

In the Matter of THE CENTURY OXFORD MANUFACTURING CORPORATION
and WHOLESALE & WAREHOUSE WORKERS UNION, LOCAL 65, C. I. O.

Case No. C-2375.—Decided February 22, 1943

Jurisdiction: optical goods manufacturing industry

Unfair Labor Practices

Interference, Restraint, and Coercion: anti-union statements; suggesting formation of a committee, to deal with employer; charges of, by granting bonus, dismissed

Company-Dominated Union: advising employees how to proceed after they had signed petition withdrawing from Union; recommending attorneys; urging employee to sign petition designating committee to bargain with employer; arranging and paying for services of notary; permitting use of plant facilities.

Collective Bargaining: majority established by consent election; attempted repudiation of union by majority of employees less than 2 months after election, held ineffectual to defeat union's majority status; majority status not affected by showing of 60 per cent labor turnover—refusal to bargain collectively by; insuring effectiveness of purported desertion from union and fostering rival bargaining agency during negotiations with union; refusal to meet with union following ineffectual repudiation of union by employees.

Remedial Orders: respondent ordered to cease and desist from unfair labor practices; cease dominating and recognizing company-dominated union, and giving effect to contract with it; upon request to bargain collectively with union.

Unit Appropriate for Collective Bargaining: production employees, excluding supervisors and clerical employees.

Mr. Martin I. Rose, for the Board.

Mr. Barnett Gillman, of New York City, for the respondent.

Miss Marcia Hertzmark, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Wholesale & Warehouse Workers Union, Local 65, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued its complaint dated August 13, 1942, against The Century Oxford Manufacturing Corporation, Long Island City, New York, 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 (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 notice of hearing were duly served upon the respondent, the Union, and Santiago Rivera, Ascuncion Castro, Ida Castaniera, Ralph Irizarry, Margafet Rodriguez, Aubrey Jemmott, Betty Paluch, and Jean Toombs, a committee representing workers of the respondent, herein referred to as the Committee, party to a contract with the respondent.

With respect to the unfair labor practices the complaint alleged in substance that the respondent (1) since about June 1, 1941,¹ vilified, disparaged, and expressed disapproval of the Union and interrogated its employees for the purpose of discouraging membership therein; (2) urged, persuaded, threatened, and warned its employees to (a) refrain from assisting, becoming members of, or remaining members of the Union, and to revoke or cancel their designation of the Union as their collective bargaining agent, and (b) assist the Committee and designate it as their collective bargaining agent; (3) on or about December 31, 1941, granted the employees a bonus for the purpose of discouraging membership in or assistance to the Union; (4) since about December 5, 1941, has refused to bargain collectively with the Union which at all times since November 19, 1941, has been the exclusive representative of the respondent's employees in a unit appropriate for collective bargaining; and (5) on or about December 31, 1941, initiated, formed, sponsored, and promoted the Committee, and has since assisted, dominated, contributed support to, and interfered with the administration of the Committee.

On or about August 21, 1941, the respondent filed an answer in which it had admitted certain allegations of the complaint but denied that it had engaged in any unfair labor practices. It alleged that subsequent to November 19, 1941, its employees had repudiated their selection of the Union as their bargaining agent. It denied that the respondent had refused to bargain with the Union and alleged that on December 16 the bargaining negotiations came to an abrupt end because the Union and the respondent had reached an impasse on the closed-shop issue.

Pursuant to notice, a hearing was held from September 3 through 11, 1942, in New York City, before J. J. Fitzpatrick, the Trial Examiner duly designated by the Acting Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. The Committee did not appear. Full opportunity to

¹ At the beginning of the hearing the Board's counsel moved to amend the complaint so as to change the above date from July 1 to June 1, 1941. There was no objection and the motion was granted.

be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing, the Trial Examiner granted without objection motions by the Board's counsel and the respondent's counsel to amend the pleadings to conform to the proof with respect to such matters as names, dates, and clerical errors. The respondent's counsel then moved to dismiss the complaint. This motion was taken under advisement and was denied in the Intermediate Report, except as to the allegation that the respondent granted a bonus to its employees for the purpose of discouraging membership in the Union. 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.

On October 15, 1942, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from engaging in such practices; that it withdraw all recognition from and completely disestablish the Committee and cease giving effect to a contract dated March 3, 1942, between the respondent and the Committee; and that it bargain collectively with the Union, upon request.

The respondent thereafter filed exceptions to the Intermediate Report and a brief in support of the exceptions. The Board has considered the exceptions and brief and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them. No oral argument was requested by any of the parties.

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

FINDING OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Century Oxford Manufacturing Corporation is a corporation organized in 1931 under the laws of the State of New York, with its office and plant in Long Island City, New York. It is engaged in the manufacture, sale, and distribution of optical frames and mountings and related products. The principal materials used by the respondent in the operation of its plant are gold filled and metal alloys, and zylonite. During the period from November 1, 1941, to September 3, 1942, the respondent purchased more than \$130,000 worth of such materials, approximately 80 percent of which came from places outside the State of New York. During the same period the re-

spondent manufactured finished products amounting to in excess of \$200,000 in value. Approximately 85 percent of such products was shipped to points outside the State of New York. The respondent employs approximately 110 employees. It admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Wholesale & Warehouse Workers Union, Local 65, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

The Committee Representing Workers of The Century Oxford Manufacturing Corporation is an unaffiliated labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

In June 1941 the Union commenced organizational activities among the respondent's employees. On the night of Friday, June 13, a number of employees of the respondent attended a union meeting, and about that date several of them signed union application cards. On June 16, according to the testimony of Arthur Federico, Foreman James Cardella, who was then acting as manager of the shell frame department, came to Federico while he was working and asked him about the union meeting the previous Friday night. On learning that Federico had attended this meeting Cardella said, "Maybe you are doing something foolish by starting to organize." Cardella did not specifically deny this testimony, but testified generally that he never spoke about the Union to any employees except Donato Tarangelo. According to Tarangelo, Foreman Cardella approached him at work on June 14, 1941, and said: "I hear you fellows joined the union and you went down there last night to a meeting." Tarangelo replied, "That is right," and Cardella then walked away. Cardella admitted talking to Tarangelo about the Union but gave a somewhat different version of the conversation. The Trial Examiner credited the testimony of Federico and Tarangelo as to these conversations. We agree, and find that Foreman Cardella questioned Federico and Tarangelo about joining the Union and suggested to Federico the lack of wisdom of such action.

In the latter part of June 1941 Louis Vitolo, the respondent's treasurer, addressed a group of employees assembled in the shell frame department of the respondent. At the time practically all the employees in that department were members of the Union. Tarangelo's version of what occurred, which we credit, as did the Trial

Examiner, despite Vitolo's partial denials, is as follows: Vitolo told them that there was no reason for joining the Union. Some employees, including Tarangelo and Federico, disputed Vitolo's statement and told him that the employees had on a number of occasions attempted without success to secure wage raises. Vitolo admitted that raises had been asked for by the employees and that none had been granted. He justified the failure to grant the raises because of unsettled conditions due to moving the plant. Vitolo then said, "We haven't done anything for you, but give us a little time. I want you to get up a committee and I want you to make a decision among yourselves; I want you people to come in and give the company a chance, come to us. You are going to decide whether you are going to stick with the company or you are going to stick with the union, and have the union get something out of this . . . the union is not going to get a cent out of the company, they will never get anything out of us. We have taken care of other unions and we can take care of this one." Federico in substance corroborated this testimony of Tarangelo. Federico further testified, and we find, as did the Trial Examiner, that Vitolo told the employees that the respondent would close the shell frame department "before the union gets a penny out of us . . ."; that Vitolo also said to Federico in the meeting, "You are a leader. . . . How about getting a committee together, getting a committee together tonight or some night during the coming week and see what we can do. Maybe we can do better. Give us a chance."²

According to the uncontradicted testimony of Federico, within a few days after the above meeting with Vitolo, Cardella suggested to Federico that the employees get a committee together to meet with the respondent. Tarangelo testified that on several occasions following the meeting, Cardella told him that he would get nowhere with the Union and that he should forget about it and cooperate with the respondent. Cardella denied this testimony of Tarangelo, but in view of Cardella's anti-union attitude as shown by his other statements quoted above, the Trial Examiner did not credit his denial. We find that he made the statements substantially as testified to by Federico and Tarangelo.

We find that by the statements and conduct of Cardella and Vitolo above set forth, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The complaint alleged that on or about December 31, 1941, the respondent granted a bonus to its employees for the purpose of dis-

² Although Vitolo denied making any statements about the Union on this occasion, he testified that after the discussion Tarangelo stated that he had been thinking of joining the Union but that, in view of what Vitolo had said, he would "think it over."

couraging membership in the Union. The record shows that each employee received a bonus on December 31. Although there was testimony at the hearing to the effect that the respondent had inspired a rumor that employees would receive the bonus only if they signed a petition withdrawing from the Union, the Trial Examiner found, and we agree, that the respondent did not initiate such a rumor. We find that the respondent has not interfered with, restrained, and coerced its employees by granting a bonus on December 31, 1941.

B. *Domination of the Committee*

On December 29, 1941, the following certain collective bargaining conferences between the Union and the respondent which will be discussed below, employee Betty Paluch prepared a petition stating that the employees did not desire to have the Union represent them. At noon on December 31 Paluch and employees Jean Toombs and Joseph Cardella, a brother of Foreman James Cardella, circulated this petition among employees of the respondent and secured the signatures of 79 persons. After the petitions had been signed, Paluch took them to the respondent's secretary, Joseph Engel, who stated that he would have nothing to do with them. Paluch then asked Engel what she should do, and Engel told her to see the respondent's attorney, Barnet Gillman, who would be at the annual New Year's Eve party at the plant when work ceased that afternoon. At approximately 3:30 of that day, after work had ceased, a volunteer committee consisting of Paluch, and 5 other employees³ met with Gillman in President Levy's office. Paluch presented the petitions to Gillman and asked his advice as to what to do. After looking at the petitions, Gillman replied that there was nothing he could do, but suggested that one of the employees telephone the Regional Office of the Board and ask for advice about the petitions. Gillman asked Paluch to telephone, but she stated she was too nervous to do so. He then asked Aigotti, but the latter refused on the ground that he had been on the Union's negotiating committee and it might appear that he was "double crossing" the Union. Finally, at Gillman's request, employee Joseph Cardella called the Regional Office and was told that the employees should secure a lawyer to advise them. At the request of the employees at the meeting, Gillman agreed to assist them in securing an attorney.

During the first week of January 1942 Paluch and the other members of the volunteer committee who had attended the December 31 conference with Gillman, called a meeting of all the respondent's employees, except the office force. This meeting was held in the shell

³ Louis Aigotti, chairman of the Union's negotiating committee, and three other members of that committee, who had signed the petitions, were also present.

frame department during the lunch hour. Paluch called the meeting to order, stating that its purpose was to select a committee of the employees to bargain with the Company. Ralph Irizarry, a member of the volunteer committee, then explained the purpose of the meeting in Spanish for the benefit of those who did not understand English. Thereafter, Paluch suggested names of various employees for the committee. If there was a second to a name she suggested, and the employees cheered the second, the employee thus named was chosen to the committee. A committee consisting of Paluch, Ralph Irizarry, Toombs, Castro, Jemmot, Rodriguez, Johnny Santiago and Ida Castaniera was thus selected.⁴

About the same time Paluch and the other employees on the Committee consulted Gillman in President Levy's office during working hours. Gillman recommended Milton Dombroff as a good lawyer, gave the Committee Dombroff's office telephone number, and suggested that they call him. Thereafter, at a conference in Levy's office after working hours Dombroff told the Committee his fee to represent them would be \$75. The Committee invited Dombroff to talk to all the employees and explain to them the basis on which he would represent the Committee.

Immediately after working hours on an afternoon early in January most of the employees assembled in the metal frame department. According to the testimony of Aigotti, Wood, Joseph Cardella, and Rossi, a supervisor, which we credit, as did the Trial Examiner, the proceedings were as follows: The meeting was called to order by Gillman, who, in introducing Dombroff, stated that the Committee had been unable to secure an attorney and that he had recommended Dombroff to represent the employees. After Gillman introduced Dombroff he joined Engel behind a wire screen which separated the shipping room from the metal frame department. This placed Gillman and Engel behind Dombroff, but facing and within view of the employees. From this vantage point Gillman and Engel could see and hear all that went on during the meeting.⁵ Dombroff told the employees that he was willing to represent them and that his fee would be \$75. He then produced petitions which he had prepared designating the Committee as the employees' bargaining agency. Some employees signed the petitions during the course of the meeting. After Dombroff had concluded his talk to the employees, a collection was made by Paluch to pay Dombroff's fee. About \$18 was collected

⁴ Most of these employees were members of the volunteer committee which had approached Gillman on December 31

⁵ Engel testified to knowledge of this meeting and did not deny that during the course of the meeting he and Gillman stood behind the wire screen. Paluch testified that Gillman was not present and that she saw him in the office of the respondent as she left the meeting. We do not credit her testimony.

in small amounts from the employees at this time, and the balance was collected the following week and paid to Dombroff.

Cecil Wood testified without contradiction, and we find, as did the Trial Examiner, that Levy asked him why he did not sign the petition designating the Committee, and told Wood that there were many of the employees in the shop who followed his leadership and that if he signed the petition these other employees would also sign. Wood told Levy that he would think about it. Wood further testified, upon examination by the respondent's counsel, Gillman, that Gillman had also asked him why he did not sign the petition and why he desired to wait for Louis Aigotti to sign it. We find that Gillman urged Wood to sign the petition selecting the Committee as the bargaining agency for the employees of the respondent.

On January 9, Gillman arranged for Nathan Newman, a notary public who shared offices with him, to be at the entrance of the plant between 5 and 6 o'clock in the afternoon. When Newman appeared at the time designated he was met by Gillman and Engel. Gillman gave Newman the petitions which Dombroff had prepared, and, as the employees left the plant, the notary, in the presence of Gillman and Engel and under instructions from Gillman, took acknowledgments of the signatures of 65 employees who had previously signed or who then signed the petition in his presence. For this service the notary was paid \$5 by the respondent.

On January 23 Newman again came to the plant at the request of Gillman at about 3 o'clock in the afternoon. In the presence of Gillman and Engel, under instructions from Gillman, the notary took acknowledgments of the Committee members' signatures to a petition for investigation and certification of representatives. Engel paid the notary \$3 for this service.⁶ The petition for investigation and certification of representatives signed by the Committee, supplemented by the signatures of the employees designating the Committee as their bargaining agency, was filed with the Board on January 26, 1942.⁷

The Committee did not perfect an organization nor did it ever elect officers. No books or minutes were kept and no provision was made for dues. Aside from the \$75 collected from the employees in January 1942 to pay Dombroff's fees, no other collections or assessments were made by the Committee. Thereafter the Committee and the respondent conferred relative to the terms of a contract governing hours, wages, and working conditions. On March 3, 1942, a contract was

⁶ Newman testified on direct examination that Engel paid his fee. In response to leading questions on cross-examination by Gillman, he testified that Paluch may have paid his fee. Paluch was not questioned on the subject.

⁷ In the *Matter of Century Oxford Manufacturing Co., Inc. and Santiago Rivera, Ascuncion Castro, Ida Castanera, Ralph Irizarry, et al.*, No. II-R-2934. This petition was dismissed by the Board on August 7, 1942.

executed by the respondent and by the Committee as the representative of all the respondent's employees, excluding office workers and supervisors. This contract is effective to March 3, 1943.⁸

The facts above set forth convince us that from its formation the Committee was aided and supported by the respondent. Paluch, who presented to Engel a petition purportedly intended to serve as a withdrawal from the Union, was told to obtain from the respondent's attorney information as to how to proceed. Thereafter, the respondent assumed the burden of assuring the perpetuation of the Committee by selecting its attorney and cooperating with him; by arranging for and directing the notary to take acknowledgements on company property; and by urging employee Wood to sign the petition designating the Committee. It rendered financial assistance to the Committee by permitting the use of its offices, plant, and facilities for development of the Committee's plan of action, and by paying the notary's fees. Finally, the respondent assisted the Committee by granting it exclusive recognition and a contract.

We find, as did the Trial Examiner, that the respondent, by the above acts and course of conduct, has dominated and interfered with the formation and administration of the Committee and contributed financial and other support thereto, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges and the Union contends that all production employees of the respondent exclusive of supervisors and clerical employees constitute a unit appropriate for collective bargaining. The respondent's answer denies the appropriateness of this unit, but does not allege what unit the respondent considers appropriate. At the hearing, the respondent maintained that the production employees excluding supervisors and clerical employees should be divided into four units consisting of (a) the shell frame department, (b) the metal frame department, (c) the tool department, and (d) the shipping department.

All manufacturing is done in the shell frame and metal frame departments. Each of these departments employs approximately 50 persons. The shipping department, consisting of 4 or 5 people,

⁸ The following employees signed the contract as members of the Committee: Jean Toombs, Aubrey Jemmott, Ascuncion Castro, Santiago Rivera, Margaret Rodriguez, Ralph Irizarry, Ida Castaniera, and Eladia Alvarez. Paluch, who was on the Committee, was not working when the contract was signed. The record is silent as to who authorized Alvarez and Rivera to act.

performs the usual functions of a shipping department and also checks the manufactured product as to quantity and quality. The tool department makes tools used in the other departments and maintains the various machines used in the shell frame and metal frame departments. The 3 employees in the tool department are more skilled and receive a substantially higher rate of pay than the employees in the other departments, but there is no evidence to show that they, or the employees in any of the other departments, desire to be segregated in a departmental unit.

Pursuant to a petition filed by the Union on October 31, 1941, a consent election was held under the auspices of the Board in accordance with an agreement entered into by the Union and the respondent wherein, among other things, it was agreed that the unit consisted of "all production employees," exclusive of supervisors and clerical employees. All bargaining negotiations between the respondent and the Union have been with respect to this unit. Moreover, as heretofore found, on March 3, 1942, the respondent entered into a collective bargaining contract with the Committee as the representative of "the workers" of the respondent, excluding office help and section managers and foremen. The unit defined in this contract, which is still in effect, is the same as that requested by the Union.

We find that at all times material herein all the production employees of the respondent, exclusive of supervisors and clerical employees, constituted and now constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that said unit will insure to the employees of the respondent the full benefit of their right to self-organization and collective bargaining and will otherwise effectuate the policies of the Act.

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

Pursuant to an agreement between the Union and the respondent dated November 12, 1941, a consent election by secret ballot under the auspices of the Board was held on November 19, 1941, among the employees in the appropriate unit. At the election 79 valid votes were cast, out of a total eligible list of 84. Of the valid votes cast, 60 were in favor of the Union and 19 were against the Union.

The respondent contends that the Union lost its majority standing on December 31, 1941, when 79 employees signed a petition stating that they did not want the Union to represent them in collective bargaining. The Trial Examiner held that the Union's apparent loss of majority on December 31, was immaterial, for the reason, among

others, that the respondent had unlawfully refused to bargain with the Union on December 16, 1941. As hereinafter appears, however, we do not find that the respondent refused to bargain with the Union prior to December 31 nor do we attribute the circulation of the petition on December 31 to the respondent's unfair labor practices detailed in Section III A and B, *supra*. The question before us, therefore, is whether the petition presented to the respondent on December 31 constituted an effective repudiation by a majority of the employees of their prior designation of the Union as exclusive bargaining representative.⁹

On November 19, 1941, the respondent's employees had voted for the Union by a large majority. Their ballots were cast secretly in an election surrounded by all the safeguards customarily provided to insure complete freedom of choice. Such elections, held under the auspices of the Board, in accordance with express statutory provisions, have been uniformly found to furnish the best evidence of employees' desires concerning representation for collective bargaining.¹⁰ When employees have expressed their considered opinions by a method which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique. Clearly this petition, subject to all the infirmities of a public poll, falls short of this standard.¹¹

⁹ At the hearing the respondent attempted to buttress the petition as evidence of the Union's asserted loss of majority by offering to prove facts designed to show that shortly prior to the execution of the petition the Union had "abandoned" its members in the respondent's employ. In this connection the Trial Examiner permitted the respondent to introduce testimony to the effect that Sverdlin, the union organizer, had advised the union members against striking, although they had voted a strike at a meeting held shortly before December 16. The Trial Examiner excluded other evidence offered to show that the Union held no shop meetings after December 16; that its meetings in December were poorly attended; and that at one such meeting Sverdlin stated to the four members present that he would be "through with" the local if no more interest was shown. We have considered the testimony as to Sverdlin's refusal to sanction the strike and we have treated the matters covered by what we have construed to be offers of proof, although not in the usual form, as proved. However, this evidence does not establish that the Union "abandoned" its members and we so find. At most it merely shows the existence of a possible basis for some employee dissatisfaction with the Union, and it cannot alter our conclusions as to the inefficacy of the petition.

¹⁰ *Matter of Botany Worsted Mills and Textile Workers Union of America, C. I. O.*, 41 N. L. R. B. 218, enforced *N. L. R. B. v. Botany Worsted Mills*, — F. (2d) — (C. C. A. 3), decided January 13, 1943; *Valley Mould and Iron Corporation v. N. L. R. B.*, 116 F. (2d) 760 (C. C. A. 7) enfg *Matter of Valley Mould and Iron Corporation and Steel Workers Organizing Committee*, 20 N. L. R. B. 211; *Matter of Pacific Greyhound Lines and Brotherhood of Railroad Trainmen*, 22 N. L. R. B. 111; *Matter of Clark Shoe Company and United Shoe Workers of America*, 17 N. L. R. B. 1079; and *Matter of Whittier Mills Company and Silver Lake Company and Textile Workers Organizing Committee*, 15 N. L. R. B. 457, enfd *N. L. R. B. v. Whittier Mills Company*, 111 F. (2d) 474 (C. C. A. 5).

¹¹ *N. L. R. B. v. Automotive Maintenance Machinery Company*, 315 U. S. 282, rev'g 116 F. (2d) 350 (C. C. A. 7) and enfg *Matter of Automotive Maintenance Machinery Company and Steel Workers Organizing Committee on Behalf of Amalgamated Association of Iron, Steel & Tin Workers of North America*, Lodge 1744, 13 N. L. R. B. 338; *Matter of Shell Oil Company, Incorporated and Oil Workers International Union, Local 367*, 34 N. L. R. B. 866, enfd; *Shell Oil Co. v. N. L. R. B.*, 128 F. (2d) 206 (C. C. A. 5); *Matter of Lebanon News Publishing Company and Local Union #107 of International Stereotypers and Electrotypers, affiliated with the American Federation of Labor*, 37 N. L. R. B. 649, enfd, *N. L. R. B. v. Lebanon News Publishing Co.*, 129 F. (2d) 325 (C. C. A. 3).

Normally the administrative processes of the Act afford the best method of resolving doubts concerning employees' sentiment, once such sentiment has been tested in an election and a reasonable time has not since elapsed. Problems arising from alleged shifts of allegiance following Board elections are among the most difficult with which this Board is confronted. In considering such allegations the Board must balance the advantages of stability in collective bargaining against the desirability of affording employees full freedom of choice of representatives. The Board has attempted to achieve a balance between these conflicting policies by refusing to entertain representation petitions within a reasonable period after an election, except where unusual circumstances intervene.¹² Without such a rule, collective bargaining would be deprived of stability, and administrative determinations would become ephemeral.¹³ In a case such as this, where no such unusual circumstances are present, no reasonable doubt can be entertained concerning the continued efficacy of a certification.

In support of its contention that the Union lost its majority, the respondent also adduced evidence to show that its pay roll was affected by a labor turn-over of approximately 60 percent during the period from November 1941 through January 1942, and an even greater turn-over during the following 3-month period. The evidence in this connection, however, is insufficient either to show that a majority of union adherents had left the respondent's employ subsequent to the election on November 19 and prior to the respondent's refusal to bargain, or to rebut the presumption that the Union, having been designated as the

¹² See, for example, *Matter of Bremser Trucking Company, et al* and *United Paving and Building Supply Workers Local Industrial Union No 1121, C I O*, 44 N L R. B 810; *Matter of National Lead Company, et al* and *United Gas, Coke & Chemical Workers of America, et al.*, 45 N L R. B. 182.

¹³ *N L R B v Botany Worsted Mills, et al* (C C A 3), decided January 18, 1943, 11 L R R 684, enfg as mod 41 N L R B 218. The Court there, in upholding the Board's order directing an employer to bargain with a certified union notwithstanding a majority of the employees in the appropriate unit had repudiated it 1 week after the election, stated:

Botany here contends that the rights of the employees under the Act entitle them to choose their bargaining agent, but like any other agent the authority may be terminated at the wish of the principal

* * * * *

The argument, while containing some elements of plausibility, would, if accepted, make chaos out of the administration of the statute and prevent the protection of the very rights which it aimed to secure * * *. The Board has within its authority power to ascertain the will of the majority of a given group of employees by election or other means. The election method is chosen, we take it, because secret ballot is regarded as the most effective way of getting an untrammelled expression of the desire of the electorate. Surely it is not to be defeated of all its effectiveness by a communication, undisclosed to the Board, repudiating immediately after the election was held, the ballot count. The employees in this case, if they wished to change their minds concerning a bargaining agent, could have asked the Board for another election. If the Board had arbitrarily refused it within a reasonable time then we might have a case where a question could be raised whether it had done its duty under the statute. But those are not the facts of this case. We conclude that there is no merit in Botany's contention that the Board erred in its order that the employer must bargain with the certified bargaining agent.

employees' exclusive bargaining representative, maintained its majority standing despite changes in personnel.¹⁴

We find that on November 19, 1941, and at all times thereafter, the Union was the duly designated representative of the majority of the employees in the aforesaid appropriate unit, and that by virtue of Section 9 (a) of the Act it was and is the exclusive representative of all the employees in that unit for the purposes of collective bargaining with the respondent with respect to rates of pay, hours of employment, and other conditions of employment.

3. The refusal to bargain

Immediately after the Union had won the consent election of November 19, Leo Sverdlin, union organizer, asked Maurice Adda, who at that time represented the respondent, to arrange a bargaining conference between the respondent and the Union. About November 27, Herman S. Hall, Labor Consultant of the Queen's County Chamber of Commerce, told Sverdlin that the respondent would arrange a conference with the Union through Barnett Gillman, an attorney. Thereafter, Gillman arranged with Sverdlin for a conference on the evening of December 5, 1941, and Sverdlin, at Gillman's request, sent the latter copies of the Union's proposed contract. On December 5 the parties met as agreed for the purpose of negotiating. Sverdlin acted as spokesman for the Union and Gillman spoke for the respondent. At the outset, Gillman suggested that they go over the Union's proposal clause by clause, but emphasized that whatever bargaining was done would have to be on an overall basis. Sverdlin proceeded with a discussion of the various demands of the Union as set forth in the written proposal previously submitted to the respondent. The principal demands of the Union were: a closed shop; seniority; \$20 per week minimum wage; \$5 per week general wage increase; 12½ holidays per annum with pay; 2 weeks' vacation and 2 weeks' sick leave with pay for all employees who had served 1 year or more, employees of less than 1 year's, but more than 6 months' tenure to receive 1 week's vacation with pay; and 1 month's conscription pay for any employee who volunteered or was drafted in the armed forces of the United States. Although all these demands were discussed in detail nothing was agreed upon. Gillman announced that he was not prepared to make any counterproposals, but that after consulting with his client he would be prepared to do so at a later meeting. By mutual agreement, the conference was then adjourned to December 8.

¹⁴ Cf. *N L R B v P Lorillard Company*, 314 U. S. 512, rev'g and remanding 117 F. (2d) 921 (C C A 6), and en'g *Matter of P Lorillard Company, Middletown, Ohio*, and *Pioneer Tobacco Workers' Local Industrial Union No 55*, 16 N L R B 684, *N L R B v Whittier Mills Company*, footnote 10, *supra*; and *Matter of Bloomfield Manufacturing Company and Metal Polishers, Buffers, Platers and Helpers International Union, Local #6, affiliated with American Federation of Labor*, 22 N L R B 83.

At the second meeting, on December 8, the Union was represented by Sverdlin, Joe Tillem, and a group of employees. The respondent was represented by Gillman and its officers, President Levy, Secretary Joseph Engel, and Treasurer Vitolo. At the opening of the meeting Sverdlin introduced Tillem as another organizer who would substitute for him during the meeting. Sverdlin then left the meeting. Thereafter there followed a discussion with reference to the various demands of the Union. The respondent, which was then paying a minimum wage of \$12 per week, offered, as a counterproposal, a minimum wage of \$14 a week, \$1 per week general increase immediately and \$1 to be paid in 6 months. Levy and Engel testified that the respondent also offered 1 week's vacation with pay and 1 holiday with pay, agreed to the arbitration procedure outlined in the proposed contract, and agreed to a provision that the respondent would not move out of the 5-cent fare zone of Greater New York. They also testified that the respondent offered to agree to a preferential shop but that the union representatives insisted upon a closed shop. Tillem denied that the respondent made any counterproposals other than the wage increases. With respect to the closed shop, he testified as follows:

Then we went into a greater discussion on the closed shop, . . . and I contended to Mr. Gillman that throughout the history of the labor movement in the United States many workers went on strike only for the question of a closed shop; . . . and I said to him that to the labor movement the question of a closed shop is more important than wage increases.

Both Tillem and Levy testified that this meeting terminated upon the discussion of the Union's demand that the respondent agree to pay a month's salary to men entering the armed services. All witnesses agreed that the respondent took the position that, unless the parties agreed as to all issues, all counter-offers were to be considered withdrawn. None of the proposals was agreed upon, and at Tillem's suggestion, the meeting adjourned to convene at a later date when Sverdlin could be present. We find that at the meeting on December 8 the respondent made the counterproposals referred to by Levy and Engel.

The third conference was held in the respondent's office on December 16. Sverdlin and a group of employees represented the Union. Gillman and the respondent's officers appeared for it. The Union's proposed contract was again gone over clause by clause. Gillman offered as a counterproposal a minimum wage of \$15.00 per week, an immediate general increase of \$2.00 a week and an additional increase of \$1.00 a week in 6 months, 1 holiday with pay, 1 week's vacation and 1 week's conscription pay, provided the Union would waive its closed-shop demand. According to Engel's testimony, the respondent offered

again to substitute a preferential shop for a closed shop. Sverdlin denied that a preferential shop was offered. After consulting with the group of employees, Sverdlin announced that the offer of the respondent was not acceptable to the Union. Gillman then asked that the meeting be adjourned until the following Friday, December 19, so as to give him further opportunity to discuss the closed shop and other demands with officers of the respondent. Sverdlin at first refused to grant the 3-day period and offered to agree to a 2-day postponement stating, according to Levy, that he was having trouble holding the members "in line." Although Sverdlin denied that a strike was threatened, it is clear that some of the employees at the meeting mentioned the possibility of striking and, as the Trial Examiner found, that there was an undercurrent of talk about a strike.¹⁵ Sverdlin finally agreed to the 3-day postponement provided that all terms agreed upon at that time should be retroactive to December 5. Gillman thereupon replied: "If that is the way you want to penalize us for the 1 day, you are tying the rope too tight and you might as well go out on strike." The conference then ended and the Union's representatives left the respondent's office.

The following day, December 17, Hall telephoned Sverdlin and stated that he had arrived at the respondent's office on December 16 too late to attend the day's conference, but that he would try to arrange a further conference. Sverdlin agreed to this suggestion. Within the next day or two Sverdlin telephoned to Hall and asked about the proposed conference. Hall answered that he was trying to arrange for it. Sverdlin also asked Hall to ascertain if the respondent would arbitrate the issues in dispute. Hall agreed to let Sverdlin know later whether the respondent would agree to this. Sverdlin did not thereafter hear from Hall and, on December 22, requested the New York State Mediation Board to mediate the controversy between the Union and the respondent. On December 26 the Mediation Board communicated with the respondent, and Gilman offered to mediate all issues excepting the closed shop. Sverdlin testified that a few days later the Mediation Board informed him of the respondent's position and inquired whether the Union would be willing to meet with the respondent, and that he had answered affirmatively. On December 31, as heretofore related, the petition purporting to repudiate the Union was presented to the respondent. On January 12 the New York State Mediation Board notified both the Union and the respondent of a conference to take place in the Mediation Board's office on January 15. On January 13, the respondent by letter notified the New York State Mediation Board that the Union no longer represented a majority of the respondent's employees, but that the respondent would meet "any lawfully designated

¹⁵ The Union had taken a strike vote prior to this meeting

representative" of its employees. As a result of this letter no further efforts to bring the parties together were made by the New York State Mediation Board.

4. Conclusions as to the refusal to bargain

As stated above, we disagree with the Trial Examiner's conclusion that the respondent refused to bargain on December 16, 1941. The evidence satisfies us that the respondent made substantial counterproposals at the conferences of December 8 and 16. Although the conference on December 16 concluded without agreement, the willingness of both parties to meet for further negotiations thereafter indicates that no impasse had been reached, nor had the respondent withdrawn from the negotiations.

However, beginning on December 31, the respondent plainly attempted to avoid its duty to bargain with the Union by insuring the effectiveness of the employees' purported desertion of the Union, and by fostering the organization of a rival bargaining agency. On January 13 it expressly refused to meet with the Union, ostensibly relying on the Union's loss of majority. But, as we have found, the Union did not lose its right to be recognized as the employees' exclusive bargaining representative as a result of the petition circulated on December 31. Nor can the respondent, in view of its interference with the employees' freedom of choice immediately following the circulation of that petition, be heard to say that it relied upon the petition in good faith when it flatly refused to bargain with the Union.

We find that on December 31, 1941, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees within the appropriate unit; and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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 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.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act.

We have found that the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit. We shall order the respondent, on request, to bargain collectively with the Union.

We have also found that the respondent dominated and interfered with the formation and administration of the Committee and contributed support to it. We shall order that the respondent withdraw all recognition from the Committee as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment and completely disestablish the Committee as such representative. The respondent entered into a contract with the Committee on March 3, 1942, which by its terms is still in effect. We shall order that the respondent cease and desist from giving effect to such contract, or any extension or renewal thereof. Nothing herein shall be taken to require the respondent to vary those wages, hours, seniority, and other such substantive features of its relations with the employees themselves which the respondent may have established in performance of this contract as extended, renewed, modified, supplemented, or superseded.

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

CONCLUSIONS OF LAW

1. Wholesale and Warehouse Workers Union, Local 65, C. I. O., and the Committee Representing the Workers of The Century Oxford Manufacturing Corporation, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The production employees of the respondent, excluding supervisors and clerical employees, at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Wholesale and Warehouse Workers Union, Local 65, C. I. O., on or about November 19, 1941, was, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on December 31, 1941, and at all times thereafter to bargain collectively with Wholesale and Warehouse Workers Union, Local 65, C. I. O., as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By dominating and interfering with the formation and administration of and contributing support to the Committee Representing the Workers of The Century Oxford Manufacturing Corporation, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

6. The respondent by interfering with, restraining, and coercing its employees in the exercise of their 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.

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

8. The respondent by granting a bonus to its employees on December 31, 1941, has not engaged in unfair labor practices within the meaning of Section 8 (1) 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, The Century Oxford Manufacturing Corporation, Long Island City, New York, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Wholesale and Warehouse Workers Union, Local 65, C. I. O., as the exclusive representative of its production employees, excluding supervisors and clerical employees;

(b) Dominating and interfering with the formation or administration of the Committee Representing Workers of The Century Oxford Manufacturing Corporation or contributing support to it or to any other labor organization of its employees;

(c) Recognizing the Committee Representing Workers of The Century Oxford Manufacturing Corporation as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(d) Giving effect to the agreement dated March 3, 1942, with the Committee Representing Workers of The Century Oxford Manufacturing Corporation or any extension or renewal thereof;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in con-

certed activities for the purposes of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

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

(a) Upon request bargain collectively with Wholesale and Warehouse Workers Union, Local 65, C. I. O., as the exclusive bargaining representative of the respondent's production employees, excluding supervisors and clerical employees, with respect to rates of pay, wages, hours of work, and other conditions of employment;

(b) Withdraw all recognition from, and completely disestablish, the Committee Representing Workers of The Century Oxford Manufacturing Corporation as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment;

(c) Post immediately in conspicuous places in its plant in Long Island City, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a); (b), (c), (d), and (e) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order;

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

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) of the Act by granting a bonus to its employees on December 31, 1941.