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the local unions where the accounts have been audited.

The above sections are not ambiguous or confusing but clear and concise and make it obvious that the authority of the International President to remove, suspend and appoint is confined to officers and appointed employees of the International Union.

Hence, for him to attempt to remove the officers of self-supporting districts or sub-districts and to appoint others of his choice to function in their stead, or for him to commit an act from which eventuates the same result, is for him to go outside his constituted authority and by circumvention enlarge the power vested in him by sections Nos. 4, 5, 9 and 10 of Article No. 9.

To do this is a flagrant usurpation of authority not granted by said sections and is a gross invasion of the Constitutional prerogative of others.

In addition to the sections of the International Constitution just above quoted and which designate the authority of the International President and limit his power to remove, suspend and appoint to officers and employees of the International Union, there is a well grounded and long established tradition to the effect that the International President may be an International Convention, the highest authority in the Miners' Union, shall not have the authority to remove or suspend officers of the subordinate branches of the Union.

X Mitchell Position Directly Opposite

I refer particularly to the case of Patrick Dolan who in 1924, while acting as President of the Pittsburgh District miners, and who, when attending a Joint Interstate Wage Scale Conference of miners and operators, voted with the operators in favor of a reduction in wages.

He did this in positive violation of the instructions of the Pittsburgh District miners and in opposition to the position of the miners' officials from Illinois, Indiana and

Ohio. Dolan's action was no less a treachery to the mine workers of the country and was the most serious offense any one could commit. His case was considered by an International Convention of mine workers.

John Mitchell, the miners' peerless leader, ruled that the Convention was without authority to remove Dolan from office.

Mitchell held that Dolan was elected, employed and paid by the Pittsburgh District miners, and that in them, and them only rested the power of removal, and that the only thing the International Convention could do with the case was to refer it back to the Pittsburgh District for action and disposition.

The convention sustained this position and the Pittsburgh District miners finally removed Dolan as their President.

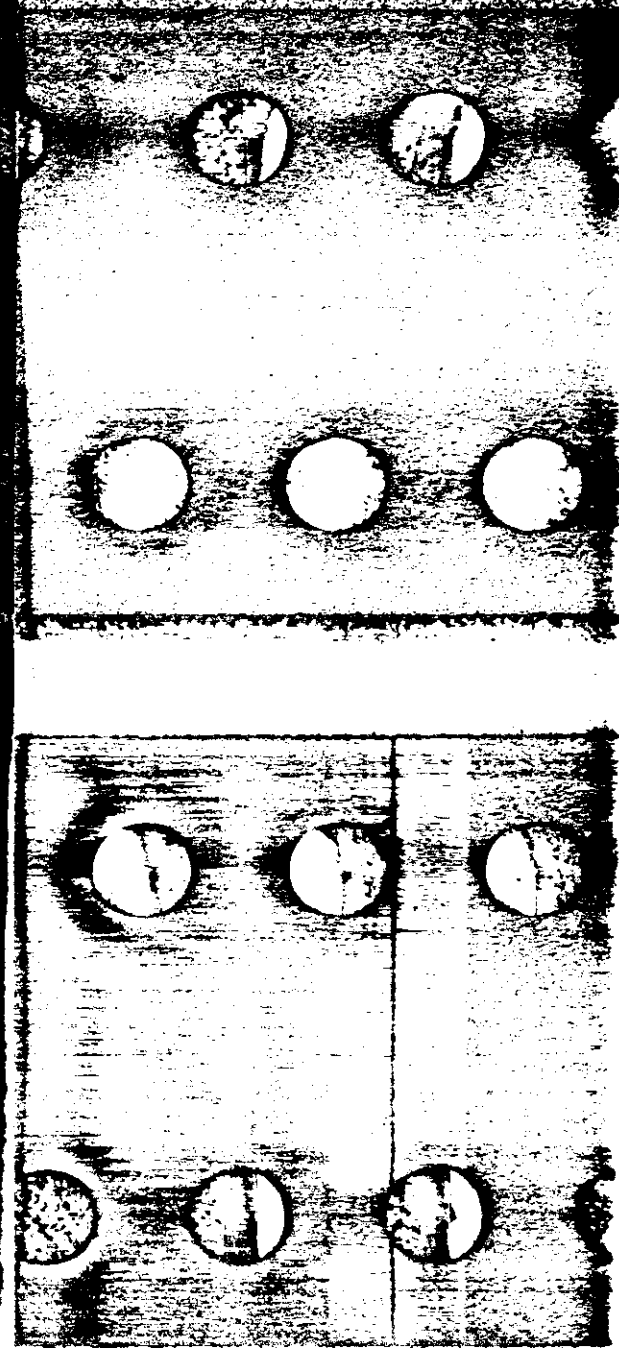
I cite another case in which an International President attempted to remove the President of the Indiana miners for alleged insubordination. This case also reached an International Convention and that body, upon motion of the incumbent International President then serving as a delegate, ruled that the International President had exceeded his authority. I refer to these cases merely to emphasize the fact that the miners have always denied unto the International President the right to remove or suspend officers of the subordinate branches and to show that they have always carefully guarded and reserved unto themselves the right to elect, remove, suspend and select their district and sub-district officers without interference from the International President or any authority other than themselves. In further support of the contention that the International President is devoid of power to remove officers other than those employed by the International Union and as proof that the members have specifically denied him that power, Section No. 3, Article No. 13 from the Constitution of the District No. 12 (Illinois) is cited and follows:

"Considering that the officers of this district are elected by and accountable to the members of this district, no authority outside of that provided in this constitution shall be allowed to suspend or remove them from office or hinder them in the performance of their duties as defined in this constitution."

From the above it is clear that when the International President attempts to read into Section No. 2, Article No. 3, International Constitution language that vests in him the right to remove district and sub-district officers, he strays beyond his jurisdiction and arrogantly invades the autonomous rights of others and defiantly disregards rules the members have enacted to protect their right of franchise.

That it was never intended or implied that Section No. 2, Article No. 3, should be used for punitive purposes or to bring offenders to account for alleged or real transgressions is made plain by the fact that the enacting convention created trial machinery and specifically provided the course to be followed in cases where officers are charged with an alleged official offense against the organization or any of its members by the adoption of Section No. 1, Article No. 13, International Constitution and which reads as follows:

X "When any officer of the Organization, other than local is charged with an alleged official offense against the Organization or any of its members, the charge must be lodged with the Executive Board of the branch of which he is an officer and the decision of said Executive Board shall close the case insofar as such tribunal is concerned, but should the accused or his accused be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached."



provided in Section No. 3, Article III, except as otherwise provided in the constitution.

The officers of Sub-District No. 9 were charged with insubordination. Surely insubordination would be an "official offense" and that being true, redress must be had under Section No. 1, Article No. 18, and not under Section No. 2, Article No. 18.

Certainly it is manifest that to remove one from office and to appoint another in his stead by means of charter revocation is to disregard Section No. 1, Article No. 18. In this case there was no reason for revoking the charter of sub-district No. 9 other than that the International President alleged the officers were guilty of insubordination.

If they were, the Constitution makes it mandatory that they be tried as provided for by Section No. 1, Article No. 18 to determine their guilt.

The mere allegation of guilt by the International President is not sufficient to satisfy the requirements of said section.

But why was the charter revoked?

The membership of Sub-District No. 9, to whom the charter applied, were not guilty of any offense, nor were they charged with any guilt whatever, but still their charter was revoked, so it is said, but why was it revoked?

Revocation on Pretext

Always charters of every class are revoked only because the membership are in rebellion against constituted authority, or because they are guilty of some great and serious transgression that they stubbornly refuse to correct; and the charter is revoked only as a last resort to bring them to obedience and only after every conciliatory means has failed.

Nothing of the kind was prevalent in Sub-District

Things were as tranquil as usual and the machine was functioning in the ordinary manner.

But still the charter was revoked. Why?

There is only one answer.

The International President made a pantomime gesture of revocation so as to furnish a pretext that he would enable him to do something he had the right to do.

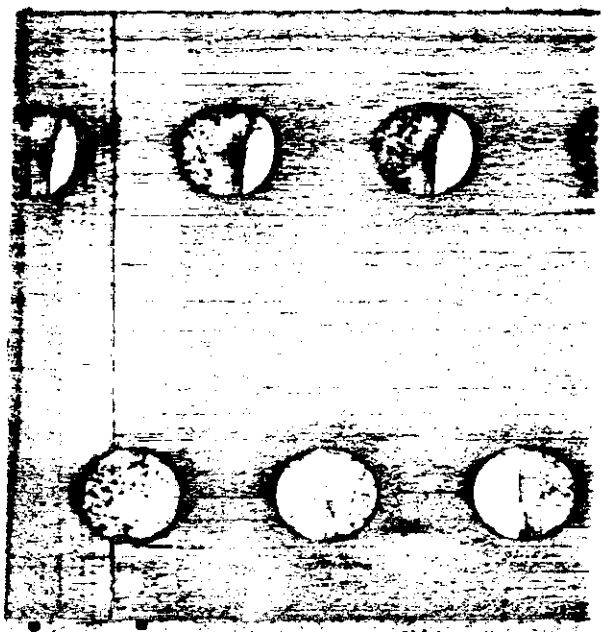
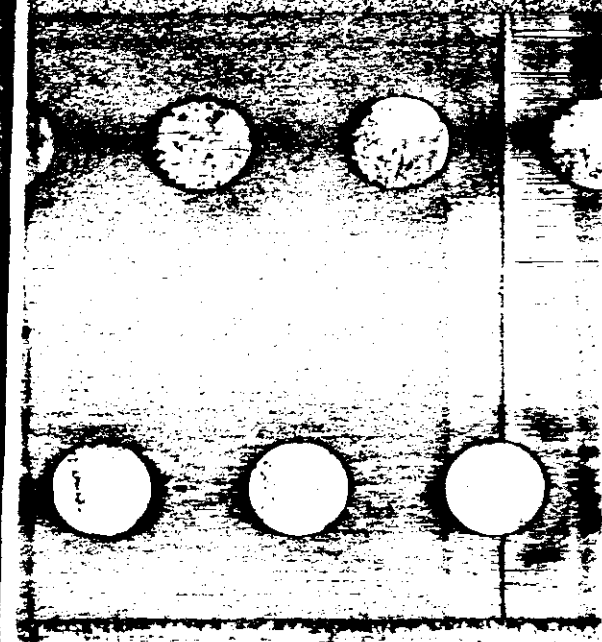
Or in other words he struck at the officers over the shoulders of the membership because he could not reach the officers if he adhered to the requirements of the constitution.

In reality the charter was not disturbed in any manner whatsoever. There was no formality of taking up the old charter and granting a new one as would occur if the charter were really revoked.

The act of alleged revocation was only a subterfuge, a shabby pretext calculated to open the way for the International President to remove the officers and to enable him to appoint men of his choice to their places and whereby he hoped to and did evade the requirements of Section No. 1, Article 12.

He had no constitutional grant to either remove or appoint as is clearly shown by sections Nos. 3, 4, 5, 9 and 10 of Article No. 9 International Constitution.

But he did illegally remove and appoint and he did worse than that, he pre-judged the officers involved and marked them with the stigma of guilt without giving them the opportunity of trial as provided for by Section No. 1, Article No. 12, and when he did that his irregularities threw the constitutional machinery out of gear and made it impossible for it to function as it was designed to function, and thereby again exposed the fallacy and unwisdom of his action. Why?



Right of Appeal Lost

Because when he robbed these officers of their official positions he by the same action, robbed them of their right of appeal from the illegal action.

How so?

Because Section No. 3, Article No. 3, International Constitution provides as follows:

"In all questions of dispute, appeals and grievances being restricted by joint agreements, the right of appeal of an individual member shall rest with the District Executive Board, and the right of appeal of any branch of the organization shall rest with the International Executive Board. This shall not prevent individuals whose membership is at stake from appealing to the International Executive Board, which body's decisions shall be final and binding and not reversed by the International Convention. Where an appeal is taken, the defendants need not file answers, save in the appeal in dispute, then, if grounds have been set, in all cases the decision of the International Tribunal must be accepted, with leave to the appellants right of appeal shall be maintained. However, the appellants may have the case re-opened, provided some satisfactory evidence is shown, or appeal covering the amount of money involved is furnished."

The membership of the men involved is not in question, therefore when the International President took them out of their official status he left them in the hands of individual members and the last above quoted clause provides that unless the membership is at stake, the right of appeal of an individual member shall rest with the District Executive Board.

Therefore, when the District Executive Board is the International Tribunal, it would be a silly waste of time and money to appeal to the International Executive Board, which has no authority in

Consequently these men are left with no constitutional means of redress.

Hence it is obvious that the irregular action of the International President did throw the constitutional machinery out of gear, and plainly shows he is trying to go ahead with the machinery in reverse motion.

This in itself should be sufficient to prove that the International President acted without constitutional warrant and in defiance of the plainly written, unequivocal provisions of the International Constitution.

It may be said he would grant them the right of appeal. It would not be within his province to do that were he so disposed. The Miners' Union is not dependent upon the whim or shifting will of any one person for its government. Instead it has a soberly considered, carefully written code of regulative rules that no one is granted the privilege to distort or to misapply.

That code of regulative rules provides no means for the creation of "provisional governments" and grants no one the power to so create. It designates the extent to which the International President shall have the power to remove, suspend and appoint, and provides how trials shall be held and the course to follow to bring to account those who transgress against the Union or any of its members, and breathes in the spirit of democracy and vests in no one the power of autocracy.

Moreover considerable significance attaches to the fact that when Section No. 4, Article No. 3 was incorporated into the International Constitution, the enacting Convention did not arrange for any procedure to be followed in instances where District or Sub-District charters might be revoked. But the constitution did stipulate the procedure to be followed when local charters are revoked. To wit: Section No. 12, Article No. 20, International Constitution provides that:

When a local charter is revoked the provisions of

bers thereof shall be required to pay an initiation fee of \$10.00 before they can again secure membership in the United Mine Workers of America, excepting those who have complied with the laws of the organization and joint agreements."

It is reasonable to assume that had it been intended that Section No. 2, Article No. 3, would vest in the International President the plenary power he attempts to exercise with reference to the revocation of district and sub-district charters, that the convention would have incorporated in the constitution some corollary stipulation as to what would follow, as was done when local charters are revoked; but the constitution is silent in that particular, thus leaving room for the contention that the intention of the convention was to convey the power to issue only and not to revoke.

But be that as it may, the fact is outstanding that there is not one iota of language nor the slightest implication in Section No. 2, Article No. 3 that vests in the International President the authority to create "provisional governments" or to remove, suspend and appoint districts or sub-district officers.

In truth for a period of 51 years, during which the Miners' Union had its greatest numerical strength and power for good, or from 1896 when the Union was founded to 1921 when the incumbent International President, through the innovation laid out for the first time, despite the mighty protest of the membership, the term "provisional government" was unheard of and unknown in the affairs of the United Mine Workers of America, and down to this day no warrant for this abortion will be found in the constitution of the International Union.

The case in point is of paramount importance. It embraces more than the removal of a few sub-district officers. It is more far-reaching than that.

Can Go As Far As He Wills

There is no constitutional warrant for the creation of "provisional governments" in the Miners' Union, nor are there any constitutional rules to govern or to regulate them once they are established by arrogated power. Neither is there any constitutional mandate as to how long a "provisional government" shall live, or as to what steps must be taken to have constitutional government restored once a "provisional government" has been established.

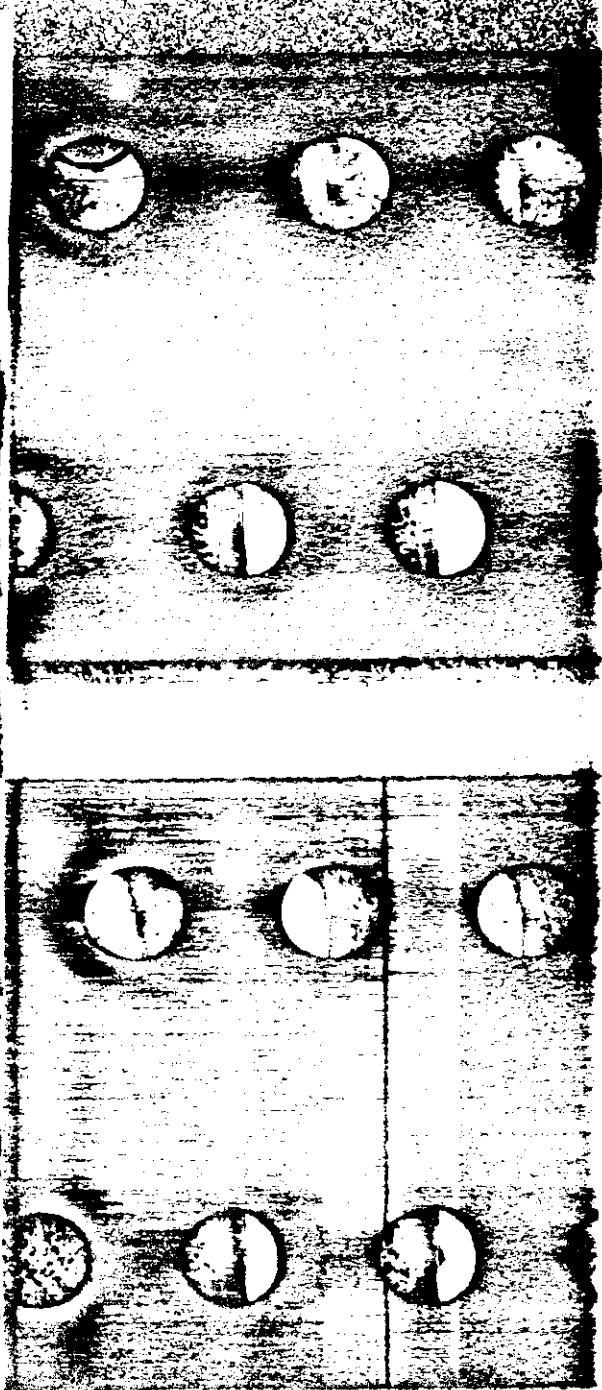
As things now stand, everything is dependent upon the caprice and will of the International President, and he is without constitutional limit or restraint of any kind.

He can go as far as he likes.

If by taking Section No. 2, Article No. 3, International Constitution as a basis for all action, he can declare charters revoked and follow the gesture with the creation of "provisional governments" and use that as his authority to remove, suspend and appoint officers, at will, or upon his mere assertion that they are guilty of insubordination, he can, by the same means invalidate any or all other sections of the constitution and establish himself as a dictator. He can do this in Sub-District No. 9, he can do the same in other sub-districts, districts and local unions. In all of these, if he so wills, there is no rule, law or power to stay his hand, nor to say when the tenure of "provisional government" shall end.

It would, indeed, be within his province to wipe out all semblance of constitutional government and to destroy every section of the constitution that is not Article No. 3, Section No. 3, and the power that would be left would be the power of the Miners' Union and endanger public safety.

The magnitude of the power he would wield if he could do would be so great that there would be enough to control all who think that



If not to belong to the Union disqualifies one to recite facts, Searls would be disqualified as he does not belong to the Union either, although he has reaped bountifully of its benefits for many years.

He has not paid as much as a ten-cent piece into the Union and it ill-behooves him to blather about someone who does not belong to the Union.

These statements have no foundation in fact.

I was not ejected from the Miners' Union.

I resigned from my position as President of the Illinois Miners and the records in the District office will so show; and I did this because of the hope that if I quietly stepped aside, Lewis would do something to save the Miners' Union from destruction.

In that, I was mistaken.

Let Him Answer Charge

As for my being a traitor to the Union, my record speaks for itself, and the institution that is largely the work of my administration is a living indestructible monument that disproves the charge of treachery on my part.

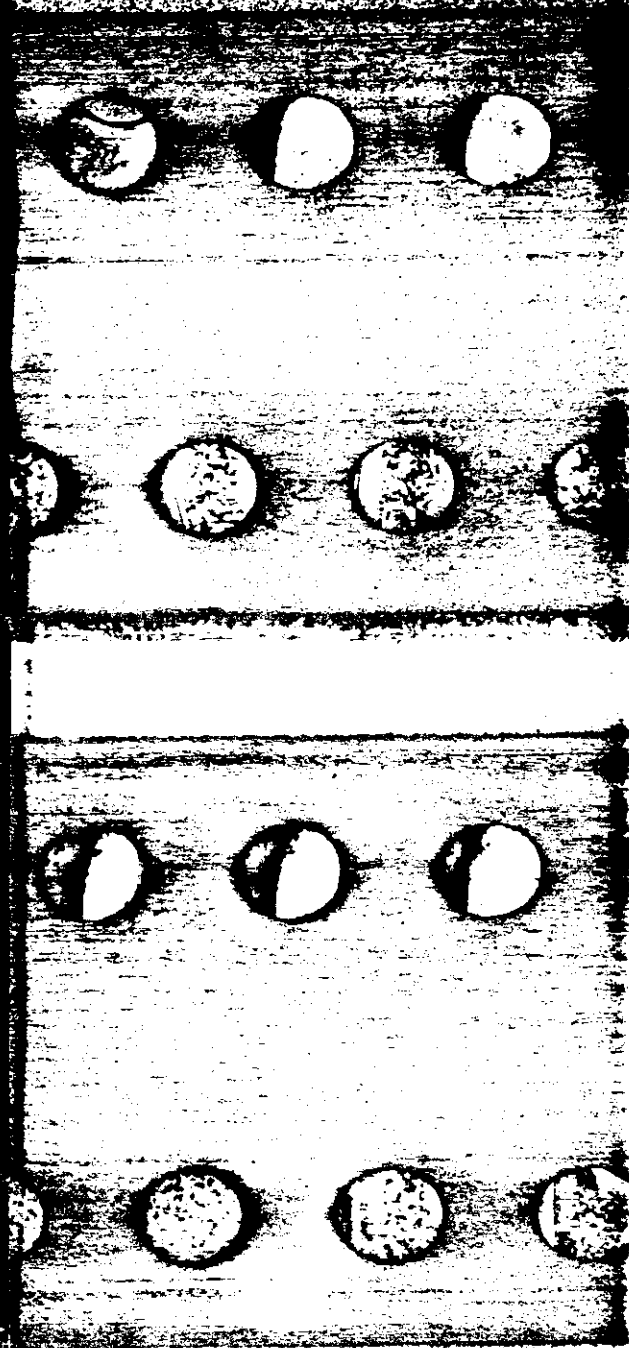
In truth, during my administration of its affairs, the Illinois Miners' Union became so thoroughly solidified and so firmly anchored that not even Lewis could destroy it and today it stands intact and alone and is the only district union in the soft coal fields of the country that has been able to survive Lewis' destructive policies. His charge of treachery on my part is a brazen lie that is disproved in a hundred different ways and the falsity of the charge is discernible on all sides and apparent to all those who care to look for the evidence.

But again, I say this is aside from the question in controversy.

Lewis is charged with having visited the Miners' Union.

Let him answer to that instead of hurling charges of treachery at me as his action in doing so will not disprove the charge that he wrecked the United Mine Workers of America.

Granting that everything he says about me is true, although not a single word of what he says is true, that would not vindicate Lewis for the terrible wrong he has done to the miners of the country.



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FEDERAL BUREAU OF INVESTIGATION
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WENDELL BERG
ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

August 11, 1943

MEMORANDUM FOR THE DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

Re: ~~X~~ Mine "B" Case - Alleged
Violations of Section 51,
Title 18, U. S. Code.

This supplements my memorandum to the Attorney General dated July 24, 1943, outlining the scope of the investigation.

In that memorandum, at pages four to six, I set out, as one of twelve "areas of investigation", a breakdown of alleged unfair labor practices by subject Elshoff. It was noted, however, (bottom of page six) that the files of the Labor Board had not then been fully analyzed, and that a supplemental memorandum would be furnished.

This memorandum sets out a more refined analysis of the allegations of unfair labor practices by Elshoff, identifies the evidence now available to us, and indicates certain desired inquiries in connection with each allegation. These specifications are not intended, however, to restrict the scope of the investigation. The Bureau will feel free, and is requested, to investigate in this, as in other areas of investigation, to the limit of the factual issues involved.

Attached to this memorandum are photostatic copies of many documents selected from the files of the National Labor Relations Board. These photostats have been numbered on the back, and in connection with each unfair labor practice, reference is made to photostats containing supporting evidence.

In appraising the allegations and evidence filed with the Labor Board by the Progressives, it must be remembered



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that the fact of collusive payments from U.M.W. officials to Elshoff was not then known. That fact is now established, and, as a consequence, the Progressives' allegations, conjectures, and suspicions appear in a more respectable light.

Chronologically, the alleged unfair labor practices fall into four groups:

- A. Unfair labor practices prior to the closing of the mine on May 12, 1937, -- the incubation of the conspiracy.
- B. Unfair labor practices between May 12, 1937, and January 4, 1938, -- attempts to effect a U.M.W. coup d'etat.
- C. Unfair labor practices from January 4, 1938, to November 7, 1939, -- the period of siege and starvation.
- D. Unfair labor practices from November 7, 1939, until March, 1941, -- favoritism in the struggle for membership.

o *Case*
Proof that Elshoff was actually guilty of unfair labor practices during the period of the conspiracy is vital if prosecution is to be undertaken. Overt acts are not an essential element of a Section 51 violation. It is theoretically sufficient to prove merely that subjects conspired with a guilty intent, but proof of intent, in the absence of admissions, is necessarily circumstantial, and, therefore, as a practical matter in case of prosecution, it would be essential to prove that Elshoff actually did impose unfair labor practices, as -- it would be alleged -- he was paid to do.

A. THE UNFAIR LABOR PRACTICES PRIOR TO
THE CLOSING OF THE MINE ON MAY 21, 1937,
- THE INCUBATION OF THE CONSPIRACY

No specific allegations of unfair labor practices during the period prior to May 12, 1937, were made by the Progressives, and at present we have no direct evidence to establish any such practices. It is established that during April, 1937, and perhaps prior thereto, the United Mine Workers were paying several Progressive members to campaign for the United Mine Workers. The details of this activity, however, are not known and, therefore, it is requested the full scope of these activities be ascertained. This request is set out in more particulars on page 3 of my memorandum of July 24, 1943.

If it is ascertained that Elshoff knew of these practices and either acquiesced in, or encouraged them, an unfair labor practice would be established.

The substance of the statements of all the subjects in respect to the agreement to make the payments is to the effect that an understanding was not reached until after the mine had closed [REDACTED]

[REDACTED]. It is likely, however, that prior to the closing of the mine an understanding had been reached between Elshoff and the U. M. W. officials that they would cooperate to the end that U. M. W. should win over bargaining rights at the mine. We have no tangible evidence to this effect and it is requested that the Bureau direct inquiries to determine whether any evidence of such an understanding prior to May 12, 1937, can be uncovered.

○ Apparently, during April of 1937, members of the United Mine Workers attempted to cause the Progressives to go on strike by circulating rumors to the effect that an extension contract signed April 2, 1937, between Elshoff and Dan McGill (representing the Progressives) did not contain a retroactive wage scale to April 2, 1937 [REDACTED]

63 - Sec 24, United States Code,
Section 6103.

B. UNFAIR LABOR PRACTICES BETWEEN MAY 12, 1937, AND JANUARY 4, 1938, - ATTEMPTS TO EFFECT A U. M. W. COUP d'ETAT

It is believed that during this period Edmundson and Elshoff hoped that they could win the victory for U. M. W. by drastic and immediate measures, such as signing the closed shop contract with U. M. W. on August 13, 1937, and the attempt to reopen the mine on September 27, 1937. These attempts by a coup d'etat were frustrated by the successful efforts of the Progressives to have a Labor Board election, which the Progressives won by the overwhelming vote of 404 to 25. On January 4, 1938, the date the certification of representation was received in Springfield, Elshoff made his third unsuccessful attempt to reopen his mine with members of the U. M. W. Subjects realized then that a coup d'etat was impossible and from that time on the "freezing out" process began in earnest.

(1) Closing Of The Mine On May 12, 1937 - Strike Or Lock-out?

Before May 12, 1937, the Progressives had expelled 12 men from membership in the Progressives apparently for their activities in spreading dissention at the Mine. We understand these men were (1) Joe Albanese, (2) Andrew Schralevious, (3) Dominick Pasquale, (4) Peter Carter, (5) Frank Austin, (6) Tony Plotch, (7) John Ananias, (8) John Sirtout, (9) George Jacoway, (10) Enory Jacoway, (11) Charles Bohannon, and (12) James Hale. When the Mine was opened the Pit Committee notified Falcetti, the Mine superintendent, that these men were no longer members of the Progressives and should be discharged under the closed shop agreement between Mine B and the Progressives. Falcetti refused to do this.

[REDACTED]

[REDACTED]. Dan McGill, the Progressive Board member of that area, took the matter up with Elshoff, who first refused to discharge them, stating he did not think he could lawfully do so under the terms of the National Labor Relations Act, but agreed to see his attorney. After seeing his attorney, he again refused, but this time gave as a reason that cars of coal were not being fully loaded and that until that situation was righted he would do nothing. The negotiations between Elshoff and McGill failed and

b3 T26, USC, §6103

the mine went on strike. Subsequent conferences between McGill and Elshoff proved equally fruitless.

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All of these individuals should be interviewed and signed statements obtained, if possible. The following inquiries are suggested:

- (a) Prior to May 12, 1937, had Elshoff instructed Falcetti not to discharge these men?
- (b) Did Falcetti report his refusal to discharge these men to Elshoff?
- (c) In the normal course of operations would Falcetti make such reports to Elshoff?
- (d) Did Falcetti usually make reports to Elshoff of some nature?
- (e) What was the usual form and contents of reports which Falcetti made to Elshoff?
- (f) Does prior conduct or do prior statements on the part of Elshoff indicate that he knew he could and should lawfully discharge expelled members of the Progressives under the closed shop contract?
- (g) Did Elshoff actually consult his lawyer between the time of his first and second meeting with McGill?
- (h) What advice did his lawyer give?
- (i) Why did he subsequently state that his refusal to discharge was based on the fact that short cars were being filled?
- (j) How did he become aware of the fact that short cars were being filled?
- (k) What was Elshoff's attitude regarding the strike in the negotiations between him and McGill?

(l) What reasons did he give in these conversations after the strike was called for his continued refusal to discharge these men?

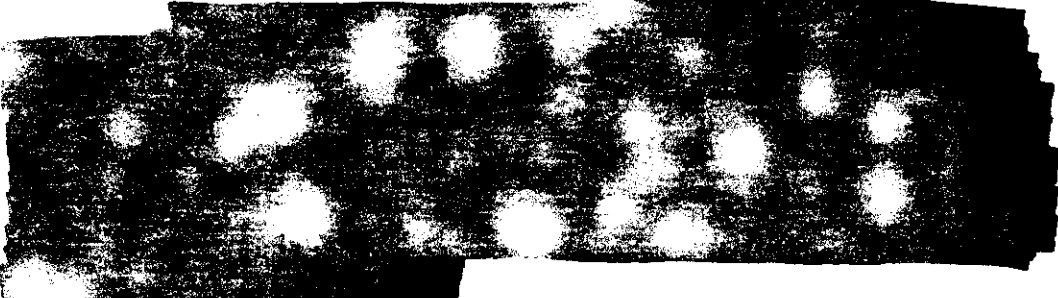
(m) In his conversations with others was he indifferent towards the strike?

(n) How long did Elshoff contemplate the mine would remain closed?



The following NLRB photostat is pertinent in connection with this unfair labor practice: D-29 - memorandum June 1, 1938, from Leonard C. Bajork, Regional Director, 13th Region, to Nathan Witt, Executive Secretary, NLRB.

(2) Elshoff Signed Closed Shop Contract On August 13, 1937, With U. M. W., Knowing It To Be A Minority Union.



The stipulation and agreement entered into on August 10, 1938, between Elshoff, the Progressives and U. M. W., was, in practical effect an admission by Elshoff and U. M. W. that the signing of the contract of August 13, 1937, was an unfair labor practice. However, the Board's order of September 13, 1938, and the decree of the Circuit Court of Appeals on June 17, 1939, were based upon the consent of Elshoff and U. M. W. and there was accordingly no actual adjudication of fact. The order and the decree will not be admissible to prove the unfair labor practice and the stipulation will not amount to an admission, but will probably be admissible as a circumstance to be considered alone with all other relevant facts.

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T 26, USC, § 6103

The crucial inquiry in this connection is whether Elshoff knew that at the time the contract was signed, that U. M. W. had only a dozen or more members at the mine.

The Progressives claimed that on May 26, 1937, 412 employees at Mine B signed a petition that the Progressives Union be their representative.

[REDACTED]

There is no question that Elshoff received the petition, but in acknowledging it he stated that he neither recognized the authenticity of the signatures nor regarded it as binding in any way. If it can be shown that Elshoff actually believed that the signatures were legitimate, this fact would seem to be conclusive that his signing of a closed shop contract with U. M. W. a month later was an unfair labor practice unless radical changes took place meanwhile. The following inquiries are suggested:

- (a) Were there any circumstances which warranted Elshoff in questioning the authenticity of the signatures?
- (b) Did U. M. W. officials know that he was writing his letter of July 12, 1937?
- (c) Did he discuss receipt of the petition with U. M. W. officials?
- (d) Were there any circumstances between the time of Elshoff's receipt of this petition and August 13, 1937, which would justify him in believing that there had been a radical shift in the loyalty of his employees from the Progressive Union to U. M. W.?

[REDACTED]

All the circumstances surrounding the formation of this local should be inquired into. The following inquiries are suggested:

b2 - 126, USC, §6103

- (a) Had there been discussions between Elshoff and U. M. W. officials concerning formation of this union?
- (b) How many members attended the first meeting of this local?
- (c) What personal relationship, if any, existed between Elshoff and Falcetti and the officers of the new local?
- (d) Were the international officers of U. M. W. aware of the Progressives' petition, carrying 412 names, at the time they granted the charter?

(3) On August 30, 1937, Elshoff Abrogated Check-off Agreement With The Progressives

[REDACTED]

The significance of this incident is not fully understood. How many of the employees on the maintenance crew at the time were Progressives? Did Elshoff's elimination of the check-off operate to the practical disadvantage of the Progressives in any substantial way? Did U. M. W. officials know of or connive in this action?

(4) Elshoff Signed Another Closed Shop Agreement With U. M. W. On September 20, 1937

On September 7, 1937, the Progressives filed a charge with the Labor Board [REDACTED] alleging that the company was engaging in unfair labor practices.

Notwithstanding this, Elshoff entered into another closed shop contract with U. M. W. thirteen days later, on September 20, 1937, [REDACTED].

[REDACTED]

b3 T26, USC, §6103

[REDACTED]

The same inquiries should be made in this connection as were requested in connection with the contract of August 13, 1937, set out in (2) above. In addition, the significance should be ascertained of the failure of Elshoff to become a member of the Illinois Coal Operators Association as he was required to do by the contract of August 13, 1937. Also, why did he sever his membership with the Coal Producers Association of Illinois in 1935 ([REDACTED])

[REDACTED]

(5) Elshoff On November 23, 1937, Procured An Injunction Against The Progressives

On November 23, 1937, Elshoff filed a bill of complaint asking for an injunction in the United States District Court at Springfield, against the activities of the Progressives

[REDACTED]

Inquiry should be directed to discover to what extent, if any, U. M. W. officials connived with Elshoff in the preparation and filing of this complaint.

(6) Elshoff Attempted On Three Occasions To Reopen The Mine With U. M. W. Members


On three occasions, September 27, December 13, 1937, and January 4, 1938, Elshoff attempted to reopen the mine with U. M. W. members. It is believed that on each occasion Elshoff well knew that U. M. W. had only a score or more employees as members. Moreover, each attempt seemed to be an effort to effect a coup d'etat to offset efforts by the Progressives to establish their collective bargaining rights.

On September 27, 1937, Elshoff attempted to reopen Mine B and notified United to supply the personnel. On the morning of September 27th, Progressives who had worked at the mine on May 12th, showed up for work and Falchetti informed them


[REDACTED]

63 T 26, USC, 86103


the company had a closed-shop agreement with United and that they would have to join the United if they wished to work there.



After Elshoff obtained the injunction, he made an attempt to reopen the mine on December 13, 1937, but apparently only about twelve members of United showed up. The NLRB held an election on December 15, 1937, which resulted in a vote of 404 to 25 in favor of the Progressives and on January 3, 1938, certified the Progressives as the bargaining agent.



Again on January 4, 1938, Elshoff made another unsuccessful attempt to reopen the mine still refusing to deal with the Progressives.



As to each of these three attempts to reopen, inquiries should be directed to ascertain

(a) Whether Elshoff was impartial in notifying both unions that he planned to reopen.

(b) Whether there was connivance between Elshoff and U. M. W. in setting the date.

b3 T. 26, USC, § 6103

C. UNFAIR LABOR PRACTICES FROM JANUARY 4, 1938,
TO NOVEMBER 7, 1939, -- THE PERIOD OF SIEGE
AND STARVATION.

After his attempt to reopen the mine on January 4, 1938, failed, Elshoff kept his mine closed until November 7, 1939 -- twenty-two months later. During this time, the Progressives claim they were constantly seeking to negotiate a contract with Elshoff pursuant to which the mine could be reopened. Two principal allegations of unfair labor practice, therefore, are suggested during this period:

(1) That Elshoff Continued the Shut-Down in Order to Assist U.M.W.'s Program to Destroy the Progressive Organization.

There is no direct evidence now available which indicates that this was Elshoff's purpose. The circumstantial evidence, however, strongly points that way. It is difficult to understand why Elshoff--assuming he intended to repay the U.M.W. "loans"--was willing to keep the mine closed and thereby incur huge losses. Elshoff's statement suggests that he feared to reopen the mine because of possible violence between the two unions. This suggestion is discounted by the fact that in the fall of 1937 he obtained an injunction against the Progressives on the theory that he wanted to open the mine with the U.M.W. furnishing the employees. Inquiry is requested to ascertain whether there was any basis for Elshoff's excuse. Evidence on this point, of course, must necessarily be of a negative character, but all information bearing on Elshoff's true reason for keeping the mine closed should be obtained.

(2) That Elshoff Refused to Bargain with the Progressive Union, as Required by the Labor Act.

It was the contention of the Progressives that throughout the period when the mine was closed, Elshoff refused to bargain collectively with them. It was asserted that he would fail to appear at meetings, would postpone meetings, and when he did appear to bargain with the Progressives, he would just go through the motions and would not actually bargain in good faith with any real intention of reaching an agreement.

The following National Labor Relations Board photostats have a bearing on the two alleged unfair labor practices set out above:

B-15 Exhibit 6 - Affidavit, dated Jan. 18, 1938,
Dillon, Schewe, Crompton, and Schneider, and
Stipulation and Agreement, Ex. 7.

- D-14 Original letter from A.F.L. (Padway) signed by Kaiser, to J. Warren Madden, Chairman, NLRB, dated Aug. 24, 1939, 3 pages.
- D-16 Memorandum from G. I. ~~Patterson~~ to Estelle S. ~~Frankfurter~~, Administrative Assistant, ~~Mine B Coal Co. C-854~~, dated July 10, 1939.
- D-17 Copy Resolution of Local U. No. 62, Progressive Mine Workers of America, signed by Ben ~~Prosser~~, Pres., Dan ~~Guritz~~, Rec. Sec. and Martin ~~Sepeck, Jr.~~, Fin. Secy.
- D-18 Resolution Local U. No. 3, Progressive Mine Workers of America, Collinsville, Ill., signed by Joseph E. ~~Barkoski~~, Rec. Sec. and Ben Bergstrom, Pres.
- D-19 Original letter from John R. ~~Kane~~, Progressive Mine Workers of America, to Robert B. ~~Watts~~, Assoc. Gen. Counsel, National Labor Relations Board, Washington, D. C., dated May 15, 1939.
- D-20 Copy of R. E. ~~Watts~~' memo to Joseph A. ~~Padway~~, Tower Bldg., Washington, dated May 9, 1939.
- D-26 Original memo from L. C. ~~Bajork~~, 13th Reg. to Mrs. B. M. ~~Stern~~, Asst. Secy, NLRB, Washington, D. C., re Mine B Coal Co. XIII-C-473, dated Aug. 25, 1938.
- D-27 Memo to the File from Beatrice M. Stern in Mine B Coal, dated Aug. 11, 1938.
- D-28 WU telegram to George O. ~~Pratt~~, Chief Trial Examiner, NLRB, Wash., D. C., from I. S. ~~Dorfman~~, NLRB, 13th Region, re Mine B 13-C-473, dated Aug. 12, 1938.
- B-14 Exhibit 5 - Copy of letter, dated Jan. 17, 1938, from Joe ~~Ozanic~~, Pres. P.M.A. to Carl H. Elshoff, Mine B Coal Co., Springfield, Ill.
- D-30 Original memo from Leonard C. ~~Bajork~~, Reg. Dir., 13th Reg. to Nathan Witt, Exec. Sec., NLRB, Washington, D. C., undated.
- D-31 Original memo from Leonard C. Bajork, Reg. Dir., 13th Reg. to Nathan Witt, Exec. Sec., dated May 10, 1938, 2 pages. Mine B XIII-C-473.

D. UNFAIR LABOR PRACTICES FROM NOVEMBER 7, 1939,
UNTIL MARCH, 1941 -- FAVORITISM IN THE STRUGGLE
FOR MEMBERSHIP.

The mine reopened on November 6, 1939, on an open-shop basis, although it is believed the Progressives were still in the majority.

Understanding of the unfair labor practices which followed the reopening of the mine requires consideration of the events which led up to the reopening of the mine.

Pursuant to charges of unfair labor practices made by the Progressives against Mine B, the NLRB issued a complaint on August 1, 1938, [REDACTED]. The Company answered generally denying the charges [REDACTED]. However, on August 10, 1938, a stipulation and agreement were entered into between Elshoff, the Progressives, and United [REDACTED] to the effect that an order could be made by the Board and upon application of the Board, the Circuit Court of Appeals could enter a decree that interference and intimidation of employees attempting to form or join a labor organization of their own choosing was to cease, that Mine B cease from refusing to negotiate with the Progressives, and that the contracts between Mine B and United, made August 18, 1937, and September 20, 1937, were not to be enforced.

The Labor Board entered its order September 19, 1938, [REDACTED] covering the provisions of the agreement, and on the same day, petitioned the Circuit Court of Appeals for a mandatory injunction. The Company filed an answer to this petition on May 15, 1939, [REDACTED] stating that the Board's order had not been violated, that the court had no jurisdiction, and that the stipulation did not confer jurisdiction on the court in the absence of a controversy.

On June 17, 1939 the court issued an order against Mine B [REDACTED] which contained the same provisions as the order of the National Labor Relations Board.

It seems like a double-barrelled inconsistency for Elshoff, who had consistently refused to deal with the Progressives and who had denied all the allegations of the complaints made by them to the NLRB, to enter into a stipulation and agreement two days after

63 T26, USC, § 6103

filing his denial to the allegations and then having agreed to allow a court to enter a decree, to then attack the jurisdiction of the court.

Inquiry should be directed to ascertain;

- b3
T26, USS,
8/1/53
- (a) What motivated Elshoff to sign the stipulation in the first place?
 - (b) Did he intend merely to gain more time for United and postpone any formal order of the board?
 - (c) Did Elshoff ever intend that the Progressives should benefit by the stipulation?

After the mine reopened, the following unfair labor practices were alleged;

- (1) From November 6, 1939, to March, 1941, Elshoff Continued to Refuse to Bargain in Good Faith with the Progressives.

The following NLRB photostats indicate the nature of the Progressives' allegations in this respect;

- D-8 Original memo from G. L. Patterson, Director, 13th Reg. to Alexander B. Hawes, Chief Administrative Examiner, dated Oct. 5, 1940, 3 pages.
- D-11 Original letter from John R. Kane, Gen. Counsel Dist. No. 1, PMWA to NLRB, 13th Reg., Chicago, re XIII-C-473, dated Dec. 15, 1939.
- ✓ D-9 Original memo from G. L. Patterson, Director, 13th Reg. to Nathan Witt, Secretary, dated Aug. 2, 1940. 2 pages.
- D-10 Copy of letter from Edmundson, Pre. Dis. No. 12 UMWA, to Mr. Avery Leiserson, field examiner, NLRB., 13th Reg. dated Dec. 21, 1939.
- D-23 Letter from J. E. Fancher, Vice President, Progressive Mine Workers of America, Dist. No. 1, to Mr. Smith, Field Examiner, NLRB 13th Region, Chicago, dated (undated).
- ✓ D-24 Original memo from Leonard C. Bajork to Nathan Witt, Executive Secretary, NLRB, re Mine B Coal C-854, dated October 4, 1938.

Especially pertinent in this regard are the following NLRB photostats:

- B-9 Exhibit 8, affidavit of John R. Kane, executed Sept. 13, 1940.
- B-10 Exhibit 9, affidavit of ~~John McCann~~, executed Sept. 30, 1940.
- B-16 Two copies of affidavits by John Groh, both executed August 10, 1940. Exhibit 9.

(2) Elshoff permitted U.M.W. to intimidate Progressives on mine property.

Additional investigation is necessary in connection with the charges of the Progressives that Elshoff and Falcetti permitted U.M.W. to intimidate Progressives on mine property. Especially pertinent in this respect are the following NLRB photostats:

- C-5 Affidavit (joint) of ~~Wm. Keck~~, Wm. Schewe, John McCann, and John Groh, executed September 12, 1940.
- B-5 Affidavits of John Groh, John Schneider (2), all dated January 7, 1941, together with MEMORANDUM signed by John R. Kane.
- B-1 Carbon copy of charge by P.M.W. of A., Local U. #54, together with carbon copy of transmittal letter of Feb. 5, 1941, to Reg. Dir., 13th Reg.
- A-8 Original typewritten letter from John R. Kane, Progressive Mine Workers of America to Regional Director of 13th Region, NLRB, dated Feb. 5, 1941.
- A-7 Original memo from Joseph C. ~~Gedman~~ to Mine B Coal Co., Springfield, Ill., dated Feb. 5, 1941.
- A-5 Undated carbon copy of memo to Mine B Coal Company.
- A-3 3 original typewritten reports of Examiner, dated February 12, 1941, from M. S. ~~Ryder~~ to File.
- C-8 Carbon copy of affidavit of Mike ~~Willen~~, unexecuted.
- C-9 Carbon copy of affidavit of Paul ~~Wilcauskis~~, unsigned, dated August 6, 1940.

- C-10 Carbon copy of affidavit of Anton ~~Maultkwoz~~, unexecuted.
- C-11 Carbon copy of affidavit of Jack ~~Vonhof~~, executed August 7, 1940.
- C-12 Carbon copy of affidavit of Vincent ~~Shadus~~, unsigned, dated August 6, 1940.
- C-14 Carbon copy of affidavit of August ~~Meglin~~, unexecuted.
- C-15 Carbon copy of affidavit of Peter ~~Manuele~~, signed, but undated.
- C-17 Carbon copy of affidavit of Rudolph ~~Kerar~~, executed August 7, 1940.
- C-18 Carbon copy of affidavit of Tom ~~Grady~~, unsigned and undated.
- C-19 Carbon copy of affidavit of Joseph ~~Gedman~~, unsigned and undated.
- C-20 Carbon copy of affidavit of Joe ~~Gedman~~, unsigned and undated.
- C-21 Carbon copy of affidavit of Rossi ~~Console~~, unsigned and undated.
- C-22 Carbon copy of affidavit of Rossi Console, unsigned and undated.
- C-23 Original "Memo", initialled "JCC" - Field Examiner interview of Salvatore ~~Catalomi~~.
- C-24 Carbon copy of affidavit of William ~~Bryant~~, unsigned, dated August 7, 1940.
- C-25 Carbon copy of affidavit of George ~~Buckstittis~~, unsigned, dated August 7, 1940.
- D-3 Affidavit of William Schewe, executed Aug. 8, 1940 (Joint with Santani and Badock). Ex. 14A.

D-4 Affidavits (Exhibits 16 to 16G inclusive)-
Salvatore Catalomi, executed Aug. 6, 1940;
Statement of Salvatore Catalomi (16A) (16B);
Peter Kloga; executed Aug. 7, 1940; Joe Gedman,
executed Aug. 7, 1940; Peter Kolbokus, execu-
ted Aug. 6, 1940; Anthony Griffetelli, execu-
ted Sept. 25, 1940; William Schewe, executed
Aug. 6, 1940; Exhibit 17, affidavit of William
Moleski, executed Aug. 8, 1940; Exhibit 18,
statement of Vincent Matejka; Exhibit 19,
affidavit of Lester Wilkerson, executed Aug.
9, 1940; Exhibit 20, affidavit of Nicolas
Heck, executed Aug. 26, 1940.

- (3) Elshoff Permitted U.M.W. to Organize on Company Property.
- (4) Elshoff Refused to Write Up Settlements of Grievances with Progressives in Accordance with Contract and Past Custom.

The following NLRB photostats are pertinent on this inquiry:

B-8 Exhibit 7, statement of John Groh.

B-16 Two carbon copies of affidavits by John Groh, both executed August 10, 1940. Exhibit 9.

- (5) Elshoff Discriminated Against Progressives and Favored U.M.W. in Working Conditions, Seniority, etc.

The Progressives' charges in this respect were not very definite. Any evidence, however, related to this unfair labor practice can be catalogued under this heading:

C-16 Original typed "Memo", initialled "JCC"-
examination of Peter Kolbokus.

- (6) After the Mine Reopened, Elshoff Followed a Policy of Hiring U.M.W. Employees and Rejecting Progressives.

This is one of the key unfair labor practices toward which investigation should be directed. The following NLRB photostats are pertinent:

B-2 Carbon copy Clark, F.X. to Patterson, R.D., dated Jan. 8, 1941.

B-2A Carbon copy of memo. from G. L. Patterson, Director, 13th Region, 13 pgs., to Howard LeBaron, Acting Secretary, dated Jan. 7, 1941. - 11 pages.

- B-6 Carbon copy of memo from Beatrice M. Stern to G. L. Patterson, Director, 13th Region, dated December 21, 1940 - 3 pages.
- B-11 Exhibit 10, Affidavit of Joseph Laverso, executed Sept. 30, 1940.
- B-12 Exhibit 13A, affidavit of Ralph Kress, executed Aug. 8, 1940; Exhibit 13B, affidavit of Dallas Houswell, executed September 11, 1940; Exhibit 13C, affidavit of Melchior Hamel, executed Aug. 5, 1940. Exhibit 13D, statement of Theodore Quintard. Exhibit 13E, affidavit of Clarence Westfall, executed Sept. 11, 1940. Exhibit 13F, affidavit of Leonard Riker, executed Aug. 6, 1940. Exhibit 13G, affidavit Paul Laurent, executed August 5, 1940. Exhibit 13H, affidavit of Vincent Guiffni, executed August 6, 1940. Exhibit 13I, affidavit of Jules Dupriez, executed Aug. 5, 1940. Exhibit 13J, affidavit of William Cole Stewart, executed undated.
- C-1 Original affidavit of John Groh, executed Sept. 12, 1940 (typed).
- C-2 Original typewritten affidavit of Matthew Console, executed August 28, 1940.
- C-3 Handwritten affidavit of Ed Reeves, signed but undated.
- C-4 Original typewritten affidavit of James Schneider, executed August 28, 1940.
- C-6 Original typewritten list of "Men who claim they have been progressives".
- D-5 Exhibit 24 - affidavit of Vincent Matejka, executed Sept. 12, 1940. Exhibit 25 - affidavit of Frank L. Seiders, executed Aug. 8, 1940. Exhibit 26 - affidavit of Vincent Matejka, executed - blank.
- D-6 Exhibit 27 - affidavit of Bill Badock, executed Sept. 12, 1940.
- D-7 Exhibit 28 - affidavit of Fred Grobelnik, executed Aug. 6, 1940. Exhibit 29 - affidavit of William Schewe, executed Aug. 6, 1940.

- D-12 Copy of letter from Lee ~~Ensel~~ to Dave Reed, Pres. PMA and John ~~Malaker~~, Pres. Local U. No. 54, PMA, dated Nov. 8, 1939.
- D-13 Copy of letter from John R. Kane, atty. ~~PMW~~ to Patterson, Reg. Dir., 13th Reg. Chicago, Ill., NLRB, dated Nov. 9, 1939.
- B-5 Affidavits of John Groh, John Schneider (2), all dated January 7, 1941, together with MEMORANDUM signed by John R. Kane.
- C-7 Carbon copy of affidavit of Harvey ~~Williams~~, executed August 7, 1940.
- C-13 Carbon copy of affidavit of Marcio ~~Santani~~, executed August 8, 1940.
- C-26 Original affidavit of Dallas ~~Boswell~~, signed and executed September 11, 1940.

(7) Elshoff Administration of the "Dirty Coal" Fund.

The Progressives charged Elshoff with an unfair labor practice in connection with the administration of the "dirty coal" fund. It is not believed that there was much substance to this allegation. The following NLRB photostats relate to this allegation:

- B-3 Original Exhibits III and IV - affidavits of Carl Elshoff, Dirty Coal Fines and Road Coal Funds, and affidavit of Lee ~~Ensel~~, Dirty Coal Fines and Road Coal Funds.

(8) Circumstances Leading up to Election of February 21, 1941.

The following NLRB photostats are pertinent:

- A-1 Memo dated Feb. 13, 1941, from Carl H. Elshoff, Pres. Mine B Coal Co. to Ray Edmundson, Pres. United Mine Workers of America, Springfield, Ill., at anc. (Carbon copy)
- A-3 3 original typewritten reports of Examiner, dated February 12, 1941, from M. S. Ryder to File.
- A-4 Carbon copy of agreement resulting from joint conference between representatives of Local Union Number 54 of the Progressive Miners of

America and representatives of Local #7469, United Mine Workers of America, the Sheriff, and representatives of The Mine "B" Coal Co.

Inquiry should be directed to ascertain:

(a) Did Elshoff express any opinions as to whether he wanted U.M.W. to win the election?

(b) When he learned of the result of the election, did he immediately begin to make plans to reopen the mine?

(c) Did he connive in any way to favor the U.M.W. campaign?

(9) Elshoff, on March 14, 1941, Signed a Closed-Shop Agreement with U.M.W.

The U.M.W. was certified by the Board on March 6, 1941. Eight days later, Elshoff signed a closed-shop agreement with U.M.W. He thus accomplished in eight days what he had failed to accomplish with the Progressives in four years. Inquiry should be directed to ascertain:

(a) When did Elshoff first indicate a willingness to sign a closed-shop contract with U.M.W.? (I distinguish here between negotiating a contract, which he was obligated to do because of the certification, and signing a closed-shop agreement, which he had refused to do with the Progressives after they were certified on January 4, 1938.

(b) The NLRB files indicate that before Elshoff did sign the contract, he notified the Regional Director of the Board that he would not sign until the Supreme Court's decision had been modified.

Apparently he raised an absurd legal condition in this respect. It is believed that this was simply a gesture on his part to give his action an appearance of impartiality. Inquiry should be directed to ascertain whether he raised this contention in good faith or not.

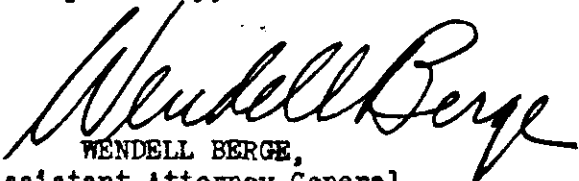
The following unsorted NLRB photostats accompany this memorandum:

B-13 Exhibit 1 - Agreement between District No. 1, P.M.A. and Mine B Coal Co. of Springfield, Ill., dated April 2, 1937.

D-25 WU telegram, dated Sep. 13, 1938 to J. Warren Madden, Chairman, NLRB, Washington, from Joe Ozanic, Pres. International Union Progressive Mine Workers of America.

- D-32 Orig. letter from ~~W. Green~~, Pres. A.F.L. to J. Warren Madden, Chairman, NLRB, Wash., D.C., dated Sept. 27, 1937.
- A-2 Original "Settlement Agreement" Case No. 13-C-1455.
- D-15 Resolution of Local U. #64 ~~Progressive Mine Workers of America.~~
- D-33 Original memo from Leonard ~~C. Bajork~~ to Benedict Worl, Mine B Coal XIII-D-125 and XIII-C-473, dated Oct. 8, 1937, 2 pages.
- A-3 3 original typewritten reports of Examiner, dated February 12, 1941, from M. S. Ryder to File.
- A-6 Carbon copy of notice to All employees of Mine B Coal Co., Springfield, Ill., dated Feb. 5, 1941.
- B-4 Exhibit V - Letter dated January 6, 1941, to Hon. ~~John Stelle~~, Governor, State of Illinois.
- B-7 Affidavit of William ~~Crompton~~, Board Member, District No. 4, P.M.W. of A., executed October 1, 1940.
- D-34 WU telegram from Joe ~~Ozanic~~, Pres., Progressive Miners of Amer., to Everett ~~M. Dirksen~~, Pekin, Ill., dated Sept. 20, 1937.

Respectfully,


WENDELL BERGE,
Assistant Attorney General.

Enclosure
No. 408059

THE MINE B. COAL COMPANY
Springfield, Ill.
13-C-160 - INFORMAL FILE

Orig. written memo of Martin Wagner, F.I., to "Memo to File" dated Aug. 28, 1941, with request of withdrawal of charge without prejudice, granted by I.S. DeWitt, Acting Reg. Dir. on Aug. 28, 1941.

Typed letter from E. J. Curry, Reg. Dir. of M.B. Co., to I.S. DeWitt, Reg. Dir., Springfield, Ill., dated July 2, 1941.

Orig. letter from E. J. Curry, Reg. Dir. M.B. Co., enclosing charge dated July 2, 1941.

Y-793

FORM 1

August 31, 1941

Mr. C. C. [unclear]

44-111-1000

INTER-OFFICE COMMUNICATION
NATIONAL LABOR RELATIONS BOARD
THIRTY-SEVEN SEVENTH STREET

DATE: August 24, 1941.

TO: Mr. Tolson

FROM: Mr. [Name], Field Examiner

UNION: Mine & Coal Company
Case No. [Number]

The investigation of this matter by [Name] discloses that [Name] Mine & Coal Company, [Location] in [State] is in violation of the National Labor Relations Act in its dealings with the United Mine Workers of America. [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

It is noted that [Name] Mine & Coal Company has refused to bargain collectively with the United Mine Workers of America, a labor organization which has been certified by the National Labor Relations Board as the representative of the employees of [Name] Mine & Coal Company.

District No. 12

UNITED LINE WORKERS OF AMERICA
Affiliated with O. I. O.

United Line Workers
Building

Springfield, Mo.

July 1, 1957

Osborn G. Hill, Superintendent
King B. Hill Company
Springfield, Missouri

Dear Sir:

Reference is made to your letter of June 28, 1957, regarding the

above captioned matter.

The enclosed copy of the contract between the United Line Workers

and the King B. Hill Company is being furnished to you for your

information.

Very truly yours,

John J. [Name]

Secretary

Springfield, Illinois
July 26, 1941

Regional Director
National Labor Relations Board
Michigan Building
Chicago, Illinois

Dear Sir:

I am enclosing herewith a copy of most labor practice
in the Coal Company of Springfield, Illinois, in
the town of Springfield, Illinois, which was formerly
owned and operated by the Springfield Coal Company
of Springfield, Illinois, and was conducted by the
National Labor Relations Board, the Springfield
Coal Company, and the Springfield Coal Company, B.
C. Company, Springfield, Illinois.

Very truly yours,
[Signature]

Enclosure

Page 2

Regional Director
Chicago, Illinois

July 25, 1941

belonged to the Progressive Mine Workers of America.

If under the above stated facts or any other charge should be filed, please advise me. I sincerely hope that the Board will investigate this case and see if something can't be done so that I can go back to work and earn a livelihood without being placed on the charity of the government.

Very truly yours,

Francis [unclear]

Francis [unclear]

WASHINGTON, D. C.

August 26, 1943

WT:EC:MLB

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21

MEMORANDUM FOR THE DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

No. 2

Re: Mine "E" -- Violations of
Section 51, Title 18.

I am transmitting herewith a group of photostats of documents obtained from the files of the National Labor Relations Board, which have been identified on the back as follows:

- E-1 to 7, inclusive
- F-1 to 8, inclusive
- G-1 to 4, inclusive
- I-1 to 6, inclusive
- J-1 to 2, inclusive
- K-1 to 3, inclusive
- L-1 to 4, inclusive
- M-1
- N-1 to 3, inclusive

Documents identified H-1 to 3, inclusive are the subject of my memorandum to you of this date numbered 3.

There are also attached hereto two copies of an analysis of some of the more pertinent documents.

RECORDED & INDEXED

Obviously it is incumbent upon us to make a more thorough analysis of these documents which contain a considerable amount of very significant material which will be of aid to your investigation. This task is now being undertaken, and in a few days, I will send you a memorandum embodying our analysis of the significance of these documents and the additional investigation leads.

44-45-89

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543

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which they suggest. I am sending you the documents today, however, in order that there may be no unnecessary delay in getting them into the hands of your agents. Many of the documents should be of considerable assistance when you come to interview the officials of the Progressive Union such as John Kane, General Counsel, and Joe Ozanic, President.

It is my belief that all of these officials who participated in the events of 1937-41 should sooner or later be fully interviewed. You will determine when it is most appropriate to make these contacts. When Mr. Coleman was in Springfield, he discussed with Mr. Hallford the possibility that pending negotiations between the American Federation of Labor and U.M.W. made it precarious to discuss the case in confidence with these Progressive officials. Obviously, however, these officials should have a wealth of knowledge concerning the pertinent events, and their cooperation can be a great aid to your Bureau.

Respectfully,



WENDELL BERGE,
Assistant Attorney General.

Enclosure
No. 240982

Analysis of pertinent documents obtained from
the files of the National Labor Relations
Board. (Groups E-F)

- (1) N. L. R. B. - E-3
1/25/38 - Flacher - V. P. Progressives to C. S. Smith -
field examiner N. L. R. B. --

Hiseff has always taken the position this business does not warrant reopening the mine.

Flacher says he has been informed that Hiseff is connected with the Brewerton Mine at Springfield but has never been able to confirm this.

- (2) N. L. R. B. - E-4 *John R.*
10-23-38 Kane to Balport LEONARD C.

On September 11, 1938, he met with Hiseff and his attorney who took the attitude that a closed shop with Progressives could not be signed because of order of National Labor Relations Board required that employment be offered to all employers on the payroll as of May 12, 1937, and this would exclude the Progressives that were expelled. Kane says this is a ridiculous construction because the N. L. R. B. designed the Progressives as the exclusive bargaining agent and ordered Mine E to negotiate with them.

- (3) N. L. R. B. - E-5 *DAN*
8/28/37 X McGill to Ozark Joe

Every day it becomes more evident that Mine "E" is fostering the U. M. W. The Top Boss - Walter Stinton, has been going to the homes of members of the Progressives who work on top at Mine "E". On August 20, 1937, he went to the home of Fred Grobelnick, a member of local #54 and told him "if you come back to work you will get your back pay and a United Miners of America card free." He told him that the men who would attend a U. M. W. meeting on August 20, 1937, at 4th and Monroe Street will represent the men who will work at Mine E when it opened up. He also visited Louis Steinmacher and Joe Keller, employed on top of the mine and talked to them about attending the meeting. According to Grobelnick, Stinton, who was a

foreman at Mine B, told him that each of the bosses were seeing the men of local 54 who worked under them on May 12, 1937.

(4) M.L.R.F. b-7

8/25/37. Signed statement by 7 Progressives.

Charles Roth, a foreman at Mine B, asked them to attend a meeting of the United Mine Workers on August 20 and told them they could not join United free and that Mine "B" was signed up with United and if they failed to show up for work as members of United within a couple of days after the mine reopened they would have no job at mine B. Roth said he was told to say this by Oscar Falcetti.

(5) M.L.R.F. F-1

12/15/39 Kane to the M.L.R.F.

Believes there is a conspiracy between United and Mine B. At a conference between Kane and Elshoff, Elshoff said he would not grant the Progressives a check off system, that he didn't like the Progressives, its organization or attorneys and would agree to nothing that would aid that organization. Later at a meeting of the Committee of Progressive Miners, he said he would grant a check off system if it was all right with Ray Edmondson.

(6) M.L.R.F. F-2

6/29/38 - Elshoff Crossed Dorfman - REGIONAL DIRECTOR.

Edmondson had assured Dorfman he would make no attempt to enforce the contract signed between him and Elshoff a year ago, but cannot enter into a written invalidation since the A. F. of L. "has never been willing to do this in cases where the tables have been turned - -"

(7) M.L.R.F. F-3

8/29/38 Elshoff to O. E. Smith

Has no intention of ignoring the decision of the board and will do everything in his power to cooperate to bring the matter to a satisfactory conclusion.

(8) M.L.R.F. F-4

1/12/38 - Affidavit by Harvey Williams

Upon instructions from Falcetti he reported at 7:30 A.M. January 12, 1938 at Mine B to work as an engineer. He was met in the wash room by Bohannon, Joe Albanese and Dominic Pasquale and Bohannon asked if he was ready to join United and on being told no Bohannon wrote his name on a card which stated in effect that he should not be employed by Mine "B". In addition Frank Austin and Billy Pasquale were stationed in the office of the company (they are U.M.W.) and affiant says they were stationed there for the purpose of preventing persons not members of United from working.

(9) N.L.R.B. V-4

1/17/38 Affidavit by Frank Walsh.

Upon instructions from Oscar Falcetti he reported on January 12, 1938 at Mine B to work as a stull feeder. He met Courley who told him he had nothing to do with hiring and that Oscar Falcetti was out of the city. Later he saw Jack Falcetti, he said there was work at the bottom of the mine. When he was preparing to do this work Bohannon contacted him and asked if he was ready to join United and on being told no Bohannon wrote his name on a card which stated that having refused to join United he could not work at that mine and that United would not be responsible for anything that happened to him unless he joined and as a result, he is scared to work in the mine being fearful that something will happen to him.

(10) N.L.R.B. V-6

9/14/37 Graphic to Mark

Mine B and United are using every conceivable tactic to force the progressives to join United.

At a meeting of the Progressives on September 10, 1937, there were 400 employees of mine B.

On September 10, 1937 the Progressives prepared a second petition and at the end of the day the Progressives of their own free will walked into the miners' hall at 6th and Washington Sts., and signed. The number no doubt exceeded 400.

(11) N.L.R.B. G-1

6/1/39 - To O. S. Smith from Elshoff

No agreement has been reached with the progressives for two reasons. (1) Due to the unsettled condition of the industry there is no reason to reopen the mine. (2) The stipulation provides that upon request of local 54 Mine B would negotiate and there has been no request from anyone connected with the Progressives since August 22, 1938 when Faucher and McGill met with Elshoff and Falcetti. It is the company's intention to follow the order based on the stipulation.

(12) N.L.R.B. G-4

9/11/37 - Memo from Bajer to Beaudry/Walk

P. 4. The Progressives submitted to the N.L.R.B. copies of the statements of their financial secretary showing that even after the expiration of the agreement in 1937 dues had been checked off by the employer during April, May, June and July of 1937.

P. 4. In a conversation with Elshoff Bajer was told that Elshoff was applying for membership in the Illinois Coal Operators Association which is recognized as the employer agency with which for years U.M.W. have negotiated their contracts.

P. 4. There is evidence to show that in the last few days Hishoff has been cooperating with United in their membership drive.

P. 5. On Sept. 8, 1937 DeJort had a conference with Edmundson and Ozanic and among other things proposed that an election be held to determine representation but Edmundson rejected this proposal without giving a specific reason but DeJort believes it was because his organization was not sure of its voting strength.

(13) N.L.R.B. H-1

8/28/41 Memo to file by Martin Warner

A man named Curry was dismissed in 1941 by Mine "B" because under the closed shop agreement he was not a member of United.

(14) N.L.R.B. H-2

7/12/41 - Edmundson to Falcetti

Advises Falcetti that Dan Curry, George Brancato, and Wiley Kellion are no longer members of United and no longer entitled to employment at Mine B.

(15) N.L.R.B. H-3

7/28/41 - Dan Curry is Regional Director

Was formerly a Progressive and joined United after a closed shop agreement was signed. Has paid dues. Claims Company discharged him and was told to do so by United. Feels sole reason for his dismissal was his former membership in Progressives.

(16) N.L.R.B. I-1

1/4/41 Affidavit by John Kane

States Company objected to entry of decree on ground that it would have to hire the Progressives who were sentenced to jail. He states that an analysis of the dates of conviction would demonstrate that when Mine "B" signed the stipulation August 10, 1938, it knew that these employees had been convicted and that the signing of the stipulation clearly required it to offer them reemployment.

(17) N.L.R.B. I-1

1/3/41 Affidavit by Antonio Victor Gent

He was paroled September 18, 1940 and applied in writing to Falcetti for employment October 8, 1940. He is informed and believes that the records of Mine "B" will show that several men were hired there since he made application.

(18) N.L.R.B. I-1

1/4/41 - Affidavit by William Croston

Was paroled September 20, 1940 and applied for work to Falcetti October 1, 1940 and since the date of his application has been unable to secure employment at that mine.

- (19) N.L.R.B. I-1
1/3/41 - Affidavit by John Schneider
Was paroled September 17, 1940 and on September 20, applied in writing to Falcetti for employment and has made oral requests but has not been hired. He is informed and has reason to believe that records of Mine B will show that several men were employed since he made application.
He knows Jasper Cascioppi and Jack Falcetta, both of whom are employed at Mine B and both of whom served time with him in the same federal institution.

- (20) N.L.R.B. I-1
1/3/41 - Affidavit of Joseph [unclear]
Applied orally September 18, 1940 and by letter around October 15, 1940 for work at Mine "B" but has been unable to secure a job.

- (21) N.L.R.B. I-2
10/29/40 Lane to N.L.R.B.
Casoppia was employed by Mine B a short time ago. He served time with Schneider. He was employed as an apprentice but is married and at least 35 and could not be considered as an apprentice under the rules of any labor organization in the state since only men under 21 can be considered apprentices.

- (22) N.L.R.B. I-3
10/22/40 Lane to N.L.R.B.
William Mansky was found guilty in the Criminal Court for assaulting Pete Illego. Bohannon and William Surlock were put under peace bonds on complaint of two women - - wives of Progressives.

- (23) N.L.R.B. I-4
10/19/40 Affidavit of Padock, Santini and Schone.
On October 14, 1940 in discharge of their duties as members of the grievance committee they were in the office of Oscar Falcetti and Bohannon came in intoxicated and cursed them violently and threatened to molest them. As members of the grievance committee they insisted that Falcetti discharge Bohannon because of these actions and because Vincent [unclear], a progressive, had been discharged for cursing on company property but Falcetti refused to discharge him.

- (24) N.L.R.B. I-4
10/9/40 Affidavit of Tony [unclear] (P.N.E.)
During past months he has applied to Mine B 33 times for work. He applied on October 7, and October 9. Falcetti told him he could make application as many times as he wanted and it would do him no good.

4 men were employed October 7, and went to work Oct. 8. Joe Perko and Hugh Monroe, members of United were employed Oct. 7. Tony Danico and Tony Yakitis, both apprentices, were employed Oct. 7. On Oct. 9 Robert Todd, member of United went to work. Believes Falcetti won't hire him because he is a Progressive.

(25) E.L.R.E. I-5

2/23/40 Letter to National Director

Joe Laverne applied to Falcetti on Sept. 18 or 19 and was refused a job.

Edie Meckelbeck, an ex-convict was reemployed by the company.

(26) E.L.R.E. J-1

10/5/40 Affidavit of Leg. Encl

From August 10, 1939 to Nov. 2, 1939, the date when notices were mailed to various employees to report for work in 10 days, he made various requests to the Progressives and United to mail to Mine "B" the correct addresses of all employees as of May 12, 1937, and supplied each with a copy of the permanent payroll as it existed May 12, 1937. United responded by letter but the Progressives either refused or neglected to answer this request although as late as late as Oct. 28, 1939 they orally promised to supply the company with the correct addresses of members of their organization but this was never done.

(27) E.L.R.E. J-1

10/3/39 Encl to Ray Reed (Dist. Pres. of Progressives)

Enclosed the permanent payroll as of May 12, 1937 and requested the correct addresses of members of local 54 who appeared thereon.

(28) E.L.R.E. J-1

10/17/39 Encl to Edmundson

Attached permanent payroll as of May 12, 1937 and requested the correct addresses of members of United whose names appeared thereon.

(29) E.L.R.E. J-1

10/18/39 Edmundson to Encl

Acknowledged receipt of letter of Oct. 17 and advised that the addresses were substantially the same as they were on May 12, 1937.

(30) E.L.R.E. J-1

10/18/39 Encl to Ray Reed

Advising that mine B would be reopened and inviting him and bargaining agents of local 54 to meet to discuss this and other matters now or previously proposed, relative to work, employment, etc.

He advised that no reply had been received to his request for the correct address of Progressives.

- (31) H.L.R.E. J-2
10/5/40 - Affidavit of Elshoff re Joe Laverne
 Was advised that because of Laverne's conviction, he was automatically deprived of the right to employment at Mine B. Through counsel he requested the whereabouts of employees who were members of local 54 on May 13, 1937 but that the Progressive Organization failed to advise him.

- (32) H.L.R.E. J-2
10/5/40 Affidavit of Elshoff re Harvey Williams
 On the evening of Sept. 17, 1940 he was looking for John Falcetti and found him in the engine room with Harvey Williams. He had been informed on numerous instances of the negligence and incompetence of Harvey Williams and determined to reprimand him and thereupon listed to Williams his shortcomings whereupon Williams asked if his services had been satisfactory and on being told no offered to resign and voluntarily wrote his resignation.

- (33) H.L.R.E. J-2
10/5/40 Affidavit of John Falcetti re Harvey Williams.
 Substantiates affidavit by Elshoff. Says when Williams offered to resign he (Falcetti) asked if he would put it in writing and Williams said yes and he gave him a piece of paper. Says Elshoff was not interested and he did not detect the odor of liquor about him.

- (34) H.L.R.E. J-2
10/5/40 Affidavit of Oscar Falcetti re Williams
 On night of Sept. 17, 1940 he saw Williams who said his work had not been satisfactory so he quit. Three days later Williams returned with John Cogh and asked if Falcetti would reinstate him. He was told no, because he had quit of his own accord. Then Williams said Elshoff had fired him. Cogh said the resignation was invalid because the word "resignation" was misspelled.

- (35) H.L.R.E. J-2
10/5/40 Affidavit by Frank Austin re Williams
 On evening of Sept. 17, 1940 he drove Elshoff home, sat in front seat with him, talked with him, detected no indication Elshoff had been drinking, and did not smell liquor about his person.

- (36) H.L.R.E. J-2
10/5/40 Affidavit of Oscar Falcetti re Mine B. VINCENT
 After the mine reopened in November, 1939 the Progressive check weighmen refused to mark down the weights for all the miners employed at the mine. He consulted counsel and as a result, permitted the miners not having the services of a check weighman to employ one at their own expense. A check weighman named Kirby was then employed.

In the middle of June, 1940 Kirby reported Matejka had threatened him, cursed him, and called him a scab. Falcetti talked to Matejka who said he was sorry and Falcetti said if it happened again he would discharge him. Two weeks later Kirby reported Matejka had cursed him, and threatened him again. He talked to Matejka who admitted the charge and then he discharged him.

The Progressive Grievance Committee took up the case and demanded Matejka be reinstated but Falcetti refused. Then Groh a board member and he discussed the case, failed to agree so the next step was to write up the case to be presented to a commission for final decision. In writing up the case Groh demanded that Falcetti admit in general evidence that he fired Matejka for Union activities which Falcetti refused to do. Groh said he could put anything in the evidence that he cared to and that such evidence regarding union activities was to be written up or he would not write up the case. As this was not true Falcetti refused to sign the evidence.

(37) H.L.R.N. J-2
10/5/40 Affidavit of Oscar Falcetti re Jack and Frank Lindsay.

Jack Lindsay was discharged for striking Bill Schewe and Mallaker. He did not present the matter of his discharge as a case to be heard before Falcetti.

Frank Lindsay was hired on trial and if his work was unsatisfactory he was to be discharged. On March 21, 1940 Falcetti told him his work was not satisfactory, paid him off and discharged him.

(38) H.L.R.N. J-2
10/5/40 Affidavit of Oscar Falcetti re William Lansky

He fired Lansky because on August 3, 1940 the Progressive Grievance Committee reported Lansky was intimidating men, trying to make them join United Mine Workers.

(39) H.L.R.N. J-2
10/5/40 Affidavit of Oscar Falcetti re Lew Wilkinson

Lew Wilkinson was fired because he claimed an injury to his head, and he never reported for treatment to the Dr. that Falcetti sent him to, and at same time he claimed and collected compensation for injury. Actually he had taken time off to dig basements. Falcetti has never refused to write up the case.

(40) H.L.R.N. J-2
10/5/40 Affidavit of Oscar Falcetti re William Molestki

On Feb. 16, 1940 Emory Jacaway notified Falcetti Molestki had gone to work at the Old West mine of the Panther Creek Mining Co. He worked 5 days there and then the mine closed. He asked for

reinstatement and was refused and then the Grievance Committee demanded Falcetti reinstate him. Grah, a District Board member asked him to take up the Molecki case on the ground that he had discharged him. Falcetti refused. Since Molecki was not an employee of the mine he did not feel it necessary to formally consider the matter on the basis of an employee discharge case.

(41) H.L.R.E. E-2

1/8/41 Memorandum to President ~~Starn~~ from Patterson

The President of Mine B stated that if the Board concluded that the court decree had been violated he would undertake to correct the situation without formal action.

Falcetti states he had a conversation with Grompton but Grompton did not ask him for a job.

Hishoff stated he is having difficulty operating the mine because of antagonisms existing between the two unions and fears the employment of the four ex-convicts would aggravate the situation and perhaps render it impossible to operate the mine.

(42) H.L.R.E. E-2

1/8/41 Memorandum to Patterson from Clark - field examiner

On January 3, 1941 he called on Edmundson who showed him a letter he had written to Hishoff stating that he proposed to close his charter at Mine B on January 16, 1941 and demanding recognition on or before that date. He further stated he proposed to close Mine B on January 17, 1941 if Hishoff did not meet his demands by that time. Edmundson read him Hishoff's reply stating that by court order he was bound to deal with the Progressives, and stating he would hold Edmundson responsible for property damage and loss of profits occasioned by the closing of the mine. Edmundson read part of his reply to this letter stating he would accept no responsibility for any damage or loss of profits.

Edmundson stated he felt that at this time there was no room for two unions in the State of Illinois.

Falcetti stated he had never recognized the United Committee at the mine.

~~Bowen~~ Ray stated he was not a member of United at the time he secured his job at mine B but there existed documentary evidence that he was.

(43) H.L.R.E. E-2

11/6/40 Padway - Gen. Counsel A.F. of L. by Thatcher to Halliday

The Progressives have been outrageously discriminated against by Mine B since the court order entered against it. The charges filed by the Progressives were intended only as a secondary remedy and Padway wants contempt proceeding instituted.

- (44) N.L.R.B. L-1
10/7/40 Thatcher to N.L.R.B.

The Company has continued to disobey the court order and the National Labor Relations Act in an outrageous manner. Each day results in ever increasing disintegration in the ranks of the "mine workers union."

- (45) N.L.R.B. L-2
Undated - Kane to N.L.R.B.

The Company's attitude clearly demonstrates that it is determined to force its employees to join a union of its own choosing.

The company refused to negotiate with Local 54 until August 8, 1939, although the order was entered by the N.L.R.B. on or about August 15, 1938, during which time the company did not attempt to operate the mine.

In October, 1939, when negotiations were in progress and while the Progressives were waiting for action on a proposed contract submitted by it the company arbitrarily notified its employees to return to work without having reached an agreement.

After the mine reopened the company recognized United as representative of the employees.

The company refused to grant the Progressives the check off or closed shop features of the contract it granted United although other mines in the state operated under such a contract.

On February 15, 1939, the company stated it would sign no contract with the Progressives but after an investigation by the regional director of the N.L.R.B. stated it would negotiate.

After charges were made to the N.L.R.B. the company agreed to certain phases of the contract but demonstrated bad faith by refusing to follow agreed procedure in the handling of disputes.

During the negotiations Elshoff stated to a representative of the Progressives that he did not like that organization and would not agree to anything to help it and intended to do everything he could to help destroy it.

The company ignored all requests of Local 54 to meet to negotiate and failed to attend meetings arranged and finally on July 30, 1940, refused to meet representatives at Local 54 without giving any reason for it. The company has failed to offer each employee on the permanent pay-roll on May 12, 1937, immediate and full reinstatement to the position they then held. The company has violated the court order that new employees should not be hired to do the same work as former employees until the latter have been offered these position.

The company has violated the court order ordering it to cease coercing employees in their right to join organizations of their own choice and from encouraging membership in United and otherwise discriminating in regard to employment on any term or condition. The company has encouraged membership in United by recognizing officials of United as representatives and by refusing to employ Progressives.

The company has encouraged membership in United by permitting members of United to organize on mine property and refusing the Progressives the same privilege.

The company has encouraged membership in United by criticizing Progressive workers and officials and denouncing its members.

The company has encouraged membership in United by refusing to sign a contract giving members of the Progressives the same privileges and conditions of employment accorded to all employees of other mines throughout Illinois.

The company has encouraged membership in United by permitting United organizers to intimidate Progressives on mine property.

The company has discouraged membership in the Progressives by refusing to grant the same conditions of employment enjoyed by employees of other mines in Illinois.

The company has discouraged membership in Progressives by intimidating and discouraging its members and by only employing members of United.

The company has not paid shot firers the same wages paid them on May 12, 1937.

The company has refused to grant a check off system to employees although this system has been established by contract and custom in this and every other Union operated coal mine in Illinois.

The company contrary to past custom failed to turn over dirty coal fines to Progressive officials.

The company has refused to follow past custom by dividing proceeds from coal loaded by company on haulage roads known as Road coal.

The company has failed to follow past custom by refusing to write up and submit to a committee or commission grievances of employees which cannot be settled at the mine.

(46) L. L. B. P. H-1

1/20/41 Motion of Local #54 to vacate order directing a hearing held by John Kane

Much intimidation and abuse by members of United was done in the presence of the mine superintendent and other mine "B" officials.

Members of United in the presence of the mine superintendent and "county" officials served an ultimatum on members of the Grievance Committee of local #54 that no member of local #54 would be permitted to enter the mine premises on or after the morning of January 17, 1941.

The President of local #7469 in a letter informed members of local #64 that the United Charter would close January 16, 1941, and that those not joining United by that time would lose their employment at mine "B". Following this threat Hunsicker issued the press statement "We are going to take that mine."

Hlsheff has allowed persons who are not employees to come upon the premises daily and intimidate and terrify members of local #64.

Hlsheff and United have brought about a situation making it impossible for the N.L.R.B. to ascertain, even by secret ballot, the wishes and desires of employees of mine "B" in regard to the designation of a representative for the purpose of collective bargaining.

(47) N.L.R.B. M-3

10/4/40 Memorandum from Clark to Patterson

Discusses the request by the Progressives for a contempt proceeding, reviews the facts and available evidence.

Hamilton C'Dunn