

In the Matter of BROWN SHOE COMPANY, INC., A CORPORATION *and*
BOOT AND SHOE WORKERS' UNION, LOCAL No. 655

Case No. C-20.—Decided May 29, 1936

Shoe Industry—Interference, Restraint or Coercion: espionage; employment of labor spies and strike-breaking agency to destroy union; by civic clubs and organizations; by public officials, business men and towns-people; initiating and fostering anti-unionism among public officials and towns-people; threat to transfer plant; intimidation; vilifying union and its leaders and organizers; discrediting union leaders; circulating anti-union petition in plant; terroristic activities against union members, leaders and organizers; during strike—*Strike:* intervention by police—*Discrimination:* non-reinstatement following temporary lay-off—*Reinstatement Ordered, Non-Strikers—Back Pay:* awarded—*Reinstatement Ordered, Strikers:* strike provoked by employer's law violation; displacement of employees hired during strike; preferential list ordered, including.

Mr. David C. Shaw for the Board.

Nagel, Kirby, Orrick & Shepley, by *Mr. Ethan A. H. Shepley*, of St. Louis, Mo., for respondent.

Mr. A. L. Schweitzer, of St. Louis, Mo., for the Union.

Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

STATEMENT OF CASE

Charges having been duly filed by Boot and Shoe Workers' Union, Local No. 655, of Salem, Illinois, hereinafter termed the union, the National Labor Relations Board, by its agent, the Regional Director for the Fourteenth Region, issued and duly served its complaint dated October 30, 1935, against Brown Shoe Company, Inc., St. Louis, Missouri, a corporation, respondent herein, alleging that the respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter termed the Act. The complaint, in brief, alleges:

(1) That the respondent, a New York corporation, with its principal office and place of business in St. Louis, Missouri, is engaged, principally, in the manufacture, production, sale and distribution of shoes in interstate and foreign commerce, and, in the course of such

operations, operates a plant for the assembly, manufacture and production of shoes in the town of Salem, Illinois, hereinafter termed the Salem plant.

(2) That the respondent, on or about September 24, 25 and 27, 1935, laid off and thereafter refused to reinstate Reba Powell, Dorothy Harvey, Fonda Wheat and Muriel Vanatta, shoe workers employed at the Salem plant, because they had joined and assisted the union.

(3) That the respondent, by statements, suggestions, implications and other conduct of its officers and agents, induced and urged certain citizens of the town of Salem, Illinois, to coerce, intimidate, interfere with and restrain the employees of the respondent at the Salem plant from joining, forming and assisting the union and from engaging in concerted activities for collective bargaining or other mutual aid or protection, and that such citizens have so coerced and restrained such employees by warnings, threats, acts of violence and other conduct.

(4) That the respondent, by its officers and agents, has attempted to discourage membership in the union, by threatening to close the Salem plant and to move it elsewhere if the employees in the plant continued in their union activities, by exhibiting open hostility to the union and its activities, by threatening employees with discharge or discrimination for joining the union, and by other forms of intimidation, discrimination and coercion.

The respondent's answer admits its corporate organization and the nature of its business as alleged in the complaint, but denies that its manufacturing operations at the Salem plant constitute interstate commerce; the answer admits the lay-offs of the four employees alleged in the complaint, but denies that they were refused reinstatement or that they were laid off because they had joined or assisted the union. The answer denies each and every other allegation in the complaint.

Pursuant to notice thereof, Alphonse G. Eberle, duly designated by the Board as Trial Examiner, conducted a hearing commencing November 13, 1935, at St. Louis, Missouri. The respondent appeared by its counsel, Ethan A. H. Shepley. The union appeared by A. L. Schweitzer. The Board was represented by its Regional Attorney. Full opportunity to be heard, to cross-examine witnesses, and to produce evidence was afforded to all parties.

The respondent's motion to dismiss the complaint, based on allegations of the unconstitutionality of the Act, and its motion to strike certain paragraphs of the complaint (both motions combined with its answer), were denied by the Trial Examiner. The respondent's motion to dismiss the complaint, made during the hearing, for want of evidence to sustain the allegations concerning the Board's juris-

diction under the Act and to sustain the allegations of unfair labor practices, was also denied by the Trial Examiner. The allegations of the complaint concerning Fonda Wheat were dismissed on motion by counsel for the Board. These rulings are affirmed by the Board.

Acting pursuant to Article II, Section 35 and 36 (a) of National Labor Relations Board Rules and Regulations—Series 1, the Board ordered the proceeding to be transferred and continued before it and ordered the Trial Examiner to file an intermediate report with the Board. Upon the record made in the proceeding, the stenographic report of the hearing and all evidence, oral and documentary, offered and received at the hearing, the Trial Examiner filed an intermediate report with the Board, finding and concluding that the evidence is insufficient to sustain the allegations of the complaint that the lay-offs of Reba Powell, Dorothy Harvey and Muriel Vanatta were discriminatory because of union affiliation or activity; that although there is positive testimony of anti-union conduct by certain citizens of Salem in total disregard of the constitutional rights of the respondent's employees, the evidence does not show any connection, by means of authorization or agency, between the respondent and the conduct of the citizens of Salem; and that the evidence does not support the allegations of interference, intimidation and coercion. The Trial Examiner recommended, therefore, that the complaint be dismissed. Evidence of intimidating conduct and statements by various citizens of Salem was admitted at the hearing under a ruling that it would be stricken and disregarded by the Trial Examiner if no connection between the citizens and the respondent were shown. The intermediate report accordingly recommends and rules that such testimony be stricken and disregarded. In view of his findings and recommendations as to the unfair labor practices, the Trial Examiner made no findings as to the nature of the respondent's business operations in relation to interstate commerce. The union filed exceptions to the intermediate report, contending that the Trial Examiner erred in his findings and conclusions and that the evidence at the hearing warranted findings that the respondent had engaged in unfair labor practices as alleged in the complaint.

After a review of the record in this proceeding, the Board finds material findings and conclusions of the Trial Examiner to be erroneous and contrary to the evidence. The Board finds the evidence recommended by the Trial Examiner to be stricken to be relevant and material to the issues in the proceeding and the Trial Examiner's recommendation in that respect is rejected and his ruling is reversed. The Board finds no prejudicial error in any of the Trial Examiner's other rulings on objections and exceptions to the intro-

duction of testimony and motions to strike testimony; if anything, we find many of his rulings sustaining the respondent's objections to the introduction of evidence to have been made upon the basis of a narrow view of the scope of the allegations in the complaint, and thus distinctly favorable and advantageous to the respondent. In view of these conclusions, this decision does not discuss in detail the union's exceptions to the intermediate report.

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

FINDINGS OF FACT

A. THE RESPONDENT AND ITS BUSINESS

Generally

I. The respondent, Brown Shoe Company, Inc., originally organized in 1879 as a Missouri corporation, became a New York corporation in 1913, has its principal office and principal place of business in the City of St. Louis, Missouri, and is engaged in the manufacture, production, sale and distribution of a complete line of medium-priced men's, women's and children's shoes.

II. (a) The respondent is the third largest shoe manufacturing company in the United States. Its stock is listed on the New York and St. Louis stock exchanges. It owns and operates 14 shoe factories, one in St. Louis and 13 in small towns located in four states¹ within a short radius of St. Louis. The respondent also operates in St. Louis two general offices and warehouses, two other warehouses, a general supply plant, a plant for manufacturing paper boxes used for packing and shipping shoes, and a sole leather plant. Through its wholly owned subsidiary, the Moench Tanning Company, Inc., it operates two tanning plants in Gowanda, New York, one for sole leather and one for upper leather.

(b) Prior to about 1915, the greater part of the respondent's operations were carried on in St. Louis. As its business grew, competition and the consequent search for cheaper labor led the respondent to establish plants in small towns comparatively close to St. Louis, some of them in states other than Missouri. The movement to the small towns, in fact, began nearly ten years earlier. Beginning with

¹ The respondent's registration statement filed with the Securities and Exchange Commission under Section 210 of the Securities Exchange Act of 1934 (15 U. S. C. A., Section 78a *et seq.*), lists these factories (Exhibit B-3) as follows:

Brookfield, Missouri
Caruthersville, Missouri
Moberly, Missouri
Charleston, Illinois
Dixon, Illinois

Litchfield, Illinois
Mattoon, Illinois
Murphysboro, Illinois
Pittsfield, Illinois
Salem, Illinois

Sullivan, Illinois
Vincennes, Indiana
Union City, Tennessee

the respondent's Moberly plant in 1907, small-town plants of the respondent have been built with funds subscribed by representative citizens in each of these towns. The typical agreement between the respondent and these citizens provides for a fixed sum to be furnished by the citizens for the erection of the factory, for the respondent to expend a fixed minimum sum for labor in the operation of the plant during a specified period of years (usually ten years), and for reconveyance of the plant to the citizens in the event of the respondent's discontinuance of operation of the plant within the specified period, excepting plant shut-downs caused by calamities or trade or labor conditions (Exhibit B-16). With the expansion of the respondent's business after 1925, still more plants were located in small towns near St. Louis; in October 1935, five of the respondent's 13 small-town plants were still subject to the reconveyance clause (Exhibit B-3). It has been the respondent's policy to confine many of these plants to specialized types of shoes. Thus the Salem plant makes ladies' shoes; the Moberly, Missouri, plant, which had been making nail and welt shoes, was restricted to sewed shoes, and the nail shoes were moved to the Pittsfield, Illinois, plant.

(c) The respondent owns about 70 per cent of its machinery and leases 30 per cent, comprising its larger machines, from several shoe machinery manufacturers, chiefly the United Shoe Machinery Company. It is comparatively easy for the respondent to close any of its manufacturing plants and move it to another town. In addition to plants already owned by the respondent, plant sites are readily available—the respondent is constantly being solicited by groups of citizens, from small towns surrounding St. Louis, seeking the location of plants.

(d) The respondent's operations in all of its plants are directed from its principal offices in St. Louis. A central committee composed of its chief officers determines its operating policies, including its general labor policy. For over a year, until September 16, 1935, the respondent employed an industrial relations counselor to advise and direct its labor policy and labor relations. Two general superintendents divide the general supervision of the various plants. A traffic manager schedules the movement of supplies from St. Louis to the various plants, and of finished shoes from the plants to the warehouses in St. Louis.

(e) Approximately half of the sole leather and upper leather used in the respondent's operations is supplied by the tanneries of its subsidiary, the Moench Tanning Company, Gowanda, New York. The balance of its leather is purchased from tanneries in Pennsylvania, Delaware, Massachusetts, New York, Michigan, Wisconsin and Illinois. Other supplies used in the respondent's operations come from

various states of the United States. The leather and other supplies are shipped to the respondent's warehouses in St. Louis. Some of the upper leather is sorted there.

(f) The respondent cuts soles, builds heels and manufactures certain of the inks, dyes and stains, and boxes and cartons for its own products. Soles are rough shaped, counter boxes and box toes are made, wooden heels, laces, eyelets, dyes, inks and other shoe supplies are made and assembled in its warehouses and plants in St. Louis. These constitute partly finished parts of shoes sent to the other plants in Missouri and to the plants in other states for further processing into finished shoes.

(g) Supplies and materials essential for the construction and assembly of shoes in practically all the small-town plants of the respondent, as well as cartons and boxes in which the shoes are packed at the plants when completed, are loaded on trucks at its warehouses and plants in St. Louis, Missouri, and transported to its small-town factories, most of them in other states.² The trucks are sealed when loaded. A list of contents and instructions for the processing, cutting, construction and assembly of materials into finished shoes at the factories accompany shipments. The trucks consist of tractors, and trailers into which the supplies are packed. The trailer is transported to its destination, unhooked at the particular plant from the tractor, which is then attached to another trailer into which cartons and boxes of shoes, completed at the plant from materials and supplies previously received, had been packed. These are transported to the respondent's warehouses in St. Louis, for distribution to its customers throughout the United States. The respondent's traffic manager maintains a schedule of truck movements, based on production schedules. The trucks used in the respondent's interstate transportation of materials and completed shoes to and from its plants are owned by Ben Gutman, Inc., who characterizes himself as the "transportation division" of the respondent. The trucks bear the name of the respondent and of brands of its shoes. Gutman, Inc. is paid by the respondent on a mileage, time and service basis.

(h) The approximate aggregate production capacity of all of the respondent's plants is 18,000,000 pairs of shoes a year. For the fiscal year ending October 31, 1934, the respondent produced 13,700,000 pairs; during the six months following, it produced about 6,000,000 pairs, indicating a production of 12,000,000 pairs for the fiscal year 1935. The respondent's business for the fiscal year 1934 was approximately \$26,800,000; its operating costs were about \$25,260,000. In the six months following, sales totalled about \$12,332,960, and operat-

² There is testimony that some of the shipments between St. Louis and the Vincennes, Indiana plant are by rail. There is no evidence of the method of transportation between St. Louis and the Murphysboro, Illinois and Union City, Tennessee, plants.

ing costs \$11,663,258. The shoe factory labor cost of the respondent's products, in relation to the wholesale price, is approximately 25 to 27 per cent; materials cost about 60 per cent. The remaining 13 to 15 per cent represents administrative and other operating costs, and profits. The respondent's total employees number approximately 10,400; of these, 7,500 to 8,000 are shoe workers.

(i) The respondent operates sales offices in St. Louis, Missouri, and in Chicago, Illinois. It has six selling branches or divisions, the Brown Shoe Company,³ the Central Shoe Company, Blue Ribbon Shoemakers, Mound City Shoe Company, United Shoe Manufacturing Company and Forest Park Shoe Company. It employs 300 salesmen, "out on the road" all over the United States; some of them maintain offices. The respondent's shoes are sold in 15 to 20 thousand retail stores throughout the United States. Of these, the "Brown plan" stores buy and sell shoes made by the respondent exclusively in return for the use of the respondent's name and considerable credit.⁴ The respondent's shoes are sold under its own brands, such as Buster Brown, Brownbilt, Tread Straight, Blue Ribbon and Air-step, and under the private brands of retailers. Small portions of its product are sold to certain large consumers and still smaller portions are sold abroad. The respondent also purchases and resells to domestic retailers small amounts of rubbers, overshoes and slippers. The respondent, at various times, engages in nation-wide advertising campaigns in magazines. It has advertised over the radio. It advertises in the national trade journals of the industry (Exhibit B-6).

The Salem, Illinois, plant

III. (a) Among its small-town plants specified above, the respondent operates a plant at Salem, Illinois, for the assembly, manufacture and production of women's shoes. Here is produced, principally, the respondent's line of Air-step shoes, a patented advertised brand (Exhibit B-6).

(b) The Salem plant was built in 1925, after a group of representative citizens of the town had subscribed \$100,000 for the erection of the factory. The agreement between the citizen subscribers and the respondent (Exhibit B-16) provided that the respondent be furnished with a warranty deed to a factory site, and the amount subscribed in cash, and for the rebate of all taxes, license fees and water

³Not Brown Shoe Company, Inc., respondent herein.

⁴The respondent's Securities and Exchange Commission registration statement (see note 1) lists six retail stores as subsidiaries of the respondent, in process of liquidation or disposal. According to the testimony of E. R. McCarthy, the respondent's vice-president, these stores were taken over as security for unpaid accounts, to be disposed of in payment thereof.

rates for ten years. The respondent, in turn, agreed to expend for labor in the operation of the plant not less than \$1,250,000 during the first ten years. The respondent also agreed to reconvey the plant to the citizen subscribers in the event it discontinued its operations within the ten-year period, excepting shut-downs rendered necessary by casualties, calamities or causes beyond its control, including labor or trade conditions. An additional \$25,000 was subscribed later for the erection of an extension to the plant, under similar terms. The respondent fulfilled its payroll obligations under the agreement in about five years, and owns the Salem plant in fee.

(c) The Salem plant has a production capacity of approximately 4500 pairs of shoes a day. The plant averages a production of about 1,000,000 pairs a year. About 900 workers are employed in the plant. In the respondent's fiscal year 1934, ending October 31st, the annual payroll in the Salem plant totalled \$400,000; in the fiscal year 1935 it was \$500,000. There are two peak production seasons during the year, January, February and March in the spring season, and July, August and September, in the fall season. Production tapers off after the capacity months until approximately April 30th and October 30th, which mark the start of the two annual inventory periods.

(d) The great majority, about 95 per cent, of the materials and supplies⁵ used in the construction of shoes at the Salem plant are delivered there by truck, tractor and sealed trailer (see finding II (g) above), from the respondent's plants and warehouses in St. Louis, Missouri. No waybills and freight receipts are used. A list of contents, and instructions, made out in St. Louis, for the cutting of the leather and the construction of shoes from supplies so delivered, accompany the shipments. The frequency of shipments is determined by a weekly schedule sent to the Salem plant by the respondent's traffic manager in St. Louis. When it arrives, the trailer is parked in a dock or shed at the Salem plant; the seal is broken and the trailer is unloaded by employees of the respondent. The unloaded trailer is then filled with completed shoes, in boxes and cartons, each pair in a box, sealed and sent back to the respondent's warehouses in St. Louis, for distribution to its various customers throughout the United States. The respondent's shipping clerk checks incoming shipments of materials and checks and lists outgoing shipments of shoes.

(e) About 60 per cent of the shoes manufactured at the Salem plant are the respondent's line of Air-step shoes. The rest bear various brands, as ordered. Normally, about 90 per cent of the

⁵ The supplies and materials include upper leather, soles cut out in the rough, bases and blocks for leather heels, tops for wood heels, wood heel blanks, laces, eyelets, counter boxes, box toes, dyes, inks, thread, practically everything that goes into the making of a shoe, and cardboard boxes and cartons for packing completed shoes, each pair in a box.

shoes made at the Salem, Illinois plant are shipped to the respondent's warehouses in St. Louis, Missouri, as set forth above; about 10 per cent consist of "special orders" shipped directly to customers in various states. These proportions vary, the special orders sometimes amounting to about 25 per cent.

Interstate commerce

IV. (a) The course of the respondent's operations produces an unmistakable and continuous flow of large quantities of supplies and materials used in the production of shoes from states other than the State of Missouri to its plants and warehouses in St. Louis, Missouri, and from such plants and warehouses to its various small-town plants in states other than the State of Missouri; and of completed shoes from such small-town plants to its warehouses in St. Louis, Missouri, and thence throughout the United States and to foreign countries.

(b) The respondent not only receives its raw materials from many states throughout the nation and sells and distributes its product all over the United States, but its method of manufacturing is itself uniquely interstate in character. The respondent's production system necessitates and sets into motion a constant flow of goods between its base of supply and place of warehousing in St. Louis, Missouri, and its small-town factories in other states. The manufacture of most of its product is dependent upon this flow, and is dependent on a labor market in several states. The respondent's assembly lines virtually extend from St. Louis, Missouri, into three other states. The mass production of shoes, as practiced by the respondent—the very manufacturing process—necessarily, directly and substantially transcends state boundaries, so that of its own nature, and apart from the flow of raw materials to the respondent in St. Louis and of finished shoes from St. Louis throughout the nation, it constitutes interstate commerce.

(c) The continuous flow of goods in the course of the respondent's business is unmistakably marked in the respondent's operation of the Salem plant, where there is also a minor flow of materials to such plant and of finished shoes from such plant directly to purchasers in other states. The Salem plant assembly line is in effect an extension of the respondent's manufacturing process initiated in St. Louis. Supplies and materials, for the assembly of shoes, many of them partially processed there, flow in a continuous stream from St. Louis, Missouri, to Salem, Illinois, and there pass the benches of the respondent's 900 employees, where, by a continuous chain of specialized operations of processing and assembly, they are constructed into shoes, packed into individual boxes and cases, and then shipped, to

a minor extent, directly to customers throughout the United States, but principally back to the respondent's St. Louis warehouses, whence, together with shoes similarly processed in other states, they are distributed to such customers.

(d) The respondent's operations, generally, constitute a continuous flow of trade, traffic and commerce among the several States.

(e) The respondent's operations in the Salem plant constitute a continuous flow of trade, traffic and commerce among the several States.

B. THE UNION; THE JOINT SHOE COUNCIL

V. (a) Local No. 655 is a labor organization which is a local of the Boot and Shoe Workers Union, affiliated with the American Federation of Labor. The union is composed of shoe workers employed by the respondent in its Salem plant. It was organized in the fall of 1933, with a membership of about 66. By the winter and spring of 1934-1935 it had grown to a membership of about 800 to 850. In the summer of 1935, membership was about 600; at the time of the hearing it was about 150 to 200.

(b) In the spring of 1934, seven locals of the Boot and Shoe Workers Union, embracing workers in seven of the respondent's small-town plants, were organized into a Joint Shoe Council of the Brown Shoe Company plants, in order to present a "united front" to obtain a joint working agreement with the respondent for all such plants. The Joint Shoe Council included representatives of Local 655 of Salem, and of the union locals in Sullivan, Mattoon, Charleston, and Murphysboro, Illinois, Moberly, Missouri, and Vincennes, Indiana.

C. BACKGROUND OF RELATIONS BETWEEN THE RESPONDENT AND THE UNION

VI. (a) About May 1934, the union local in each of the seven plants of the respondent represented in the Joint Shoe Council, including Salem, called a strike upon receiving word from its representative that the respondent had failed to appear to negotiate a joint working agreement at a conference scheduled with the Joint Shoe Council in Mattoon, Illinois. The strike lasted about three weeks; all of the seven plants were shut down. The strike was settled after a conference in St. Louis between representatives of the locals and officers of the respondent, including its president, John A. Bush. The terms of the settlement, embodied in a memorandum signed by Bush (Exhibit B-27), provided: "No Union recognition. No discrimination against the Union. No immediate flat wage or piece price increase. All questions of piece prices, wages, working conditions and differences to be taken up in each individual factory for settlement by a Committee consisting of one employee from each

department and one other of their own choosing, the Factory Superintendent and the General Superintendent or his representatives.”⁶ A majority of the locals voted to accept the settlement terms and all seven plants resumed operations.

(b) Shortly after the strike settlement, Bush employed A. A. Ahner, owner and president of Industrial Investigators and Engineers, Inc., and of the A. A. Ahner Detective Agency, Inc., both organized about 1928, as “industrial relations counselor” for the respondent, at a salary of \$200 per month and expenses. His name and title of industrial relations counselor were printed on the respondent’s stationery (Exhibit B-26). Ahner’s employment in this capacity, according to his own testimony, began before the workers at the Moberly plant returned to work after the strike, and continued for over a year, until September 16, 1935. Harry Widman, associated with Ahner in his business, was later employed by the respondent, upon Ahner’s recommendation, as his assistant.⁷ Ahner, before organizing his own companies, was what is called by detectives an “operative”, and for five years St. Louis district manager, of the Railway Audit and Inspection Company, a nation-wide private detective agency engaged largely in “investigating” labor union activities, breaking strikes and furnishing guards and strike-breakers. He has had wide personal experience as a labor spy by joining labor unions to report their activities to employers. The ostensible corporate purposes of the Ahner Detective Agency are, broadly, according to Ahner, surveys, inspections, criminal and civil investigations; his “Industrial Investigators and Engineers” was also incorporated to investigate all cases relating to industrial relations and all phases of union endeavors and enterprises. Actually, Ahner has a reputation as a professional strike-breaker and union-wrecker, an employer of thugs, sluggers and armed guards in his strike-breaking activities, a planter of labor spies in factories and labor organizations, an organizer of “independent” or company unions on behalf of employers, has been implicated in “framing” union leaders, and is notorious in the St. Louis industrial area for successful terrorism in his chosen field. He operates in Missouri, Illinois, Iowa, Kansas, possibly Indiana, and “wherever we are sent.” The annual gross income of both his corporations is about \$100,000. Ahner’s activities have been widely publicized in articles in the St. Louis “Post Dispatch”, an important daily newspaper of wide circulation and na-

⁶The settlement memorandum bears no date, contains no provision for the duration of the arrangement and does not mention the respondent by its corporate name. It is entitled “Agreement with Committee of Employees from the following factories: Sullivan Ills., Salem Ills., Mattoon Ills., Charleston Ills., Murphysboro Ills., Vincennes Ind., Moberly Mo” It is signed, “J. A. Bush, Pres.”

⁷Ahner testified that he had destroyed all records of his association with the respondent, a procedure customary in his work.

tional reputation. His activities have been condemned by formal resolution of the Central Trades and Labor Unions of St. Louis. He is well known as the head of a "slugging outfit" and for interference, often by violence, with self-organization of workers and their concerted activities for collective bargaining and mutual aid and protection. Bush disclaimed any knowledge of Ahner's reputation at the time he hired Ahner. To him he was a "square shooter", employed at the suggestion of one of the respondent's officials, to deal with the respondent's labor problems, then increasing in volume. Bush telephoned only one of Ahner's several references, prior employers, to check on his honesty. Ekins, one of the respondent's directors and a general superintendent, admitted he had learned of Ahner's reputation after he was employed by Bush. The record leaves no doubt that the respondent knew the true nature of Ahner's profession and business at the time he was employed, and its relationship to labor unions. We cannot but conclude that his employment by the respondent immediately after the show of strength by the strike of the seven local unions, including Local No. 655, united in the Joint Shoe Council, was for the purpose of intimidating the union locals, interference with their growth and activity and, most likely, their destruction. Ahner's employment by the respondent continued for more than two months beyond the effective date of the Act, July 5, 1935, and during this time the Sullivan and Charleston locals finally disintegrated (see finding VI (g) below), and the disruption of Local No. 655 in Salem began (see findings VIII and IX below).

(c) After his employment, Ahner made a tour of every plant of the respondent "that had any union elements" and conducted open meetings there. He appeared in Salem, with Bush, in the summer of 1934. Employees in the Salem plant were assembled and Ahner was introduced as the respondent's "industrial relations counselor." In his speech, Ahner characterized himself as a friend of organized labor, a former union member; he advised the employees that "the matter of unionism was a voluntary one, . . . and that they were not forced to become a member because some agent of the union said so." Shortly after this speech, information of Ahner's reputation as a strike-breaker reached and was spread among employees in the Salem plant. Norris, the union organizer there, informed Finks, superintendent of the Salem plant, that Ahner was connected with detective agencies and was a strike-breaker, and requested that Ahner be eliminated from the union's dealings with the respondent in Salem. Finks consulted Ekins, who, after getting the approval of Bush, decided that labor grievances in Salem would be handled without Ahner. There is no evidence that after his speech, Ahner appeared

in Salem again in his official capacity. But the respondent's labor policy, the determination of important problems, was still made in St. Louis, where Ahner acted as its chief labor adviser.

(d) Ahner admitted in his testimony, that in his work for the respondent he employed investigators. He preferred the term "investigator" to "spy" in speaking of his operatives.

(e) Until several months before the hearing in this proceeding, the respondent employed George Strong as a spy in the Salem plant. He went about the plant with a candy wagon, ostensibly selling candy and soft drinks to the respondent's employees. Actually, his work was to report to Ekins what he had heard that would be likely "to cause trouble." He was paid for each report on the basis of its value to Ekins; the prices ranged from \$8.00 to \$100. Ekins admitted that Strong had reported on labor matters, for example, a project to organize an independent union in the Salem plant. Strong, before he operated the candy wagon, worked in the Salem plant stock room; he is now employed by the respondent in St. Louis, in one of the leather departments; in the course of his present work, he still visits various of the respondent's plants, including Salem. Ekins, to whom he reported on the Salem plant, testified, "I had to have some information. Mr. Ahner was entirely out of the Salem factory."

(f) In the summer of 1935 the Joint Shoe Council arranged a meeting with the respondent to present proposals for a joint agreement concerning wages, rates of pay and working conditions. On July 22, 1935, representatives of the several union locals in the Joint Council, including Salem, met at the Missouri Athletic Club in St. Louis, with Ekins and Kaut, the respondent's general superintendents, and Ahner, its industrial relations counselor. No business was transacted at the meeting because of the absence of Bush. Ahner made or secured a list of union representatives present, as evidence that the respondent had met with representatives of its employees. Five of the union representatives present at the meeting—Norris, union organizer in Salem, Gullion of Moberly, Hendrixson of Vincennes, Davidson of Mattoon, McGonigal of Brookfield—testified that sometime during the meeting Ahner stated that he had been hired to destroy the unions in the respondent's plants. Ahner, Ekins and Kaut, and Tyrell Lawyer, then president of the union local in Sullivan, denied that Ahner had made such a statement. On August 12th, the Joint Shoe Council again met representatives of the respondent, including Bush and Ahner. The proposals for a joint agreement were presented to Bush; but Bush refused to enter into any sort of agreement with the Joint Council. Neither at this meeting, nor at an intervening meeting of the Joint Shoe Council, was there any discussion of the anti-union statement claimed to have been made by

Ahner on July 22nd. None of the union representatives appears to have complained of it to Bush or to have discussed it at their own meetings.

(g) Early in August, 1935, the union local in the respondent's Sullivan, Illinois plant burned its charter at a union meeting. Early in September, the union local in the respondent's Charleston plant voted to send its charter back to the national offices in Boston (Exhibit B-7). The burning of the Sullivan charter took place under circumstances strongly persuasive of collusion between Tyrell Lawyer, the union local's president, and Ekins. The respondent closed its Sullivan plant, after Lawyer had presented a protest to the lay-off of an edge cutter, a union member, without seniority in his job, and had supported a strike on that issue. There is testimony indicating that the respondent's mimeographed notices announcing the closing of the factory, issued on July 30th, were dated July 29th, the very day of the strike. Lawyer testified he had advised Ekins to close the plant. Lawyer was in close touch with Ekins just before the charter was burned and telephoned him immediately after it was done. Although Bush discharged him from the Sullivan plant, through Ekins he was later employed by the respondent in St. Louis as a salesman, at a salary of \$25.00 a week while learning (Exhibits B-17 to 22). The Sullivan plant reopened after the charter was burned. Workers were required to register for reemployment at the court house with a citizens' committee (Exhibit B-15). Later, the Sullivan citizens' committee and the respondent's superintendents published a joint advertisement in the Sullivan "Progress" thanking the respondent's employees and others for their cooperation in the reopening of the plant (Exhibit B-14). The Charleston plant was closed at the time the union local there voted to return its charter. The Decatur, Illinois "Herald", on September 12, 1935, reported, "according to authoritative reports from the Brown Shoe Co., in St. Louis" that the Charleston plant would be reopened "as a result of the action", and that "as soon as the officials of the Brown Shoe Co. hear of the action in Charleston, machinery will be moved to Charleston from the factory in Salem. This action is expected because of the continued strength of the union in Salem." (Exhibit B-7; see finding IX (f) below.) Widman, the assistant of Ahner and his associate in his business, worked in the respondent's Sullivan plant as personnel man; he also worked in Charleston, where the vote to return the charter was preceded by the activities of a citizens' committee in securing the signatures of 500 shoe workers to an agreement to return to work under "any conditions stipulated by the Brown Shoe Company officials" (Exhibit B-7). Widman was practically in complete charge of labor relations in the Sullivan and Charleston

plants, and turned over to Ekins only such problems as he could not settle. He represented the respondent in its dealings with the union locals in those plants.

Relation of the Salem plant to the town

VII. The town of Salem, Illinois, has a population of about 4,400. The respondent's Salem plant plays a dominant role in the economic life of the town's inhabitants, workers, business men and public officials alike. The payroll of the Salem plant furnishes the town with its chief source of income, and is the basis of considerable credit extended to employees in the plant by the merchants. Moreover, news of labor relations in other of the respondent's small-town plants, including those in Charleston and Sullivan, Illinois, located near Salem, is rapidly transmitted to Salem and is a matter of common interest and concern to its inhabitants, employees of the respondent and the others. The merchants and public officials of Salem, many of them subscribers to the \$125,000 furnished the respondent for the erection of its factory (see finding III (b) above), no less than the workers, are deeply interested in keeping the Salem plant open and in operation. The town's inhabitants are, consequently, keenly sensitive to information which has a bearing or may have an effect on their interest in the continued operation of the Salem plant. The business men of Salem, in the summer and fall of 1935, were of the impression that it would be easy to move the Salem plant. It was known that the respondent's Charleston plant was closed at the time. There is uncontradicted testimony in the record that the Charleston plant had in the spring of 1935, made some of the Air-step line of shoes, the principal product of the Salem plant, and there is evidence indicating that the Charleston plant had experimented with this line of shoes and was available for their manufacture.

D. THE UNFAIR LABOR PRACTICES

Interference, restraint and coercion

VIII. The evidence in the record establishes that from early in August to about mid-October, 1935, the town of Salem was the scene of anxiety on the part of its business men, public officials, and supervisory and shoe worker employees of the respondent, lest the Salem plant be closed by the respondent, and of considerable activity by these elements against the union and its organizer, Norris,⁸ which amounted to a veritable anti-union drive. During that time rumors

⁸ Morris Norris, the union organizer, was employed in the Salem plant in 1933. He has since 1934, been the representative of Local No. 655 and of the national organization, the Boot and Shoe Workers' Union.

were persistent in the town and in the factory that the plant was to be closed and the work moved elsewhere. There is evidence of direct anti-union conduct during that period by business men and town officials; by supervisory employees of the respondent; by shoe worker employees of the respondent; and of conduct by business men and town officials which, while not directly anti-union, has an unmistakable anti-union significance in the light of the whole situation. These anti-union activities in Salem were aimed chiefly to discredit Norris in the town and to get the union members to emulate the union locals in Sullivan and Charleston and renounce the union charter (see finding VI (g) above).

IX. (a) The impelling motive for the anti-union conduct of the Salem inhabitants was the fear that the Salem plant would be closed by the respondent and the work moved elsewhere. The germ of that fear appears to have been first planted directly in Salem by the respondent early in August, 1935, about the time the union local in Sullivan had burned its charter after the closing of the Sullivan plant. At that time, Eugene R. McCarthy, the respondent's vice-president, actively engaged in the conduct of its affairs, visited Salem. While there he had conversation with Omar J. McMackin, mayor of the town, one of its leading merchants and a substantial subscriber to the funds for building the Salem plant, and with several other business men of the town. McMackin testified that there had been rumors of a strike in Salem and that the merchants of Salem were concerned that if there was a strike the plant might be moved somewhere else. In reply to the question, "Had you any direct information from any officials from the Brown Shoe Company, or any hint or inference that that may be done?", he testified, "Mr. McCarthy . . . said they wanted to work the factory at Salem, that they were making the Air-step shoe there, which was a very popular shoe, *and they wanted to know that they could have peaceful operation of the factory, otherwise it might be necessary to do something else about the Air-step shoe,* (italics supplied) that they couldn't afford to make contracts and sales and then have something happen there which would interfere with the output of the shoe and their sales."

(b) McCarthy's statement to McMackin and the others brought quick action by the Salem merchants. A few days after the conversation, at McMackin's suggestion, the majority of the leading business men of Salem held a meeting at the country club of the town. The business men called the meeting to seek a way of insuring industrial peace so the factory would remain in Salem; the current rumors concerning the possible closing of the Salem plant were discussed. A committee of five, including McMackin, was appointed to meet officials of the union to talk over the situation. After

a conference between this committee and union officials, including Denny, president of Local No. 655, the committee sent a letter dated August 8, 1935, to McCarthy (Exhibit R-5), informing him of the conference, expressing the realization of the union officials that a shut-down of the Salem plant would injure the town, requesting the respondent to deal fairly with the union at the then impending meeting of the respondent and the Joint Shoe Council on August 12th (see finding VI (f) above), and hoping that the meeting would result in a satisfactory agreement, "whereby the Salem plant may continue to operate." This letter was read by Denny at a union meeting on August 15th, and was approved on motion (Exhibit R-8 f).

(c) The August 15th union meeting was called for all 1935 union card holders. The announcement of the meeting, chalked on a sidewalk near the factory, bore the words "Strike Vote." When the members had assembled, the card holders whose dues were in arrears⁹ were, on a motion made by Arthur Seibman, later active against Norris and the union and characterized by union officials as an agitator, asked to leave. A motion to strike in support of the Sullivan local was then defeated by a vote of 250 to 6. Tyrrell Lawyer, president of the Sullivan union local, implicated in the burning of its charter and in collusion with the respondent in anti-union activities in Sullivan (see finding VI (g) above), had appeared before Local No. 655 at a meeting in Salem shortly before this, and explained the situation in Sullivan. Lawyer, in his testimony, denied that he made a plea for a sympathetic strike in Salem.

(d) On the evening of August 25th, Morris Norris, the union organizer, was decoyed from his home in Salem by a telephone call, and slugged—beaten on the head and kicked in the mouth. He reported the case to the local state's attorney. No official action resulted from his complaint. There is evidence in the record that officials of union locals in other of the respondent's small-town plants experienced violence or threats of violence in the summer of 1935. A mob of Charleston citizens, equipped with tar, watched all roads for the appearance in Charleston of Harold Davidson, union agent in Mattoon, on the night of September 11th. Earlier in the summer, members of the Joint Shoe Council, who had sponsored a meeting in Litchfield, Illinois, were run out of town by a citizens' committee; in fact, Ahner, at the meeting in the Missouri Athletic Club on July 22nd (see finding VI (f) above), twitted them about it. Gullion, union organizer in Moberly, testified that on September 9th he received, by mail, a paper bearing the names of Cox, Carlen, Gullion, McGonigal,

⁹ Under the union rules, failure to pay dues results in automatic suspension from active membership.

Davidson and Norris; lines were drawn through the names of Cox, Carlen, Davidson and Norris, union officials who had been beaten and slugged.

(e) Early in September, a number of copies of a document (Exhibit B-24) purporting to be a certificate by the circuit court clerk of Effingham County, Illinois, to the effect that Norris had been indicted there in 1932 for larceny and receiving stolen property, had pleaded guilty, and had been paroled and had paid his fine and had been released from parole, were notarized as true copies by T. N. Spencer, a notary public, employed in the offices of the Illinois Bond and Investment Company at Salem, of which B. E. Martin, a representative citizen of Salem, and a subscriber to the respondent's original building fund (see finding III (b) above), is president. Spencer notarized the copies from the Effingham court clerk's certificate; he testified he was handed the copies by a stenographer employed in his office, and that he gave the notarized copies to Charles McMackin, the son of Mayor McMackin of Salem. The notarized copies were distributed in Salem and in the plant, and there was talk in the town and among employees in the respondent's plant that Norris had been convicted of stealing chickens. Norris admitted in his testimony that he had pleaded guilty to a charge of petty larceny. There is no evidence as to who secured the certificate from the Effingham clerk. Ahner testified that investigation of criminal records of union leaders was part of his work.

(f) Early in September, Charles Howe, assistant superintendent in the Salem plant, called the attention of Denny, president of the union, to the article in the Decatur "Herald" of September 12, 1935 (see finding VI (g) above), and gave Denny a copy of the paper. Previously, on August 15th, the day of the strike vote (see finding IX (c) above), according to Denny, Howe had said to him, "I hear you're going to vote tonight to send your charter back"; and Howe had discussed with him the fact that no samples were being made for the Salem plant and had stated that the respondent's Charleston plant was experimenting with the line of shoes made in Salem with a view to transferring the work to Charleston. Howe denied Denny's testimony that he had intimated to Denny that the Salem plant would be closed, and testified that he and Denny had frequent conversations. The article, in the Decatur "Herald", on its front page (Exhibit B-7), headlined, "Union Votes Charter Out, Plant of Brown Shoe Co. Expected to Reopen Following Action", is credited to a staff correspondent in Charleston. It reports that the union local in Sullivan had voted to return its charter to Boston, that, according to an authoritative report from the respondent in St. Louis, the Charleston plant "will reopen within three weeks as a result of the action", that

it is reported "that machinery will be moved to Charleston from the factory in Salem, and that this action is expected because of the continued strength of the union in Salem." The article also reports that a Charleston citizens' committee secured signatures of 500 shoe workers to an agreement to return to work under any conditions stipulated by the respondent. This article, and "some of the wild rumors" alarmed the union and caused it to arrange a meeting between the union's executive committee and Ekins in St. Louis, on or about September 18th. Ekins denied the rumor of the moving of the Salem work to Charleston contained in the article, and stated that all that was necessary to keep the work at the Salem plant was "to avoid the type of unpleasantness that had occurred at other places." Denny also testified that Ekins intimated that in the event of labor trouble in the Salem plant the work could and would be moved.

(g) Late in September, McMackin, accompanied by another representative citizen of Salem, called on the respondent's president in the St. Louis office and inquired as to the future of the Salem plant. According to McMackin, Bush "assured me they wanted to operate the Salem plant, they liked the class of work that came out of the Salem plant . . . and if they could know that they would like peaceful operations and wouldn't have shutdowns, they would like to work the plant to full capacity." "He said that if the plant ran peacefully, we would have full production there." McMackin testified that McCarthy, who was present, "said about the same thing". McCarthy, in his testimony, stated that McMackin came to ask Bush "how full the Salem factory was going to run," "what the picture was ahead." He testified that he told McMackin that production in Salem would stay down until "we began making shoes for Spring." He denied that he had said anything at this time that the Salem plant would be closed in the event of labor troubles.

(h) In 1935, the fall seasonal slump in the Salem plant began before its normal time, because of previous overproduction, and the respondent began laying off workers in mid-September. About a year before, the union had secured an agreement with Finks and Ekins that seasonal lay-offs were to be made on a seniority basis, so that workers longest employed were to be laid off last when production slumped and returned to work first when production revived. The seniority arrangement with the respondent was the union's principal accomplishment at the Salem plant, its outstanding achievement in collective bargaining.¹⁰ Under the seniority arrangement the union members employed in the Salem plant were afforded a

¹⁰ There is evidence of other achievements in collective bargaining at the Salem plant: the reinstatement by the respondent of two union members who had been discharged for fighting, and the removal of an objectionable foreman, in both instances at the request of the union

measure of protection against discrimination; the arrangement made it difficult for the respondent to lay off union members during the seasonal slumps on account of their union membership and activity under the guise of laying off "less efficient" workers. The arrangement was adhered to by the respondent for about a year, and formed the basis of the great bulk of the grievances dealt with by Finks on presentation of the union's shop executives.¹¹ When workers laid off in September, 1935, complained of violations of the seniority rule, shop executives who presented their complaints were told the seniority rule was "out". About the end of September, or possibly, October 1st, the union's president and executive board were informed by Finks that the seniority arrangement was no longer in effect. Denny testified that the union regarded that verdict as final. Although Finks testified that he had taken up the abrogation of the seniority agreement with Ekins, who agreed with his decision, Ekins, in his meeting with the union officials in St. Louis on September 18th, did not mention the matter.

(i) On October 8th, at a special meeting, the union considered the respondent's abrogation of the seniority agreement. The possibility of a strike in protest was discussed. While several union members, admittedly dissatisfied with the union, testified in behalf of the respondent that the union voted to back up the seniority agreement and to leave the matter to the "Labor Board" (the charges in this proceeding were filed on October 7th), we are convinced by the testimony, especially that of Denny who presided at the meeting and put the motion, that the union voted to back up the seniority agreement to the limit and authorized the union's executive board to take whatever action was necessary in support of the seniority agreement.

(j) Early on Friday evening, October 11th, a crowd of about 175 employees of the Salem plant, many of them union members, gathered in front of the plant. Word of the meeting had gone around in the factory during the afternoon. Prompted by fear that the factory would be closed, the crowd gathered to take some action about Norris, the union organizer. Claude Swayze, a cutter, not a union member, and admittedly hostile to the union, was in charge of the meeting. A committee of four, two union and two non-union employees, was designated to call on Norris. The union members on the committee, Arthur Seibman and Frank Canaway, were admittedly hostile to Norris and dissatisfied with the union.¹² The crowd followed the committee to the home of Norris. According to the committee mem-

¹¹ The union designated a shop executive for each department in the plant, who, with a chairman, formed the union's executive board. Grievances were usually presented to Finks by the department executives and the chairman. Finks also met with the executive board.

¹² It was Seibman who made the motion to oust delinquent members from the August 15th meeting. (See finding IX (c) above.)

bers, Seibman, the spokesman, told Norris that a committee of workers at the plant wanted to talk to him. Norris testified that Seibman said, "We have come to ask you to leave town". The committee stepped off the porch of the house when Norris protested. Roy Sollis, an instructor in the cutting room, with supervisory duties and authority there, was in the crowd. There was a hostile demonstration against Norris by the crowd, which remained on the scene for some time. Continued demonstrations for several days finally caused Norris to move his family to Centralia, Illinois.

(k) The next morning, October 12th, before the commencement of work in the plant, a group of workers in the lasting department considered refusing to work with union members in their department. They finally went in to work.

(l) Later, the same morning, Conrad Garner, a cutter, admittedly hostile to the union and to Norris, and Roy Sollis, the instructor who admitted hostility to Norris, left the plant in order to prepare copies of a petition for signature by the respondent's employees. They were out of the plant all morning; their foreman, Gruenkemeyer, knew they were out. Sollis was paid for this time; Garner denied that he was paid. The petition, according to Garner and Sollis, was originally drawn up in pencil by the two; they feared the possible closing of the plant. Garner and Sollis testified they called on several of the business men in town, with whom they discussed the wording of the petition, and then took it to the local printer, who advised them it was "too rough". They finally took it to a lawyer, Johnson, city attorney of Salem, who revised it, and had it typed by his stenographer. The copies of the petition in its final form were mimeographed that morning by a stenographer employed by A. E. Miller, a real estate dealer. Neither Johnson nor Miller or his stenographer were paid for their work. Garner and Sollis began circulation of the petition at once. The petition (Exhibit R-4) recites that certain employees are causing confusion and unfriendly relations between employees and the respondent which may result in the closing of the plant as was the case in other nearby cities, and requests that in the interest of the undersigned employees and the community and the respondent, the employees causing such confusion, misunderstanding and unfriendly relations be asked to discontinue such conduct and if it is not discontinued that they be discharged. The first part of the next week the petition, obviously aimed at the union and its leaders, circulated freely at the plant. About 450 employees of the respondent, many of them union members, signed it, a great number of them at the plant, and on October 15th, or 16th, it was presented by Sollis to Finks, who sent it on to Ekins in St. Louis. There is testimony that one of the signatures is a forgery; Garner signed

three times; one worker signed when drunk and another permitted his name to be written, although he did not know what he was signing. There is testimony that one employee told another, while at work, "if you want to work, you'd better sign it". The petition itself shows that it is based on fear lest the Salem plant be closed.

(m) Denny testified he had thought the seniority arrangement could be adjusted. However, the executive board was finally impelled by the demonstration of the mob against Norris the evening before, and by the contemplated refusal of the non-union lasters to work with union members (see findings IX (j) and (k) above), to exercise the authority given it by the union vote on October 8th (see finding IX (i) above) to back up the seniority agreement. The executive board of the union met on Saturday night, October 12th, and decided to call a strike in the plant on Monday, October 14th.

(n) Early on Monday morning, October 14th, the Salem plant was picketed by union members, variously estimated in the testimony to number 50 to 175. About 300 employees went in to work. Finks telephoned Ekins in St. Louis and reported the situation. McMackin heard of the picketing and visited the plant. Later that morning, about 9:30, Bush telephoned him from St. Louis. According to McMackin, Bush said, "if we are going to operate that factory we must have it where we can operate it peacefully; we will not operate it where there is danger of people being hurt or people being killed; it is not our policy to operate it then." Bush testified he had said, "I told him . . . that I wanted him to know that we couldn't run factory unless we could run it peacefully, we didn't want any broken heads, and there was nothing to do unless shut down the factory if we are going to have that kind of condition over there . . ." McMackin reported this communication from Bush at a mass meeting of business men, town officials and some of the respondent's employees held about 10 o'clock that morning at the city hall. Representative citizens spoke at the meeting, and there was some mention of an undisclosed plan to settle the dispute at the plant. McMackin left the meeting and ordered the police commissioner to break the picket line by 11:30 that morning. While McMackin testified that the chief of police was looking for special police about 8:30 or 8:45 A. M., it is not clear from the testimony whether these were deputized before or after Bush's telephone call at 9:30. The special police, on McMackin's order, broke up the picket line that morning. McMackin testified he made the order to prevent violence when workers in the plant came out at the noon hour. Several of the pickets, some of them carrying American flags, were clubbed by special policemen. A few were piled into an automobile and driven several miles out of town. Other special police, some of them national guardsmen and employees at the Salem plant, were sent to watch the roads leading into Salem, upon a false

rumor that neighboring union miners were expected to arrive to support the union.

(o) Several days after the strike, Denny drew up proposals for settlement of the strike and return to work without discrimination and with recognition of the union. He showed the proposals to McMackin, who had them typed. Denny submitted the proposals to Finks, but was told Finks had no authority to act and was referred to the respondent in St. Louis. Denny requested McMackin to present the proposals to the respondent's offices in St. Louis. McMackin testified he told Ekins, in St. Louis, that he had proposals for an agreement with the union, but that he did not present it because Ekins advised him that the union members should present the proposals themselves.

(p) Throughout the period between August 15th and October 14th, various representative business men and town officials at Salem, including McMackin, James, the commissioner of police, and others, made anti-union statements to officers and members of the union, suggested that they give up their union activities and their charter to keep the Salem plant operating, made detrimental statements about Norris, repeated their fears that the Salem plant would be closed and moved from Salem unless the union got rid of Norris and its charter, and said that the plant would operate at full capacity if the union were abandoned. From the testimony, these statements, some of them denied, were made on the streets, in business places, at the home of Norris on October 11th, the night of the demonstration there, and at his home the following night.

(q) During this period also, Finks and Howe, superintendent and assistant superintendent at the Salem plant, Courtney, foreman of the fitting room, and Luety, a "trial runner" and at times a temporary foreman, Sollis, an instructor, Baker, an assistant foreman, and Peck, a final inspector, all with supervisory functions and duties, made statements, some of them denied, to various officials and members of the union indicating their antagonism to Norris, suggesting that the union dispose of its charter and that the plant would be closed. Howe's conduct in this respect has been set forth in finding IX(f) above. Denny testified that in September Finks asked him to use his influence to keep labor troubles down in the Salem plant; that in the event of labor trouble a citizens' committee would do the hiring and firing in the plant; that he did not want the same thing happening at Salem that happened in Charleston and Sullivan.

(r) In addition, during this time Salem business men and public officials engaged in conduct which is illustrative of the tension and depth of the anti-union feeling then existing in the town. James, Salem police commissioner, at a town council meeting, urged Plummer, street commissioner, to get rid of Marshall Cagey, employed in

his department; Cagey is the father of Vermont Cagey, financial secretary of the union. John Taylor, a Salem baker, employer of Herman Cagey, Vermont's brother, called on Plummer to find out what Plummer intended to do about Marshall, the father. Neither Marshall nor Herman lost his job. Mabel Sullins, union member, was notified to vacate her home by Mills, the Salem postmaster, her landlord, although they had previously made arrangements to pay off arrears in rent. Mabel testified that Mills told her the work of the Salem plant would be taken away if "we didn't drop the union." Neva Schinn, an employee of the respondent, who rented a room at the home of Dorothy Harvey, a complainant in this proceeding, was advised by Middleton, a special policeman active in breaking up the picket line on October 14th, that it would be best for her to move from the Harvey house. Neva testified that she moved. She was not working at the time and "I thought I would get back to work sooner." On October 16th, two days after the strike, Madden, a union organizer, spent the night at the home of Frank McKinney, father-in-law of Henry Smith, a member of the union executive board. That evening the Salem chief of police drove up to McKinney's house, turned his lights on the porch, and told McKinney, "I am informed you are harboring someone"; he refused McKinney's invitation to enter the house. Two days later McKinney, who worked as a meat cutter in a chain grocery store, was discharged by Funkhauser, the manager. Funkhauser had attended the citizens' meeting in the country club on August 15th. Although he testified that he discharged McKinney because "he hadn't showed enough profits to satisfy the company", Funkhauser also testified, "I thought he might be detrimental to the business if I kept him" and "if a man is working for me and takes sides in a matter of that kind, I should think, I have customers on both sides . . ."

(s) Late in October, 1935, after the charges in this proceeding had been filed by the union, McMackin, accompanied by several other Salem business men, again called on the respondent at its offices in St. Louis. McMackin had requested the meeting, to find out how the plant was going to operate. Bush, McCarthy, Ekins and the respondent's counsel were present at the meeting. McMackin testified that McCarthy informed him "they were going to put shoes in the Salem plant right away and as far as he knew the output would soon get up to the normal amount of forty-five hundred pairs a day."

Conclusions

X. (a) A review of the testimony of the events in Salem during the period between early August and mid-October, 1935, and a review of the evidence of contemporaneous activities of the respondent's

officers and agents concerning Salem and the Salem plant, in the light of the background of the relationship of the respondent and the union and the relationship of the Salem plant and the town, set forth above, convinces us that the anti-union drive in Salem was caused by the respondent's own conduct and that the respondent is primarily responsible for the intimidation of its Salem plant employees in their union activities.

(b) It is the respondent's contention that the evidence establishes no connection between the respondent and this anti-union drive in Salem, and the Trial Examiner so found and concluded, on the theory that the conduct of the citizens of Salem, the business men and the employees of the respondent, was conduct in their own or the community's interest or in some cases official conduct of town officers. The Trial Examiner also concluded that internal dissension in the union and dissatisfaction with Norris motivated participation in anti-union conduct by union members. The Trial Examiner's findings and conclusions fail to take into consideration the full significance of the background of the respondent's relations with the union, including the evidence of the respondent's open cooperation with the citizens' committee in Sullivan, its unmistakable hostility to organized labor in general and the local unions in its various small-town plants in particular, as evidenced especially by its open employment of the notorious strike-breaker Ahner to be its industrial relations counselor, in charge of labor relations and labor policy, immediately after seven of these local unions had united for concerted activities for collective bargaining, the evidence of Ahner's close association with Ekins, the respondent's general superintendent in charge of labor relations in the Salem plant, and finally, the fact, well known to the respondent, of the dominant economic position of the Salem plant in the lives of the inhabitants of the town which made them extremely sensitive to the slightest hint concerning its continued operation. The situation in Salem, in this view, required only the slightest hint from the respondent, the slightest suggestion of its attitude, the slightest rumor of its conduct in its other plants, to stimulate the inhabitants of Salem, business men, officials and employees of the respondent alike, to accede to its wishes in order to keep the Salem plant from being closed or moved by the respondent. These wishes, in the light of the respondent's attitude to unions and of what happened in Sullivan and Charleston, with which they were familiar, were unmistakable: that the union in Salem cease to function.

(c) The record contains uncontradicted evidence that the respondent, through some of its chief officials, stated to representative citizens of Salem that the Salem plant might be closed or moved or both in

the event of "labor troubles" and, on one occasion, that it would be closed if picketing of the plant continued after the October 14th strike. These statements were made when the inhabitants of the town were aware of the closing of the Sullivan and Charleston plants and of the disruption of the union locals in these plants and the consequent reopening or plans to reopen them for operation. To them, chiefly, is attributable the anti-union turmoil in Salem, and the respondent's responsibility therefor. There is not a word of evidence that the respondent, if it had no intention of closing the Salem plant, sought, when the rumors of closing flew thick and fast, and of which the respondent knew, to allay the fears of the inhabitants of Salem by a straightforward general announcement that the Salem plant would not be closed; nor is there a word of evidence that the respondent, if it did intend to close the plant, sought to quiet the situation in Salem by an announcement that its employees had a right to have their union, and that it did not desire that mob tactics and intimidation be used to break the union. That is the least the respondent could have done were its intentions not to create a situation stimulating anti-union activity. There is, to be sure, no evidence of any formal cooperation between the respondent and the citizens of Salem in the anti-union drive; there is no such evidence as a resolution of the respondent's board of directors authorizing the Salem citizens to act for the respondent. But the evidence connecting the respondent with the anti-union activities in Salem is clear enough to preclude the substance of the Trial Examiner's conclusion that the inhabitants of Salem had pulled the respondent's chestnuts out of the fire of their own accord. That cat's paw did not move without urging by the respondent. McCarthy's statement to Mayor McMackin, early in August (finding IX (a) above), indicates a possible closing of the plant unless there could be "peaceful operation" of the factory. In the light of the background situation, his meaning is unmistakable—the only possible factor precluding "peaceful operation" was the possibility of concerted activity of Salem plant employees, through the union, in support of collective demands. McCarthy's statement brought immediate action by the citizens (finding IX (b) above). Late in September, Bush added to the uncertainty by his statement to McMackin in St. Louis that the Salem plant would operate full capacity if there could be "peaceful operations" and no "shutdowns". Again, the meaning is unmistakable. On the day of the strike, October 14th, McMackin ordered the special police to break up the picket line immediately after Bush in his telephone call from St. Louis threatened to shut down the plant if it could not be operated peacefully. All of the anti-union conduct, by Salem citizens, by its public officials, by Salem plant

employees, supervisory and shoe workers, set forth in finding IX above, is traceable to fear that the respondent would close the Salem plant if the union continued active in Salem. It was this fear which caused the efforts to discredit Norris, the terrorism practiced against him, the drive to get the union members to renounce the union charter, the anti-union petitions, the breaking of the picket line. The respondent directly inspired this fear and did nothing to allay it, although, through its officials, Finks, Ekins, McCarthy and Bush, it knew of the existence of this fear and its probable consequences. It was only in late October, after the union had been disrupted, that McMackin and other citizens were assured of capacity production in the Salem plant.

(d) The respondent, in the same manner, is directly responsible for the intimidating statements made to union officials and members by supervisory employees in the Salem plant (see finding IX (g) above). They, like the business men and workers, feared the plant would be closed, a fear engendered by the respondent as set forth above. Their supervisory positions made their statements to Salem plant employees the more effective, and the respondent is responsible for them in any event. That some of them were friendly with the employees and were in the habit of discussing matters concerning the Salem plant with them does not mitigate the effect of their conduct in the light of the tense situation in Salem created by the respondent's creation and fostering of the fear that it intended to close the Salem plant in the event of labor troubles. It is sufficient that this fear prompted them into action which, in its absence, may possibly be explained on other grounds.

(e) While the seniority arrangement in the Salem plant was not definite as to duration, it had been agreed upon between the respondent and the union by means of collective bargaining, had been in effect for a year and was the union's chief accomplishment in collective bargaining at Salem. The seniority rule was the union's principal protection against discrimination by the respondent during the seasonal slumps (see finding IX (h) above). The respondent's arbitrary abrogation of the seniority rule, in the light of the background situation set forth above, is to be interpreted only as a blow aimed directly at the union. Consequently, the respondent's termination of the arrangement without conferring with the union constitutes interference, restraint and coercion of its Salem plant employees in the exercise of their right to collective bargaining guaranteed by the Act. The respondent first disregarded the rule in some of the September lay-offs, then announced its decision to the union's executive board. The respondent gave no consideration to the rights of its Salem plant employees to collective bargaining nor to its own duty under the Act not to violate those rights.

(f) The union's picket line was broken up during the strike on October 14th, as a consequence of the conduct of the respondent's president (see finding IX (n) above). We find that the respondent's conduct in that respect amounts to interference, restraint and coercion of its Salem plant employees in the exercise of their right to concerted activities for mutual aid and protection guaranteed them by the Act.

(g) While 15 of the respondent's employees in the Salem plant, former union members, testified in its behalf that they and others had left the union because of dissatisfaction with Norris and the union officers and the conduct of union affairs, it is clear from the evidence that the principal cause of dissension in the union was the fear implanted in Salem by the respondent that the Salem plant would be closed. That fear is expressly announced in the petition signed by 450 of the Salem plant employees, many of them union members or former union members.

(h) The respondent's conduct, as set forth above, constitutes interference, restraint and coercion of its Salem plant 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 collective bargaining and other mutual aid or protection.

Discriminatory discharges

XI. (a) Due to the fall seasonal slump, the respondent, between September 14 and October 5, 1935, laid off 194 employees of the Salem plant. Of these, guess-work by foremen in the Salem plant shows 73 to be union members, 81 non-union and 40 unknown as to union affiliation.¹³ The charges in this proceeding name five Salem plant employees claiming discrimination (Exhibit B-1 a). Four were named in the complaint. One of these, Fonda Wheat, failed to appear at the hearing and the allegations in the complaint as to her were dismissed. Elmer Onheiser, whose name was included in the charges, but not in the complaint, testified, in behalf of the respondent, that he had not authorized the use of his name. He was reinstated by the respondent on the day of the strike, October 14th. The three remaining complainants are Muriel Vanatta, Reba Powell and Dorothy Harvey. There is no evidence that any of them was refused reinstatement by the respondent.

(b) *Muriel Vanatta* was employed by the respondent as a flat folder in the fitting room of the Salem plant since 1931. She had been an

¹³ A list of the workers laid off was prepared by the respondent after charges in this proceeding were filed (Exhibit R-3). Foremen at the Salem plant noted after each name whether the worker was thought or known to be union or non-union. These designations are guess-work on the part of the foremen. No evidence was introduced in behalf of the union, from union records or otherwise, to check these designations.

active member since its organization in the fall of 1933, and her union membership was known to the respondent's supervisory employees at the plant. There is no question as to her seniority over several operators in her department who were retained during the fall slump; she had not been laid off since the fall of 1933. Nor is there any question as to her competence or efficiency. In 1933 she was sent to the Murphysboro plant at the respondent's expense to help out there. She was laid off on September 27th. Of the 16 girls in her department, seven were laid off, five of them union members. Of the nine retained, six are union members. Three of the girls laid off have been put back to work, two of them union members. The reason given by the respondent for Muriel's lay-off is that on a production basis she failed to earn the minimum hourly rate paid her during the three weeks preceding her lay-off. In August, the flat-folders through Mrs. Broda, the union executive in the fitting room, had complained to Finks that they were unable to earn the minimum hourly rate, 30 cents, because of low piece prices. Mrs. Broda appointed a committee of three, Muriel and two sisters named Ferguson, to talk with Finks. Muriel did most of the talking for the operators. Finks promised to take the matter up with the St. Louis office. Later, when no action was taken, the girls threatened to refuse to work, and Finks raised the hourly minimum to 37½ cents, and again promised to investigate the piece rates. There is evidence that the piece rates were found not to be lower than those elsewhere and that production by the flat-folders was surprisingly even, indicating, according to Finks, that the operators were holding back on their work. Finks testified that the operators were kept at the same rates thereafter and earned 39 cents per hour on a production basis. However, the two Ferguson girls were not laid off during the fall slump and the respondent did not lay off two operators who had low production records for the three weeks' test period claimed by the respondent to have been the basis for lay-off of Muriel.

(c) *Reba Powell* was employed by the respondent as a kid puller in the wood heel department for five and one-half years. She is a charter member of the union and her union membership was known to her forelady, Mrs. Woodfall, and to Finks. She appears to have had seniority over several operators retained in her department during the fall slump; she had not been laid off since the fall of 1933. Reba and Ira Prah, union executive in her department, testified that she was a competent worker. Mrs. Woodfall, her forelady, testified that her work was poor. However, it is clear that Reba on a production basis, earned the minimum hourly rate. She was laid off on September 24th. Of the 13 in her department, four were laid off, two union and two non-union. L. Filbrook, the most active union member in the

department, was not laid off, nor were two other union members. Four others retained were not union members. The reason advanced by the respondent for Reba's lay-off is inefficiency. Mrs. Woodfall testified that she retained Evelyn Thompson, the least efficient kid puller but with more seniority than Reba, because she could also do celluloid pulling. There is evidence indicating that Mrs. Woodfall was not friendly to Reba and that Evelyn Thompson had informed the forelady that Reba collected union dues in the department.

(d) *Dorothy Harvey* was first employed by the respondent in 1931, when she was 16 years old. Because her earnings were only three or four dollars a week, she found it necessary to quit in July, 1933. That fall she returned to work on the prospect of better earnings because of the National Industrial Recovery Act. She was employed in the fitting room, on French binding cementing, a machine operation. In the summer of 1934 she was laid off; in January 1935 she was reemployed on cementing heel stays, hand work, and, part of the time, in her old job of French binding cementing. She was a member of the union and her membership was known to the respondent. She was laid off on September 25th. Of the seven operators on cementing heel stays, three were laid off, one union member. Three non-union workers and one union member were retained. One of the non-union operators has been reemployed. The reason given for Dorothy's lay-off is her lack of seniority on the work of cementing heel stays; the evidence shows that she had no seniority on that operation. Her foreman testified that Finks permitted him to make the seasonal lay-offs on a seniority basis. However, Dorothy's claim is that she had department seniority, based on her work on French binding cementing, which began in 1933, although there is also testimony that she tried to avoid this work because she claimed the machine was injurious to her health. The fitting room employs 250 to 300 operators, on 16 different operations, and it is reasonable to conclude that normally seniority was tested by the job and not length of service in the department. But Dorothy was employed on cementing heel stays and French binding cementing on her return to work after the lay-off in 1934. Her seniority status must therefore be determined as of her employment in 1933. There is evidence that one girl, with less seniority than Dorothy, was retained on French binding cementing during the 1935 fall slump.

(e) The evidence is convincing that Muriel Vanatta, Reba Powell and Dorothy Harvey were laid off as a result of the respondent's arbitrary abrogation of the seniority rule, which we have found to have been a blow at the union and an interference with the exercise by the respondent's employees of their right to collective bargaining (see findings IX(h) and X(e) above). When Mrs. Broda protested

the lay-off of Muriel and Dorothy to the foreman, she was told the seniority rule was "out". Ira Prah! did not present Reba's case; he felt it was no use in the face of Mrs. Broda's experience. The resultant effect on the union and its members, their discouragement, is obvious; the seniority rule and its protection from discrimination was the chief fruit of their union. It is not material in this connection that the respondent laid off about as many union members as non-union employees among the 194 laid off and that the union leaders were not laid off. It was within the respondent's power to set an example and it did so in the lay-off of Muriel, Reba and Dorothy, all three employees known to the respondent as union members. The reasons advanced by the respondent for their lay-off is not convincing. In the light of the entire situation in the Salem plant, we are convinced that these three employees were laid off by the respondent in the course of the respondent's engaging in an unfair labor practice and because they were union members.

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

XII. (a) The strike in seven of the respondent's plants in May, 1934 (see finding VI(a) above) was the result of the respondent's failure to meet representatives of the union locals in these plants for the purposes of collective bargaining. Unfair labor practices by the respondent, including its arbitrary termination of the seniority arrangement with the union, caused the strike at the Salem plant on October 14, 1935. There is evidence that the respondent's refusal to recognize union locals in several of its other plants and other conduct by the respondent indicating unfair labor practices, resulted in strikes and the closing of the plants. Statistics compiled by the Bureau of Labor Statistics, United States Department of Labor, certified under the seal of the Department of Labor and the signatures of Frances Perkins, Secretary of Labor, and Isadore Lubin, Commissioner of Labor Statistics (Exhibit B-25), show that in 1934, out of 65 strikes and lockouts in the boot and shoe industry, 36 were "organization" strikes and lockouts, due to labor disputes involving, chiefly, the issues of union recognition and discrimination; these 36 strikes involved 18,648 workers and caused 359,340 man-days of idleness. In 1935, from January to July inclusive, out of 29 strikes and lockouts in the industry, ten were over the issue of "organization", and involved 2,179 workers and 37,324 man-days of idleness.

(b) We have found that, apart from the great flow of materials to the respondent in St. Louis and of shoes from the respondent to all parts of the United States, the respondent's very manufacturing operations are interstate in character and require and cause a continuous flow of commerce between St. Louis and its small-town plants

in other states. On the basis of experience in the respondent's plants and in other plants, the respondent's conduct as set forth in the findings above burdens and obstructs commerce among the several states and the free flow of commerce, and had led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce among the several states.

THE REMEDY

The strike at the Salem plant on October 14th was caused by the respondent's conduct in arbitrarily terminating the seniority agreement with the union and by other anti-union conduct for which we have found it to be responsible. Moreover, we have found that the violent breaking of the picket line on the day of the strike was caused by the respondent, this conduct amounting to interference, restraint and coercion of its employees in the exercise of their right to concerted activities for mutual aid and protection. An order requiring the respondent to cease and desist from such conduct will not wholly restore the union to at least the position it occupied in the Salem plant on the day of the strike. We shall, therefore, in order to restore the status quo, order the respondent to offer reinstatement to those employees at the Salem plant who went out on strike on October 14th, and to that end, if necessary, to displace employees hired since October 14th to take the places of strikers.¹⁴ In order to restore the status quo, we shall also order the respondent to enter into negotiations with the union with the object of reaching an agreement in regard to the seniority arrangement which the respondent arbitrarily abrogated in violation of its employees' rights to collective bargaining in respect to conditions of employment.

We shall also order the respondent to reinstate the three discharged employees. As we said in *Matter of E. R. Heffelfinger Co., Inc., Case No. C-46*, "Normally, we would also order back pay from the date of discharge to the time of respondent's offer of reinstatement. We believe, however, that in view of the Trial Examiner's recommendations, respondent could not have been expected to reinstate the discharged workers after it received the Intermediate Report, . . . and therefore it should not be required to pay back pay from that time to the date of this decision". The intermediate report in the instant proceeding was received by the respondent's counsel, E. A. H. Shepley, on February 14, 1936.

¹⁴ For orders to same effect, see *Matter of Columbian Enameling and Stamping Company, Case No. C-14*; *Matter of Canvas Glove Manufacturing Works, Inc., Case No. C-24*; *Matter of Rabhor Company, Inc., Case No. C-29*.

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. Boot and Shoe Workers' Union, Local No. 655, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The respondent, by laying off Muriel Vanatta, Reba Powell and Dorothy Harvey, because they joined and assisted a labor organization, thus discriminating in regard to the tenure of the employment of each of them and thereby discouraging membership in the labor organization known as Boot and Shoe Workers' Union, Local No. 655, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivisions (1) and (3) of the Act.

3. The respondent, by causing citizens and public officials of the town of Salem and its officials and employees at the Salem plant to intimidate, interfere with, coerce and restrain employees of the respondent at its Salem plant in the exercise of the rights guaranteed in Section 7 of the Act, and by its arbitrary abrogation of the seniority arrangement with the union and by other conduct, and by each item of such conduct, all as set forth in findings IX and X above, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

4. The unfair labor practices in which the respondent has engaged and is engaging, as set forth in the preceding conclusions 2 and 3, and the findings of fact above, 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 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, Brown Shoe 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 and protection, as guaranteed in Section 7 of the Act, and from in any manner inducing and causing citizens and public officials, and its supervisory and other employees from

interfering with, restraining or coercing its employees in the exercise of such rights.

2. Cease and desist from in any manner 'discouraging membership in Boot and Shoe Workers' Union, Local No. 655, or in any other labor organization, by discrimination in regard to hire or tenure of employment or any term or condition of employment, by laying off or discharging or threatening to lay off or discharge any of its employees for joining or assisting Boot and Shoe Workers' Union, Local No. 655, or any other labor organization.

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

(a) Offer immediate employment to employees at the Salem plant who were employed by the respondent on October 14, 1935, and who went out on strike on that day, in all cases in which the respondent has since October 14th employed others to do the work of such employees, and in all other cases place such employees on a list to be offered employment, in the order of their seniority, as and when their services are needed;

(b) Upon request, enter into negotiations with Local No. 655 for the purpose of collective bargaining in respect to the seniority arrangement in effect at the Salem plant until September, 1935;

(c) Offer to Muriel Vanatta, Reba Powell and Dorothy Harvey, and each of them, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(d) Make whole the said Muriel Vanatta, Reba Powell and Dorothy Harvey, and each of them, for any losses of pay they may have suffered by reason of their lay-offs, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the periods from the respective dates of their lay-offs to February 14, 1936, and from the date of this decision to the time of such offer of reinstatement, computed at the wage rate each was paid at the time of such lay-off, less the amount, if any, which each respectively earned during said periods;

(e) Post notices immediately in conspicuous places in all of its plants, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.