

In the Matter of THE TIMKEN SILENT AUTOMATIC COMPANY, A CORPORATION and EARL P. ORMSBEE, CHAIRMAN, EXECUTIVE BOARD, OIL BURNER MECHANICS ASSOCIATION

Case No. C-10.—Decided March 17, 1936

Stove and Furnace Industry—Unit Appropriate for Collective Bargaining: eligibility for membership in only organization making bona fide effort at collective bargaining; functional coherence—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* assent to particular demands differentiated from; refusal to negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees; bargaining with individual employees—*Strike—Interference, Restraint or Coercion:* expressed opposition to labor organization; denial of right of employees to be represented by non-employees; persuasion of employees to resign from union; soliciting individual strikers to cease striking—*Discrimination:* non-reinstatement following strike—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; strike provoked by employer's law violation; displacement of employees hired during strike—*Back Pay:* awarded.

Mr. David A. Moscovitz for the Board.

Alexander & Green, by *Mr. James H. McIntosh* and *Mr. H. S. Ogden,* for respondent.

Mr. Frank Scheiner for the Union.

Mr. Louis L. Jaffe of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 1, 1935 the Oil Burner Mechanics Association, hereinafter referred to as the Union, filed with the Regional Director for the Second Region a charge that the Timken Silent Automatic Company, Long Island City, New York, had engaged in and was engaging in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935. The charge was amended on October 17, 1935 and again on December 3, 1935. On November 13, 1935 the Board issued a complaint against the Timken Silent Automatic Company, hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Second Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3), and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. In respect to the unfair labor practices, the complaint alleged in substance:

1. The installation, inspection, and service departments at the Long Island City plant of the respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act; on or about September 18, 1935, the Union, representing the majority of employees in said unit, requested the respondent to bargain collectively with it, and on said date, and at all times thereafter, the respondent did refuse and has refused to bargain collectively with the Union and did state and has stated that it will bargain only with its employees individually.

2. As a result of this refusal by the respondent to bargain collectively with the Union, the Union called a strike on September 25, 1935, which was settled on October 8, 1935, by agreement reached between representatives of the respondent and representatives of the Union, which agreement provided that the respondent would take back all striking employees without discrimination or question; the respondent has since refused to comply with the terms of this agreement and has denied employment to J. Mills, J. Kohut, E. Korn, W. Lamm, Louis Licht, J. McVicar, W. Moran, B. Mulcahy, H. Schultheis, J. Schwartz, P. Theiss, L. Thompson, P. Brady, A. Bero, E. Coogan, P. Creciluis, J. Derwechter, H. Mandel, E. Ormsbee, O'Rourke, E. Ryan, I. Riker, John Roman, R. Schumacher, Dan Gardner, K. Holbert, J. Kavanaugh, George Schultz, T. O'Reilly, P. Burns, Walter Doyle, G. Smith, D. Lennon, I. Zwicker, and Fish, and has at all times since that date refused to employ the said employees for the reason that the said employees joined and assisted the Union and engaged in concerted activities with other employees in the Long Island City plant for the purpose of collective bargaining and other mutual aid and protection.

In accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1, the complaint and accompanying notice of hearing were served on the respondent and the Union on November 13, 1935. On November 22, 1935, the time to answer having been extended to that date by the Regional Director, the respondent filed a paper objecting to the jurisdiction of the Board in the premises, and, without waiving the aforesaid objections, answering the complaint. The substance of its objections to the jurisdiction was first: that the business of the respondent is an intra-state business, that the regulation of the labor relations between the respondent and its employees is solely within the jurisdiction of the State of New York; and that in consequence the Act as attempted to be applied violated the Tenth Amendment of the Constitution of the United States; second: that the Act as attempted to be applied to the respondent and its employees deprives each and all of them of their liberty of contract and is in violation of the Fifth Amendment of the Constitution of the United States.

In its answer the respondent denied that its business constituted a flow of commerce among the several states, denied the alleged unfair labor practices or that the alleged practices burdened or obstructed commerce; with respect to the allegations of refusal to employ certain named striking employees, the respondent alleged that the following were not in its employ on September 25, 1935, the day of the strike: J. Kohut and Fish; that the following had not at any time since September 25, 1935 applied for employment with the respondent: G. Mills, W. Lamm, P. Brady, K. Holbert, G. Schultz; that the following have been employed by the respondent since September 25, 1935 and are still so employed: Louis Licht, L. Thompson, P. Creciluis, O'Rourke, G. Smith; that the following have obtained employment elsewhere or are engaged in business for themselves: J. McVicar, W. Moran, B. Mulcahy, H. Schultheis, A. Bero, E. Coogan, J. Derwechter, E. Ormsbee, E. Ryan, John Roman, Dan Gardner, I. Zwicker; that the following were students employed temporarily and on the basis of probation only for the purpose of learning the business of oil burner mechanics: T. O'Reilly, P. Burns, W. Doyle; that H. Mandel was offered employment by the respondent and declined to accept such employment.

By order of the Board, William J. Mack was designated as Trial Examiner. By amendments to the notice of hearing, the hearing was postponed to December 4, 1935, at which time the hearing was opened, with the Board and the respondent being represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to both parties.

At the hearing the Board moved to amend its complaint. The motion to amend the complaint was granted. The amendments were two. First: The allegation that the respondent had refused to employ certain persons was stricken as to certain of those persons and retained as to the following only: W. Moran, J. Kohut, B. Mulcahy, H. Schultheis, A. Bero, J. Derwechter, E. Ormsbee, E. Ryan, John Roman, Dan Gardner, C. Lennon, I. Zwicker, J. Kavanaugh, E. Korn, J. Schwartz, P. Theiss, T. O'Reilly, P. Burns and W. Doyle. Second: to the appropriate bargaining unit were added two departments, the storeroom and the garage departments. The respondent moved to amend its answer to deny the allegations added to the complaint by amendment. The motion was granted.

At the hearing on December 4th testimony was taken. The respondent moved to dismiss the complaint on the constitutional grounds previously stated in its objections to the jurisdiction and on the further ground that the complaint does not state sufficient facts to make a cause of action. The Trial Examiner took the motion under advisement. Upon the understanding that all rights asserted

by the motion were reserved, the respondent participated in the hearing. The motion was renewed on the ground that a stipulation submitted by the Board relating to the character of the respondent's business and of its employees established that the industrial activities of respondent are "local" and that the Act by its own terms is inapplicable. The Trial Examiner again reserved decision on the motion. Upon the basis of the findings hereinafter made below, the motion to dismiss is hereby denied.

On December 16, 1935, the Board directed that the proceedings be transferred to and continued before it, thereupon assuming jurisdiction of the proceeding pursuant to section 35, Article II of said Rules and Regulations—Series 1.

Upon the record in the case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

1. *The Respondent.* The Timken Silent Automatic Company is a Michigan corporation engaged in the manufacture, sale, installation, and servicing of automatic oil boilers, oil-furnaces, water heaters and heating accessories and parts, and is one of the largest manufacturers and sellers of its kind in the United States.

The product is manufactured in Detroit, Michigan. Approximately 60 per cent of the materials used by the respondent at its Detroit plant is shipped to it from states other than Michigan. The larger percentage of the sales of its products is made in states other than Michigan.

The respondent is authorized to do business and does engage in business in Michigan, New York, Massachusetts, New Jersey, Pennsylvania and other states. It has branches for the purpose of receiving, selling, installing and servicing its product in Long Island City, New York, where the present dispute occurred, and in New Rochelle, New York; in Boston, Massachusetts, in Philadelphia, Pennsylvania, and in Detroit, Michigan. It has sales outlets through approximately 350 dealers. The respondent advertises nationally by mail, magazine, bill board and radio. In all its operations it employs approximately 700 persons exclusive of executives and supervisory employees.

The operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States.

2. *The Long Island Branch.* The present controversy is concerned with the relations between the respondent and certain of its employees who are employed at the respondent's Long Island City Branch, hereinafter called the Branch, a place of business devoted

to receiving, selling, installing and servicing the respondent's products. All of the sales made by the Branch are made in New York for installation there. The Branch sends a monthly inventory of its stock to the Detroit factory office. From that office it receives supplies of stock so that it will always have sufficient on hand to fill orders. In the fall it receives a particularly large amount of stock to meet the peak business of early winter. The burner is shipped from Detroit in a carton which is not usually opened until it is to be installed. Additional materials and parts used in the installation are purchased locally and are stocked in bulk. Of a total number of 11,500 units manufactured and sold by the respondent in 1934, approximately 1,900 were sold by the Long Island Branch. This Branch employs about 151 of the 700 employees; its payroll is \$19,000, of the monthly \$100,000 payroll of the respondent. Each monthly payroll of the Branch is audited in the Detroit office, and covered by a check to the local branch for the total sum involved.

3. *Refusal to bargain.* The employees in the Branch are divided into five groups: installation, inspection (of installations), service (subsequent to installation), garage, and stockroom. Though it is not the regular practice to shift men from one division to another, it is not unusual for installation men to go on service nor for either of these groups to lend a hand in the stockroom or the garage. This is borne out by the fact that a number of the men here concerned have been at one time or another used in installation, inspection and service work.

The Union was first organized in February, 1935 by a group of employees in the Branch, and is a labor organization. Employees in the installation, inspection, service, garage, and storeroom departments were eligible. The employees in these departments comprised all employees with the exception of the clerical staff, and constitute, with the exception of the supervisory and clerical staff, a unit appropriate for the purposes of collective bargaining.

At first the Union was not affiliated with any other organization. On July 7, 1935 the Union affiliated with the Federation of Metal and Allied Unions. By the middle of July, 1935 the Union had about 135 members, only four or five of whom were not respondent's employees. There were at this time about 100 persons on respondent's regular payroll at the Branch. The rest of the Union members were reserve or extra men. The Union membership and the number of employees continued more or less constant until September 24, 1935, at which time it is claimed that the respondent refused to bargain collectively. There is, therefore, no question that the Union represented a majority of the Branch employees in the appropriate unit at the time in which it sought to bargain on their behalf.

In early July, 1935 the Union sent a committee to Harry P. Dennison, service manager of the Branch, to demand clean toilets, a suitable place to change clothes, lockers, and certain other things. The committee was composed of Ormsbee, Derwechter, Gardner and Yager. (The first three of these are among those not reemployed. Mr. Yager returned to the plant while the strike was on.) Mr. Dennison first told them that if they did not like the place they could leave. He then told them that he would answer officially at a later date. Subsequently he admitted the justice of certain of these demands. He agreed to grant them but in fact did so only to a very limited extent, as appears below.

In August, O'Malley, an assistant to Dennison, told Ormsbee that he had been instructed to "pull" Ormsbee's time card; he said that Ormsbee was to see Reis, the general branch manager. O'Malley told Ormsbee, referring to his union activity, "You should not jeopardize your position for any of these dumb monkeys out here. What I think you ought to do is resign from the organization, resign any position you have with them . . . if you will do that, I will go to Mr. Reis and tell him I think he has got you figured out all wrong. . . . The proposed action by the company is to fire the active members of the Union."

Ormsbee saw Reis. Reis received him well, and agreed to meet a committee. On August 9th a committee of eight, led by Ormsbee, met with Reis. A number of demands were made: for a 40-hour week, first-aid kits on trucks, preference for employees in filling certain jobs, clean toilets, towels and soap, lockers, and dressing space. An oral understanding was reached on a 45-hour week. Certain of these demands were admitted to be reasonable; a very few—clean toilets, soap and towels—were acted upon, but even in those instances the respondent did not commit itself by agreement to the fulfillment of them; it treated them as suggestions and acted upon them to the extent that it saw fit.

On September 18th a Union committee of about nine men with Ormsbee as spokesman presented Reis with a proposed contract in writing. The demands were for recognition, closed shop, hiring through the Union, wage and hour scales, and certain preferences in filling the better jobs. Reis informed the committee that it would be necessary for him to communicate with the main office of the respondent in Detroit.

On September 24th, Dennison called all of the employees together before work began, and addressed them. Standing with him were Jordan, general service manager of the respondent for its service operations everywhere, and Louis Klaus, an assistant of Dennison who was supervisor of installation. Though a great many of the

Board's witnesses stated that Dennison's speech to them was profane and abusive, he denied it in his testimony. According to his own testimony his speech was as follows:

"Fellows, I am here to answer this paper which was given to Mr. Reis, and our answer is that we are not going to sign this agreement or any other agreement, today, tomorrow, this week, next week, this month, this year, or next year, and if any of you people are not satisfied with conditions under which you are working and have worked in the past, you can go upstairs and get your money. Those of you who care to work under the present and past conditions will have a job. We will take care of you the best we can as circumstances permit.

Dennison then gave them one-half hour to decide whether they would work. After some indecision they went to work. That night, however, at a Union meeting a strike was voted. On September 25th, 110 employees struck. The respondent shut down the plant for one week.

On October 4th, certain men having heard that the respondent was willing to negotiate, a Union committee of which Ormsbee was the spokesman met Reis. Reis said that the position of the respondent was the same at that time as it was in the beginning and always would be that way. They would have nothing to do with any organization of the kind. However, they would always be willing to confer with any committees of the employees, or any employee individually; that, he said, was what the law required and in that they were willing to obey the law. He then said that all the strikers could come back but would have to sacrifice seniority and sign on as new employees.

Between October 5th and 7th, Dennison negotiated privately with Mandel, one of the strikers, for a return of the men. These negotiations were not known to the Union at large. The respondent sought, thus, to ignore completely the chosen representatives and dealing in this way to isolate and break down the Union leadership. At first Dennison said he had authority to take the men back only as strike-breakers without their regular privileges. When Dennison receded from this position, Mandel suggested a meeting with a Union committee to confirm the arrangement. At this meeting it was understood that the men would be taken back at their old jobs as needed. The men understood that there was to be no discrimination in rehiring. Dennison admits that the men asked in his presence that there be no discrimination and that he said nothing.

From these facts it is clear that the respondent categorically refused to bargain with the Union as the representative of its employees

and made it clear that it was undisposed to explore with an open mind the possibilities of making an agreement with its employees. It is true that officers of the respondent did meet Union committees from time to time; after being surprised into a display of downright hostility at the initial approach of the Union, the officers were courteous and discreet and ready to discuss casual grievances and demands. The demands, however, were treated as suggestions upon which the respondent, if it acted, acted, not on the basis of a collective bargain or agreement, but of grace. When asked to consider an agreement regulating prospectively relations between it and its employees in a comprehensive manner, the respondent refused to discuss the idea or any detail of it and made it clear that it had a fixed policy precluding such discussion. It thus refused in its dealings with its employees to accede even to the forms and the procedure of collective bargaining.

We find, therefore, that respondent has refused to bargain collectively with the representatives of its employees.

4. *The return to work: discriminatory reinstatement.* On October 8th about 60 of the strikers signed applications for reinstatement. All of the men named in the amended complaint, except Doyle, signed these applications. The men were told that they would be called for when needed. Practically all of the men signing applications, except those here in question, have been called back for work. The latter, despite their applications and though some of them solicited work at the office of the Branch a number of times, have never been called for work.

It is true that the respondent does not employ so many men as it did before the strike. Dennison estimated that during the strike the business of the Branch had fallen off 70 per cent; at the time of the hearing it was 50 per cent of what it had been before the strike. Before the strike 95 to 100 men were employed. Now about 65 or 70 are employed.

However, among the men now employed are a number of new men taken on during the strike, how many does not appear, and 20 or more new men taken since the strike was settled. Respondent's witnesses (explaining and justifying the employment of new men) testified that it is customary to take new men in September or October for the rush season in early winter, and that these new men had been "contacted" prior to the strike. But by the time the strike was settled respondent was aware that increased business had not developed, and that, as a consequence, no one in addition to the old men who had applied for reinstatement would be needed. Nevertheless, respondent employed 20 new men in place of and in preference to that number of the old men. There is some claim that these new men were inexperienced and not hired for the jobs at which the men

in question would have been employed. But the testimony of Louis J. Klaus, one of Dennison's assistants, is to the effect that about 20 new men were taken on (how many of these before, how many after the settlement of the strike, is not clear) to do the work that the old employees could have done; that a number were thereafter laid off and that, at present, there are six to ten new men in such jobs. It is evident, therefore, that in a number of instances since October 8th when a job was to be filled and one of the old employees here in question was available and had applied, the respondent filled the vacancy with a new man.

Klaus testified that 16 of the men named in the complaint as amended (these were all that were known personally to him) were inefficient and that in two weeks' time new and inexperienced men hired to take their places had been found superior. He said this though certain of these men had been employed by respondent anywhere from three to eight years, a number in supervisory capacities.

There is much evidence both as to the method of hiring and statements made by officials of respondent which shows that Union activity and not merit was the criterion of reinstatement. Normally the head of a department hired his men, subject to the approval of Dennison. This was the procedure used in hiring the new men, mentioned above, but the applications of the strikers were sent directly to Dennison's office. Dennison on one occasion told Mandel (one of the strikers) that the orders to hire had to come from New York. Klaus told O'Reilly, one of the strikers, "We are not hiring here. It is in the hands of the company's lawyers in New York." Siebrick, one of Klaus' assistants, told Moran the New York lawyers were going to look him up.

O'Reilly, having heard that he was not being hired because his work was poor, asked Siebrick if this was true. "No", was the answer, "it is something that happened at one of the Union meetings". Moran, while on the picket line, remarked to Strickland, the chief inspector, that the strike would soon be over. "Well, you'll never get back anyhow," replied Strickland.

It seems clear from the evidence that the men in question were discriminated against in favor of new men and that the reason for the discrimination was union activity. Dennison's own explanation of why they were not rehired in effect supports the view that there was discrimination. Dennison insists that he never agreed that he would take back the men without discrimination. When asked on cross-examination why he took new men rather than the strikers, he replied, "I did not tell them I would employ them exclusively (i. e. the strikers) before anyone else". That they were discriminated

against for union activity is the only explanation consistent with the facts. For example, Ormsbee, the Union spokesman, had been employed for eight years by the respondent. He had done service, installation, and inspection work, sometimes in the capacity of foreman. No claim that he was inefficient was made prior to or at the hearing. Derwechter, a member of the Union's executive committee, had a similar record of employment. When these men applied for reinstatement their applications were not handled in due course by the department heads directly familiar with the men's merits and with their own employment needs. The applications were sent to the office of Dennison and possibly from there to a lawyer's office, to persons who would be in no position to pass on the applicant's merit. After September 18th when the Union presented its contract, the respondent showed itself in its formal dealings with the men and by the random remarks of its officers and foremen to be strongly and uncompromisingly opposed to the Union.

These deviations from normal employment procedure and these scattered remarks gain point and consistency when it is noted how large a proportion of the active Union leadership has been refused work. In the period between early July and October 8th, the day of the strike settlement, the Union sent five committees to deal with the respondent. The size and personnel of the committees varied. In all, 15 men served. They were: Ormsbee, Derwechter, Hölbert, Gardner, Yager, Mandel, Aparadisso, Zuzziana, Alexander, Schultheis, Zwicker, Myers, Moran, Lennon and Roman. Yager deserted the Union cause returning to work during the strike. Holbert did not apply for employment. Of the remaining 13, eight have not been employed. These eight include the three most prominent Union members, Ormsbee, Gardner and Derwechter. These three, together with Yager, composed the first Union committee ever to meet the management. Either Ormsbee or Gardner was the spokesman for all subsequent committees. Ormsbee and Derwechter were members of the regular Union executive committee, Ormsbee being the Chairman of that committee and also of the strike committee. Moran, another Union member not reemployed, was the sergeant-at-arms for the Union. Out of about 60 men applying for reemployment on October 8th, about 40, or 66⅔%, have been successful. Out of 13 Union committee members eight (including the three most prominent), or about 60%, have failed of reemployment. Furthermore, a number of these had been employed by the respondent for many years, Ormsbee and Derwechter each for eight years, and Gardner for three years. Employees of their experience would normally have been reinstated before others. In this fact: the disproportionate number of committee men and prominent Union leaders who were not rein-

stated, we perceive more than the operation of mere chance; we find a studied plan by respondent to eliminate the Union leaders from its staff.

We find that respondent has discriminated with respect to hire and tenure of employment against the persons named in the complaint as amended, except Walter Doyle (there is no proof that Doyle applied for reemployment), for the purpose of discouraging membership in the Union, and that by such acts, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights of self-organization guaranteed in Section 7 of the Act.

5. *Effect of unfair labor practices upon commerce.* We find that these acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof. In support of our conclusion that these acts do affect commerce, we cite the following authorities: *Duplex v. Deering*, 254 U. S. 443; *Aeolian Co. v. Fisher*, 35 F. (2d) 34; 40 F. (2d) 189. The sale and installation of the products are intimately related to and connected with their manufacture and transportation. The respondent is engaged in every operation necessary to the placing of these boilers in the houses of the consumer from the manufacture in Detroit, Michigan, to the installation in Long Island, New York. Sale and installation are just as essential in the conduct of its far-flung business as is manufacturing and transportation. A stoppage in any one of these operations affects the others. Under like circumstances the courts have held, in the cases above cited, that a labor boycott arising in connection with installation is a restraint of interstate commerce and so, a violation of the Sherman Anti-Trust Act. We believe that those cases support our finding that the unfair labor practices as found affect interstate commerce.

THE REMEDY

There are 18 men who have suffered discrimination. These men are not at work now because of two reasons. First, the respondent's wrongful refusal to bargain caused them to strike. During that strike men were employed in their place. Second, after the settlement of the strike, the respondent has further filled with new men jobs for which the men in question were available. These men or some part of them are thus out of work as a consequence of the respondent's wrongful act in refusing to bargain and as a result, further, of its discrimination in reinstating the strikers. If the damage occasioned by respondent's failure to bargain is to be repaired, if the discrimination is to cease, and if the resulting interference with the organizational activity of the employees is to be removed, the men who have thus been illegally supplanted must be returned to work, even though

men hired since September 24th (apart from strikers) should have to be displaced. A number of the men to be reinstated have performed more than one type of work for the respondent. Ormsbee, for example, has done installation, service work, and inspection. Ormsbee's availability is, apparently, not limited to the last job he held. Insofar, therefore, as it was customary to regard a man as available for more than one job that fact shall be taken into consideration in determining whether a new man is now filling a job for which an old man is available. Assuming that on this basis there are fewer jobs than there are available men, the men will receive preference according to their seniority, except that a man who was actually employed at the time of the strike in the job to be filled shall be preferred to one who was not so employed. It is possible that the respondent does not observe seniority rules in its business. We believe, however, that the form of the relief is necessary to accomplish the policies of the Act. Certain of the 18 men in question were more prominent in union activity than others. If we permit the respondent to choose among them, discrimination, though within a narrower range, may be continued. Seniority is *prima facie* a relevant criterion of fitness so that, as at present advised, we believe the application of that rule would operate fairly. Those of the 18 men who cannot be offered jobs should be placed on a preferred list to await vacancies as they arise, and to be employed according to the seniority rule here laid down.

On September 24th, when the respondent refused to bargain with the Union, almost all of the employees were members of the Union. There is nothing in the record to indicate that that is not still the case, unless it be that the tactics of respondent have dissuaded a number from being active in Union affairs. Therefore, we order the respondent to bargain with the Union, should the Union seek to bargain with respondent.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following conclusions of law:

1. The employees in the installation, inspection, service, store-room, and garage departments at the Long Island City Branch of the respondent, except the supervisory and clerical staff, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

2. The Union is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

3. By virtue of Section 9 (a) of the Act, the Union, having been designated as their representative by a majority of the respondent's employees in an appropriate unit, has been, at all times since early

July, 1935, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

4. By its refusal to bargain collectively with the Union as the representative of its employees, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. By its refusal to employ W. Moran, J. Kohut, B. Mulcahy, H. Schultheis, A. Bero, J. Derwechter, E. Ormsbee, E. Ryan, John Roman, Dan Gardner, C. Lennon, I. Zwicker, J. Kavanaugh, E. Korn, J. Schwartz, P. Theiss, T. O'Reilly, and P. Burns in order to discourage membership in the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

6. By interfering with and restraining its employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid and protection as 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, subdivision (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the 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, Timken Silent Automatic Company:

1. Cease and desist from in any manner interfering with, restraining or coercing their 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, as guaranteed in Section 7 of the National Labor Relations Act.

2. Cease and desist from discouraging membership in the Oil Burner Mechanics Association, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. Cease and desist from refusing to bargain collectively with Oil Burner Mechanics Association as the exclusive representative of the employees in the installation, inspection, service, storeroom, and garage departments at the Long Island City Branch of the respond-

ent in respect to rates of pay, wages, hours of employment and other conditions of employment.

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

(a) Upon request, bargain collectively with Oil Burner Mechanics Association as the exclusive representative of the employees in the installation, inspection, service, storeroom, and garage departments at the Long Island City Branch of the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) To the extent that work for which the following are available is now performed by persons employed since September 24, 1935, apart from strikers, offer employment to the following named persons, on the basis of seniority as set forth in this decision: W. Moran, J. Kohut, B. Mulcahy, H. Schultheis, A. Bero, J. Derwechter, E. Ormsbee, E. Ryan, John Roman, Dan Gardner, C. Lennon, I. Zwicker, J. Kavanaugh, E. Korn, J. Schwartz, P. Theiss, T. O'Reilly, and P. Burns; place those for whom employment is not available on a preferred list to be offered employment as it arises.

(c) Make whole such of those persons named in paragraph (b) above who receive employment, for any loss of pay they have suffered by reason of respondent's refusal to employ them, by payment to each of them, respectively, of a sum of money equal to that which each would have earned had he been employed in lieu of the person who has worked in his place (except that he shall not receive anything for the period between September 24, 1935 and October 8, 1935), less the amount which each has earned during such period.