

In the Matter of LENOX SHOE COMPANY, INC. and UNITED SHOE WORKERS OF AMERICA, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION

Cases Nos. C-255 and R-209.—Decided December 3, 1937

Shoe Manufacturing Industry—Interference, Restraint, or Coercion: coercing and intimidating employees to join favored labor organization; permitting organizers of favored organization to address employees at meetings in plant on company time; permitting and designating certain employees to solicit for favored organization on company time and property; requesting local businessmen to intervene and decide what labor organization employees should join; signing closed shop contract with favored labor organization before determining majority status of—*Closed Shop Contract:* with labor organization assisted and fostered by unfair labor practices, invalid, respondent ordered to cease and desist giving effect thereto—*Discrimination:* discharge—*Strike—Reinstatement Ordered:* of employees discharged; on application for reinstatement of employees who struck because of unfair labor practices—*Back Pay:* awarded to employees discharged—*Investigation of Representatives:* controversy concerning representation of employees; rival organizations; substantial doubt as to majority status; *Unit Appropriate for Collective Bargaining:* production employees in three of employer's plants; interchange of employees between plants; no controversy as to—*Election Ordered:* date to be determined in future, upon compliance with Board's order.

Mr. Edward Schneider, for the Board.

Mr. Israel Bernstein, of Portland, Me., for the respondent.

Mr. A. Raymond Rogers, of Waterville, Me., for United Shoe Workers of America.

Mr. George Karelitz, of Haverhill, Mass., for Boot and Shoe Workers' Union.

Mr. Paul S. Kuelthau, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the United Shoe Workers of America, herein called the U. S. W., the National Labor Relations Board, herein called the Board, by A. Howard Myers, Regional Director

for the First Region (Boston, Massachusetts), issued its complaint dated July 19, 1937, against Lenox Shoe Company, Inc., Freeport, Maine, herein called the respondent, alleging that the respondent had engaged in and was 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. The complaint and notice of hearing thereon were duly served upon the respondent.

In respect to the unfair labor practices the complaint, as amended, alleged in substance that the respondent discharged Russell Dorr on June 7, 1937, James B. Hill on June 17, 1937, and Mary Coffin on June 25, 1937, and has since refused to reinstate them because they, and each of them, joined and assisted the U. S. W. and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection; that the respondent coerced and encouraged its employees to join the Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, herein called the B. & S. W. U.; that the respondent by such acts and other acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 23, 1937, the respondent filed an answer admitting the nature and scope of its business, but denying that it was engaged in interstate commerce, admitting the discharge of Russell Dorr, but denying the other discharges and all allegations of unfair labor practices, and alleging that it had signed a closed shop agreement with the B. & S. W. U. on June 9, 1937, and had since endeavored faithfully to abide by the terms thereof.

On June 16, 1937, the U. S. W. filed a petition with the Regional Director alleging that a question affecting commerce had arisen concerning the representation of the production employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On July 20, 1937, the Board authorized the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, and ordered the petition and complaint cases consolidated for purposes of hearing. Notice of the hearing on the petition was duly served on the respondent.

Pursuant to the notices of hearing duly served upon the respondent, a hearing was held in Freeport, Maine, on July 26, 27, and 28, 1937, before Irving G. McCann, the Trial Examiner duly designated by the Board. The Board, the U. S. W., and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the

issues was afforded to all the parties. At the beginning of the hearing, the Trial Examiner allowed the petition of the B. & S. W. U. to intervene, but ruled that counsel for the B. & S. W. U. would be required to confine himself, in cross-examination and introduction of evidence, to the allegation of domination of the B. & S. W. U. by the respondent and to the issues raised by the petition.

After the introduction of a stipulation concerning the respondent's business, the Trial Examiner denied the respondent's motion to dismiss the complaint on the ground that the respondent was not engaged in interstate commerce. The respondent excepted to this and other adverse rulings of the Trial Examiner.

Counsel for the B. & S. W. U. withdrew from the hearing on the morning of the second day because the Trial Examiner refused to allow him to cross-examine in regard to the discharges and in regard to the circumstances surrounding a sit-down strike by the U. S. W. We have reviewed the conduct and the rulings of the Trial Examiner and find that he did not unduly restrict the participation in the hearing of counsel for the B. & S. W. U.

At the conclusion of the evidence for the Board and the U. S. W., the respondent moved to dismiss the complaint and the petition on the ground that the evidence did not show that any of the employees of the respondent were members of the U. S. W. when the complaint and petition were filed. At that time the respondent also moved to dismiss the complaint in regard to James B. Hill and Mary Coffin on the ground that at the time of their discharges the respondent was operating under a closed shop contract with the B. & S. W. U. and Hill and Coffin were not members of the B. & S. W. U. The Trial Examiner denied those motions. Those rulings are hereby affirmed.

Counsel for the respondent, claiming that the hearing had not been fair and impartial, refused to introduce any evidence and the hearing was adjourned at the close of the evidence for the Board and the U. S. W.

We have reviewed the conduct and the rulings of the Trial Examiner and find that he was fair and impartial throughout the hearing and committed no prejudicial errors. His rulings are hereby affirmed.

On September 10, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, but making no finding in regard to a violation of Section 8 (2).

The Intermediate Report was served on the parties on September 16, 1937 and no exceptions to it were filed. On September 30, 1937, the Board issued an amendment to the complaint in order to conform

the allegations to the proof. No answer was filed to the complaint as amended.

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized under the laws of the State of Maine with its principal office and place of business at Freeport, Maine, and a branch office in Boston, Massachusetts. It is engaged in the production, sale, and distribution of women's McKay, women's cemented, men's, and boys' shoes.

The business is conducted in three factories, two of which are physically connected and all of which are enclosed within one fence surrounding the entire property. The respondent occupies these factories rent free, paying only taxes, maintenance, and insurance. They are owned by the Freeport Realty Company, a corporation organized to hold business property and to induce business to come to Freeport. The stock of the Freeport Realty Company, which is in the nature of a non-profit corporation although it is not organized as such, is owned by business men of Freeport.

The officers of the respondent are: Morris Levine, president; Hyman Mersky, vice-president and general manager; Maurice Mersky, treasurer. These three, together with Max Mersky, who is superintendent of the factory making men's shoes, comprise the Board of Directors of the corporation. Other members of the Levine and Mersky families are also active in conducting the operations of the plant, either as foremen or otherwise.

In 1936 the respondent purchased \$1,447,007.65 worth of leather, rubber, cloth, fiberboard, nails, thread, and other raw materials used in the manufacture of shoes. In the period from January through June 1937, its raw material purchases amounted to \$583,306.35. Practically all of the raw materials are purchased outside of the State of Maine and shipped by truck, rail, express, and parcel post to the respondent's plant in Freeport, Maine.

In 1936 the respondent, which manufactures only to order, manufactured and sold 2,003,043 pairs of shoes, and from January through June 1937, it manufactured and sold 990,491 pairs of shoes. Practically all of the respondent's shoes are sold and transported out of Maine to other states of the United States. The respondent ships by truck, rail, boat, and parcel post. The average time between the receipt of the raw material by the respondent and the shipment of the shoes made therefrom is four weeks.

The respondent employs five salesmen with headquarters at the respondent's branch office in Boston who travel to all parts of the United States.

On June 4, 1937, the respondent had 656 employees, and on June 25th it had 800.

II. THE UNIONS

The United Shoe Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization admitting workers in the shoe industry to membership either as members at large or in local unions. On July 27, 1937, Local No. 145 was chartered with jurisdiction over shoe workers in Freeport, Maine.

The Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, is a labor organization which admits workers in the shoe industry to membership.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

On April 20, 1937, one Roland Dodge, an employee of the respondent, went to Lewiston, Maine, to seek assistance from the U. S. W. in organizing the respondent's plant. No organizers were available at the time. On May 1st Dodge again went to Lewiston, and this time he returned with about 75 application cards for the U. S. W. but without further assistance for an organization campaign among the respondent's employees. Dodge passed these cards out among the respondent's employees and many of them were signed and returned to him. He took the cards, which were returned to the U. S. W. office in Lewiston.

On May 24, 1937, Walter Brown, an employee of the respondent, approached Russell Dorr, also one of the respondent's employees, and asked him to try to enlist the help of the U. S. W. in Lewiston in organizing a local of the U. S. W. among the respondent's employees in Freeport. Through his stepfather, Sergius Boulay, Dorr got in touch with Dominic Charpentier, financial secretary of Local No. 114 of the U. S. W., in Lewiston.

On May 31st Charpentier came to Dorr's home in Freeport and brought 550 U. S. W. application cards. Four employees of the respondent, Delton Cook, George Smith, Boulay, and Dorr, were present at the time. On June 1, 1937, Dorr, Smith, and Cook started passing out these cards among the employees. Many of the cards were signed and returned.

During May 1937, Hyman, Maurice, and Max Mersky had been talking about a union in their plant to various people in Freeport. In those conversations they had always expressed themselves in

favor of a so-called independent union and opposed to a national union of any sort. Thus Hyman Mersky said on one occasion that they had been dodging national unions for ten years and they would never recognize one in Freeport but would move to a shoe center to do that. The Merskys seem to be on very familiar terms with their employees, and the record shows several discussions of unions with various individual employees. The respondent opposed any national union until the beginning of June, after which its antipathy seems to have been directed against the U. S. W. and the Committee for Industrial Organization.

On the morning of June 2, 1937, four of the Merskys went to the Freeport hospital to see Dr. Harvey Howard, president of the local Chamber of Commerce. Several local business men were present. The Merskys told them that they should decide whether the plant should be organized by the Committee for Industrial Organization, the American Federation of Labor, or an independent union. That afternoon Paul Powers, a Freeport attorney who had been at the meeting at the hospital, went to Lewiston to find out how to organize an independent union.

When Powers returned that evening he went to Dr. Howard's office, where the meeting of that morning had reconvened without the Merskys. Powers explained the methods of organizing an independent union. Leslie B. Bailey, the chief of police and secretary of the Chamber of Commerce, then announced that there were two A. F. of L. organizers outside who were waiting to talk to the meeting. Bailey said he had found them on the street and talked to them and that they seemed to be a "pretty clean outfit."¹ The two organizers, Douglas and Ford, were then brought in. They explained their method of organizing and said that after they arrived in Freeport they found that another union had started organizing at the respondent's plant and that they would leave if the townspeople wanted them to. They also stated that they would appreciate any help the businessmen would give them in organizing the respondent's plant. The meeting decided that Powers and Howard should call a meeting of the shoe workers in Freeport for some time the following week.

The next day, at the suggestion of Hyman Mersky, Powers called the presidents of the Chamber of Commerce and Freeport Realty Company, and a meeting of the directors of the organizations was arranged for that afternoon. The meeting was held in the Women's Club. The Merskys and their attorney, Bernstein, were present. The

¹ E. J. Hayes, the station agent at Freeport, is reported to have said, when presiding at the first B. & S. W. U. meeting in the town hall, that he had written to the B. & S. W. U. at the request of some of the respondent's employees and asked them to send organizers to Freeport.

Merskys refused to speak, and Bernstein spoke for them. Bernstein stated that the respondent was losing orders because of threats of labor trouble in its plant and that it was up to the townspeople to choose among the Committee for Industrial Organization, the American Federation of Labor, and an independent union. Douglas and Ford, the B. & S. W. U. organizers, then appeared, and the Merskys and Bernstein left. After listening to Douglas and Ford, the meeting decided to draw up a letter to the respondent's employees recommending that they join the B. & S. W. U. That letter was drawn up the same evening in Powers' office by a committee appointed for that purpose.

On June 4th this letter² from the Chamber of Commerce and the directors of the Realty Company was circulated in the respondent's plant.³ It bore the names of the leading business men of Freeport. At least one of the respondent's employees, Mary Coffin, was told by Ida Smith⁴ that those merchants had agreed not to extend credit to anyone who did not join the B. & S. W. U.

That same afternoon a meeting of the employees of the respondent was called in the cutting room of the men's shop. The power in the plant was shut off by Myer Levine, one of the foremen, and the workers were told by their foremen to go to the meeting. Three B. & S. W. U. organizers, Kennedy, Douglas, and Ford, were present and spoke. Kennedy said that the Merskys had chosen the B. & S. W. U. in preference to the U. S. W. as the lesser of two evils. All of them spoke generally of the advantages of the B. & S. W. U. and said that the B. & S. W. U. knew how to handle employers of the Mersky type. Ford requested signatures to a petition asking that the B. & S. W. U. be recognized as the bargaining agency for the employees. Max and Hyman Mersky stood immediately outside of the opening of the cutting room in the stitching room where they could see and hear everything that went on.

Immediately after this meeting Bill Hindley, a cutter in respondent's plant, went through the cutting room asking employees to sign B. & S. W. U. cards. One of the Merskys was always near him, in such position that he could see what was happening. The organizers helped Hindley by talking to various people at their machines. Although Hindley had been working as a cutter he did not return to his cutting bench between June 4th and June 28th because he was busy circulating cards and organizing for the B. & S. W. U.

² Board's Exhibit No 20 and No 26 Exhibit No 26 bears more names because Hayes had taken it around to the merchants not at the meeting and they had authorized adding their names to it Both appear to have been circulated in the plant

³ The record does not reveal who had charge of circulating the letter. Ida Smith, one of the respondent's production employees without supervisory duties, showed it to Mary Coffin. In general, it just seems to have been handed from person to person

⁴ Ida Smith is the woman employee who was chosen to solicit membership in the B & S. W U on company time She is non-supervisory

On June 7th at about nine o'clock in the morning, Ernest Washburn, an employee in the "making room" at the respondent's plant, overheard Max Mersky giving detailed instructions to Hindley about solicitation for B. & S. W. U. in the "making room". Mersky told Hindley to start at one end of the room where the younger people were and to tell them either to join the B. & S. W. U. or to get out of the factory. Mersky and Hindley apparently thought they might have some trouble with some of the older employees there and discussed them individually. Among the men so discussed were Dodge, Williams, and Washburn. Mersky instructed Hindley to tell Dodge and Williams that they could sign or not as they wished, but insisted, over Hindley's objection, that Washburn be told either to sign or get out. Washburn followed Hindley upstairs to the "making room" after this conversation and watched him follow Max Mersky's instructions.

When Hindley came to Washburn he asked him to sign a B. & S. W. U. card. Upon Washburn's refusal, Hindley told him that he either would have to sign one or get out. Washburn refused to sign and also refused to give up his job. Hindley moved on to Williams, who worked next to Washburn. Williams was asked to sign but was told that it was optional with him, that he could either sign or not as he wished. Hindley talked to everyone in the "making room" that morning.

At noon on June 7th, Russell Dorr, who had been very active in starting the U. S. W. and in soliciting membership in it, was discharged. The facts surrounding his discharge are discussed below.

At about 2:30 in the afternoon of June 7th, there was a meeting of the employees, called by the management, in the yard at the respondent's plant. The back of one of the respondent's trucks was used as a platform and from it Hyman Mersky and two of the respondent's salesmen, Hurd and Walker, talked to the employees. Hyman Mersky spoke first and said that unless the employees chose the right agency to represent them, the respondent was going to leave Freeport. After he had finished, Hurd and Walker spoke and urged the employees to choose the American Federation of Labor because that was best for them.

That evening, June 7th, the B. & S. W. U. had a mass meeting in the town hall. E. J. Hayes, the station agent and a member of the Chamber of Commerce, presided, and Kennedy, Douglas, and two women shoe workers from Haverhill, Massachusetts, spoke. After the meeting four of the Merskys—Hyman, Louis, Max and Maurice—came into the hall and talked to the organizers and several of the respondent's employees. The meeting was well attended but was not very orderly, since some of the audience were opposed to the B. & S. W. U.

On June 8th the U. S. W. held a meeting at the Nordica Theater in Freeport, the town hall being no longer available for meetings because the selectmen objected to its use by "outsiders." Walker, the respondent's salesman who had spoken at the meeting in the respondent's yard the day before, went to this meeting and refused to leave even when requested to do so by the police. At that meeting an organization committee was appointed and applications passed out, signed, and returned.

On June 9th the B. & S. W. U. sent a list of its members among the respondent's employees to the respondent, stating that it represented more than 65 per cent of the employees. The respondent did not check this list against its pay roll or even count the number of names on the list. On the basis of this representation the respondent, on the same day, entered into a closed shop contract with the B. & S. W. U.

The respondent and the B. & S. W. U. made no immediate attempt to put this contract into effect. In fact its terms do not appear to have been revealed to any of the respondent's employees until June 29, 1937.

James B. Hill and Mary Coffin were discharged by the respondent on June 17 and June 25, 1937, respectively, under circumstances discussed below.

On the afternoon of June 28th a committee of the U. S. W. called on the respondent to discuss the discharge of Mary Coffin. The committee started to talk to Hyman, Louis and Maurice Mersky. As soon as the committee stated whom they represented, Hyman and Maurice left. The committee then asked Louis Mersky to reinstate Mary Coffin and not to discriminate further against the U. S. W. After listening to their demands, Louis Mersky stated that the respondent was not interested and left the office. The committee went out into the factory and called a sit-down strike. Mary Coffin, who had gone to see the Merskys with the committee, was escorted out of the factory by the Chief of Police and started picketing the gates of the plant. The sit-down strike lasted only the rest of the afternoon. The employees then left the plant.

When the employees of the respondent reported for work on Tuesday, June 29th, they were met at the gates by city police and special deputies, who admitted them in groups of six or seven. Some of those admitted returned saying that they were told that they had to sign a B. & S. W. U. card in order to go to work. Upon receiving this information, the U. S. W. resumed the strike and established a picket line.

While the strike of the U. S. W. continued, those who wished to work passed in and out through the picket line every day and there was no violence. The key men who would provide the work for the

rest of the factory refused to go through the picket line. On July 15th the president of the Freeport Local of the B. & S. W. U. spoke to the Freeport Chamber of Commerce and the directors of the Freeport Realty Company, stating that the men in the factory were becoming very angry because there was not enough work and that there would be violence if the picket line remained around the plant. The B. & S. W. U. wanted the city or county officials to take some action to break up the picket line and get the employees back to work. Nothing of that nature was done, apparently because the officials could find no ground for interference so long as the picketing was peaceful. On July 21st the picket line was abandoned by agreement between the parties.

The facts set forth above show that the respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization by seeking to influence them to join the B. & S. W. U. in preference to the U. S. W. This was accomplished by meetings for the purposes of organization on company time and company property, at one of which organizers for the B. & S. W. U. were present and spoke. These meetings clearly indicated to the employees the respondent's preference for the B. & S. W. U. The meeting which the respondent called in its yard on June 7th and at which Hyman Mersky, Hurd, and Walker spoke was clearly an attempt on the part of the respondent to coerce and intimidate its employees into joining the B. & S. W. U.

The action of the Chamber of Commerce and the directors of the Realty Company was induced by the respondent's request to those groups to meet and decide what labor organization the respondent's employees should belong to, and as such is clearly intimidation and coercion by the respondent. The Chamber of Commerce is vitally interested in keeping respondent in Freeport. The threats of the officers of the respondent to move, in view of the fact that the respondent has no investment in Freeport, were sufficient to arouse the Chamber of Commerce to act. This is what the respondent clearly intended.

The fact that Max Mersky instructed Hindley as to what to say to persons in the "making room" who refused to sign B. & S. W. U. cards further shows the respondent's attempt to take part in the choice of a union by its employees and is another instance of interference by the respondent with their organization.

The respondent's actions in signing the closed shop contract with the B. & S. W. U. after practically no negotiation and without counting the names on the membership list submitted or checking those names against its pay roll are, under the circumstances, further indication of its desire to create the B. & S. W. U. as the spokesman for its employees and to reinforce this partnership by concluding a

contract which would force employees into the union so favored.

These actions of the respondent, together with the discharges of Russell Dorr, James B. Hill, and Mary Coffin which showed that the respondent was willing to enforce its wishes by discharges if necessary, clearly constitute interference, restraint, and coercion of employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and we so find.

B. *The Discharges*

Russell Dorr. Dorr had worked for the respondent for approximately three years prior to his discharge on June 17, 1937. He was employed as a stitcher until December 25, 1936, but was then transferred to vamping, which work he was engaged in at the time of his discharge. Dorr agreed to learn vamping, which was a new job to him and which required special skill, at the respondent's request. For the first few months that he was on vamping, his work was watched closely and he was not given the more difficult jobs. However, as time went on and his work seemed satisfactory, his work was not watched and he took the general run of work as it came through. The testimony clearly shows that it requires about a year's experience for one to become an expert vumper and that Dorr could not be expected to turn out flawless work on all types of shoes in his sixth month on the job. The evidence is undisputed that Dorr was not watched by anyone after he had been vamping for a few months.

On June 1st Dorr became extremely active in passing out the U. S. W. cards. Much of this was done in spare moments at the factory and there is no doubt that the respondent, whose officers were on familiar terms with the employees, heard of this activity at once.

On June 2nd Max Mersky, superintendent of the men's factory, began to keep a very close watch on Dorr. Max Mersky watched Dorr for 15 or 20 minutes at a time, three or four times a day. This was much more attention than Max paid to any other employee in the factory and was more than had ever been given to Dorr even in his early days on vamping. On one occasion Max criticized his work and told him that it was not any good and that he had better be careful because the Merskys did not want him in the factory, a clear indication that the respondent was looking for a pretext upon which to discharge Dorr. Later in the same day, June 2nd, Max brought back a shoe which he said Dorr had vamped incorrectly. Dorr consulted Chase, who worked next to him and who had been vamping intermittently for 25 years and was considered an expert, and they

decided that the mistake lay in the next operation, not in the vamping. After the next operation was redone the shoe was sent through and passed inspection.

Dorr was at the B. & S. W. U. meeting in the cutting room on Friday, June 4th, and objected when Ford asked the employees to sign the petition. He asked that the employees be given a day or two to think the matter over before being asked to sign. His request was not granted.

On Monday, June 7th, Max Mersky resumed his close supervision of Dorr's work. During the morning he approached Dorr and informed him that he had spoiled a case of suede bals⁵ through improper vamping. Dorr offered to pay for any damage attributable to him and Mersky said that they did not do business that way. That noon Dorr was discharged.

Emory Chase, who had been vamping for the respondent for two years, testified that it was quite usual for a vamber to pay for work he had spoiled, that he and three or four other vampers had paid the respondent for work they had spoiled, and that he knew of no vamber, aside from Dorr, ever discharged by the respondent without being accorded an opportunity to pay for spoiled work. This evidence, which was not denied by the respondent, clearly shows that Dorr was not discharged for spoiling the suede bals. When we consider that although Dorr was a new man at vamping, he was considered efficient enough not to be watched closely by his foreman for some months before his discharge, and that it was not until after he became active in organizing the U. S. W. that the respondent began to be worried about the quality of his work, we cannot escape the conclusion that inefficient work was the pretext adopted by the officers of the respondent to rid themselves of an employee who was active in organizing his fellows. This conclusion became increasingly obvious when we realize that it was not Dorr's foreman who watched his work and sought to correct him on it, but the factory superintendent. It is beyond credence that the superintendent of the factory would devote such an amount of time to watching each employee whose work he suspected might not be quite up to standard. The conclusion that Dorr was discharged because of his activity in organizing the U. S. W. is inescapable.

We find that the respondent discharged Russell Dorr on June 7, 1937 and discriminated against him with respect to hire and tenure of employment under the circumstances set forth above, thereby discouraging membership in the U. S. W.

⁵ A type of shoe most difficult to vamp. Dorr had worked on the samples for that type of shoe, and they had passed inspection, but aside from that had not done any work on suede bals.

James B. Hill. Hill started to work for the respondent on February 15, 1937. For a few days he helped his wife on her treeing jack,⁶ but he soon was put on a treeing jack of his own. On April 27, 1937, Hill was laid off, but he was reemployed three weeks later.

On June 1st Hill joined the U. S. W. He was made a member of a committee at the meeting of the U. S. W. at the Nordica Theater on June 8th which was attended by Walker, one of the respondent's salesmen who spoke at the meeting of June 7th called by the respondent. From June 1st on, Hill had application cards and passed them out in the factory. He testified that he would give them to people in the smoking room and to people who came to his machine to talk to him. The respondent made no effort to stop these activities.

On June 15th, Ida Smith⁷ came around the finishing room with application cards for the B. & S. W. U. When she came to Hill she asked him whether he was in favor of the U. S. W. or the B. & S. W. U. Hill replied that he belonged "to the only organization in the world". Hill meant, and she understood him to refer to, the U. S. W. Ida Smith passed on to the next employees and found that the next two also belonged to the U. S. W. She made some remark Hill resented; so he shouted, "It's Town Hall tonight, boys, with the C. I. O., and let's all go". Ida Smith came back to him then and called him by name and swore at him. Hill answered in kind. Morris Levine, superintendent and foreman, came up. Ida Smith went off with him. They stood about 30 feet away and talked for some time.

That evening Hill addressed a mass meeting of the U. S. W. On the way home he was involved in an automobile accident which necessitated his absence from work the next day.⁸ Homer Jellison, one of respondent's employees who had been with Hill in the accident, informed the superintendent and Hill's foreman that Hill could not come to work that day because of the accident. When Jellison was going home that night, Levine, the superintendent in that division, called him aside and asked him if he still favored the U. S. W. Upon Jellison's stating that he did, Levine said, "Your friend, Mr. Hill, was discharged . . . today for talking C. I. O."

When Hill reported to work on June 17th he found another man on his jack and his foreman told him that he had been ordered to hire people to fill all jacks the day before. Hill tried to talk to Levine, but Levine would not see him. The foreman could not get any information from Levine, except that Hill was through at the plant. Hill's work had always been satisfactory.

⁶ The operator of a treeing jack puts the shoes on the jack, cleans them, prepares them for the repairers and for the packers.

⁷ See footnote No 4

⁸ Hill had to appear in court on June 16th

Considering these facts in the light of the respondent's attitude toward the U. S. W., as discussed in Section III, A, above, it is apparent that the respondent seized upon Hill's temporary absence as an excuse for replacing him.

We find that the respondent discharged James B. Hill on June 17, 1937 and discriminated against him with respect to hire and tenure of employment under the circumstances set forth above, thereby discouraging membership in the U. S. W.

Mary Coffin. Mary Coffin had been employed by the respondent as a floor girl⁹ for three years. On June 1, 1937, she joined the U. S. W. and on June 3rd refused to sign a B. & S. W. U. card. On Friday, June 4th, she attended a U. S. W. meeting. On June 7th, the following Monday, while she was singing at her work, Morris Levine asked her if she sang at the U. S. W. meeting, and told her to "stop singing and get to work."

On June 11th Coffin attended another U. S. W. meeting, and on the following Monday, June 14th, Hyman Mersky and Louis Mersky in turn questioned her as to what occurred at that meeting. She refused to tell them anything about it. Later the same day Maurice Mersky also questioned her about the meeting and asked her why she wanted the U. S. W., and what she would do if they had a closed shop and she had to join the B. & S. W. U. Coffin said that she wanted the U. S. W. because it was a better union for the employees than the B. & S. W. U. and that if the factory were a B. & S. W. U. closed shop, there would be more people outside than inside. Maurice stated that it would be a closed shop before long.

On June 14th Coffin talked to her old foreman, Pete,¹⁰ in the compo shop, and he told her he would be wanting her to return soon because a great deal of work was coming in.

On June 25th, when Maurice Mersky told Coffin there was no more work for her, she tried to find Pete in the compo shop but he had gone home. Coffin went to the C. I. O. office next and was told to report to work on Monday, June 28th, and to come back to them if she was not put to work there.

On June 28th, Coffin reported at the factory and could not find her time card. She went to see Pete, who told her he had work but that he had orders not to put her on. Coffin then went to see Maurice Mersky, who told her his nephew was taking her place. Mersky would not talk about work in the compo shop. Coffin then returned

⁹ Floor girl seems to designate a sort of jack-of-all-trades who is used at unskilled work wherever needed in the factory and is shifted around from department to department

¹⁰ Last name not in the record.

to the U. S. W. office and the events described in Section III, A, occurred.

On the basis of the above facts it is apparent that Mary Coffin was discharged because of her membership and activities in the U. S. W.

We find that the respondent discharged Mary Coffin on June 25, 1937 and discriminated against her with respect to hire and tenure of employment under the circumstances set forth above, thereby discouraging membership in the U. S. W.

C. The closed shop contract with the B. & S. W. U.

Under the circumstances discussed under III, A, above, the respondent entered into a closed shop contract with the B. & S. W. U. on June 9, 1937.

Section 8 (3) of the Act provides:

. . . Nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made.

Under this provision and in view of our findings under III, A, above, the contract here in question is clearly invalid. The B. & S. W. U. was not, on the date on which the contract was signed, the free choice of a majority of the respondent's employees and was a labor organization which had been assisted by unfair labor practices. The B. & S. W. U. therefore is within the proviso to Section 8 (3) of the Act quoted above, and the June 9, 1937 contract between it and the respondent is void and of no effect. Of course, this does not mean that the B. & S. W. U. may not hereafter negotiate a new contract with the respondent should it subsequently be certified by the Board as the exclusive representative of the respondent's employees.

Since the contract is void and of no effect, it cannot operate as a defense to the discharges of Hill and Coffin.

IV. THE QUESTION CONCERNING REPRESENTATION

The U. S. W. started organizing in the respondent's plant on or about June 1, 1937. On June 4, 1937, the U. S. W. held an organization meeting in the Town Hall at Freeport, and applications were taken for membership. The presiding officers at that meeting claim that 297 signed application cards were turned over to them that

night and that their total membership in the respondent's plant at that time was 331. Membership increased from that time on, until on June 24, 1937, when the U. S. W. application cards were counted under the supervision of the Regional Director for the First Region, there were 519. Of these 249 were undated. On the basis of this membership the U. S. W. asks recognition as the exclusive representative of all of the respondent's employees.

The B. & S. W. U. introduced no evidence of its membership on different dates, but on June 24, 1937, when the B. & S. W. U. application cards were counted under the supervision of the Regional Director, there were 384 B. & S. W. U. signed cards. The B. & S. W. U. claimed to have more cards which were not then available. On June 8, 1937, the B. & S. W. U. wrote to the respondent claiming to represent more than 65 per cent of its employees and the respondent recognized the B. & S. W. U. as the exclusive representative of all of its employees. Such membership was, as we have found in Section III, A, above, influenced by the respondent's unfair labor practices.

The respondent stipulated that on June 4, 1937, it had 656 employees, and that on June 25, 1937, it had 800 employees. We find that a question has arisen concerning the representation of employees of the respondent.

V. THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING

The petition for investigation and certification of representatives alleged that all of the production employees of the respondent constitute an appropriate unit for collective bargaining. The respondent operates three factories, two of which are physically connected and all of which are enclosed within one fence surrounding the entire property. Although separate production records are kept for each factory, all are operated through one office as a unit and the correspondence, ledger accounts, and purchasing are handled through that office as if the whole were one factory. Employees are often transferred from one department to another and from one factory to another.

Both the U. S. W. and the B. & S. W. U. admit to membership all of the production employees of the respondent. Neither the B. & S. W. U. nor the respondent object to the designation of the production employees as the appropriate unit for collective bargaining.

In order to insure to the employees of the respondent the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that the production employees of the respondent, exclusive of foremen and supervisory employees, constitute a unit appropriate for the purposes

of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

VI. THE EFFECT OF THE UNFAIR LABOR PRACTICES AND OF THE QUESTION CONCERNING REPRESENTATION ON COMMERCE

The activities of the respondent set forth in Section III, above, and the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE REMEDY

The actions of the respondent described in Section III, A, above, culminated in a strike on June 29, 1937. That strike was called to protest against the respondent's interference with, restraint, and coercion of its employees in the exercise of their rights guaranteed in Section 7 of the Act. The strike is still in progress and is a current labor dispute within the meaning of Section 2 (9) of the Act. A person whose work has ceased in connection with a current labor dispute remains an employee under Section 2 (3) of the Act, so long as he does not obtain regular and substantially equivalent employment elsewhere. Nothing in the record shows that any of the persons who struck on June 29, 1937, has obtained regular and substantially equivalent employment elsewhere since that time. Those persons, therefore, never lost their status as employees of the respondent. In order to restore the situation existing before the unfair labor practices, and since the strike was caused by unfair labor practices, we shall order the respondent upon application to reinstate those employees who struck on June 29, 1937, to their former positions, discharging, if necessary, any employees hired since that time.

Since the contract discussed under III, C, above, was with an organization which had been assisted by an unfair labor practice and is therefore void and of no effect, we shall order the respondent not to give it effect, and we shall also order the respondent not to recognize the B. & S. W. U. as the exclusive representative of its employees unless and until the B. & S. W. U. has been certified by the Board as the exclusive representative of its employees.

VIII. THE DETERMINATION OF REPRESENTATIVES

For the reasons stated above we find that in order to determine the question of representation which has arisen, an election is necessary. On June 29, 1937, the U. S. W. called a strike at the respondent's

plant which was still in progress at the time of the hearing. Because of the strike a substantial number of the respondent's employees are not working. Those employees who are not now working because of the strike are entitled to return to their jobs upon application and are entitled to have a voice in choosing their bargaining agent. We, therefore, direct that all employees in the appropriate unit on the last pay roll of the respondent preceding June 29, 1937, shall be eligible to vote in the election.

Russell Dorr, James B. Hill, and Mary Coffin, who have been found to have been discriminatorily discharged and who will be ordered reinstated, shall also be permitted to vote in the election.

We shall not at this time set the date for holding an election but shall direct that the election be delayed until such time as the Board is satisfied that there has been sufficient compliance with its order to dissipate the effects of the unfair labor practices of the respondent and to permit an election uninfluenced by the respondent's conduct.

CONCLUSIONS OF LAW

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

1. United Shoe Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

3. Russell Dorr, James B. Hill, and Mary Coffin were employees of the respondent, within the meaning of Section 2 (3) of the Act, at the time of their respective discharges and at all times thereafter.

4. The respondent, by discriminating in regard to the hire and tenure of employment of Russell Dorr, James B. Hill, and Mary Coffin, and each of them, and thereby discouraging membership in United Shoe Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The strike of the employees of the respondent, beginning on June 29, 1937, is a labor dispute within the meaning of Section 2 (9) of the Act.

6. The employees of the respondent who struck on June 29, 1937, lost their employment as a consequence of the respondent's unfair labor practices within the meaning of Section 2 (3) of the Act.

7. The employees of the respondent who struck on June 29, 1937 are employees of the respondent, within the meaning of Section 2 (3) of the Act.

8. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

10. A question affecting commerce has arisen concerning the representation of employees of the respondent, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

11. All production employees of the respondent, excluding foremen and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) 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 respondent, Lenox Shoe Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Discouraging membership in United Shoe Workers of America or any other labor organization of its employees, or encouraging membership in Boot and Shoe Workers' Union of America or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and 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 its employees to join Boot and Shoe Workers' Union, or any other labor organization of its employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers for Boot and Shoe Workers' Union or any other labor organization to engage in activities among its employees in behalf of such labor organization during working hours or on the respondent's property, unless similar privileges are granted to United Shoe Workers of America and all other labor organizations of its employees;

d. Giving effect to its June 9, 1937 contract with Boot and Shoe Workers' Union, providing however that nothing in this order shall preclude the employer from hereafter making an agreement with

Boot and Shoe Workers' Union or any labor organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) of said Act;

e. Recognizing Boot and Shoe Workers' Union as the exclusive representative of its employees unless and until Boot and Shoe Workers' Union is certified as such by the Board;

f. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the 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 Russell Dorr, James B. Hill, and Mary Coffin immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

b. Make whole Russell Dorr, James B. Hill, and Mary Coffin, and each of them, for any loss of pay they have suffered by reason of their respective discharges, by payment to each of them of a sum equal to the amount which each would normally have earned as wages during the period from the date of their respective discharges to the date of such offer of reinstatement, less any amount earned by each during such period;

c. Upon application offer to those employees who were on the last pay roll prior to June 29, 1937, and went on strike on June 29, 1937, and who have not obtained regular and substantially equivalent employment elsewhere, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges, dismissing if necessary, all persons hired for the first time since June 29, 1937 to perform the work of such employees; and place those for whom employment is not available on a preferred list to be offered employment as it arises on the basis of seniority by classifications before any other persons are hired;

d. Make whole all employees who were on the last pay roll prior to June 29, 1937, and went on strike on June 29, 1937, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 2c herein, by payment to each of them, respectively, a sum equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of reinstatement, less the amount, if any, which each, respectively, earned during such period;

e. Immediately post notices to all its employees in conspicuous places in each of its three factories in Freeport, Maine, stating: (1) That the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purpose of collective bargaining with the respondent; (3) that the respondent will bargain collectively with any labor organization entitled thereto; (4) that the respondent will not discharge, or in any manner discriminate against members of United Shoe 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 respondent will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist Boot and Shoe Workers' Union 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;

f. Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with Lenox Shoe Company, Inc., Freeport, Maine, an election by secret ballot shall be conducted at such time as the Board shall hereafter direct as stated in Section VIII of the above decision, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the production employees of Lenox Shoe Company, Inc., at its Freeport, Maine, plant whose names appear on the pay roll of said Company next preceding June 29, 1936, exclusive of foremen and supervisory employees and those who have obtained regular and substantially equivalent employment elsewhere, to determine whether they desire to be represented by United Shoe Workers of America, affiliated with the Committee for Industrial Organization, or by Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.