In the Matter of THE CUDAHY PACKING COMPANY *and* UNITED PACKING HOUSE WORKERS LOCAL INDUSTRIAL UNION No. 389

In the Matter of THE CUDAHY PACKING COMPANY *and* U. P. H. W., L. I. U. No. 873, AFFILIATED WITH P. W. O. C. AND C. I. O.

Cases Nos. C-901 and R-1134, respectively.—Decided September 26, 1939

Meat Packing Industry—Interference, Restraint, and Coercion—Company-Dominated Union: domination of and interference with formation and administration; support; solicitation of membership for, during working hours, with aid and acquiescence of foremen; discrimination in favor of; disestablished, as agency for collective bargaining—*Discrimination:* charges of, sustained as to six employees, dismissed as to one employee—*Reinstatement Ordered:* employees discriminated against—*Back Pay:* awarded to employees discriminated against; monies received by employees for work performed upon Federal, State, county, municipal, or other work-relief projects to be deducted and paid over to agency supplying funds for projects—*Investigation of Representatives:* controversy concerning representation of employees: employer's refusal to grant recognition of Union—*Unit Appropriate for Collective Bargaining:* all hourly paid and piece-work production and maintenance employees, exclusive of superintendents, assistant superintendents, foremen, subforemen, clerical and office workers, scalers, watchmen, timekeepers, truck drivers, employees in the salvage department, and all supervisory employees; stipulation as to—*Representatives:* proof of choice: elimination of disagreement between company and union to insure satisfactory negotiations requires an election—*Election Ordered:* company-dominated union excluded from ballot; employees discriminatorily laid off, discharged or refused reinstatement included among those eligible to vote; election to be held at such time in future as Board shall direct—*Evidence:* affidavits of respondent's supervisors, filed as part of answer, not entitled to evidentiary weight in absence of showing or claim of unavailability of affiants.

Mr. Thurlow Smoot and *Mr. Lee Loevinger*, for the Board.

Mr. Thomas Creigh of Chicago, Illinois, *Mr. Harry S. Snyder* and *Mr. John S. Sears*, of Sioux City, Iowa, for the respondent.

Mr. John J. Brownlee of Chicago, Ill., for the Union.

Mr. L. B. Forsling of Sioux City, Iowa, for P. H. W. U.

Miss Margaret Holmes, of counsel to the Board.

DECISION
ORDER
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by United Packing House Workers Local Industrial Union No. 389, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint, dated June 22, 1938, against The Cudahy Packing Company, Sioux City, Iowa, herein called the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint, as amended, alleged in substance (1) that the respondent had dominated and interfered with the formation and administration of a labor organization at the Sioux City plant known as Packing House Workers Union of Sioux City and had contributed support to it; (2) that the respondent discharged Alex Gongliewski on January 19, 1938; discharged Harry R. Washburn on June 24, 1938; laid off Glenn Stark on July 19, 1937; laid off Mike Misliska on December 30, 1937; laid off Otto Boyd on December 20, 1937; laid off Lester Nelson on December 4, 1937, all of whom were production employees at the Sioux City plant, because of their membership in and activities on behalf of the Union; and that on or about December 7, 1937, the respondent laid off Lester Sindt, and on or about December 10, 1937, refused said Sindt reinstatement to its employ; that on or about July 31, 1937, the respondent laid off Einar Myklegard, and on or about October 31, 1937, refused said Myklegard reinstatement to its employ; and that on or about December 21, 1937, laid off Preston Daniels, and on or about December 24, 1937, refused said Daniels reinstatement to its employ, all of whom were production workers at the Sioux City plant, because of their membership in and activities on behalf of the Union.

Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union. On July 6, 1938, the respondent filed an answer in which it denied the unfair labor practices alleged in the complaint. Attached to the answer and expressly made a part thereof were affidavits signed and sworn to by

certain of the respondent's supervisory officials, setting forth affirmative defenses to the allegations of discrimination against the nine individuals named in the complaint.

Pursuant to notice, a hearing was held in Sioux City, Iowa, on July 7, 8, 9, 11, 12, 13, 14, and 15, 1938, before James J. Fitzpatrick, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. At the commencement of the hearing Packing House Workers Union of Sioux City, herein called P. H. W. U., filed with the Trial Examiner a motion and petition for leave to intervene. The Trial Examiner granted such motion, limiting the intervention, over the objections of P. H. W. U., to matters related to the allegations in the complaint that the respondent had dominated and interfered with the formation and administration of P. H. W. U. P. H. W. U. thereupon requested permission to file an answer denying such allegations of the complaint, which request the Trial Examiner granted. Thereafter P. H. W. U. filed an answer, was represented by counsel, and participated in the hearing within the limitations noted. The rulings of the Trial Examiner regarding the intervention of P. H. W. U. are hereby affirmed. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

During the hearing the counsel for the Board moved to dismiss the complaint in so far as it alleged that the respondent had discriminated with regard to the hire and tenure of employment of Lester Sindt and Glenn Stark. Counsel for the Board also moved that the complaint be conformed to the proof. The Trial Examiner granted these motions and his rulings are hereby affirmed. Throughout the hearing the Trial Examiner made other rulings on motions and on objections to the admission of evidence. The Board has reviewed all the rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 31, 1938, the Trial Examiner filed an Intermediate Report. He found that the respondent had dominated and interfered with the formation and administration of P. H. W. U. and contributed support to it; that the respondent had discriminated with regard to the hire and tenure of the employment of Harry R. Washburn and Michael Misliska because of their membership in and activities on behalf of the Union; and that by virtue of such acts the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. With regard to the charges of discrimination in the cases of Gongliewski,

Myklegard, Nelson, Daniels, and Boyd, the Trial Examiner found that the respondent had not engaged in unfair labor practices.

On September 9, 1938, United Packing House Workers Local Industrial Union No. 873, affiliated with the Packing House Workers Organizing Committee and the Committee for Industrial Organization, herein also called the Union, filed with the said Regional Director a petition alleging that a question affecting commerce had arisen concerning employees of the respondent at its Sioux City plant and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 20, 1938, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. On October 14, 1938, the Board, acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of said Rules and Regulations, consolidated the case involving the petition, being Case No. R-1134, with the prior case involving the alleged unfair labor practices, being Case No. C-901, for the purpose of hearing and all other purposes, and ordered that one record of the hearing be made. On November 5, 1938, the Regional Director issued notice of hearing, copies of which were duly served on the respondent, the Union, and the P. H. W. U.

Pursuant to notice, a hearing was held in Sioux City, Iowa, on November 21, 22, and 23, 1938, before Webster Powell, the Trial Examiner duly designated by the Board. The Board, the respondent, the Union, and P. H. W. U. were represented and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the commencement of the hearing, the Union petitioned the Board to change the caption of Case No. C-901, by substituting the words "Local 873" for the words "Local 389." The respondent objected on the ground that such motion involved a substitution of parties. The Trial Examiner did not rule on the motion at the hearing. We hereby deny the motion. At the beginning of the hearing the respondent objected to the order of the Board consolidating Cases Nos. C-901 and R-1134 and to the proceedings in connection with such order. The Trial Examiner overruled such objection and his ruling is hereby affirmed. During the hearing the Trial Examiner made other rulings on motions and 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.

Pursuant to notice, a hearing was held before the Board at Washington, D. C., on May 11, 1939, for the purpose of oral argument in the consolidated cases. The respondent and the Union were represented and participated in the argument. In its exceptions and during oral argument the respondent asserted that Trial Examiner Fitzpatrick had been biased and prejudiced against it during the hearing in Case C-901 and had arbitrarily limited its cross-examination of witnesses. This assertion is without merit. The Trial Examiner's fairness and impartiality throughout the hearing are manifest in the record; and the respondent was permitted great latitude in cross-examination, being limited only as to matters immaterial to the issues and improperly gone into on cross-examination.

The Board has considered the exceptions filed by the respondent, P. H. W. U., and the Union to the Intermediate Report of the Trial Examiner in Case No. C-901, and, except in so far as the exceptions are consistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

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

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The Cudahy Packing Company is a Maine corporation having its principal executive offices in Chicago, Illinois. It is chiefly engaged in the purchase and slaughter of livestock and the processing and marketing of the products therefrom. In addition, the respondent is engaged in the business of refining vegetable oils; manufacturing soap and other cleansing materials; pulling, scouring, and combing wool; mining, producing, and distributing salt. It owns, maintains and operates refrigerator and tank cars for the transportation of its products. The respondent transacts business throughout the United States and foreign countries.

The respondent maintains slaughtering and meat-packing plants in Omaha, Nebraska, Kansas City, Kansas, Sioux City, Iowa, Los Angeles, California, Wichita, Kansas, North Salt Lake, Utah, Jersey City, New Jersey, Newport, Minnesota, San Diego, California, Denver, Colorado, Detroit, Michigan, and Albany, Georgia. It owns and operates soap and Old Dutch Cleanser factories at East Chicago, Indiana, and Toronto, Ontario, Canada; maintains shops for the construction and repair of refrigerator cars at East Chicago, Illinois; maintains a shop for refining vegetable oils near Memphis, Tennessee; operates a wool scouring, combing, and storage plant at Providence, Rhode Island; and owns and operates a salt mine and refinery at Lyons, Kansas. The respondent maintains 80 branch produce-col-

lecting and processing plants scattered throughout the United States. In addition, it owns and operates 1,496 refrigerator cars and 44 tank cars.

At the close of the 1936 fiscal year the respondent's total assets amounted to $82,000,000.00 and its sales during such year netted $201,605,000.00. The annual pay roll of the respondent amounts to $7,873,727.

We are concerned in this case with the respondent's Sioux City, Iowa, plant, at which the respondent slaughters and processes livestock. A substantial portion of the livestock slaughtered at the Sioux City plant originates outside the State of Iowa, and over 75 per cent of the products of such plant are shipped outside the State of Iowa. The operations of the Sioux City plant require the services of at least 650 production workers.

II. THE ORGANIZATIONS INVOLVED

United Packing House Workers Local Industrial Union No. 389 is a labor organization affiliated with the Committee for Industrial Organization. It was organized in June 1937 to embrace the respondent's employees and the employees of other packing houses in Sioux City, Iowa.[1]

United Packing House Workers Local Industrial Union No. 873 is a labor organization affiliated with Packing House Workers Organizing Committee and the Committee for Industrial Organization. Under the auspices of said Packing House Workers Organizing Committee, which is the branch of the Committee for Industrial Organization delegated to supervise the organization of packing-house workers in all parts of the United States, United Packing House Workers Local Industrial Union No. 873 was formed in August 1938 and was granted a charter. Its membership is drawn from the respondent's employees, and such employees of the respondent as were affiliated with United Packing House Workers Local Industrial Union No. 389 prior to August 1938 were transferred on or about that date to United Packing House Workers Local Industrial Union No. 873.

Packing House Workers Union of Sioux City is a labor organization limited to the Sioux City employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The Packing House Workers Union of Sioux City; interference, restraint, and coercion*

Prior to the passage of the Act and for about 2 years subsequent to its effective date the respondent maintained an employer-employee

[1] The employees of the respondent, of Armour & Company and of Swift & Company at their Sioux City plants were embraced in Local No. 389.

conference board in its Sioux City plant. The Sioux City board was similar to conference boards maintained in other plants of the respondent throughout the United States. The members of the board met at regular intervals to discuss problems that arose in the plant, such meetings being held in a special room on the respondent's property.

On or about April 19, 1937, the Sioux City employees received by mail from the respondent's Chicago office a bulletin signed by E. A. Cudahy, Jr., the respondent's president, discussing the Act and the decisions of the Supreme Court of the United States establishing the constitutionality of the Act.[2] The concluding remarks of the bulletin were as follows:

> May I suggest, too, that in these times of change in the general conception of the relations between worker and employer we, of the Cudahy organization, will do well *to keep to our chartered course of industrial relations by which we have progressed so steadily for so many years.*
>
> Further, it seems to me that until the rules and regulations embodied in the Wagner Labor Relations Act are known and understood thoroughly, it is the part of good judgment to *maintain our accustomed way and not be unduly influenced by developments of the moment.*[3]

At approximately the same time as the bulletin was circulated the respondent disestablished the conference board in the Sioux City plant with the explanation that such action was necessitated by the recently established constitutionality of the Act. The disbanding of the board took place in the regular conference board room in the respondent's plant and was announced by Carney, the respondent's plant superintendent. On the day that the conference board was disestablished certain of the employee members made plans for a "secret" meeting for the purpose of forming a union to take the place of the conference board. The record does not disclose what occurred at such meeting. A few days later a group of 14 employees, including 3 former conference-board members, approached an attorney with whose assistance Articles of Association and Bylaws for the Packing House Workers Union of Sioux City were written. The Articles outline the structure and functions of P. H. W. U. and contain the provision that any amendments made thereto shall be

[2] *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1; *The Associated Press* v. *National Labor Relations Board,* 301 U. S. 103; *Washington, Va. & Md. Coach Company* v. *National Labor Relations Board,* 301 U. S. 142; *National Labor Relations Board* v. *Fruehauf Trailer Co.,* 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry-Marks Clothing Company,* 301 U. S. 58.

[3] Italics ours.

forwarded to the respondent.[4] The record does not reveal the manner in which the committee which drafted these documents was selected nor at whose suggestion the attorney was approached. The Articles and Bylaws were adopted at a meeting of P. H. W. U. held outside the plant on April 26. At such meeting correspondence from independent unions which were being formed in other Cudahy plants was read to the employees in attendance.

In the approximately 2 weeks intervening between the disbanding of the conference board and the April 26 meeting of P. H. W. U. an intense organizational drive was conducted in the plant. Membership was solicited mainly by former employee conference-board members during working hours and in the presence of foremen. During the membership drive Perry, a clean-up foreman, urged an employee under his supervision to join P. H. W. U. and "cause himself a whole lot less trouble." Solicitation in the hog-casing department was initiated by Foreman Blevens who provided a former conference-board member with a sheet of paper and instructed him to sign up his department.[5]

At the hearing a series of letters between P. H. W. U. and the respondent was introduced in evidence. The first of this series was written on May 1 and signed by the committee of 14 which organized P. H. W. U. The letter stated that P. H. W. U. represented over 51 per cent of the respondent's employees, that such employees had tentatively designated the committee to act as their representative for the purposes of collective bargaining, that the designation of P. H. W. U. and the committee by the employees as such representative was in the possession of P. H. W. U.'s attorney and was available for inspection by the respondent. The respondent on May 4 wrote a letter to the attorney for P. H. W. U. in which it recognized the committee as the exclusive representative of its employees for the purposes of collective bargaining. No inspection of the designation of P. H. W. U. or the committee was made by the respondent prior to May 4. On May 28, after officers and trustees had been elected, the names of the trustees and a copy of the Articles of Association were forwarded to the respondent.[6] The original Articles

[4] The Articles provided that the employees signatory thereto designate P. H. W. U. as the exclusive representative of all the respondent's employees for the purposes of collective bargaining. The Articles also provided that a copy thereof together with the names of the trustees of P. H. W. U. should be forwarded to the respondent immediately upon the election of officers. The Bylaws provided for the election of trustees in whom is vested the power to bargain with the respondent on all matters pertaining to employment. The Bylaws limit membership in P. H. W. U. to the respondent's employees.

[5] The testimony concerning the activities of the respondent's supervisory employees, which are recited in this section, was unrefuted at the hearing. In the absence of any denials, and upon the basis of the entire record, we accept the testimony regarding such activities as true.

[6] The record does not reveal the precise date on which officers were elected but such election apparently occurred in May 1937.

had been signed by 350 employees, these signatures apparently having been obtained at the April 26 meeting.[7] The record does not disclose whether or not these signatures were attached to the copy of the Articles which was sent to the respondent on May 28.

About May 15 Shaeffer, a production employee who had been elected president of P. H. W. U., attended a convention in Omaha, Nebraska, of independent unions from Cudahy plants throughout the United States. In addition to the employee delegates, the convention was attended by E. A. Cudahy, Jr., and two other officials from the respondent's Chicago office. Shaeffer testified that the convention had been discussed at a P. H. W. U. meeting early in May and that it was generally understood at such meeting that independent unions similar to P. H. W. U. were being formed in all the respondent's plants and were to convene in Omaha. As the result of conferences between the employee delegates to the Omaha convention and the respondent's officials, a blanket contract was drawn up covering conditions of employment for all the respondent's plants throughout the United States. Neither the contract nor any of its provisions had been discussed by P. H. W. U. before Shaeffer attended the Omaha convention. The contract provided that the respondent should compensate employees for the time spent attending these conventions at their regular rate of pay.[8] Shaeffer returned to Sioux City with a copy of this contract which was adopted as read at a meeting of P. H. W. U. in the latter part of May.

Near the end of May a meeting of the employees who had been elected stewards of P. H. W. U. was held during working hours on the respondent's property. The stewards were informed of the meeting by their foremen and were paid for the time spent at the meeting. Carney presided and read the contract to the stewards, explaining the grievance procedure in detail. During the course of the meeting Carney stated, "I can't tell anybody to belong to a union or not to belong but I know what I would say to them if I were a steward . . . I don't want to spend a couple of years in Leavenworth." Although Shaeffer attended the meeting, he did not participate in the discussion nor had he talked with Carney before the meeting to ascertain whether their interpretations of the contract provisions were the same.

The contract was executed by the respondent and the trustees for P. H. W. U. on June 14, 1937. Although it was testified at the hearing that subsequent to May 28 the respondent and the

[7] The president of P. H. W. U. testified that the respondent employed 550 production workers in May 1937; however, counsel for the respondent stated, during the course of oral argument, that the respondent employed 918 production workers in May 1937.

[8] Shaeffer testified, however, that his convention expenses and salary were paid by P. H. W. U. It is to be noted that the contract was subsequently amended to omit this provision.

trustees had conferred regarding its provisions, these conferences produced no alterations in the contract which had been drawn up in Omaha. The contract was by its terms to run until June 14, 1938, as amended from time to time according to a procedure expressly set forth.[9] On May 4, 1938, the contract was extended indefinitely, with a provision for termination by either party upon notice. The contract was still in effect at the date of the hearing.

The cooperation extended P. H. W. U. by the respondent during the April membership drive was continued until the date of the hearing. Although P. H. W. U. maintained a dues office at a filling station a few blocks from the plant, its stewards freely collected dues inside the plant during working hours. It was the usual practice throughout the year 1937 for the respondent's foremen and strawbosses to excuse P. H. W. U. members from work and to assign other employees to their jobs while they were transacting P. H. W. U. business. The transaction of such business often involved several hours' absence from work for which time the P. H. W. U. stewards were not docked. The evidence further reveals that P. H. W. U. customarily used the respondent's bulletin boards for the posting of notices. As late as June 1938 King, foreman of the hog-kill and cutting departments, urged an employee to join P. H. W. U. "with the rest of the boys."

The Union was organized in June 1937 at a meeting of employees from several packing houses in Sioux City. After the June meeting Blevens, foreman of the beef and hog-casing and offal departments,[10] ridiculed the union button worn by an employee in his department and asserted that the Union was composed of communists and I. W. W.'s. Mills, an assistant superintendent, told another employee who attended the June meeting that "we have a union here already and it is functioning quite nicely and we don't wish to have another organization come in at this time." Perry, the clean-up foreman, visited an employee under his supervision at his home a few days after the June meeting relating a conversation he had engaged in with Assistant Superintendent English concerning the employee's union activities and instructions received from English "to find out all about such employee." Perry's advice to the em-

[9] The contract was amended several times between June 14, 1937, and May 4, 1938. The majority of the amendments involved changes in the wage and hour provisions of the contract whereby the original 8-hour day and 40-hour week with time and one-half for overtime were altered to allow a longer working day and week. Prior to one such amendment a petition was signed by certain employees in December 1937 requesting the amendment. The signatures were obtained by a P. H. W. U. trustee who requested the employees to sign the petition during working hours in the presence of Mills, the assistant superintendent, and Johnson, the beef-kill foreman.

[10] Blevens is also foreman of the sheep casing, sheep heads and offal, pork-kill casings, outside casings, and tripe departments.

ployee, who denied being a union member, was "to lie low for a few days and keep his mouth shut." [11]

Washburn, a machinist in the beef-casing department under Foreman Blevens, immediately became the leader of the Union among the respondent's employees. During the months following its organization, Blevens frequently called Washburn away from work to discuss the Union. Blevens' remarks during the course of these discussions were invariably derogatory of the Union. Blevens often questioned Washburn in an attempt to ascertain the names of other employees who belonged to the Union and endeavored to persuade him to repudiate the Union and "string along with us." In the spring of 1938 Blevens handed Washburn a clipping from a Fort Dodge, Iowa, newspaper, containing remarks disparaging the Union. Such remarks were underlined when Washburn saw the clipping. Carney, the plant superintendent, also attempted to induce Washburn to give up his union membership, stating in May 1938 that "it is always the fellow that is the head of the unions that gets it in the neck; the unions come in cycles and when they are over, why, it is the leaders that gets it."

Union buttons commenced appearing in the plant in the late fall of 1937. It was testified at the hearing that several union members in various departments in the plant refrained from wearing their buttons because of fear of reprisals. When three beef-kill employees appeared at work wearing union buttons in December 1937, Johnson, the beef-kill foreman, forbade one of such employees to converse with other workers under the penalty of losing his job, a restriction never before imposed on anyone in the department. Mills and Carney commenced spending an unusual amount of time in the beef-kill department, devoting their attention exclusively to the three employees displaying union buttons and walking up and down beside them watching them as they worked. On several occasions after Mills left the department Johnson told these employees to "watch out or they would put someone else on the job." The record discloses that these employees were producing satisfactory work at the time of this surveillance. Shortly before the hearing every employee in the beef-kill department who belonged to the

[11] This finding is based on the testimony of employee Curley which was unrefuted at the hearing. During oral argument counsel for the respondent objected to this finding in the Trial Examiner's Intermediate Report on the ground that it was based on hearsay evidence. Curley's testimony that Perry, an agent of the respondent, had related to him certain statements and instructions made by English, the respondent's assistant superintendent, regarding union activities of the respondent's employees, is probative of the fact that the respondent, through its assistant superintendent, did make such statements and did so instruct Perry, under the substantive doctrine of the law of agency that the declarations of an agent to a third person, uttered in the course of his employment, are admissible in evidence to prove the truth of the facts asserted in them and are binding on the principal as though made by the principal. See *Restatement of the Law of Agency*, Section 286; Wigmore on Evidence, (2nd Ed.) Sections 1078, 1769.

Union wore his button to work. On that day Johnson peremptorily ordered Washburn out of the department, calling him a "C. I. O. son-of-a-bitch." [12]

When Curley, who had become the most active union member in the clean-up gang, commenced wearing his button in December 1937, Foreman Perry told him to take it off and "save himself a lot of trouble." Curley was still wearing his button a few days later when English, an assistant superintendent, visited a department in which Curley was working. After English left, Perry said to Curley, "For God's sake take that button off or you will get fired and I will get fired." In May 1938 English talked to Curley, stating that Curley had been talking too much and that "Cudahy's wasn't going to stand for anyone running around the plant talking." English warned Curley to "keep quiet" if he desired to continue working for the respondent. The "talking" of which Curley was accused consisted of the solicitation of union membership in the dressing room during his lunch hour and after work.

In February 1938 a number of employees in the sheep-kill department wore their union buttons to work. Three P. H. W. U. trustees from other departments took over the sheep-kill dressing room during working hours one morning in February. The employees in the sheep-kill department who were wearing union buttons were individually taken from their work into the dressing room by the trustees and came out without their buttons. The sheep-kill foreman and strawboss undoubtedly observed and acquiesced in the removal of union buttons since they were present in the department during this activity, which consumed an entire forenoon, and made no attempt to interrupt. That afternoon one of the trustees showed two union members a handful of union buttons, stating "That is how far your C. I. O. is going."

The record reveals only one instance where the Union attempted to use the respondent's bulletin boards. This occurred in May 1938 when a union notice was posted on the beef-kill bulletin board. The notice remained posted only 15 minutes and was removed shortly after Mills visited the department. When Mills departed, Foreman Johnson asked an active union member if he had posted the notice, stating that Mills was "madder than hell about it." The record also reveals that the respondent's open hostility toward the Union led union members to confine their activities to their lunch periods and before and after work. On several occasions Washburn complained to Carney that P. H. W. U. members were being allowed to transact business and solicit membership during working hours, demanding similar privileges for the Union. Carney's reply invariably was

[12] This incident is more fully discussed in Section B.

that the respondent was not required to recognize the Union since it had signed a contract with P. H. W. U.[13]

The record further discloses that the respondent at no time allowed the Union to represent its members in regard to grievances. Washburn had been selected to handle union grievances in the plant at a July 1937 meeting of the Union. He immediately informed Carney of his selection and newspaper accounts of it appeared in two Sioux City publications. Carney, however, consistently refused to discuss the grievances of union members with Washburn, stating that they would have to be presented through P. H. W. U.

Conclusion

The foregoing facts point unmistakably to the respondent's participation in the formation and administration of P. H. W. U. It arose in the plant within 2 weeks of the day on which the respondent dissolved the management-employee conference board as a gesture of conformance with the Act, at the same time suggesting to its employees the keeping of "our accustomed way" in preference to being influenced by "developments of the moment." The course of conduct in which the respondent, through its officials and supervisors, engaged subsequent to the disbanding of the conference board leaves no doubt of its determination to continue in its plant through P. H. W. U. a method of employee representation consistent with that which existed prior to the Supreme Court decisions establishing the constitutionality of the Act.

That P. H. W. U. had the respondent's active support from its inception is made clear by the open encouragement and assistance afforded the new organization. It was introduced in one department by a foreman, in others by former employee-members of the conference board, who solicited membership in the presence of foremen and in one instance with a foreman's active cooperation. The respondent aided its expansion and growth by permitting solicitation of membership during working hours, even paying employees for the time thus spent. Within 3 weeks of the dissolution of the conference board, P. H. W. U. had completed its organization and had been readily granted exclusive recognition without any check by the respondent of the validity of its membership claims. P. H. W. U. continued to enjoy the respondent's cooperation until the date of the hearing, its members freely pursuing organizational activities during working hours, with the permission of foremen and the use of plant facilities, and with pay. As late as June 1938 a foreman

[13] There was introduced in evidence a letter written by Carney to P. H. W. U. in August 1937 requesting that solicitation of membership and other activities be pursued outside the plant. Our previous findings reveal that the policy expressed in this letter was never put into effect.

assisted in the solicitation of membership. Although subsequent to June 1937 the Union frequently protested the privileges P. H. W. U. received in the plant, the evidence is conclusive that no effective steps were ever taken by the respondent to curb the full exercise of such privileges.[14]

There can be no doubt that the collective bargaining leading to P. H. W. U.'s contract with the respondent was both initiated and dominated by the respondent. In the absence of any showing of initiative on the part of P. H. W. U., we infer from the proximity of the Omaha convention to the creation of P. H. W. U. and from the attendance at this convention of delegates from similar organizations apparently formed simultaneously with P. H. W. U. in other of the respondent's plants, that the convention was arranged by the respondent and was participated in by P. H. W. U. upon the invitation of the respondent. The terms of the blanket contract drawn at the Omaha convention had not been previously discussed by the membership of P. H. W. U.; and prior to the signing of this contract without alteration in the terms drawn up in Omaha the plant superintendent instructed the P. H. W. U. stewards as to their duties under the contract.[15]

The respondent's sponsorship of P. H. W. U. as an employee organization designed to maintain the system of employer-controlled employee representation which the respondent had fostered prior to the establishment of the constitutionality of the Act is further revealed by the hostility of its officials and supervisors toward the Union.[16] Its supervisors freely indulged in statements disparaging the Union, attempted to persuade the leader of the Union to abandon it, acquiesced in the conduct of P. H. W. U. trustees in calling union members away from their work for the purpose of removing their union buttons,[17] and themselves intimidated union members by questioning them about union activities and by subjecting those wearing union buttons to discrimination, coercive warnings, and unusual surveillance while at work. A specific instance of this course of conduct in which the respondent interfered with the employees' right to self-organization was the exclusion of Washburn from the beef-kill department when the union members therein appeared at

[14] See *Matter of Swift and Company, a corporation* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641 and United Packing House Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269; order enforced, as modified, in *Swift & Company* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10; 1939).

[15] Compare *Matter of The Cudahy Packing Company* and *Packinghouse Workers Local Industrial Union No. 62*, 5 N. L. R. B. 472; order enforced, as modified, in *The Cudahy Packing Company* v. *National Labor Relations Board*, 102 F. (2d) 745 (C. C. A. 8th, 1939).

[16] See *National Labor Relations Board* v. *Stackpole Carbon Company*, 105 F. (2d) 167 (C. C. A. 3d, 1939).

[17] See *Matter of General Shoe Corporation* and *Georgia Federation of Labor*, 5 N. L. R. B. 1005.

work wearing their buttons, which exclusion we have found in Section B to have been based on Washburn's union activities.

The respondent's persistent opposition to the Union intimidated its employees to the extent that union members refrained from invoking privileges freely exercised in the plant by P. H. W. U., such as the use of bulletin boards and the transaction of business and solicitation of membership during working hours. The respondent's refusal to remedy this situation of inequality in answer to the repeated requests of the Union for impartial treatment indicated that it intended the resultant discouragement of the exercise by the Union of privileges abundantly accorded to P. H. W. U. and amounts to a denial to the Union of such privileges.

We find that, by the above acts, the respondent has dominated and interfered with the formation and administration of P. H. W. U. and has contributed support to it, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *The lay-offs, discharges, and refusals to reinstate*

The complaint alleged, and the answer denied, that the respondent discriminated with regard to the hire and tenure of employment of nine named employees because of their union activities.[18] Attached to the respondent's answer, and expressly made a part thereof, were affidavits signed by certain of the respondent's supervisory officials, setting forth affirmative defenses to the charges of discrimination contained in the complaint. The Trial Examiner, relying on such affidavits, dismissed the cases of five of the employees allegedly discriminated against for union activities. The Union excepted to the Trial Examiner's findings in so far as they gave evidentiary weight to the affidavits which were filed as a part of the answer. We find this exception to be well taken. The affiants did not testify at the hearing and no showing was made that they were unavailable for the purpose of testifying or being cross-examined concerning the matters contained in their affidavits. Nor did the respondent at any time during the hearing or subsequent thereto contend that these affidavits were entitled to evidentiary weight.[19] Consequently, we can afford the affidavits no evidentiary weight.

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[18] At the hearing the charges of discrimination as to two employees were dismissed upon motion by counsel for the Board.

[19] During the course of the oral argument before the Board, the Board inquired of the respondent's counsel if he knew of any judicial or quasi-judicial procedure which would justify the substitution of affidavits for the testimony of witnesses who were available. Counsel replied that he did not, and that he made no point about it. Counsel also stated during the oral argument that "the respondent introduced little if any rebuttal testimony, for the reason that under the record as it stands there was nothing to rebut . . ."

1. The beef-kill department

The complaint alleged that during the month of December 1937 three union members in the beef-kill department were laid off and/or refused reinstatement because of their union activities. We shall consider these cases collectively.

Lester Nelson worked in the beef-kill department continuously from October 29, 1929, until December 4, 1937, with the exception of a 5-month absence from work in 1936 and a 9-month lay-off in 1937. He was employed in the capacity of laborer. Nelson was laid off on December 4, 1937, the day he first wore his union button to work. He applied for reinstatement on December 15 but was not rehired. Although he received several days of temporary employment in other departments in which he possessed no seniority subsequent to December 4, Nelson has never been reinstated to the beef-kill department.

The respondent in its answer alleged that Nelson's lay-off on December 4 and its failure to reinstate him thereafter were occasioned by light livestock receipts. The respondent, however, introduced no evidence to support this allegation. The record affirmatively shows that Nelson was the only employee laid off on December 4, and that there was an increase in livestock receipts on December 15.[20] Upon the evidence, therefore, we find no merit to the respondent's contention that light livestock receipts required Nelson's lay-off on December 4 and explained his failure to secure reinstatement thereafter.

The respondent's answer further alleged that Nelson possessed no seniority rights in the beef-kill department on December 4. Since the record does not sustain the respondent's contention that light livestock receipts required Nelson's lay-off on December 4, and his failure to secure reinstatement thereafter, the contention that he possessed no seniority rights on the date of his lay-off is no defense to the alleged discrimination. However, an examination of the evidence adduced at the hearing regarding Nelson's seniority renders the respondent's allegation that he possessed no seniority rights on December 4 untenable.

Although no testimonial evidence concerning the respondent's seniority policies was introduced at the hearing, the respondent stipulated that the contract then existing between it and P. H. W. U. correctly stated the general rules of seniority prevalent in the plant. The contract provides for a system of departmental seniority, rights accruing after 6 months of consecutive employment in a department. Dismissal or voluntary quitting terminates seniority; absence due to

[20] The record reveals that the number of cattle killed per hour in the beef-kill department on December 15 was 100, as compared with the 80 head an hour killed on December 4.

illness, however, does not cause seniority rights to be lost. It is provided that temporary lay-offs not exceeding 90 days do not affect seniority.

Prior to his lay-off, Nelson had worked in the beef-kill department for approximately 8 consecutive years with the exception of the 5-month period in 1936 and the 9-month lay-off in 1937. His absence from work in 1936 did not operate to terminate his seniority since such absence was due to illness. Whether the 9-month lay-off in 1937 operated to terminate the seniority rights Nelson earned during his previous 7 years of employment depends on the construction to be placed on the provision in the contract dealing with temporary lay-offs. Although the pertinent provision implies that a lay-off exceeding 90 days *affects* seniority, the contract does not state, nor did the evidence adduced at the hearing show, whether such a lay-off terminates, or merely suspends until reinstatement, seniority earned prior thereto. The contract definitely states that voluntary severance of employment or dismissal terminates seniority rights, as contrasted with a temporary lay-off exceeding 90 days which merely affects seniority. Another provision recites that failure to return to work within a given time after recall, in the event of a temporary lay-off, *forfeits* seniority rights. This latter provision apparently includes temporary lay-offs exceeding 90 days giving rise to the inference that lay-offs exceeding 90 days do not cause seniority rights to be forfeited. In addition to the patent ambiguity in the wording of the contract, the respondent's answer did not allege that this 9-month lay-off in 1937 terminated Nelson's seniority rights but rather based the allegation that he possessed no such rights on his 5-month absence from work in 1936, which was alleged to have been a voluntary quitting. As noted above, the record does not sustain this latter allegation. Furthermore, after his 9-month lay-off Nelson was apparently permitted to work in accordance with the seniority he had previously earned in the beef-kill department.[21] The facts (1) that the contract provision itself is ambiguous; (2) that the respondent failed to allege in its answer, or introduce evidence to show, that this 9-month lay-off terminated Nelson's seniority; and (3) that despite such lay-off Nelson was apparently allowed to work in accordance with his previously established seniority, lead us to conclude that his 9-month lay-off in 1937 did not operate to terminate his seniority rights, and we so find.

Furthermore, Nelson testified that his seniority rights entitled him to work on both December 4, and December 15, on which latter day

[21] The evidence disclosed that experienced employees are able to ascertain the exact rate of kill at which the plant must operate before their seniority entitles them to work. Nelson testified that he was always allowed to work when the kill was 25 or more head of cattle an hour. Since this testimony was unrefuted, and in view of our finding that Nelson had seniority rights in the beef-kill department, we accept it as true.

15 men with less seniority were hired.[22] We must accept this testimony as true since the respondent, in whose possession resided the best evidence on these matters, including departmental seniority lists, did not refute it at the hearing.

Preston Daniels worked for the respondent in the beef-kill department continuously from the summer of 1934 until December 22, 1937, with the exception of periodic lay-offs due to shortages in livestock receipts. He worked in the capacity of legger. He joined the Union in October 1937 and commenced wearing his union button to work in December. Daniels was laid off on December 22, 1937. He applied for reinstatement on December 24, first by telephoning Johnson who hung up the receiver when he learned who was calling. He then applied to the respondent's employment manager who refused to do anything about his case. Although subsequent to December 22 Daniels received several days of temporary employment in other departments in the plant in which he possessed no seniority, he has never been reinstated to the beef-kill department.

The respondent in its answer alleged that Daniels' lay-off on December 22 was occasioned by light livestock receipts. This allegation is supported by the evidence adduced at the hearing and we accordingly find that Daniels' lay-off on that day was not an unfair labor practice.[23] Although the complaint alleged that Daniels was refused reinstatement on December 24, the respondent did not, either by allegation in its answer or by submitting evidence at the hearing, offer any explanation for its refusal to reinstate him on that day. It is true that the respondent alleged generally that Daniels possessed no seniority rights in the beef-kill department but this allegation finds no support whatever in the record, which reveals that Daniels' established seniority entitled him to work on December 24.[24]

The record is silent as to whether or not the respondent requires its employees to apply for reinstatement in order to secure work after a lay-off. There is evidence that on occasions departmental foremen sent for employees when work became available, and the respondent's practice as revealed by the language used in the contract between it and P. H. W. U. seems to contemplate recall.[25] However, the majority of employees who testified at the hearing followed the practice

[22] The respondent was killing 80 head of cattle an hour on December 4 and 100 head on December 15. Nelson's seniority entitled him to work when the kill was 25 or more head of cattle an hour.

[23] The record discloses that the number of cattle killed per hour on December 22 was reduced from an unknown higher figure to 60 head an hour. As noted *infra*, Daniels' seniority entitled him to work when the kill was 70 or more head of cattle an hour.

[24] Daniels testified that he always worked when the kill was 70 or more head of cattle an hour. In the absence of any evidence to refute such testimony, we accept it as true. Inasmuch as the kill on December 24 was 80 head of cattle an hour, Daniels' seniority entitled him to reinstatement on that day.

[25] The contract provides that a failure to report to work within a given time *after recall* forfeits seniority.

of applying for reinstatement, the usual manner being to apply at the gates of the plant where the respondent's employment manager hires men on mornings when there is work available in the plant. Although Daniels did not apply at the plant gates for reinstatement on December 24, he telephoned Johnson and the employment manager. In the absence of a showing by the respondent of what was the acceptable mode of application, we find that Daniels' application for reinstatement on December 24 was adequate.

Otto Boyd commenced working for the respondent in 1926 and with the exception of periodic lay-offs caused by light livestock receipts, worked continuously until December 20, 1937. On the latter date he was employed as a shackler in the beef-kill department under Foreman Johnson. Boyd joined the Union around December 1, 1937, and commenced wearing his union button in the plant on December 5. He immediately began to solicit membership among his fellow workers before and after work.

Boyd was absent from work on Saturday, December 18, because of illness. He sent a message to Johnson reporting his inability to work. When he returned to the beef-kill department on Monday, December 20, Johnson refused to allow him to work, stating "You have taken Saturday off on yourself, take today off on me." Boyd returned to the plant on December 21, but was again sent home by Johnson with the direction to stay there until recalled. On January 19 Boyd returned to the beef-kill department and asked Johnson when he could report to work. Johnson sent him into the dressing room to wait until he discussed the matter with Assistant Superintendent Mills. Boyd had been waiting in the dressing room but a few minutes when the respondent's chief of police entered and told him "to get your damn clothes and come on," and then escorted Boyd out of the plant. Although in January 1938 Boyd worked about 11 days in the hog-kill department where he had no seniority rights, he has never been reinstated to the beef-kill department.

The respondent in its answer alleged that Boyd had been laid off on December 20, 1937, and not subsequently reinstated to the beef-kill department, because of unsatisfactory work and repeated tardiness and absence from work. The respondent submitted no evidence to support these allegations. The record itself discloses no instance of unsatisfactory services rendered by Boyd during his approximately 11 years of employment nor does it contain evidence that Boyd had repeatedly been tardy and absent from work. On the one day on which the record reveals that Boyd was absent from work he sent a message to Johnson explaining such absence. We must assume that Johnson received the message in the absence of any denial by him. Under these circumstances, we cannot accept the

respondent's contention that Boyd was laid off and refused reinstatement because of the reasons alleged in its answer.

In weighing the evidence relative to the cases of Nelson, Daniels, and Boyd, it is important to consider the open hostility that Johnson, the beef-kill foreman, displayed toward the Union. Although none of these employees was outstandingly active in union affairs, the fact that their alleged discriminations occurred coincident with the wearing of their union buttons becomes significant in the light of Johnson's anti-union activities. Nelson was laid off on the very day that he appeared at work wearing his union button; the record contains no valid reason for the lay-off which occurred on a day when his seniority entitled him to work. Nelson failed to secure reinstatement when he applied on December 15, although 15 men younger than he in seniority were hired. Daniels was refused reinstatement on December 24, shortly after he commenced wearing his union button to work. The record reveals no valid reason for the respondent's action in refusing him reinstatement on a day when his seniority entitled him to work, nor did Johnson testify to explain his curt refusal to speak with Daniels when he telephoned to apply for reinstatement on December 24. Boyd was laid off on December 20, shortly after he appeared in the plant wearing his union button and at a time when he had begun to solicit membership for the Union in the plant. His lay-off occurred the next working day after an excusable absence from work, and the circumstances surrounding his lay-off and his failure thereafter to secure reinstatement demonstrate Johnson's antipathy toward him.

It is true that these employees were given temporary employment in other departments in which they possessed no seniority after being laid off and/or refused reinstatement in the beef-kill department, but such employment was not equivalent to their former positions in the beef-kill department under the respondent's seniority system whereby a man must work in a particular department at least 6 months to establish seniority.

Upon the evidence, we are satisfied, and we find, that the respondent laid Nelson off from the beef-kill department on December 4, 1937, and refused him reinstatement to that department on December 15, 1937; refused Daniels reinstatement in the beef-kill department on December 24, 1937; and laid Boyd off from the beef-kill department on December 20, 1937, and at all times thereafter refused Boyd reinstatement to the beef-kill department, because of their membership in the Union.

Nelson earned 60 cents an hour on the date of his lay-off, averaging 35 hours of work a week; he earned $183.08 between December 4, 1937, and the date of the hearing. Daniels earned about 82 cents an

hour prior to December 24, 1937, averaging 32 hours of work a week. Boyd earned about $28 a week prior to his lay-off; he earned $192 between December 20, 1937, and the date of the hearing.

2. Einar Myklegard

The complaint alleged that Myklegard was laid off on July 31, 1937, and refused reinstatement on October 31, 1937, because of his union activities. The respondent's answer denied such allegations, alleging that Myklegard's lay-off and subsequent failure to secure reinstatement were occasioned by light livestock receipts.

Myklegard commenced working for the respondent in March 1934, as a laborer in the mechanical department. He was laid off from November 1935 until March 1936. Returning to work on the latter date, he worked continuously until July 31, 1937. Myklegard was tenth from the top on the mechanical-department seniority list, which contained 19 or 20 names.

The evidence adduced at the hearing shows that Myklegard's lay-off on July 31, 1937, was in accordance with his seniority, 11 men being laid off on that day due to a reduction in livestock receipts. We therefore find that Myklegard's lay-off on July 31, 1937, was not based on his union activities.

Although three employees were hired in the mechanical department on October 31, 1937, all of them possessing less seniority than Myklegard, Myklegard did not apply for reinstatement either on that day or at any other time subsequent to his lay-off. As noted above, the weight of the evidence seems to indicate that some form of application was usual in order to secure reinstatement. Myklegard's failure to apply for reinstatement, coupled with an inactive union record, leads us to find that the respondent's failure to reinstate Myklegard on October 31, 1937, was not based on his union activities.

3. Alex Gongliewski

The complaint alleged that Gongliewski had been discharged on January 19, 1938, because of his union activities. The respondent in its answer alleged that Gongliewski's discharge was occasioned by an argument in which he had engaged with Agnes Bernick, a fellow employee, on January 19.

Gongliewski had been employed in the capacity of small-gut puller in the hog-casing department under Foreman Blevens for about 8 years prior to his discharge. He joined the Union in December 1937, and immediately commenced wearing his button and soliciting membership in the plant during his lunch hour and after work.

A few minutes before work commenced on the morning of January 19, Bernick met Gongliewski on the hog-casing floor and accused him

of shirking his work on the preceding day, whereupon an argument ensued between the two. The argument was interrupted by the hog-casing strawboss, who sent Gongliewski to Blevens' office. Blevens then discharged Gongliewski. Later in the morning Blevens also discharged Bernick, presumably as a result of the argument. Bernick, however, was reinstated to the hog-casing department a few days after her discharge.

Immediately after his discharge Gongliewski reported the incident to Carney, the plant superintendent, who suggested that he file a grievance with P. H. W. U. He also told Washburn about his discharge. Washburn talked to Blevens about Gongliewski during the morning of January 19, and Blevens told Washburn that he had discharged Gongliewski because of the belief that Gongliewski had been attempting to persuade Bernick to join the Union.

About a week after his discharge Blevens sent for Gongliewski and asked him if he desired to return to work. Gongliewski replied in the affirmative, whereupon Blevens stated that he intended to put Gongliewski to work in the beef-casing department "so I can keep an eye on you and see that you don't get into any trouble." [26] Gongliewski went to work in the beef-casing department on January 26. He possessed no seniority in the beef-casing department. One morning during his employment in the beef-casing department, Blevens urged Gongliewski to file a grievance with P. H. W. U. if he desired to secure his old job, stating that Bernick had obtained reinstatement in that way. Gongliewski refused to file such a grievance. After working 2 or 3 days in the beef-casing department, Gongliewski was laid off because of a reduction in forces. On or about March 22, 1938, Blevens again sent for Gongliewski and reinstated him to the hog-casing department.

With regard to the argument on January 19, the evidence is conclusive that Bernick started the dispute. It further appears that Bernick habitually provoked arguments with other employees, by using obscene language and by complaining that the employees she worked with failed to perform their duties properly. Although Gongliewski had argued with Bernick on occasions prior to January 19, others had also frequently done so and had never been discharged for that reason. Blevens' admission that he had discharged Gongliewski because he thought Gongliewski was attempting to induce Bernick to join the Union satisfies us that the argument was not the real reason for Gongliewski's discharge. This conclusion is strengthened by the fact that Bernick secured immediate reinstate-

[26] The hog-casing and beef-casing departments are on the same floor of one of the plant buildings. Although Blevens is foreman of both departments, he spends most of his time in the beef-casing department.

ment whereas Gongliewski did not secure reinstatement until March 22, although he was allegedly discharged for the same offense as Bernick. Although it is true that subsequent to January 19 Gongliewski received employment in the beef-casing department, such employment was temporary and was in a department in which he possessed no seniority rights. Under all the evidence, we find that the respondent discharged Gongliewski from the hog-casing department on January 19, 1938, and denied him reinstatement to that department until March 22, 1938, because of his union activities.

Gongliewski earned about 67 cents an hour prior to his discharge, averaging 35 or 40 hours of work a week.

4. Michael Misliska

The complaint alleged that Misliska had been laid off on December 29, 1937, because of his membership in the Union. The respondent in its answer denied such allegation and alleged that Misliska had been laid off because of unsatisfactory work and nervousness.

Misliska had been employed about 8 years prior to his lay-off as a butcher in the beef-cutting department. He joined the Union in the fall of 1937 and thereafter disclosed his union membership to a P. H. W. U. steward in his department and refused to pay P. H. W. U. dues. On December 29, Foreman Hammerston sent Misliska home from work after accusing him of being drunk. The evidence reveals that Misliska was not drunk on December 29. Although, subsequent to his lay-off, Misliska received about 6 weeks' employment in the hog-kill department in which he possessed no seniority, he has not been reinstated to the beef-cutting department.

The respondent introduced no evidence at the hearing in support of its allegation concerning Misliska's lay-off, nor does the record show that Misliska's work at any time during his 8 years of employment had been unsatisfactory, or that he had exhibited any nervousness in connection with his work. Nor did Foreman Hammerston take the witness stand to explain his conduct in sending Misliska home on December 29 with the remark that he was drunk, when the record reveals that he was not drunk. The employment received by Misliska subsequent to December 29 was temporary and was in a department in which he possessed no seniority rights. Although the evidence is meager concerning Misliska's union activities, the record contains no explanation for his summary lay-off and the respondent's failure thereafter to reinstate him, apart from his union membership. We find that the respondent laid Misliska off from the beef-cutting department on December 29, 1937, and failed thereafter to reinstate him to the beef-cutting department, because of his membership in the Union.

5. Harry R. Washburn

The complaint alleged that Washburn was discharged on June 24, 1938, because of his union activities. The respondent in its answer denied such allegation, alleging that Washburn's discharge was provoked by insubordination.

Washburn had been employed by the respondent about 5 years prior to his discharge, during which time he worked as a machinist in the beef-casing and offal departments under Foreman Blevens. Washburn was active in the formation of the Union, was elected recording secretary in June 1937, and was elected president in January 1938, which position he still occupied at the date of the hearing. His union activities have been discussed in the preceding sections.

On June 22, 1938, about 35 employees in the beef-kill department wore their union buttons to work. Prior to that day, only a few union buttons had been worn in the department. Washburn visited the beef-kill department during his lunch period on June 22 on union business. He had just arrived in the department and was walking toward the dressing room when Johnson, the beef-kill foreman, approached him and said, "Get out of here, you C. I. O. son-of-a-bitch. We will take care of this situation up here." Washburn departed, reporting the incident to Carney, the plant superintendent, that afternoon. During his discussion with Carney, Washburn asserted that the Wagner Act gave employees the right to pursue union activities during their lunch hours and after work and that it was his intention to visit the beef-kill dressing room on his own time. Washburn understood Carney to grant him permission to visit the beef-kill department on his own time as long as he did not interfere with anyone's work.

On June 23 Washburn visited the beef-kill dressing room during his lunch period. He did not pause on the beef-kill floor where the gang was working. About 5 minutes after Washburn entered the dressing room, Johnson came in and told him "to get the hell out if he didn't want to get hurt." Washburn replied that he had Carney's permission to be there, suggesting that Johnson telephone Carney to verify such permission. Johnson called Carney's office and again told Washburn to leave the department. Washburn departed as requested and upon returning to his own department was told by Blevens that Carney was waiting to see him in the dressing room. Carney insisted that Washburn had disobeyed his instructions by returning to the beef-kill department. Washburn denied that he had been instructed to keep out of the beef-kill department, telling Carney that it was his understanding from the June 22 conversation that he had permission to visit the beef-kill dressing room if he did not interfere with anyone's work. Carney thereupon forbade Washburn to return to the

beef-kill department at any time in the future under penalty of discharge and Washburn promised that he would stay out of the beef-kill department. After Carney left, Blevens, who had been present during the conversation, told Washburn that "he was going to get it."

During the morning of June 24, Washburn was informed that the beef-cooler gang was being reduced at noon. The beef-cooler department is located in a building adjacent to the one which houses the beef-casing and offal departments and the beef-kill department. It is connected to the beef-offal department by means of a ramp leading from building to building, and is also connected to the beef-kill department by an enclosed runway. The beef-casing and offal departments and the beef-cooler department are on the fourth floor of their respective buildings, and the beef-kill department occupies part of the fifth floor of the same building in which the beef-casing and offal departments occupy the fourth floor. During his lunch hour on June 24, Washburn walked over to the beef-cooler department to ascertain if the men being laid off were union members. When he arrived in the beef-cooler department, he saw two men standing about half-way up the runway leading to the beef-kill department. He walked along the runway to where the men were standing, but upon discovering that they were not union members he returned to his own department via the beef-cooler department. Upon reaching his department Blevens discharged him saying, "you finally got what you asked for."

The respondent maintains that Washburn was discharged for violating Carney's instructions by returning to the beef-kill department on June 24. This contention is based on the assertion that the runway between the beef coolers and the fifth floor of the adjacent building is a part of the beef-kill department. The beef-kill, the sheep-kill, and the calf-kill departments are located on the fifth floor of the building in question. After the animals are killed, skinned, and processed in their respective departments on the fifth floor, they are moved by means of overhead rails to the point where the runway, which is designated by the respondent as the "killing floor hot line," connects with the fifth floor. All carcasses are shrouded, stamped, weighed, and inspected as they move down the runway toward the coolers. The final operation consists in transferring the carcasses from the moving rails which carry them down the runway to stationary rails inside the beef and sheep coolers.[27] Only beef-kill employees work in the runway, and the respondent considers it a part of the beef-kill department for accounting purposes. There can be no doubt that Washburn entered the beef-kill department when he commenced walking along the runway. Washburn testified, how-

[27] The sheep coolers are apparently located in the same building as the beef coolers.

ever, that he did not know that the respondent considered the runway a part of the beef-kill department. Inasmuch as the final processing of the carcasses of sheep and calves, as well as beef, is performed in the runway, there appears to be some basis for Washburn's view.

However, we are persuaded that Washburn's conduct on June 24 was not the actual reason for his discharge. His exclusion from the beef-kill department was clearly discriminatory. The record is replete with evidence that other employees, including P. H. W. U. members who transacted P. H. W. U. business, freely visited that department both before and after Washburn was refused admittance. Washburn himself had never been restricted until the day the union members in the beef-kill department wore their buttons to work *en masse*. The language used by Johnson on June 22 amply demonstrates that the reason for Washburn's exclusion from the beef-kill department was his union membership and activities. Having subjected Washburn to a discriminatory ruling, the respondent then grasped the infraction of such ruling as an occasion for his discharge. There can be no doubt that the respondent seized upon the June 24, 1938, incident as a pretext for discharging the Union's president and leader, and we so find.

Washburn earned about 68 cents an hour prior to his discharge, averaging 33 hours of work a week.

During the oral argument before the Board the respondent asserted that Washburn's discharge was the result of a conspiracy between the Union and Smoot, the attorney who prepared and tried the case for the Board. The respondent contended that such conspiracy was brought out in the record by its cross-examination of Washburn.[28]

[28] The respondent offered certain documentary evidence as a part of its cross-examination of Washburn, some of which was excluded by the Trial Examiner. Two such excluded documents, which were filed as rejected exhibits, were issues of *The Packinghouse News*, a weekly news bulletin mimeographed and circulated by the Union among the respondent's employees. These issues contained articles either written by Washburn or based upon information furnished the editorial staff of the Union by Washburn, and were offered to impeach the credibility of his testimony concerning the circumstances surrounding his discharge. The respondent was not prejudiced by the exclusion of these bulletins since the information contained therein did not impeach Washburn's sworn testimony. A third issue of *The Packinghouse News* which the Trial Examiner excluded contained an article reviewing a visit to Sioux City by Wiener, the Regional Director of the Board for the Eighteenth Region. The respondent did not state wherein such evidence was material to the issues in the case and we do not find that it was material. The Trial Examiner admitted in evidence a fourth issue of *The Packinghouse News* containing a section which had been blotted out before the issue was circulated, but excluded from evidence an exhibit setting forth the respondent's version of the blotted-out section. This latter exhibit, which was filed with the other rejected exhibits, consisted of an article purporting to relate certain statements made by Vogt, a Field Examiner for the Board, sometime in February 1938. This exhibit was at no time identified as being the correct version of the statements which had appeared in the blotted-out section nor was it otherwise authenticated. We therefore find that the exclusion of these two latter exhibits was not prejudicial to the respondent. We have heretofore affirmed the Trial Examiner's rulings on these and other matters which arose during the cross-examination of Washburn in the Statement of the Case *supra*.

The respondent claimed that Washburn had discussed with Smoot and a union organizer in a saloon on June 22 the question of whether a violation of the respondent's instructions to keep away from the beef-kill department was sufficient reason for discharge and that Smoot told Washburn on that day that he had a constitutional right to disobey Carney's instructions and visit the beef-kill department. The record reveals that Washburn did relate the June 22 incident to Smoot and Ballard, the regional director of the Union, in the tap room of the West Hotel where Smoot was registered. However, there was no discussion of Washburn's constitutional rights nor of the question of whether the beef-kill incident was sufficient to provoke Washburn's discharge. Both Smoot and Ballard expressed the opinion that Washburn's exclusion from the beef-kill department was in violation of the Act, at the same time advising him to strictly obey all the respondent's rules and any instructions Carney should give him. The respondent asserted that Washburn again discussed the matter with Smoot on June 23, after having returned to the beef-kill department and after having again been asked to leave by Johnson and forbidden to return by Carney, and that it was decided that Washburn had not yet given the respondent sufficient provocation for discharging him. The record, however, shows that Smoot was not in Sioux City on June 23, but that he had returned to Minneapolis on June 22. The respondent maintained that "the frame-up on our superintendent" was completed when Washburn wired Smoot about his discharge on June 24 pursuant to a prearranged plan. Although Washburn did wire Smoot the details of the June 24 incident, the record conclusively shows that the wire was not sent pursuant to an agreement between Smoot and Washburn and that the possibility of Washburn's discharge had never been discussed or contemplated by the parties. Before Smoot left Sioux City, Washburn inquired as to what action he should take if additional evidence were discovered, specifically mentioning the possibility of Louie Novak, a beef-kill employee, being discriminated against for union activities. Smoot told him that the Board's complaint would issue after he returned to Minneapolis and that the respondent had 5 days in which to answer. Equipped with this knowledge, when Washburn himself was discharged, he wired Smoot to insure the inclusion of his case in the complaint. We find the charge of conspiracy between the Union and Smoot to be entirely without foundation in the record and without merit.

We find that the respondent discriminated with regard to the hire and tenure of employment of Lester Nelson, Otto Boyd, Preston Daniels, Alex Gongliewski, Michael Misliska, and Harry R. Washburn, thereby discouraging membership in the Union and thereby

interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in 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 and is engaging in unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.[29]

We have found that the respondent dominated and interfered with the formation and administration of, and contributed support to, P. H. W. U. Its continued existence is a consequence of violation of the Act, thwarting the purpose of the Act and rendering ineffective an order to cease the unfair labor practices. In order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference, and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them in the Act, we will order the respondent to withdraw all recognition from P. H. W. U. as representative of the respondent's employees for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and to disestablish it as such representative. The contract between the respondent and P. H. W. U. embodying recognition of P. H. W. U. as such representative, is a result of and tends to perpetuate the effects of the respondent's unfair labor practices. We will order the respondent to cease

[29] As pointed out in Section II, *supra*, United Packing House Workers Local Industrial Union No. 389, the Union filing the charges in Case C–901, was divided into three separate groups on or about August 1938, and the respondent's employees who were members of Local 389 transferred to United Packing House Workers Local Industrial Union No. 873, affiliated with the Packing House Workers Organizing Committee and the Committee for Industrial Organization, the Union filing the petition for investigation and certification in Case R–1134. All the respondent's employees who are affiliated with the Committee for Industrial Organization are now represented by Local No. 873. In order to effectuate the policies of the Act, it is necessary that the respondent be ordered to cease and desist from discouraging membership in United Packing House Workers Local Industrial Union No. 873. This will be accomplished in our Order that the respondent cease and desist from discouraging membership in United Packing House Workers Local Industrial Union No. 389, or *any other labor organization of its employees.*

and desist from giving effect to the contract heretofore described or any other contract or agreement it may have entered into with P. H. W. U. in regard to rates of pay, wages, hours of employment, or other conditions of employment.[30]

We have found that the respondent discriminated with regard to the hire and tenure of employment of Nelson, Boyd, Daniels, Gongliewski, Misliska, and Washburn, because of their union activities. In order to effectuate the policies of the Act, we shall order the respondent to offer to these employees, with the exception of Gongliewski, reinstatement to their former positions without prejudice to their seniority and other rights and privileges. In the case of Gongliewski, we have found that the respondent reinstated him to his former position on March 22, 1938. Accordingly, we shall not order the respondent to reinstate Gongliewski but will require that the respondent fully restore to Gongliewski any seniority rights or other rights or privileges he may have lost by reason of his discharge on January 19, 1938. The respondent will be required to make Nelson, Daniels, Boyd, Misliska, and Washburn whole for any loss of pay they may have suffered by reason of this discrimination with regard to their hire and tenure of employment by payment to each of them, respectively, a sum of money equal to the amount which they each normally would have earned as wages from the date of such discrimination to the date of the offers of reinstatement, less their net earnings[31] during said period. With regard to Gongliewski, the respondent will be required to make him whole for any loss of pay he may have suffered between January 19, 1938, the date of his discharge, and March 22, 1938, the date of his reinstatement, less his net earnings as aforesaid.

However, in view of the Trial Examiner's finding that the respondent did not discriminate against Nelson, Daniels, and Boyd we will not require the respondent to give back pay to those men for the period from the date of the respondent's receipt of the Intermediate Report to the date of this Decision.[32]

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[30] See *National Labor Relations Board* v. *Stackpole Carbon Company,* 105 F. (2d) 167 (C. C. A. 3d, 1939).

[31] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590,* 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

[32] See *Matter of E. R. Haffelfinger Company, Inc.* and *United Wall Paper Crafts of North America, Local No. 6,* 1 N. L. R. B. 760.

VI. THE QUESTION CONCERNING REPRESENTATION

As pointed out in Section II, *supra*, the respondent's employees who had been affiliated with United Packing House Workers Local Industrial Union No. 389, were transferred to United Packing House Workers Local Industrial Union No. 873 pursuant to a reorganization effected by the Packing House Workers Organizing Committee, affiliated with the Committee for Industrial Organization, in August 1938. Thereafter Local No. 873 received a charter and elected its officers. Prior to the transfer, Harry R. Washburn, the president of Local No. 389, resigned his office. He was elected president of Local No. 873 in August 1938.

On August 26, 1938, Washburn wrote a letter to English, the respondent's assistant superintendent, stating that the Union represented a majority of the respondent's employees and requesting a bargaining conference. The respondent did not reply to such letter. Also in August 1938 a union committee met several of the respondent's Sioux City officials and Thomas Creigh, its Chicago, Illinois, counsel, at the Warrior Hotel in Sioux City. The Union at that time requested recognition from the respondent and compliance with the recommendations of the Trial Examiner's Intermediate Report in Case No. C–901. Creigh stated that the respondent would not recognize the Union, adding that "they would have to let the law take its course and carry this thing through the Courts."

We find that a question has arisen concerning the representation of the respondent's employees.

VII. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occuring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII. THE APPROPRIATE UNIT

At the hearing all parties stipulated that an appropriate unit for the purposes of collective bargaining should consist of all hourly paid and piece-work production and maintenance employees, exclusive of superintendents, assistant superintendents, foremen, subforemen, clerical and office workers, scalers, watchmen, timekeepers, truck drivers, employees in the salvage department, and all supervisory employees. We shall adopt the unit agreed upon by the parties.

We find that all hourly paid and piece-work production and maintenance employees, exclusive of superintendents, assistant superintendents, foremen, subforemen, clerical and office workers, scalers, watchmen, timekeepers, truck drivers, employees in the salvage department, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

IX. THE DETERMINATION OF REPRESENTATIVES

The record discloses that the respondent's pay roll of November 12, 1938, which was not introduced in evidence, contained the names of 870 employees within the unit we have found to be appropriate. The Union introduced in evidence 696 membership cards signed by employees of the respondent between June 1937 and the date of the hearing. The authenticity of such cards was established at the hearing.[33] The Union also introduced in evidence petitions signed by 685 persons within 2 months of the hearing, designating the Union as their bargaining agent. A comparison of the signatures on these petitions with the signatures on the 696 membership cards which were stipulated to be authentic reveals that 584 of the employees in the appropriate unit designated the Union as their representative for the purposes of collective bargaining during the months of October and November 1938.

The Union claims that it should be certified upon the proof offered. The Company, however, strenuously objects to certification. As we have recently stated, we are persuaded by our experience that, under circumstances such as these, any negotiations entered into pursuant to a determination of representatives by the Board will be more satisfactory if all disagreement between the parties regarding the wishes of the employees has been, as far as possible, eliminated.[34] We shall therefore direct that an election by secret ballot be held

[33] Although the respondent admitted the validity of the signatures on the cards and the fact that the 696 employees who signed the cards were within the appropriate unit, it objected to their admission on the grounds that there was no showing that the cards were valid designations of the Union or that the employees signing such cards were members of the Union at the date of the hearing. The fact that a majority of employees signed membership cards is sufficient designation. See *National Labor Relations Board* v. *The Louisville Refining Company*, 102 F. (2d) 678 (C. C. A. 6th). Furthermore, a majority of employees in the appropriate unit signed petitions within 2 months of the hearing designating the Union as their representative. The respondent's objections to the admission of these cards are without merit.

[34] *Matter of Armour and Company* and *United Packinghouse Workers Local Industrial Union No. 13, Packinghouse Workers Organizing Committee, affiliated with C. I. O.*, 13 N. L. R. B. 567; See also *Matter of The Cudahy Packing Company* and *United Packinghouse Workers of America, Local No. 21, of the Packinghouse Workers Organizing Committee*, 13 N. L. R. B. 526.

but at such time in the future as we shall hereafter direct when we are satisfied that the respondent's unfair labor practices do not prevent a free expression of the employees' choice of representatives.

At the hearing the parties stipulated that the pay roll for the week ending November 12, 1938, should be used as a basis for determining the question concerning representation. We shall defer the determination of the eligibility date until our further Direction. Included among those who shall have an opportunity to vote are Lester Nelson, Otto Boyd, Preston Daniels, Michael Misliska, and Harry R. Washburn, whom we have found were discriminatorily laid off, discharged or refused reinstatement prior to November 12, 1938. Inasmuch as we are ordering that the respondent withdraw recognition from P. H. W. U. and that P. H. W. U. be disestablished as a collective bargaining agency, no provision for P. H. W. U. shall be made upon the ballots.

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

Conclusions of Law

1. United Packing House Workers Local Industrial Union No. 389, United Packing House Workers Local Industrial Union No. 873, affiliated with Packing House Workers Organizing Committee and the Committee for Industrial Organization, and Packing House Workers Union of Sioux City, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of the Packing House Workers Union of Sioux City, and by contributing support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Lester Nelson, Otto Boyd, Preston Daniels, Alex Gongliewski, Michael Misliska, and Harry R. Washburn, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. 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 and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

6. The respondent has not discriminated in regard to the hire and tenure of employment of Einar Myklegard within the meaning of Section 8 (3) of the Act.

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

8. All hourly paid and piece-work production and maintenance employees of the respondent, exclusive of superintendents, assistant superintendents, foremen, subforemen, clerical and office workers, scalers, watchmen, timekeepers, truck drivers, employees in the salvage department, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Cudahy Packing Company, Sioux City, Iowa, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Packing House Workers Union of Sioux City, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Packing House Workers Union of Sioux City or any other labor organization of its employees;

(b) Recognizing the Packing House Workers Union of Sioux City 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;

(c) Discouraging membership in the United Packing House Workers Local Industrial Union No. 389, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any term or condition of employment of any of its employees because of their membership in, or activity on behalf of, any such labor organization;

(d) 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 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;

(e) Giving effect to its contract with the Packing House Workers Union of Sioux City.

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

(a) Withdraw all recognition from the Packing House Workers Union of Sioux City as a representative of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish the Packing House Workers Union of Sioux City as such representative;

(b) Offer to Lester Nelson, Otto Boyd, Preston Daniels, Michael Misliska, and Harry R. Washburn, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, and restore to Alex Gongliewski any seniority rights or other rights or privileges he may have lost by reason of his discharge;

(c) Make whole Lester Nelson and Otto Boyd for any losses in pay that they have suffered by reason of their discriminatory lay-offs, and make whole Preston Daniels for any loss in pay he may have suffered by reason of his discriminatory refusal of reinstatement, by payment to each of them, respectively, a sum of money equal to that which they each normally would have earned as wages during the period from the date of their discriminatory lay-off or refusal of reinstatement, to the date of the respondent's receipt of the Trial Examiner's Intermediate Report, and from the date of this Order to the date of their reinstatement or offer of reinstatement, less their net earnings during said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Alex Gongliewski for any loss of pay he may have suffered by reason of his discharge, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 19, 1938, to March 22, 1938, the date of his reinstatement, less his net earnings, if any, during said period, deducting, however, from the amount otherwise due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole Michael Misliska and Harry R. Washburn for any losses in pay they may have suffered by reason of their discriminatory lay-off and discharge, respectively, by payment to each of them, a sum of money equal to that which they each normally would have earned as wages during the period from the date of their discriminatory lay-off and discharge, respectively, to the date of their reinstatement or offer of reinstatement, less their net earnings, if any, during said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(f) Immediately post and keep posted for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees in a conspicuous place in its plant at Sioux City, Iowa, stating that the respondent (1) will cease and desist in the manner set forth in paragraph 1 of this Order; and (2) will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order;

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent discriminated against Einar Myklegard in regard to his hire and tenure of employment or any term or condition of employment.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with The Cudahy Packing Company, Sioux City, Iowa, an election by secret ballot shall be conducted at such time in the future as the Board shall hereafter direct, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and

Regulations, among all hourly paid and piece-work production and maintenance employees of The Cudahy Packing Company, Sioux City, Iowa, exclusive of superintendents, assistant superintendents, foremen, subforemen, clerical and office workers, scalers, watchmen, timekeepers, truck drivers, employees in the salvage department, and all supervisory employees, to determine whether or not such employees desire to be represented for the purposes of collective bargaining by United Packing House Workers Local Industrial Union No. 873, affiliated with Packing House Workers Organizing Committee and the Committee for Industrial Organization.

Mr. William M. Leiserson took no part in the consideration of the above Decision, Order, and Direction of Election.