

In the Matter of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., AND ITS AFFILIATED COMPANIES—BROOKLYN EDISON COMPANY, INC.; NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY; WESTCHESTER LIGHTING COMPANY; THE YONKERS ELECTRIC LIGHT AND POWER COMPANY; NEW YORK STEAM CORPORATION; and CONSOLIDATED TELEGRAPH AND ELECTRIC SUBWAY COMPANY, and UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION.

Case No. C-245.—Decided November 10, 1937

Gas and Electric Utility Industry—Interference, Restraint, and Coercion: employment of industrial spies; recognition of a favored labor organization for its members only, at a time when organization incomplete and membership negligible, as the first step in plan to dictate choice of representative of employees; effecting transfer of a company-dominated union over to favored labor organization; urging, persuading, and warning employees to join favored labor organization and threatening them with discharge for non-compliance; permitting officers of dissolved company-dominated union who had become officers of favored labor organization to utilize, in behalf of favored labor organization, their prerogatives as officers of company-dominated union, such as use of company offices, stenographic services, and expense accounts, while paid regular salaries by respondents; permitting organizers and dues-collectors of favored labor organization to carry on activities on company time and property, while similar privileges denied to rival labor organizations; execution of contracts with favored labor organization in behalf of members only, for the purpose of consummating and perpetuating illegal course of conduct; respondents' construction of contracts as exclusive collective bargaining agreements in spite of knowledge that membership in favored labor organization is not the free choice of majority of employees—*Collective Agreements:* invalid, even though for members only, since executed for the purpose of consummating and perpetuating plainly illegal course of conduct; respondents ordered to cease and desist from giving effect thereto—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. David A. Moscovitz and Mr. Will Maslow, for the Board.

Whitman, Ransom, Coulson & Goetz, by Mr. William L. Ransom and Mr. Pincus M. Berkson, of New York City, for the respondents.

Mr. Louis B. Boudin and Mr. Sidney Elliott Cohn, of New York City, for the United.

Mr. Joseph Friedman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Electrical and Radio Workers of America, herein called the United, the National Labor Relations

Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York City), issued its complaint dated May 12, 1937, against Consolidated Edison Company of New York, Inc., and its affiliated Companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, the Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, herein called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect of the unfair labor practices, the complaint in substance alleged (1) that the respondents had employed and were employing industrial spies for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations; (2) that on or about November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Greulich, and Michael Wagner, employees of the respondents, and on or about June 19, 1936, discharged, and thereafter refused to reinstate, William J. Kennedy and John Emler, employees of the respondents, for the reason that they had engaged in concerted activities with other employees of the respondents for their mutual aid and protection; and (3) that the respondents had interfered with, restrained, and coerced their employees in the exercise of their right to form, join, and assist labor organizations of their own choosing and were continuing to do so, had contributed and were contributing financial and other support to the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and had coerced and were coercing their employees to join or assist the I. B. E. W.

Copies of the complaint and of notice of a hearing to be held on June 1, 1937, at New York City, both dated May 12, 1937, were duly served upon the respondents, upon the United, and upon the I. B. E. W. On May 25, 1937, the Regional Director issued and duly served upon the parties and the I. B. E. W. an amended notice of hearing, specifying that the hearing would be held on June 3, 1937, instead of on June 1, 1937.

On May 17, 1937, the respondents, appearing specially, filed a motion to dismiss the complaint for lack of jurisdiction, on the ground that the Act was inapplicable to the respondents and their labor relations with their employees, for the reason, it was asserted, that the respondents conduct a local, intrastate business and are, therefore, subject exclusively to the New York State Labor Relations Act,¹

¹ Chapter 443 of the Laws of 1937. The State Act is also designated as Article 20 of the Labor Law.

which was to become effective on July 1, 1937. The motion included a request that the motion be heard and determined by the Board prior to the hearing on the complaint, and was accompanied by an affidavit of Oscar H. Fogg, vice-chairman of the board of trustees of the respondent Consolidated Edison Company of New York, Inc., and vice-chairman or member of the board of directors of each of the affiliated companies named as respondents, containing a statement of facts tending to show that the respondents' business was of an intrastate character. On June 2, 1937, the Board denied the respondents' request for a prior and separate hearing by the Board on the motion to dismiss the complaint.

Pursuant to the amended notice, a hearing was held at New York City on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, before Robert M. Gates, duly designated as Trial Examiner by the Board. The Board, the respondents, and the United were represented by counsel and participated in the hearing. The I. B. E. W. did not appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the commencement of the hearing, argument was heard on two separate petitions to intervene filed with the Regional Director prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, both labor organizations claiming to have filed with the Regional Director informal charges against the respondents. The complaint herein was not based on these informal charges, but only on the formal charge filed by the United. Upon separate objections by counsel for the Board, the respondents and the United, the Trial Examiner reserved decision thereon, but on June 10, 1937, the second day of the hearing, he denied both petitions to intervene. The ruling is hereby affirmed.

At the commencement of the hearing, the respondents reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on the respondents' motion to dismiss the complaint. At the close of the presentation of the Board's case, the motion to dismiss the complaint for lack of jurisdiction was renewed by the respondents and was denied by the Trial Examiner. The ruling is hereby affirmed.

On June 10, 1937, the second day of the hearing, the Trial Examiner allowed the complaint to be amended to include allegations of the discriminatory discharge of Stephen L. Solosy, without objection by the respondents other than their general reservation of objections to the jurisdiction of the Board. On June 14, 1937, the respondents filed a verified answer, in which they reserved their objections to the jurisdiction of the Board and in substance denied engaging in the

unfair labor practices alleged in the complaint, setting forth in addition affirmative allegations in defense thereof.

Upon the completion of the presentation of the Board's case on June 24, 1937, counsel for the respondents requested an adjournment until July 6, 1937, to enable him adequately to prepare and present the respondents' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, the testimony of both of whom was asserted to be indispensable. It was shown that Carlisle, who was chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and had been in charge of the respondents' labor policies and negotiations, was in France attending a meeting of the World Power Conference and would return to New York City on July 5, 1937; and that Dean, who was vice-president of New York and Queens Electric Light and Power Company and in charge of the execution of the policies of that company which resulted in the alleged discriminatory discharges of five of the persons named in the complaint, was in Milwaukee attending the annual conference of the American Institute of Electrical Engineers and was thus unavailable as a witness at that time. The only reason offered for not calling other witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than was anticipated by the respondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only, and reserved until that time decision on the question whether the testimony of Dean and other witnesses would be taken when the hearing was resumed on July 6, 1937. The Trial Examiner granted permission to the respondents to present the matter of taking the testimony of witnesses other than Carlisle on July 6, 1937, directly to the Board in the meantime. This was done by the respondents in a letter to the Board, dated June 28, 1937. The Board replied in a letter, dated July 2, 1937, stating that it would permit both Carlisle and Dean to testify on July 6, 1937, but would not permit any other witnesses to testify, on the ground that such other witnesses should have been produced on the completion of the presentation of the Board's case on June 24, 1937. After the testimony of Carlisle and Dean had been received on July 6, 1937, counsel for the respondents called a witness to testify concerning the alleged discriminatory discharge of Stephen L. Solosy. The Trial Examiner refused to allow the witness to testify. The respondents duly excepted to the ruling of the Trial Examiner. The Trial Examiner, however, allowed the respondents to introduce into the record an offer of proof concerning the alleged discriminatory discharge of Stephen L. Solosy.

After the close of the Board's case, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner de-

nied the motion in so far as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Philemon Ewing, who was not named in the complaint, but concerning whose discharge testimony had been received; but in other respects the motion was granted. The ruling is hereby affirmed. At the same time the Trial Examiner granted the respondents' motion to amend its answer to include as a separate defense allegations that certain contracts executed by the respondents and certain locals of the I. B. E. W. as of June 15, 1937, after the commencement of the hearing, had rendered moot any controversy raised by the complaint.

The parties did not avail themselves of the opportunity afforded for argument at the close of the hearing, but thereafter the respondents filed a brief.

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 27, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

During the course of the hearing the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENTS AND THEIR BUSINESSES

A. *Incorporation and nature of business*

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are New York public utility corporations, having their principal offices and places of business in New York City. They are engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. Consolidated Edison Company of New York, Inc. is engaged also in the business (a) of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and (b) in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas, namely, coke, coke breeze, tar, light oils, and sulphate ammonia. Consolidated Edison Company of New York, Inc., besides being an operating utility company is also a holding company, owning controlling stock interests, as described below, in the other respondents herein. Westchester Lighting

Company and The Yonkers Electric Light and Power Company are New York public utility corporations, having their principal office and place of business in Mount Vernon, New York. The former company is engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the city of Yonkers; and the latter company is engaged in the business of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York. New York Steam Corporation, a New York public utility corporation having its principal office and place of business in New York City, is engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan. Consolidated Telegraph and Electrical Subway Company, a New York corporation having its principal office and place of business in New York City, is engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors (other than telegraphic and telephone conductors) in the Boroughs of Manhattan and The Bronx. Consolidated Edison Company of New York, Inc., and Westchester Lighting Company occupy space in such ducts and pay rent for the space so occupied.

B. Stock ownership

Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc., (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by Bronx Gas and Electric Company, merged into Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of Consolidated Gas Company of New York and that conducted by various gas companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged in 1936 into Consolidated Edison Company of New York, Inc. The latter company owns more than 90 percent of all the outstanding voting stock of each of its affiliated companies named as respondents herein.

C. Unitary and integrated System

The respondents are commonly referred to as the Consolidated Edison Company group of companies or the Consolidated Edison Company System. They constitute and are operated as a unitary and integrated system.

System management. A majority of the board of directors of each of the respondents, other than Consolidated Edison Company of New York, Inc., is made up of trustees or officers of the latter

company. Each of the respondents has executive and operating officers and employees who are not officers of Consolidated Edison Company of New York, Inc., but who take part, with the trustees and officers of the latter company, in the discussion and determination of the major and general policies of the respondents. The major labor policies, among others, of the respondents are thus discussed and determined, but are locally administered and applied by the board of directors and executive officers of each respondent, in a manner not inconsistent with the general policies as determined by and for the respondents as a whole.

Unified operations of System. The companies of the Consolidated Edison Company System have for many years been under a unified ownership, management, and operation. Thus, the gas operations of the System have for many years been carried on in accordance with the terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and other properties of the various companies have been and are operated as an interconnected system. Similarly, the generating facilities of the electric companies in the System have been and are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. Additional electric energy is purchased from New York Light and Power Company, which is not affiliated with the respondents, under interchange of power arrangements established with that company, in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the System. New York Steam Corporation has a connection with one of the electric generating stations of Consolidated Edison Company of New York, Inc., from which is made available an additional supply of steam for resale to its customers.

Location of respondents' properties. The respondents' electric generating stations, sub-stations, gas manufacturing plants, gas holder-stations, steam generating plants, service buildings, shops, store-rooms, garages, and similar structures are all maintained and operated within the State of New York, and principally in New York City and Westchester County. All transmission and distribution facilities and equipment owned by the respondents and all other property owned by the respondents and used in their business are located in New York City or Westchester County. All meters in use by any of the respondents are located and are read on the premises of consumers situated in New York City and Westchester County; and all metering apparatus and equipment furnished by the respondents are similarly located.

Exclusiveness of respondents' service. In 1936 the System supplied 97.5 per cent of the total electric energy sold by central station companies in New York City, and practically all of the electric energy sold by central station companies in Westchester County. It supplied 55.3 per cent of the total gas supplied to consumers in New York City. It did not supply any gas to consumers in the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens. On the other hand, its percentage of the total gas supplied to consumers in Manhattan and The Bronx is very much greater than 55.3 per cent. Westchester Lighting Company is the only public utility supplying gas in Westchester County; and New York Steam Corporation is the only central-station steam utility in New York City.

Annual production, sales, and employment totals. In 1936, the System generated and purchased 6,038,989,792 kilowatt hours of electric energy and sold 5,130,976,460 kilowatt hours. The total revenue from the sale of electric energy amounted to \$180,488,596.19. During the same period the System produced 39,286,022,000 cubic feet of gas, and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to \$41,163,261.69. The total revenue from the sale of steam during 1936 was \$10,761,341.04. During the same period the revenue from the sale of coal and oil by-products amounted to \$3,485,338.01, but such revenue is treated by the respondents as an abatement of production expenses.

As of April 17, 1937, the respondents employed 42,101 employees. The total annual pay roll for 1936, including annuities and separation allowances paid, amounted to \$81,891,990.40.

D. *Purchase of materials in interstate commerce*

Coal and oil. The raw materials used by the respondents in the production of all their electric energy, gas, and steam are coal and gas-oil. In 1936 the respondents purchased 4,975,452 tons of coal at a cost of \$23,224,761, and purchased 114,370,343 gallons of oil. All the coal was mined outside the State of New York and transported from points outside the State of New York to the plants of the respondents by rail and barge or by rail and steamship. All the oil is produced at wells and refineries outside the State of New York and transported in barges from points outside the State of New York to the respondents' gas plants in New York City. The respondents do not own or operate any ships, barges, tugs, or freight cars for the transportation of gas and oil from their points of origin outside the State of New York to the respondents' stations or storage yards. The respondents maintain unloading and coal conveying equipment at their stations or storage yards and the respondents' employees unload the coal from

the boats. The shipment of coal and oil to the respondents is practically continuous throughout the year.

Copper. In 1936 the respondents purchased \$53,160 worth of copper for electrical construction and operation. The copper is mined outside the State of New York and a substantial portion thereof is purchased from concerns situated outside the State of New York.

Cable. In 1936 the respondents purchased \$4,659,840 worth of cable, of which approximately 30 per cent came from factories situated outside the State of New York.

Other materials and equipment. In 1936 the respondents purchased substantial quantities of other materials, equipment, and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, poles, incandescent lamps, and similar items. Part of these items were purchased from concerns situated outside the State of New York, and part from dealers within the State of New York.

E. Dependence of particular consumers on electric energy and gas supplied by the respondents

The written stipulation for the determination of the question of jurisdiction entered into by counsel for the Board and counsel for the respondents sets forth data concerning a number of particular consumers which show the dependence on the electric energy and gas supplied by the respondents of various types of important businesses engaged in interstate and foreign commerce and communication and the disastrous effect on such commerce and communication that would result from a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employées.

Railroads.—The respondents supply electric energy to the New York Central Railroad, an interstate railroad. The electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, a terminal for interstate and intrastate trains operated by the Railroad Company, in part for the lighting and operation of various structures on terminal lands, and in part for the electric operation of both intrastate and interstate passenger trains from Harmon, New York, to the Grand Central Terminal and from the Grand Central Terminal to Harmon, New York. No steam-propelled passenger trains ordinarily operate between the Grand Central Terminal and Harmon, New York. Electricity supplied by the respondents is also used for the air-conditioning of Pullman cars attached to interstate trains in the yards of the Railroad Company in New York City. In 1936 the Railroad Company purchased from the respondents 145,593,421 kilowatt hours for

all purposes. The respondents deliver all of the electric energy to the Railroad Company at designated locations in the State of New York.

The respondents also supply electric energy to the New York, New Haven, and Hartford Railroad Company, an interstate railroad, which utilizes it for the operations of its freight terminals for both interstate and intrastate trains, and for the operation of passenger trains in and out of Grand Central Terminal, many of which trains operate on interstate runs. The total electric energy supplied to the New Haven Railroad in 1936 was 58,793,983 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Hudson and Manhattan Railroad Company, which utilizes it for the lighting and operation of its terminal buildings, for the operation of a rapid transit railroad which runs for a distance in New York City and thence by tunnel to Jersey City and Hoboken, New Jersey, and for the operation of an interurban railroad from its terminal in New York City through the tunnel under the North River to Jersey City and Newark, New Jersey. The total electrical energy supplied to this Railroad Company in 1936 was 57,221,097 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Lehigh Valley Railroad Terminal in New York City for the operation of its interstate railroad terminal.

Steam service supplied by New York Steam Corporation, a respondent herein, is used to operate compressors, for the operation of switches in the interstate railroad tunnel of the Pennsylvania Railroad Company under the North River.

Navigation in New York harbor. The respondents supply electric energy to the Federal Government for the operation in New York harbor of six lighthouses, 8 beacon or harbor lights, the United States Barge office, the United States Customs Houses, various warehouses, and Governor's Island. They also supply electricity to the City of New York for the operation of devices used as aids to navigation, namely, lights on various bridges and on the ends of various piers and docks. The respondents also supply electric energy to a majority of the piers of trans-Atlantic and coastal steamship companies, along the East River and the North River, for lighting, freight-handling, and related uses. They also supply electricity to the Port of New York Authority for the operation of its terminal; the Holland Tunnel, an interstate vehicular tunnel under the Hudson River, and the other projects under its supervision.

Ferries. The respondents supply electricity to various ferry slips from which steam-propelled ferries operate on the Hudson River between New York and New Jersey. The electricity is used in the

operation of waiting rooms, ticket offices, signs, and approaches. They also supply electricity, under contract with the Federal Government, to ferry slips from which ferries operate in waters other than the Hudson River.

United States post-offices. The respondents supply electric energy to the Federal Government for the operation of its General Post Office in New York City and some 132 branch post-offices in New York City and Westchester County. The electricity is used for operating pneumatic tubes between postal stations, equipment in stations, including conveyor belts, elevators, ventilators, and similar equipment. Postal operations are conducted on a 24-hour basis.

Telegraph. The respondents supply electric energy to the Western Union Telegraph Company and its some 210 branch offices in New York City and Westchester County, and to the Postal Telegraph Company and its some 140 branch offices in New York City and Westchester County. The electricity is used for general lighting and power purposes and for the operation of apparatus used in the transmitting and receiving of telegraphic messages, both local and interstate.

Telephone. The respondents supply electric energy to the New York Telephone Company for the operation of its various buildings, offices, and exchanges in New York City and Westchester County. The electricity is used to operate the equipment utilized in the transmitting and receiving of interstate and local communications.

Radio. The respondents supply electric energy to RCA Communications, Inc., a subsidiary of Radio Corporation of America, which, among other uses, is used to operate the switchboards for its trans-Atlantic radio service. Similarly, the respondents supply electric energy to Columbia Broadcasting System, Inc., and to its subsidiary, Atlantic Broadcasting Company, for the purpose, among others, of operating equipment which broadcasts to other states as well as the State of New York.

Airports. The respondents supply electric energy to the Floyd Bennett Air Field, for such purposes as building lighting, field illumination, the operation of a radio beam, obstruction lighting, and the operation of hangar machine shops.

Newspapers. The respondents supply electric energy to the New York Times Company for the operation of all the power equipment in the printing plant and for general lighting purposes. The newspapers printed and published by this company are circulated throughout the world.

Dow-Jones tickers. The respondents supply electric energy to Dow-Jones and Company, Inc., for the operation of its financial news ticker service.

New York Stock Exchange. The respondents supply electric energy to the New York Stock Exchange Building Company, and a related concern, Stock Exchange Building Company, located in the same premises, for light and power in the operation of the Stock Exchange and of the Stock Exchange ticker system for the sending out of stock quotations and transactions. Through this system stock exchange quotations are made instantly available throughout the country by telegraph.

F. *Relation to commerce*

On January 15, 1936, an interruption of the alternating current service in parts of the Boroughs of Manhattan and The Bronx was produced by a short circuit in the respondents' Hell Gate generating station. Service to some 40,000 customers, out of about 2,000,000 electric customers of the respondents, involving about ten per cent of the load, was affected. Although other generating plants of the System took over the load from such units at the Hell Gate station as were affected by the short circuit, several telephone exchanges and branch post offices, and various industrial and commercial concerns in the area affected, experienced a partial or total interruption of electric service, as the restoration of service required considerable work in the streets, on transformers, and on consumers' premises (fuses, motors, etc.) to repair the effects of the impact of the short circuit on the distribution lines in the area affected, as well as work in the electrical galleries at Hell Gate.

This incident coupled with the fact that the respondents supply 97.5 per cent of the total electric energy sold in New York City by central station companies and the respondents' contention at the hearing and in their brief that the operations of the System could easily be endangered and seriously dislocated by a single one of certain of its employees, is indicative of the effect which a labor dispute between the respondents and their employees might have upon the operations of the respondents and the multitude of businesses whose operations are dependent on them for electric energy.

It thus becomes evident from all the above findings (1) that the respondents receive vast quantities of coal and oil and quantities of copper, cable, and other commodities in interstate commerce; (2) that the highly industrial and commercial area of New York City and Westchester County, the former the largest shipping, transportation, and commercial center in the United States, is almost entirely dependent on the respondents as a commercial source of electric energy and steam, while the Boroughs of Manhattan and The Bronx, a part of the Borough of Queens, and Westchester County are almost entirely dependent on the respondents for gas; (3) that a labor dispute

between the respondents and their employees interrupting the respondents' operations would seriously affect the flow of vast quantities of coal and gas-oil, and quantities of copper, cable and other commodities, in interstate commerce; (4) that a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees, (a) would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce and communication in and around New York City, and thereby also paralyze the operations of most of the businesses situated in the area served by the respondents and engaged in shipping and receiving commodities in interstate and foreign commerce, and would curtail the United States mail service, including mail carried in interstate and foreign commerce, and (b) would directly cause the cessation or curtailment of the operations of the businesses served with power by the respondents and engaged in shipping and receiving commodities in interstate or foreign commerce.

Expressed concisely, a labor dispute between the respondents and their employees interrupting the respondents' operations would not only affect the flow of the large quantities of coal and oil which they receive in interstate commerce, but might be substantially equivalent to the effect on interstate and foreign commerce and communication which would be caused by simultaneous labor disputes in the respondents' business and in all the businesses served by the respondents that are engaged in operating the instrumentalities of interstate and foreign commerce and communication and all the businesses engaged in shipping and receiving commodities in interstate or foreign commerce.

II. THE UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA

The United Electrical and Radio Workers of America, which has filed the charge upon which the complaint herein is founded, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the employees of the whole electrical and radio industry in the United States. Local No. 1212 of the United admits to membership only employees of the respondents.

III. THE UNFAIR LABOR PRACTICES

A. *Background of labor organization among the respondents' employees*

In the latter part of 1933 and the early part of 1934 organizations known as Employees' Representation Plans, herein called the Plans, were established with the assistance of the respondents among the employees of each of the respondents and of each of the companies

which were merged in 1936 into Consolidated Edison Company of New York, Inc. The Plans appear to have been formed as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry.

There is specific oral and documentary evidence concerning the formation and operation of the Plan among the employees of Bronx Gas and Electric Company, which was merged in 1936 into Consolidated Edison Company of New York, Inc., and also ample evidence that the formation and operation of the Plans among the employees of the various other companies in the respondents' system conformed to a similar pattern. The following narrative of the establishment of the Plan among the employees of Bronx Gas and Electric Company is thus typical of the Plans established at approximately the same time throughout the companies of the respondents' system, including Consolidated Telegraph and Electrical Subway Company.

One day in the latter part of 1933, during working hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining. Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company. The Company bore the expense of conducting the poll and the election and paid for the printing of the petitions, circulars, and copies of the constitution and by-laws of the Plan and for the time devoted to the Plan by sundry employees.

The constitution and by-laws of the Plan stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with

the management of the Company" and that "collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management". Membership was restricted to employees, and was to cease with termination of employment. There were no dues. The Plan divided the Company into a number of departments and provided for a department council and a general council. The former consisted of representatives elected by the employees in each department, in the proportion of one representative for every 50 members of the Plan in the department. The general council consisted of the chairmen of the department councils. In the larger companies of the respondents' system, there were also bureau councils, bureaus being subdivisions of departments. In voting each member of the general council was entitled to cast one vote for each member of the Plan represented by him.

Similar Plans were established in all the Companies of the respondents' system and in a substantially similar fashion. The respondents bore the expenses of all the meetings and elections, both of which took place on Company time and property, of clerical and stenographic services, printing, and of the entire functioning of the Plans. The members of the general and department councils were paid their regular salaries by the respondents for all time devoted to Plan affairs. The chairmen of the general councils devoted most of their time to Plan work, and in the larger companies both the chairman and the secretary devoted their full time to such work, occupying offices in the respondents' premises, equipped with desks and provided with stenographic service. The chairmen of the general councils and, in the larger companies, the secretary also, were allowed expense accounts which were paid by the respondents as routine matters upon vouchers signed by department heads.

On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored.

In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood

of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I. B. E. W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I. B. E. W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

At this juncture the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below.

B. Events between April 12, 1937, and the date of execution of contracts with the I. B. E. W.

After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the validity of the National Labor Relations Act, Carlisle, who was in charge of the respondents' labor policy, had two conferences concerning the recognition of the I. B. E. W. with D. W. Tracy, the International president of the I. B. E. W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I. B. E. W., accompanied by a proposed contract providing for recognition of the I. B. E. W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc., of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I. B. E. W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I. B. E. W. Various comments from the floor indicated that the Plan representatives considered the sudden recognition of the I. B. E. W. as a means of coercing them into transferring their allegiance to the I. B. E. W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I. B. E. W. until the employees had had an opportunity to discuss the matter.

Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company asked Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I. B. E. W. and the United he preferred that the employees join the I. B. E. W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federation of Labor and hence that it was the part of wisdom to recognize the I. B. E. W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concern-

ing Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I. B. E. W. when its membership among the respondents' employees was negligible. Carlisle replied that the I. B. E. W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I. B. E. W. he knew that its organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I. B. E. W. under these circumstances was intended as a blow to the United, as an aid to the I. B. E. W., and as a strong indication to the employees of the union favored by the respondents.

After Carlisle left the conference he dispatched a letter to Tracy recognizing the I. B. E. W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I. B. E. W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I. B. E. W. as a design to force the employees into the I. B. E. W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I. B. E. W. was intended to force membership in the I. B. E. W.

On the afternoon of the same day, Straub called on Colonel Stillwell, vice-president of Consolidated Edison of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company in 1936 into Consolidated Edison Company of New York, Inc. Stillwell said that recognition of the I. B. E. W. would be a blow to the Committee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I. B. E. W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I. B. E. W., with whom he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric Company over to the I. B. E. W. The following day Straub called at the address, but merely discussed the aims and policies of the I. B. E. W. with a representative of the I. B. E. W. Later that

same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I. B. E. W.

On the following day, April 22, a conference of 400 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I. B. E. W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I. B. E. W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted of formulating three questions which were addressed to Carlisle by Ganley. The questions and answers were substantially as follows:

Question: Could a vote be taken among the respondents' employees on the matter?

Answer: If such a vote implied that the respondents would bear the expenses of the election, it could not.

Question: Would he stop department heads and foremen from coercing employees into joining the I. B. E. W.?

Answer: Since he had not issued any order to do so, he would not issue any order to stop.

Question: Why were I. B. E. W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?

Answer: The respondents have never policed their buildings and did not intend to begin now.

A shout from the floor accusing Carlisle of having "sold 40,000 employees down the river" evoked considerable applause.

Carlisle departed and shortly thereafter, upon adjourning, Ganley announced that there would be another meeting on the following day

for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at the Hotel Roosevelt in New York City. Tracy informed them that the I. B. E. W. intended to establish seven locals and that each of the Plans could shift over to the I. B. E. W. as a corresponding local, retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I. B. E. W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

After Local B-829 was chartered on April 23 the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I. B. E. W. and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I. B. E. W., grew lukewarm. In the election of May 4 he refused a position as an officer in Local B-829, but continued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was reproached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

In his talk with Stillwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I. B. E. W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

The establishment of all the locals of the I. B. E. W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I. B. E. W. locals and continuing to exercise their privileges as Plan officers for several weeks after the I. B. E. W. locals were chartered, devoting all their working

hours to I. B. E. W. organization, using the respondents' offices and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the I. B. E. W. The department heads and foremen during working hours solicited employees to join the I. B. E. W., and generally assumed the role of I. B. E. W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I. B. E. W. and that sensible employees would conduct themselves accordingly.

The respondents allowed to I. B. E. W. organizers free access to all the respondents' buildings and permitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I. B. E. W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose, of offices of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend "Pay A. F. of L. Dues Here". Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down to some office on the premises and pay their dues. Similar privileges were denied to the United.

I. B. E. W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I. B. E. W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I. B. E. W. locals that they resigned from the respondents' employ to become full time I. B. E. W. officers paid by the I. B. E. W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the respondents knew that the Plan officers had shifted over to the I. B. E. W. and had utilized their Plan prerogatives in behalf of the I. B. E. W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I. B. E. W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it

recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts.

C. Execution of the contracts with the I. B. E. W. locals

After the I. B. E. W. had established its seven locals and had procured a membership therein, the respondents, in the period between May 28 and June 16, the latter date being subsequent to the commencement of the hearing, entered into seven substantially similar contracts with the seven I. B. E. W. locals.² The contracts conformed in most respects to the proposed contract which accompanied Tracy's demand for recognition on April 16. The contracts in terms recognized the I. B. E. W. as the representative of its members and were applicable only to such members.³ The contracts also provided for certain wage increases and a procedure for settling grievances which outlawed strikes and lockouts, and prohibited discrimination

²The contracts were executed on the following dates:

1. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B-830, applicable to gas workers. Respondents' Exhibit No 17.
2. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B-829, applicable to electric workers Respondents' Exhibit No 18.
3. May 28, 1937—Contract between Brooklyn Edison Company, Inc., and Local No. B-825 Respondents' Exhibit No. 19
4. June 1, 1937—Contract between New York and Queens Electric Light and Power Company and Local No. B-839. Respondents' Exhibit No. 20.
5. May 28, 1937—Contract between Westchester Lighting Company and The Yonkers Electric Light and Power Company and Local No B-832 Respondents' Exhibit No. 21.
6. June 16, 1937—Contract between New York Steam Corporation and Local No. B-826 Respondents' Exhibit No 826
7. The respondents did not introduce into evidence the contract executed between Consolidated Telegraph and Electrical Subway Company and an I B E W local, but stated that the contract was substantially similar to the above contracts and executed during the same period.

³Recognition of the I B E W. was accorded by the particular respondent granting the contract in the first sentence of Article II of each contract, as follows

"The . . . Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of The Brotherhood "

The statement of the applicability of each contract is contained in Article I thereof, as follows:

"This agreement shall apply to all employees of the . . . Company who are members of the Brotherhood . . ."

by the respondents against any employee because of membership in the I. B. E. W. and coercion by the I. B. E. W. of any employees into joining the I. B. E. W. or solicitation of membership on the respondents' time and property.

Carlisle testified that he was aware that when recognition was conferred upon the I. B. E. W. on April 20, 1937, it had not as yet completed its organization and that such recognition contemplated the establishment of locals, with committees of which contracts would be subsequently executed. He further stated that at the time of the execution of the contracts he was in possession of no definite information concerning the size of the membership in each local, except newspaper reports. He admitted that the I. B. E. W. did not discuss the matter at that time. It was only on July 29, 1937, after the contracts had been made and the presentation of the Board's case in the hearing herein completed, that the I. B. E. W. submitted a statement⁴ of its membership to him. This consisted merely of a typewritten statement showing the number of eligible employees and the number of members in each local. The statement indicated that a majority of the employees eligible for membership in each local were members of the local, except in the case of Local B-829, to which were eligible 13,200 electric employees of Consolidated Edison Company of New York, Inc. This latter exception has particular significance in view of Carlisle's construction of the contracts as exclusive collective bargaining agreements.

Carlisle testified that the contracts were applicable to all employees and were exclusive collective bargaining agreements, i. e., that the respondents would not enter into collective bargaining agreements with any other labor organizations during the existence of the contracts. He thus in effect admitted that he had recognized and entered into contracts with the I. B. E. W. locals as the exclusive bargaining representatives of the respondents' employees at a time when he did not know the size of their membership and when even as late as June 29, Local B-829 did not have a membership of a majority of the employees within its jurisdiction.

It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I. B. E. W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the express limitation of the representation of the I. B. E. W. to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts.

⁴ Respondents' Exhibit No. 16.

D. Conclusions as to the respondents' relations with the I. B. E. W.

We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course of conduct in interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, *a fortiori*, they are invalid.

In order to establish conditions for the exercise of an unfettered choice of representatives by the respondents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto.

E. Employment of industrial spies

The complaint alleges that the respondents had employed and were employing industrial spies or undercover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.

Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included

investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of the leaders of that organization. Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

The manager of the Inspection Company and one of the detectives who did the investigating, testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Inspection Company and so have the power to utilize them as a basis for future discriminatory action against their employees.

The respondents' contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November 1, 1936 is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondents' own employees, or that the practice will not be resumed in the future. The respondents have not stipulated that they would not engage in this practice, but on the contrary have from the outset denied the jurisdiction of the Board to take any action in this proceeding.

F. *The discriminatory discharges*

1. Wersing, Greulich, and Wagner

The complaint alleged that on November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing,

Julius A. Greulich, and Michael A. Wagner, because of union activities. The answer avers that they were discharged for other reasons. Since all three men were employed by New York and Queens Electric Light and Power Company, performed substantially similar work, were the organizers and officers of Local No. 103 of the Independent Brotherhood, were discharged at the same time, and were given the same explanation for their discharge, we will first narrate the employment history of each of them and then discuss their union activity and discharges as a group.

Wersing. Wersing began work for the respondents on October 8, 1929, as a second grade clerk at a weekly salary of \$22.00. All his work was performed during the night. After about six months he was transferred to other night work called "cut in and cut out", which involved making initial and final bills on consumers' accounts. Two months thereafter he received the regular two dollar weekly salary increase which followed upon a satisfactory probationary period. In 1933 he was transferred to day work at the personal request of J. Smith, a supervisor. Wersing found the work dull and about eight months later was transferred back to night work. Early in 1935 he filed an application for a day work position in response to a posted notice that the position was available. The position was obtained by an employee with less seniority than Wersing. A committee of the Independent Brotherhood took the matter up with the respondents and were informed that Wersing had filed his application too late. Subsequently, in May 1935, he was transferred to day work in the stores accounts division of the auditors' department. Although he replaced an employee with a first grade clerk rating, his own rating continued as second grade clerk. He brought this fact to the attention of his supervisor and later of the personnel bureau, from which he received a final, unfavorable communication about two weeks before his discharge.

While Wersing was not an exceptional employee, he performed his duties competently. When he was employed on night work his supervisor conferred some responsibility upon him and allotted to him the instruction of new employees as an additional duty. His supervisor on the work which he was performing prior to his discharge considered his work satisfactory. At the time of his discharge his weekly salary was \$23.00. A general reduction in pay in 1933, which was not fully restored, accounts for the fact that his salary was less at this time than at an earlier stage of his employment.

Greulich. Greulich began his employment with the respondents on October 3, 1929, as a clerk at a weekly salary of \$25.00. He received the customary two dollar weekly salary increase after six months' employment. In 1933 his pay was reduced 8½ per cent in conformity with the general pay reduction enforced throughout the

respondents' system. In May 1934, one-half of the pay reduction was restored. Thereafter his weekly salary was increased to \$27.00 as a result of a reclassification of his position. He received an additional increase in salary subsequently, so that at the time of his discharge his weekly salary was \$28.75.

Greulich, like Wersing, worked in the stores accounts division of the auditors' department. Greulich devoted a large portion of his time to writing letters in response to a particular kind of correspondence and was the only one in the division performing that type of work. He also performed the added task of checking the work of twelve girls. He was never disciplined or suspended, but, on the contrary, was commended by his supervisor, at whose request he undertook to write items for the respondents' magazine.

Wagner. Wagner began his employment with the respondents on July 23, 1929, as a first grade clerk at a weekly salary of \$27.00. Six months thereafter he received the regular two dollar increase in salary. In March 1931 he was advanced to the position of accounting assistant in the fixed capital division of the auditors' department at a weekly salary of \$32.00. His work consisted of preparing the monthly authorized fixed capital expenditure reports. He was the only one in the department who performed the work on the figures. In November 1934, he received an increase of \$3.83 in his weekly salary as a result of a reclassification of his position. At the time of his discharge his weekly salary was \$34.50.

Wagner's work was frequently commended by his supervisors. The respondents admitted and their records show that Wagner was rated as an exceptionally able and diligent employee.

Their union activity. All three men became members of the national organization of the Independent Brotherhood in February 1934. Thereafter they organized Local No. 103 among the employees of New York and Queens Electric Light and Power Company. In July 1934 Local No. 103 held its first meeting, at which Wersing was elected acting president and Greulich and Wagner were elected to the Executive Board. Throughout the year 1934 they were actively engaged in securing membership and in distributing circulars, leaflets, and a magazine called "The Tower Man", all issued by the national organization of the Independent Brotherhood. They became members of the Plan in April 1934, but Wersing resigned therefrom in December 1934, and Wagner in the early part of 1935. In September 1934 they formulated a petition of grievances, concerned chiefly with the restoration of the general pay reduction, which was finally presented to the management by a committee appointed by the general council of the Plan, after much persuasion by Wersing, Greulich, and Wagner. They asserted that the restoration in 1934 of one-half of the 8½ per

cent pay reduction was induced by their activity for wage increases. Thereafter they persistently attacked the Plan as a company-dominated union. In February 1935 Wersing was elected president of Local No. 103, Greulich vice-president, and Wagner treasurer. After their election to these offices they informed their supervisors of that fact by letter and received either written or oral acknowledgment of their letters. Thereafter Local No. 103 issued its own leaflets, circulars, pamphlets, and a monthly magazine called "Live Wire", attacking the Plans, listing grievances against the respondents, and explaining its own aims and policies. A number of articles appearing therein were over the signatures of Wersing and Greulich who wrote most of the Local's literature of this character. They also were actively engaged in soliciting membership by visiting employees at their homes. All this activity continued throughout 1935, and if anything, was intensified shortly prior to their discharge.

In March 1935 Wersing and Greulich conferred with Harry Snyder, president of New York and Queens Electric Light and Power Company, with respect to the assignment of an employee with less seniority to a day work position for which Wersing had applied, as related above. In August 1935 Wersing became president of the joint board composed of representatives from all the Independent Brotherhood locals in New York City. In the fall of 1935 there were rumors of impending lay-offs. Local No. 103 and the joint board, under the guidance of Wersing, Greulich, and Wagner, undertook to prevent the impending lay-offs by appearing at rate hearings before the Public Service Commission, by writing to Governor Lehman, Mayor La Guardia, and Chairman Maltbie of the Public Service Commission. They also issued a considerable quantity of literature in opposition to the impending lay-offs.

Just prior to their discharge there appeared in the "Live Wire" a signed article by Wersing entitled "Turkeys or Lay-offs for Thanksgiving". About two weeks prior to their discharge Greulich, who was still a member of the Plan, appeared at a meeting of the Plan members to distribute Independent Brotherhood literature and was promptly ushered out by Plan officials. The next day his supervisor, without especial rancor, informed him that he did not consider his actions on the preceding day as strictly ethical. On November 15, 1935, a committee composed of Wersing, Greulich, and Wagner, had a conference with Harold Dean, vice-president and general manager of New York and Queens Electric Light and Power Company, concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied with the reasons given for his discharge and did not press the matter further. Dean, however, expressed a strong antipathy to the presumption of the

committee in attempting to interfere with the exercise of his discretion to discharge employees.

Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15 with Dean, who was in charge of the execution of the respondents' labor policy at New York and Queens Electric Light and Power Company, was the likelihood that the memory of a disagreeable episode would linger in Dean's mind.

Their discharges. All three men were discharged on November 29, 1935, without notice, but receiving two weeks' pay in lieu of notice. Wersing and Greulich, who both worked in the stores account division of the auditors' department, were notified of their discharge at the same time by their supervisor, who told them to see Mr. Payne in the Personnel Bureau. When they arrived in Payne's outer office the next morning, they saw Wagner leaving Payne's office. Wersing and Greulich had separate interviews with Payne. The accounts of all three men of their interviews with Payne are substantially the same. Payne informed them that they were being laid off because the respondents were discontinuing a department and that it was necessary to absorb a portion of the employees employed in that department into other departments. He stated that married men were being given preference over single men and that since all three of them were single their turn to be laid off had arrived. Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. Payne was unable to explain this fact. The respondents have not requested any of the three men to return to their employment.

The respondents maintain that the three men were laid off for the following reason. The inventory department was engaged in compiling reports required by the Public Service Commission. A substantial number of the employees in that department were transferees from other departments. The department had grown into a body of 300 employees. In 1935 the Public Service Commission's requirements as to reports were so greatly reduced that the respondents found it necessary to discontinue or substantially reduce the department. In transferring employees from the inventory department back to other departments the respondents adopted the standard of favoring married men as against single men, all other things being equal. It was asserted that the discharge of the three men was the consequence of the application of this standard.

The respondents' contention that the inventory department was being reduced and transfers of employees made to other departments, thereby causing lay-offs of employees in such other departments, is supported by the evidence. In August 1935, 25 employees were laid

off as a consequence of the application of this policy, but no employees were laid off in the auditors' department. On November 29, 1935, the three employees were the only employees laid off in their respective divisions. Dean, in his testimony, did not explain why certain single employees with less seniority were retained, except for the general statement that the department heads in the exercise of their judgment, determined that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications. Such an explanation, however, is unsatisfactory in the case of Wagner, at least. According to the respondents' own records he was regarded as an exceptionally able and diligent employee. In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason.

It is significant that by the discharge of these three employees the respondents eliminated from their employ all the officers of Local No. 103 at a time when their union activities were beginning to prove troublesome to the respondents. Dean's explanation for their discharge, particularly the discharge of Wagner, is inadequate and not persuasive, in the face of the retention of a number of single men and girls with less seniority in their divisions, and an even larger number in their department. The evidence indicates rather that the respondents unfairly utilized the lay-offs consequent upon the discontinuance of the inventory department as a means of discharging the three officers of the Independent Brotherhood, whom they wished to eliminate from their employ because of their union activity.

We find that Wersing, Greulich, and Wagner were in fact discharged because of their activities in the Independent Brotherhood. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since his discharge Wersing has devoted all his time to union affairs, and all his earnings from that time until the date of the hearing have been as a union officer. At the time of the hearing he was president of the United Local No. 1212 and chairman of the field representatives of the utilities division of the United. Greulich has been employed since March 1936, by the Federal Writers' Project. Wagner was out of employment until May 13, 1937, when he secured employment with a laundry company at a weekly salary of \$17.00.

All three men desire their jobs back. We find that Wersing, Greulich, and Wagner have not, since their discharge, obtained any other regular and substantially equivalent employment.

2. Kennedy and Emler

The complaint alleged that on June 19, 1936, the respondents discharged, and thereafter refused to reinstate, William J. Kennedy and John F. Emler, because of union activity. The answer avers that they were discharged for other reasons. Both men were employed as linemen in the overhead bureau of New York and Queens Electric Light and Power Company, were discharged on the same day, and were given identical explanations for their discharge. We will relate the history of the employment and the union activity of each of them separately and then discuss their discharges as a single incident.

Kennedy. Kennedy worked for this company during 1923 and 1924 as a meter-tester. He resigned and subsequently reentered its employ on January 18, 1928, as a first grade lineman's helper at \$29.90 weekly. In 1929 he became a third class lineman at \$31.90. Thereafter he was advanced to the position of second grade lineman and in 1934 to that of first class lineman, in which position he was employed at the time of his discharge at a weekly salary of \$40.48. His steady advancement is an indication of his competency as a workman. He had also gained experience in underground work and as a "trouble-shooter", the latter job ranking just above first class lineman. The respondent's employment records show that during the year prior to his discharge, Kennedy was absent from his work for more than normal periods, but this was caused by illness and time spent in a hospital. He testified that his illness arose out of the character of his work, which often involved working in muddy ditches during inclement weather, and that the respondents' own doctor treated him and advised him to go to a hospital.

In 1934 Kennedy became a member of the Plan and was elected bureau representative for more than 300 employees in the overhead bureau. Shortly thereafter he became convinced that the Plan was a company-dominated union and was not hesitant about stating his views. In November 1934 he met Wersing, joined the Independent Brotherhood, and thereafter became very active in soliciting for members. In February 1935 he was elected general manager of Local No. 103. At several meetings of the Plan in the early part of 1935 he spoke of the futility of the Plan. At approximately this time he sought to resign from his position as overhead bureau representative in the Plan. He communicated his intention to his supervisor, who urged him not to resign as it would create an unfavorable impression toward

the Plan. Kennedy yielded, but was later informed by the chief officer of the Plan that his supervisor had suggested expelling "that radical", Kennedy, from the Plan. At a meeting of the Plan held thereafter Kennedy taxed his supervisor with having uttered the above statement, which his supervisor parried with a query as to what other course was open to him as a representative of the management. At a special meeting of the Plan held shortly thereafter, one of the respondent's officials made an address containing references to certain radicals and agitators. Kennedy arose and remarked that it was obvious that the references were addressed to him, and that if they denominated his activities agitation, then he was an agitator. The respondent's official then made some remarks about misinterpretation and dropped the matter. At the Plan election in June 1935 Kennedy refused renomination. In August 1935 he was elected president of the national organization of the Independent Brotherhood, resigning from his position as general manager of Local No. 103, which was taken over by Wersing.

After the discharge of Wersing, Greulich, and Wagner, Kennedy was selected as chairman of a committee to negotiate with the respondent concerning the discharge of the three men. The committee had a conference with the president of the New York and Queens Electric Light and Power Company in December 1935, at which Mayor La Guardia was present, but nothing was accomplished. The committee reported back to the members of Local No. 103, and were empowered by them to call a strike if necessary. Two representatives from the Labor Department of the State of New York strove to obtain a settlement with the respondents, but were unsuccessful. Kennedy decided not to call a strike, as the Christmas season was considered inopportune.

In April 1936 the Independent Brotherhood affiliated with the I. B. E. W. and Kennedy resigned his presidency of the Independent Brotherhood to become a rank and file member of the I. B. E. W. He decided at this time to run again for office in the Plan. On June 11, 1936, he was elected representative for the overhead bureau. He was discharged a week later on June 19, 1936.

Emler. Emler began his employment with the respondent in July 1927 as a clerk at a weekly salary of \$25.00. Shortly thereafter he was transferred to meter-setting at \$27.00 weekly. At approximately six months' intervals he was advanced to lineman's helper in the overhead bureau, to third class lineman, to second grade lineman, and finally to first class lineman, the position he held at the time of his discharge at a weekly salary of \$40.48. There had never been any complaints concerning his work and his steady advancement is testimony of his competency.

In April 1935 he became a member of the Independent Brotherhood. He devoted his spare time to organizational activity with Wersing and Greulich and talking in behalf of the Independent Brotherhood. In September 1935 he was elected to the executive board of Local No. 103. He was a member of the committee which negotiated for the reinstatement of Wersing, Greulich, and Wagner, and participated in the negotiations. He was also a member of the committee which in December 1935 was empowered to call a strike. At that time he was advised by his foremen that it would be foolish to call a strike. He continued his union activities until the time of his discharge on June 19, 1936.

Their discharges. On June 17, 1937, Kennedy and Emler, who were working on different field jobs, were informed by their foremen that Mr. Payne at the Personnel Bureau wished to see them. They had separate, but substantially similar, interviews with Payne. Payne informed them that he had bad news, that he had orders from the respondents to lay off "surplus employees", and that since they were surplus employees they were being laid off. Both men asked him the manner in which eight years of continuous service had achieved for them the status of surplus employees, but he was unable to explain. He told them that there was a possibility of securing work with Consolidated Edison Company of New York, Inc., and gave them the name of a personnel officer of that company. Both men called there that afternoon, but were unable to see the personnel officer. The next morning they succeeded in obtaining an interview, at which they were questioned concerning their ability to perform certain technical electrical work. On learning that they were not qualified for such work, the personnel officer made some remarks about jobs as linemen's helpers at \$30.00 a week, which were followed by the expression of his opinion that those jobs were probably all filled anyway. On June 19 they returned to Payne and were formally laid off, receiving their separation allowances of two weeks' pay for each year of service. Four other men were discharged during the same period, of whom two were union men and two were not. One of the nonunion men, Baake, received employment from Consolidated Edison Company of New York, Inc., while the other returned to his former job the next day. Kennedy testified that both he and Emler had seniority over a large number of employees in their bureau, and that they were the only first class linemen who were laid off, while there had been no prior discharges of first class linemen.

In December 1936 Payne notified Kennedy of an opportunity to secure employment with another public utility company, New York Dock Company. Kennedy notified his union, which in turn notified Emler. Emler called upon Payne who told him to apply for work at the New York Dock Company, adding as a parting thrust that

it would be embarrassing for the respondents if Emler resumed his "funny business" at his new job. Emler secured a lineman's job with the New York Dock Company, but at a weekly salary of \$30.00, the salary paid to a lineman's helper by the respondents. He is still so employed at a weekly salary of \$35.00. The respondents have not requested either Kennedy or Emler to return to their employment.

The respondents contend that the discharges of Kennedy and Emler resulted from the reductions in the overhead bureau necessitated by the gradual change in the character of the work in Queens from overhead to underground. A number of the overhead workers were trained for underground work, while others had to be laid off. In this group were Kennedy and Emler. Dean, who testified to the above, did not adequately explain why Kennedy and Emler were laid off, while men with less seniority were retained; nor did he adequately negative Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department.

It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company where he would not retain his position as a bureau representative. The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge and a transfer to an inferior position in another of the respondents' companies.

Emler was the last of the group associated with Wersing, Greulich, Wagner, and Kennedy in the organization of Local No. 123 of the Independent Brotherhood. His discharge or transfer from Queens, coupled with that of Kennedy, would serve to remove the two principal, active union men who were associated with the three men originally discharged. Payne's admonition to him in December 1936 not to resume his "funny business" at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors.

Although the evidence supports the respondents' contention that the overhead bureau was being gradually reduced because of the change in the character of the work in Queens from overhead to

underground, we find that the lay-offs incidental thereto were merely utilized to screen the respondents' true motive. We find that Kennedy and Emler were in fact discharged because of their union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Kennedy operated a private club after his discharge, but testified that it was a losing venture. Since March 1937 he has been engaged as a paid organizer in the utilities division of the Committee for Industrial Organization. Emler has been working for New York Dock Company since December 1936 at a lower salary than that which he received in the employ of the respondents. Both Kennedy and Emler desire to return to their former positions in the employ of the respondents.

We find that Kennedy and Emler have not, since their discharges, obtained any other regular and substantially equivalent employment.

3. Solosy

The complaint, as amended, alleges that the respondents discharged Stephen L. Solosy on January 17, 1936, and thereafter refused to reinstate him, because of union activity. The answer avers that he was discharged for other reasons.

Solosy commenced work in October 1928 as a tester in the laboratory of Consolidated Gas Company of New York, which is now Consolidated Edison Company of New York, Inc. He left this employment in November 1928, but returned to work in January 1929 and continued in the respondent's employ until his discharge. After having worked in the laboratory for the first four months at a weekly salary of \$20.00, he was transferred to work on instruments known as Thomas calorimeter inspectors, which measured the B. t. u. content of gas. His job was concerned with maintaining, servicing, repairing, and overhauling those instruments. At that time there were twenty-seven such instruments, situated at different places, in the respondents' entire system. Solosy's work was thus performed in different places. He received periodic increases and at the time of his discharge was receiving a weekly salary of \$33.54. No complaints or reprimands concerning his work were made. His steady increases in pay attest his competency.

Early in 1934 he became a member of the Federation of Architects, Chemists, Engineers, and Technicians, an independent union. Shortly thereafter he joined the Plan. The members in his department elected him and Philemon Ewing to head a committee to

investigate the Plan. He served on this committee for three months, rendering monthly reports to the effect that the Plan was a company-dominated union. In the latter part of 1934 he and Ewing joined the Independent Brotherhood. Both of them did a great deal of organization work in Manhattan for the Independent Brotherhood. His activity became open and known to the respondents at least as early as March 1935. As we have stated previously, during April 1935 he was trailed by detectives, and reports concerning his and Ewing's activities were filed with the respondents. In March 1935 Solosy and Ewing began to publish and distribute a monthly paper called the "Gas Man". Its last issue appeared in November 1935. Both Solosy and Ewing solicited employees at their homes for membership in the Independent Brotherhood, securing at least 25 members in the latter part of 1935. Solosy and Ewing were the only employees in their department who were vigorously engaged in union activity.

Solosy and Ewing were discharged at the same time and in the presence of each other. Solosy was told that he was being laid off because the respondents were shutting down the "A" plant of the Astoria Light, Heat, & Power Company, thereby necessitating the laying-off of a number of employees. It appears that the "A" plant was in fact shut down, probably because of the decrease in the amount of gas sold. Solosy was not given previous notice of his discharge, but was given his separation allowance. He pressed his supervisor for further reasons concerning his discharge and received the following cryptic reply, "You know more about it than I do". In answer to a question whether he would ever be called back, his foreman said that he thought not. The respondents have not requested Solosy to return to their employ.

It appears from the evidence that although there were a few others discharged at the same time with Solosy and Ewing, Solosy was the only one in his division who was discharged. There were only seven employees in his division. Solosy testified that of the other six employees he had seniority over two.

It is significant on the one hand that Solosy and Ewing were the only active union men in their department and that their activities were investigated by detectives and reports of their activities filed with the respondents. On the other hand there is an absence of any adequate explanation for Solosy's discharge while two fellow employees with less seniority were retained. The evidence clearly indicates that the reduction of employees necessitated by the shutting down of the "A" plant was utilized as a screen to conceal the true motive for his discharge.

When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their

employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel.

At the hearing the respondents were not allowed to introduce the testimony of Solosy's supervisors when offered at the continuance on July 6, 1937. The respondents offered no good reason for their failure to produce these witnesses at the close of the Board's case on June 24, 1937. They cannot complain of the Board's refusal to admit the testimony when the hearing was resumed two weeks later for the purpose of receiving the testimony of Carlisle and Dean.

We find that Solosy was in fact discharged because of his union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Solosy has been unemployed since his discharge. He desires to return to his former position in the employ of the respondents. We find that Solosy has not, since his discharge, obtained any other regular and substantially equivalent employment.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Upon the whole record we find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2 (5) of the Act.

2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich,

Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

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

6. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio

Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing their 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 purposes of collective bargaining or other mutual aid or protection.

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

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not dis-

charge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

The complaint, in so far as it alleges that the respondents have engaged in and are engaging in 'unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.