

In the Matter of BILES-COLEMAN LUMBER COMPANY and PUGET SOUND
DISTRICT COUNCIL OF LUMBER AND SAWMILL WORKERS

Case No. C-197.—Decided December 23, 1937

Lumber Industry—Interference, Restraint, or Coercion: anti-union statements; attempts to defeat collective bargaining by the unlawful refusal to bargain; discrediting union leaders; questioning employees regarding union affiliation and activity; expressed opposition to labor organization; distributing anti-union literature among employees, direct appeals to employees by statements and advertisements in newspapers in disregard of representatives of majority of employees; conducting a ballot by mail on question of returning to work on basis of company policy which had been rejected by representatives of employees; solicitation of individual employees to return to work on basis of rejected company policy; notice that jobs of striking employees not returning to work by certain date would be filled with new men—*Discrimination:* discharge; allegations in complaint dismissed—*Unit Appropriate for Collective Bargaining:* production employees, excluding loggers; organization of business; differences in work; distance separating scenes of operation; history of collective bargaining—*Representatives:* proof of choice; signed petitions designating union as a bargaining representative; membership in union—*Collective Bargaining:* refusal to recognize or deal with union as exclusive bargaining representative; refusal to bargain collectively in good faith as to substantive terms of proposed agreement—*Strike:* caused and prolonged by employer's unlawful refusal to bargain collectively with union—*Employee Status:* during strike—*Reinstatement Ordered:* strikers upon application for reinstatement; preference list ordered—*Back Pay:* awarded strikers, from date of denial of application for reinstatement.

Mr. John J. Babe, for the Board.

Weter, Roberts & Shefelman, by *Mr. F. M. Roberts* and *Mr. Charles C. Hall*, of Seattle, Wash., for the respondent.

Houghton, Cluck & Coughlin, by *Mr. Jack R. Cluck* and *Mr. Paul Coughlin*, of Seattle, Wash., for the District Council.

Mr. H. E. Anderson, of Omak, Wash., and *Mr. Harvey F. Davis*, of Wenatchee, Wash., for the Petitioning Interveners.

Mr. Joseph Friedman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Puget Sound District Council of Lumber and Sawmill Workers, herein called the District Council, in behalf of Carpenters' Union No. 2570 of Omak, Washington,

Lumber and Sawmill Workers, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles W. Hope, Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated April 28, 1937, against Biles-Coleman Lumber Company, Omak, Washington, 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), and (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Copies of the complaint and of notice of a hearing to be held on May 10, 1937, at Omak, Washington, were duly served upon the respondent and the District Council. On May 6, 1937, the Regional Director issued and duly served upon the parties an order continuing the hearing to May 17, 1937. On May 7, 1937, the Regional Director notified the respondent that the complaint was to be amended and entered into a stipulation with the respondent whereby the respondent's time for filing an answer was extended to a day five days from the date of the service of the amended complaint. On May 8, 1937, the Regional Director issued and duly served upon the parties an amended complaint and notice of a hearing to be held on May 17, 1937, at Omak, Washington.

In respect of the unfair labor practices, the amended complaint alleged in substance (1) that on October 25, 1935, the respondent discharged and thereafter refused to reinstate E. E. Hawes and Howard Lacy, and on June 15, 1936, discharged and thereafter refused to reinstate 310 or more employees for the reason that they had joined and assisted the Union and had engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection; (2) that on April 27, 1937, and on various dates thereafter the respondent refused to bargain collectively with the Union as the exclusive representative of the respondent's employees in its sawmill and manufacturing plant, said employees constituting an appropriate bargaining unit; (3) that as a result of the respondent's refusal so to bargain collectively with the Union a strike was called on May 4, 1936, which has continued without interruption or abatement until the present time; and (4) that by various other acts the respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, and was continuing to do so.

On August 13, 1937, the respondent filed its answer, in which, in substance, it denied most of the allegations of the amended complaint and set forth affirmative matter, including an averment that all its

employees, including those engaged in logging operations, constituted a unit appropriate for the purposes of collective bargaining. The respondent admitted in its answer, however, that "a very substantial proportion of the products of its manufacture at its Omak plant are sold for delivery in other States of the Union than the State of Washington, and that they are transported to such other States by common carrier railroads."

At the same time the respondent filed a motion requesting that the allegations of Paragraph X of the amended complaint, which set forth the discriminatory discharges of 310 or more employees without specifically naming them, be made more definite and certain by stating the names of all such employees either in an amendment to the amended complaint or in a bill of particulars.

Pursuant to the notice of hearing attached to the amended complaint, a hearing was held at Omak, Washington, commencing on May 17, 1937, and concluding on July 14, 1937, before Walter Wilbur, duly designated as Trial Examiner by the Board. The Board, the respondent, and the District Council were represented by counsel and participated in 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 the respondent made a motion to strike out the allegations of Paragraph X of the amended complaint which set forth the discriminatory discharges of 310 or more employees, on the ground that the charge filed with the Regional Director, a copy of which was attached to the amended complaint, contained no reference to the 310 or more employees mentioned in Paragraph X of the amended complaint. The Trial Examiner denied the motion to strike, but in substance granted the respondent's motion for a bill of particulars which it had filed prior to the commencement of the hearing. The ruling is hereby affirmed.

In accordance with the Trial Examiner's ruling there was added to the charge an amendment setting forth the discriminatory discharges of 332 employees on June 15, 1937, accompanied by a list of their names, designated as Exhibit I. At the same time Paragraph X of the amended complaint was amended to incorporate by reference the names of the 332 employees listed on Exhibit I, attached to the amendment to the charge. The Trial Examiner granted the respondent five days in which to answer the amendment to Paragraph X of the amended complaint and ruled that no testimony on any issue raised by such amendment should be introduced until the five-day period had elapsed. The ruling is hereby affirmed.

Thereafter the respondent filed an answer denying the allegations set forth in the amendment to Paragraph X of the amended complaint. During the hearing, on June 6, 1937, the Trial Examiner

permitted the respondent to amend its answer to include allegations that of the 332 employees named as having been discriminatorily discharged on June 15, 1936, eight had been convicted of violations of the law growing out of the strike. The amendment concluded with a prayer that the complaint be dismissed or, in the alternative, that the above eight persons, together with any other employees who should thereafter be found guilty of unlawful acts growing out of the strike, should be excluded from reinstatement in the event of the entry by the Board of an order of reinstatement.

On May 18, 1937, the second day of the hearing, 198 employees of the respondent joined in a petition to intervene in the proceeding. The petitioners in intervention alleged that they had been employees of the respondent on and prior to April 29, 1936, and were employees of the respondent at the time of the hearing. They prayed leave to intervene for the purpose of showing that an appropriate bargaining unit should include all the employees of the respondent and not merely the employees in the sawmill and factory at Omak and that on the dates mentioned in the amended complaint the Union did not represent a majority of the respondent's employees. The Trial Examiner ruled that the petition in intervention had merit only insofar as it suggested that there might be a question of representation as of the time of the hearing and allowed the petition merely as notice of the petitioners' claim that such a question existed. He refused to allow the petitioners to cross-examine witnesses introduced by the Board, but reserved decision on whether he would allow the petitioners to introduce testimony after the Board and the respondent had completed their presentation of evidence, until that time. The petitioners duly excepted to the ruling. At the close of the presentation of testimony by the Board and the respondent, the Trial Examiner refused to allow the petitioners to introduce testimony on the ground that his earlier ruling sufficiently safeguarded the petitioner's interests and that the introduction of evidence by the petitioners would serve no purpose other than to give further color of merit to their claim that a question of representation existed at the time of the hearing. The petitioners duly excepted to the Trial Examiner's ruling.

While the grounds of the Trial Examiner's ruling may not have been precisely responsive to the assertions of the petitioners in intervention, his ruling was not prejudicial. We do not feel that under the circumstances of this case, in a proceeding brought by the Board upon its complaint issued against the respondent, individual employees of the respondent had such an interest as to entitle them to intervene in the proceedings for the purposes requested. The Trial Examiner's ruling is hereby affirmed.

At the close of the introduction of testimony, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner denied the motion insofar as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Pat Mullen, 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 close of the hearing the Trial Examiner heard argument by counsel for each of the parties. Thereafter, the District Council filed a brief with the Board.

By order of the Board, dated July 20, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended. Pursuant to notice a hearing was held before the Board on September 3, 1937, in Washington, for the purpose of oral argument. Only the respondent appeared. It was represented by counsel and presented its oral argument.

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 RESPONDENT AND ITS BUSINESS

Biles-Coleman Lumber Company is a Washington corporation, having its principal office and place of business in Omak, Washington. It is engaged in the business of logging timber and operating a sawmill and factory. The respondent's logging operations are carried on exclusively for the purpose of supplying lumber for its sawmill and factory. After the lumber passes through the sawmill it is utilized in the factory in the manufacture of fabricated products such as casket shooks, boxes, window frames, ironing boards, and similar products. Only a negligible amount of the lumber logged by the respondent is not converted into manufactured products in its factory. The respondent's principal product is lindermanized casket shooks, of which it manufactures approximately 55 per cent of the total output in the Northwest. Fifty-seven per cent of all its products are shipped annually to destinations outside the State of Washington, but since a large proportion of the 43 per cent of its products which remain in the State of Washington consist of sawdust and shavings, byproducts, at least 75 per cent of its total manufactured products are shipped to destinations outside the State of Washington.

The respondent's sales of its products during the period from March 31, 1936 to March 31, 1937 amounted to \$1,210,481.81. The respondent employs approximately 600 men and has a monthly pay roll of about \$45,000.

II. THE UNION

Puget Sound District Council of Lumber and Sawmill Workers, the labor organization which filed the charges in this proceeding, is affiliated with United Brotherhood of Carpenters and Joiners of America, an affiliate of the American Federation of Labor, and has jurisdiction of the various local unions of lumber and sawmill workers situated in the area known as Puget Sound, Washington.

Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers, is a local union within the jurisdiction of the District Council and in whose behalf the District Council filed the charges in this proceeding. While membership in the Union is not restricted to employees of the respondent, its membership is composed almost entirely of the respondent's employees.

III. THE UNFAIR LABOR PRACTICES

A. *Background of organization of the Union and the respondent's reaction to it*

The organization of the respondent's employees into a labor organization began in June 1934. At that time 40 or 50 employees of the respondent convened at the stockyards alongside the railroad near the respondent's plant for the purpose of discussing the advisability of calling in an American Federation of Labor organizer.

The following afternoon, Pat Mullen, one of the leaders in the union movement, was summoned by R. L. McNett, the respondent's president, and questioned concerning the meeting on the preceding evening. Mullen informed McNett that a substantial number of employees were interested in forming a union, had communicated with an American Federation of Labor organizer, and had planned a meeting open to all the respondent's employees in its sawmill or factory on the subject. McNett at first stated that he failed to see the need of a union and then suggested that the men form a company union or a union under Loyal Legion of Loggers and Lumbermen, known as the Four L's, showing Mullen a Four L booklet. McNett then admonished Mullen that the formation of a union affiliated with the American Federation of Labor would involve the employees in sympathy strikes, bloodshed and violence, and would only serve the purpose of supplying outside organizers with cigars to smoke at the employees' expense. McNett offered the respondent's premises as a place for holding meetings and asked Mullen if there was any objection to his (McNett's) addressing the employees on the subject

of unionization before the open meeting was held. Receiving a favorable answer from Mullen, McNett called a meeting of all the employees in the sawmill and factory the following afternoon and addressed them in terms substantially similar to those he had expressed in his interview with Mullen, concluding, however, with an exhortation that all the employees attend the meeting and voice their opinions on the question of calling in an American Federation of Labor organizer.

On the following evening a meeting of the respondent's employees was held at the respondent's retail shed. A majority of the approximately 500 employees in attendance voted to call in an American Federation of Labor organizer. The next day, Pat Mullen was laid off.

Shortly thereafter Leo Flynn, an organizer for the American Federation of Labor, arrived in Omak, collected dues from about 30 employees and placed Pat Mullen in charge of receiving applications for membership. In July 1934, 30 or 40 members convened and voted to apply for a charter from the American Federation of Labor. Thereafter a number of the leaders of this group of employees were discharged by the respondent. On July 30, 1934, the Union received its charter from the American Federation of Labor, under the name "American Federation of Labor Local Union No. 19763 of Sawmill Workers and Loggers of Omak and Vicinity".

In August 1934 the respondent, by its foremen distributed an anti-union pamphlet among its employees entitled, "Labor and Rackets".¹ In October 1934, the Regional Labor Board of the old National Labor Relations Board under the National Industrial Recovery Act ordered the reinstatement of Mullen and several other union leaders whom it found to have been discriminatorily discharged by the respondent. The case was adjusted and Mullen and the other union men were reinstated by the respondent.

Early in 1935 the Union had attained a membership of about 300 among the respondent's employees in its sawmill and factory. At this time several officials of the Union made a trip into the loggers' camps in order to interest the loggers in the Union. They found that the loggers considered that their interests would not be adequately represented by a union whose headquarters were situated in Omak, which was about 15 to 20 miles distant from the logging camps.

In 1935 the American Federation of Labor conceded to United Brotherhood of Carpenters and Joiners of America, herein called the United, jurisdiction over the American Federation of Labor local unions in the lumber industry. In April 1935, the Union received its present charter and name from the United. In January 1936, the Union affiliated with the District Council.

¹ Board's Exhibit No. 61.

In May 1935, Percy Mortemeyer, a straw boss, was discharged two months after he had joined the Union. The Union contacted McNett several times in its efforts to secure Mortemeyer's reinstatement, but was unsuccessful in its negotiations with McNett. During the same period, the respondent had returned to a 45-hour week after the invalidation of the National Industrial Recovery Act. The Union then held a meeting with the respondent concerning the establishment of a 40-hour week and the reinstatement of Mortemeyer. The negotiations proved unsuccessful, however, and the Union voted to strike in support of its demands. The strike was never called.

After its failure to secure the reinstatement of Mortemeyer, the Union found its membership dwindling. By the end of 1935 the number of its members in good standing had fallen to 40 or 50. Early in 1936, the Union commenced a campaign, described below, to rebuild its organization.

B. The refusal to bargain collectively

1. The appropriate unit

The amended complaint alleged that the respondent's employees in its sawmill and factory, excluding supervisory officials, foremen, salesmen, clerical and office employees, watchmen, and janitors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The respondent maintains that the unit designated in the amended complaint is too limited and should include also the respondent's employees engaged in its logging operations. A description of the organization and operation of the respondent's business will clarify the contentions of the parties.

Situated in Omak, the respondent's plant consists of a sawmill, factory, a small powerhouse, a retail shed, kilns, storage yards, and a pond to which the logs cut in its logging operations are delivered. The respondent owns and operates a railroad which commences at its plant in Omak and runs 20 to 30 miles into the woods where the logging operations take place. The respondent cuts and logs most of its timber on the Colville Indian Reservation under contract with the Federal Government, but a substantial amount of timber is also cut and logged on land owned by the State of Washington and private individuals. All the respondent's logging operations occur at a distance of 15 to 30 miles from Omak.

At the hearing the Board showed that the expression, "employees in the sawmill and factory", used to describe the unit in the amended complaint, was generally understood to include all the employees engaged in the sawmill, factory, powerhouse, the kilns, and the yards, exclusive of certain types of employees listed in the amended com-

plaint. The three employees in the retail shed were excluded as salesmen, and the respondent made no objection to their exclusion. The Union apparently considered that the lower end section railroad crew was also a part of the unit and most of this crew had designated the Union as their representative. The lower end railroad crew lived in Omak and began operations daily from the respondent's plant at Omak, working on the railroad for a distance of about 15 miles and returning to Omak at the close of work. Occasionally the respondent engaged an upper end railroad crew which worked on the portion of the railroad furthest in the woods. This crew lived in the woods and the Union claimed that they should be excluded from the appropriate unit along with the employees engaged in the logging operations.

The respondent made no objection to the unit claimed by the Board and the Union insofar as concerned the exclusion of foremen, salesmen, clerical and office employees, watchmen, and janitors, but contended for the inclusion of the employees engaged in its logging operations, chiefly on the ground that the respondent's business was an organic whole and its operations interdependent. While the evidence clearly shows that the operations of the respondent's sawmill and factory, as at present carried on, are dependent upon its logging operations and vice versa, numerous other factors adduced by the Board overcome this consideration in the determination of an appropriate unit.

It was shown that the principal logging operations of the respondent are conducted by the respondent itself in a region called the Disautel area, while the remainder of its logging operations are carried on by "gypos," the operations being characterized as "gypo" operations. The gypos own their own equipment, and are paid a flat rate per 1,000 feet logged. They hire the gypo employees and determine their wages, except that the respondent requires that a certain minimum be paid. The respondent's books show the respondent itself as paying the wages of the gypo employees, with the amounts of wages being deducted from the amount of money due the gypo himself, with the consequence that the gypo is the person who takes the business risk in conducting the gypo operation and is thus the person chiefly concerned as to the wage rate of the gypo employees and the quality of their work. It is unnecessary to determine whether the gypos are independent contractors or, as maintained by the respondent, foremen. It is clear in any event that the gypo employees enjoy a peculiar status and that their inclusion in a unit with the other employees might readily obstruct effective collective bargaining by the other employees. Moreover, the gypo operations are conducted at various places 20 to 30 miles distant from the sawmill and factory. Gypo operations are likely to be somewhat irregular, depending upon

the contracts which the respondent happens to be able to make with the State and with private owners of timber. The gypo employees live in the woods and are not all gathered at one place.

Somewhat similar considerations are applicable to the employees of respondent in the Disautel area. The operations take place more than 15 miles from Omak and the men live in logging camps in the woods. The only opportunity that these employees would have to participate actively in a union at Omak would occur on Saturday night when they might come to town to purchase their weekly provisions or to seek entertainment. Secondly, like the gypo employees, they perform an entirely different type of work. They are loggers, while the employees at the Omak plant are factory or mill employees.

A most important consideration in determining an appropriate unit in this case is the history of collective bargaining among the respondent's employees. The only employees of the respondent who have at any time organized for the purpose of collective bargaining are the employees at the Omak plant. The Union has never attempted to organize the gypo employees and none of them are members of the Union. In 1935 the Union's attempt to organize the loggers in the Disautel area met with no success. Only a few such loggers have ever belonged to the Union and they were never active. It is also significant that the respondent did not object to the unit claimed by the Union during its negotiations with the Union, but has for the first time raised the question in this proceeding.

We conclude that a unit composed of the employees in the sawmill, factory, powerhouse, kilns, yards, and lower end section railroad crew, excluding all the employees in the woods, supervisory officials, foremen, salesmen, clerical and office employees, watchmen, and janitors, would insure to those employees the full benefit of their rights to self-organization and to collective bargaining, and otherwise effectuate the policies of the Act, and constitute a unit which is appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Representation by the Union of the majority in the appropriate unit

The complaint alleged that on April 27, 1936, when the Union presented its proposed agreement to the respondent, and on various dates thereafter until negotiations ceased on or about May 26, 1936, the Union represented a majority of the employees in the appropriate unit. The respondent submitted a list of its employees on April 27 and 29, 1936, and on May 2, 1936, the last working day before the strike was called on May 4, 1936.²

² Board's Exhibits Nos. 48 and 48-A.

This list reveals that there are 443 employees in the appropriate unit. The number includes employees in the retail department, some foremen, and a few clerical employees, but it is unnecessary to eliminate them from the count as the Union's majority is clear.

During March and April 1936 the Union circulated for signature among the respondent's employees petitions designating the Union as their collective bargaining agency. All of the 295 signatures appearing on the petitions³ were secured before April 27, 1936. The petitions were signed by members of the Union in good standing, delinquent members, and by employees who had never previously joined the Union. The Board submitted the petitions in evidence, and all the signatures except two were identified by the Union officials who secured the signatures and personally witnessed the signers affix their signatures. Moreover, during the course of the hearing, which lasted for two months, great numbers of employees were called to give testimony by both the Board and the respondent and in every case an employee whose signature appeared on the petitions identified it as his own and as having been affixed of his own free will and with full knowledge of its significance.

Discounting the two signatures which were not identified, there are signatures of 293 employees designating the Union as their collective bargaining agency. Deducting from this number all signatures which the respondent's list of employees shows do not represent employees on the relevant dates, all duplications, and all signatures which were asserted to represent employees not properly within the appropriate unit, there remain 261 signatures representing employees of the respondent within the appropriate unit on the relevant dates who had designated the Union as their collective bargaining agency before April 27, 1936. This number represents a clear majority of the 443 employees in the appropriate unit. In fact, the Union's position was even stronger, as the list of members⁴ compiled from its membership rolls discloses that 20 of its members in good standing prior to April 27, 1936, did not take the trouble of signing the petitions. By May 5, 1936, the day after the strike was called, the Union had secured 10 additional members who had not signed the petitions; and by May 12, 1936, had secured 9 more such members. The Union's strength not only remained unimpaired but increased during the strike until negotiations were terminated on May 26, 1936, and the plant reopened on June 9, 1936, with the strike still in continuance.

We find that on April 27, 1936, and at all times thereafter the Union was the duly designated representative of a majority of the employees in the appropriate unit, and, pursuant to Section 9 (a) of the Act,

³ Board's Exhibit No. 38-A-N.

⁴ Board's Exhibit No. 60.

was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

Early in 1936 the Union began a campaign to rebuild its organization by increasing its membership and by formulating an agreement for presentation to the respondent. By the latter part of April 1936 the Union had been designated as the collective bargaining agency of the respondent's employees in an appropriate unit and a proposed agreement had been drafted and approved by the membership. The respondent attempted to show that the proposed agreement had not been properly approved at this time by the Union membership or by the District Council which had jurisdiction over the Union. While the Board has held that it will not concern itself with the operations of the internal affairs of the Union in a case like this, we may add nevertheless that the evidence fails to sustain the respondent's contention.

The proposed agreement contained 17 articles, chief among which were: (1) recognition of the Union as the exclusive bargaining representative of the respondent's employees; (2) an eight hour day and a forty hour week; (3) the establishment of a seniority rule; (4) a ten cent hourly wage increase; and (5) the establishment of a closed shop.⁵

On April 27, 1936, the executive committee of the Union, headed by Ralph Stout, held a conference with McNett, the respondent's president, at which they presented the proposed agreement to McNett. Stout stated the substance of the agreement to McNett. McNett read the agreement, requested explanations of several articles, objected to certain other articles, and concluded the conference with a statement that he would "look over" the agreement generally. Before the committee departed Stout pointed out that the last provision in the agreement called for a written reply to the secretary of the Union within five days.

That evening or on the evening of April 28 McNett drove to the town of Leavenworth where he consulted Robert B. Field, a large stockholder in the respondent and a banker who served as the respondent's financial agent, in respect of the proposed agreement. McNett and Field decided that they would not accept the agreement.

On April 29, 1937, McNett called a meeting of all the employees in the factory and sawmill at 4 P. M., including both the day and night shifts. He told them that a committee from the "so-called" union had presented him with a proposed agreement and that he

⁵ Board's Exhibit No. 55.

desired all the employees to hear his answer, which was final. He then remarked that a large portion of the stock in the respondent was held by widows and orphans, that the respondent had not paid dividends since 1929, that by insisting upon collective bargaining the employees would lose their individualism, that outside organizers would control them, and that most of the men had been satisfied until the advent of outside organizers. He also referred to various articles in the proposed agreement and said that the respondent would in no event accept them. He concluded his address with a statement that the answer was final and advised the men to go home and discuss the matter with their wives.

The executive committee and the union members generally construed McNett's address as a flat refusal further to negotiate concerning the proposed agreement. We find that the contents of the address itself and the circumstance that it was made to all the employees and not merely to the representatives of the Union, as collective bargaining in good faith would require, fully justified their construction.

The respondent maintained that McNett acted under the impression that the proposed agreement called for a yes or no reply and precluded further negotiations. The evidence is clear that such an interpretation of the Union demands was wholly unjustifiable and we find it difficult to conceive that the president of a business like that of the respondent should construe the initial presentation of its demands by the Union as anything other than a basis for negotiations. The respondent also contended that it thought the Union at this date was attempting to bargain for all its employees, including the loggers. Only one article in the proposed agreement might have tended to convey such an impression, but McNett on April 27 questioned Stout concerning the meaning of that article and was informed that it had reference only to the employees in the lower end railroad crew. All the remaining articles in the proposed agreement related to the employees at the Omak plant. Moreover, the fact that the Union's specification of the unit in its letter to respondent on May 8, opening negotiations during the strike, elicited no comment and in fact hardly attracted the respondent's attention confirms the Union's assertion that McNett was under no misconception concerning the unit which the Union was representing. We find that on April 29, 1936, the respondent refused to bargain collectively with the representatives of a majority of its employees in an appropriate unit.

At the union meeting held on the night of May 2, a vast majority of the members present again voted to confirm the demands contained in the proposed agreement, to strike in support of them, and authorized the executive committee to act as a strike committee. The strike

was called on May 4 and picketing commenced at that time. The plant closed down and remained closed until June 9, 1936, when the respondent reopened it with the strike still continuing:

On May 8 the strike committee dispatched a letter to the respondent specifying that the Union represented a majority of the employees in the sawmill and factory and that the strike committee was willing to meet with the respondent and negotiate.⁶ This letter was received on the same day by McNett during a conference with Field, A. M. Aston, the respondent's secretary, F. M. Roberts, the respondent's attorney, and John Fitzgerald, an employers' labor relations advisor called in by the respondent to assist it in its difficulties and who was representing 40 other lumber concerns in the Northwest involved in similar situations. Fitzgerald testified that at this conference he recommended that recognition be limited to recognition for the union membership only, and that the officials of the respondent said that "they would follow that". Accordingly, on the same day the respondent sent a reply that it was willing to negotiate with the Union as the representative of its membership only, in the following terms:

This company is willing, as in the past, to meet with any of its employees either singly or in groups to discuss any matters of mutual interest, such as hours, wages, and working conditions. The Company has negotiated in the past with committees representing *the union membership* on our operation, and expects to *continue* to do this if such practice is the desire of those belonging to the union.⁷

On May 9, 1936, the strike committee met with McNett, Field, and Aston. Various articles of the proposed agreement were discussed and explained. The respondent objected to the closed shop provision and the union committee agreed to discard it. The respondent then objected to the word "sole" preceding the words "collective bargaining agency." The respondent maintained this objection throughout the entire negotiations and insisted upon granting merely recognition of the Union for its membership. The respondent also indicated that it was unable to grant any increase in wages or accept the Union's proposals as to hours and seniority. The respondent asked the committee to condense its proposals. At the close of the conference, arrangements were made for another meeting on May 11.

At this second conference the respondent presented the committee with five clauses,⁸ which were concerned only with recognition and seniority. We shall set forth clauses 2 and 3 because they indicate

⁶ Board's Exhibit No. 59.

⁷ Board's Exhibit No. 65. The italics do not appear in the original document.

⁸ Board's Exhibit No. 71. The italics in the subsequent excerpts do not appear in the original document.

the respondent's attitude toward recognition, from which it never receded. Clause 2 reads:

The plant committee will be elected by ballot so that the company will be assured that the committee is the selected spokesman and committee for *the union membership*. This plant committee shall have authority from the union to settle with the management all matters concerning *individual* complaints or grievances *affecting members of the union*. One member shall be selected by the committee as chairman, who shall be the usual spokesman for the committee.

Clause 3 reads:

In *dealing* with its *union employees* through their elected committeemen, the Company is accepting the fact that its employees may organize a union to bargain collectively; in return the Company expects to have the cooperation of the union membership and the plant committee in promoting harmony and efficiency.

The committee departed from the conference to study the proposed clauses. Stout marked his objections and proposed corrections on the drafts of the clauses. His comments and corrections thereon indicate that he detected and objected to the fact that the clauses did not grant exclusive recognition as required by the Act. At a conference held on May 14 Stout pointed out that the clauses did not grant the recognition to which the Union was entitled. McNett stated that he thought Stout dominated the Union and was not truly representing the desires of the members. He indicated that the respondent would present its story to all its employees in the local newspaper.

In the May 15 issue of The Omak Chronicle there appeared a statement by the respondent which revealed both its conception of the meaning of recognition and its view that the union committee was insisting upon exclusive recognition to the detriment not only of the union members but also of all the inhabitants of Omak.⁹ Almost at the commencement of its statement there appears the following:

At the last conference your Committee asked that the Company set out what it would do in the way of recognizing the Union *as an agency of its members* in the Company's employ. *As far as we can tell, the first interest of the Committee is in recognition*. The company, as we have explained before in several conferences, has a number of serious problems which must be considered. We believe our employees, those who are members of the union and those who are not, *and the people of Omak have other problems* which must be considered.

⁹ Board's Exhibit No. 72. The italics in the subsequent excerpts do not appear in the original document.

This excerpt clearly discloses the respondent's notion that recognition should relate only to the union membership, its declaration that the Union was not asking for more than that, and its attempt to circumvent the whole issue of recognition with assertions that there were other and more pressing problems.

The respondent's statement concluded with the following paragraph, in which it also brings home to its employees that the plant might remain closed indefinitely:

The Company cannot plan, under present market conditions, to start operations if further threats of strike and trouble are present. At the same time, the Company will *deal with a committee of the Union for Union membership, which we understand is the meaning of "recognition"*. However, under the present circumstances, due to the useless strike, the Company cannot plan to resume operations until the men who might be required to operate necessary departments or to ship stock have reported for work. The Strike Committee and the Company, during a series of discussions, have come to a common understanding of how the Local Union recognition could be worked out. But, before it can approve this, the Company must have some definite assurances that this useless strike is behind both employers and employees and that we can all work in the future without such sudden, unnecessary and costly interruptions. It is only fair to notify all Union members that because of the financial condition of the Company and the market situation *there is not much inducement for the Company to continue operations at this time.*

On May 15 Charles W. Hope, Regional Director for the Nineteenth Region, arrived in Omak and held separate conferences with the respondent and the Union. The respondent contended at the hearing that Hope's visit stiffened the Union in their negotiations, which the respondent claimed were progressing satisfactorily until that time. The evidence fails to disclose that any particular progress had been made in the negotiations prior to Hope's arrival, other than the discarding by the Union of its demand for a closed shop. When the union committee met with the respondent on May 16, it did not renew its closed shop demand. The committee asked the respondent whether it would accept a provision whereby both parties agreed to subscribe to the National Labor Relations Act. The respondent refused, asserting that it was not subject to the Act. At this conference or the one preceding it, the committee had indicated that it might be willing to accept an eight-hour day and forty-five-hour week and a five cent increase in wages, if its demands as to recognition and other items were met. The conference on May 16, however, seems to have been devoted to a discussion of the Act

and nothing was accomplished. The conference closed with a request by the respondent that the committee rewrite its demands in shorter form.

The evidence is quite clear that by May 16, the respondent had decided that the union committee was not likely to yield without gaining recognition as exclusive bargaining agency and something more than was contained in the five hollow clauses offered by the respondent on May 11. The respondent therefore determined to reopen its plant by going over the heads of the committee and dealing with the union adherents individually—in short, to discard collective bargaining as a means for settling the strike. On May 16 and 17, Fitzgerald, the labor relations advisor, assisted the respondent in preparing a ballot to be sent employees to designate whether or not they were willing to return to work at once on the basis of a statement of the Company's policy with respect to Union members. Fitzgerald aided in preparing both the accompanying literature which discredited the strike committee and Hope, the Regional Director, and the statement of the Company's policy, which consisted of substantially the same five clauses presented to the committee on May 11, with the addition of a sixth clause providing for an eight hour day and a 45 hour week, with time and a half for time over 45 hours per week.¹⁰ This material was printed by May 21 and received by the employees on May 25.

At a conference on May 18 the committee presented the respondent with a redraft of its demands, condensing its original 17 proposals into seven articles.¹¹ The chief proposals in this redraft were provisions that both parties agree to subscribe to the National Labor Relations Act; that the respondent establish an eight hour day with a forty-five hour week if necessary to fill orders; and that the respondent grant a five cent increase in wages. The respondent would not accept it and objected strongly to the chief provision relating to recognition, and the provision for a five cent increase in wages.

On the front page of the May 19 issue of *The Omak Chronicle* there appeared an advertisement by the respondent addressed to its employees under the caption, "An Appeal to Our Employees".¹² This advertisement attempted to discredit the union committee and to demoralize the strikers by instilling in them a distrust of their leaders, a procedure quite inconsistent with the respondent's contention that it was bargaining collectively in good faith. Several excerpts from the respondent's advertisement will clearly disclose its technique in seeking to avoid collective bargaining:

The Company feels that Mr. Stout is taking on considerable responsibility when he undertakes to speak for the several hun-

¹⁰ Board's Exhibit No. 77 A-E.

¹¹ Board's Exhibit No. 85.

¹² Board's Exhibit No. 75.

dred employees of the Company. The Company feels that it has many loyal friends who will not sanction the decision Mr. Stout has made. The Company believes that throughout this entire controversy, the rank and file of the men have not been given a clear picture of the Company's position in the matter. The Company believes that a great majority of the men feel that the Company has stated its position truthfully and fairly. The Company feels that a minority are exerting an undue influence, restricting hundreds of men from their rightful opportunity to work, thereby dealing a serious blow to the entire community . . .

Are a few men tying up our plant and keeping hundreds from work, or is the action of the Strike Committee an expression of the majority of our employees?

On May 21, 1937, the respondent paid the publisher of The Omak Chronicle to issue a special edition of that paper, on the front page of which appeared an advertisement addressed to the respondent's employees, stating the terms to which the respondent would agree to adhere, as embodied in its statement of "Company Policy for Union Members":

(1) This Company will deal with a Plant Committee of not less than three nor more than five employees for the members of the Sawmill and Timber Workers Union who are on the Company payrolls at the time. Such Plant Committee members must be American Citizens and have been in the employ of the Company at least one year.

(2) The Plant Committee will be elected by ballot so the Company will be assured that the Committee is the selected spokesman and negotiator for the Union membership. This Plant Committee shall have authority from the Union to settle with the management all matters concerning individual complaints or grievances affecting members of the Union. One member shall be selected by the Committee as Chairman who shall be the usual spokesman for the Committee.

(3) In dealing with its Union employees through their selected Committeemen, the Company is accepting the fact that its employees may organize a Union to bargain collectively. In return, the Company expects to have the cooperation of the Union membership and the Plant Committee in promoting harmony and efficiency.

(4) Some members of the crew may not wish to join the Union. This is their right just as it is the right of those who do want to join to become members. Threats or intimidation to force individuals to become members who do not want to join will be a cause

for discharge by the management. During working hours no member of the Union is to solicit any employee for Union membership.

(5) The Company retains the right to hire and discharge employees, but there will be no discrimination against any member of the Union because of Union affiliation. The Company, as in the past, will recognize the principle of seniority, but also must recognize that efficiency and ability for the job by individuals is the main consideration in production. In rehiring, it shall be the policy of the Company to rehire from its list of employees laid off by reason of work becoming slack, if such employees are immediately available, qualifications for the particular job considered. The management will be the judge of ability and individual efficiency on the plant.

(6) With the exceptions below, the following holidays shall be observed in the sawmill and factory: All Sundays, New Year's Day, Memorial Day, July 4th, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day: and all production work done, on these days shall be considered as overtime and shall be paid for at the rate of rate and one-half. The hours of labor in the sawmill and factory shall be as follows: Eight hours shall constitute a day's work on production: The work week on production shall be limited to 45 hours—all work on production in excess of 45 hours in any one calendar week shall be paid for at time-and-one-half. On either production or shipping the Company will stagger men or crews during the week in order to maintain, insofar as it is practicable, the standard 45 hour week.

Other exceptions are as follows: Monthly employees, Engineers, Firemen, Watchmen, men employed on maintenance or replacement work, logging railroad and logging repair and maintenance crews, hauling and handling fuel to keep power plant operating.

In line with a long established custom of the industry, machine tenders are to be on the job a few minutes in advance of the starting whistle in order to see that everything is in readiness for production; this is allowed for in their rates of pay.

It is an absolute impossibility for the Company to meet a general increase in wages. However, we do feel that some wage adjustments are in order and these will be made when the Company's financial condition permits.

Provided the men come back now, the Company is willing to do all the things enumerated in the six numbered paragraphs above, and, in addition, is willing to place each and every man on the same job as he was performing on Friday, May 1st, if

it has sufficient business left to furnish the same men employment at that time.

We ask that every employee make an effort to learn the true facts and then decide in his own mind whether or not he wishes to return to work.¹³

This document reveals clearly and significantly that the respondent would not grant the Union recognition as the exclusive bargaining agency of its employees in an appropriate bargaining unit.

The Union committee met in conference with the respondent on May 21, at which the respondent's advertisement was discussed. In answer to a question by Stout, McNett said he would sign no contract with the Union, not even one embodying the respondent's statement of policy. McNett requested that the committee allow the union members to vote on the respondent's statement of policy. At the union meeting on the following evening the committee brought the matter before the members, but opposition was so great that it could not reach a vote.

Realizing that the situation had become crucial, the Committee prepared a redraft of its demands, making all the concessions which it felt that it could make.¹⁴ This redraft follows the respondent's statement of policy on such points as were acceptable to the committee. It accepted the 45-hour week on the condition that it should apply only when necessary to fill orders, and provided for time and one-half for overtime in all departments and not merely production work. It provided for a five cent hourly increase in wages. The first sentence of the first article reads:

The party of the first part recognizes the party of the second part as the collective bargaining agency.

The word "sole" appearing in the original proposed agreement had been dropped. Stout testified that "sole" was omitted to avoid the respondent's persistent objection to it, but that the committee did not thereby intend to surrender its claim for recognition as the exclusive bargaining agency, as it considered that the words "*the* collective bargaining agency" signified the same. While the evidence is somewhat confusing on this point, it is still reasonably convincing that in omitting the word "sole" the committee's intention accorded with Stout's explanation at the hearing.

The committee presented this final redraft to the respondent at a conference on May 23. The respondent said that it was still objectionable and requested until May 26 before giving a definite answer.

¹³ Board's Exhibit No. 73.

¹⁴ Board's Exhibit No. 74. The "Statement of Executive Committee" attached to the redraft of the Union's demands was not presented to the respondent until May 26, 1936.

On May 25 the respondent's employees received letters from the respondent containing a statement of the respondent's policy as it appeared in the May 21 issue of *The Omak Chronicle*, a ballot on which to indicate whether or not they desired to return to work on the basis of the statement of policy, a stamped envelope addressed to the respondent in which to return the ballot to the respondent, and a form letter.¹⁵ This latter document sought to place the blame for the failure to arrive at a settlement upon the strike committee, outside union officials, and the Board's Regional Director. As previously indicated preparation of the ballot and its accompanying literature had commenced at least as early as May 16.

The strike committee conferred again with the respondent on May 26. The respondent presented the committee with a copy of the statement of its company policy, similar to that which had appeared in the advertisement of the May 21 issue of *The Omak Chronicle*. The committee stated that there was nothing further to negotiate if the respondent had only its statement of policy to offer. Stout asked McNett if he would sign the respondent's statement of policy with the view of combining it with the committee's final redraft. McNett answered that he would not sign anything. The committee then presented McNett with a written statement that if the respondent would not offer more than its statement of policy there was nothing further to negotiate.¹⁶ Negotiations thus ceased on May 26.

At a meeting of the Union held on May 25 it had been decided that all the respondent's ballots received by union members should be turned over to the strike committee instead of being mailed to the respondent. Union officials testified that over 200 such ballots were turned over to the strike committee. The respondent then had a new batch of ballots printed, and instructed certain of its foremen and supervisory officials to visit the employees who had not returned their ballots to the respondent. The foremen solicited the employees at their homes and on the streets to sign the ballots, in many cases explaining that voting in favor of returning to work *at once*, as stated in the ballot, did not mean what it said, but that employees could return at any time. In this way a number of employees who would not consent to cross the picket line were induced to sign the ballot and vote in favor of returning to work. This was done pursuant to the respondent's plan to go over the heads of the representatives of the union, to destroy collective bargaining and at the same time, by announcing in the newspapers that a majority of its employees had voted to return to work at once,¹⁷ mold public opinion in favor of

¹⁵ Board's Exhibit No. 77 A-E.

¹⁶ Respondent's Exhibit No. 84.

¹⁷ Board's Exhibits Nos. 86 and 79, May 26 and June 9 issues of *The Omak Chronicle*, respectively.

reopening the respondent's plant on the basis of the respondent's statement of policy.

On May 26 the respondent commenced the erection of a fence around its property and at about the same time started arrangements for opening its plants. Early in June the businessmen in Omak and vicinity in a signed resolution indicated their desire to support the respondent in reopening its plant. On June 9 the plant was reopened with a small number of men returning to work, crossing the picket lines in caravans of cars. In the June 12 issue of *The Omak Chronicle* there appeared an advertisement by the respondent that the jobs of employees who had not returned to work by June 15 would be declared vacant and that the respondent would feel free to fill their positions with new men.¹⁸ A number of members and adherents of the union returned to work by the deadline. After June 15 the respondent filled the jobs with new men and such union men as returned to work from time to time. The bulk of the strikers had not returned to work at the time of the hearing. The strike and the picketing of the respondent's plant for 24 hours daily had continued unabated until the time of the hearing.

Conclusions

An examination of the extensive documentary evidence and the many hundreds of pages of oral testimony clearly reveals the following facts:

1. That on April 29, 1936, the respondent refused to bargain collectively with the Union.

2. That the above refusal to bargain collectively precipitated the strike called on May 4, 1936, which had continued unabated at the time of the hearing.

3. (a) That throughout the negotiations which took place during the period from May 9, 1936, to May 26, 1936, the respondent deliberately and steadfastly refused to recognize or deal with the Union as the exclusive bargaining agency of the respondent's employees in the appropriate unit. (b) That such refusal by the respondent was a primary factor in the prolongation of the strike.

4. That the respondent refused to bargain collectively in good faith with the Union. This is clearly disclosed in the respondent's readiness to destroy collective bargaining by going over the heads of the strike committee and dealing directly with the individual employees.

We find, therefore, that on April 29, 1936, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the representative of its employees in respect to rates of

¹⁸ Board's Exhibit No. 80.

pay, wages, hours of employment, and other conditions of employment.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

C. The alleged discriminatory discharges

1. The alleged discharge of 332 employees

The complaint, as amended, alleged that on June 15, 1936, the respondent discriminatorily discharged, and thereafter refused to reinstate, 332 named employees. The evidence adduced in support of this allegation shows that the respondent, in its efforts to induce its employees to return to work after the plant had been reopened on June 9, inserted in the June 12 issue of *The Omak Chronicle* an advertisement containing the following notice to its employees:

All former employees of Biles-Coleman Lumber Co. who were working May 1st will have to report to their foremen by 7:00 A. M. June 15, 1936.

After this date their jobs will be declared vacant and the Company will feel free to fill their positions with new men.¹⁹

It was the contention of counsel for the Board that all striking employees who failed to return to work on June 15, 1936, were thus automatically discharged on that date. We are unable to accept that view. It is clear that, under the circumstances of this case, the respondent issued the notice only as a threat of the loss of jobs for the purpose of demoralizing the union membership in pursuance of the respondent's unlawful refusal to bargain collectively with the Union. The evidence reveals that the respondent intended the notice only as a threat and that it was so construed by the striking employees. The record shows that striking employees, both those who had designated the Union as their representative and those who had not, who applied for work during the period from June 15, 1936, to the date of the hearing were reinstated. We are unable to find that the notice coupled with the failure of the 332 employees named in the complaint, as amended, to return to work on June 15 constituted a discriminatory discharge of such persons in violation of the provisions of Section 8 (3) of the Act.

The allegations of the complaint, as amended, with respect to the discharge of the 332 employees named therein are hereby dismissed.

¹⁹ Board's Exhibit No. 80.

2. Hawes and Lacy

The complaint, as amended, alleged and the answer denied that on October 25, 1935, the respondent discriminatorily discharged, and thereafter refused to reinstate, E. E. Hawes and Howard Lacy. We will first narrate separately the history of employment with the respondent and the union activity of each of the men, and then discuss their discharges together.

Hawes. Hawes began work at the respondent's Omak plant in 1929 as a lumber piler at the "green end" of a chain device upon which lumber was carried. He continued in this position until the date of his alleged discriminatory discharge. He was a competent workman and his work was considered satisfactory by his foreman.

In the latter part of July 1934, Bob Smith, Hawes' foreman, in distributing the pay checks, handed Hawes and the other employees an antiunion pamphlet entitled "Labor and Rackets."²⁰ Although Hawes regarded this as a warning not to join the Union, he nevertheless became a member of the Union on August 10, 1934. Hawes did not become especially active in the Union until July 1935 when Union membership was beginning to dwindle after the Union's failure to secure the reinstatement of Mortemeyer. During the period from July 1935 to October 25, 1935, the date of his alleged discharge, Hawes frequently spoke from the floor at union meetings, stressing the necessity for action to halt the falling off of membership and attendance at union meetings. On July 10, 1935, Hawes was appointed to a committee which solicited the business men in Omak to display union cards in their places of business. In general, the committee was unsuccessful in this venture. On August 3, 1935, Hawes was nominated for vice-president of the Union, but was defeated in the election. As Hawes was politically active in Omak, he was appointed on October 16, 1935, to sound out the views on labor entertained by the candidates for mayor. He made a report to the Union on this matter on October 23, 1935, at which time he was appointed to a committee for the collection of delinquent dues. Two days later he was laid off.

Lacy. Lacy began work at the respondent's Omak plant in December 1925 as a "chain puller". Three months later he became a lumber piler at the "green end" of the chain, in which capacity he continued until July 1934 when he was discharged. Subsequently the Regional Labor Board of the old National Labor Relations Board found that the respondent had discharged Lacy for union activity and ordered the respondent to reinstate him with back pay. The respondent reinstated Lacy in November 1934. He then continued as a lumber piler at the "green end" until October 24, 1935, when he was laid off. Lacy was a competent workman and his work was considered satisfactory by his foreman.

²⁰ Board's Exhibit No. 61.

Lacy was a charter member and charter recording secretary of the Union, having joined the Union in May 1934. In April 1935 Lacy was a member of a committee which presented to the respondent a proposed agreement concerning wages and hours similar to the agreements presented at that time to all the lumber companies in the Northwest. In the latter part of June 1935 Lacy served on a committee which conferred with officials of the respondent concerning the discharge of Mortemeyer. On August 10, 1935, Lacy resigned as recording secretary.

Their discharges. On October 24 and 25, 1935, Lacy and Hawes, respectively, were laid off. Their foreman, Bob Smith, told them that their layoff was caused by the recent installation of a resaw and automatic stacker which had reduced the amount of work to be performed by the men. The evidence reveals that a resaw and automatic stacker had been installed within approximately a week prior to the discharge of Hawes and Lacy and that the amount of the work was thereby reduced, with the consequence that it was necessary to lay off a number of the regular pilers. The respondent laid off another regular piler, who was not a union member, along with Hawes and Lacy. In fact, it appeared that almost all the regular pilers at the "green end", among whom was the president of the Union, belonged to the Union at this time, so that the respondent could hardly avoid laying off Union members in reducing its force of regular pilers. Counsel for the Board attempted to prove that pilers with less seniority than Hawes and Lacy were retained, but was unsuccessful. The respondent showed that prior to the latter part of 1933 or the early part of 1934, the piling was performed for the respondent by independent contractors who hired their own pilers. In 1933 or early in 1934 the respondent itself took over the work of piling and retained the pilers who had been in the employ of the independent contractors. Computing seniority only for the period during which the pilers were in the respondent's employ, Hawes and Lacy did not enjoy seniority over any of the pilers at the "green end". It was shown that some of the pilers retained at the "dry end" of the chain had less seniority than Hawes and Lacy, but the respondent proved that those employees were Indians, whom the respondent was under an obligation to retain in its employ under the terms of its agreement with the Federal Government for the logging of timber in the Colville Indian Reservation. Moreover, Hawes admitted that when it was necessary temporarily to shift pilers from the "green end" to assist the pilers at the "dry end" he had requested his foreman not to send him to the "dry end" as he disliked the work at the "dry end".

The respondent also maintained that it had not discharged Hawes and Lacy, but had merely laid them off, promising them work when-

ever it should be available. The evidence shows that Hawes was reemployed in November 1935 to pile lumber on the lower chain and worked steadily until April 9, 1936, when he was again laid off as the work slackened. While piling lumber on the lower chain Hawes received an hourly wage of 59 cents, the same wage he had received on the green chain, even though piling on the lower chain was generally classified at about 40 cents an hour. After he was laid off in October 1935 Lacy went to work on the Grand Coulee Dam. It is clear, however, that if he had remained in Omak he would have received the same amount of work as Hawes.

Although Hawes and Lacy were competent workmen and active Union men, the evidence gives rise to a substantial doubt as to whether they were discharged for Union activity.

The allegations of the complaint with respect to the discharges of E. E. Hawes and Howard Lacy are hereby dismissed.

D. Interference, restraint, and coercion

The first eight numbered allegations of Paragraph XIII of the Complaint, as amended, set forth specific acts or series of acts committed by the respondent in violation of Section 8 (1) of the Act. Since the evidence introduced at the hearing sustains only the allegations setting forth acts which we have found above were committed by the respondent as part of its unlawful conduct in refusing and continuing to refuse to bargain collectively with the Union, we will dismiss the other allegations.

The first eight numbered allegations of Paragraph XIII of the Complaint, as amended, are hereby dismissed in so far as they set forth acts other than those which we have found in Subsection B of Section III above were committed by the respondent as part of its unlawful conduct in refusing and continuing to refuse to bargain collectively with the Union.

E. Respondent's defense to the reinstatement of certain employees

The respondent's answer, as amended, alleged that, in the event that the Board ordered the reinstatement of the striking employees, certain named employees should be excluded from the order of reinstatement for the reason that they had been convicted of certain offenses growing out of the strike. It was shown that six striking employees had been charged by the police with throwing rocks at the house of an employee who had returned to work after the respondent reopened its plant. On being given assurance that they would receive a suspended sentence, they pleaded guilty to the charge. The employee at whose house the rocks were allegedly thrown testified that he was listening to the radio at the time and then proceeded to state the exact locations on the lawn on which he heard the rocks

fall. Although one of the men admitted having thrown a stone at the house, in view of the acts of violence, described below, committed by the respondent, we do not consider that the circumstances of the incident, the subsequent plea of guilty, and the suspended sentence are of sufficient gravity to warrant the exclusion of these employees from our order of reinstatement.

It was also shown that three striking employees were sentenced collectively to a fine of \$100 and costs on a charge of placing nails along a highway used by trucks engaged in the respondent's logging operations. The officer who made the arrest testified that it was made under the following circumstances: The police received a telephone call from an unidentified person who stated that nails had been found placed along a portion of a highway in the woods and requested the police to arrest any persons found in that vicinity. The police found the three striking employees riding in an automobile in the vicinity. This was the sole ground for the arrest. No nails or tools were found in the car and the men protested their innocence. It was shown that the three employees had, earlier in the day, received permission from the civic authorities to gather wood in that vicinity for the use of the striking employees. It was known in Omak that they had secured such permission. Under such circumstances, it is not an unreasonable inference that the telephone call may have originated from sources inimical to the Union and desirous of injuring its members. Moreover, it does not appear that any particular damage was done to the trucks. In view of the acts of violence committed by the respondent, described below, we do not deem the circumstances surrounding this entire incident warrant the exclusion of these employees from our order of reinstatement.

We are less hesitant in denying the respondent's request to exclude the foregoing men from our order of reinstatement in view of the fact that the respondent's own president was convicted of assault and fined \$1.00 and costs as a result of his activities in the strike. On the morning of July 2, 1936, the respondent's president assaulted one of the Union's pickets, thereby causing a fight between a number of the pickets and a larger number of men who were at that time working for the respondent and had congregated at the entrance to the plant in order to watch the pickets move their tents. In view of this incident the respondent can hardly make its prayer for the exclusion of particular employees from our order of reinstatement in good countenance.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and sub-

stantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent's employees at its Omak plant went out on strike on May 4, 1936, because of the respondent's refusal to bargain collectively with the Union. We have also found that the strike was prolonged by the respondent's refusal to bargain collectively with the Union after its employees went out on strike. Since the strikers ceased work and have remained out of work as a consequence of, and in connection with a current labor dispute, and because of the respondent's unfair labor practices, those strikers who have not obtained any other regular and substantially equivalent employment have been employees of the respondent since the date on which they went on strike, and still are employees of the respondent, within the meaning of Section 2 (3) of the Act. After the respondent reopened its plant on June 9, 1936, it employed a number of individuals who were not so employed on May 2, 1936, the last working day before the strike on May 4, 1936. The respondent is under a duty to reinstate its striking employees to their former positions and to restore the status quo existing prior to the strike. Therefore, we shall order the respondent to offer to those employees who went out on strike on May 4, 1936, and thereafter, and who have not obtained regular and substantially equivalent employment, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights or privileges, dismissing if necessary employees hired after May 4, 1936; and place those for whom work 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.

Among the employees who are still out on strike are two of the respondent's foremen, Philip G. Welter and Harry Perry. Both men returned to their jobs when the plant reopened on June 9, 1936, upon the respondent's assurance that a majority of the striking employees were returning to work. When it had become apparent that most of the striking employees were not returning to work, the two foremen, shortly after July 2, 1936, went out on strike and joined the Union. Since they joined the other employees in a strike caused by the respondent's unlawful conduct, we shall order the respondent also to reinstate them to their former positions.

Our order will also provide that employees whose application for reinstatement is refused by the respondent in violation of our order herein shall be entitled to back pay accruing from the date of the

refusal of the application to the date of reinstatement, less any amount earned during that period.²¹

CONCLUSIONS OF LAW

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

1. Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The strike of the employees is a labor dispute, within the meaning of Section 2 (9) of the Act.

3. The employees, including Philip G. Welter and Harry Perry, who went out on strike on May 4, 1936, and thereafter, are employees of the respondent, within the meaning of Section 2 (3) of the Act.

4. All the respondent's employees in the sawmill, factory, powerhouse, kilns, yards, and lower end section railroad crew, excluding all the employees in the woods, supervisory officials, foremen, salesmen, clerical and office employees, watchmen, and janitors, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. By virtue of Section 9 (a) of the Act, Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers, having been selected as their representative by a majority of the employees in an appropriate unit, was on April 29, 1936, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

6. The respondent, by refusing to bargain collectively with Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers as the exclusive representative of its employees in the appropriate unit, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

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

8. The respondent has not engaged in an unfair labor practice within the meaning of Section 8 (3) 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.

²¹ *Matter of Oregon Worsted Company and United Textile Workers of America, Local 2435*, 3 N. L. R. B.
2435, 3 N. L. R. B. 36.

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 Biles-Coleman Lumber Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from refusing to bargain collectively with Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers as the exclusive representative of all its employees in its sawmill, factory, powerhouse, kilns, yards, and lower end section railroad crew, excluding all the employees in the woods, supervisory officials, foremen, salesmen, clerical and office employees, watchmen, and janitors;

2. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

a. Upon application, offer to those employees, including Philip G. Welter and Harry Perry, who went out on strike on May 4, 1936, and thereafter, and who have not obtained regular and substantially equivalent employment, immediate and full reinstatement to their former positions, without prejudice to their seniority or other rights or privileges, dismissing if necessary employees hired after May 4, 1936; and place those for whom work 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;

b. Make whole all employees, including Philip G. Welter and Harry Perry, who went out on strike on May 4, 1936, and thereafter, for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with paragraph 3-a herein, by payment to each of them, respectively, of 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 said period;

c. Upon request, bargain collectively with Carpenters' Union No. 2570 of Omak, Washington, Lumber and Sawmill Workers, as the exclusive representative of all its employees in its sawmill, factory, powerhouse, kilns, yards, and lower end section railroad crew, ex-

cluding all the employees in the woods, supervisory officials, foremen, salesmen, clerical and office employees, watchmen, and janitors, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

d. Post immediately notices to its employees in conspicuous places throughout its place of business, stating that the respondent will cease and desist in the manner aforesaid, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

e. Notify the Regional Director for the Nineteenth Region within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed, with respect to the discharge of 332 named persons and E. E. Hawes and Howard Lacy, and insofar as it alleges that the respondent has committed specific acts in violation of Section 8 (1) of the Act which have not been sustained in this decision.