In the Matter of Atlas Bag and Burlap Company, Inc. *and* Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union

Case No. C-34.—Decided March 4, 1936

Second-Hand Bag Industry—Interference, Restraint or Coercion: engendering fear of loss of employment for union membership or activity; expressed opposition to labor organization, threats of retaliatory action; propaganda against union; threat to close plant; villifying union and union organizers;—*Unit Appropriate for Collective Bargaining:* production employees—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to negotiate with representatives; meeting with representatives but with no intention of bargaining in good faith; bargaining with individual employees—*Company-Dominated Union:* announcement of intention to form; domination and interference with formation and administration; financial or other support; initiation and sponsorship; disestablished as agency for collective bargaining—*Employee Representation Plan:* form and operation—*"Yellow Dog" Contract.*

Mr. David A. Moscovitz for the Board.
Mr. L. L. Balleisen, of Brooklyn, N. Y., for respondent.
Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

Statement of Case

Charges and amended charges having been duly filed by Milton Rosenberg, Organizer, Burlap and Cotton Bag Workers Union Local No. 2469 affiliated with the United Textile Workers Union (hereinafter termed the union), the National Labor Relations Board, by its agent, the Regional Director for the Second Region, issued and duly served its complaint dated November 12, 1935, against the Atlas Bag and Burlap Company, Inc., Brooklyn, New York, respondent herein, alleging that the respondent has engaged and is engaging in unfair labor practices affecting commerce in violation of Section 8, subdivisions (1), (2), (3) and (5) of the National Labor Relations Act. The complaint, in substance, alleges as follows:

That the respondent, a New York corporation, having its principal office and principal place of business in Brooklyn, New York, is engaged in the purchase, reconditioning, sale and distribution of second-hand burlap bags, and causes and has continuously caused a substantial amount of such bags to be purchased and transported

in interstate commerce, and causes and has continuously caused the bags reconditioned by it to be sold and transported in interstate commerce, from and through states of the United States other than the State of New York;

That the respondent's production employees constitute an appropriate unit for the purposes of collective bargaining; that a majority of these employees designated the union to represent them for the purposes of collective bargaining with the respondent; that by virtue of Section 9 (a) of the National Labor Relations Act, the said union has been the exclusive representative of all employees in such unit for the purposes of collective bargaining; that the union, by Milton Rosenberg, on or about October 15, 1935, sought to bargain collectively with the respondent in behalf of all of its production employees; and that the respondent refused to bargain collectively with the union as the exclusive representative of its production employees; thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (5) of the said Act;

That the respondent has dominated and interfered with the formation and administration of a labor organization of its employees, known as the "Collective Bargaining Committee of the Atlas Bag and Burlap Company", and notified its employees that, as a condition of continued employment, they must sign individual contracts designating such "Collective Bargaining Committee" as their representative for the purposes of collective bargaining, the said contract containing, among others, provisions that the employees shall not have the right to request recognition by the respondent of any union; and that the respondent made it clear by acts and threats, that a failure to comply with such notification would result in discharge or lockout of its employees; thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1), (2) and (3) of the said Act.

The respondent's answer fails to reply to the allegations as to its corporate organization or the appropriate bargaining unit; but it denies the other allegations in the complaint and also alleges: that it had no knowledge or proof that a majority of its employees had designated the union as their representative for collective bargaining; that the respondent did confer with Rosenberg, the union's representative, but that Rosenberg did not submit any proposals in writing; that the "Collective Bargaining Committee" was initiated by a request from several of the respondent's employees for a conference with the respondent concerning the formation of a "shop union"; that the respondent, through its president, L. Prosnitz, then sought the advice of L. L. Balleisen, Industrial Secretary of the Brooklyn Chamber of Commerce, who furnished him with documents to be

used by the respondent's employees in the formation of a "shop union"; and that the respondent did not participate in the formation of the "Collective Bargaining Committee" and did not threaten its employees in securing signatures to the contract thereafter signed by several of its employees.

Pursuant to notice thereof, Dr. John A. Lapp, duly designated as Trial Examiner, conducted a hearing commencing on November 20, 1935 at the Federal Building, Brooklyn, New York. The respondent appeared by L. L. Balleisen, Industrial Secretary of the Brooklyn Chamber of Commerce, acting under the respondent's power of attorney, and participated in the hearing. The Board was represented by counsel. At the close of testimony for the Board, the respondent moved to dismiss the complaint for lack of proof of the allegations therein and on the grounds that the respondent's business is not in interstate commerce. The motions were denied by the Trial Examiner.

Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. Upon the record thus made, the stenographic report of the hearing and all evidence, oral and documentary, offered and received at the hearing, the Trial Examiner, on December 23, 1935, filed an intermediate report, finding and concluding that respondent had committed unfair labor practices affecting commerce in violation of the National Labor Relations Act as alleged in the complaint. The respondent filed exceptions to the intermediate report, contending that the Trial Examiner's findings are not sustained by the evidence and that the National Labor Relations Act is unconstitutional.

Acting pursuant to Article II, Section 34, National Labor Relations Board Rules and Regulations—Series 1, the Board, upon the entire record in the proceeding, makes the following:

Findings of Fact

A. THE RESPONDENT AND ITS BUSINESS

I. The respondent, Atlas Bag and Burlap Company, Inc., is and has been since October 8, 1932, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the Borough of Brooklyn, Kings County, State of New York (hereinafter termed the plant).

II. (a) The respondent is engaged in the business of purchasing, reconditioning by cleaning, mending, repairing, sorting and printing, and selling and distributing second-hand burlap and cotton bags in the State of New York and many other states and in foreign countries.

(b) The respondent's purchases of used bags are made by its representatives, from persons engaged in the business of gathering such bags and directly from "emptiers", such as chain stores, bakeries and the like. The respondent's sales are made by its representatives "all over the country". The respondent's president, L. Prosnitz, travels ("goes on the road") to other states for the purpose of making such purchases and such sales; while "on the road", he sends the orders he receives for reconditioned bags to the respondent's plant in Brooklyn, where they are filled. Purchases and sales are also made by telephone, by mail and through persons who call at the respondent's plant.

(c) The second-hand bags purchased by the respondent are delivered to a platform at the plant, to a large extent by the vendors' own trucks; such bags are also delivered by common carriers and forwarders by rail, water and truck. The bags reconditioned and sold by the respondent are transported from a platform at its plant through forwarders and common carriers by truck, rail and water. The respondent's employees carry the bags received from the platform into the plant; they carry the bales of reconditioned bags to the platform and the tail-ends of trucks; sometimes they help load the bags on the trucks.

(d) Upon arrival at respondent's place of business, the bags are cleaned by machine, sorted, repaired or mended by machine, inspected and sorted again for size and quality, counted and baled. Upon order, bags are printed on the respondent's printing presses with the purchaser's name or trademark or whatever is specified. The respondent makes shipments on order. Although Stampa, its secretary, testified that a stock of two or three hundred thousand bags is normally kept in the plant, he also testified that it is customary not to have sufficient stock on hand to fill orders, requiring the respondent to make purchases in order to do so. According to Stampa's testimony, bags purchased by respondent normally remain in its plant for four or five weeks; the actual operation of reconditioning a single bag takes half a minute. The bags reconditioned by the respondent go out of its plant substantially as they come in. They come in as bags and, after improvement in the course of the respondent's processing operations, go out as bags.

(e) In the course of the respondent's business there is a continuous flow of second-hand bags to its plant from states other than the state of New York and from its plant to states other than the state of New York. A substantial proportion, approximately 26% for the year ended November 15, 1935, of the bags purchased by the respondent is caused by the respondent to be purchased and transported in interstate commerce from states other than the state of New

York to its plant in Brooklyn, New York, and a considerable portion, approximately 83% for the same period, of the bags sold by the respondent is caused by the respondent to be sold and transported in interstate commerce to states other than the state of New York from its plant in Brooklyn, New York.[1]

B. THE BARGAINING UNIT

III. The production employees at the respondent's plant in Brooklyn, excepting those engaged in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining.

C. THE UNION AND ITS ORGANIZER

IV. The Burlap and Cotton Bag Workers Local Union No. 2469 is a labor organization composed of burlap and cotton bag workers, including employees of the respondent. Milton Rosenberg, an accredited organizer and label agent for the American Federation of Labor (Exhibit B–10), is also an accredited general organizer for the United Textile Workers of America, an A. F. of L. affiliate (Exhibit B–11). Local Union No. 2469 is affiliated with the United Textile Workers of America. Rosenberg is the organizer and the business representative of Local Union No. 2469, which position he occupied during the month of October, 1935.

D. THE RESPONDENT AND THE UNION

V. For nine weeks, from about July 30 to September 30, 1935, all of the respondent's employees were out on strike in an effort to secure a written working agreement with the respondent. The strike took place when the respondent refused to consider a proposed collective agreement with a labor organization then known as the New and Used Burlap and Cotton Bag Workers Union (hereinafter termed the old union), affiliated with the United Hebrew Trades, composed of workers in the industry and of which the respondent's employees then were members. On September 30th the respondent's employees returned to work, having lost the strike, and without any collective agreement with the respondent.

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[1] For the twelve months from November 15, 1934 to November 15, 1935, the respondent's purchases and sales were as follows: (Statement furnished by the respondent under oath in conformity with agreement made at hearing)

Purchases:		Sales:	
In New York State	$83,161 52	In New York State	$25,064.66
In 5 other States and Porto Rico	29,625 25	In 29 other States, Italy, Austria	126,566.64
Total	$112,786 77		$151,631 30

The statement furnished by the respondent indicates purchases in five states during the calendar year ended November 15, 1935. Stampa, the respondent's secretary, testified that the respondent's purchases generally are made in eight states.

VI. Thereafter, at a meeting of the old union, on October 3, 1935, attended by about 75 workers in the industry, including a number of the respondent's employees, it was unanimously decided to affiliate with the United Textile Workers of America, a labor organization associated with the American Federation of Labor. Rosenberg, the organizer, was present at this meeting and at a subsequent meeting on October 10th and spoke to the workers. The testimony is clear that affiliation with the United Textile Workers included business representation through Rosenberg. The minutes of the October 10th meeting show that Rosenberg "will act as our business agent from now on" (Exhibit B–7). The group was subsequently chartered as the Burlap and Cotton Bag Workers Local Union No. 2469 (the union in this case), and at a meeting on October 24, 1935, Rosenberg swore in the officers and the members (Exhibit B–8).

VII. Nick Stannish, vice-president of the old union and of Local No. 2469 and an employee of the respondent, was delegated, at the meetings on October 3rd and 10th described above, to secure applications and the initiation fees from his fellow workers, and to turn them over to the union secretary, who was then to fill out application cards with receipt stubs attached, the latter to be given by Stannish to the members who had paid. The testimony and exhibits show that 14 of the respondent's total of 18 production employees in this manner became members of Local No. 2469. One of the memberships was repudiated. This leaves a total of 13 of the respondent's 18 employees [2], a clear majority, who are members of Local No. 2469, and who designated the union as their representative for the purposes of collective bargaining, thus constituting Local No. 2469,

[2] Exhibit B–9 consists of 13 application cards to the United Textile Workers of America showing that the initiation fee of each applicant named thereon had been paid and received by the union, as follows:

Molly Rocco	Edna Savoldi	Casper Filippi	Helen Abramcyzk
Mary Waslewski	Helen Bychuck	Lucy Rocco	Julius Kaplan
Stella Merkel	Joe Stabile	Nick Stannish	Stella Francyk
Stella Rabowski			

These are all dated as received October 14, 1935, except the card of Stannish, dated November 12th, who, according to the testimony, had voted for affiliation with the United Textile Workers at the October 3rd meeting, was present at the October 10th meeting, but had not in fact paid his initiation fee until November 12th

Stannish, union vice-president, testified that 14 of the respondent's 18 employees paid the initiation fee, received the receipt stubs attached to the application cards, and became members of Local No. 2469. These, according to his uncontradicted testimony, comprise the employees whose cards appear in Exhibit B–9, as specified above, excepting Stella Francyk, and, in addition, Alice Kowsh and Alice Nikitick. Miss Kowsh testified that she was a member of the union and wanted the union and Rosenberg to represent her The membership of Miss Nikitick is not questioned in the record.

Molly Rocco, whose card appears in the exhibit, repudiated union membership in her testimony; and there is testimony that Stella Francyk is not employed by the respondent

This leaves an unquestioned total of 13 of the respondent's 18 employees who are members of the union and who consequently designated the union and Rosenberg to represent them for the purposes of collective bargaining

by virtue of Section 9 (a) of the Act, as the exclusive representative of all of the respondent's employees for the purpose of collective bargaining.

VIII. (a) On October 15, 1935, Rosenberg called on the respondent for the purpose of negotiating an agreement. Although he had a conversation with Stampa, the respondent's secretary, and D. Prosnitz, brother of the respondent's president and a member of the firm, when he broached the subject of an agreement he was told to await the return of L. Prosnitz, the respondent's president, in a few days. On October 18th Rosenberg met both the Prosnitz brothers and Stampa. He had a proposed agreement in his pocket. But L. Prosnitz told him he was not ready to sign a union agreement and asked him to wait until November 1st. On October 22nd, Rosenberg met the Prosnitz brothers again, and asked L. Prosnitz to look at a proposed agreement which he offered him. Again, Prosnitz refused to sign anything and stated he could make no reply until November 1st. Neither L. Prosnitz nor the others, at any of these meetings, questioned Rosenberg's authority to represent the respondent's employees or asked for his credentials.

(b) On October 25th, at a regular membership meeting of the Local No. 2469, Rosenberg was told by some of the respondent's employees that their employer was attempting to form a company union. On November 1st, Rosenberg telephoned the respondent, and spoke to D. Prosnitz. Rosenberg asked him if the respondent was ready to negotiate an agreement with the union. The reply, according to Rosenberg's uncontradicted testimony, was, " 'we are forming a company union' and he hung up".

E. THE RESPONDENT AND THE "COLLECTIVE BARGAINING COMMITTEE"

IX. Meanwhile, according to the testimony of Michael Mignone, an employee of the respondent and formerly a member of the old union but not a member of Local No. 2469, he presented a handwritten letter to the respondent on October 22, 1935, requesting a "talk . . . about forming a shop union" (Exhibit B–2). The letter is signed by eight of the respondent's employees, three of whom are members of Local No. 2469 and who testified that they wanted the union to represent them and that they had signed this communication at the request of the management or because of fear of the loss of their jobs. Mignone testified that the proposal for a "shop union" was his own idea and that he had acted on the advice of his father, a union man.

X. On October 22nd, the same day the letter specified in finding IX was received by the respondent, L. Prosnitz, its president, took the letter to L. L. Balleisen, Industrial Secretary of the Brooklyn Chamber of Commerce, and asked for his advice. The respondent

is not a member of the Chamber. According to Balleisen's own testimony, he informed Prosnitz that "this letter is written so that the average individual . . . would be suspicious. It looks too much like collusion." He also said to Prosnitz, "the thing for you to do would be to put it in the form that I have used in other companies". Thereupon, Balleisen testified, he dictated to his secretary forms of two letters to be used by Prosnitz and his employees in the formation of a "shop union" and its recognition by the respondent. One was the form of a letter, from the employees to the respondent, dated October 23, 1935, announcing to the respondent that a "shop union" had been organized and that officers had been elected and a "collective bargaining committee" had been appointed, and the other was the form of a letter from the respondent recognizing the "shop union" and the "committee". According to Balleisen's testimony, Prosnitz "was to give this copy (of the letter dated October 23rd) to the employees and when they . . . got it signed, he would recognize it, and I dictated the type of letter that he should answer. . ." He also advised Prosnitz that the respondent's employees hold an election to choose officers for the "shop union" and select the "collective bargaining committee", and stated that he would furnish Prosnitz with a form of agreement which he had used in other places to be used as a model for a contract with the respondent's employees.

XI. (a) L. Prosnitz gave Mignone the form of the letter dated October 23rd, drafted by Balleisen. Mignone testified that Prosnitz spoke to him of his conference with Balleisen and that Prosnitz "told me this was the form it was going to be in, and that they would have an election and vote for officers and have the shop union".

(b) On October 25, 1935, some of the respondent's employees were called by Mignone, his brother, Anthony, and James Zucchetto, both also employees of the respondent, to participate in an election of officers for a "shop union". Not all of the respondent's employees were summoned. The testimony is clear that those known to be staunch union members were not asked and did not participate in the election. By permission of one of the Prosnitz brothers, the election took place in the respondent's plant, very close to the office. Pinto, the foreman, was present, and Stampa and L. Prosnitz passed by the place where it was held at the time. There were no nominations. The employees were told to vote for any one they wanted. The Mignone brothers and Zucchetto counted the ballots. Michael Mignone announced the results: Michael Mignone elected president, Pinto, the foreman, vice-president, and Zucchetto, secretary.

(c) On the same day, October 25, 1935, the respondent received from Michael Mignone a letter dated October 23, 1935, announcing the organization of a "shop union" (the "Atlas Bag and Burlap Co., Inc. Employees Union"), the election of officers and the appoint-

ment of a "collective bargaining committee" (the "Collective Bargaining Committee of the Atlas Bag and Burlap Company"), and requesting recognition. This letter was signed by Mignone and ten other employees of the respondent, including Pinto, the foreman (Exhibit B-3). Of these, four employees testified they were members of Local No. 2469 and desired the union and Rosenberg to represent them, but had signed the letter through fear of the loss of their jobs. Some of these testified they signed the letter in the respondent's office, in the presence of Stampa, the respondent's secretary. There is also testimony that Pinto, the foreman, solicited signatures for the letter. The letter itself was actually typed on October 25, 1935, by the daughter of L. Prosnitz, the respondent's president, who is employed in the respondent's office. The letter is a verbatim copy of the form letter composed by Balleisen, as set forth in finding X above, including the very date thereon, October 23, 1935. The respondent, on the same day, recognized the "shop union" and the "collective bargaining committee" in a letter (Exhibit B-4) which is a copy of the form letter given Prosnitz by Balleisen, as set forth in finding X above.

(d) The "shop union" (the "Atlas Bag and Burlap Co., Inc. Employees Union") and the "collective bargaining committee" (the "Collective Bargaining Committee of the Atlas Bag and Burlap Company"), described above, are labor organizations composed of employees of the respondent.

XII. (a) After the election and exchange of letters, set forth in finding XI above, identical individual contracts of employment were presented by L. Prosnitz to some of the respondent's employees. The form of the contract, like the letters, was furnished to L. Prosnitz by Balleisen. In form these contracts were signed by the "collective bargaining committee" (the "Collective Bargaining Committee of the Atlas Bag and Burlap Company") specified in the letter of October 23rd to the respondent (Exhibit B-3), and were to be signed by the employer and by each individual employee. Each of the five committee members signed each contract as a committee member and each signed such a contract individually. Pinto, the foreman, also signed such a contract, as did Rose Marchi, an employee who does not read or write English.

(b) On November 1, 1935, the respondent's employees were assembled in the plant at the direction of L. Prosnitz and were addressed by L. L. Balleisen for about 45 minutes. He read portions of the contract to them from a copy he held in his hand, made explanatory remarks, and denounced outside unions as rackets and union organizers as racketeers. He expatiated on the advantages of a "shop union" and emphasized that it required no payment of dues.

According to the testimony of some of the respondent's employees, Balleisen also made a statement that he would advise the respondent to close its plant unless its employees signed the contracts. Balleisen's own testimony as to this statement is that, "I made the statement that if I was the employer of this plant and I saw conditions of that sort, I would stop operating my plant until the employees agreed between themselves as to what they wanted".

(c) Thereafter, at least two more of the respondent's employees signed contracts. Both were members of Local No. 2469 and both testified they signed the contract through fear of the loss of their jobs. There is testimony that after Balleisen's speech Pinto, the foreman, took open measures indicating that the respondent was preparing to close its plant. There is also testimony that Pinto and L. Prosnitz participated in soliciting signatures to contracts.

XIII. (a) The contract furnished to the respondent by Balleisen and signed by the "collective bargaining committee" and by each of nine of the respondent's employees, including the foreman (Exhibits B–5, R–6–14), states that it is an agreement between the respondent "and the duly elected Collective Bargaining Committee of the employees of the Atlas Bag and Burlap Company, and the Atlas Bag and Burlap Company Employees' Union consisting of the employees of said company, and each and every one of the employees of said company". Although disguised as a collective agreement, the contract, expressly intended for individual signature by employees, is an individual contract of employment.

(b) The contract further provides for the wage scale in force on October 25, 1935, for a 40-hour week, and for extra overtime pay for time in excess of 520 hours during any 13-week period. The respondent in the contract agrees not to resort to the lockout, but reserves the right to discharge or lay off employees for specified reasons. The contract provides that the employees agree that "they or any of them" will not go out on strike "during the entire period of this agreement to November 1, 1940".

(c) The contract also provides that "any employee has a right to join any union of his own choosing, or refrain from joining any union. Furthermore, no employee or person working for the employer shall be obliged or required to, but may voluntarily, join the employees' union of the Atlas Bag and Burlap Company. *The employees, or any of them shall not and have not the right to demand a closed shop or recognition by the employer of any union*, and the employer has the absolute and unqualified right to hire or discharge any employee or employees for any reason or for no reason, and regardless of his or their affiliation or non-affiliation with any union". Such discharge is not subject to arbitration or mediation, "and any action of reinstatement, if any, will be taken voluntarily by the

employer if it deems such reinstatement advisable". (Italics supplied.)

XIV. There was no negotiation or discussion between the respondent and "the committee" as to any of the terms of the contract. There was no bargaining in any sense of the term. Not a word or even punctuation mark in the contract as presented by L. Prosnitz was altered. Copies of the contract were just signed without question by the employees, in the precise form originally furnished by Balleisen to Prosnitz.

F. CONCLUSIONS

XV. The respondent's conduct as set forth in finding VIII above constitutes a refusal to bargain with the exclusive representative of all of its employees. This conclusion of fact is sharply emphasized by the respondent's conduct set forth in findings X to XIV above which negatives completely any intention on the part of the respondent to bargain collectively with the representative so designated by its employees.

XVI. (a) The respondent's conduct as set forth in findings X and XI above constitutes domination and interference with the formation and administration of labor organizations of its employees.

(b) Whether or not Michael Mignone, the avowed instigator of the "shop union" and the "collective bargaining committee", acted originally on his own initiative,[3] every step he and those who associated with him took after October 22, 1935, followed without an iota of deviation the pattern and plan furnished to L. Prosnitz, the respondent's president, by Balleisen, and transmitted by Prosnitz to Mignone. The right of employees to be free from such domination or interference, guaranteed them by the National Labor Relations Act, and the correlative duty imposed upon the employer not to so dominate or interfere, cannot be evaded by the obvious and transparent subterfuge of ready-made "shop union" plans furnished to employers by the Industrial Secretary of a Chamber of Commerce, an association of employers. The evidence clearly establishes the fact that the respondent participated not only in securing the "shop union" plan from Balleisen, but also took an active part in "putting it over". The respondent's officers and foreman solicited signatures to the letter dated October 23rd, furnished the services of its stenographer, and the use of its office, participated or were present at the "election" on October 25th. The parts played by M. Mignone and his associates in perfecting the "shop union" and the "collective

[3] The Trial Examiner, who heard Mignone testify, says in his intermediate report (page 6): "The conflicting nature of Mr. Mignone's testimony throws doubt upon the statements of his own participation in the formation of the shop union."

bargaining committee" were obviously directed by the respondent in accordance with the scenario furnished by Balleisen.

(c) The entire "shop union" plan is a sham, a formula for a puppet organization devised to deprive employees of the right to self organization and collective bargaining guaranteed them by the National Labor Relations Act, and made readily available, wholesale, to employers determined to deprive their employees of such rights or ignorant of their true meaning. The respondent in this case secured and provided M. Mignone with the "shop union" plan and participated in the formation and administration of the "shop union" and the "collective bargaining committee".

(d) The true nature of the "shop union" and the "collective bargaining committee" is further revealed by the manner in which the committee accepted the contracts furnished by Balleisen and presented to L. Prosnitz. These agreements, according to the employees who signed them, were subscribed by each of the committee members as a committee member and individually without question, discussion or change of a word or punctuation mark. There was no bargaining in any sense of the term. Signatures were solicited by the foreman and by L. Prosnitz. Two of the employees who signed testified they did so out of fear of the loss of their jobs; two of them do not read or write English, and testified that the contract was not read or explained to them.

(e) The nature and purpose of the respondent's conduct is emphasized by the fact that its activity in behalf of a "shop union" and the "collective bargaining committee" came just after the respondent had been approached for the purposes of collective bargaining by Rosenberg, the business representative of Local No. 2469, then representing a clear majority of its employees, and just after L. Prosnitz had put Rosenberg off until November 1st. See Finding VIII (a) above.

XVII. (a) The contract furnished by Balleisen and used by the respondent for individual agreements with its employees as set forth in findings XII to XIV above, constitutes an individual anti-union or "yellow dog" contract of employment, discriminatory in regard to terms or conditions of employment and discouraging to membership in a labor organization, in this case Local No. 2469.

(b) The contract deprives each employee who signs it of the right to strike until November 1, 1940, of the right to demand recognition of any union by the employer, and of the right to question discharges for any reason or no reason regardless of his affiliation or non-affiliation with any union. Despite the lip-service rendered by the terms of the contract to the right of an employee to join any union of his own choosing, the agreement deprives each employee subscriber of

the fundamental rights inherent in union affiliation and activity—the right to union recognition, which means the right to collective bargaining, the right to concerted activities for mutual aid or protection, which is guaranteed to employees in Section 7 of the National Labor Relations Act, and the right to protest against the employer's exercise of his most powerful anti-union weapon, discharge for union affiliation or activity. It would be hard to devise a more patently anti-union or "yellow dog" contract, or one more discouraging to membership in a labor organization.

XVIII. The respondent's (a) refusal to bargain with the exclusive representative of all its employees as set forth in findings VI to VIII and XV above, (b) its domination and interference with the formation and administration of the "shop union" and the "collective bargaining committee" as set forth in findings IX to XI and XVI above, and (c) its solicitation of and entering into the individual contract of employment set forth in findings XII to XIV and XVII above, and each item of such conduct, constitute interference, restraint and coercion of its employees in the exercise of the rights in Section 7 of the National Labor Relations Act.

G. THE RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

XIX. The nine-weeks' strike which took place in the respondent's plant from about July 30 to September 30, 1935, was caused by the respondent's refusal to consider a collective agreement and to bargain collectively with its employees through a labor organization of which they were members, as set forth in finding V above, and said strike diminished and reduced by about 50% of its normal volume the respondent's business of reconditioning second-hand bags and its purchase, sale and transportation of used and reconditioned bags in interstate commerce.

XX. On the basis of experience in the respondent's plant and in other plants, the respondent's conduct as set forth in findings XV to XVIII above, and each item of such conduct, burdens and obstructs commerce among the several States and the free flow of commerce, and has led and tends to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

The Respondent's Exceptions

The respondent's exceptions to the Trial Examiner's intermediate report are based chiefly on the contentions that his findings of fact, conclusions and recommendations are contrary to the evidence. The findings of fact and conclusions set forth above are in substantial accord with those of the Trial Examiner, whose intermediate report we find to be supported by the evidence. The rulings of the Trial

Examiner in denying the respondent's motions to dismiss the complaint for lack of proof of the allegations therein and on the ground that the respondent's business is not in interstate commerce are affirmed. The respondent's motion, embodied in the exceptions to the intermediate report, to dismiss the complaint for want of evidence to sustain its allegations and the Trial Examiner's findings and conclusions is denied.

The respondent's final exceptions are based on the contention that the National Labor Relations Act is unconstitutional, and amount to a renewal of its motion to dismiss the complaint on that ground made at the hearing before the Trial Examiner. The motion is denied.

Conclusions of Law

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. The Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with the United Textile Workers of America, and the "Atlas Bag and Burlap Co., Inc. Employees Union" (the "shop union"), and the "Collective Bargaining Committee" of the "Atlas Bag and Burlap Company" (the "collective bargaining committee"), as set forth in the findings of fact above, are labor organizations within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The production employees at the respondent's plant in Brooklyn, excepting those engaged in a supervisory capacity, as set forth in the findings of fact above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act.

3. By virtue of Section 9(a) of the National Labor Relations Act, the Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with the United Textile Workers of America, has been designated and selected, as set forth in the findings of fact above, as the exclusive representative of all of the respondent's employees for the purposes of collective bargaining.

4. The respondent, by refusing to bargain collectively with the representative of its employees, as set forth in the findings of fact above, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the National Labor Relations Act.

5. The respondent, by dominating and interfering with the formation and administration of labor organizations, as set forth in the findings of fact above, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the said Act.

6. The respondent, by discouraging membership in the labor organization known as Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union, by soliciting and entering into individual anti-union contracts of employment with its employees, said conduct constituting discrimination in regard to terms and conditions of employment, as set forth in the findings of fact above, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the said Act.

7. The respondent by the conduct referred to in the preceding conclusions 4, 5 and 6, and in each of them, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, as set forth in the findings of fact above, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the said Act.

8. The unfair labor practices in which the respondent has engaged and is engaging, as set forth in the preceding conclusions 4, 5, 6 and 7, and the findings of fact above, constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the said Act.

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Atlas Bag and Burlap Company, Inc., and its officers and agents, shall:

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

2. Cease and desist from any manner of domination or interference with the formation or administration of the labor organizations known as the "Atlas Bag and Burlap Company Employees' Union" and the "Collective Bargaining Committee of the Atlas Bag and Burlap Company" and from in any manner soliciting or encouraging membership in such organizations and from dealing with or recognizing such organizations as representing its employees and from continuing the existence of such organizations.

3. Cease and desist from in any manner discouraging membership in the Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with the United Textile Workers Union, by discrimination in regard to any term or condition of employment through in any manner offering, soliciting, entering into, continuing or enforcing or

attempting to enforce the individual anti-union contracts of employment with its employees set forth in the findings of fact above.

4. Cease and desist from any refusal to bargain collectively with the Burlap and Cotton Bag Workers Local No. 2469, affiliated with United Textile Workers Union, the exclusive representatives designated therefor by its production employees, in respect to rates of pay, wages, hours of employment, or other conditions of employment.

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

(a) Personally inform in writing the officers of the "Atlas Bag and Burlap Company Employees' Union" and the members of the "Collective Bargaining Committee of the Atlas Bag and Burlap Company" that these organizations have been formed and administered in violation of the National Labor Relations Act as set forth in this Decision, and that the respondent will not in any manner deal with or recognize such organizations, and that they shall be dissolved and cease to exist.

(b) Personally inform in writing each and every one of its employees who has entered into the individual anti-union contract of employment, as set forth in the findings of fact above, that such contract constitutes a violation of the National Labor Relations Act and that the respondent is therefore obliged to discontinue such contract as a term or condition of employment and to desist from in any manner to enforce or attempt to enforce such contract.

(c) Enter into negotiations in good faith with the Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union, designated as their exclusive representatives for the purposes of collective bargaining by its employees, as set forth in the findings of fact above, with the object of making an agreement covering rates of pay, wages, hours of employment and other conditions of employment.

(d) Post notices immediately in conspicuous places in its Brooklyn plant, on all floors thereof and near the time-clock, stating that under the terms of and in compliance with this Order: (1) the respondent will comply with the provisions of the National Labor Relations Act; and that (2) the respondent's employees will not be interfered with, restrained or coerced in the exercise of their rights to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and that (3) the organizations known as the "Atlas Bag and Burlap Company Employees' Union" and the "Collective Bargaining Committee of the Atlas Bag and Burlap Company" were organized in violation of the National Labor Relations Act and that the respondent will no longer recognize or deal with these organizations and that member-

ship in these organizations will no longer be solicited or encouraged by the respondent, and that these organizations shall be dissolved and cease to exist; and that (4) the individual anti-union contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and that the respondent will no longer offer, solicit, enter into, continue, enforce or attempt to enforce such contracts with its employees; and that (5) the respondent will bargain with the Burlap and Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union, exclusively as the representative of all of its production employees; and that (6) such notices will remain posted for a period of 30 consecutive days from the date of such posting.