

In the Matter of MANN EDGE TOOL COMPANY and FEDERAL LABOR  
UNION No. 18779

*Case No. C-61.—Decided June 22, 1936*

*Tool Industry—Interference, Restraint or Coercion:* denial of right of employees to be represented by non-employees—*Discrimination:* demotion, wage reduction; discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Robert H. Kleeb* for the Board.

*Mr. A. Reed Hayes*, of Lewistown, Pa., for respondent.

*Mr. David Williams* for American Federation of Labor.

*Hilda Droshnicop*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Upon charges<sup>1</sup> duly filed by David Williams, representative of the American Federation of Labor, on November 12, 1935, the National Labor Relations Board, by Clinton S. Golden, Regional Director for the Sixth Region, issued its complaint against the Mann Edge Tool Company, Lewiston, Pennsylvania, respondent herein. The complaint and notice of hearing thereon were duly served on January 20, 1936.

The complaint alleges that respondent has engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act.<sup>2</sup> Respondent did not file an answer.

Pursuant to the notice of hearing, Judson A. Crane, duly designated as Trial Examiner by the Board, conducted a hearing on January 30 and 31, and February 1, 1936, at Lewistown, Pennsylvania. Respondent and Federal Labor Union No. 18779, hereinafter called the union, appeared by counsel and participated in this hearing. The Board was also represented by counsel.

At the hearing respondent submitted a document, dated January 30, 1936, in which it stated among other things that it appeared spe-

<sup>1</sup> On November 12, 1935 the union filed a petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. With permission of the Board, this petition was withdrawn on June 3, 1936.

<sup>2</sup> On June 3, 1936, the Board granted the request of the union to withdraw the charge that respondent had violated Section 8, subdivision (5) of the Act.

cifically for the purpose of objecting to the jurisdiction of the Board and requested that the complaint be dismissed on the ground that respondent is not engaged in interstate commerce. Respondent's motion to dismiss was denied. This ruling is affirmed. On motion by counsel for the Board, the Trial Examiner amended the complaint by withdrawing the name of Wilson Swonger, and by alleging as regards E. J. Miller that he had been reemployed in a demoted position, said demotion being due to his union activities.

Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded all parties. Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on February 27, 1936, filed an intermediate report, finding in substance that respondent had discriminated against Domer H. Musselman and James F. Longacre, but not against Russell Smith and Elmer J. Miller. The Trial Examiner recommended that respondent cease and desist from interfering with the union activities of its employees and that it immediately reinstate Musselman and Longacre. On March 6, 1936, David Williams, acting for the union, filed exception to the intermediate report.

We find that the evidence requires some modification of the Trial Examiner's rulings, findings and conclusions.

Upon the entire record, including the pleadings, the stenographic transcript of the hearing, the documentary and other evidence received at the hearing, and the intermediate report and exceptions thereto, the Board makes the following:

#### FINDINGS OF FACT

##### 1. THE MANN EDGE TOOL COMPANY

The Mann Edge Tool Company is a Pennsylvania corporation engaged at its plant in the City of Lewiston, County of Mifflin, Pennsylvania, in the production, sale and distribution of edge tools. Handled and unhandled axes are respondent's principal product. A total of about 75 men are employed in the various departments which compose respondent's plant. Respondent is capitalized at \$75,000.00.

From August 1, 1935 to about January 30, 1936 respondent imported over the Pennsylvania Railroad 73% less-than-carload-lots shipments from points outside Pennsylvania as against 27% less-than-carload-lots shipments from within the state. These shipments included axe handles, mechanic tools, paper bags, axes, lacquer, paint and lard oil, ball bearings and belt fasteners imported from Arkansas, Connecticut, Georgia, Indiana, Kentucky, Massachusetts, Michigan,

New Jersey, New York, Ohio and Tennessee. Three carload lots shipped to respondent from without the State during this period consisted of wooden handles from Louisville, Kentucky, and of shipping boxes from Baltimore, Maryland. Norton grinding wheels, which are indispensable for the manufacture of respondent's axes are imported by respondent from Worcester, Massachusetts. Within the same period 85% of the less-than-carload lots of handled and unhandled axes shipped by respondent over the Pennsylvania Railroad were to destinations in more than thirty States, while only 15% were to points within the State of Pennsylvania. Combining the figures for the total shipments, interstate and intrastate, carload and less-than-carload, inbound and outbound shipments over this railroad were 68% interstate and 32% intrastate.

Rail is an important method of transportation used by respondent. A side track runs off the line of the Pennsylvania Railroad adjoining the plant; through this, products are moved in and out of respondent's plant. Employees of respondent load and unload cars on this track. Trucking of materials to and from the freight stations is another method of transportation used by respondent.

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

## 2. THE UNFAIR LABOR PRACTICES

On August 1, 1933, respondent's entire force, then unorganized, struck for the wages to which they were entitled by virtue of the Code for the industry under the National Industrial Recovery Act. On August 2, the plant resumed operations, and in September, 1933, respondent's employees were granted the wage to which they were entitled under the Code. After this strike, Manbeck, Secretary and Superintendent of respondent, suggested to Musselman, who was vice-president and chairman of the wage committee which had been formed during the strike, that a permanent shop committee be formed. About October 11, 1933, Federal Labor Union No. 18779, a labor organization affiliated with the American Federation of Labor, was formed in the plant and a check-off system was instituted. About May, 1934 Duncan, foreman of the painting department, who had been president of the union after its formation, told Musselman that Manbeck had informed him that he had intended that the men have an independent organization rather than American Federation of Labor affiliations. Duncan said that he concurred in Manbeck's view, and about this time led the employees in the painting and handling departments out of the union. The bulk of these men never reentered the organization.

Respondent's wage agreement with the union entered into in 1934 expired February, 1935. About March 1, 1935, negotiations for the following year's agreement began. When negotiations reached an impasse, the union proposed to enlist the aid of an American Federation of Labor representative in the bargaining. Manbeck reacted unfavorably to this suggestion, saying, "It's no use, he knows nothing about the axe business". Nevertheless, Williams, representative of the American Federation of Labor, was called in, and respondent agreed that the old contract would remain in force pending negotiations on the new agreement. On May 16, 1935, the union committee and Williams met with Manbeck and a further conference was set for May 22, 1935.

When the committee and Williams arrived for the May 22 meeting, Manbeck did not appear. Stephens explained that he was at the hospital. Upon the threat of the union committee that it would strike if subjected to these tactics, Manbeck presented himself. However, he then took the line that a year's contract was for far too long a period and that a 30 day agreement was as far as he would go. At a subsequent meeting on May 29, the only item in dispute was the duration of the agreement. At this conference Manbeck proposed December 31 or January 1 as the expiration date; when Williams suggested February 1, Manbeck agreed. Williams and Manbeck were to meet on June 3 to settle details and to sign the agreement. It was clearly understood throughout the negotiations that Manbeck had authority to make commitments for respondent on these questions. The union informed Manbeck that it would strike on June 4 if the agreement was not signed on the afternoon of June 3.

On the morning of June 3, at 10 o'clock, the whole factory force was suddenly called together. Manbeck announced that the union insisted on his signing the agreement that afternoon. He delivered the warning that respondent could close down its factory during the summer and fall and fill its orders from competitors' plants and remarked that if this were done competitors might discover the volume of respondent's business, buy it, and close it down. He asserted that the disputed agreement contained no change in the wage scale, and that the union's insistence on respondent's signing it was therefore incomprehensible to him. Respondent, he declared, could not sign the agreement because of the recent invalidation of the National Industrial Recovery Act, and the possibility that competitors would cut costs by reducing labor standards. Respondent intended to continue last year's wage rates and working schedules, and would, he said, having signed the agreement on May 27 had the union been willing to make its expiration date December 31, 1935. However, competitive conditions might now require a cut in wages. In con-

clusion, Manbeck offered bonuses to the men who stayed on their jobs, subject to respondent's orders being paid for at the present rates and a rise in corporate profits from the present level. Manbeck's speech concluded with the following statement:

"Now, if there are any men in the shop who do not care to continue their jobs, let your foreman know this afternoon, and we will arrange to have your pay ready, just as soon as the clerical work can be done at the office. I mean your pay in full, last week's, and whatever you earned today . . . Gentlemen, I hope we do not have any trouble. Think twice before you take final action. If you think Mr. Williams can pay you a better wage for the rest of your days than the M. E. T. Co. follow him."

Musselman testified that at one point in this speech Manbeck turned to him and said: "Don't bring Williams to our meeting because we won't see him." Manbeck also indicated that the painting and handling departments had already been consulted and had agreed to his proposal. The union was requested to indicate its intentions immediately. This it refused to do. On the night of June 3, the union met to consider respondent's ultimatum and decided to strike. The following day the strike began.

Respondent had made preparations for this event. It recruited several skilled workers from a plant which it had closed down some time before, and with the aid of these and some unskilled men whom it had also collected in advance, continued operations.

Respondent having announced that it would not see Williams, he called in Mr. Robert E. Mythen, Commissioner of Conciliation, U. S. Department of Labor and Mr. Frank Bowden of the Pennsylvania Department of Labor and Industry to assist the union in bargaining with respondent. Their conference with Manbeck and Stephens resulted in a signed agreement dated June 6, 1935, which reads as follows:

"That we agree to take back all these men without discrimination, putting them to work on some kind of a job in the factory within the next twenty to thirty days, sooner if at all possible. It is further understood that they will be put back on their regular jobs just as soon as it can be arranged."

The strikers consented on June 6 to return to work, under the impression that this agreement meant that they all would receive their jobs back within 20-30 days. This, however, did not occur. Manbeck refused to lay off any of the strikebreakers, and continued to employ other men. Fifteen or sixteen union men were thus not taken back. At the hearing respondent explained that there was a verbal understanding with the conciliators that it would not have to

take back those who were "undesirables"—"not on account of union activities, but on account of their disposition towards the company and the kind of work . . ." and that it intended from the beginning to reinstate in their old jobs only those whom "the company desired to have back." Both Mythen and Bowden flatly denied that the agreement contained any such proviso, not only at the hearing, but, as hereafter set forth, to respondent's officers at a time prior to the hearing.

As a result of this "interpretation", Russell Smith, president of the union, Domer H. Musselman, vice-president and head of the grievance committee, Elmer J. Miller, secretary of the union, and James Longacre, member of the grievance committee and an active union man, all highly skilled workers, were never returned to their former places, but were put on a temporary labor-gang job tearing out obsolete machinery. When this work was completed, respondent laid them off indefinitely on July 5, though their old jobs were then open. Williams tried unsuccessfully to deal with respondent on the question of reinstating these four employees. Respondent took the position that the agreement did not require it to take back permanently employees whom it considered "undesirable" and that, in any event, it was under no obligation to take the men back at any particular time. At about this time the rumor spread that Bowden had told respondent's officers that he would be amenable to their carrying out the agreement by formally reemploying "undesirables" and then discharging them on some pretext. About July 8 or July 10 Bowden returned to Lewiston for the purpose of scotching this rumor. In a conference at which Russell Smith and Musselman were present Bowden confronted Manbeck with this statement. Manbeck admitted that Bowden had not said this, but declared that Mythen had. During this meeting the union men took the opportunity to point out that Manbeck was unfairly hiring new men when employees to whom it was obligated under the agreement were still out. To this Manbeck replied "That is our business; we can hire and fire whom we please."<sup>3</sup>

The following week, Mythen made a special trip to Lewiston to deny Manbeck's statement. On July 18 Bowden, Mythen, Musselman, and Miller went to respondent's plant for a conference with Manbeck and Stephens on this matter and on the whole question of the reinstatement of the men who were still unemployed.<sup>4</sup> When Mythen inquired where Manbeck was, Stephens replied that he had left town—though the stenographer had just told Mythen that he was in

<sup>3</sup> At the hearing Manbeck denied that Bowden and he had this conference

<sup>4</sup> At the hearing Manbeck testified that he never heard of Mythen's and Bowden's visit until the day before in court. However, he later asserted that Stephens told him he need not come to the meeting.

the factory. Mythen testified that he then informed Stephens that he considered that respondent had violated its agreement in failing to take back the strikers—particularly the leaders—within 30 days, although their jobs were open. To this Stephens replied, “Well, if the men feel like they can get more through their labor organizer and more through bringing a representative of the government here, they could do so.” On July 22, Williams requested the Regional Director for the Sixth Region to investigate the question of whether a complaint could be issued in this case.

At the time of the hearing most of the strikers had been taken back except the men here involved; and two of these, Miller and Gibboney, were subsequently called back to work. Manbeck admitted that he had taken on other employees since the work of the “labor gang” had ended on July 5. These men, he said, were promised jobs before and during the strike.

It is indicative of respondent’s attitude toward the union that Grant Smith, assistant superintendent of the plant and uncle of Russell and Oscar Smith, both union men in the plant, said when he saw Oscar passing around union applications early in October, 1935, “I understand you are . . . getting signers to represent the union . . . well, you don’t want to do it again . . . the company will not positively have anything to do with an organization that is affiliated with the American Federation of Labor.” On cross-examination by respondent’s counsel, Grant Smith explained his statement in the following manner: “I didn’t want to have to do it (i. e., to discharge Oscar). I wanted to keep him in the employ . . . I wanted to take care of him after going through what he went through, we didn’t want to start anything else right away . . .”. Grant Smith admitted also that he told Oscar, “The company would not stand for this literature passing through the shop.”

### 3. THE DISCRIMINATORY DISCHARGES

(1) *Russell Smith* had been president of the union since April, 1934. He had been a steel heater in respondent’s plant for approximately two or three years, earning about \$16 or \$17 a week on piece work. There had never been any complaints about his work or any discussion about laying him off before the strike. The evidence fails to establish the fact that Smith was not called back to his former position because he was inefficient. Grant Smith, who at first asserted that Bridgens, whom Russell helped, complained about Russell’s work every day, later admitted that Bridgens was a chronic complainer. The testimony that Russell was “indifferent to his work” because he wished to stop work at noon, after having been at the furnace from 6:15 A. M. on, with a half hour out at 9:00, was

vitiated by the fact that the schedule desired by Russell was the general practice in the industry, had formerly been respondent's practice, and all the steel helpers in the plant shared his views on the matter. Though it might easily have done so, respondent failed to put in pay roll records of employees in comparable positions to substantiate its accusation of inefficiency. At the hearing Manbeck openly admitted the source of his objection to Russell Smith: "I am not talking about his efficiency," he said. "It is his disposition . . ." Smith, he declared, was a disruptive influence because he suggested to the men that they should work shorter hours and receive more wages. Since his discharge respondent's steel heaters work until 2:00 o'clock whereas they formerly refused to work after noon.

After the strike, Oscar Smith, a bit drawer who was then working on the labor gang with the men here involved, was put on Russell's job heating steel, which was then open, and Madison, a man who had not been on the pay roll before the strike, was put in Oscar's place. Russell was then kept on the temporary laboring job though he might have been returned to his old position. When Oscar was subsequently detailed to his former place as a bit drawer, leaving Russell's job open again, Herbert Swonger, who was hired September 9, was put in Russell Smith's place.

The Trial Examiner's finding that Russell Smith was dismissed for inefficiency is hereby reversed.

(2) *Domer H. Musselman*, vice-president of the union and head of the grievance committee, had been employed by respondent for about twelve years and had been a bit drawer in respondent's forge shop for approximately nine years. His average earnings were \$20 a week on piece work. Respondent's officers admitted that he was a good workman, and said that he would be taken back if there was work for him. There had never been any discussion of discharging him before the strike. The objections to Musselman offered by respondent that he occasionally took 45 minutes for lunch instead of 30 minutes, and that, though he was good on his own work, he was not equally efficient on other jobs, scarcely account for the discharge of so old an employee.

Directly after the strike, Bowman, who had never worked for respondent before, was put in Musselman's place, though Musselman was available for employment. After July 5, when the labor gang had been laid off and Musselman was again without work, respondent discharged Bowman because he was "seldom sober." Instead of recalling Musselman, whom they admittedly could have taken back at that point, Frey, who had not worked for respondent for six years, replaced Bowman. Of his qualifications for the position, Grant Smith said after Frey had worked six months on the job: "He is a

better blacksmith than bit drawer, but he is getting better." Grant Smith's conclusion on the relative merits of Musselman and the men who replaced him is suggestive. Smith testified that despite Bowman's inebriety and Frey's inexperience, he preferred them both to Musselman as bit drawers. He admitted that neither Bowman nor Frey was a better worker than Musselman, but ". . . Musselman was a fault-finder." In response to the suggestion that Musselman may have appeared to be a "kicker" because he was chairman of the grievance committee, respondent said, "Yes, and I think it spoiled him." The inference was that he brought too many grievances to respondent.

After the issuance of the intermediate report in this case Musselman was reinstated in his former position by respondent on March 10, 1936 without payment of back wages.

(3) *James Longacre* was the member of the grievance committee representing the polishing department. He had been the sole regular buffer in respondent's plant for about seven and a half years. His average salary was about \$32-\$33 for a five day week. During that period he was never laid off, except in slack periods. His output was never inspected, and he was regarded as one of the hardest workers in the shop. Respondent never contemplated discharging him before the strike. In spite of attempts by respondent's counsel to establish the fact that there were flaws in his work, respondent's officers conceded at the hearing that he was an excellent workman.

After the strike, Ed Bowman, a new man, was put in Longacre's place though Longacre was available. When Ed Bowman left the job because "he has the habit of not staying anywhere very long" Longacre, who was then on the labor gang, could have replaced him. Instead Snyder, a new man who had been hired as a bit drawer, filled the vacancy left by Ed Bowman. Respondent's officers admitted that Longacre was then available and could have filled the job better than any man known to them. As in the case of Musselman and Russell Smith, respondent's only consistently held objection to Longacre was his "disposition".

On March 10, 1936 respondent reinstated Longacre in his former position without back pay.

(4) *Elmer J. Miller*, the secretary of the union, and a former member of the grievance committee had worked for respondent for twenty-three years. For approximately five years he had worked at the wedge saw in the tempering room. His earnings were approximately \$19 a week.

Though Miller was available for employment after the strike, Ralph Reed, an employee of respondent, was detailed to his position. After July 8, when Miller had been discharged with the rest of the labor gang, C. P. Vogelsang, who had been laid off by respondent

some time before the strike, was put in Miller's position at the wedge saw. On November 13 Miller was recalled and placed in a demoted position in the shipping department at a lower wage than he had previously received at the wedge saw.

As in the case of the other men here involved, respondent failed to substantiate its contention that Miller was not reinstated in his former job because of inefficiency. The Trial Examiner's finding that Elmer J. Miller was not reinstated in his former position because of inefficiency is hereby reversed.

At the hearing respondent openly asserted that it intended from the beginning, at the cost of violating the agreement with the conciliators, not to reinstate to their former positions "undesirables" whose "disposition" toward their work was improper. In spite of its alleged commitment to the strike breakers, respondent succeeded, by some discharges and reallocations of work, in finding room for the great majority of the 50-odd employees who struck on June 4. The president, vice-president, secretary and a member of the grievance committee of the union alone have failed of reemployment. The Board's conclusion in *Timken Silent Automatic Company* and *Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, is applicable here:

"Employees of their experience would normally have been reinstated before others. In this fact: The disproportionate number of . . . prominent Union leaders who were not reinstated, we perceive more than the operation of mere chance; we find a studied plan by respondent to eliminate the Union leaders from its staff."

Owing to the absence of evidence no finding is made on the discharge and failure to reinstate to his former position of Harry Gibboney.

We find that respondent has discriminated with respect to hire and tenure of employment against the persons named in the complaint as amended except Harry Gibboney, for the purpose of discouraging membership in the union, and that by such acts, respondent has interfered with, restrained and coerced its employees in the exercise of the rights of self-organization guaranteed in Section 7 of the Act.

#### 4. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

We have found above that in August, 1933, respondent's plant was shut down owing to labor difficulties. Owing to the strike on June 4, 1935, the functioning of respondent's factory was again considerably disrupted. That labor disputes frequently cause serious dislocations in the industry in which respondent is engaged is evidenced by the fact that according to records of the Bureau of Labor Statis-

tics of the United States Department of Labor, strikes and lockouts in 1934 and in January to July, 1935, involved 996 men and 11,447 man-days of idleness.

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

#### THE REMEDY

We have found that respondent on July 5, failed to reinstate in their former positions and discharged Russell Smith, Elmer J. Miller, Domer H. Musselman and James Longacre because of their union activities. To this explanation alone can we assign respondent's dismissal of men of such extensive experience in respondent's own plant in favor of the workmen who were retained in their places or hired from outside. Since Longacre and Musselman have already been reinstated in their former positions, an order to that effect in their cases would be superfluous; we therefore award them only back pay from the period of their illegal discharge on July 5, to the date of their reinstatement in their former positions, less the amount earned by them during the time they were without employment in respondent's plant. Since Russell Smith and Elmer J. Miller are still ousted from their former positions, we order that they be reinstated and given back pay on the same basis as Musselman and Longacre. They are not, however, to be paid for the period between February 27, 1936 and the date of this decision, because of the failure of the Trial Examiner to find that respondent was guilty of a violation in their cases.

#### CONCLUSIONS OF LAW

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

1. Federal Labor Union No. 18779 is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. By its refusal after July 5 to reinstate in their former positions Russell Smith, Domer H. Musselman, Elmer J. Miller and James Longacre respondent did discriminate in regard to hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in Federal Labor Union No. 18779 and by all of said acts and each of them did thereby engage in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act. By its continued refusal after July 5 to reinstate in their former positions Russell Smith and Elmer J. Miller respondent is discriminating in regard to hire and tenure of employment of said persons and each of them and is thus discouraging membership in Federal Labor Union No. 18779 and by all said

acts and each of them is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

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

4. 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 respondent, Mann Edge Tool Company, and its officers and agents, to:

(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 National Labor Relations Act.

(2) Cease and desist from discouraging membership in Federal Labor Union No. 18779, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

(3) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Reinststate to their former positions without prejudice Russell Smith and Elmer J. Miller, with all rights and privileges previously enjoyed; and

(b) Make whole Russell Smith, Elmer J. Miller, Domer H. Muselman and James Longacre for any loss they may have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages on his former position during the period from the time he was discharged on July 5, 1935, to the date of such offer of reinstatement, computed at his average weekly wage on his former position, less the amount which each, respectively, has earned subsequent to July 5, 1935, and up to the time of such offer of reinstatement; except that Russell Smith and Elmer J. Miller shall not be compensated for the period of February 27, 1936 to the date of this decision.

It is further ordered that the complaint be dismissed as to Harry Gibboney.