

PAM
94-
994

Volume 1

U.S.

NATIONAL LABOR RELATIONS BOARD

STENOGRAPHIC REPORT OF HEARING

In the matter of:

THE KOHLER COMPANY,
FEDERAL UNION No. 18545, KOHLER WORKERS ASSOCIATION

Handwritten:
T922K7
K788
WMS

September 8, 1934

JESSE L. WARD

of WARD & PAUL

OFFICIAL REPORTERS

EARLE BUILDING

WASHINGTON, D. C.

Office:

NATIONAL

{ 4266
4267
4268

Albee Building:

DISTRICT 2200 — Branch 373

House Office Building:

NATIONAL 3120 — Branch 1073

NATIONAL LABOR RELATIONS BOARD

September 8, 1934.

HEARING IN THE MATTER OF THE KOHLER COMPANY,
FEDERAL UNION No. 18545, KOHLER WORKERS
ASSOCIATION.

Mr. Lloyd Garrison

Chairman



Held in

Washington, D. C.

NATIONAL LABOR RELATIONS BOARD

IN RE: The Kohler Company,
Federal Union No. 18545,
Kohler Workers' Association.

September 9, 1934.

<u>I N D E X</u>	<u>P A G E</u>
Members of the Board present	1
Others present	1
Preliminary statement by Mr. R. W. Watts	3
Statement of facts by Mr. Ohl On behalf of Federal Labor Union No. 18545	6
Mr. Paul Smith On behalf of the American Federation of Labor	21
Mr. Joseph A. Padway Representing the Wisconsin State Federation of Labor, the Local Union in this Case, and the American Federation of Labor	23
STATEMENT OF Mr. Lucius P. Chase On behalf of the Respondents	32
STATEMENT OF Mr. K. L. Hougen On behalf of Kohlers Workers Association	146
REPLY ARGUMENT by Mr. Padway	158

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

September 9, 1934

HEARING IN THE MATTER OF THE KOHLER COMPANY,
FEDERAL UNION No. 18545, KOHLER WORKERS
ASSOCIATION.

The hearing in the above-entitled matter was called to order at 10:00 o'clock A. M., in room 715 Department of Labor Building, Washington, D. C., Mr. Lloyd Garrison, Chairman of the Board, presiding.

Present:

Mr. Lloyd Garrison, Chairman	)	THE BOARD
Mr. Harry A. Willis.	)	

Appearances:

Mr. Joseph A. Padway,

For Wisconsin State Federation of Labor, American
Federation of Labor and Federal Union No. 18545.

Mr. David Rabinovitz,

For Federal Labor Union No. 18545.

Mr. Henry Ohl, Jr., President,

Wisconsin State Federation of Labor

Mr. Paul J. Smith,

Representing American Federation of Labor,

On behalf of the Kohler Company,

Mr. H. L. Butler,

Mr. Lucius P. Chase,

Mr. E. L. Wingert.

On behalf of Kohler Workers' Association:

Mr. A. L. Hougen,

Also Present:

Mr. R. W. Watts,

Special Master.

- - -

Chairman Garrison: Mr. Watts, will you make a preliminary statement for the record?

Mr. Watts: If the Board please, as the Special Master of the Board and by its direction, I proceeded to Sheboygan, Wisconsin, on the 30th day of August last, and there during three days took testimony in the matter which is now before the Board. That testimony approximates about 1000 pages, and is supplemented by a large number of affidavits, all of which have been digested and presented to the board.

The record has in it various reservations of the parties on questions of law, and I think their positions are very clearly set forth in that respect.

I therefore file the report with the Board and respectfully recommend that the Board afford opportunity to counsel to summarize the evidence which was proven by them at the hearing.

I also submit the notice of this hearing.

(The notice referred to is as follows:)

To: Kohler Company,
Kohler Workers Association,
Federal Labor Union #18548
Kohler, Wisconsin.

Please Take Notice, that a hearing will be held by the National Labor Relations Board at Room 715, Labor Department Building, Washington, D. C., on the 7th day of September, 1934.

at 2:00 o'clock in the afternoon of said day, upon charges and complaints that between July 15, 1933 and the date of said hearing, at Kohler, Wisconsin, and within the jurisdiction of the said Board, Kohler Company did violate the provisions of Section 7 (a) of the National Industrial Recovery Act and the sections of the several codes set up and duly approved pursuant to the provisions of the said National Industrial Recovery Act and applicable to said Kohler Company, in so far as the said sections incorporate the provisions of Section 7 (a) of the National Industrial Recovery Act; in that at the times and place aforesaid the said Company and its agents did interfere with, restrain and coerce its employees in the designation of their representatives for collective bargaining, in self-organization, and in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and did require its employees as a condition of employment to join a company union, did require its employees as a condition of employment to refrain from joining, organizing and assisting a labor organization of their own choosing, and did discriminate against its employees who joined, organized and assisted a labor organization of their own choosing.

Please Take Further Notice, that at the time and place first above mentioned, the National Labor Relations Board will also hold a hearing to determine whether it shall appear in the public interest to order and conduct an election by a

secret ballot of the employees of said Kohler Company to determine by what person, persons, or organization they desire to be represented in order to insure the right of the said employees to organize and to select their representatives for the purpose of collective bargaining as defined in Section 7 (a) of the National Industrial Recovery Act, and to make such orders as may be deemed necessary and proper to make effective any election which may be so ordered.

Please Take Further Notice, that you are entitled to be represented by counsel or otherwise at said hearing, and to present any evidence which you may desire to submit in the premises.

(Signed) Lloyd K. Garrison, Chairman,

H. A. Millis,

Edwin S. Lundy,

Members,

National Labor Relations Board.

Washington, D. C., August 31, 1934.

Chairman Garrison: I think, if it is satisfactory to counsel that the most helpful procedure to this board would be for counsel on both sides to summarize the facts from their point of view. I think it would hardly be necessary to have arguments on points of law that have been raised.

The Board will be glad to receive briefs if counsel desires to file on those points, but it seems to me that

the problem of what the Board ought to do in this case depends upon the facts of the situation. In view of the massive size of this record, the Board would appreciate hearing counsel on both sides summarizing their points of view. Is that satisfactory to counsel?

Mr. Butler: Yes, sir.

Mr. Padway: Yes, sir, that is satisfactory, except that I would like to devote a few moments if the opportunity would be given to me, to one point of law raised.

Chairman Garrison: Which point is that?

Mr. Padway: On the mandatory order for the dissolution of the company union.

Chairman Garrison: The Board will hear that question, inasmuch as it is novel.

Mr. Padway: That is why I present it, because it has not, to my knowledge, been presented before.

Chairman Garrison: Mr. Padway, will you proceed with your summary?

Mr. Padway: I think Mr. Ohl might open up with a statement of facts.

Mr. Ohl: Your petitioners, on behalf of Federal Labor Union No. 18545, chartered by the American Federation of Labor, composed of employees of the Kohler Company of Kohler, Wisconsin has set forth in a petition to the National Labor Relations Board, that:

In July, 1933, and during the period immediately following, a large number of Kohler Employees organized and secured a charter from the American Federation of Labor.

That thereafter, Federal Labor Union No. 18455, elected labor representatives to bargain for wages and working conditions with the Kohler Company, and duly informed the company of such election.

That on several occasions of meeting with these representatives, the Kohler Company did not sincerely bargain with them.

That the Kohler Company rejected definite proposals submitted by the bargaining committee but insisted that their consent to meet at all constituted collective bargaining.

That the Kohler Company, in an effort to thwart the employees in their effort to bargain collectively and to deny them free choice of organization and representation as provided in Section 7 (a) of the National Industrial Recovery Act, brought into being, a company union known as Kohler Workers Association; organized by the company under threats, coercion and intimidation.

That the Kohler Company discriminated against employees because of union affiliation through lay-offs and demotions.

That on July 16, 1934 as a result of the Kohler Company's violations, the workers were compelled to seek redress in a strike.

That on July 27th, a ruthless attack on the pickets and sympathetic citizens was perpetrated.

That the massacre resulted in two deaths, and 42 wounded, all but two of whom were shot in the back.

That the Union representatives and Kohler representatives met with the Chicago Regional Labor Board in Chicago, August 10th and 11th, 1934, the Board having called both parties before it in an effort to mediate the controversy.

That the Chicago Regional Labor Board offered a proposal for the consideration of both parties.

That the Union representatives accepted the Board's proposal on the same day, notwithstanding the proposal involved the foregoing of specific demands previously made by the union.

That the Kohler Company, after five days of deliberation, rejected the Board's proposal.

That the Kohler Company has been defiant of the regulations established for recovery.

That because of the prevalent tenseness, further bloodshed is feared.

Your petitioners submitted:

That it is imperative that means be taken to prevent the Kohler Company from continuing its unlawful conduct.

That the Kohler Company be adjudged guilty of violation of Section 7 (a), ordered to cease its violations, or suffer revocation of the blue eagle and citation to the Attorney General of the United States for prosecution.

We have asked:

That an election be held by the National Labor Relations Board to determine representation for collective bargaining.

That the employees on the company payroll as of August 15, 1933, constitute the eligible electorate.

That such election be held promptly.

That the Kohler Company be commanded to refrain from interfering with employees.

That the Kohler Company be commanded to bargain collectively with authorized representatives of the employees for all of the employees.

That an affirmative and mandatory order be issued commanding the Kohler Company to dissolve the Company Union, the Kohler Workers Association.

Your petitioners requested that a hearing be immediately called at which the facts represented in the petition may be established. Such a hearing was held August 30th, August 31st, and September 1, 1934, in the court house in Sheboygan, Wisconsin, upon direction of your board, by Mr. R. W. Watts.

Before Judge Padway and Mr. Rabinovitz present their arguments, I wish to emphasize a few important points in connection with the matters embraced in our petition and which are borne out by testimony and evidence in the hearing conducted by Mr. Watts.

In the matter of organizing Federal Labor Union No. 18094 the testimony and evidence will show that Kohler Employees

themselves sought organization in accordance with section 7 (a) of the National Industrial Recovery Act, voluntarily came to the Sheboygan Central Labor Union, a Federated Labor Body of Sheboygan, in which county the village of Kohler is situated, and requested the assistance of more experienced unionists in perfecting their organization.

The American Federation of Labor was appealed to as the labor organization with which the Kohler employees wished to affiliate. The Wisconsin state Federation of Labor, the State Branch of the American Federation of Labor, likewise was requested to assist.

As a result, the number of applications for union membership increased until they reached many hundreds, -- a large majority of Kohler employees.

The record reveals that the Kohler Company and -- or its agents, from the beginning interfered with the self-organization of employees; company agents watching meeting places of employees; by threats from company keymen, foremen, etc., cautioning men to desist or be penalized by being selected as the first to be laid off; that employees were discharged thereafter when it was found they retained their membership in the union; that employees were demoted to less desirable jobs; that as punishment for joining the union, many employees, highly technical in their craft and long in the service of the company, were selected for layoffs, while

comparatively new employees were retained or re-employed.

As to collective bargaining, your Board will find on perusing the testimony and exhibits that the company has studiously avoided bargaining with the proper representatives of the majority of the employees. It is true that the union's representatives were admitted into the Kohler office, but we were constantly told that the Company is dealing with the Kohler Workers' Association, the company union, but would listen to us or any other group or individual.

A perusal of the testimony and of the exhibits introduced by the company, purporting to be transcriptions of conference proceedings of October 4th, November 21st, November 29th, 1933, and July 6th, 1934, and the Company's written answer to the Union's fourteen demands will show convincingly and without doubt that the company while professing to bargain, deliberately evaded every attempt on the part of the company's representatives to come to an agreement.

The record shows conclusively that the company did not intend to tolerate any bargaining group, but insisted on recognizing none save its own company-organized, company-financed and company-controlled organization, the Kohler Workers' Association.

The record will show definite violation of Section 7 (a) in that the company's whole attitude throughout was antagonistic toward the union representatives, dishonest, insincere and

evasive of the law and its purposes. One cannot escape the conclusion that all through the period since employees began organizing into a union of their own choosing, the company stood in bold defiance, not only of a legitimate employees' organization, but of the law and the government.

It will be noted that it finally had to become clear to the representatives of Federal Labor Union No. 18565, that it was futile to continue efforts to bargain with the company; that Kohler's attitude was a sham and a pretense, and that other channels of redress must be resorted to.

We want to make an earnest plea for the serious consideration by the National Labor Relations Board of the question of who shall be legitimate voters in the election for which we have petitioned.

We have shown how the company obstinately, wilfully, maliciously and illegally has tried to prevent legitimate organization from the beginning in July, 1933. A large number were laid off about the middle of August, 1933, with the assurance that they would be re-engaged.

Following organization of the company-union, another large number was laid off, temporarily, they were told. Many of these employees are still idle. Some have secured short time or temporary work, but anticipate reinstatement in their customary work. Most of these had allied themselves with Federal Labor Union No. 18545.

A great injustice would be done were these men deprived of a vote in an election for bargaining representatives.

The company's desire to use the payroll of June 30, 1934 is untenable. Should their wish be conceded, you may as well throw out our whole case, because the company between July 1933 and July 1934 has favored a considerable number of intimidated workers, and company-union members, to jobs; while the greater number of union adherents are waiting a decision which will accord them a degree of justice and protection under the promised New Deal.

Permit us to make a final appeal for a just and speedy decision. The situation in Sheboygan is volcanic. The attitude of defiance of Kohler, and its challenge to the New Deal, has caused keen resentment reaching out far beyond the membership of Union No. 18545.

The officers of the village of Kohler are in the main, men in high positions of the Kohler Company. The President of the village is the General Works Manager. The village Treasurer is the Personnel Manager of the Kohler Company.

With hundreds of gunmen being drilled on Kohler property, apparently to kill, anything is possible now.

We look to the government, through the National Labor Relations Board, to afford the necessary, rightful and promised relief.

Mr. Padways: I may state that Mr. Ohl is the President of

the Wisconsin State Federation of Labor.

I shall now ask Mr. Rabinovitz to make his presentation.

Mr. Rabinovitz: I do not intend to take up too much time in this matter but just to address myself and stress a few of the facts that were brought out in the hearing at Sheboygan.

These men at Sheboygan in the main, especially the workers of the Kohler Company, are men that knew little or nothing about unionism, and before any representatives of the American Federation of Labor or the State Federation of Labor had even come to Sheboygan, or had sent speakers there, these men, as Mr. Ohl pointed out, approved men of the Central Labor Council, and the testimony will show that as high as 1500 members were organized into Federal Labor Union No. 18545, before any contact was had with the Wisconsin State Federation of Labor or the American Federation of Labor.

These men, as the testimony will show you, primarily organized because they felt that section 7 (a) gave them this right, which they thought they did not have before that time, at least with government sanction and government protection.

As soon as these men began to organize, a fight appeared on the part of the company to combat this organization, and we find that back in September, organization of this company union was started, and Mr. Padway will go into those details more concretely, actually quoting from speeches and from various

exhibits, but I just want to stress that history there briefly.

A number of men approached Mr. Kohler at his home as he testified, asking him for his permission and his consent to organize a Kohler Workers' Association. Following that meeting at the home of Mr. Kohler, some eighty odd key men or faithful workers, if you please, are asked to come into the offices of the general officers of the company, they are asked that by foremen and superintendents, and there they form what they call a nucleus of the Kohler Workers' Association. Mr. Kohler is present there and he speaks. There is only one speaker besides him and that is a man by the name of Ramel, I believe, a chief chemist, as I understand, of the Kohler Company.

Mr. Kohler got up at this particular meeting, as the evidence will show, and as a copy of his speech will show you, and analyzed the situation for these men, and explained what they called a preliminary draft. He explains it to them. He makes suggestions to them as to how their constitution should be worded and how it should work, and then he tells them that he would like to see them join this company union and keep up the happy relationship that they had had up to that time.

Then on that day, as the men came to work, there being a foundry there and they work in different shifts, -- the men are told to go through the cafeteria or the recreation hall which is across the street there in the village, and are told

that a speech will be made to them by some important individual, and these men are taken from their jobs on company time and taken into these various halls, and there Mr. Kohler is introduced by the temporary chairman of the Kohler Workers' Association.

Mr. Kohler gets up on the platform and speaks to these men. He stresses to these men the difficulties he had during the depression, and then he goes into the company union matter.

At either one or two of these meetings, or possibly all, as the evidence will show you, he again analyzes the constitution and makes suggestions and even goes as far as telling them that they will be paid for their time, that they are there on company time.

These meetings lasted approximately an hour or an hour and a half, and it is not denied that the company paid them for that time.

As a matter of fact, at one stage he particularly says that these representatives, these committee men, will conduct their Kohler Workers' Association business in the plant during working hours, and he ends up and says, "Because after all, this Kohler Workers' Association is company business."

At these meetings, time keepers, office employees and other key men passed around pencils and ballots and the Board has a copy of that ballot, -- rather I should have said application blanks instead of ballots, -- application cards.

He picks up one of these application cards and says, "Now, you read it with me." He reads it with them and explains it to them.

These application cards have a space for the name of the individual and the clock number.

Many of these men at these meetings did not sign these cards. They either said that they wanted to think it over, or some of them flatly refused and said that they did not think that the Kohler Workers' Association was -- that they did not believe in the Kohler Workers' Association.

Subsequent to those meetings, a day or so after, foremen and superintendents, as the affidavits will show you, went around in the shop, urging the men to join this company union. The affidavits will show you where they were threatened, where they were told if they knew what was good for them they would join, where they were told that when a layoff occurs, "We know whom we are going to pick first."

The counter affidavits by the Kohler Company state in many instances that these superintendents and foremen did not say that to the employees, but that common workers were picked from the Kohler Workers' Association, and all that the foremen or superintendents did was ask these men to come into an office and there be met by these ordinary workers of the association, and there asked to join this company union.

Be that as it may, we know that, together with these

speeches made by Walter Kohler, together with his presence there, together with the superintendents being present, and the entire history, that there was coercion there on the part of the company.

The membership of the union on October 28th, I believe, was 1865 members. At that time a strike vote was taken by the organization, as far back as then, ---and 1865 men voted for that strike. The testimony shows that these men were carefully counted, they were carefully discerned by those there as being members of the Kohler Company payroll, that they had men of the various departments standing at the door, they counted these men and knew who these men were, and they were legitimate employees.

Subsequent to that time, because of these actions on the part of the company union, some men dropped out, and this constant combat existed between the company union and the American Federation of Labor.

We claim that on the basis of the fact that Mr. Kohler was present at these meetings and made four speeches in one day, took this active part as he did in these meetings, the presence of the superintendents, the foremen, the asking of the men to sign up for the company union in their presence, and then the intimidation of these foremen and superintendents after these men had failed to sign; all of which is clearly a violation of section 7 (a) and as held in the recent decision

of this Honorable Body, the Houde decision.

As Mr. Ohl has pointed out to you also, at various times these men tried to approach the Kohler Company with a view to bargaining, but they utterly failed.

There is one important item that Mr. Ohl forgot -- possibly he thought one of us would touch on that. And that is that as far back as October 11, 1933, these men appealed to the National Labor Board, the old National Labor Board at that time of which Mr. William Green was a member, and the matter was turned over to Dr. Fitzpatrick who was at that time State NLR.A. Administrator. His duties were not so definite at that time, but he took charge of the case.

There was a meeting held at his office attended by Paul Smith, Mr. Ohl, and some of these men, and Mr. Chase and some unknown individual, some say it is Thortelson and some say Mr. Ireland of the Kohler Company. At that meeting Mr. Fitzpatrick proposed an election, and Mr. Fitzpatrick claims that request was turned down, and nothing was derived from that particular meeting.

Also, at one of the previous conferences, Mr. Ohl also requested an election, and the minutes will show you that that was requested by him. He asked that the Kohler Company and the employees petition jointly to whatever board had charge at that time for an election.

After Herbert Kohler and Mr. Chase and other associates

had conference for about an hour and a quarter, they came back and declined that request.

In stating these things, I just want to state to the board this fact, that statements will be made here by the other side that this thing came all of a sudden, this strike, that it was unwarranted and that they knew nothing about it. I want to point out to this board that it was the Federal Labor Union who from the very start, from October 11th on, in requesting Dr. Fitzpatrick for this election and in writing that to the National Labor Board, and all the way through up to Chicago, where they accepted the Regional Labor Board proposal in full, and their action asking for this meeting, and their cooperation at all times, is indicative of the fact that they are the ones who really wanted to live up to the law, and they are the ones who wanted this thing brought to a speedy settlement, and it also brings out the fact that the action of these men in going on strike on July 16th was something that was warranted. They were at their rope's end. That is the only remedy that they had.

We ask in consideration of these men out there, who, because of their sincere belief in their rights, were deprived of their jobs, where they were laid off on or about August 15th and some on August 15th, August 22nd and September 15th, are men with large families, who are in need, and these men have been out from that time up to this time.

Some of the men here we admit were retained in their employment up to the time of the strike, but these four or five hundred men will be deprived of a livelihood unless the board consider them as employees. Mr. Padway will go more into the evidence on that point and point out to the board where, by Walter Kohler's admissions, these men are still on the payroll, where by a system of insurance, these men are still kept on the payroll and should be recognized as employees of the Kohler Company.

I thank you.

Mr. Padway: I would like Mr. Smith to read a statement into the record of the position of the American Federation of Labor on the appearance here of the company union. Mr. Paul Smith is the personal representative of Mr. Green.

Mr. Smith: If the Board please; In order that we may not be accused of any discourtesies to the board, and our government, I would like for the position of the membership of Federal Union No. 18545 and the American Federation of Labor, with regard to the so-called Kohler Workers' Association, termed a Company Union, to get the situation clear to this Honorable Board. As a representative of Mr. Green, I desire to enter this statement:

Representatives of the American Federation of Labor and the Wisconsin State Federation of Labor requested the National Labor Relations Board, through Mr. Watts, its special counsel,

now hearing the Kohler controversy, to refuse the Kohler Workers' Association, a company dominated organization, the right to participate in the hearing.

It was the Kohler employees affiliated with the Federal Union 18545, A. F. of L., who formally complained against the Kohler Company for violations of Sec. 7 (a), and denial of rights under said section. Upon this complaint against the company, the Board directed a hearing. The Kohler Company was directed to respond and it has appeared.

The American Federation of Labor union does not recognize the Kohler Workers' Association as a party to this controversy. Nor was the American Federation of Labor union informed in advance of the hearing that the "company" union will be a party or permitted to participate.

The position of the American Federation of Labor as directed by me in the present controversy, is that the Federal Labor Union 18545 as an affiliate of the American Federation of Labor can not participate in a proceeding with an illegally conceived organization dominated by the company, and set up to defy the law and defeat the lawful rights of workers.

For that reason the Board has been requested to strike all testimony given by and on behalf of the Kohler Workers' Association, and exclude it from the participation in this hearing.

Our position is simply this: We have filed no complaint

against the Kohler Workers' Association as such. Our complaint is against the Kohler Company for among other things forming a company union in violation of the law and refusing to negotiate with us in good faith. Consequently we appealed to the national Labor Relations Board for a hearing and so far as we know are the only parties who have filed a complaint with the Board against the Kohler Company.

Mr. Butler: Do I understand from Mr. Ohl's statement that you are asking here that the Board dissolve the Kohler Workers' Association?

Mr. Padway: I said I would argue that proposition.

Mr. Butler: You contend that you request that?

Chairman Garrison: Do you wish a ruling on that request on that request now?

Mr. Padway: I do not just ask it now. I also state for the record that the speaker now is Joseph A. Padway, general counsel for the Wisconsin State Federation of Labor, appearing for the Wisconsin State Federation of Labor, and also for the local union interested in this matter and a party to the controversy, and also appearing by special appointment of William Green, President of the American Federation of Labor, as special counsel in this matter in representing the American Federation of Labor.

To direct the attention of the Board to that which Mr. Smith just read into the record, may I say that the position we

take is in the nature of a proceeding where a plaintiff brings a cause of action against a defendant, and that there is a third party who feels that they have an interest in the matter, and wishes to be interpleaded. We feel at least that if that third party had any interest, that it first should have been disclosed before we went to the hearing; that an application for interpleader may have been made, and then the Board would have had an opportunity to hear arguments of both the complainants and defendant, whether the third party should rightly be in the proceeding.

If it was the intention of the third party to be here as a means of getting at all of the facts, and all of the arguments of the interested parties, at least we feel that that could have been prevented by a petition or some information or notification to us, because there will arise instances -- I want to say to this board not particularly in this case, but there will arise instances where perhaps one party or the other will desire to withdraw from a controversy when a third party petitions for an interpleader, and that interpleader is granted.

I do not know what would have happened here, what position we would have taken, had we been advised that when we were to attend this hearing at Sheboygan on Thursday morning of last week, that there would be there the company union and its counsel and representation to subpoena witnesses. If these same witnesses came in to testify on behalf of the company, or the

company brought them in and presented the picture of the company union to show its independence, its voluntary set-up as a part of the case, that would all be very well and we would have no objection, but its entry as a party -at a time when we have presented a controversy not with it, but with the employer, not knowing it is going to be here, "we feel that the better practice would have been to have informed us of it in advance, so that we would have taken a definite position.

And when we saw the unusual activity of this company union and its appearance as a party in that formal manner, we could not do otherwise than simply to withdraw from the proceeding at the time being, refuse to cross examine those witnesses, but we remained in the room out of respect for Mr. Watts, who was sent there by you, and out of respect for the Board.

Chairman Garrison: Well now, Mr. Padway, of course, these proceedings are not in the nature of a lawsuit.

Mr. Padway: Possibly not.

Chairman Garrison: It is rather in the nature of an inquiry by this board of a factual situation in order that the board can determine what its duty is under the statute. In that sense there are no parties to the proceeding in the ordinary sense of a lawsuit. It is not a case of an ordinary plaintiff and an ordinary defendant and interpleading parties. Those technicalities are really not altogether applicable to this type of proceeding. What this board is after is to get all

of the facts that are in any way pertinent to the question before it. If the testimony of these people who represent the company union, bears on issues of facts before the Board, I do not see upon what ground the Board could strike it out. Really all that we wish to strike out is matter that is irrelevant or immaterial. I take it that this testimony has some bearing upon the situation.

After all, we could not very well say in advance of hearing all of the testimony, that this particular organization was an illegal organization. That remains to be ascertained.

Mr. Padway: Yes, sir, but I rather think that the board will have to consider the question of parties. I think more or less, even though it is a procedure before an administrative body, and perhaps the strict rules that prevail in a court of law in respect to pleading do not apply, it will be necessary from time to time to consider such a situation, and this may illustrate it in this case. Other cases may illustrate it rather strongly and perhaps more forcibly than in this case, but I think there will have to be some definite ascertainment of who are the parties, in order to get at the real issues of the case.

The Chairman: The Board is glad to get suggestions, because of course we are feeling our way procedurally. This is a new sort of a thing. But I just want to get your thought.

Suppose we were to have a hearing in a case in which a par

ticular group of workers wanted us to order an election, and we invite the company, and at the hearing there turns up another group of workers and they say, "We are the largest group of workers in the company, it is quite unnecessary to have an election, and we would like to tell you why." Should we not hear them?

Mr. Padawy: Yes, absolutely; but, Dean Garrison, does there not occur this -- that we are the complainants? There must be a complainant, somebody brings the controversy at least before an administrative body, and the person who brings the complaint ought to be able to withdraw it. We may want to withdraw it. We have no controversy with the company union, nor are we advised that it has brought a complaint, nor that even that it has asked to participate in the proceedings. Ought we not at least, as a matter of procedure, be apprized that here is a company union that does claim some interest in this matter, and wishes to appear and be represented? And we want you to know that and proceed to hear all of the facts that bear on the subject.

It may be very possible -- I do not say we would have in this case -- but it is quite likely whether we would have considered whether or not we would have withdrawn the complaint.

Chairman Garrison: I can see that point, but the difficulty arises in all of these cases, and it is a very real one, and that is that very frequently the board in advance of a hearing is

quite ignorant of the facts.' The things develop, as it were, at the hearing, and people come in. You cannot run it quite the way you do a formal lawsuit. In the interests of expedition, which is all important in these cases, if we were to get technical and adjourn a hearing in order to permit withdrawals and consideration of those things, I do not know but what we would be doing more harm than good. I am very intent on getting these things cleaned up.

Mr. Padway: May I say that the position we have taken shall not be construed and is not intended as criticism in any way, but rather as a constructive suggestion of a proposition that arose, and we were actually confronted with, and in which we took this position as outlined by Mr. Smith.

Chairman:Garrison: I am very glad to have your suggestion.

Mr. Padway: Mr. Chairman, and members of the Board:

There are after all two important propositions that we are to establish before this board, and over which we believe it has jurisdiction.

One is that there had been a violation of section 7 (a) with respect to the representation and with respect to self-organization; and

Paragraph second, that by virtue of these violations, in order to set at rest certain controversies in dispute, an election be held.

These are the important features of this controversy

before this board.

The evidence bearing upon those points, - s has been briefly covered by Mr. Ohl and Mr. Rabinovitz, and which I may in the course of my argument, have to reiterate from time to time, is very definite in this case. I do not want to make extravagant statements, but I may make the statement with confidence, as it comes as made by the company's witnesses, and particularly by the President of the Company who was the chief spokesman and actor in this entire drama.

Now, let us forget whether the members of the Kohler Company, the workers, came to the American Federation of Labor and asked the American Federation of Labor to organize them, and we may overlook for the time being whether they had grievances or whether they did not have grievances, whether this was a happy family or was not a happy family. Nevertheless, employees found their way into the American Federation of Labor and did ask for a charter and did secure a charter and became a regularly and duly affiliated body of the American Federation of Labor.

The evidence indicates conclusively by witnesses of the respondent that in order to offset unionization and activities of the American Federation of Labor, whether these were by representatives of the American Federation of labor, or by the men, the workers of the Kohler Company applying to the A.F. of L., in order to offset those activities, instantly there was

set in motion this desire and this propaganda for a company union.

It was done in a rather subtle manner. The first thing that was done in this particular controversy or in this method was to circulate a petition, the petition of August 25, 1933. The petition reads -- it is a very simple petition, and it read that "We, the workers of the Kohler Company" -- I am giving it in substance, not in verbatim, but I have it here and I can give it to you verbatim.

"We, the undersigned employees of the Kohler Company are satisfied with labor policies of the company during the depression, and we hereby give our unqualified support to the management of the company at the present time."

The only evidence of anyone writing that petition is of a Mr. Ramel, a foreman. He was inquired of about it. He said that he wrote it in his own hand, he sent it in to the offices of the company through the timekeeper, and then said, "If the men wish to sign it, let them sign it."

A sort of a declaration that our manager is a very fine gentleman, and our boss is a good boss, and we are being well treated.

It reminds me very much of the sort of thing that happened when the immigrants first came to this country, and they wanted to teach them to talk English in the steel mills and the English they were taught was, "My boss is a good boss," "My boss is a

fine man, and they repeated that, and that is the way that they were taught their English.

It seems to me that this petition is of the same kind.

On August 25th, they say there was nothing discussed of a company union or anything about it, and we find a petition, -- a petition of what? That our boss is a great man and has treated us nicely during the depression.

That is harmless in itself. If they wished to pin a medal on their employer, there is no objection to that, but I say to you that that was a preliminary for the employees to set in motion this company union, and that the company was a party to it, because its foreman and its chief wrote this petition, and they secured 600 names, and the bad part about it is this, that of these 600 names, hardly a single one except a few knew what it was going to lead to. The men themselves really believed that this was only a petition or only a statement of glorification of the company and its President.

Well, that was August 25th, soon after the National Industrial Recovery Act went into force, and it was consistent with a plan, as we will show by evidence of the witnesses of the respondent here, to conform to that advice that was being circulated at the time, distributed in circulars, and constitutions and by-laws by commerce associations and manufacturers associations throughout the country, that was deluging these large employers with this literature telling them what

to do.

The first instruction was "Get your employees together and tell them they need not join an American Federation of Labor Union, because you can select your own organization," and tell them their rights of self-organization, -- not an affirmative argument, but a negative way that you are not obliged to join any organization.

And if the Board please, there is in the record here a mimeographed form which was submitted to Mr. Watts, exhibit No. 113, in which that was posted throughout the company, telling them, "You need not join a union." It contained a series of questions such as "Must I join a union in order to hold my job or to get a better job," and the answer, "No." And another question, "Must I join a union to get the benefits of the N.R.A.?" And the answer "No."

And so forth, and so on.

That was posted throughout the company, this consistent plan, -- and by the way this may not perhaps be in the evidence, although I alluded to it and asked the questions. I have seen so many of those in the exact forms, simply the name substituted, that you can see the consistent effort on the part of the employers throughout the country to start in with this campaign of trying to defeat the rights of self-organization by first of all getting the employees in a frame of mind which indicated or communicated to them that they did not have to or should not

join an organization of their own choice."

Then came this all of a sudden case, this rather instant stunt that you have perhaps had called to your attention before -- I know that Mr. Willis has, that somewhere out of a clear sky, somebody gets the bright idea overnight that it would be a fine idea to have our own organization in our own plant, 2600 or 2700 employees never thought of an organization for collective bargaining, but they suddenly get the bright idea that they ought to have a company union or some organization. They already had an organization for fraternal benefit, they already had an organization for insurance benefits, they already had an organization for sick benefit, but all of a sudden one is formed, and for what? To collectively bargain. And the evidence shows that this company had a standing policy for forty years of giving to its employees, having them come in in groups or singly, the opportunity to present their grievances to the employers, and the employer would listen to them; in other words, they were to form an organization to do no different or carry on no other policy, or to give them no extra rights than were given to them, as it is claimed, for forty years.

This bright idea was conceived by the wrong people. It was not conceived by the employees, it was conceived by the chief chemist of the company, a man evidently of some standing. It was conceived by a man named Wandron, a foreman, and one other.

And so these men meet and call on Mr. Kohler, the President of the company, just when he is about ready to go home, and tired and weary, and they said, "We have a bright idea, we want to form a company union." He says, "It is a good idea. Talked to Mr. Thortleson."

Thortelson is a very intelligent man, a teacher at a college, a professor at the University of Wisconsin or some other University. And Thortelson had received these propositions, and Mr. Kohler said, "Yes, Thortelson has a lot of good information about this, talk to him." And Kohler goes home to supper.

Chairman Garrison: Was Thortelson an employee of the company at this time?

Mr. Padway: Yes, sir. He has been there a few years as assistant to the President. And Mr. Thortelson, if you please, sits down there, and, mind you, this is after dusk on September 7th, and I want to bring out this fact to this Honorable Board, that on September 6th at dusk when this proposition is first broached, before this company, it is agreed that there will be a meeting on September 7th with a select committee of 81 persons, and where this matter will be taken up.

The President of the Company is on hand in the morning at 8:00 o'clock in the morning there in the basement of the offices, where the group of 81, the select squad was there to listen to this proposition. And, if you please, there are membership cards already in existence, beautifully set up, and

placed in a manner so that it was given particular attention that they may not be violating section 7-A -- "You are free to join or not to join as you please."

All of this innocent machinery -- innocent, as they claim -- is all set up and manufactured and launched, if you please, with one little conference at dusk. And in the morning, how does this machinery go through? It shows that M. Kohler came there in the morning and spoke to this committee of 80 people. He said, "The employees asked if I would speak to the employees about this matter." The President is the spokesman and explained the company union -- anew idea.

And so the President goes there at 12:00 o'clock, the President goes there again at 2:40 o'clock, and the President goes there again at 8:00 o'clock at night, -- three shifts.

I want to say that it is remarkable. I do not want to be facetious, but I say that that employer in pinning that medal of August 20th, did well, because what employer would go four times in one day to deliver these speeches to his employees. It certainly shows an employer of unusual activity, graciousness, and desire to do what they wanted him to do. But the employer came there, as I have stated.

But they were not smart enough to word those speeches so that at least they would conceal that which they were doing, and there never was a clearer or a more brazen case presented to the board of unusual activity on the part of an employer of

launching or originating a company union and the method or manner to get them in, and the course that was presented, and the constitution that was presented to them.

If you please, here are the speeches that were filed by the respondent as exhibits. The Lord knows why they filed them. We could not remember all of it, and testified merely to the substance of it. No one ever thought and we did not know -- I say frankly there is not a single man in this room -- I did not know -- that these speeches said actually that they would pay the organization expenses and continue to pay them. But these are the speeches. These are in evidence.

There is one delivered here September 7th, and in this speech -- we do not know the particular hour, although we had copies of all of the hours:

"Last night a group of men came to see me about organizing a workers' association." This is the President speaking, and by the way, the picture has been presented to you. Here are these employees in this room, called in, four or five or six hundred at a time. They are told there is going to be an important speaker, but they were not told what they were going to be there for, or what that important speaker would say. The very first speaker, lo and behold, is their President, -- the President upon whom they had pinned the medal for graciousness and so forth during the depression.

So they find the speaker there saying;

"Last night a group of men came to see me about organizing a workers' association within the plant. They presented a petition which was signed by over 600 men. This petition was voluntarily signed, and was addressed to the company stating that they were satisfied with the policies of the company. For many years this company has worked in friendly relations with the men in the organization. We are not all satisfied, and there are times when problems came that needed settlement, and these were always settled to the satisfaction of everyone."

The fact is that they were not settled to the satisfaction of everyone, as the next paragraph will disclose. There is an inconsistency even in that.

Continuing:

"When there is a difference of opinion there are always two sides where a decision must be made one way or the other, and sometimes one party was not satisfied."

At least we have the confession that they are not always satisfactorily adjusted.

He continues:

"The group of men that came to see me yesterday about starting an association within the factory, had prepared a bulletin which will go out into the factory, and this morning we had a meeting in the basement of the general office. This is the bulletin."

And the bulletin says, that, "You had better get under

the wire if you want to be a member of this wonderful organization."

Then the speech goes on:

"I am the oldest employee in point of service of anyone in this institution."

It is rather a condescension for him, the President of the company, at \$40,000 a year, but in speaking to the employees he says, "I am the oldest employee in the company."

He goes on further to say, "I have been in the company longer than anyone of those employed now, so I am talking from a background of experience. We have tried to bring about certain happy relations which have existed for many years."

That "happy relations" phrase or "happy family" phrase I think could not be copyrighted, because it has been used so frequently by all employers throughout the country who wish to set up these organizations.

He goes on further:

"You have had only a touch of the depression. Orders were so small that business could have been carried on, if we had looked at it from a purely business standpoint, by employing those needed to fill orders. This could have been done with a thousand men and 1000 to 1500 men would have been released. This, however, was not done. This morning, a group of 80 men adopted a constitution and by-laws under which the worker

Association will organize. This organization will work only during working hours, and will be paid at their regular rate of pay or the piece work rate. The expenses of the organization will be taken care of by the company, as this organization will also be of benefit to the company."

At least there is some virtue and consistency in that, and we admire the frankness of the statement that the organization will be of benefit to the company.

This speech alone, I think, is sufficient to come directly to the Houde case, and we can apply the facts of this case directly to the Houde case.

The Company organization was dominated by the company and fostered by the company, and we show that such an organization came into existence and is in existence at the present time.

I do not want to leave it merely with that one speech. Here is another speech that was made at noon. Here again they are exhorted to join the company union.

There is a third speech here in which we find this language: "800 men signed a petition and said they wanted to continue working with this company as they had in the past. This was a voluntary petition. A committee of three came to see me last night and asked if we would consider organization of a shop workers' association."

That has been done in many instance. I emphasize the

word "we." In other words, the employees in key positions came to the employer and asked the employer whether he would consider organization of a shop workers association.

He tells them that a committee of the workers came to see him last night and brought up the question of a shop organization representative of the men in the industry and that he thought it was a very good thing to do and had told them that the company would be glad to cooperate in any practical way.

The speech goes on and directs attention to the charter, which was the constitution, and he states to the employees this rather magnanimous provision, that the charter provides that no entrance fee or dues shall be charged for members of the association.

As one witness said, I think it was the gentleman here, the chairman of the organization, he said he went to the meeting, and I asked him, "Why did you go? Did you know why you were going there?" And he said, "I will go and do anything that I paid for. I was being paid for it." That is his frank statement, and so he went there.

Carrying that farther, why not join an organization of the company where there were no dues and their time was being paid for?

That was done in this instance, and there was another clause which probably should have been put in there, -- the

employer suggesting clauses that should go in, and that is that their time would be paid for because they were working on the business of the company.

If we took the company at its word, they have given the stamp and character to this organization, a company organization, promoted to foster the business of the company, and those participating in it were working for the interest of the company. That is their own contention and their own statement.

And Mr. Kohler told them in his speech that their meetings would be held in the day time, and the men would be paid at their regular rate of pay, and so forth. And he said, "It is proper that you should know that, because you will be on company business."

He says, "Applications have been passed to you," --

Gentlemen of the board, it needs no graphic description of the picture that when the employer, who is so active on this day, who appears before these several hundred employees in a hall employees who have already asked to sign this petition, how wonderful the employer has been to them during the depression, and then he is the only speaker, -- there is a short introduction by some chairman, a temporary chairman, but he is the only speaker and he prefaces this company organization with a wail of tears, and the greatness and the goodness that he has displayed toward his employees, and then he says to them: "There are cards here and they will be passed around in the hall. There are pencils

here and those who wish may sign."

Sure, he had legal advice and he said, "You are free to join or not to join as you please."

But here they are in this room, confronted by the employer who has laid open his heart to them, so to speak about his troubles and his business, and here they are called together without any information in advance, - a sort of a flying squadron that has been organized in the morning, people are stationed around the halls with pencil and paper and they are asked to sign while he is still present in that room.

The psychology of it, the impression that it makes when the boss stands there, and in his presence the cards are being circulated and the pencils are there and the boss says, "I wish you to join. You may do so or not do so as you please, but I wish you to join," -- in every one of those speeches, there is that subtle poison which we find injected so openly, "Who knows where we will be pretty soon?"

And that "I wish to continue, and I wish you to cooperate."

These men are not fools. That is equivalent to a threat that they will close down entirely unless they join this organization.

And he says, "You all have your applications, you can sign and drop it in the ballot box if you wish. You do not have to sign it here. You can wait until tomorrow if you wish. You do not have to sign at all. It is purely voluntary on your part."

but I am going over this application with you paragraph by paragraph," and -- this is not the speech in which that occurs, but he tells them that all of the expenses will be maintained by the company and then says, "It is not going to be against any man who does not want to sign this."

But he continues, "There is no assurance as to how long the company will keep going. Cooperation is decidedly essential in any program that is carried out. It is understood that the men who do not sign will have no vote in the procedure here today."

And on cross examination Mr. Kohler frankly admitted that he wanted them to join, he wished they would join, and he wanted this organization to come into existence.

The situation that was presented here-- by the way. Then to make sure that the men will come in there fast enough, and there won't be any unusual delay of too much thinking, because a number of them refused, there was a bulletin posted, and the bulletin said that they should sign the application card before 8:30 Tuesday morning, September 12th.

Of course, this certainly was something to be very very eager for, to be come a charter member of this organization, particularly when we look at the constitution.

It is stated in an affidavit that was filed here after the hearings closed, and in this affidavit it was stated that Mr. Thortelson presented the constitution. He spoke over

with them what kind of a constitution they should have, and somewhere in the Tanway decision, if I recall the language correctly, the agreement there made between the employer and employee merely for a closed shop with a company union was termed an "oddity" in the analysis of the labor relations.

This constitution is not an Argosy -- this is a travesty. It seems to me that to hand out this constitution -- here is this man just below the President who is supposed to be a key man. I think it was said that he was drawing \$15,000 a year -- I don't remember -- but a very high salaried man, and in a key position, he hands them a constitution if you please which provides for nothing, -- nothing at all except this -- that they may have an organization known as the Kohler Workers Association, that it will provide opportunity for discussion of the wages, complaints, safety plans, working conditions, hours, grievances, or any other matters affecting the progress, and well being, that they can come to the employer. And they sent up a big organization, four pages, -- four pages of it, how these elections will be conducted. It is a big machine, with no gasoline, no electricity and no steam, but a big powerful machine set-up of how they have elections and sub-elections and general committees and sub-committees, and all of this machine is propelled for what? To do the same thing that the employer said he did 40 years without his constitution, -- namely, to meet any group of

employees that may come in there. There is no set-up for arbitration if there is a difference.

I asked one of the important men in a key position, "What will you do under your constitution in the event that you cannot agree with your employer on matters in controversy?" And he said, "The only thing you can do is to strike."

Mr. Kohler says that that is of course sacrilegious to strike. He thinks it was terrible to have a strike against this plant under these circumstances, but his own man who was a party to his constitution said that that was all that was left to do.

This all this constitution provides except that you will have to pay no dues, and you can come into this organization without having to pay anything at all.

Analyze this constitution. It is part of the record of the hearing, see what it is, and therefore I say it is a travesty. If it is true that these men were not in league with the company and they came to Thortelson and asked him, said, "Help us with the constitution to found this organization," there were two things that he could have done. You could either have said, "I cannot help you," or else he should have said, that he could help them and give them something worth while. I say for shame for a man to take advantage of employees and give them a flimsy rotten piece of a constitution like this.

I have seen worse constitutions, worse in the affirmative

provisions that they contained, but those at least are honestly set forth. They stare and glare at you, and you have a fight with them. But here is something innocent on its face, and which gives nothing. And when asked on the stand, "Is there anything on there that you did not have before, he said, "No." Not a single thing they did not have before.

What happened? Mr. Ohl and other workers on the association and non-workers affiliated with the A. F. of L., were solicited by the employees of the Kohler Company to represent them in matters of collective bargaining. They were elected very early last year, September, August or some time in there -- the dates are part of the record.

Mr. Rabinovitz: July.

Mr. Padway: July. And then they presented themselves to Mr. Kohler or at the Kohler plant for those purposes in an effort at collective bargaining. They stated that they represented a majority of the employees.

We have on file here evidence which shows that there were members of the organization to the number of 1365. I think it will be conceded that that is a majority of the Kohler Company employees as of any date, August 15th or any date subsequent to that. But if it be contended that 1365 is not a majority, then there was a meeting held, and men stationed at the door, -- at various doors of the different departments, men who knew the employees that came in. It was only for Kohler employees, and

1867 employees came to this hall at that meeting, one of the largest halls which they could get there, and they voted, and voted unanimously to elect this committee

And so we had a majority of, and informed the company that we represented the majority. The company did not question the number at the time, specifically who or how many we represent, but there is the same argument as in the Houde case; "We will deal with you and we will deal with others and the company unions and individuals."

Perhaps I am putting it a little too favorably to the company to say "Deal." I would rather say "Receive you." But they probably used the word "deal."

And the bargaining committee went there and called. I wish you could read, and probably you will read -- because they are in evidence, -- how those conferences were conducted, because there is a stenographic transcript of them here. The company, instead of saying whether it will or will not do this or that, or make its counter-proposal, made counter-proposals of the order, "That has been our policy," and "This we won't do," and "This is our policy." The most evasive, the most senemic sort of arguments and answers to defeat plain simple propositions brought by working men who are unaccustomed probably to presenting matters along evasive lines, who came in there bluntly and said, "Our employees want this and that."

The first conferences were purely matters of collective

bargaining as to who shall be the representative. And there are a series of evasive answers. We get nothing out of the company through this bargaining committee that made them feel that they were welcome, or made them feel that they were going to get anywhere.

Then came the time after those sessions as late as July 6th to submit definite proposals. They were no longer going to argue on the matters pertaining to representation. They thought maybe they could do something by submitting definite proposals with respect to hours, wages and working conditions.

Fourteen proposals were submitted. The answer is on file. I am always afraid of the number 14, since the famous Fourteen points of President Wilson did not work out so well.

Probably they would have been more successful if they had used the number 13 or submitted 15 points, but anyway they came there with 14 points, and presented them, and the answer is there, and while on the face of it it looks as if it was an apparent effort to bargain, anyone with intelligence will sense that all that that was intended was to receive them and listen and to do that which has been forcefully described in the Houde decision. But there was never an intention to arrive at an agreement, and never even an intention to bargain or consult or negotiate in good faith.

Mr. Kohler and the others of the company are continually asserting, "Why didn't you come back after my answer of the

lth to your fourteen points?" He did not ask in that answer to come back, but he said, "We were still open for negotiations."

What use was there to go back? What could be accomplished when the committee sensed, five or six people, working men, and they were presented with this answer, and they could read that they were ultimatums.

Some said that Mr. Kohler said, "I will give you my final answer." He denies that, but giving him the benefit of the doubt, and taking the communication on its face, and his conduct, Mr. Ohl at that time leaving the conference had this to say -- and this is not with any thought or consideration or consultation, but the immediate reaction to that which transpired and went on in that room, and that reaction that was in Mr. Ohl's heart and in his breast and in the breast of the others that were there, was made known to Mr. Kohler as they were leaving. Mr. Ohl says, "What is your reaction to paragraph 14?" Mr. Kohler says, "We will make a statement of our policy on it. We cannot in a written agreement."

Mr. Ohl said, "We do not want a statement of policies at all. We want to know what you are willing to agree to. If you say that is your policy and we agree, that is one matter, but merely stating what has been the policy in the past is not collective bargaining."

Mr. Kohler answered, "Well, that is a matter of interpre-

tation. And Mr. Ohl asked, "Are we wait for the letter telling us what the policy is?" And Mr. Kohler answered, "There will have to be a policy." And so on all the way through.

We submitted in those 14 points some piece rates. The day rate was one thing, and the piece rate was 30 per cent higher than the day rate. And I will read to you in a moment what Mr. Kohler said he agreed to. He did not even agree to that, but what he did say was this: "We have always paid the overtime that you have there set forth, but there is no necessity for discussion or dissent?" And with respect to the 30 per cent you ask he said, "Our employees will always earn at the piece rates more than enough to cover the 30 per cent you ask." That was the answer, and not an agreement, and as I will show in a moment.

The immediate reaction of Mr. Ohl and the others that were there, and they told it to Mr. Kohler right then and there, "You have not bargained."

(Reading from Mr. Ohl's statement.)

I wonder if anything perhaps in Layman's language -- not language of the legal mind or of the trained advocate, but I wonder if anything could so clearly approximate the decision in the Houde case as written by this board, than this language of Mr. Ohl's and this statement to Mr. Kohler that his conduct, that his reception and method and manner of talking to them and listening to them, -- as that which Mr. Ohl has said

here.

Well, there was no use. There came a time when even the patience of Job was taxed. This had been going on, as stated by Mr. Rabinovitz, since August and September 1933, and here it is July 6, 1934. Three conferences have been had with representatives of the employers -- four -- and nowhere, still they were nowhere -- out in the wilderness.

What else was there to do? To resort to the only weapon left, and that was to strike.

I think this far I have established in my argument that Section 7 (a) was violated because the organization, the Kohler Workers' Association was brought into being to beat the American Federation of Labor Organization that was going on, and by the way two witnesses who testified for the Kohler Company said in effect that there was a race on as to who would get the representation, the A. F. of L. Union or the Company Union. It may not be in exactly that language. That may have been the leading language suggested by me in my question, but I believe you will find in the testimony of Mr. Ireland and another witness that they heard there was a union organizing, and the idea was to see whether the company union or the A. F. of L. union could get organized and get the representation first.

I think we have established that it was company-dominated; I think we have established that they formed or participated in the adoption of a charter or constitution as they call it,

and I think that you will be convinced from a reading of their own affidavits and the evidence in this action that that is so. I say it is peculiarly fortunate that evidence on these points of the complainant may be disregarded and the evidence of the defendant may be taken.

There is part of this record, and it has been referred to in the affidavits, this proposition. After the strike was called, trouble started.

We have not gone into that issue. We do not think it was a matter for the Board, in so far as the decision on the violations of Section 7(a) were concerned. If it were a matter of conciliation or mediation, I presume those matters could be referred to.

However, a number of affidavits have been filed, given to us yesterday, dealing with that subject. Now, I move they be stricken from the record or disregarded, and if they are not stricken from the record or disregarded, then because that issue was not raised during the trial--it was referred to in the petition, but no proof was offered on it--we enter a general and specific denial to all of the affidavits that are on file.

We have with us counter-affidavits--I will not call them counter-affidavits, because they were prepared in advance, but we have affidavits setting forth the conduct in this affray and shooting, and all that. If the Board will consider that as the material element in this case, we wish to be afforded an opportunity to meet those affidavits, although in my humble opinion I don't see where that is an issue in the case.

Chairman Garrison: It seems to the Board also that the Board is concerned only with the question of Section 7(a) and not with questions of what happened during the strike, except, though, as it may bear upon the propriety of the reinstatement of certain specific individuals. Only to that extent would

the question of what occurred in the strike be pertinent to the Board.

Mr. Butler: I think Mr. Padway has rather overstated the scope of these affidavits. They were primarily a record of the Habinovitz participation. I don't think there was any purpose in going into the history, except so far as it was necessary to bring out facts material to the matters the Board will be interested in.

Mr. Padway: After these proceedings were had, and the strike was in progress, we were called--

Chairman Garrison: Just to clear up that point of the affidavits while we are on it; as the Board pointed out, we would consider as relevant to this issue only those affidavits which had to do with the propriety of the reinstatement of certain individuals. For example, if this Board should find that certain individuals had been discharged in violation of Section 7(a), its practice has been in such cases to order their reinstatement unless they have been guilty of unlawful acts which in the judgment of the Board would disqualify them from further employment. To the extent those affidavits may bear upon such a matter as that, they would be pertinent; otherwise they would not be, and the Board would not consider them. There I think we shall have to leave it.

Mr. Padway: I will mention some other affidavits later. We are going to make further objections to them, but I will

come to that in the course of time.

Now, Mr. Chairman, and members of the Board, Mr. Smith states there were affidavits here that men participated in rioting and in unlawful activities and a strike. I don't know what will be the ruling of this Board. The ruling of the old Board was that an employer was not obliged to reinstate or re-hire those guilty of such conduct. We will assume that is the ruling yet until reversed by this Board.

We deny in every case unlawful activities or unlawful acts of conduct on the part of any employee who is charged with them. These affidavits were presented to us on Friday. We are not complaining about the delay, except we want an opportunity to deny these matters, and either the Board can go then into the issue of fact as to each employee, here or in Chicago or elsewhere, but I would not like the Board to make a ruling on the one-sided affidavits presented Friday, charging employees with unlawful conduct, without opportunity for those employees to be heard on the conduct charges.

Chairman Garrison: Do these affidavits name specific individuals?

Mr. Butler: I think in some cases. I think the affidavits indicate not only the names of specific people, but contain a general charge of the character of the picketing, and showing it was a matter of mob picketing from start to finish, and unlawful picketing from start to finish, the sort of thing

that kept the employees in a state of siege in the plant, kept people from going in there, and matters of that kind, and of course we must assume it is a very pertinent consideration with this Board as to whether anybody is eligible to cast a vote in an election or eligible for reinstatement who is in the situation as presented here, so violent a lawbreaker.

Mr. Padway: May it please the Board, after the strike was in progress for some short time, and after these troubles occurred on the picket line in the village, the shootings referred to, which did take place, the Chicago Regional Labor Board intervened and endeavored to collectively bargain with us or get us down to collective bargaining.

I think it is pertinent to this inquiry, at least as a manifestation of good faith on the part of the company in its so-called efforts to collective bargaining with Mr. Ohl and his committee at that time, to observe what the attitude was before the Chicago Regional Labor Board, because here were private conferees, a representative not of the employer and the employee, but here was an impartial board that was there to witness our activities, and I am within bounds in referring to them, because long and elaborate affidavits are set up here by Mr. Kohler, and they are now in the record, in which he explains these activities in Chicago, and tells how he tried in good faith at Chicago to come to some terms on collective bargaining, and how recalcitrant the employees were.

Up to that point the employees' demands of the collective bargaining committee were few. Fourteen points. They were specific. They set forth they wanted a wage increase in such and such a place. If there were to be a reduction of hours, they were to be reduced such and such amount.

The Chicago Regional Labor Board met with us all day Friday. We were in another room. They had Mr. Kohler and his conferees in another room, and all day Friday we sat around to see what was going to be done, and at night we were called together, and then the Chicago Regional Labor Board asked each side what it wanted to do--or, rather, they asked us what would be our immediate demands, and we stated there were certain things we thought were fundamental.

For instance, we thought it was fundamental that there be some agreement now, before the strike is called off, as to representation. We thought it was fundamental that there be some agreement then as to reinstatement; we thought it was fundamental that there be some machinery set up that could take care of the specific 14 points that were there.

We were asked by the Chicago Regional Labor Board to forego specific demands, and when Mr. Kohler charged the Chicago Regional Labor Board, as he does in these affidavits, with acceding to the whole proposition, that is not a fact; because after Mr. Kohler and his conferees went home at 4 o'clock that afternoon, then Mr. Levin and Mr. Fletcher and the other member

came to us and said, "Forego your 14 points, or specific demands," and we did that at the instance of the Chicago Regional Board, and said, "All right; if this will help end this controversy, we will forego the 14 points."

That was a great concession, and yet in the affidavits it is said that the Board yielded to our plan. Then, says Mr. Spencer, "I have prepared a memoranda"--I think it was next morning he said that--"I have prepared a memoranda," and the memoranda was this. He said, "All right, in view of the setting aside, for the time being, of the specific 14 points, and this union is willing to do that, we have removed the great obstacle in this controversy, and now I have prepared an agreement which says: That the men shall be taken back, reinstatement on the basis of seniority. If there be any dispute as to those guilty of unlawful conduct that will be arbitrated by the Chicago Regional Labor Board."

That was to take care of reinstatement.

Then came the next proposal, to take care of the other matter of representation. In the matter of representation it was said:

"That will be determined by the Chicago Regional Labor Board," and this clause was inserted there, that after the decision of the Houde case, which was a picket case at that time, that if the decision in that case permits of minority and majority representation, or proportional representation,

that the Kohler Company shall have the benefit of that decision.

In other words, they were not to be bound by specific agreements, and saying that that agreement shall bind you for the term agreed upon, and then it was said, "We will set up an arbitration committee, by selection of an employee or two employees, and then representative of the employer or two, and then those two or four will select a third or a fifth, as the case might be, and the other matters will be arbitrated."

Mr. Kohler says that was the union's proposal. It was not at all. The union's proposal had 14 specific points, and we were asked to do away with those 14 specific demands, surrender them, and take the proposal submitted to us by the Chicago Regional Labor Board. The terms of that proposal were not entirely acceptable, and yet in order to act in good faith and meet the situation, we said, "We will accept that proposal, every word of it, and not change a line of it," and what did Mr. Kohler do? This is a manifestation and a very eloquent presentation of the method and manner adopted by the company in collective bargaining in the proposal that was submitted to the Board.

They would not answer, as we did, immediately what their attitude was, though they were there on it as a family corporation. Mr. Kohler was there with his brother, and others, and could have answered immediately. Yet, they wanted until

Wednesday, or even longer, to decide the matter, and then what is the reply? They came in with a proposal all prepared, and here it is:

"The Kohler Company shall resume and thereafter maintain operations in such manner and to such extent in the various departments as it shall find practical and consistent with business prudence. Employees, so far as required by the company from time to time, shall in general be in the following order: Persons actually on the payrolls during the week ending June 30, 1934, who shall establish to the satisfaction of the company that they have not engaged in rioting in connection with the strike.

"(b) Persons removed from the payroll since August 15, 1933, on the same basis as above."

They did away with reinstatement. In other words, the entire subject of reinstatement, the method and manner and procedure and selection was to be subject to the whim, caprice and pleasure of the company, so that the efforts to bargain in good faith, the efforts to meet the suggestions laid down by the Chicago Regional Board, in fact, was nullified. In fact, this was so apparent that a few days later they sent in another proposal in which they receded somewhat from this position, but the recession was by far not a recession that they made in good faith.

"Third, the basis of all cases of increase or decrease of

working hours, shall be subject to the long-continued practices of the company, to give consideration to the factors of merit, efficiency and seniority, and also subject to the human factors as family and dependents, but there shall be no discrimination one way or another on account of any union affiliations."

I see before me the automobile code, and there is not only a literal inclusion here of the terms of that code, but an enlargement upon it, so that greater rights shall be given to this company in the increase or decrease of working hours as were provided in the automobile code.

Then there is that greater concession that no discrimination will be made.

Then, on the next page:

"The company shall continue its practice of bargaining with any individual employee or his chosen representative, or with any group of employees or their chosen representatives, but such group representative may not represent any non-concurring member of the group."

The old story. We will bargain with majorities and minorities and individuals, and not only will we meet them--or, I should put it this way: I doubt whether it was intended they would bargain with them, although they say so, although they will meet with them and talk with them and discuss matters with them and be very gracious and courteous, and probably say,

"Goodby," and leave it at that way.

"Wages and hours." Here they say that the strike shall be called off and picketing and other interferences discontinued.

We ask this Board in all consciousness and honesty, is there an effort here to meet one of the demands given by the Chicago Regional Board as a basis of bringing to an end this strike? They want the right to take back the employees as they please; wages, hours and working conditions will remain as they were before, and then so far as representation is concerned, they will either meet with individuals or groups, minority groups, or do as they please, and there the recession was not a consent to a single thing that might have led to a discussion or basis of meeting on common ground.

Then the National Labor Board sent them another notice in which it somewhat modified the terms and said they would have the advantage of any decision which would come down from this Board, and to that they answered with even worse proposals than before, and they said: "We have carefully considered the proposal which was suggested by your Chairman and concurred in by his associate.

"Further consideration of the proposal confirms the view expressed to you at the least meeting, that follows in all essentials the proposals made by the Federation of Labor representative."

As I have stated, it was not our proposal at all, but it was the proposal of the Chicago Regional Board.

They outline their proposal again, and there is always this putting off to the future further negotiations, an endless thing; one that never had a termination.

The only change that they made was if there be dispute as to the reinstatement in the matter of unlawful activities alleged, those would be arbitrated.

There is not in this letter any effort to meet in good faith the proposals of the Chicago Regional Board, and this is the culmination of 10 months of going through all sorts of conciliations and conferences, and then before this impartial tribunal at Chicago, in an effort to bring this strike to an end, and then we receive this document as an answer to what they will do. It is drafted not only in bad faith, but I think it is a deliberate defiance of anything that might savor of a legal set-up in Section 7(a).

Now, if the Board please, I want to just confine myself to a point or two in connection with the vote.

I think we have established that there has been a violation of Section 7(a) in the matter of representation, in the matter of self-organization. We were deprived of that right. Now, we come to this vote proposition.

We have presented to you the petition of about 960 persons--I forget the exact number--however, they are asking that

a vote be had. That is a substantial number of the employees of this plant who want this vote. We also have 1365 members in all who want the vote. We believe that all of those who met and appointed Mr. Ohl and his committee to represent them in collective bargaining want this vote.

The question arises, is it in the public interest? I don't think one need dwell on that when there is a plant closed down, with hundreds of families out on relief; men who want work, and many cannot go elsewhere to work.

There has been some trouble, some bloodshed. I think the case of public interest is definite. Nothing more need be said on that score.

Let me say this; I want to present now, and I don't want the Board to construe this as being a technical argument, but I ask this Board to issue a mandatory order, dissolving this company union before a vote can be taken. In the first place, it seems to me that this Board must hold that this company union is illegal, because of its set-up and its constitution, and I am of the opinion that there shall not be a company union, complying with Section 7(a), or which can be legally set up, if such company union constitution contains this clause, "That any member of the union, so-called company union, ceases to be a member after he is discharged from his employment."

Now, it seems to me that where a constitution does, as

this constitution does--it has this clause:

"The membership automatically ceases when a person leaves the employ of the Kohler Company or its legal subsidiary"--

Here is the situation: In order to have free and untrammelled representation as set forth in Section 7(a) the term of a representative ought to be twice as long as the term of the agreement, if the union who sets up the representative wants him to serve that length of time. If the agreement be for one year and the employees select representatives and they want their same representatives for a year, that should be the term.

Now, then, when membership ceases in an organization by virtue of discharge or the act or conduct on the part of the employer, the employer can put an end to that representation, and publicly veto by discharge. Such clause in any company union set-up, in my opinion, stamps that kind of an organization with illegality.

In the case of Mr. Ohl, who is not an employee there, and the employees have selected them, there is no opportunity for the company to discharge him. He goes on and represents the employees to the very end of the term of the agreement, but in this other instance, where the company can discharge the employee, I say that that kind of an organization is illegal; that it is an interference with the free course of representation, because with that free course must be a continuation of

the office, a perpetuation of functions and so forth, and the control of those functions must be entirely within the union.

Now, I say this kind of an union and this kind of a set-up which they have must stamp the company union with illegality and there cannot be a company union legally devised or constituted under Section 7(a) with any such clause.

Now, I come to the next point, and that is this: I have established here--I think we have--that this union was illegally conceived, in violation of Section 7(a). The intention was to offset the A. F. of L., to defeat that organization. If this is an illegal union, then I say to you how can we have a free and untrammelled vote while that illegal combination organization or union--call it what you will--is in existence. How can we secure what resolution 44 calls for, which is Section 3: to secure freedom from coercion with respect to all elections. How are we granted freedom and assured freedom from coercion with respect to all elections when an illegally conceived union is in existence, functioning with company pay, company expenses, housed by the company, the officers paid by the company, the expenses of its counsel and everyone else paid by the company?

Is that assuring us freedom, if you please, from coercion in respect to all elections?

I maintain that before a vote can be taken, and I know the Regional Board has taken a vote, "Do you want the company union to represent you, or the A. F. of L." But in all these

instances where a company union is set up as this is set up, and where the company dominates it, and where it is said to be in violation of Section 7(a), or has that menaced coercion that they can exercise by virtue of whatever unity they have to the company union, and set up two combining factors, one the A. F. of L, legally constituted, and the other an illegal organization, we cannot see how any Board can ask employees to vote for an organization which is stamped with illegality, and in its inception came into being in violation of Section 7(a).

Now, then, Resolution 44 gives this Board the power to make mandatory orders in respect to the matter of elections. The others are inquiries, findings of fact, and so on, explanatory order of the President, it seems to me would give this Board, under Section 1, the right to issue orders, findings and the like, in connection with Section 1, but Section 2 says that any Board so established is hereby empowered, when it shall be in the public interest to order and conduct an election by secret ballot of any employees of any employer to determine by what person or persons or organization they desire to be represented.

For what purpose is that to be done? In order to insure the right of employees to organize and select their representative for the purpose of collective bargaining. What is the use of holding an election, to organize to insure the right of

employees to organize, when there is an organization in existence which is illegal, or created in defiance of law?

We are told here to hold an election, and we are going to have a vote. The vote being how and being what? To organize; and here is an organization that is tolerated, permitted to remain and exist, and which, if the facts are as we claim them to be, is illegally conceived. How can an election like that be conducted? How can it be said that that is to insure the right of employees to organize, when you permit them to remain in an organization when they were herded in there by the employer like sheep, given cards and told you sign.

Then you heard that these employees were told, "We are giving to you the right to have a free organization," when they are still in there, laboring under the coercion and intimidation and threats, operated by the company and conducted by the employer.

That must be unloosed, removed; that organization must be completely dissolved before you can order an election and give these men a free choice of self-organization.

To leave them remain in that organization, believing, after all, they are only workers, believing as they do, that there is a pledge of loyalty to the organization, illegally conceived, that they owe some duty to this company-dominated organization, to say that they had to go out and vote, I say is not keeping with the spirit of Section 7(a) or Resolution

44; and, if you please, an order does not mean merely the order that we shall have a right to an election, but it must take the prominence of an election, the time, the place, the manner of conducting the election, its operation and machinery.

Isn't part of that election machinery, if the Board wants to say, "Let us hold this election off the premises of the employer to insure freedom from intimidation;" is it not just as much a requisite mandate of the Board to say, "It is necessary, in order to have liberty, to just as much dissolve that company union, break off its pledge of loyalty, this false organization, and give them freedom of choice?"

I say this is an order which comes within Section 3 and the advisability of an order of that kind, may it please the Board, is this: That that order is made, and I hope that what I am about to say will be treated--I mean to be respectful, but in any event at least it has been my personal experience as attorney for labor unions, and I dare say it has been the experience of those who have American Federation of Labor work of this nature to handle, that our department of Justice has been exceedingly cautious, if not somewhat inactive on Section 7(a).

I know personally of only one proceeding instituted, and I am frank to state, and this is my personal reaction, that I do not think the Department of Justice has cooperated with the New Deal, with the President's Order, with Section 7(a), or

with the intent and purport of it.

Now, then, if the order were made a mandatory order, dissolving this company union, and that comes under the provision of election, we have the right under this resolution, without the Department of Justice being an aggrieved party, to take the matter into the courts, in much the same matter as Federal Trade matters are taken into court, and that is what we want.

We are willing to go into the courts and spend our time and money to uphold the law, as we have done. We will assume the burden and go in there, but we want to be placed in a position where we can do it without having to go begging and drumming at the door of the Department of Justice to get action on these matters that are so vitally necessary to be acted on. .

I say this in the presence of President Green, because if I am wrong in the matter, I know I can be chastised in the matter very readily and quickly. I think he is here to hear my position on the matter. I rather think it is the position of all organized labor and the position of the ^{American} Federation of Labor on this matter.

Now, then, it says in this resolution, "Any order issued by such Board under authority of this section, may upon application of this Board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as it

can be, provided in the case of the Federal Trade Commission Act."

That is a marvelous power. That provision clarifies the National Industrial Recovery Act. I think this 3(b) which some courts have interpreted to mean that when relief is sought it can only be sought by and through the direction of the Attorney General, it means that here we have the right to do it, and we say that order should be made, and if that order is made I feel the American Federation of Labor will then take up the controversy from that point.

Mr. Kohler wants to go to court he argues. We will go to court with him. We will take him there, but we don't want to go in the manner he proposes to go, where there will be delayed proceedings, so that we may be tired out in an effort to receive justice, just as the Telephone decision in Chicago was held up for 10 years before a final determination was had. We know that it is tricks of employers. We have seen that altogether too often on the part of large corporations and utilities, but here we can get an order and summary action is provided for. We are willing to go that far, and so I say it is necessary in this instance to dissolve this company union by mandatory order, and when that is had, and compliance is refused, and the order is made, we can do the rest.

In conclusion, I just want to say this; we have been told by Mr. Kohler and by the Kohler Company that they cannot yield

and will not concede to the mandates and orders of the Board.

The last thing that was proposed when this hearing closed, at which Mr. Watts presided, the very last statement, contained in these few questions and answers, may be enlightening to the Board:

"Mr. Padway: If your employees were to say to you now that they are willing to go back to work if you will accord them the recognition the law says you should, the recognition that you should give them, with a general arbitration clause in advance, and if I were to tell you that they would go back to work on that basis, are you ready to accept them?

"The Witness: We cannot tell you how many people we need to employ now, Mr. Padway."

Mark you, that is an evasive answer. He is an intelligent witness. I have not asked him to take back one, or a thousand.

"Mr. Padway: I am not asking you to do that.

"The Witness: You are facing a very difficult situation there.

"Mr. Padway: I am not asking you to employ a single one. I simply say, 'Will you arbitrate those questions in a general arbitration and accept the arbitration in accordance with the rules of a general arbitration clause?'"

There was a long silence on the part of Mr. Kohler before he answered that. He was far longer than intelligent person

should hesitate, so his attorney came to his rescue and said:

"Mr. Butler: You should agree to let the future of this plant swing on simply the turn of a decision of some arbitrators--that is the trouble with that."

In other words, he put in the record that which he would like Mr. Kohler to have said.

"Mr. Padway: If it were so surprising to you, you were present when the Chicago Regional Labor Board proposed that exact plan.

"Mr. Butler: One member of the Chicago Regional Labor Board proposed that as a part of a single plan, and in doing that he followed your position.

"Mr. Padway: All right; call it my plan.

"Mr. Butler: Well, this is one of the things injected in this controversy.

"Mr. Padway: Now, this^{is}/last question I will put: If I say to you, Mr. Kohler, that your employees will return to work according to seniority in the departments as you need them and the departments require them, will you give them an arbitration clause and accept arbitration as laid down by the National Labor Relations Board?"

Mr. Kohler was on the stand, hesitating. His attorney was fearful he might yield, I suppose. Mr. Butler interposes, and says:

"Mr. Butler: Well, I do not think he should answer that

question if he does not want to."

Mr. Butler did not need to tell Mr. Kohler, an intelligent, educated man, that he did not need to answer if he did not want to.

"Mr. Padway: Well, do you care to answer it?"

"The Witness: We will not accept necessarily the dictates of the National Labor Relations Board on the various questions."

And that was after the decision in the Houde case had been brought to our attention through the Associated Press.

"Mr. Padway: You won't accept that. You understand that only pertains to representation. I just want to know your position so that I can at least align my own thoughts on the testimony. That is all."

Then I conclude with this:

"Mr. Padway: In an effort to obviate the necessity for going to Washington, I am authorized to state that it will not be necessary to go, and our employees will return to work on the basis of seniority in the various departments when required. If Mr. Kohler or the company will give us an arbitration clause respecting wages, hours and working conditions, and give us representation as will be determined by the National Labor Relations Board."

Mr. Butler: Of course, Mr. Padway, you know from the beginning this company declined any sort of proposal that would enter into an arbitration scheme, submit to a board of arbitra-

tors, any board of arbitrators, the entire life of that business. That is all there is to the last 5 minutes of this conversation.

Mr. Padway: Now, if the Board please, I will go a little further than Mr. Butler: I will concede that was their position. I will say their position now is to refuse to obey the mandate of the Board as expressed in the Houde case, unless they have receded from that position. If they have, I would like to know it.

But let me say to this Board and to the respondents in this case, that organized labor proposes to treat those employers who make this statement that "We will take the matter through the courts, and until the courts decide whether our interpretation of this matter is correct or wrong," we are going to treat them in the only manner we can treat them, and that is by bringing to bear all the pressure, legal and economic, at our command.

Let me say this; a decent citizen, an honorable concern, persons who wish to live up to the law of the land, that when a law is passed, or at least a decision made upon it, would say, "We will accept that; we will go along with the law and the Government in the decision, even though we will attempt to reverse."

An attempt to reserve it is their right. It is their right to take these proceedings into court; and by all legal

means to defeat, if they can, the decision of this Board, but ⁷⁶
as long as Section 7(a) is in the Act--Congress has passed it.
It is the law of the land--and as long as there is now a
definite determination that even an eighth grade school boy
can understand as to what is meant by Section 7(a), it is the
duty of every person and every company to obey it, even during
the time they are fighting it, and if then they should secure
a reversal, we will humbly bow in submission and secure our
redress elsewhere.

But where a company sets up defiance, as it does in this
case, and has done, and says it will abide by its own inter-
pretation in preference to the interpretation of the Adminis-
tration tribunal of the Government, that defiance will not be
tolerated by organized labor, and organized labor will go
along with the Government, and then, if the processes of the
courts are too slow, we will exercise the right given to us in
Resolution 44, that nothing shall impede the right to strike,
and we shall strike. We will probably go down in defeat in
some instances, but that is not a strike loss when we strike
with and for the law, and for the upholding of a decision by
this Board.

These men can never return--and the Board may as well
know that now and the other side know it--they cannot return
to work and will not return to work as long as the company
says "We will defy the decision of this Board as it interprets

Section 7(a)."

As long as that decision remains on the books it must be given support by organized labor, because when organized labor recedes from that position, when it says "We will bow to the dictates of force and power of the employer, because he controls the job,"--and he probably is able to do it in some instances, but if we go back and surrender the right accorded to us under Section 7(a), then organized labor must bow its head in shame. These employees will not return, and let me say by way of digression that this battle has just begun. There are other problems for it to consider. There has been a boycott proposed by employees on the picket line, but there are thousands of employers who install their wares. They may find these plumbers will not install them. We have not, or do we want to resort to those efforts, but if it becomes necessary and these means are legal within the interpretation of the President's Reemployment Agreement, and Section 7(a), and the right to secure the Blue Eagle, we say to this Board if it becomes necessary to do that, perhaps we should. This employer is not bigger than the Government. It is not bigger than the Federation of Labor or the organized labor movement, and this defiance must come to an end, and if it doesn't come to an end, on its shoulders and its shoulders alone rests the responsibility for what has transpired and will transpire.

Two men have given their lives, if you please, in this

battle to maintain the dignity of the law. Forty-two were shot, forty in the back while running away, and so we hope there will be no further bloodshed and trouble, but if there is that will rest upon the shoulders of the Kohler Company, because law cannot be denied in the manner in which they are defying the law.

Chairman Garrison: I think, gentlemen, we will take about a 5-minute recess and then continue until about 1 o'clock. Would that be satisfactory to the company?

(Whereupon a short informal recess was taken after which the proceedings were continued as follows:)

Chairman Garrison: The Board will be glad to hear argument from the company.

Mr. Padway: I have just a word or two further to say. I was reminded during the recess by my colleague here that I omitted to state that we are desirous that this election take place as of August 15, 1933. The reasons for that are these: It was of that date that the last lay-off was had, certain kilns were shut down, the sewer department was laid off. From then on there were lay-offs. That is one reason.

Another reason for it is that that is the time we contend as the commencement of unlawful activities on the part of the company. It asserted itself at that time in an endeavor to offset unionization by the A. F. of L. In other words, the unlawful conduct had its inception at that time.

Also the record will show that all employees who were in the employ of the company August 15 and laid off were considered employees for all time thereafter until the strike because they carried for them group insurance, and they sent them letters telling them what their rights were under that group insurance. These letters are in evidence. I think that the testimony of Mr. Ireland shows there was no change in status after August 15 in so far as carrying the employees on the books were concerned. The employment manager has testified to that.

On August 15, strange as it may seem, as contained in his reply--well, it is not strange. That is one thing that is agreed to.

"When the company's business permits employees laid off since August 15, 1933, will be offered employment before new applicants."

It will be said Mr. Kohler later receded from that, but he will find it later reiterated in the two proposals submitted to the Chicago Regional Labor Board. You will find two dates, one June 1, 1934, and also August 15, 1933. They are taken as the two dates. Those two dates run through here as a sort of record, throughout these proceedings, that the vote should be taken.

If the Board should determine a vote is warranted, and it is in the public interest, and it should order one, may we here

register our--I don't want to take it light--but at least our opposition--and yet I don't want to use a word as strong as that--to a mail vote. And our position that the vote should be taken away from the plant at some established place where the men can go in and vote in booths.

I don't want to elaborate on that. We have had some sad experience with mail votes, the opportunity to tamper with the men.

The company union graciously presented us with affidavits from Mr. Hougén--and they did not sit with us officially in the tribunal--and Mr. Hougén shows about 100 or 150 men have been solicited to say, Well, they were in the A. F. of L. organization, or didn't want to be, or are resigning, or want to be in the company union, and we find several hundred who say that they joined the company union under pressure and under the feeling that they had to, the boss wanted them to.

Chairman Garrison: I think we need not have any argument on that. The Board will not conduct a mail ballot.

Mr. Padway: I am trying to offset the efficacy of these affidavits; this large bunch of affidavits that the men did not want to belong to the A. F. of L. organization.

There is just one other thing and I am through; I want to say this in support of a mandatory order for the dissolution of this company union before a vote can be had, so that they can be free of choice with respect to organization. I call

the attention of this Board to a case that you may know so well, of the Texas and N. L. Railway v. the Brotherhood of S. S. Clerks. I looked for that in the Houde case, but it was not there.

Chairman Garrison: I think it was present in a footnote.

Mr. Padway: Then, maybe it escaped me. You will find every element utilized by the court in ordering a dissolution of the company union in that case by way of purging the company of contempt contained in this Kohler case. Every element that was taken up by the Supreme Court case. Every element that was taken up by the Supreme Court in the Texas and New Orleans Railway Company v. the Brotherhood of Steamship Clerks is contained here.

In that case they say:

"Circumstances of solicitation of authorization."

Here is the boss himself soliciting them with pencils and paper.

"--membership on behalf of the Association. The fact that the members of the Railway Company who were active * * * were permitted to devote their time to that enterprise without deducting from their pay and charged to the Railroad Company the expenses incurred in recording members of the association, the report made to the Railway Company and the discharge from the Railroad Company of leading members of the Brotherhood and the cancellation of their passes gave support, despite the

attempted justification of these proceedings, to the conclusion of the courts below that the railway company and its officers were actually engaged in promoting the interest of the association in opposition to the Brotherhood, and that this constituted an actual interference with the selection of employees and their representatives."

We can't have interference and at the same time have freedom from interference. We can't have an organization set up for coercion and at the same time say let that organization have a free and untrammelled and un-interfered with vote, and I say, just as the court there ordered the dissolution of that organization by way of purging the company of contempt, I say this would seem to give foundation to the fact, at least, if the authority is in the resolution to do it, to make an order of dissolution in order to remove the interference.

I thank you.

STATEMENT OF MR. LUCIUS P. CHASE

On behalf of the Respondents

Mr. Chase: May it please the Board, at the hearing in Sheboygan certain reservations of legal points and certain objections as to rulings and courses of procedure pursued were notice, and without reciting them at this time, we would simply would like to have the record show they are reserved.

I had proposed to discuss at some little length the elaborate intemperate and apparently publicity inviting com-

plaint of the complainant in this case. However, complainants themselves read here portions of it, and I will not take the time of the Board to go into that.

It appears the principal points involved are the alleged illegal actions of the company in connection with the organization of the Kohler Workers Association. In that connection I will confine my remarks to that phase of it.

As to the legitimacy of the Kohler Workers organization, as its right to continue living, that is a matter for the association itself to argue itself. We are interested in the point at this time in so far as it respects a violation of Section 7(a) on the part of the company.

There is an allegation of discrimination between union men and members of the Kohler Workers Association. Apparently there is an allegation of the company's refusal to bargain with Union No. 18545, and then there is this rather novel and intemperate allegation of a conspiracy to enrage the populous so that the village police might shoot the pickets in the back, and quite properly the Board ruled that issue is not now before us.

There are proper tribunals for the trial of that issue and the company and everyone involved in these most scurrilous allegations are prepared to meet those issues at the proper time and place.

I will pause at this time only long enough to point out

the rather ominous and perhaps prophetic utterance of Mr. Padway with respect to future violence, the fact is that ever since the picketing has been peaceful; that is, the 28th of July, the pickets have been unmolested in their picketing, and as long as they remain peaceful I suppose they will remain unmolested by the authorities.

With respect to any violation of the law by the company and enforcement of the law by the legal and so-called economic weapons of the Federation of Law, it appears again that the law enforcement officials are sufficient. It does not yet appear that the American Federation of Labor is the law enforcement branch of the Government, however they may proceed in their own way to protect their rights.

The record has been cluttered up with certain alleged grievances. Mr. Watts quite properly ruled those grievances and their merits were not part of the case. However, the company was then prepared and is prepared to meet the issues raised by those allegations on their merits.

Chairman Garrison: The Board takes the same position as, I believe, Mr. Watts who ruled that the evidence was received, not to establish the fact of any particular grievances, but merely as evidence of the fact that the workers thought they had something they wanted to bargain collectively about. I think to that extent the evidence is pertinent, but this Board will not, of course, attempt to pass upon the question as to

whether or not the grievances were sustained.

Mr. Chase: We understood Mr. Watts' ruling to be to that affect, and we, of course, thought it proper.

Mr. Padway: I thought we stated we were offering evidence for that purpose only, not to establish each grievance.

Mr. Chase: We prepared this case the best we could in the short time available. We received notice of the hearing a day and a half before it was held. We saw a copy of the complaint about 10 minutes before it started.

Many affidavits were presented on which we had no opportunity for cross-examination, and many unsworn statements were also offered, statements in the form of affidavits, which were unsworn. We have met many of the issues thus raised by counter-affidavits. We have met other allegations by trying to lay our cards on the table.

There has been some discussion as to what Mr. Walter Kohler, the president of the company said on certain occasions, and we offer transcripts of these cases in evidence. They speak for themselves.

Likewise, with respect to certain conferences held by the Kohler Company and representatives of Union 18545. Transcripts of the meetings have been offered.

We have prepared a two-volume set of affidavits which are classified as to subjects. I won't proceed to read these to the Board. I will simply point out that the table of content

is on the cover of each volume, and if the Board is interested in any particular subject of discussion, they will find the affidavit in the place noted. The affidavits of the individuals are arranged in alphabetical order within each division.

During the argument of counsel for complainants, there were many assertions made which are unsupported by anything in the record. It is impossible to go into detailed analysis at this time and point out which decisions are supported by the record and which are not. I think the record will pretty well speak for itself on that.

Probably the most fundamental of the points involved here, the most fundamental of the allegations, because it goes to the proof of the other allegations perhaps, is that of discrimination by the company against members of Union 18545, and in favor of members of the Kohler Workers Association. These charges of discrimination do not arise as they have in many cases where a company has been going on doing business in the regular course of events, and for some reason lays off a few men and adds some other men in their place. It is not that sort of thing at all, and to understand the nature of the charges of discrimination, the facts behind these charges, which relate to the charges, it is necessary to get some of the background.

This is a case where curtailment of production was necessary due to the serious falling off in business, starting back

as long ago as 1928, and in Part II of this Book of Affidavits there is an affidavit by Mr. Turgeson, to which is attached a chart showing the trend of residential building over a period of the last few years, residential building being the principal market for the products of the company.

The business declined constantly, and sharply. In 1933, according to the testimony in the case, productive capacity of the Kohler Company was sufficient to manufacture quite the entire consumption of plumbing fixtures in the country in that year. That is just a brief indication of the problem the company was up against.

In spite of that, the company kept all of the men employed, kept all of those men employed at work at full time, 51 hours a week, I believe it was, without any cuts in rates, up until 1931, when hours of work were reduced somewhat--to 40 hours, I believe. It was not until 1932 that there were any cuts in rates of pay.

This was not easy to do. The company piled up huge inventories, according to the record, according to the facts. It spread employment over a great many people, spread it so thin, in fact, that it was unsatisfactory both to the men and to the company. For, after all, spreading employment is a very expensive method of operation. The men are less efficient when working that way, machinery is not used to efficient capacity. Overhead burdens multiplied by leaps and bounds. Supervision

becomes more expensive. This is a very expensive place to operate, and as a result the company lost several million dollars in the last few years.

It was made by Mr. Padway on salaries of officers. I do not think it is at issue here. It is interesting to point out, however, that the salaries of the officers he referred to have been cut practically in half for the last few years. One year I believe the president worked practically for nothing, and when considered in comparison with offsetting losses the officers were working for less than nothing. But that is not ^{at} issue in this case.

By the middle of 1933 the company had about reached the end of its rope so far as this policy of spreading employment and piling up of inventory was concerned. It had to borrow money from the banks in order to continue operations, and is still borrowing. The cost of doing business, not only in the matter of labor but in the matter of raw materials, sharply increased as a result of the M. R. A. While business in May and June was better than it had been, in July, August and September there was a sharp incline in residential building, and in the company's sales. As a result, the company had to shut down some operations and lay off some men. The pottery had been operating with four kilns. Two of the kilns were closed down and half the force had to be removed. In the enameling division production had to be cut. The nightshift

on the cleaning room had to be laid off. The room in which the castings are prepared for enamelling, part of the foundry, was shut down. In the brass division the night shift and the machine shop was removed and just a few of the key men, special technical experts, were transferred to the day force to keep them there. The boiler and the radiator departments had been started up after the depression began, principally in an effort to keep men employed, was shut down, principally because of old production, and remained close for several months, after which it opened up on a much reduced scale.

Of course, these shut downs and curtailment of production required selection between men. Now, it is quite obvious that a man may not be faulty enough in his work or inefficient enough to warrant his discharge during full operations, but when it comes to a matter of laying off one man or another, then reasons do appear which would not be sufficient for discharge under ordinary circumstances. It is not a matter of discipline, it is a matter of selecting the best men for the purpose.

According to the testimony of the superintendent who has charge of these lay-offs, without any instructions from the employment division or from anyone above, and the affidavits as well as the oral testimony rather are complete on that score--the men were selected principally on the basis of efficiency, men whose loss records were good; men whose pro-

duction records were good, who had been earning in excess of the piece rates earned by the others. The question of adaptability became important. The Kohler Company manufactures something like 30,000 different items, and it is necessary to keep men who could make not one item, but several items, so that they might be transferred and shifted around and kept busy, so flexibility was an important factor.

Where these factors were practically equal, the matter of family relationships came into play. Was a man married or single? What were his home obligations? What were his other opportunities for employment? That consideration was second to the other, but it was an important one, and seniority was also an important consideration.

Right on that point, I would say the Kohler Company has never operated strictly on the seniority basis. Seniority has been recognized and given effect to, but it has never poured itself into the straightjacket of strict seniority. However distasteful the term might be to certain interests, merit does play an important part in the promotion of men and in the earnings of men.

With respect to seniority alone, practically all the members of this organization have a certain amount of seniority. No new employee has been hired in the last 5 years, so every one in the organization has been there at least that length of time.

A man who has worked for the organization 10 years is a relative newcomer in the organization. Ten years may seem like a long time, but when you deduct the five they all have, he is only senior for 5 years.

Naturally, when a man is laid off he has the tendency to look to someone else other than himself to explain it. We did not know, of course, which of these men were union men and which were not. It would be pretty hard to conceive they were all union men. Those who belonged to the union naturally found it very easy to attribute their lay-off to that cause, but that does not explain the lay-off of the other men who had no union affiliations, and it does not explain the retention of an overwhelmingly number of men who do have union affiliations. I suppose it is a tendency to blame membership in the union for what appear to them reprisals on the part of the company as a natural corollary of their tendency to attribute all their good fortunes to the union. They are union-conscious if they belong to it. That is not allegation, it is not a charge; it is simply a statement of fact.

As I said, we did not know who all the union men were. Undoubtedly we knew who some were. We did not know who others were. We could not present at this time a complete analysis of how many union men were kept and how many were laid off. However, a number of union men appeared in this case, and we have made a study of these union members who have signed affidavits

or who have testified in this proceeding, just to see how many had been discriminated against and how many had not.

Seven former members of the Kohler Company were put on the stand by the union. Of this seven, three of them, Arthur Cain, Charles Livesick and Fred Seidler continued work right up to the 30th of June of this year when the plant shut down for the summer shut down, and who undoubtedly^{would} have been called back to work after that if the strik had not intervened.

One of these men, Arthur Cain, is the president of the union. Fred Seidler is a member of the bargaining committee. These three men were kept on, and three others were laid off, Charles Hymans, Klein, and a man by the name of Gorde.

Charles Hymans testified before unions had ever been heard of and before there could have been a charge of discrimination he had been demoted, and he testified further when he was laid off a married man of family was put in his place. Gorde, according to the record, had very heavy losses in the enamel shop. His losses ran more than 5 per cent of his production, in the last 3 months he worked, whereas the average for the department was less than 1 per cent.

Furthermore, he had complained of a poor heart which interfered with his work.

Klein, according to affidavits in the case, was less efficient than some of the other men in his department.

The other witness, Guy Birdy, quit on August 29, according

to testimony of three witnesses in the record.

At the time of the August 22 lay off in the pottery, he was kept in spite of the fact he was secretary of the union, and I use the term "in spite of the fact," in view of the allegations in the complaint. He was kept. He was a lavatory molder, and he was the only man kept. The secretary of the union was the only man kept for casting lavatories. The need for lavatory casting finished, and he was transferred to casting sinks, and because he felt he could not meet his financial obligations as a sink caster, he said he would not work unless he could cast lavatories, and he quit, left the plant and never came back.

We have three men who were laid off, three who were kept, and one who quit. Mr. Seidler, a member of the bargaining committee of the union, who was kept, testifying to this effect:

"I might say in our department nobody was laid off in spite of the fact that they all belonged to the union, with the exception of two."

That is the testimony of a member of the bargaining committee of this union that is complainant in this case.

We come to Exhibits 13 to 18. I will not take time to discuss them in detail, except to point out that these unsworn statements in the form of affidavits are signed by a total of 125 men, and of these 125 men, all union men presumably, 90 of them were not laid off and only 35 of them were laid off.

In other words, approximately three times as many union men were kept as were laid off.

Furthermore, these statements said--I should have used the word statements rather than petitions--in these unsworn statements there is an inference that these men, signers, joined the Kohler Workers organization because they were coerced into joining, and they signed because they were afraid not to. The fact is, according to the affidavit of the secretary of the Kohler Workers Association, that of these 125 who make that averment, 90 of them never belonged to the Kohler Workers Association. Ninety who make this statement that they joined because they were coerced into joining, never belonged.

Looking into these statements a little further we find they go into considerable detail as to language used by Mr. Kohler in certain speeches. These statements represent nothing but the union's allegation of what they would like to prove, and these men, loyal union men, undoubtedly obligingly signed, and to me these statements, prove nothing except the men are loyal union men who were willing to sign.

Mr. Padway: Wouldn't it be fair to say this is the fact; it says that those of us who joined the company union did so because we were intimidated, or something, by virtue of the organization. It is not claimed that all these men who signed that affidavit were members of the union. There are members ^{those} signatory to that affidavit, and/who were not, and the para-

graph dealing with those who are, who claimed intimidation, reads that those of us who signed the affidavit--you will find that on the second page.

Mr. Chase: We have it before us here. One clause does use that term, another does not.

"Those of us who signed up for the company union would not have signed up, would never have signed were we not afraid we would lose our jobs; the presence of Walter J. Kohler at the meeting, and the presence of timekeepers and foremen had a great influence in our signing and made us fear we would lose our jobs."

You see the inference is clear, whether the language is clear or not, that these men had signed. I think the statement was intended to create that impression, regardless of any careful selection of words that may have been used, and by the way that particular reservation which Mr. Padway has brought ought was not brought out in the hearing at all until cross-examination forced that distinction.

Then, taking up some of these other affidavits, the next one we come to is one by a man by the name of Holderberg, who happened to be the president of the Kohler Workers Association until he resigned in July, 1933, after the strike started.

It appeared from his affidavit, and, by the way, we had no opportunity to cross-examine these affiants--the most important paragraph is his affidavit--it is by its terms

hearsay; somebody told him this.

In the second paragraph he has certain allegations of conversations that are repudiated by the affidavit of his foreman, found in Part III of the Book of Affidavits, and by other testimony.

Then in paragraph three he also states, "Last September a year ago," he signed up 16 men for the union, by the same statement he himself did not join the union until this summer. In the interim he was a member, first, of the general committee of the Kohler Workers Association, or its president. This man was either double-crossing the union or double-crossing the Kohler Workers Association, or maybe both. He simply may have been trying to ride both horses, but that is the situation with respect to his affidavit.

Other affidavits are treated in order in Part III(a), (b) and (c) of this book of affidavits. I won't go into all of them. I think the counter-affidavits speak for themselves.

I have one more here that is interesting, an affidavit by one Henry Kraus, who alleges he was asked to join the Kohler Workers Association on a certain day. He refused and a half hour later he was laid off by his foreman.

The facts are, according to the records, and as stated in the counter-affidavit, that he was laid off 2 weeks before the Kohler Workers Association was ever heard of, and yet he alleges he was laid off a half an hour after he was asked and refused

to sign.

That is Exhibit 23 in the case.

Chairman Garrison: I am afraid, Mr. Chase, we will have to adjourn at this point, because of engagements of the Board. We will resume at 2:15 o'clock, if that is satisfactory.

(Whereupon, at 1 o'clock p. m., a recess was taken until 2:15 o'clock p. m. of the same day.)

AFTERNOON SESSION.

2:15 o'clock P. M.

- - -

Chairman Garrison: Mr. Chase, will you continue?

Mr. Chase: At the noon recess I was discussing the evidence bearing on the question of discrimination against the union members and in favor of the Kohler Workers Association members. I discussed a little of the cross examination of the witnesses who testified and some of the affidavits that have been filed. I pointed out that in volume 1 of the book of affidavits here offered, under sections 3 (a), (b), (c) and (d), we have counter affidavits in rebuttal of the charges made.

We have tried to rebut all of the allegations of the complainants. If there is some individual allegation that we have not answered, it is because we have overlooked it inadvertently. We were working under pressure here, and got these out in two or three days and we think we have covered all of them.

But I think that this evidence shows clearly that discrimination did not in fact occur, that in the curtailment of operations some layoffs were unavoidable, that selection between the men was on a fair basis, that the layoff originally may very well have been of a temporary character, but has since stretched out to a period of a year, and as it appears in the record, there is no immediate prospect of their reemployment. The business

situation is such that there are no immediate prospects.

Some mention was made of the company's having kept insurance, group insurance, in enforced on these men and that of course, is a fact. The group insurance which the company carries with the Aetna Insurance Company is of two kinds; first, insurance on which the company pays all of the premium, and then an additional amount which the employee may take voluntarily and carry at his own expense at the same rate.

The first of the two policies, -- the policy in which the company pays the premium, builds up gradually from \$300 to \$2000. I think it is worth \$1,000 to a man at the end of five years. In case the insurance is dropped for any reason and the man starts in again, he starts in at the \$300 figures.

This insurance was kept in enforce so that if the man was later re-employed he would have \$1000 insurance instead of \$3,000. I do not consider that the maintenance of this insurance in any way determines the question of employment status one way or the other.

Under the terms of the policy -- and that appears in the record -- the insurance may or may not be terminated when a employee's employment ceases. The company has a number of former employees, in years past on whom the insurance is still carried although their employment was terminated at the time.

I am not making any point of that except to point out that the maintenance of insurance is not determinative one way or

the other of employment status.

Mr. Millis: That insurance is taken by the year, I take it? You have an annual premium?

Mr. Chase: The premium is paid monthly.

Mr. Millis: And does the contract run for a year, or indefinitely?

Mr. Chase: The contract runs indefinitely. It is for no definite period, and the company pays the premium for each month on the number of persons on the payroll for that month or the number of persons being protected under the policy.

Mr. Millis: The contract does not have to be renewed?

Mr. Chase: No. It runs on indefinitely. The contract was made several years ago and it runs on indefinitely until one or the other party terminates it. The premiums are paid monthly, at any rate.

Then we come to the question of interference by the company through its alleged activities in connection with the organization of the Kohler Workers Association. In that connection let me point out first that there is not anywhere in the record as far as I recall, and there is certainly nothing in the facts that hooks up in any way this voluntary petition of 600 names that was circulated by some of the men some time in August, either with the formation of the Kohler Workers' Association or with the company in any way. The record shows I think beyond controversy that it was purely a voluntary activity

among the men. To be sure a few of the foremen may have anticipated what it was, but it was not organization activity to the foremen. If they did so, they did so voluntarily, and by far the greater number of the sponsors were ordinary workmen. It was purely a voluntary thing.

Getting into the organization and the promotion of the Kohler Workers' Association, it is uncontradicted on the record that the initiation of this particular organization was on the part of three employees of the company, one of them being Mr. Wandren who occupies a very lowly position of stock chaser in the brass foundry. He just chases up stock for the workmen. One of the men by the name of Wasner, who happens to be a working foreman, a type of employee who one of the members of the union bargaining committee testified was eligible for membership in the union. They have a number of such in their union.

Mr. Bahr, who was referred to as the chief chemist, is not what the name might indicate, -- a high priced research man, because the company maintains no chemical research department. It is simply similar to the working foremen. They make ordinary routine analyses of products as they come in, and that is all they do. He has two or three men with him, and he again is in the nature of a working foreman.

According to Mr. Bahr's testimony, he had been considering the matter of a shop organization for some time. Early in the

summer he had approached the Works Manager, and apparently the Works Manager did not come to any conclusive understanding with him. Later they had this meeting which was referred to before, with Mr. Kohler. I think the testimony in the record is pretty clear on that point, and it is uncontroverted that these men discussed it with Mr. Kohler. They went to him on their own initiative. He quite obviously had been giving thought to this sort of thing. I do not think there need be any argument on that point.

Not only industrialists, but people everywhere were giving consideration to this matter of employee organization and the method and form it should follow. A study had been made and Thortelson had been studying such things. There is no question about that.

These men came and discussed it, and Mr. Kohler called Mr. Thortelson in and he went over with them the plan that they had, and he had certain ideas and helped them work out something that was satisfactory to them, and I will discuss the nature of that plan a little later as it appears to me, and as apparently it appeared to Mr. Thortelson. It is referred to in the affidavit in part 2 of the book of affidavits.

Mr. Smith: May I interrupt you, Mr. Chase? Do you know what the salary of this chief chemist was, approximately?

Mr. Chase: I do not know, but I would be awfully surprised if it were more than \$2000 or \$2500 a year. We have lots of

workmen in the plant who in good times make more than that. He is not a high priced man.

Mr. Garrison: Does that appear in the record anywhere?

Mr. Chase: I do not think his salary appears.

Mr. Padway: It appears that he is the Chief Chemist, and we took it for granted that he was a monthly employee, distinguished from the others, who are paid by piece work.

Mr. Chase: I am not even sure that he is on a salary basis. Many of the technical men in the shop are on a high hourly rate of pay. I am not sure that he is on a monthly basis. But he is not a highly paid technical expert or official of the company or anything of that sort.

Chairman Garrison: Perhaps Mr. Kohler can enlighten us on that.

Mr. Kohler: His work is of a routine nature. He makes analyses of products. He is not a research chemist, and if the counsel stated that he is the Chief Chemist, I do not know that that is his title. His salary is very nominal. It would probably be about \$2000.

Mr. Chase: He is part of the factory organization. He is in no sense in an executive position in the company.

Mr. Millis: Does he hire and fire chemists? Does he employ the chemists and have the right of discharge?

Mr. Chase: No, sir, he has supervision over a couple of assistants with him, but he has no power of hiring or firing.

Mr. Kohler: May I add that there is no policy of hiring and firing in that sense. No foreman has the right to fire an employee.

Mr. Millis: The layoffs were by the foreman?

Mr. Chase: No, sir, they were by the Department Superintendent, as appears from the record. May I say this: A foreman in the Kohler Company plant may not be what is usually thought of as a foreman. He actually receives less money than the piece workers who work under him. I think Mr. Heymann, one of the witnesses for the complainant, testified that at the time that he was receiving approximately 70 cents an hour as a foreman, the piece workers under him were earning all the way from 70 to 95 cents an hour. The foremen were simply a little more assured of their income. They are in a supervisory capacity but for the most part they work alongside of the men. There are supervisors above them, and superintendents in charge of the department and the superintendents are the ones who had charge of these layoffs and removals.

They testified and were still uncontroverted in the record, that they asked Mr. Kohler to address these meetings that they wanted to hold.

Now, there is no question at all but what these meetings were held on company time, that the men were not docked for the time that they spent there. There is no question at all about that as far as the facts are concerned, but these meetings were

at the request of this group and Mr. Kohler spoke at their request.

If anyone understands the background of the organization, he would know that that is nothing unusual, that there has been a very close relationship of that sort through the years. There is nothing strained or unnatural about it. It was not a case of the boss getting off of his "high horse" for the first time and rubbing elbows with the men. It was just a natural casual relationship such as had continued for years and years in that plant.

When you come to the speeches that Mr. Kohler made on those occasions, it seems to me that they have got to be taken and read fairly according to the language that is there, and not from the point of view from which Mr. Padway approached the subject. He seemed to start with a presumption of insincerity on the part of Mr. Kohler, and presumably on the part of all employers.

In starting out with this assumption of insincerity, many sinister things were read into it. It clearly appears from the speeches that the men were told that they were free to do what they pleased about signing it. He used some such expression probably as "I would be pleased to have you sign," or "I would be pleased if you signed," or something like that, but if it was simply a sincere expression which was in no sense threatening or coercive, it seems to me that probably the best test of that is the effect that it had on the men themselves.

After all, these men have lived in this relationship with the company and with Mr. Kohler for years, and any given set of words would have an effect on them, depending upon the background that they were familiar with.

In the record we have this testimony by Mr. Coon, the President of Federal Union No. 18645, which Mr. Padway is representing. He had worked for the company for a number of years. He had been a union man all that time, and he never felt that he was discriminated against. He always felt that he was well treated and fairly treated. Here is his testimony:

"Question: Now, when you heard the speech of Mr. Kohler on September 7th, did you have the feeling when you left that you were going to lose your job if you did not sign?

"Answer: No, I did not have.

"Question: It did not leave that impression on you?

"Answer: I belonged to organized labor for 35 years, and I did not approve of shop unions.

"Question: But you did not feel that you would be fired if you did not sign that card, did you?

"Answer: Well, I did not feel that I would be. I did not know of any reason why I should.

"Question: And you have not been? That is a fact, isn't it?

"Answer: I have not been."

That is the testimony of the President of the Union as to

effect the speech had on him.

Another witness that the union put on the stand in support of its case was Mr. Lavacheck. I believe that is the pronunciation. It is a name with many consonants and few vowels. This series of questions and answers is part of the cross examination of Lavacheck.

"Question: You did not sign the Kohler Workers Association card?

"Answer: No.

"Question: And you were not laid off, were you?

"Answer: No.

"Question: You worked right up until June 30th?

"Answer: June 30th.

"Question: Nobody told you that you would be laid off if you did not sign the card?

"Answer: No.

"Question: Mr. Kohler did not say anything like that?

"Answer: No, not to me.

"Question: After that meeting of the committee of 82, you attended another meeting in the recreation hall?

"Answer: Yes.

"Question: Nothing was said there about losing your job if you did not sign a card?

"Answer: No, nobody said anything about that?

"Question: And you continued to work until June 30th?

"Answer: Yes.

"Question: And you applied for membership in the American Federation of Labor, did you not?

"Answer: Yes.

"Question: When did you join?

"Answer: Some time in August of 1933.

"Question: In spite of that, you have continued to work for the Kohler Company?

"Answer: Yes."

It is apparent, I believe, from the testimony of that witness on cross examination, that in spite of his union sympathies he saw nothing threatening or coercive in anything which Mr. Kohler said, in any of the meetings which he attended.

With respect to the activities of foremen and supervisors, there are rebuttal affidavits, I believe, with respect to all of the allegations made. On that point I think it might be said that there undoubtedly was quite general discussion among the men in the plant as to whether one form of union or another was desirable. There may have been isolated cases where the foremen participated in such discussions. If they did so, they did so purely of their individual responsibility, and, as I said before, most of these foremen, according to Mr. Heyman's testimony for the union, were eligible to membership in the union. They are that kind of foremen.

There is no company policy in that respect. The affidavit

of the factory manager is here to that effect.

There is a copy of a newspaper statement attached to an affidavit of Herbet B. Kohler, issued in September, in which it was made exceedingly clear that no one would be discriminated against by reason of joining the union or not joining the Kohler Workers Association, the statement in the newspapers including the Sheboygan Press, which has a general circulation throughout that part the state.

There are cases where union men actually sought to have foremen join the union. There are affidavits to that effect in here.

So that whatever discussion there was in the shop was of a very informal nature and of a very personal nature, and was just as much in one direction as another.

It was certainly no part of any company program or any company plan.

I believe I referred before to exhibit 23 in which a witness for the union alleged that he was laid off half an hour after he refused to join the Kohler Workers' association, and which shows that he was laid off over two weeks before the association was ever heard of. What is one of the affidavits on which complainants rely.

Now, as to whether or not membership in the Kohler Workers' Association was a condition of employment, I think the record is clear. If a thing is a condition of employment, it seems

necessarily that it is something without which there will be no employment, and the record is full of instances of men who did not belong to the Kohler Workers Association continued to work, and were members of the union continued to work, and as I pointed out before, of 125 signatures to a certain set of affidavits, presumably all union men, 90 of them were kept employed, and only 35 were laid off. A rather high average in favor of the union, I should think.

Now, the company is interested in this Kohler Workers' Association problem from the point of view of a violation of Section 7 (a). I believe that the Kohler Workers Association is represented here, and is ready to defend its own legitimacy and its own right to live. That is its affair.

I want to make one statement in regard to an assertion made by one of the counsel for complainants, and that is that the expenses of counsel are paid by the company. That is not true. The company has nothing whatever to do with suggestion that this union retain Mr. Hougren, and nothing whatever to do with retaining him, has not, and will not pay one cent for his services. They can probably explain the basis on which they have retained him, but he is in no sense retained by the company or responsible to the company.

Mr. Padway: I do not like to interrupt. If that is the case, you are reneging on the obligation you assumed when Mr. Kohler said that he would continue to take care of all of the

expenses of the organization and connected with it. That may be something for Mr. Hougen to take up with your company, but I know that I would collect if I were Mr. Hougen and you would not pay me on your promise there.

Mr. Chase: I was just going to go into that, Mr. Fedawy. Since the original organization of the Kohler Workers Association, and I refer now to the printing of the cards that they may have had at the time, since then the contributions of the company towards that organization have been limited solely to not docking the men when they had meetings on company time. That is the sole contribution of the company to this organization. As to that, the record shows that has been the policy of the company for years, -- to permit men to take up their grievances with the company, with the employment department or with the President of the Company or with anybody else in authority on company time without being docked, singly or in groups. There is nothing new about that. It has been a long standing policy of the company. Their committee meetings and other activities, recreational activities, and visiting the medical department on other than compensation matters, -- things of that sort have all been on company time.

Mr. Millis: What is the case with piece workers? Do they lose their time, or do you figure what their probable piece earnings would be, and pay them?

Mr. Chase: We have what we call a standard piece rate. We

determine how much an hour a competent workman with no more than average loss, should earn on a piece rate, that is, we pay when a piece worker is on other work other than the piece work -- I will put it this way. When he is on any one of the sort of things that I have referred to, sometimes when he is doing his regular work on other than a piece work basis, he receives that standard piece work --

Mr. Millis: So that he is an hour worker at that time?

Mr. Chase: He is an hour worker at an assumed piece rate basis. Do you see?

Mr. Millis: Yes.

Mr. Chase: With respect to Mr. Padway's inquiry, I will say this. The company received notice sometimes during the year after this association was organized that it wanted no company contributions. It held a dance at one time at which it raised a large amount of money -- I don't know how much, but they can probably refer to that -- and they have raised other moneys in other ways. I believe their counsel can probably explain that fully. Now, welcome to the nature of this organization, and I would like to turn briefly to Mr. Thortelson's affidavit in part 2 of volume 1 in which he points out some of the differences between the Kohler Workers Association and what is commonly known as a company union. I personally have seen a number of so-called company union plans of one sort or another, and the predominating characteristics of most of the

plans that I have seen is some sort of veto powers committee or a joint board in which the employees and the companies have equal vote, in which there is in fact constitutionally by contract, company domination. Mr. Padway is right when he says that in the Kohler Workers Association there is no contact with the company. There is not. It is its own constitution. It is pre-determined or changed or amended at will without any consultation with the company whatever.

I believe Mr. Padway referred to a provision in the constitution which automatically cancels membership when employment ceases. Well, if the Kohler Workers Association does not want that in there, they are free to change it at any time. They are not bound to the company contractually or otherwise, to consult the company in changing this constitution. The constitution is entirely in its own hands. It has complete control of its own destiny. The constitution provides for the association's own committees. It sets up the committees provided by its constitution. It wants to have committees it can do so. It does not purport to set up committees on behalf of the company. It sets up its own committees to bargain with the company. There is no veto power of any sort vested in the Kohler Company in connection with its activities. It bargains just as union No. 18545 might bargain.

Mr. Padway made some point of the fact that its ultimate remedy was no strike. I suppose where there is freedom of contract

between an employer and an employee or group of employees, it is the privilege the employees to quit at any time if they do not like the conditions, and to quit in concert. I do not see that the Kohler Workers Association has any less and neither has it any more legal or economic remedies than any union has. It can do as it pleases, legally and through economic means, without in any way breaching any contract with the company. It has every resource available that any organization has. It provides its own rules and conducts its own elections without any interference or supervision or cooperation of any sort from the company. Its elections are its own.

It seems to me in this connection if there is any vice in an organization of this sort, it lies in the manner in which it is conducted. It is the absence of freedom of action and domination by the company. The method of its birth, it seems to me, is relatively unimportant, although we claim that as far as we are concerned, in this case at least, its birth is illegitimate. But after all, what section 7 (a) guarantees is freedom of choice, not an absence of it.

And, if an employee chooses to belong to an organization of this kind, that is his right under section 7 (a). If he chooses not to, it is his right not to, and it is his right to join any other organization he pleases, and unless that right is interfered with affirmatively in a coercive sort of way and an intimidating sort of way, there has been no interference with

his freedom of choice.

Assume that an organization is illegitimate, and of course, we contend that this is not. And I suppose until it has been disbanded by the courts, or its legitimacy has been restored, or some other action of a final nature has been taken, that an employee is free, even to belong to such an illegitimate organization if he chooses to do so. However, that is a point aside from this case here, I believe. The mimeograph sheet that was referred to by Mr. Padway was never identified in the record. He contends that it was posted on the bulletin boards all over the shop, and contains statements to the effect that the men did not have to join the union if they did not want to. That particular mimeograph sheet was not presented until near the end of Mr. Kohler's testimony. Mr. Padway showed it to him and Mr. Kohler testified that he had never seen it. Its origin is still unknown as far as the record is concerned. As a matter of fact, I do not suppose it is for counsel to testify in this case, but the record is just blank on it, and perhaps we had better leave it at that point, although an explanation --

Mr. Padway: (Interrupting) I will state now that I have no objection to your making any explanation you wish regarding that document.

Mr. Chase: The explanation is simply this. That at the time Union No. 18545 was being organized in Sheboygan, and it appears also from affidavits that have been served on me by

counsel for the Kohler Workers Association -- a couple of hundred of them -- that representations were being made to the men at that time by union organizers that they had to join the union to get the benefits of the N.R.A., and that they had to do this and they had to do that, and these men were coming into the employment office and into the factory offices and asking whether it was true, and this sheet, which is not as Mr. Padway insinuates a sheet prepared by some national association and sent out, was prepared locally there and kept in the office, and when these men came in and asked these questions these sheets were handed to them. There was no effort made to distribute them broadcast, they were not posted on the bulletin boards, but they were simply honest answers to questions which frequently arose. That is the whole story with respect to that.

Chairman Garrison: What were these questions?

Mr. Padway: I think it would be of interest if we got the sheet. It is in the record and it is very short.

Chairman Garrison: What sort of questions would these men ask?

Mr. Chase: I am just talking from memory now. The men would ask, "Do I have to join the American Federation of Labor, or do this that or the other thing to get the benefits of the N.R.A. or to get a wage increase or something of that sort." The sheet was not prepared by me, but I know of its preparation.

Mr. Millis: Who did prepare it?

Mr. Chase: It was prepared, I believe, by the employment manager and one of my assistants in my department.

I think it should be kept in mind in considering the questions and answers, that in no case was this sheet the starting point in the discussion. The man always came in with a lot of information and misinformation as to what his rights were, and it was an attempt to give him the other side of the story, and that is all.

Mr. Padway: I am prepared to state, off the record, that our boys claim it was posted on the bulletin board and that is how we got this one. That is what they claim. I do not know.

Mr. Chase: They are mistaken in their claim entirely.

Mr. Padway: When I said this morning it was similar to hundreds I had seen, what I mean was this. I think the first question is identical, but the last portion when you see the patriotic utterances used there, the quotations from President Roosevelt and General Johnson's statement, they are used in connection with the company union constitution itself as a preface to many of them that you may see before this is over. It is some of the literature which I talked of this morning through chambers of commerce, which contain that material, and the excerpts are almost identical with this which is found in the constitution.

Mr. Smith: Do you know approximately what time this set of questions and answers was prepared?

Mr. Chase: I do not know exactly. It was probably some time in the -- in August of last year: I could not state as to that. It was very very early, however. Before there was any union No. 18545, and when the discussion was more or less of a general discussion throughout the community. The discussion did not pertain to any particular labor organization. It was a matter of unionization in general that was under discussion.

Mr. Smith: What do you assert was the occasion for its preparation?

Mr. Chase: The fact that the men were coming into the employment department, into the different factory offices and saying that they had been told so and so by a union organizer that they had to join the union to get the benefits of the N.R.A., that they had to join the union if they wanted to get decent wages, and I think -- I do not know whether that mimeograph sheet pertains to it or not, but such statements, -- that they had to join the union in order to hold their jobs. Statements of that sort came in. I do not know whether this sheet refers to that or not.

I think that the affidavits which Mr. Hougren has, and copies of which were served on me last night, actually bear out my charge that those misrepresentations were being made.

We could discuss this matter of the Kohler Workers Association further, but I think the record itself is rather complete on that point, and I am willing to leave the discussion

right there.

Then we come to the matter of bargaining. According to the testimony of Mr. Paul Smith during the hearing in this case and of other union witnesses, by "Bargaining" they mean the consummation of an agreement, -- that that is the bargaining, and that if conferences and negotiations result in a disagreement, that there has been no bargaining. That is the definition that is scattered all through the testimony of the union witnesses in this case.

And they all testified that when they alleged that the Kohler Company had refused to bargain with them, that what they meant was that the company had made no agreement with them.

I think the record shows adequately that the company did at all times negotiate with this committee. They were earnest attempts on both sides to persuade the other to its point of view. It is a fact, and this one point on which the union witnesses and we do agree -- there was at no time a meeting of the minds which could have resulted in a written contract.

We will take these meetings here one at a time. The stenographic reports of the meetings are in the record. I think they speak for themselves.

The first of these meetings was on October 4, 1933, when a committee of some of the employees and representatives of the Central Labor Council of Sheboygan came out to see a committee of the company. That was before this particular

union was organized and before they had their charter, -- nearly a month before. They came out merely to see what we could do about taking back some of the boys that had been laid off. There was nothing very urgent in their demands. They went away apparently satisfied that the company could not take them back right away, and the company would do the best it could.

That is about all that there was to that first meeting.

November 21, 1933, that meeting was a meeting at which a union committee representing the complainants in this case -- they were organized by that time, -- sought to set up machinery for collective bargaining, as stated. That was their purpose in coming. They presented no credentials of their authority except a certificate signed by the secretary of union No. 12545, that they did represent all of the employees of the Kohler Company. They simply tendered this sheet. The company did recognize that this committee did in fact represent some of its employees -- how many, the company did not know -- but it did represent some of them, and the company proceeded to deal with them.

The Company's position at the time was that if they wanted machinery for collective bargaining, it was up to them to set it up. That they should set up whatever committees they felt they needed, and there was a willingness on the company's part to negotiate with these committees. We discussed that at some length, and the union committee left to consider with

their members certain grievances, and to come back the following week, November 29th, and present these grievances.

Apparently, or at least they seemed to be satisfied at that time that the setting up of the machinery was their problem, and they did set up their committees and come out and bargain with the company on existing grievances.

On November 29th they came back. Their first and only demand at that time was exclusive right to represent all of the employees of the company including the non-assenting members. They again presented no credentials to support their claim that they represented all of the employees or even a majority of the employees, except their own unsupported statements.

The company believed at that time, and still believes, with all due respect to the recent decision of this board, and knows no discourtesy is meant in my statement that section 7 (a) means that employees are free to associate in whatever groups they please, or remain as individuals, and bargain with employers. I suppose an argument on the law is inappropriate at this time, but at least that was the decision of the company. At that time at least there was no Houde decision. There were, however, official statements by the Administrator and the general counsel of the N.R.A. in support of that petition.

The Congressional Hearings, the records of the congressional hearings are full of interpretations of union men to the effect that individual rights were not intended to be taken away

-- I am getting into a legal argument now that probably is unprofitable.

At least, the company -- purely aside from the legal question -- the company at that time felt that its interpretation was correct. There was no agreement on that.

While they were to present a number of grievances at that time, they presented none. They left on November 29th.

The Company stated its position in a letter of December 2nd to a committee of the union, and from that time until June 18th of this year, a period of six months, the union made no attempt at any time to contact the Kohler Company further. At no time until June 18th of this year did the union ever present any demands with respect to specific grievances. The whole course of the negotiations prior to that had been on this method of bargaining.

Mr. Padway: Would it not be fair to say that there were complaints lodged with the National Compliance Board at Milwaukee, with Mr. Fitzpatrick, and that there was correspondence back and forth between the Board and the Unions respecting their complaints in the month of February and in the month of March, 1933?

Mr. Chase: Yes, I think the record shows that, Mr. Padway.

Mr. Padway: I thought it did.

Mr. Chase: There is no argument about it. My statement was that they made no effort to take the matter up further

with the company, and no specific grievances were presented to the company until June 18th of this year when the 14 points were presented. That is the first the company heard of specific grievances.

As a result of this letter of June 18th presenting the Union's fourteen points, a conference was arranged for July 8th, which was held. It was a conference lasting something over 3-1/2 hours, and the transcript of that conference is likewise in the record. Each of these 13 points was considered at length. I do not believe that a fair reading of that transcript will give the impression that the company was evasive. There were very different "noes" on a number of points. Others were taken under consideration.

It is true that the company stated that some things were its policy, but I do not know of any magic, either white or black, in a statement of a policy. A number of things were taken under consideration and a written reply was given to the 14 points.

Neither the meeting nor this written reply were intended to be final, I do not think, and I do not think that a fair reading of the transcript or of the replies themselves give that impression. The written reply left the door open for further bargaining.

According to the testimony of the union representatives, no effort was made to find out whether it was final or not.

On cross examination one of the members of the bargaining committee, Mr. Wren, testified that the word used with respect to this written answer was not "final" but "definite," and we assert that the answer was definite.

I believe Mr. Padway made the assertion that during the course of his argument that the company -- maybe it was not Mr. Padway, -- It might have been Mr. Ohl, -- that the company insisted that merely having a friendly meeting and smoking a few cigars was bargaining. The company has never taken that position. That is not anything which happened. There was in fact a most earnest discussion of all of the proposals and the positions of both sides, and apparently the parties were far apart. Neither succeeded in persuading the other to its point of view.

We assert, and I think the record bears us out, that the union's attitude was not particularly helpful in bargaining. In the first place -- and this is a point that I had not intended to mention, but when the union started to organize, their technique was to use recriminations and mere presentations of the employer. It is not the pleasantest thing or the easiest thing in the world and sit down and deal with persons whose initial approach to a problem is of that sort, but the negotiations were carried on. The union, according to the testimony of their own witnesses, voted a strike in September of 1933. That strike was deferred of course. Again in June

they voted another strike --

Mr. Rabinovitz: (Interrupting) It was October 4th.

Mr. Chase: I believe Mr. Wren or somebody testified it was in September.

Mr. Rabinovitz: It was October 28th.

Mr. Chase: I will accept your word for it. There is a conflict in the record on that however. The testimony of one or two of the witnesses is clearly September.

Mr. Rabinovitz: Possibly, but it was October 28th.

Mr. Chase: The record speaks for itself on that, whichever it is, and I think that the record shows that again in June of this year they voted a strike when they had not been in contact with the company for six months. Again the actual strike was deferred and this conference of July 8th was had.

At no time, as I pointed out before, did they come down to specific grievances until June of this year. They did not come there and try to negotiate hours and wages and all that sort of thing. The one point that they attempted to negotiate was bargaining, their kind of bargaining, and that is where the negotiations stopped. That seemed to be the uppermost thought in their minds. They were demanding what the company believed they had no right to demand.

At no time did they ever offer credentials in support of their claim of representation. The company was at all times in

the position of being asked to deal with an undisclosed principal.

No reply was ever made to these 14 points that the company presented as a counter proposal. According to the testimony of the union's own witnesses in this hearing, they made no attempt whatever to find out whether this answer of the company was final. They just assumed it. It was an ethereal sort of thing. It was in the atmosphere around them. But they made no attempt by telephone or in any other way to find out whether it was final. They made no effort to ascertain the justification of the company's position. They were rather contemptuous of the company's contention that it could not give them the requested wage increase, and yet Mr. Ohl testified, and other witnesses testify that they made no effort to ascertain whether from the company's point of view, the financial point of view, it was --

Mr. Padway: (Interrupting) It was a fact, is it not, that while these negotiations were going on, Mr. Kohler gave one department a 15 per cent raise through the efforts of the company union?

Mr. Chase: I think the record shows that in July I believe it was of this year, there was a 15 per cent raise in boiler radiator molding department, but the fact of it is that the rates in the radiator molding department had for a long time been out of line with the rates in the enameled iron

were molders, just across the aisle from them. It was a source of a great deal of concern and discontent, and it was a making of a fair adjustment between two groups of molders. It was not in the nature of a general wage increase.

There have been wage adjustments throughout the past year, and they probably will continue as these inequalities appear.

Then we come to the mediation activities. I do not know that it is necessary to discuss that at length here. We have attached as exhibits to Mr. Kohler's evidence, copies of the correspondence, proposals and counter proposals, and I believe the positions of the different parties are pretty well set forth.

I will state however, that the initial proposal for discussion submitted by Mr. Spencer on a Saturday morning, following a joint conference of the night previous, followed in detail the union's statement of the previous night as to the minimum change which it would accept. That is not said in disrespect or criticism of Mr. Spencer. It is simply the fact as we felt it, that apparently he felt that the Union's position was the proper starting point in the negotiations, but he made it clear to both parties, that he was not offering that as a settlement that should be made. It was presented to both sides as a basis for further discussion, and it followed the minimum requirements that the Union had laid down the night before.

The Company made several counter proposals. It modified

these counter proposals from time to time. In the last one, which by the way is still out, -- we made the last move -- the company expressed a willingness to arbitrate this question of fact on whether or not unlawful picketing had been engaged in, and this matter of reinstatement. We were willing to arbitrate whether or not as a matter of fact the individuals had done the things with which they had been charged.

Mr. Padway: Did you eliminate the merit clause as to the others that were not charged with unlawful picketing? Suppose 100 were charged and 1800 were not? You still stuck to your merit clause --

Mr. Chase: (Interrupting) Merit means merit, and it seems to me we must start with a presumption of sincerity if we are going to get any place.

Chairman Garrison: I think, Mr. Padway, it might be a little better if we let Mr. Chase finish, and you can comment afterwards.

Mr. Padway: I beg your pardon.

Mr. Chase: I believe that that probably disposes of the facts on this matter of bargaining. We think that the transcripts of the various conferences and the letters that are in the record pretty much speak for themselves.

I realize that this is a very sketchy and incomplete and possibly disorganized presentation of our side of the case, but it represents what we could do in the limited time.

I believe Mr. Butler has some comments to make in the continuation of the argument.

Mr. Butler: I shall try and be brief and draw your attention to a few things that have impressed me, of a more general nature than have been referred to here. I cannot claim to be an expert in labor disputes; in fact, this is about my first experience. And I have been learning some things.

One is that in a proceeding like this, or at least in this proceeding, there has been no opportunity, so far as I have observed, to deal or mediate with workmen once in the employ of the company. That was remarked by one of the members of the Mediation Board at Chicago. He could not remember that they had had the privilege of talking with actual ex-employees except on one occasion during their rather protracted methods of mediation there.

I started in upon the assumption that this was a sort of thing in which each side was going to have reasonable respect for the legal rights of the other. We might differ about legal interpretations; we might differ about facts, but that we could at least, in mediation proceedings, approach the thing from the broad standard of public interests.

I presume in my innocence or ignorance, I conceived that the great big outstanding thing in its relation to public interest was the getting of these men, one 1800 of them, who had pleaded with the village for protection in their right to

go to work.

As I say, I apparently was not an expert, because I soon found that at the threshold of mediation, constantly standing in the way of it, constantly in all of the efforts at bargaining, was the primary condition that the local union -- I will call it that because I do not remember the number -- must be recognized not only as a sole bargaining agency, but in addition that you cannot bargain unless you come to a conclusion and an agreement, which was rather startling to me.

And upon that, let me say that if this board will examine these papers which have been presented here, transcript of these bargaining meetings, they will find that there is nothing at any stage of these negotiations where the company has not fully and fairly met the situation. And I can say that if the matter is approached from the standpoint that has characterized this proceeding from the outset that you are going to wipe away all presumptions of innocence, you are not going to try to reconcile a sentence or a phrase in order to make it accord with sincerity and honesty, but you are going to try if you can -- if you are going to approach it from the standpoint that the source from which it emanates is so corrupt that only a distorted application can be made of it, -- but throughout from the beginning we have been asked to bargain with a group not of employees alone, but of representatives of the higher body, men not easily fooled, I judge, from what I have heard

here today and have heard throughout; -- you have got to bargain with them on a basis of bargaining that even under the Houde case, and under no other case, and under no law and no constitution could be justified, and that is that you must come to an agreement. And if you have not, you have not bargained. In that respect, if the Board please, you will find this case a rather exceptional case, I think from those that you have been called upon to deal with, perhaps those with which you deal in the future.

It is unnecessary for me to say, I know that Dean Garrison knows -- that the Kohler plant is an important institution. It is something more than an industrial plant. It is an institution in our state. It is an important institution to the state. It is of vital importance to the people of Sheboygan, and the people of Sheboygan Falls, of Plymouth, where men are dependent upon this as the largest industry of the community. It has been of vital importance to the idle men, the men who want to work, that it be kept in operation, and of course it is of vital importance to this company that it preserve the life of that property.

I was amazed, -- I was amazed to hear the declaration of counsel notifying us that in the event that we could not immediately and effectively follow the decision of the Houde case, but instead should resort to a right of review by the Courts, that the entire power and authority of the Federation of Labor would

be directed to the destruction of this plant and this institution in the village of Kohler.

A statement like that, if the Board please, about the exercise by us of a judicial right of ^{re-}view conferred by the very statute under which you are administering your jurisdiction today, upon their own complaint.

Exercise of that right, they tell us, is going to bring upon us blood boycott, and all of the so-called economic agencies or clubs, or whatever they call them, of that institution.

And I would like to have your Honors observe that apparently that threat came not from Mr. Padway in his capacity as representative of the workers, who are the real parties in interest, but came in his capacity as special counsel, general counsel, I believe it is, of the Wisconsin Federation and special counsel for the American Federation of Labor, and the power that he was talking about that is to be exerted is the power of that enormous aggregation.

Chairman Garrison: The Board feels that this is not the forum for making threats to the company. I think we can simply consider that as not before this Board. It is something, of course, with which we are not concerned at this hearing.

Mr. Butler: I mention that to lead to another observation. I recall that when the NRA went into effect, according to the papers, and I think reference was made to it in the Houde case, there was a great effort made on the part of unions to advance the formation of unions in shops all over the country. At that same time it appeared, or about that same time, it appeared there was activity on the part of the companies, speaking generally, and more from memory of newspapers at the time, in which they were setting up those so-called company unions. Some of them undoubtedly were under company control. Possibly

in others the company may have given what the opinion in the Houde case so aptly refers to as a "moral blessing," but that situation prevailed and continued, and I still did wonder, not knowing anything about these situations, as they were in practical facts, as to just why there should be that situation of great activity on the one side to establish these federation unions and the activity coming thereafter of company unions being formed.

And I just want to observe that what I have seen here today and heard here today, and what I had repeatedly heard in the course of this proceeding up to this time, amply explains to me why it has been that a company which had always operated on an open shop basis should have something of fear as to the consequences of union domination.

That has been brought home to me today more graphically than anything has ever brought it to me before.

Now, along with that particular thing, I want to speak a word about Section 7 (a). In substance, it has been said here that we have been violating Section 7 (a), in its provisions for collective bargaining, and that we have been persistently and deliberately violating it all this time since it was in effect. There is no suggestion that there could be the slightest excuse, the slightest extenuation for having a conception of the meaning of Section 7 (a) different from that which has been urged upon you by counsel and which has been urged upon us

throughout these proceedings.

Going back again, that law was followed by Code making. Section 7 (a) was required to be embraced in the codes. The codes were slow in the process of completion and final agreement. The President's Code intervened to stop the gap. That was signed by this company. That contained that provision.

But in the progress of code making, getting industries into codes, the question arose as to the meaning of 7 (a). Does that mean exclusive majority bargaining? Does it mean what promises a closed shop, or does it mean the right of every individual, his freedom to bargain for himself or by his own agency or the individual plus other like-minded individuals to select some one to bargain?

That, I think you gentlemen all know, was a subject very prominent in the minds of industrialists during the progress of the formation of these codes. It was an important question. And soon, and presumably to forward earlier the consummation of the codes, the Chief Administrator of our NHA and his counsel, made an interpretation of that language, and that preceded as applied to this, that preceded the signing of the codes. Undoubtedly it preceded the signing of many codes.

It was an interpretation which conformed to what seems to be the plain intent of the La Guardia Act passed about a year before, and industry rather accepted that interpretation, coming as it did from the head of the Administration of the National

Recovery Administration and from its counsel.

I felt myself confronting charges of violation of Section 7 (a), that industry was entirely justified in accepting that interpretation and in signing its codes on the basis that it would be observed. I felt, too, that the language, the purpose, the intent and the reading of it in connection with the La Guardia Act warranted no other interpretation.

This company, if it has been violating the code, that provision of it as respects collective bargaining, has been doing precisely what it was legally advised it might properly do, and in reliance upon what I supposed was an authentic interpretation when its codes were made.

That approaches nearer than I expected to do, or wanted to do, a discussion of the Houde case, but I say it merely because the type of contention that we have had here, about this wilful and malicious departure from the collective bargaining intent of that section has made it seem relevant.

Chairman Harrison: Do you remember the date of the Johnson-Richberg press release, to which I assume you refer?

Mr. Padway: February 4, 1934. The President's order was February 1st.

Mr. Butler: The first one was in August.

Chairman Garrison: Yes, but the August release did not specifically, as I remember it, deal with that question.

Mr. Butler: My recollection of that is that it did very

clearly.

Chairman Garrison: The February 4th release did deal with it expressly. That was after this company signed two of its codes, and it seems to me that the company might have given some thought to the Executive Order of the President on February 1st.

Mr. Butler: We had an Executive Order of the President, and plus that we had an interpretation which was very clear, of Johnson and Richberg who were the administrators of the code, and later there was a situation which followed, in which the President requested different things in settlement of the Automobile strike and some other case which followed.

Chairman Garrison: That was an agreement, and that was after you came under the code. That was not an interpretation of Section 7 (a).

Mr. Butler: You know, I really would like to discuss that whole subject with you but that would be, I take it, a waste of your time.

Mr. Millis: You are about three weeks late.

(Laughter).

Mr. Butler: I once was told by a Southern District Judge, when I was arguing the constitutionality of a water power act, and I knew that he was a good old State's Rights man, and I thought I would impress him a good deal with a State's Rights argument, and he announced the next day that I was forty too

late, so I am at least closer this time.

In whatever view you take of the Houde case, it is very clear that the same freedom of self-organization was given to company unions or to other unions as was given to the American Federation of Labor. In fact, although it is hard for me to believe after the experience I have gone through, I cannot see the name "American Federation of Labor" given in any of these laws, and that has tended to make these things a little confusing to me.

Now, they ask to dissolve this Kohler Workers Association. They say it was borne in iniquity. There again I cannot follow the argument. At least, it is functioning. It is functioning to the consent of a lot of workers. They want it to function. They have set up a bargaining scheme. They want to bargain that way, and to ask you to deprive them of their rights by some process of bastardizing them is quite beyond my comprehension, and yet that is precisely what you are asked to do.

Chairman Garrison: I do not think we were asked to bastardize them. The claim is they are bastardized already. We were to strangle them.

Mr. Butler: That is a more accurate statement. I assumed, and I had not read anything to the contrary, that there was nothing in 7 (a) that put an employer in a position where all liberty or action on his part in respect of collective bargaining or in respect of any other of the contractual provisions is

taken away from him or denied. If it were so held to be, I should very much question the power of Congress to do it. An employer has some slight concern when he has millions invested. He has some slight concern as to whether his shop shall be an open shop or a closed shop. Particularly if he has built his shop over 40 years on that basis, and on that same basis has achieved a development that has been shown to have taken place in the Village of Kohler, and which is known all over the country.

I grant you that he may not say that he will coerce his employees from joining this or joining that or to join this or to join that. But that has not been done. It has been avoided. And this record shows that nothing has occurred here which, in fact, has in anyway interfered with the liberty of action of these men.

Now, I want to come for just a moment to this question of election, and I pass that for the moment, because I want to speak a little further about this matter of the threat that is made here to destroy this company if it should speak a review of your decision.

Chairman Garrison: Can we not leave that threat out on both sides? It seems to me that that has nothing to do with this case. I have already expressed myself on the subject.

Mr. Butler: I simply wanted to know that I had made it clear to you, that the particular sin for that all to be

inflicted upon this is merely the exercise of the right granted by this Board, which is exercising jurisdiction which he himself has invited.

That leads to this question of an election. I just want to say a few words about that.

You are confronted with the question whether it is in the public interest to have an election. There is functioning the Kohler Workers Association. Enough has been said to suggest that an election may be productive of great strife, because one of the opponents in the election are the members of an institution with whom counsel does not even want to sit in the same room, but more important still is the question of how you can have an election which is going to reflect the will of the actual employees or even potential employees of that company? That company once employed four or five thousand men. In these past years that industry has suffered perhaps more than any other. That company has maintained employment far beyond any economy in production.

Make fols.

It reduced wages only as a last resort. It spread wages in a way wholly economic. It has had to compete with other industries who did the economic thing of operating with a limited number of men, shutting down departments and simply keeping steps with their orders. It has crowded its warehouses all for the purpose, at its own great loss, of competing its men at work, maintaining employment and seeing, if it could, that everybody possible could have a revenue from that plant.

Now, how are you going to use the eligible employees? You will find a situation where it may be a thousand men, it may be fifteen hundred men there who can, by spreading employment, be given a job. You have got, according to the claims of the other side, some 1400 people, union men that they claim are eligible. We have in the other organization, I believe, a claim of some 1700 men. You have got a potential possibility of not over 1500 men to spread, according to these claims, amongst 3,000 men. You have got to assume that these men, that extra 1500 men, are going to be demanded by this business.

Now, the record has nothing in it to show you that that is true. I think the record has enough in it to show you that that is a perfectly violent assumption.

Now, it would seem altogether in the public interest, as I look at it--this is perhaps more my personal view of it--as I look at it, it would seem to be a wholly unfair thing for

you to hold an election excepting on the basis of actual employment, which is very, very small, because we don't know even who will be potential employees or how many there will be. Some, of course, as we get back to greater production, but the business has been going down, down and further down, and the prospects today are as dark as they have been any of the time.

Now, you don't want to get, I wouldn't think, in a situation where the collective bargaining agency--and I am assuming the sort of agency you will select, if you do, will be in conformity with your Houde case, majority representatives who will bargain for all--it would seem to me a wholly unfair thing that that choice of agency be made and the election controlled by men who as like as not will never again be employed by that company, not because the company desires that culmination, but simply because of the condition it finds itself today.

And let me just in that connection say that there is another aspect which has been forced on me throughout this proceeding, and that is the apparent disregard that has been taken by the complainants of the financial losses of this company and the necessity of the company to limit its payroll, and of the fact that the company, on the undisputed evidence here, has done everything possible, and far beyond the requirements of their business judgment, to keep men going until it simply got to the limits and had nothing else to do except close certain departments and let the men go.

I suggest that matter as bearing upon the matter of public interest in an election. If the word of counsel mean anything, take mine, considering his objections to the paternity of this other organization--we might have repeated the disastrous occurrences we had down there.

Chairman Garrison: There is quite a bit of a feud on now?

Mr. Butler: Well, I would say it is approaching that. You have what to me is a greater and more important consideration of knowing who is the majority. I cannot see how this is going to accomplish anything useful, and I think I can see how it may do a great injustice.

Now, there is another thing. If the Board is going to order an election, I think that it would be only fair and in accord with the provisions of the review by the Circuit Court of Appeals, that in the making of its order, the order shows on its face that it is an order for an election to determine exclusive majority representation. That is to the end that you will appear--and I am speaking very frankly about this--that it will appear on the face of the order itself that the type of election which is ordered, and it seems to me that the order should embrace the conditions of eligibility, because in order to review it, it should be apparent, I think, that the question naturally arising which involves the question of that decision in the Houde case, of course, should appear in the

order as it goes to the Circuit Court of Appeals.

Chairman Garrison: I take it from this that the company has no intention of abiding by the order of this Board?

Mr. Butler: Excepting as we form conclusions different from what we have now. It would be our purpose to have the court pass on the question, and I am sure that that is not a statement from counsel that would be wholly unexpected by the Board in view, no doubt, of the difficulties it itself has had in arriving at a conclusion as to the meaning of that language.

It is perfectly well known that there are a large number of lawyers, some of them no doubt lawyers of some capacity, that are not in accord with that decision, and of course it is a decision of very vital consequence. I think, too, the very joint resolution under which you operate is one that contemplates that your decision, being merely administrative, and your orders, being merely administrative, do not get the force of law, except subject to that judicial review, and I presume that judicial review was necessary to the granting of the powers that were granted you in that joint resolution.

Now, I think I said that I think the order should also prescribe the conditions of eligibility. The theory of this review is, I suppose, that these questions be set aside in granting an order for an election involving judicial questions, and that is just as true of the question of eligibility. We

find a statute that deals with the word "employee" or "employees," and if we are going to review it we most earnestly would like to be in a position where these matters can be most readily shown on the record.

Now, I think that is about all I have to say, excepting I would like to add this; this Kohler factory, Kohler Village in its development, has represented an idea of Walter Kohler, and members of his family. It has represented what to them has been an effort to practically build and operate a plant that should have pleasing surroundings, wholesome surroundings, with a village that could be operated by the men themselves, where there should be removed, so far as possible, all matters of paternalism, and where there could be an interest as between employer and employee, a concern on his part for their welfare, an effort on his part to do full justice at all times to them; and if you would look into the record you would find not only has this effort been made to maintain as many workers as possible; to maintain wages at a considerably higher level than his code requires, to try to do for these people who are around him, not only those who live in Kohler, but those who live in Sheboygan and elsewhere, give to them the sort of treatment that he conceives and always has that the working men are entitled to.

I would like to have you think of those men and think what it is for us to be told, as we have been told in these proceedings, that these sort of ambitions, the relation of them,

the earnest effort to achieve them, that might have been all right once, but this is a new deal, and what you have got here is a situation where, as the result of it, you may be saying to every employer, every progressive employer, every sympathetic employer, you may be saying to him, and causing him to say to himself, "What is the use of it all. Why not bind them down as far as the law will let me go, because when all is said and done you are no better off, but, in fact, are the loser by millions of dollars."

Chairman Garrison: Does that complete the argument for the company?

Mr. Butler: It completes mine.

STATEMENT OF MR. K. L. HOUGEN

On behalf of Kohler Workers Association

Mr. Padway: I take it the statement read by Mr. Smith is applicable to the entire situation?

Chairman Garrison: Yes.

I want you to understand our situation: The Board has not finally passed on the legitimacy or illegitimacy of this particular organization. Naturally we cannot, and you have asked that we enter an order dissolving it, and I think the Board would like to hear from that sort.

Mr. Hougen: I shall be as brief as possible. I shall make an effort to be helpful to this Board, and the way I believe I can be of some help to this Board is to avoid extra-

vagant claims.

I appear here for this group of workers now numbering 1878. On the first of July this association had 1860 members. Prior to the hearing at Sheboygan 10 additional persons had joined the association. Since the hearing at Sheboygan 8 others have joined our association.

This group consists of men who depend on their daily labor for the maintenance of themselves and their families, and they are all interested in having an opportunity to work for the Kohler Company because that is the only place that Kohler or at Sheboygan where there are any applicants for labor available.

You know as well as I do that the furniture factories which constitute the great bulk of the business at Sheboygan have been virtually at a standstill for three or four years. Many of them are in the hands of receivers, many of them are closed up without any employment at all, and there we have a community between Kohler, Sheboygan Falls and Plymouth and the City of Sheboygan, of approximately 45,000 people, and the closing of a factory like the Kohler Company is a very serious thing to these men.

I have been grieved to notice that counsel for the complainant here has tried to give to every iota of testimony the worst possible interpretation. The very fact that approximately 1,000 of these workmen of the Kohler Company sent a communica-

tion to the president of the company early in August, 1933, he gives the interpretation as being company inspired for the purpose of defeating voluntary action of these workers. That communication is very easily explained, gentlemen, because the Kohler Company until the early part of 1932 did not decrease its force, did not decrease its wages, but commencing in 1933 it was forced to reduce its working hours and it had then, in place of keeping all of its men on to spreading the work basis, because the warehouses were so stocked up they could not go on with further production, so they had gone to the basis of changing their operation from whole days and full time to spreading the work between the men. That was the humanitarian thing to do, but it was a vital and serious departure, so far as the workmen were concerned.

These workmen have collaborated with the Kohler Company for a long period of time, and the relations have always been friendly and normal. When this radical change in the work set-up was made, it was entirely reasonable to expect these men to express to the Kohler Company that they appreciated the Kohler Company was doing the best it could under the very difficult circumstances under which labor and capital has been forced to operate now for a great many years.

That merely indicates a determined effort on the part of the complainants here to give a wrong and false interpretation to every action. The Kohler Workers Association was organized,

as has been said, by these workmen. It was not done on the spur of the moment. Oscar Barr, who was perhaps the leading spirit in the final organization of the union, has given this matter, as he states, considerable study over a considerable period of time, a year or more, or two years or more.

Weldren and the others testified that they had given it some thought. Mr. Sasa, who is now the acting chairman of the association, testified that that matter had been discussed before he went to camp. He and others had talked about organizing a workmen's association. Association was in the air, and the workmen had the choice, then, of forming their own shop organization or any local organization or affiliating with the American Federation of Labor.

I had no quarrel with the American Federation of Labor. Those who wished to join the American Federation of Labor will and could. I have no quarrel with them. I do not dispute with them. I do not quarrel with them. I have no fight with them. Lord bless them, if they can serve labor, bless them for doing it, but under this situation where the workmen want their own association--and it was a perfectly natural aspiration in this case because it takes in the pride of these workmen that may live at or near Kohler, that they were a part of this great Kohler organization that has built up in the United States a model for all industry in the United States, and I can say that without any question, and these men were

proud of the fact that they were Kohler employees--they were perfectly willing to be separate and distinct from all other labor organizations and deal directly with their employers.

What did these men do? They talked the matter over, and then a committee of three went to Mr. Kohler and asked him if it was agreeable to him. Certainly it was. Why should not Kohler express his satisfaction that his employees were desirous of forming their organization to deal personally with him, without the interference of outside people, who did not have as their sole desire the serving of the laborers of Kohler, but in addition to that have the desire to serve the interests of all other workmen all over the country.

These men had the right to make their choice and Kohler was no doubt glad that somebody was starting a movement so that these men could express that idea.

On the following day a committee of 80 men adopted a constitution, the one that is here, by which they set up the methods through which they can deal with their employer. Supposing Kohler did express the friendliness to such a method? There was nothing wrong or unlawful about that. Certainly not. They were told in Kohler's speeches, or in literature, the two notices that were gotten out, that you can join or not, as you see fit. There is no one urged to join or asked to join, and to indicate to you how carefully this committee of 80--these were not foremen--there were two of them were, Mr. Staber and

Mr. Sasse--they were not foremen. Mr. Staber was the chairman of this organization.

During the organization, prior to that election, rumors came to Mr. Staber that some foreman had said to some employee that he had better join the K. W. A. The evidence shows that as soon as that thing was called to the notice of Mr. Staber he immediately sent back to these two foremen their application for membership cards, and told them that they must decide for themselves whether they wanted to join the Kohler Workers Association or not.

So, I say without any fear of contradiction on a single honest word in this entire record, that there isn't a single honest word of evidence, except the purest and vilest hearsay, that there was any compulsion or undue urging on the part of any Kohler worker to join this organization when it was originally formed, and it was formed with over 1800 members.

Now, then, if you follow the history of that organization, they had an election about the 26th of September. That election was conducted by the employees themselves. There was not a single foreman or employer of the Kohler Company that had a word to say about the election. They moved into the plant polling booths, the official polling booths of the village of Kohler, which were used, and they conducted that election as secretly and in the same way as they conduct a public election.

They had the payrolls there and the polling lists. They had polling clerks. Every man that was voted was checked on that polling list to see whether he was a worker, and we offered to produce in evidence all those records showing the election was conducted by the employees from the payrolls and the polling lists are preserved and kept today to show who voted.

First, before they had their election, however, they had a primary election, leaving each workman to make his own nomination of the members of these committees. Then out of nomination twice the number to be chosen were put on the official ballot when they had the election. The result is they had an election and thereby set up the machinery by which they have functioned.

Then, in January, gentlemen, under the Constitution these officers were elected to serve until Wednesday following the election. The second Wednesday of January is the official election date, and on the third Wednesday of January they had another election conducted in exactly the same form and a new set of committeemen were elected by the men voluntarily out of their own number.

There isn't one iota of evidence that any officer or foreman or superintendent or anyone in authority did or said a single thing to indicate what the company might wish to have on this board of officers. It was a free and voluntary act of the

members of the Kohler Workers Association.

I am then unable to see why this is not the full and free act and free choice of the employees of the Kohler Company. They have set up their own bargaining machinery.

I speak now on the proposition of these elections, and I want to picture to you that we have here set up and in active operation and have had now for a year and a half a bargaining instrument free from any influence on the part of the corporation or its officers, and that there is no need for election because they have their bargaining instrument.

Now, then, when many of us had been uncertain about what the law is on many subjects we have had to read and study from the beginning almost. It is not surprising that there is difference of view and difference of opinion on the construction or practical application of these laws. That is to be expected.

Now, then, the Kohler Workers Association up to the present time has not assumed any high or lordly position. We have been the instrument up to date of the members of our association. If the law be as we said at the hearing, or the regulations require that this association shall take under its protective wing and deal for all of the employees of the Kohler Company, the association is willing to do that. We are willing to function, if the Board says that is the law, if the Kohler Company says we should, if the A. F. of L. says we may deal for them, we shall be glad to deal for them. If the law says we

must deal for them, we shall be glad to deal for them, and we shall do the best we can, and there has been no discrimination in our association whether the man is a member of the union or not. He may belong to the Kohler Workers Association in either event, and I filed here with Mr. Watts here yesterday 180 or 190 affidavits by men who had signed application cards to become members of the labor union but who expressed their desire to be members of the Kohler Workers Association, and as members of the union, out of 189, apparently less than 40 have ever paid a nickel of dues or initiation fees, and once payment has been made, have varied from 50 cents to \$3. I don't understand that that makes them union members, but that is neither here nor there.

What I wish to make clear to you gentlemen is that we have set up freely, by the act of the employees, not only in its organization but has been recreated, if you please, voluntarily and freely at each of these two elections, we have set up the bargaining machinery.

Now, then, what would happen if a new election was ordered? You would have a prolongation of this confusion. Apparently there is considerable animosity in certain quarters. There may be outbreaks; there may be violence. To no purpose.

Here is a company whose payroll has been declining for some considerable time. Perhaps it will continue to decline.

Let us hope it will increase. But it is the fall of the year. You cannot expect any marked improvement to happen until February. Now, then, the figures show that out of the employees on the company's payroll of July 1 of this year, 1740 were members of the Kohler Workers Association, so that by long odds the vast majority of the employees now are represented, for purposes of collective bargaining by the officers and committees of the Kohler Workers Association, so that we say at the present time there is no occasion for an election.

We stand here and say that we have here our own bargaining machinery, that we are willing to deal for the Kohler Workers Association.

I have prepared, your Honor, a little compilation. I recognized that the principal portion of the stage would be taken up by my illustrious brethren, and I was largely just a tail ender, so I put my observations in writing. I shall be glad to leave them here. It is perhaps a somewhat compact situation of the situation as it respects us. I don't know whether Mr. Padway would consent to receiving anything from me or not. I would be glad to tender him a copy.

Mr. Padway: I am glad to receive it, and I want you to know that anything I have said does not apply personally at all. I have the utmost respect for you, personally.

Mr. Hougen: The suggestion has been made that I am here as a limb of the Kohler Company. There is no evidence to

support that statement, and I hope there is no reason for suspicion. I am here purely and solely and only as a representative of the Kohler Workers Association. I have never been advised in any respect by any one a thing that I should do or say. I have never submitted to them in advance what I was going to say or suggest. They have never offered me a cent, and I don't believe I would take it if they gave it to me, since I certainly would be under grave suspicion, but the Kohler Workers Association have their own funds. They have three or four hundred dollars in the treasury when they employed me, and I did not expect to come to Washington. I thought that would be an ample amount to compensate me, but now that we have traveled two or three thousand miles to attend these hearings I will say that it came to be a burden, so the other day they passed the hat around among the men, the workmen in the factory. They didn't ask a nickel from the foremen or the officers of the Kohler Company and they did raise sufficient money to pay my expenses and that of my two friends and associate, the workmen, to come down here to this hearing.

I want that distinctly understood. We are here standing on our own feet. We have our own association which we have sponsored and organized and maintain and operate, and we claim under your decision that we now have the right to bargain collectively for the Kohler Workers Association, the Kohler employees.

I am not going to be arbitrary and insist that we should represent them. If they wish to talk their grievances over with the Kohler Company very well. We are not going to be optimists or proud about that, but we do claim now, under your Houde decision, that we represent the Kohler workers and the Kohler employees, and that we have a bargaining agency set up by ourselves, not only once by the original organization in September, but by the rejuvenation, by the election on the 27th of September, 1933, and the second election in January of this present year, when our officers were elected to hold their offices for a period of 1 year, and that we now constitute the bargaining agency for the Kohler company and that our machinery must be allowed to function until the next election when the Kohler employees may change it, if they wish.

The Kohler employees may change their constitution. It is all under their own control. The Kohler Company has not a word to say about it. We can put into our constitution whatever we please. So we claim that right now and we do not want to be strangled to death. We are a very live baby, and we are neither bastards nor the hirelings of anybody. We are here standing on our own feet.

I think that the memorandum that I submitted contains in brief the concrete history of the organization, and I do not want to intrude on your time. I would like to have you notice that in the organization of the Kohler Workers Association it

is not properly called a company union. It is not a company union. It is an association limited to the employees of the particular company. But outside of that the company has nothing more to do with it. It is self-organized, self-regulated, self-managing institution operated by employees. The company pays nothing. The fact that these men attend these meetings on company time is nothing surprising, but that has been the history of the Kohler Company at all times, and the evidence shows that, that all grievances, labor grievances, and so on, have all been taken care of on company time, though that is not a new department. It is nothing different from what the company has always done.

I thank you.

Chairman Garrison: Mr. Padway.

REPLY ARGUMENT BY MR. PADWAY

Mr. Padway: I cannot resist the temptation to correct an impression given us here, that this is a child, or that someone is out on an limb. I don't want to leave that impression. I don't think this organization is a child at all. We are now told this is not a company union. I would think it would be more appropriate to say that it is a marriage, probably the wife of the company. There has been so happy a courtship between the two, they have gotten along so pleasantly and so well and their ideas jibe so well, that the issue and offspring I am sure will thrive and get along so well because of the happy

courtship and fine union between these two.

That may be the result of the rejuvenation about which Mr. Hougen spoke. Whether it is or not I do not know, but it is a very, very happy situation indeed.

I am almost inclined to believe that Congress made a mistake, that Congress should have held the A. F. of L. an independent union and should have legalized the company unions, because they get along so well. There isn't anything they can't do beautifully and well and to the satisfaction of both.

It so happens that that is not what Congress did. It so happens that Congress sets the policy of the country, and it did through Section 7(a) give us some form of collective bargaining, exactly the reverse of what we have here. It did not want this pleasantry, this courtship, this flirtation; it wanted the employees to have a standing before the employer, and in that way have free exercise in the choice of representatives and in self-organization.

I am amazed as I have sat here and listened to the arguments by able lawyers who--and I say this not as a deaconium or out of friendship, but I have a high regard for Mr. Butler. Everyone in the State of Wisconsin who practices law will have that regard, and I think Mr. Chase gave some study to this and is brilliant enough to understand what it is all about, and certainly Mr. Hougen does, with his experience, and to see these gentlemen stand here before this Board and repeat that

which was repeated in the Houde case, in the automobile case, and in other cases, the same situation, the same set-up, and say, "Why, there isn't any connection. It is free and innocent and pure as the driven snow," almost makes one believe that either these men are self-anesthetized or else they haven't paid any attention to the law.

After all, is it so difficult a task to state what is interference, what is influence, what is coercion? Does it have to be with a baseball bat; does it have to drive the employees in, lock the door and say, "Now, Mr. Kohler says unless you sign that card you will not have a job, you will get a bat over the head, and down you will go and into the ash box"?

Let us see what is said in the Supreme Court; these gentlemen have confessed this is the first time they have been in this sort of a case. ^{In} All of these cases the same things are presented as are presented here, and on that subject the Supreme Court said, through Justice Hughes:

"The intent of Congress is clear with respect to the sort of conduct that is prohibited. Interference with freedom of action and coercion refer to well-understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of friendly intercourse between employer and employee. Influence in its context plainly means

pressure, the use of authority or power on either party to induce action by the other in derogation of what the statute calls self-organization. The phrase covers the abuse of relations or opportunities so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purpose of this Act, than in relation to the well known application of the law with respect to fraud, duress and undue influence. If Congress intended that the prohibition as thus construed should be enforced, the courts would encounter no difficulty in fulfilling its purposes, as the present suit demonstrates."

And I beg to disagree with my good friend Mr. Butler when he said the difficulties this tribunal had in coming to a decision in the Houde case. I rather think there was no difficulty. The Board has not been constituted very long, and the decision is out. The Board was constituted in July. It doesn't seem bad, with all the other matters that this Board has before it, 90 pending cases, some new cases, being caught up with the calendar, and having the Houde case to consider--I rather think the Board has not experienced much difficulty, when I read the decision and the mass of citations in the footnotes, supporting everything that is said there. I don't think there was much difficulty in coming to a conclusion such as was arrived at. At least there isn't that difficulty and uncertainty that Mr.

Butler thinks appears in the Houde decision. On the contrary, I think it is very explicit and very well fortified by rulings that go as far back as the Wilson War Labor Board, and its rulings at that time.

Now, what has gone in on here, and what has been presented in this evidence, no one with intelligence, as I said this morning, could say leave the situation that can be construed free from interference. There has been all kinds of interference. The speeches speak for themselves; the evidence speaks for itself. I don't want to spend much time on that, but I do want to say this; that Mr. Kohler said this plant had been an open shop plant. There was an open shop policy and open shop philosophy for 40 years, and they were not willing to recede from that. They had this happy relationship, they had gone along for 40 years. But whether they like it or not the Government has said they have got to get away from it. There is a change necessary. They say they are not making money, but they are borrowing from the banks. They have to lay off their employees. But, after 40 years, whatever their policy may have been, a change in economic and social set-up is necessary, and whether they believe in it or not, that is a matter for Congress to determine by public policy, and it has been determined in the N. R. A., and a resistance, a refusal to act and to go on with that policy may all be very well when it is not part of the law, but when it is part of the law, they must

go on with it.

I don't want to leave this suggestion which has been made here of the kindness and goodness of Mr. Kohler in giving these employees work go unchallenged. We dispute that. It is not an issue before this tribunal, but it goes all through these affidavits and statements and testimony so that one is justified in taking a moment to say this: The spread of employment in this industry was not greater by Mr. Kohler than in thousands of industries in the country. The spread of work among the men was no greater, the use of capital and surplus and money borrowed from the bank was no different in this industry than others, but time and again when our bargaining committee went to talk with them they said, "We will give you what the code calls for," and the minimum of the code does not give a man a living, but when Mr. Kohler stands up and says, "I have been so wonderful an employer," and Mr. Butler says, "They have been too good to him," I will tell you who they have been good to if the Board wants to know, and it is a matter of record. They have been good to themselves. In all the years of the depression 7 per cent was paid; they never slipped up on a preferred dividend, and the majority of the preferred stock is held by eight or ten of the Kohler family, taking about a quarter of a million a year in salaries and dividends.

That is not an issue, but it is in the record, and we are confronted with that every time we ask for collective bargain-

ing. We are given this history until it sickens us, as to how great, how good, how kind this man has been, that this is a beautiful garden city we have there. Yet, with 3,308, only 200 factory workers have ever lived in that garden city, and it is set up as a great, wonderful and aesthetic proposition, pointed out to these people. But they don't want stone, they want bread. They don't want to look at gardens of 200 people out of 2800 employees. What is the use of giving us that slop; give us justice in law.

They would try to make you people believe that all these workmen are living in these garden cities. They are not. They are living in hovels in Sheboygan and these other places. It is time Mr. Kohler knew that.

When we talk about collective bargaining, members of the Board, we talk about this--I wish I had the time to just take up, in the matters of collective bargaining, and their efforts to do so in good faith, as called for by the Houde decision, the last word in collective bargaining--may I just take about 3 or 4 minutes on that, just to show you at random, page after page, in the testimony?

Chairman Garrison: Mr. Padway, could we perhaps set some time on the whole thing?

Mr. Padway: Will you give me until quarter to five?

Chairman Garrison: Yes, sir.

Mr. Padway: It says;

"The company is now working in conformity with Section 7(a) of the National Recovery Act and will continue to do so. It will deal with anybody who represents workers or deal with anybody else."

Very nice, but let us see how it was done in this particular instance. Mr. Ohl is talking about the arrangement and the set-up, so that they will deal with grievances. Mr. Kohler says:

"No one can tell whether or not there will be any grievances. Suppose we postpone that and consider it after a while. So far as seniority is concerned, the company will decide what men it takes back for the good of the business."

That is, we will discuss the other proposition at some time later, and as far as taking men back, seniority basis, we will do that if the business indicates.

Mr. Chase says the company talked this over and gave many refusals. It gave all refusals except one, and only one is set up, the 51 per cent base rate.

We go on again.

"Mr. Ohl: You will not agree to it?"

They are now talking about the seniority.

"We cannot agree to return men to seniority purely because of age or length of service. I will be glad to discuss that with my associates later and see what they have to say about it. We are willing to meet with you just as we are meeting

with you now."

"We are willing to meet with you," and on seniority they will meet as time goes on.

"Mr. Ohl: The reason that I am asking for an answer is that these men will have to go back to their group and make a report.

"Mr. Kohler: We will continue the practice of giving a man a hearing.

"Mr. Ohl: Will you agree to that; just say as to that.

"Mr. Kohler: It is the policy now to give a man a hearing."

Further he says:

"My answer is that there is no reason or occasion for sitting up the machinery now."

He is referring to the machinery for collective bargaining.

Later:

"Section 7(a) of the N. R. A. does not contain a provision for arbitration, but if you follow up the decisions of the Labor Board you will find cases of arbitration."

"Mr. Chase: The Labor Board has no power.

"Mr. Ohl: No.

"Mr. Chase: Is employment trouble much a matter of mutual agreement?"

Then it goes on:

"Then your answer is no.

"Mr. Kohler: When the question comes up we may agree to it."

That is the way the whole thing goes on, page after page, getting nowhere, and these men are talking; let us agree on something, give us a definite answer.

He says later:

"We are living up to the code, which is the law of the land."

That is all through here. That is the usual habit of an employer who does not want to agree to meet with the employee.

He says:

"We are living up to the code."

Later: "The code is not satisfactory."

"Mr. Kohler: Then you will have to take it up with Mr. Johnson."

He forgets we came there to take it up with him.

"Mr. McCreary: On every one of these proposals you have not bargained to my notion at least. All you say is you will live up to the code."

Then Mr. Ohl interjects with something. Then Mr. Kohler:

"No, let us wait until then."

They are talking about agreeing to things now.

"You say you are socially minded."

"Mr. Kohler: We will live up to the code."

That reminds me of Caesar's will. "We should have a will, a will." A code; a code. That is all we could get out of him.

"Well, give us an answer."

"You have our answer on that question."

Then, Mr. McCreary:

"Will you say definitely that you will not hire any man until all the men formerly employed will be given opportunity to work?"

"Mr. Kohler: I don't think we should make a statement like that, because it is too arbitrary. It is our policy to take men back."

You take page after page and find that they have not been pinned down to anything definite.

"I have met you. Come in, gentlemen."

Perhaps the record does not show it; it ought to. They were given cigars. Courtesy, yes; generosity, yes. Anything definite, no.

It hurts when an employer comes out and says, "I will give you fellows nothing but all this talk about a code."

"Mr. Kohler: I think we will let it go at that."

Then, Mr. Ohl:

"It is very vague. It is not an answer."

"Mr. Kohler: Well, it is our position."

I marvel at the patience of human beings. They sit there and wait for 3½ hours. I frankly think, as phlegmatic as I am,

at times I would have arisen and walked out on that conference half way through had I been treated in the manner they were treated.

"Mr. Ohl: It is not agreeing to give employment--

"Mr. Kohler: Shall we go on with the next question?"

He arbitrarily cuts that off. He thought nothing of it. These men have not yet had an answer, but he wants to cut it off. He says:

"Mr. Kohler: Shall we go on with the next question?"

"Mr. Ohl: Well, if that is all you have to say about it.

"Mr. Kohler: I think that is something the company will have to determine."

Then he goes to a new proposition, a proposition which is discussed, proposition 8 of wages.

"I think that is something the company will have to determine."

And that ends that. That is collective bargaining in the opinion of these people. They cannot believe that. I do not believe Mr. Butler or Mr. Chase or Mr. Kohler can believe that that constitutes collective bargaining. After reading the Houde decision they certainly cannot think so. They may argue here, but they cannot believe their argument.

Then Mr. Ohl speaks to him of working standards and Kohler says:

"Well, let us go on with the next one."

And that ends that, and so throughout this thing.

Then they are talking now about deductions, a very sore spot with them:

"Mr. Kohler: In what department were you working?

"Mr. Ohl: Of course, if this is from the agreement, all the men would know it.

"Mr. Kohler: What is next?"

Always on to the next thing.

Then, there were two significant things on page 35, when they did catch him at things there really should have been some bargaining about. Those things were to be bargained for by him, by the company union.

"Mr. Kohler: If that is true, the men should come to us and complaints will be investigated. We will look into those charges. They have an association here now, and apparently it is working satisfactorily."

That was with regard to the lay-offs and deductions and so on.

Then, another instance further down the page:

"These things are being met with a committee of our Shop Association."

Here is a man who says he is going to collectively bargain with the majority and minority groups. Let us assume this was a minority group, but when they had something he could not answer or bargain on he would say, "These things are being met

with--by whom? By a committee of our shop association.

That is only the last conference. I would like to quote from the conference they had with Mr. Herbert Kohler. It amounts to almost audaciousness. It amounts to an invitation to get out.

They complain about Mr. Smith going on the stand and saying collective bargaining meant an agreement. That is not what he said. Read what he said; he said that it meant exactly what the Houde decision said; it should lead to an agreement that the bargaining should be in good faith. There may be collective bargaining, if that is the sense, that I will meet and talk and discuss, but I do not intend to come to an agreement. That is not collective bargaining within the meaning of Section 7(a).

That is like going to a store and buying something that you never intended to purchase, but just to fool the clerk or the owner you ask what he wants for it, what will it do, and you are leading him to believe he is going to have a fine sale, and he rubs his hands with pleasure, and you get him all worked up, and then walk out on him.

I defy the other side to show me a single instance where there was any intention in this whole thing to arrive at an agreement at all. When you have here one, two, four, ten, fourteen points, you go down the list without almost a single dissent, and there isn't an agreement, I say the very fact that he

did not agree on a single thing is a manifestation that they were not bargaining in good faith. That is what Mr. Smith meant. It showed, in view of the fact that they agreed upon nothing except that which was turned down, that that indicated, if you please, that they were not intending to bargain---the very fact that they did not agree on a single thing.

Now, I am through. I just simply want to ask this; that never, never more automatic paternalism will supplant our rights under Section 7(a), and the quicker employers, Mr. Kohler and others, learn that, the better off it will be. The running of the plant is not at all necessary to the welfare of the workers. They may all lose their jobs. It is better they should than they should have to work for starvation wages, and this idea of saying, "We won't see the plant open," is just slop. It is not necessary to keep that plant open. I represent these workers and have their interests at heart, and yet I would rather see the plant closed down and the employees out of work, surprising though it may seem to those on the other side, if we cannot get enough in minimum wage to give us food, shelter, clothing and so forth, so that we can go back and work for that and wait for better tomorrow. When these wages get below those minimums, when we haven't enough to buy food, shelter and clothing, then it is time for this plant to close up, because it is not serving humanity; it is throwing these people on the Government. But if it is not true they can pay more---and the

Government is endeavoring to show how they can pay more-- to correlate their industries and take their codes, and if they will take this definite American policy as set down, they will find they will soon be out of the mire and muck they are in now. They will not cooperate. They file it, and then they holler, "We can't meet it. We are in a bad situation." Well, let them change their tactics and they will probably be in a happier situation.

Thank you for our courtesy and attention.

Chairman Garrison: Gentlemen, would anything be served by a conference of counsel with this Board? Or have hopes of reaching any agreement disappeared?

Mr. Butler: I think I might say about that, we have at no time declined to consider with them the matter of coming to some agreement, but so far, and that was the experience, I believe, in the mediation board--the demands are of a character that are simply impossible. I will approach the question with some other viewpoint. That is another thing.

Chairman Garrison: What do you think, Mr. Padway? Is there use of discussing this matter?

Mr. Padway: Dean Garrison, and members of the Board, when we concluded our testimony at Sheboygan and at Chicago, too, when we had these hearings, we said, "Our employees will go back in the numbers that Mr. Kohler needs on the basis of seniority set up in the departments he wants, and as he needs

them, and if he claims someone was guilty of unlawful conduct, that we will leave to the Chicago Regional Labor Board or any person that may be set up as the tribunal to arbitrate these matters."

We said, too, that we were willing to have this Board decide upon representation, and there again that we stand by and have the Board determine representation in such suitable manner as it deems proper under the circumstances. That we waived our 14 points and any immediate demands and left that to arbitration, either leave it fairly to this tribunal without a representative on our side or their side, or the Board set up, with a representative of our side or two, and one or two of the other side, and someone the Board may put on that tribunal to determine those things that they think they cannot agree on. Isn't that the least we can ask to get together upon the basis that we are asking to come back, that they will take back who they please and those they put in this so-called outcast list, because of unlawful activities, that they will arbitrate on, and there they will stop. If the principle of arbitration is good for one thing, it ought to be good for everything that is in dispute. If it is accepted in one matter it ought to be accepted in all. Is there anything less we could ask? If the men went out on strike, that is a different matter, but to go back, gentlemen, today, and tell these workers there at Sheboygan that we want them to go back on the basis that a vote

will be had, but how will it be had? Well, if we lose we are out, and if we win the Kohler Company do reserve to themselves the right to go through the courts. That would be something we would ought to have shame in our hearts for. We want to go back there; we may not be able to maintain the integrity of our organization, but we can, if you please, maintain it if we lose the strike. You know we can lose the strike out there; we can have the picket line broken up and Mr. Kohler can go back and open up his plant--and I don't say this by way of threat--I say boycott is the only thing encouraged by the Government. It encourages a boycott in those instances by withdrawal of the Blue Eagle, and the P. R. A. says only patronize those who have the Blue Eagle. When we said the plumbers might not install these fixtures, an order might go out throughout the country--this is not a threat. It is within our rights. Why put us to all that trouble? The picket line today means nothing. Kohler can, if he wants to, break that picket line in 24 hours and start to produce, but it won't sell the products, and that is not a threat.

Chairman Garrison: This is scarcely a conciliation argument. The Board has no desire to ask the parties against their judgment to sit down with us. We have had plenty of experience in finding, to our sorrow, that these conferences frequently do nothing more than waste time, but in this case, if you think there is anything you would like to take up with us in joint

conference we would be glad to do so. Otherwise, we will adjourn.

Mr. Butler: In view of what has been said, I don't think there is even a suggestion of a starting point.

Chairman Garrison: Well, we will adjourn, gentlemen.

(Whereupon, at 4:54 o'clock p. m., the hearing adjourned.)
