

In the Matter of COLUMBIA RADIATOR COMPANY and INTERNATIONAL
BROTHERHOOD OF FOUNDRY EMPLOYEES, LOCAL NO. 79

Case No. C-66.—Decided June 2, 1936

Radiator and Boiler Industry—Unit Appropriate for Collective Bargaining: eligibility for membership in only organization making bona fide effort at collective bargaining; production employees—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to negotiate with representatives—*Strike—Discrimination:* non-reinstatement following temporary shut-down; non-reinstatement following strike; lockout—*Reinstatement Ordered, Non-Strikers—Reinstatement Ordered, Strikers:* discrimination in reinstatement; strike provoked by employer's law violation; displacement of employees hired during strike; preferential list ordered, including.

Mr. Robert H. Kleeb for the Board.

Mr. J. P. Fife and *Mr. Ralph H. Frank*, of Pittsburgh, Pa., for respondent.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On February 5, 1936, Local No. 79, International Brotherhood of Foundry Employees, hereinafter referred to as Local No. 79, filed a charge with the Regional Director for the Sixth Region, charging the Columbia Radiator Company, Versailles Township, Allegheny County, Pennsylvania, hereinafter called the respondent, with having committed unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935. A complaint and accompanying notice of hearing were issued by Clinton S. Golden, duly designated agent of the National Labor Relations Board, on February 14, 1936, copies of which were duly served upon the respondent and upon Local No. 79.

The complaint charged the respondent with violations of Section 8, subdivisions (1), (3) and (5), of the National Labor Relations Act, hereinafter called the Act. With respect to the violation of Section 8, subdivisions (1) and (3), the complaint alleged that on January 7, 1936, the respondent had closed its plant; that on January 26 it issued cards to its employees recalling them to work; and that such cards were not issued to the following employees and they were subsequently refused employment: J. B. Hadden, President, Local

No. 79, and John Winso, J. H. Nelson, J. McIntosh, Charles Reimenschneider,¹ John Goulding,² and Robert Booth, all members of the committee of Local No. 79. The violation of Section 8, subdivision (5) of the Act was alleged to have occurred by reason of the fact that on or about January 28, 1936, the respondent was requested but refused to bargain collectively with the committee of Local No. 79 in regard to the terms and conditions of employment and the reinstatement of the above-named individuals.

On February 21, 1936, the respondent filed a motion to dismiss the complaint and an answer. The motion to dismiss was based on the grounds that the Act is unconstitutional generally and also in its particular application to the respondent's business, and that the allegations of the complaint are so vague, general and indefinite that to require the respondent to answer and defend would be to deprive the respondent and its stockholders of liberty and property without due process.

The answer denied the allegation that J. B. Hadden was not notified on January 26 to return to work, admits that the other named employees were not notified to return to work, but denies they were ever refused employment; alleges that a reduced force was to be employed on January 28 and that the selection of the men-to-be notified to return to work was left to the judgment of the foreman in each department, the foremen being instructed that in the selection of the men to be called back they should be guided only by considerations of individual efficiency and should not discriminate because of union affiliation. The answer also denied knowledge by the respondent that Local No. 79 is the representative of its employees for collective bargaining and denied that it refused to bargain collectively with Local No. 79 or any committee designated by Local No. 79 on or about January 28, 1936.

Pursuant to the notice of hearing, a hearing was held at Pittsburgh, Pennsylvania, February 24, 1936, before J. Warren Madden, duly designated by the National Labor Relations Board to act as Trial Examiner, at which hearing full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded both parties. The hearing was continued on February 25, 26, 27 and March 12. At the opening of the hearing, counsel for the respondent presented a motion to continue the hearing for the purpose of allowing the respondent time to prepare its defense adequately, and also renewed the motion to dismiss. Both motions were denied by the Trial Examiner. The motion for a continuance and a motion to dismiss with the right to argue the motion

¹ Incorrectly spelled Reiminschneider in the complaint.

² Incorrectly spelled Gulding in the complaint.

for dismissal were made by counsel when the Board rested its case. These motions were also denied by the Trial Examiner. All rulings of the Trial Examiner on motions, as well as his rulings on evidence, are hereby affirmed.

Upon motion of counsel for the Board, the complaint was amended at the hearing by striking the name of J. B. Hadden, President, Local No. 79.

By order of March 27, 1936, and in accordance with Section 35, Article II of the National Labor Relations Board Rules and Regulations—Series 1, the proceeding was transferred to and continued before the Board.

Upon the entire record now before it, including the pleadings, transcript of the evidence, exhibits introduced, and the brief of the respondent, the National Labor Relations Board makes the following:

FINDINGS OF FACT

1. The respondent, a corporation organized under and existing by virtue of the laws of the State of Pennsylvania, has its principal office in Versailles Township, Allegheny County, Pennsylvania, where it owns and operates a manufacturing plant, hereinafter called the plant, for the manufacture, distribution and sale of radiators and boilers. The financial statement of the respondent issued on January 1, 1936 stated its assets to be \$1,751,202.31; its net sales for the year 1935, \$1,447,160.35; and its paid in surplus, \$529,849.05.

A list of 625 persons considered employees by the respondent on December 20, 1935, was received in evidence, although William H. Watt, plant manager, estimated that the largest number of employees at work at one time between June 1 and December 20, 1935, was approximately 550. The payroll for shop employees in the year 1935 was approximately \$500,000.

2. The plant occupies about 10 acres of ground, and is immediately adjacent to the main line of the Baltimore & Ohio Railroad, the only railroad serving the plant. Two spur lines or sidings which enter into the walled or fenced enclosure of the plant and traverse, respectively, the length and width of the plant, branch off from the main line close to the plant. Incoming and outgoing cars are placed upon these sidings, for the purposes of loading and unloading, by a shifting engine owned by the Baltimore & Ohio Railroad. The inside of the plant is divided into the many departments necessary to produce the finished radiators and boilers manufactured from iron and alloys, each operation following the preceding one in orderly progression to produce the finished products.

Incoming and outgoing materials are also conveyed to and from the plant by 14 contract carriers by truck, all trucks loading or

unloading going within the confines of the plant on the side of the plant opposite the railroad entrance.

3. Raw materials used by the respondent in the manufacture of radiators and boilers include pig-iron, limestone, sand, scrap-iron, coke, paint and linseed oil. The respondent also purchases finished products such as thermometers, asbestos, rods, valves, and boiler jackets to be attached to or shipped with its radiators and boilers. Pig-iron is secured from Pennsylvania; limestone from West Virginia; sand from New York and, according to the testimony of John B. Nason, Jr., Vice-President of the respondent, also from Indiana or Michigan; scrap-iron principally from Pennsylvania, though an undetermined amount is secured outside the State of Pennsylvania; coke from Pennsylvania and West Virginia; linseed oil from Ohio; thermometers, rods and valves from Pennsylvania; boiler jackets and asbestos from Indiana. All paint used in the painting of radiators and boilers is secured from the Crescent Paint Company, a corporation, whose paint shop is within the confines of the respondent's plant.

The Baltimore & Ohio Railroad carried 8,581,204 pounds of goods shipped to the respondent in the month of November, 1935. Of this amount 2,064,584 pounds or approximately 24% were intrastate shipments, and 6,516,624 pounds or approximately 76% were interstate shipments. Henry M. Wilson, chief clerk and cashier of the Baltimore & Ohio Railroad at McKeesport, testified that the month of November was an average month as to shipments.

John B. Nason, Jr., testified that 3,053,330 pounds of finished products were shipped from the plant in the month of November, 1935, and that approximately twice as much material is shipped into the plant as is shipped from it. On the basis of these figures it is apparent that the Baltimore & Ohio Railroad carries practically all incoming materials. We therefore find that approximately 76% of all incoming materials are shipped in interstate commerce.

4. The respondent maintains branch offices in Philadelphia, Pennsylvania; Boston, Massachusetts; Chicago, Illinois, and Newark, New Jersey. In addition it maintains sales offices in Charlestown, Massachusetts; Newark, New Jersey; Philadelphia, Pennsylvania, and Chicago, Illinois. Both branch and sales offices are in reality warehouses, products being shipped to them by the respondent on orders placed for stocking the warehouses for the purpose of sale to customers in the vicinity. A substantial amount of the radiators and boilers manufactured by the respondent is sold to Sears, Roebuck & Company, under a contract whereby the radiators are sold f. o. b. McKeesport and are shipped according to instructions given by Sears, Roebuck & Company. A majority of the shipments are arranged for by Sears, Roebuck & Company, the balance by the respondent.

As previously stated Nason testified that in November, 1935, the respondent shipped 3,053,330 pounds of finished products from the plant. He also testified that more finished products are shipped out by truck than by rail. 608,155 pounds of products consigned by the respondent were carried by the Baltimore & Ohio Railroad in the month of November, 1935; 29,976 pounds, or approximately 5%, in intrastate commerce, and 578,179 pounds, or approximately 95%, in interstate commerce. Figures submitted on behalf of the Continental Freight Forwarding Company, a motor carrier operating in interstate transportation only, account for an additional 23,463 pounds shipped out during the month of November, 1935. No other carriers appeared at the hearing and Nason testified that he was unable to state either the exact or an approximate percentage of the proportion shipped out which was shipped in interstate commerce. He did testify that he believed more of the outbound shipments made by truck are made within the State of Pennsylvania than outside of it. While we are thus unable to determine exactly what percentage of the outgoing shipments move in interstate commerce, we find that a substantial portion of them are shipped in interstate commerce.

5. The respondent, in addition to owning 50% of the stock of the Crescent Paint Company, also controls through stock ownership the Equitable Supply Company, Glendale, Long Island, New York, a corporation existing under and by virtue of the laws of the State of New York, and the Versailles Finance Company, McKeesport, Pennsylvania. The Equitable Supply Company both purchases from and acts as a sales agent of the respondent. It acts as a jobber and is not engaged in manufacturing. The Versailles Finance Company discounts time notes given by home owners to heating contractors for installations of the respondent's products. Although it finances other projects, the business of the Versailles Finance Company is largely limited to financing installations of radiators and boilers manufactured by the respondent. The notes accepted for discount are not confined to notes received for installations within the State of Pennsylvania. About 10% of the respondent's business is handled by means of notes discounted by the Versailles Finance Company.

6. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States.

7. In June or July, 1933, a shop representation plan was put into effect in the respondent's plant. The evidence does not show in what manner this plan was instituted. No constitution or by-laws were ever adopted. Under the plan the plant was divided into five departments, the employees in each department electing a committeeman to represent them. The object of the plan and the selection of committeemen was to have the five persons so elected meet with the management of the respondent for the purpose of collective bargaining. In

September, 1933, the committeemen, dissatisfied because of their failure to secure any concessions from the respondent, called a mass meeting of all the employees. By unanimous vote, the employees decided to join an outside organization, and money was appropriated from the funds of the plant to secure a charter. Shortly thereafter application for a charter was made to the International Brotherhood of Foundry Employees. Pending the receipt of the charter a second meeting was held, temporary officers were elected, and the shop representation committee was instructed to notify the respondent of the new organization. In conformity with the instructions, the committee notified Dr. Theodore Nason, now deceased but at that time an official of the respondent, that temporary officers had been elected in an outside organization, that the members of the shop representation committee had become members of this organization, and that the shop representation committee intended to dissolve.

Before the charter for Local No. 79 had been received, some dissension arose because of the desire of certain employees to affiliate with another outside organization. About October 15, 1933, which was about two weeks after the application for the charter had been made, the shop committee, with the consent of the respondent, held an election by secret ballot inside the plant to determine the choice of a majority of the employees. Two hundred and seventy-eight votes were cast, and 249 employees chose the International Brotherhood of Foundry Employees. Some of the remaining 29 desired to retain the shop representation plan, and the rest wished to join another outside union.

At this time or shortly thereafter, the members of Local No. 79 elected the five committeemen under the shop representation plan as a committee to act for Local No. 79 in collective bargaining with the respondent.

The respondent alleged in its answer, and argued at the hearing and in its brief, that in dealing thereafter with the committee it had no knowledge that the committee was acting as a union committee selected by the union members, but believed it was dealing with the shop committee elected by all of its employees. We feel that reliance on this fact, by the respondent, indicates a confusion as to the issues involved. If the respondent failed to bargain collectively with the representatives selected by a majority of its employees, it committed an unfair labor practice, whether those representatives were a committee chosen by Local No. 79 or a committee elected under the shop representation plan. There is no denial by the respondent that it knew that its employees were members of some outside labor organization. Furthermore, the election in October, 1933, was held in the plant with the consent of the respondent. In this connection, it is

pertinent to point out that when the committee notified Dr. Nason of the formation of an outside affiliation, Dr. Nason stated that the respondent did not want anything to do with any outside organization or union, asked who the officers of the organization were, and on the following day discharged all three officers. These discriminatory discharges were reported to the Pittsburgh Regional Labor Board of the National Labor Board, and with its aid, all three of the discharged employees were ultimately reinstated.

8. On January 3, 1934, when the plant reopened after the usual shutdown for the Christmas holidays, the respondent announced a wage cut. The employees refused to work on that day but returned to work the following day upon the agreement of the Pittsburgh Regional Labor Board to hold hearings on the case. Hearings and conferences were held, but when no decision had been rendered by April, a strike was called. This strike involved a wage dispute, the reinstatement of George McBride, who had been discharged in October, 1933, and recognition. The strike lasted two weeks, and was settled when Local No. 79 accepted proposals made by the respondent in a letter to Clinton S. Golden, then mediator for the Pennsylvania Department of Labor and Industry. In the letter, the respondent agreed to make certain wage adjustments, and announced its "willingness . . . to recognize and deal with any committee elected by our men as their representatives to adjust grievances and handle questions relating to wages or working conditions; to refrain from discriminating against any employee . . . engaging in Union activities outside of working hours; . . ." The letter did not mention McBride, but he was reemployed.

Although Local No. 79 was not mentioned by name in this letter, it is clear that the respondent knew at this time that the shop representation plan was defunct and that a new system of representation had been put into effect.

9. After April, 1934, the respondent met at frequent intervals with the committee of Local No. 79. The testimony shows that relations between the committee and the respondent were amicable during this period and that about 75% of the complaints and grievances discussed with the management were settled in favor of the employees.

A few days prior to July 31, 1935, a dispute arose concerning wages to be paid to the nine men employed in the department where radiators are cleaned. The respondent had placed a machine in the department to replace the old method of hand cleaning and had announced a reduction in the piece rate from 91¢ per hundred for hand cleaning to 50¢ per hundred for machine cleaning. Due to the change in operations, the force of cleaners was to be reduced from nine to five men, the five men retained to be selected on the basis of

seniority. The men in the cleaning room were unwilling to accept this cut in wages, although they did not apparently resist the reduction in the force. When they refused to work, the respondent sent in five laborers from another department to operate the machine. Upon the refusal of the laborers to replace the cleaning room force, the respondent notified them that they were discharged. Thereupon, the President of Local No. 79 called a stoppage, and every machine and operation in the plant immediately stopped. The men remained idle for two hours, then resumed operations upon the agreement of the respondent to continue the use of the nine men at the prior hand rate until mediators could be brought in to aid in reaching an agreement.

An agreement was reached on July 31, and was embodied in a memorandum signed by Golden, at this time Associate Director of the Pittsburgh Regional Labor Board, and by Thomas M. Finn, Commissioner of Conciliation of the United States Department of Labor, who had acted as mediators in the dispute. The agreement provided that the prior rate should be paid for an indefinite trial period, during which time the machine was to be tested to determine its capacity, and that, after the output of the machine had been definitely determined, a piece work rate would be established "through conferences between Company officials and shop committee representing employees."

10. In October, 1935, a dispute arose concerning the wages of the heat gang. Again almost instantly work throughout the entire plant was suspended and was not resumed for two hours. The record does not show in just what manner the return to work after the two-hour shutdown was accomplished but the dispute was settled with the aid of Edward McDonald, Commissioner of Conciliation of the United States Department of Labor, and P. A. Ramsey, Pennsylvania Department of Labor and Industry. A written agreement was signed by John B. Nason, President of the respondent, and Charles Reimenschneider, Chairman of the Shop Committee, and was witnessed by the two Conciliators.

11. After the machine had been operated in the cleaning room for 21 or more consecutive days for one hour per day, the respondent made a piece rate offer for radiator cleaning to the committee and to the men in the cleaning room. Meetings were held on December 12 and December 18 in an attempt to reach an agreement on a rate. On December 20, the plant again closed down for the Christmas holidays, January 6 being set as the date for its reopening. On December 23 and January 3 the committee and the management again met to discuss the piece rate for machine cleaning. At this time, the situation apparently was that the respondent at all times since July had made only the one offer of 50¢ per hundred or 47¢ per hour.

On its part, the committee on December 18 demanded the retention of the prior average hourly rate for a further trial period.

On January 6, 1936, the plant reopened but since the cleaning room worked one day behind the production departments, the cleaning room men were not to report to work until January 7. Again on January 6, the committee and the respondent met to discuss the rate for the cleaning room, but no agreement was reached. The cleaning room men reported to work at their usual time at 6 A.M. on January 7. Watt, plant superintendent, walked over to the men and asked them what they were going to do. Reimenschneider, a member of the committee and employed in the cleaning room, stated that the men did not want to return to work until some agreement had been reached. Upon Reimenschneider's suggestion that they hold another meeting, when the remaining members of the committee reported for work at 8 o'clock, the cleaning room men did not start to work. The meeting was held but as neither side made any further offers no agreement was reached. The testimony of Reimenschneider and of Watt varies somewhat as to what occurred immediately after this meeting. Reimenschneider testified that the men in the cleaning room started back to their department, but before they reached it were ordered off the premises by Watt. He does not state whether the men intended to go to work. Watt testified that after the meeting the men "just walked off of the job." Sometime later in the same day, the respondent put notices on the bulletin boards reviewing the complete history of the cleaning room dispute, and concluding, "As a result of this situation and the refusal of the cleaning room men to go to work, operations in the foundries must be suspended until further notice."

12. On January 26, 1936, the respondent sent out cards to 550 persons requesting them to report to work on January 28. Cards were not sent to the cleaning room employees, the five committeemen and many other members of Local No. 79.

Watt and John B. Nason, Jr., testified that the plant was to be reopened on less than a capacity basis, that the selection of the persons to be recalled was left to the discretion of the foreman of each department; that the foremen were instructed to choose the men according to their individual efficiency; that the foremen had been instructed not to discriminate because of union affiliations or activities; and that the men in the cleaning room had not been recalled because they were considered to have quit by walking off the job on January 7.

13. It seems apparent in the light of the facts already stated that we cannot accept as true the respondent's contention that it did not know that the committee with which it had been dealing was a union

committee. In addition many other facts might be cited from the record to show knowledge on the part of the respondent of the membership and extent of the union organization within the plant. For example, there is evidence that sometime between January and April, 1934, Local No. 79 presented a proposed written agreement to Dr. Theodore Nason and John B. Nason, Jr., which agreement mentioned Local No. 79 by name and asked for recognition; that sometime after July 5, 1935, Winso, one of the committeemen, after a meeting between the respondent and the committee, asked Watt how Local No. 79 could secure recognition and was unofficially advised by Watt to wait until the constitutionality of the National Labor Relations Act had been determined; that Watt admitted to Winso during the time of the cleaning room dispute that "You people are organized well enough to shut this plant down in five minutes time"; and that Winso about two or three months before the hearing told Watt that the union paid him for time lost in acting as a committeeman. In addition to this direct knowledge on the part of Watt and Nason, there is a great deal of evidence that many of the foremen had been members of Local No. 79 before being promoted and knew exactly which of the employees were members. Russell Eori, now a foreman, was at one time a member of the committee of Local No. 79. It was to these same foremen that the ultimate decision of which employees should be recalled for work was left. There is no logical explanation of the omission to call back the committeemen, the officers and many members of Local No. 79, except the determination of the respondent to eliminate, if possible, the outstanding persons in the union organization.³ In addition to alleging that the only reason why certain persons did not receive cards was because they were not considered to be the most efficient employees by their foremen, the respondent points to the fact that many of their present foremen were formerly union members and that Hadden, now President of Local No. 79, was sent a card.⁴ The evidence shows that Hadden was not elected President of Local No. 79 until the second week in January, 1936, at the time the plant was shut down. It seems apparent that he was called back only because the respondent did not know of the change in officers at the time the selection was made. Many

³The complaint as amended includes only six persons, each called a committeeman. The evidence shows that the committee consisted of Winso, Nelson, McIntosh, Reimenschneider, and Goulding. Robert Booth, erroneously called a committeeman, was in fact a sub-committeeman. It is not apparent why Charles Szvith, President of Local No. 79 from January 1, 1935, to January 1, 1936; George McBride, corresponding secretary of Local No. 79; and Conrad and Caste, two other sub-committeemen who testified at the hearing, were not included in the complaint. The testimony shows that none of these persons received cards to report to work on January 28.

⁴At the time the charge was filed and the complaint issued Haddon had not received a card to return to work and was therefore included in the complaint. Prior to the hearing a card postmarked January 26, but misdirected, was delivered to him and his name was stricken from the complaint by amendment.

reasons other than a desire to favor union employees might be more logically suggested for the selection of foremen. The plant was so completely organized, it would have been practically impossible to select employees to act as foremen, without choosing a member of Local No. 79. Furthermore, promotion is a well known device to eliminate union leaders.

As to the charges of inefficiency, no specific facts of inefficiency regarding the individuals involved were alleged or testified to on behalf of the respondent. Reimenschneider had been employed continuously since 1926, having also worked prior to that time for the respondent, and was the person selected to operate the machine in the radiator cleaning room during its trial period. Winso had been employed by the respondent about six years and had never been laid off except in periods of slack operation. Nelson had been employed for some time prior to 1926 when he quit his job with the respondent to take what he considered a better position with the Holland Furnace Company, but when he was laid off by the latter company because of slack work he immediately applied for and received reemployment by the respondent and had worked constantly ever since. He had never been laid off by the respondent except in slack periods and had never been reprimanded for his workmanship. McIntosh had been employed about 13 years, had never been discharged, had been laid off only in slack periods, his work had never been criticized and he had never been reprimanded for any serious offense. Goulding began working for the respondent in 1929; quit in 1930, to take a job with the National Tube Company; was laid off by the Tube Company because of slack work; was reemployed by the respondent in 1931, and had worked steadily ever since. Robert Booth began working in the boiler shakeout department in 1930. He had been employed previous to that time in another department, but the record does not show when his employment with the respondent began. He had never been discharged or laid off by the respondent and had never been criticized with regard to his work.

A general allegation of inefficiency, unsupported by any evidence, is clearly insufficient to overcome the logical inference of discrimination because of union activities created because of the fact these men held prominent offices in Local No. 79 and had splendid service records for long periods of time.

We conclude that the respondent discharged Winso, Nelson, McBride, Goulding and Booth by failing to recall them to work on January 26, and that they were discharged because of their union affiliations and activities. By such discharges, the respondent discriminated in regard to hire and tenure of employment and thereby discouraged membership in a labor organization.

As to Reimenschneider, and the other employees of the radiator cleaning room, the respondent insists that they ceased to be employees by their own act of quitting on January 7. It is true these men did not work on January 7 because of the failure to reach an agreement concerning their wages. Assuming that they walked off the job, as Watt contends, the effect was a strike because of the failure to reach an agreement. If as the men themselves testify, they were ordered off the premises, they were then locked out. It is undisputed that the shutdown of the plant from January 7 to January 28, 1936, was due to this same dispute. On either interpretation of the facts, these nine employees, as well as all other persons who were employees on January 7, were persons whose work had ceased as a consequence of a current labor dispute and were therefore employees, within the meaning of the Act,⁵ on January 26 when the discharges occurred. We conclude that Charles Reimenschneider was also an employee who, by not being called back to work on January 26, was discharged because of his union affiliations and activities, and that by so discharging him, the respondent discriminated in regard to hire and tenure of employment and thereby discouraged membership in a labor organization.

The respondent attaches great significance to the fact that no proof was offered by the Board to show that any one of the persons named personally sought reemployment and was refused. Radell Cook, a sub-committeeman who did not receive a card, testified that he attempted to get into the plant on January 28 to ask for reemployment, that Watt stopped him and asked if he had a card, saying, "You are supposed to have a card." Even if the attitude of the respondent had not been made entirely clear by the issuance of cards, this testimony is sufficient to show that even if these men had asked for reemployment they would have been refused. Furthermore, as hereafter set forth, a strike was called on the morning of January 28, not only because of these discriminations but also because of the wage dispute. For these men to have sought reemployment, after the calling of the strike, would have been a desertion of the union cause.

14. By these discriminatory discharges the respondent interfered with, restrained and coerced its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

⁵ Section 2, subdivision (5) of the Act.

15. Local No. 79 is a labor organization whose membership is confined to production employees of the respondent, exclusive of foreman, officials and clerical help. The complaint alleges that the "production department excluding all office workers, clerical employees and supervisory officials at the plant of the respondent—constitutes a unit appropriate for the purposes of collective bargaining." The respondent does not assert any other unit to be the proper one. We find that the employees of the respondent engaged in production, exclusive of those acting in a clerical, supervisory and official capacity, constitute a unit appropriate for the purposes of collective bargaining.

16. A list of 625 persons considered by the respondent to have been employees on December 20, 1935, was received in evidence. This list indicates that 253 persons actually worked in the plant on December 20, 1935. The Financial Secretary of Local No. 79 submitted a complete list of members of Local No. 79 in good standing on December 20, 1935. This list contains 468 names. A comparison of the employment list with the membership list shows that 229 of the 253 employees working on December 20 were members of Local No. 79, and that 462 of the 625 persons considered by the respondent to be employees on December 20 were members of Local No. 79 on December 20.⁶ There is no evidence in the record to show that the membership of Local No. 79 changed between December 20 and January 28, the date on which it is alleged that the respondent refused to bargain collectively.

We find that on December 20, 1935, and at all times since that date and specifically on January 28, 1936, a majority of the employees in the unit we have found to be appropriate were members of Local No. 79.

17. On January 28, 1936, when the men who had received cards reported to the plant for work and discovered that the union committee, officers, cleaning room men and other union members had not received cards to report to work, they refused to go into the plant. Hadden, President of Local No. 79, was summoned and after talking with the men called the committee together. Hadden, with four members of the committee, went into the plant and conferred with John B. Nason, Jr., and Watt. According to Watt's testimony Hadden spoke first, pointing out that some of the employees had not received cards. Nason made no comment. Winso then complained

⁶The testimony shows that the employment list submitted by the respondent contains inadvertently some duplication of names and also the names of some foremen. The membership list of Local No. 79 also contains the names of prior members of Local No. 79 who are now foremen and the names of members who have ceased to be employees since June 1, 1935. In checking these lists every name on the employment list was used, the membership list then being consulted to see whether the person claimed to be an employee was on the membership list. In this way these discrepancies counterbalanced each other.

that the respondent had refused to arbitrate the cleaning room dispute, and Nason replied that the respondent had never agreed to arbitrate. Hadden then expressed regret at the situation and the committee left. Hadden testified that he informed Nason and Watt that the men were dissatisfied, that they thought it was a lockout, and until the question of the machine was straightened out he did not know what they would do, but that in any event they would not work that morning. Nason replied that as far as the machine was concerned that was a closed incident and he did not want to discuss it at all. Neither Nason nor Nelson, McIntosh, Goulding or Winso testified as to what took place at the meeting.

At 10:30 o'clock of the same morning Local No. 79 held a meeting in a storeroom adjacent to the plant and voted to strike.

Between 12:30 and 1, Hadden and the committee again went into the plant and requested a conference with Nason. When Watt informed the men that Nason was at lunch, the committee replied Watt would do as well, and they informed Watt that the men had decided to strike. Winso then stated to Watt: "This means recognition of our Union."

Shortly after January 28, Commissioner of Conciliation McDonald of the United States Department of Labor attempted a settlement but was unsuccessful. On February 11, Mayor Lyle of McKeesport called John B. Nason, Jr., Hadden, the Secretary of the Chamber of Commerce and a local merchant to a meeting. In the course of the meeting, Nason said there were some members of the committee he did not want to deal with.

18. The testimony of Hadden and of Watt concerning the meeting on the morning of January 28 contains two facts on which they are agreed: first, that Nason and Watt were informed that one of the reasons the men were talking of striking was the discrimination in the sending out of the cards; and second, the failure of Nason to reply to this statement. There is abundant evidence in the record that the strike occurred not only because of the failure to reach an agreement in the wage dispute but also because of the alleged discrimination. The question of discrimination was a new one with respect to which the respondent had the duty to bargain collectively if requested to do so. It is inconceivable that Nason and Watt did not interpret the presence of Hadden and the committee, especially in the light of their statement that the men did not want to work because of the discrimination, as a request on the part of the committee that the discriminatory selection be discussed. The failure of Nason and of Watt to make any reply to these statements is clearly indicative of their determination to stand by the selection as made and constitutes a refusal to bargain collectively.

We find that on January 28, 1936, the respondent refused to bargain collectively with Local No. 79 concerning conditions of employment.

19. There was testimony by the manager of two Sears, Roebuck & Company stores in Pittsburgh that he received four or five local complaints about failure to receive goods from the respondent during the strike. He called the respondent and was informed by someone at the plant that the men were on strike and would not allow delivery trucks into the plant. There is no direct evidence of interstate shipments that were interrupted because of the labor dispute. The inference is logical, however, that if intrastate shipments were prevented by the strike, interstate shipments were also prevented.

The shutdown of the plant on January 7, 1936, because of the labor dispute, constituted a burden and obstruction to commerce. The respondent, by the discriminatory discharges on January 26, 1936, and by refusing to bargain collectively on January 28, 1936, concerning these discharges, created a situation which led to a strike that has continued the burden and obstruction to commerce.

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

20. Under the circumstances of this case, the appropriate remedy would be the reinstatement, as far as possible, of those persons whom the respondent considered its employees on December 20, 1935. As pointed out in our prior decisions in similar cases, no effective relief could otherwise be granted. See *Columbian Enameling & Stamping Co.; Rabhor Company, Inc.; Jeffery-DeWitt Insulator Co.*

CONCLUSIONS OF LAW

Upon the basis of the findings of fact and upon the entire record in the proceeding the Board finds and concludes as matters of law:

1. Local No. 79, International Brotherhood of Foundry Employees, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The employees of the respondent engaged in production, exclusive of those acting in a clerical, supervisory and official capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, Local No. 79 having been designated as their representative by a majority of the employees in an appropriate unit, was on January 28, 1936, and at all times thereafter has been the exclusive representative of the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

4. The respondent, by refusing to bargain collectively with Local No. 79 in respect to conditions of employment on January 28, 1936, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. The respondent, by discharging John Winso, J. H. Nelson, J. McIntosh, Charles Reimenschneider, John Goulding and Robert Booth, and each of them, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

6. The respondent, by discharging John Winso, J. H. Nelson, J. McIntosh, Charles Reimenschneider, John Goulding and Robert Booth, and each of them, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

ORDER

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

1. Cease and desist from,

(a) In any manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid and protection;

(b) In any manner discriminating in regard to hire and tenure of employment and thereby discouraging membership in Local No. 79 or any other labor organization of its employees;

(c) Refusing to bargain collectively with Local No. 79 as the exclusive representative of its employees engaged in production, exclusive of those acting in a clerical, supervisory and official capacity, in respect to the discriminatory discharges and in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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

(a) Upon request, bargain collectively with Local No. 79 as the exclusive representative of its employees engaged in production, exclusive of those acting in a clerical, supervisory and official capacity, in respect to the discriminatory discharges and in respect to rates of pay, wages, hours of employment and other conditions of employment, and in respect to the wages of employees in the radiator cleaning room;

(b) Offer reemployment to John Winso, J. H. Nelson, J. McIntosh, Charles Reimenschneider, John Goulding and Robert Booth in their former positions without prejudice to rights and privileges previously enjoyed;

(c) Offer reemployment, on the basis of seniority in the respective departments, to all those persons listed by the respondent as its employees on December 20, 1935, who have not received substantially equivalent employment elsewhere, discharging, if necessary, any employees who may have been hired by the respondent since January 28, 1936; and in the event that a sufficient number of positions are not now available, place the remainder of those persons on a preferential list to be offered reemployment on the basis of seniority, in the respective departments, as and when additional labor is needed;

(d) Post immediately notices to its employees in conspicuous places throughout the plant stating (1) that respondent will cease and desist in the manner aforesaid and (2) that such notices will remain posted for a period of at least 30 consecutive days from the date of posting.