, therefore, order the respondent to give no effect to it. We will order the respondent to offer immediate and full reinstatement with back pay to the 18 discriminatorily discharged employees listed in appendix B, except Grant Steele, dismissing if necessary all toolroom employees hired since August 13, 1937. Since Grant Steele testified that he had secured other employment at higher wages and did not desire to resume his former employment, we will not order his reinstatement. Since the Trial Examiner in his Intermediate Report recommended the dismissal of the complaint as to these employees, the period from the date of the Intermediate Report to the date of the order herein will be excluded from the computation of their back pay. Grant Steele's back pay shall be computed from the date of his discharge to the date on which he commenced his employment elsewhere, which occurred 1 week after his discharge. We will also order the respondent to reinstate Mona Armstrong with back pay. Similarly, the period from the date of the Intermediate Report to the date of the order herein will be excluded from the computation of her back pay.

In view of our findings in Section III, C, above, as to the appropriate bargaining unit and the designation of the U. A. W. by a majority of the respondent's employees in the appropriate unit as their representatives for the purposes of collective bargaining, it is not necessary to consider the petition of the U. A. W. for certification of representatives. Consequently the petition for certification will be dismissed.

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

CONCLUSIONS OF LAW

1. International Union, United Automobile Workers of America, Local No. 459, International Association of Machinists Tool and Die Makers Local No. 35 and Production Lodge No. 1200, are labor organizations within the meaning of Section 2 (5) of the Act, and Acme Welfare Association was a labor organization within the meaning of Section 2 (5) of the Act.

2. By its domination and interference with the administration of the Association, and by contributing support thereto, the respondent has engaged in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The production employees, including toolroom employees, and excluding buffers and polishers and supervisory and office employees of a clerical nature, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. International Union, United Automobile Workers of America, Local No. 459, was on August 10, 1937, and at all times thereafter has been, the exclusive representative of all such employees for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with International Union, United Automobile Workers of America, Local No. 459, on August 10, 1937, and at all times thereafter, as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By discriminating in regard to the hire and tenure of employment of Mona Armstrong and the employees listed in appendix B, thereby discouraging membership in International Union, United Automobile Workers of America, Local No. 459, and encouraging membership in International Association of Machinists, the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

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

ORDER

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

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees, or encouraging membership in Inter-

national Association of Machinists Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment because of membership or activity in connection with any such labor organization;

(b) Recognizing or dealing with Acme-Lees Welfare, Inc., or with Acme Welfare Association, if it shall seek to act as a labor organization at any time hereafter;

(c) Urging, persuading, warning, or coercing its employees to join the International Association of Machinists Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any other labor organization of its employees, or discharging or threatening them with discharge if they fail to join such labor organization;

(d) Giving effect to its closed-shop contract, dated August 6, 1937, and executed August 11, 1937, with the International Association of Machinists, providing, however, that nothing in this order shall preclude the respondent from hereafter making an agreement with International Association of Machinists, or any other labor organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring, as a condition of employment, membership therein, if such labor organization is the representative of the employees in an appropriate bargaining unit as provided in Section 9 (a) of said Act;

(e) Refusing to bargain collectively with International Union, United Automobile Workers of America, Local No. 459, as the exclusive representative of its production employees, including toolroom employees, and excluding buffers and polishers, supervisory and office employees of a clerical nature, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(f) Maintaining surveillance of the meetings and activities of International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees;

(g) 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 purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer to the employees listed in appendix B, except Grant Steele, immediate and full reinstatement to their former or substanti-

ally equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any toolroom employees hired by the respondent since August 13, 1937;

(b) Make whole the employees named in appendix B, except Isaac Newton Garrett and Grant Steele, for any losses of pay they have suffered by reason of their discharge, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from August 13, 1937, to the date of the Intermediate Report and from the date of this order to the date of the respondent's offer of reinstatement, less any amount earned by him during those periods which he would not have earned if working for the respondent;

(c) Make whole Isaac Newton Garrett for any losses of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, August 20, 1937, to the date of the Intermediate Report and from the date of the order herein to the date of the respondent's offer of reinstatement, less any amount earned by him during those periods which he would not have earned if working for the respondent;

(d) Make whole Grant Steele for any losses of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, August 13, 1937, to the date on which he secured other employment;

(e) Offer to Mona Armstrong immediate and full reinstatement to her former position, without prejudice to her seniority and other rights and privileges, dismissing, if necessary, any employee hired by the respondent to perform the work of such employee;

(f) Make whole Mona Armstrong for any loss of pay she has suffered by reason of her discharge, by payment to her of a sum of money equal to that which she would have earned as wages from the date of her discharge, August 21, 1937, to the date of the Intermediate Report and from the date of the order herein to the date of the respondent's offer of reinstatement, less any amount earned by her during those periods which she would not have earned if working for the respondent;

(g) Post immediately notices to its employees in conspicuous places at its Muncie, Indiana, plant, 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; (3) that the respondent will not require any person or present employee to become or remain a member of the International Asso-

ciation of Machinists, Tool and Die Makers Local No. 35, or Production Lodge No. 1200, in order to secure, or continue his employment in the plant, as the case may be; (4) that the closed-shop agreement with the International Association of Machinists, dated August 6, 1937, and executed August 11, 1937, recognizing it as the exclusive representative of the toolroom employees at its Muncie plant is void and of no effect; (5) that the respondent will bargain collectively with International Union, United Automobile Workers of America, Local No. 459, as the representative of the employees in the appropriate unit; and (6) that the respondent will not discharge, lay off, or in any manner discriminate against members of International Union, United Automobile Workers of America, Local No. 459, or any person assisting said organization, by reason of such membership or assistance;

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

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

And it is further ordered that the allegations of the complaint that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by discriminating against the employees listed in appendix A, except Mona Armstrong, in regard to their hire or tenure of employment be, and they are, hereby dismissed.

CHAIRMAN J. WARREN MADDEN, concurring: I concur in the decision and in all of the opinion except that part which appears on page 23, beginning with the words "Furthermore, for the purposes of the Act," and ending with the words "that the craft unit is appropriate." I think that this language is unnecessary for the decision of this case, and that therefore no opinion should be expressed upon this subject.

APPENDIX A

Walter S. Garrett	Edward Youngman
Maurice Slaughter	Agnes Holland
Edward Johnson	Curtis Landers
Cletus Garrett	Cleda Watts (now Crutcher)
Wilbur Garrett	Katherine Webb
Isabelle Barrett	Mona Armstrong
Catherine L. Long	Richard Cameron
Carl Carmen	Wilbur Mitchell
Martha Keener	

APPENDIX B

Robert Bunch	Lon S. Cole
Grant Steele	James Condon
Chester Kirby	Isaac Newton Garrett
Herman Davis	Rudolph Keil
Harold Sharpe	R. E. Manlove
Charles Fensel	Dwight Stiffler
Erskine "Dutch" Allison	Floyd Stevenson
Len Jones	Shelby Tolley
Levi Benn	Francis Witmer