

In the Matter of S. L. ALLEN & COMPANY, INC., A CORPORATION and
FEDERAL LABOR UNION LOCAL NO. 18526

Case No. C-60.—Decided May 13, 1936

Farm Implement and Machinery Industry—Sted Industry—Strike—Lockout—Employee Status: during strike; during lockout—*Interference, Restraint or Coercion:* during strike; soliciting individual strikers to cease striking—*Strike-Breakers:* employed—*Unit Appropriate for Collective Bargaining:* history of collective bargaining relations; production employees—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* employer's duty, as affected by strike; negotiation in good faith; meeting with representatives, but with no intention of bargaining in good faith; reasonable effort; counter proposals—refusal to meet representatives; refusal to negotiate with representatives—*Reinstatement Ordered, Strikers:* strike provoked by employer's law violation; displacement of employees hired during strike; preferential list ordered, including.

Mr. Gerhard P. Van Arkel for the Board.

Brown & Williams, by *Mr. Ira Jewell Williams, Jr.*, of Philadelphia, Pa., for respondent.

Mr. Lewis G. Hines, of Philadelphia, Pa., for American Federation of Labor.

Hilda Droshnicop, of counsel to the Board.

DECISION

STATEMENT OF CASE

On February 3, 1936, Federal Labor Union Local No. 18526, hereinafter referred to as the union, filed with the Regional Director for the Fourth Region a charge that S. L. Allen & Company, Inc., of Philadelphia, Pennsylvania, had engaged in unfair labor practices, forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On February 26, 1936, the Board issued a complaint against the S. L. Allen & Company, Inc., hereinafter referred to as respondent, the complaint being signed by the Regional Director for the Fourth Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act.

In respect to the unfair labor practices the complaint alleged in substance that respondent, by its officers and agents on January 27, 1936 and thereafter, attempted to dissuade its employees at the Philadelphia plant from continuing their membership in the union, and that on January 13, 1936 and thereafter it refused to bargain collectively with the union in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The complaint and accompanying notice of hearing were served on respondent and the union in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1.

In its answer, filed March 4, 1936, respondent denied the jurisdiction of the Board on constitutional grounds, and challenged the complaint on the ground that it contained no copy of the charge. In respect to the unfair labor practices it alleged that respondent had neither solicited nor intimidated its employees to discontinue membership in any union; that respondent conferred with the union's representatives as late as January 20, 1936; and that no agreement was then possible because the union's demands exceeded what respondent was willing to concede. It alleged further that on February 1, 1936 respondent had received a letter from the union requesting a further meeting, but that since said letter contained no further concession on the part of the men and no suggestion that any further concessions would be made, respondent had replied that further negotiations would be useless. The answer contained also the allegation that respondent is willing at any time until further notice to receive and consider carefully any written proposal from the duly authorized representatives of its former employees, but that it is not under any obligation to act, and reserves its right at any time to decline to deal with any person or persons with whom it does not wish to deal.

By order of the Board, dated March 5, 1936, the proceeding was transferred to and continued before the Board in accordance with Article V, Section 35 of National Labor Relations Board Rules and Regulations—Series 1. In the same order Robert M. Gates was designated as Trial Examiner to conduct the hearing.

Pursuant to the notice, a hearing was held at Philadelphia, Pennsylvania, on March 9, 10 and 11, 1936 before the Trial Examiner, and evidence was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

At the hearing respondent renewed its constitutional objections to the jurisdiction of the Board. At the end of the hearing respondent moved to dismiss the complaint on the same constitutional grounds and also on the ground that the evidence did not support the allegations of the complaint. The Trial Examiner reserved decision on these motions. Both motions are hereby denied.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY

Respondent, S. L. Allen & Company, Inc., is a Pennsylvania corporation, having its principal plant which is the scene of the present dispute, and place of business in the City of Philadelphia, Pennsylvania. Respondent operates another factory in Madison, Ohio. Respondent is engaged in the production and sale of sleds and farm implements. Sixty per cent of its products are agricultural implements and 40 per cent are snow sleds. It is one of the largest manufacturers of snow sleds in the United States.

Respondent has approximately 225 employees in the Philadelphia plant. About 160 or 165 of these are production workers, the rest comprising the foremen, office force, engineering department, salesmen and officers.

The principal materials used by respondent in the manufacture of its products are steel castings, both grey iron and malleable, wood parts, bolts and rivets. Respondent's answer admitted that 20 per cent of these materials were bought in states other than Pennsylvania. A substantial proportion of the wood parts for sleds and handles of agricultural implements are purchased in New York and Tennessee. Most of the bolts, nuts and rivets used in the assembly of various agricultural implements and sleds are imported from Connecticut.

Over 50 per cent of respondent's finished products are sold outside of Pennsylvania. Thus, in December 1935 and in January 1936, respondent made shipments to Alabama, Arkansas, Connecticut, District of Columbia, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New York, Ohio, Rhode Island, Virginia and Canada. Three trademarks, "Planet, Jr.," "Flexible Flyer" and "Airline Pilot" are registered by respondent for use in interstate and foreign commerce.

The chief methods of transportation used by respondent are freight and truck. Respondent has a railroad siding adjoining the delivery platforms on its property which connects with the Pennsylvania and Reading Railroads.

At least seven or eight salesmen travel throughout the country selling respondent's products. These sales are to jobbers all over the United States. Respondent advertises in periodicals having a national circulation such as "Farm Journal" and "Toys and Novelties."

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

II. APPROPRIATE UNIT AND THE UNION AS REPRESENTATIVE OF THE MAJORITY IN SUCH UNIT

Farm Implement Workers' Union, Federal Labor Union Local No. 18526 is a labor organization, affiliated with the American Federation of Labor. It was formed in the early fall of 1933 for the purpose of creating an agency for collective bargaining between respondent and its production workers. The union is composed exclusively of respondent's production workers.

The complaint alleges that the production workers of respondent at its Philadelphia plant constitute a unit appropriate for the purposes of collective bargaining. The record contains no denial of this allegation, nor does respondent assert that any other unit is the proper one. In dealing with them over a considerable period, respondent has recognized that its production workers comprise an appropriate classification.

We find that the production employees of respondent at its Philadelphia plant constitute a unit appropriate for the purposes of collective bargaining. Approximately 165 of respondent's 225 employees in the Philadelphia plant are production workers. At the time it was formed the union contained 125 or 130 of these production workers; in October, 1935, 145 or 150 of them were members; in the middle of January, 1936, when the present labor dispute began, the union had a membership of approximately 164. On March 11, 1936, the last day of the hearing in the instant case, four of the men had returned to work, leaving the union with a membership of 160. At no time during the strike has its membership fallen below that figure.

The union, on or about January 13, 1936 and at all times thereafter was the duly designated representative of the majority of the men in the production department of respondent's Philadelphia plant.

III. COLLECTIVE BARGAINING PRIOR TO THE STRIKE

In September, 1933, shortly after the organization of the union, all but 8 or 10 of the production men took part in a strike for higher wages, better hours, union recognition, a more equitable method of bargaining and a signed collective agreement with respondent. The plant did not operate during the two weeks' duration of the strike. On October 3, 1933, the men returned to work. The settlement was worked out through negotiations between respondent, the union officials, Mr. Kitley, a mediator representing the United States De-

partment of Labor, and Mr. Hines, a representative of the American Federation of Labor, who had been called in by the union. Respondent at that time consented to adjust wages, to recognize the union committee and to provide for collective bargaining. It was further agreed that a memorandum which was drawn up by the mediator would govern respondent's relations with the union for the duration of the National Industrial Recovery Act.

On May 27, 1935 the National Industrial Recovery Act was declared unconstitutional. August 5, 1935 respondent received a letter from Alexander J. Ross, and Thomas Davies, president and secretary of the union, respectively, enclosing a proposed memorandum of agreement to supplant the one which had expired, and requesting an opportunity to negotiate. Respondent failed to acknowledge or answer this letter. On August 17, 1935 the union again wrote to respondent, pointing out that its former request had been ignored, and asking an interview on August 21, 1935, at 10 o'clock.

On August 29 Mr. Scammell, Mr. Llewellyn, and Mr. Richie, president, treasurer, and superintendent, respectively, of respondent, met with the union negotiating committee which was composed of Mr. Rosshirt, Mr. Fields, Mr. Shepherd, Mr. Perpente and Mr. Ross. Scammell reminded the committee that he had asked them several months before to submit a revision of the labor rates on Firefly Sleds and pointed out that he had not received it. He also asserted that he had not had time to read the proposed union agreement. There followed a discussion of the projected contract in the course of which Scammell said that the provision for vacations was more than the company could afford, that he would never recognize the closed shop, and that the clause entitled, "Dismissal for Cause" was unacceptable. He rejected also the provision requiring him to dismiss any employee who failed to pay his union dues by the 15th of any month.

On September 6 the union committee again conferred with Scammell, Llewellyn and Richie. Scammell opened the meeting by reading the memorandum which had expired on May 27, 1935, and stated that respondent could not sign the new agreement because it contained a closed shop provision. There was then considerable discussion of wages. Scammell again refused to agree to vacations with pay, and to the clause providing that foremen were not to perform any of the work of the regular workmen. He reiterated his objections to the closed shop at some length. Scammell also expressed doubt that any other company reinstated and paid for time lost by them, men whom the union decided had been dismissed without cause.

Extensive cross-examination of Ross by respondent's counsel from complete minutes of these conferences failed to elicit evidence that

Scammell agreed to sign any provision of the proposed agreement or showed a disposition to consider seriously compromise on any clause which he found objectionable. The union's conferences with respondent in the latter part of August and in September thus proved fruitless.

Late in October, 1935, respondent discharged Ross, the president of the union. Efforts of the union committee to discuss the subject with respondent's officers were rebuffed. For three days Hines' office attempted to reach respondent's officials at the plant, and Scammell at his home, without success. The union then called a meeting to take a strike vote. Ross was thereupon reinstated.

This episode over, the union renewed its attempts to arrive at an agreement with respondent. On October 25, the union notified Hines that it needed his aid in negotiating with respondent. On October 28, respondent was asked by the union to fix a date for a meeting to which it could bring Hines. Respondent failed to answer this letter. Hines then wrote to respondent on November 4, 1935 requesting an appointment for the purpose of discussing the agreement. This letter was never answered.

Through the good offices of two conciliators, Mrs. Forrester of the United States Department of Labor, and Mr. Kutz of the Pennsylvania Department of Labor and Industry, respondent was persuaded to meet again with the union committee on December 2. Mrs. Forrester, Kutz, Hines, Scammell, Llewellyn, and the union committee were at this meeting. On December 9 Kutz, Mrs. Forrester, Scammell, Llewellyn, Richie, and the union committee met again. At the December 16th meeting the same persons were present, with the exception of Mrs. Forrester. This group and Hines were present on January 3, at the last meeting at which the proposed contract was considered.

At the December 2 conference the proposed agreement was discussed paragraph by paragraph. Scammell continued to find insuperable objections to provision after provision. Kutz suggested at the December 9 meeting that respondent present alternatives to the proposals it had rejected. Scammell replied that respondent had never consented to enter into any agreement, that no signed agreement was necessary, and that comparison of respondent's labor standards with those of other plants in the industry would demonstrate respondent's superior treatment of its employees. Discussion of the contract continued, however, Scammell refusing to make any concessions in regard to clause after clause. To a request for time and a half payment for overtime, Scammell replied that since the depression appeared to be on the wane, he might consider time and a third.

At the December 16 meeting Scammell reversed himself on his previous statement concerning time and a third for overtime. Respondent's officers continued to find nothing in the agreement to which they could accede. The union pointed out that it was impossible for it to demonstrate that wages at respondent's plant were lower than those paid by competitors because rival companies would not disclose their wage scales. Scammell countered with the statement that of course such figures alone would convince him because only they would be comparable to his own expenses. Kutz then suggested that Dr. George Taylor of the University of Pennsylvania arbitrate the union's disagreements with respondent. Scammell definitely rejected this suggestion.

Scammell exhibited no greater disposition to come to terms at the January 3 conference. He rejected the arbitration clause and the overtime clause. When asked what was wrong with the latter provision, Scammell replied that nothing was wrong with it except that he would not agree to it. He added that there was not enough work and time and a half overtime pay was absolutely out of the question.

After further discussion, which brought the conferees to the end of the proposed agreement, Scammell suggested that Kutz embody the result of the foregoing meetings in a new memorandum as a basis for further discussion. His parting words as Kutz, Hines and the union committee were going out the door were, "You can draw up this memorandum of agreement, but I haven't signed it yet."

Ross testified that throughout the extended conferences in which he took part, it was apparent that Scammell went through the motions of bargaining with no intention of seriously attempting to reconcile the differences between respondent and the union. Subsequent events confirmed Ross' inference that respondent's participation in these conferences did not connote a *bona fide* acceptance of the principle of collective bargaining.

IV. THE UNFAIR LABOR PRACTICES

On the morning of Thursday, January 9, Ross and Rosshirt were summoned to a special meeting with Richie, Cooper, Ross' foreman, and Kelly, foreman of the hammer shop. Richie opened the meeting with the words, "We have called you in to tell you we are putting on a night shift." 20 or 25 men were to be put on a 3:45 p. m.-12:45 a. m. night shift, and certain day men were to report to work at 7 a. m. instead of at 8 a. m. Ross protested against the suddenness of the announcement and said that this information came as a surprise, since Scammell had told the committee that there was so little work that even overtime would be unnecessary. He stated, however, that the question would be considered at the union meeting scheduled for the following night, Friday, January 10. Richie rejoined that that

would be too late, an answer must be given that very day, and a meeting should be held immediately in the locker room. At the 12 o'clock lunch hour the men concerned, from the hammer shop, the machine shop, the maintenance men and the steel grinders, discussed the question of the night shift. They decided that since night shift work necessarily increased their cost of living, and would involve the use of inexperienced helpers, that those affected should receive an increase in piece-work payments of 10 per cent. With 25 men on the night shift about \$66 would be added to respondent's weekly payroll.

That afternoon Ross and Rosshirt reported that the men requested a 10 per cent increase in wages for those going on the night shift. The committee stated explicitly, however, that they would be willing to compromise on less than a 10 per cent increase if respondent demonstrated its good faith by making some concession. Rosshirt and Ross suggested that a 6 per cent raise might be satisfactory. The union also offered to submit the question to arbitration. Richie replied that he had no authority to grant the raise in wages, but would communicate with Scammell. Ross requested that Richie notify him of Scammell's answer. This was not done.

Friday, January 10, at 4:30, without further consultation with the committee, Richie posted a notice on the bulletin board stating that beginning Monday, January 13, a night shift would be instituted; that the hours of some of the day shift men would be 7 a. m. to 3:45 p. m. instead of 8 a. m. to 4:45 p. m. and that those affected by the change of hours would be notified by their respective foremen. Ross immediately went to Richie and asked if this night shift was being forced on the men. Richie denied that force was intended but repeated that the night shift was going on as scheduled. Ross then requested an interview with Scammell, who was in the plant that day. In their interview with Scammell later in the afternoon of the same day Ross and Rosshirt again indicated that they would accept less than a 10 per cent increase and asked Scammell if the night shift was to be forced on the men. Scammell replied that the night shift was necessary because the hammer shop had fallen behind in the production of cultivator wheels, etc. and that he would pay no higher rates for the night shift because a dozen or more other firms in Philadelphia did not. He concluded with the statement, "I am going to put a night shift on . . . You are going to like it. The union is not dictating terms to me." When Ross rejoined, "Well, if that is the way of it, no night shift is going on," Scammell returned with, "There is a night shift going on."

At the union meeting on Friday night it was decided that the men would all report for work at the usual time and that the committee would continue negotiations with respondent for a 10 per cent increase for the night men.

That the union intended to negotiate the question and had not decided to strike is borne out by the fact that on Saturday morning, January 11, the shop committee visited Hines and requested his help in bargaining with respondent's officers. Hines made repeated efforts to contact respondent's officials on Saturday, but none of them could be reached.

When the men reported for work at 8 o'clock on Monday morning, about 25 employees who had been instructed to appear at 7 o'clock instead of at the regular 8 o'clock hour were refused admission to the plant. Ross sought out Richie immediately and asked whether these men were locked out. Richie replied, "No, these men are not locked out, but until they can report for work at the time we want them to they need not report at all." Ross asked Richie to permit the men to continue work and to discuss the question of the night shift rationally. Richie rejoined with a categorical "No." To Ross' request that he be permitted to have the day off in order to be free to negotiate the dispute, Richie said, "See your foreman." Cooper, Ross' foreman, refused to give him leave, and Ross was told that he would be discharged if he left his work that day. He was not even given an opportunity to telephone to Hines.

At two-thirty on Monday afternoon, January 13th, Richie and Llewellyn called a conference with Shepherd, Perpente, Fields and Ross of the shop committee. Ross pointed out the urgent necessity of adjusting the dispute at once because of the unrest caused in the plant by the lockout of the men. Llewellyn refused to consider any concessions to the union's demands, but said that if the second shift was not put in that it would be necessary to farm out some of the work and that it would probably not come back. Perpente then asked whether it was not worth the 10 per cent. Llewellyn replied that the work to be done was not "competitive stuff" meaning, presumably, that this was a special situation. The committee then renewed its offer to compromise on the 10 per cent demand and again suggested that the question be submitted to arbitration. Llewellyn closed the conference with the statement, "Well, I don't think you can adjust it now because you know the type of man Mr. Scammell is. It would be fruitless to try and adjust it." Ross then said, "Well, Mr. Llewellyn, I am very sorry to tell you that under the circumstances the men are agitating on the inside on behalf of the men on the outside, and if there is no settlement before three o'clock, we have the full sanction from the American Federation of Labor to walk out in sympathy." Llewellyn then said, "Well, if you can take it we can." At three o'clock on Monday afternoon, January 13, the remaining production men in the plant, with the exception of two non-union workers, struck.

On January 14 Hines came to the plant with the union committee and requested a meeting with respondent's officers. He was asked to come upstairs alone. Later the committee joined Hines in a conference with Llewellyn and Richie. Hines stated that respondent's refusal to admit to work the 25 men who reported at 8 o'clock instead of at 7 o'clock was a lockout and that a satisfactory settlement would be expedited by a return to the old schedule pending negotiations on the night shift wage question. Rosshirt challenged Llewellyn's statement that the increase in compensation was impossible because of competitive conditions by pointing out that if the night shift comprised 20 men the extra pay would add only \$2.50 a month for each of the 20 employees to respondent's payroll. Llewellyn then adverted to the fact that the stockholders had not received dividends for seven years. To the committee's remark that there had been no night shift before, he answered that times were not what they had been. Llewellyn's concluding statements reflected respondent's determination to make this issue a sticking point; he said that he was himself without authority to alter the situation in any way, that Scammell had the last word and that Scammell's instructions were that the men would have to go on the night shift on his terms; that is, with no increase in pay.

After this meeting the union committee had difficulty in reaching respondent's officers. On Hines' suggestion, Mrs. Forrester and Mr. Kutz made several attempts to bring Scammell and the union committee together. These were unsuccessful. On January 17 however, the union committee and Mrs. Forrester, Mr. Hines, Llewellyn and Richie met, but respondent's position remained unmodified.

The subsequent efforts of Mrs. Forrester and Mr. Kutz to persuade Scammell to confer with the union representatives failed. On January 27 the strikers were notified by respondent that owing to their cessation of work without permission or excuse, they were no longer employees and should call for their tools not later than January 31, 1936. On the following day, and throughout that week, respondent's foremen made personal visits to several of the strikers' homes, saying that Scammell would never recognize the union, that the plant was going to resume operations, and urging the men to return while return was still possible.

On January 29 the union committee made another attempt to see Scammell. On their arrival at the plant with Mrs. Forrester and Mr. Kutz, they were told that Scammell would not see the committee. Through the mediators Scammell sent word that he would not meet with the committee, and would entertain no communication relating to the proposed contract, but that he would consider a written offer on the dispute which had directly caused the strike.

On the following day, January 30, the union dispatched to Scammell an answer signed by 112 men.

The letter asserted that the strikers still considered themselves employees and that they desired to discuss through their representatives the issues involved in the dispute. It concluded with a request that Scammell set a date for a conference or submit the whole question to arbitration. To this communication respondent replied in the following terms:

“Your letter dated January 30, 1936 was received this morning.

“Without commenting on the statements in the letter, some of which are inaccurate, we will say that it is clear that further negotiations would be useless.

“We have accordingly made other plans.”

The union then decided to make no further overtures until respondent evinced a disposition to meet it in good faith and to bargain.

Respondent's “other plans” consisted of a project to resume operation of the plant by hiring strike-breakers through the Metal Manufacturers' Association of Philadelphia. Police officers in the district of respondent's plant testified that up to this period the behavior of the strikers had been exemplary, and that it had been unnecessary to increase the normal police protection around respondent's factory. On Saturday, February 5, Llewellyn informed the police that respondent proposed to open the plant on the following Monday, and requested that more policemen be detailed to the district. On the same day Hines, who is a member of the Mayor's Labor Committee in Philadelphia, appealed to the Mayor to intervene personally. The Mayor telephoned Scammell and urged him to meet the union. Scammell unqualifiedly refused to do so. February 7 a large group of men were collected in front of the Metal Manufacturers' Association for transportation to respondent's plant. In a last effort to forestall an open breach between respondent and its employees, Hines telephoned Mr. Earl Sparks, secretary of the Metal Manufacturers' Association. Sparks' reply to Hines' opening remarks were, “We are going to put the union out of business.”

Respondent's relations with its strike-breakers follow a pattern which has become familiar in this type of case. The strike-breakers were hired through the Metal Manufacturers' Association rather than at the regular employment office maintained at respondent's plant. The men were largely imported from other cities; many were unaware that a strike was in progress at respondent's plant. A few had been told that they were to be sent to Baltimore, Maryland, and were taken to the Philadelphia plant against their will. It was testified at the hearing that two of the strike-breakers begged a police-

man to aid them to escape from the plant after they had been there for a few days. That most of the men were not ordinary workmen intending to live as normal citizens is evident from the fact that respondent made arrangements to house them in the plant. They in fact slept there for two nights, when the Board of Health evicted them because of the unsanitary conditions.

It is clear that respondent's officers were under no illusions as to the caliber of the bulk of the strike-breakers they had brought to the city and employed in their factory. Pursuant to request of the police, as the strike-breakers were delivered by the Metal Manufacturers' Association, Llewellyn submitted their names to have their criminal records searched. Two of the strike-breakers left the plant immediately when they discovered that this was being done. Frank Alvero, one of the strike-breakers, on February 21, while working at respondent's plant, without provocation viciously attacked one of the strikers with a knife, on a public railway train. Respondent was informed by the police on February 22 that Alvero and at least another of his new "employees" had criminal records. There is no evidence that either of these were discharged. On March 1 Alvero was held in \$1500 bail. Though respondent's officers were thus fully apprised of his dangerous character, Alvero was still given the run of the plant on March 9 at the time of the hearing, nearly three weeks after these events occurred.

Although respondent hired approximately 51 strike-breakers between the beginning of February and March 6, production continued to be seriously crippled. Respondent had a conference with Mrs. Forrester and Mr. Kutz on February 26, at which it reiterated its statement of January 29 that it would consider a written offer from the union looking to settlement of the strike. This Scammell followed with a somewhat cryptic letter to Ross on February 27, in which he stated that the loss of orders due to the dispute had cut down materially the number of employees necessary for operations, and that he regretted the plight of his older employees. (The average service of the strikers was about 20 years.) Ross told the mediators that the committee must meet with respondent's officers in order to negotiate; the mediators brought back the message that respondent would consider only a written proposition. On March 3, 1936, the union delivered to Mrs. Forrester a letter in answer to Scammell's verbal message, stating that the men on March 2 had authorized their representatives to confer with respondent's officials at any time suiting their convenience, for the purpose of negotiating terms of settlement permitting resumption of work and such other terms covering wages, hours and working conditions as were mutu-

ally desirable, to govern the relationship of the employees and respondent for the future. The letter concluded with the statement:

“To this end we wish to assure you and your respective departments through you, that we are ready to negotiate and mediate any differences that we may have with the Company and, if need be, are willing to arbitrate in order to compose any differences not able of adjustment through negotiations or mediation.”

Respondent's officers did not reply in writing to this communication. On the last day of the hearing, on March 11, 1936, respondent's treasurer, Mr. Llewellyn and Williams its counsel, had occasion to demonstrate its attitude. During a recess, Stanley W. Root, Regional Director for the Board, suggested that respondent's officers and the union committee meet around the table. Llewellyn and Williams declined, saying that they would receive an offer if the union would transmit it through Root, but that they would not meet with the representatives of the men until they were apprised of the contents of such an offer, and considered the offer a possible basis of agreement. Root returned from a conversation with the union representatives with suggestions and questions relating to the position which respondent would take under certain conditions. Llewellyn and Williams sent back word that this could not be considered a firm offer. Yet the union had many times presented its position; it had even offered alternative terms. All this was clear to respondent. Respondent had consistently refused during first the entire negotiations relating to the proposed contract and then in connection with the night shift to grant a single demand or suggest a single counter proposal; while asking the union to submit a written offer, it gave no indication that it had receded or would recede from this attitude in any way. It is obvious that under such circumstances there was, in the absence of oral discussion, no basis upon which the union could construct a written offer, short of complete capitulation. By refusing to meet with the union representatives, respondent made it impossible for them to explore with respondent the now existing situation,—much had changed since the last meeting—upon the basis of which exploration alone was it possible for the union to make an intelligent offer at the same time consonant with the union's needs and offering a possibility of acceptance by respondent.

Conclusions respecting unfair labor practices

The evidence indicates that by January 9, when it announced the night shift, respondent had determined to dispense even with the pretense of bargaining collectively with the union representatives. Thus, although respondent's officers were cognizant of the fact that

its production employees were already dissatisfied with the existing scale of wages and were depending upon further negotiations for adjustment of their basic compensation, Scammell failed to consult the committee in regard to a fundamental alteration in the time schedule, informally notified Ross of the change, refused to reconsider or to modify the decision in any manner, and disregarded the committee's plea that the status quo be maintained pending negotiations. To the committee's offers of compromise or arbitration respondent thus opposed a determination to discredit the union by initiating changes without its knowledge or consent. The indicia of good faith are notoriously elusive, but respondent's tactics after January 9 point definitely to a desire to demonstrate conclusively the union's impotence in influencing the management. That both parties regarded the outcome of this dispute as decisive of the question whether respondent would bargain collectively with the union is apparent from the whole tenor of the discussions after the issue was made explicit by respondent's announcement concerning the night shift on January 9.

Respondent contends that its numerous conferences with the union committee on the night shift issue both before and after the strike conclusively establish its compliance with the collective bargaining provisions of the Act. It justifies its subsequent refusal to meet with the union on the ground that negotiations had reached a deadlock and that there was no point in continuing the conferences until some possibility of agreement presented itself.

Respondent's position is based upon a misunderstanding of the import of the collective bargaining provision of the Act. To meet with the representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations under this Section. A construction of the collective bargaining provision which overlooked the requirement that a *bona fide* attempt to come to terms must be made, would substitute for non-recognition of the employees' representatives the incentive simply to hamstring the union with endless and profitless "negotiations." In the absence of an attempt to bargain in good faith on the employer's part, it is obvious that such "negotiations" can do nothing to prevent resort to industrial warfare where a dispute of this nature arises.

Respondent's contention that it was legally absolved from the necessity of meeting the strikers after the last conference in January, when the "deadlock" was reached, is scarcely tenable. We have found that the failure of negotiations before and after the strike was due to respondent's refusal to bargain and its determination to demonstrate to its employees that the collective bargaining machinery could be of no avail in securing concessions. There was thus not an impasse in

the negotiations but rather a refusal to bargain on respondent's part. Respondent's subsequent refusal to meet the committee because it would not accept respondent's terms was therefore merely another aspect of the same violation. It has been noted above that respondent had so narrowed the field that the only "offer" which it would consider a suitable basis for another conference was virtual capitulation by the union. Passing this point, however, it is relevant to state that even if respondent had bargained in good faith before and directly after the strike, and an impasse had been reached, nevertheless, the employer may not always attempt to confine the union's subsequent efforts to secure a settlement, to written offers which may be rejected or accepted without explanation. Interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process. Where in the course of the strike supervening events, such as the formal discharge of the strikers and the importation of strike-breakers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining. It is particularly significant that respondent refused to meet with the union after importing the strike breakers. It sought thus, to force the strikers back to work and to dispense completely with the machinery of collective bargaining.

We find that respondent refused to bargain collectively with the representatives of its employees, and that by such refusal respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.¹

V. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We found above that respondent's plant was closed for two weeks owing to the strike of September, 1933. As a result of the present strike respondent's factory shut down completely between January 14 and February 5. It has since only partially resumed operations. For a considerable period shipments to and from the plant ceased entirely; they are still far below normal. By its refusal to bargain collectively with Federal Labor Union Local No. 18526 respondent precipitated and prevented the settlement of the strike.

We therefore find that the aforesaid acts of respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

¹ The charge in this case does not specify an independent violation of Section 7 by virtue of respondent's attempts to persuade its employees to abandon the union; since this allegation of the complaint is unsupported by the charge, we make no finding on that allegation.

THE REMEDY

We have found that respondent's production workers struck on January 13, 1936 owing to respondent's refusal to bargain collectively with its employees, and that the strike is still in progress owing to respondent's continued refusal to bargain with the union. Since the strike was caused by respondent's unfair labor practice, respondent is under a duty to reinstate the strikers to their former positions and to restore the status quo which existed prior to its commission of this unlawful act. Respondent must accordingly offer to respondent's employees who went on strike on January 13, 1936 employment in their former positions on the basis of seniority, to the extent that work is available and is being performed by persons employed since January 13, 1936, apart from strikers. Persons employed since January 13, 1936 must be dismissed if that is necessary to arrive at this result. Those strikers for whom employment is not available must be placed on a preferred list to be offered employment on the basis of seniority as it arises.

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. Federal Labor Union Local No. 18526 is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The production employees of respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, Federal Labor Union Local No. 18526, having been designated as their representatives by a majority of the employees in an appropriate unit, was on January 13, 1936, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining.

4. Respondent, by refusing to bargain collectively with Federal Labor Union Local No. 18526 in respect to conditions of employment on January 13, 1936, and at all times thereafter, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

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

6. The unfair labor practices in which respondent has engaged and is engaging constitute unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

On the basis of the foregoing 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 respondent, S. L. Allen & Company, Incorporated, a corporation, and its officers and agents, shall:

1. Cease and desist from refusing to bargain collectively with Federal Labor Union Local No. 18526 as the exclusive representative of its employees engaged in production in respect to rates of pay, wages, hours of employment and other conditions of employment.

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

(a) Upon request, bargain collectively with Federal Labor Union Local No. 18526 as the exclusive representative of its employees engaged in production in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) To the extent that work is available and is being performed by persons employed since January 13, 1936, apart from strikers, within 10 days offer employment in their former positions on the basis of seniority to respondent's employees who went on strike on January 13, 1936, dismissing if necessary persons employed since January 13, 1936, and place those strikers for whom employment is not available on a preferred list to be offered employment on the basis of seniority as it arises.