INDUSTRIAL ESPIONAGE AND SURVEILLANCE: A STUDY
OF EMPLOYER RESISTANCE TO THE INSTITUTION
OF COLLECTIVE BARGAINING

APPROVED:

Major Professor

Minor Professor

Director of the Department of Economics

Dean of the Graduate School
INDUSTRIAL ESPIONAGE AND SURVEILLANCE: A STUDY OF EMPLOYER RESISTANCE TO THE INSTITUTION OF COLLECTIVE BARGAINING

THESIS

Presented to the Graduate Council of the North Texas State College in Partial Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

By

185214

Robert W. Parr, B. A.

Raymondville, Texas
January, 1951
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. WHY A NATIONAL LABOR RELATIONS ACT?</td>
<td>4</td>
</tr>
<tr>
<td>III. CASES OF ESPIONAGE AND SURVEILLANCE---</td>
<td></td>
</tr>
<tr>
<td>PART I</td>
<td>31</td>
</tr>
<tr>
<td>IV. CASES OF ESPIONAGE AND SURVEILLANCE---</td>
<td></td>
</tr>
<tr>
<td>PART II</td>
<td>55</td>
</tr>
<tr>
<td>V. SUMMARY AND CONCLUSION</td>
<td>77</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>94</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

The purpose of this study is twofold. The primary object is to make an exploration of and to examine in detail the practice of industrial espionage and surveillance. Many people, while they may be aware of the existence of such a practice, have only a limited knowledge of the ramifications inherent in it. This study, then, will seek to localize and to classify the facts on the subject of espionage and surveillance of the union activities of workers. An attempt will be made to present the facts in such a way that one who is completely unaware of the existence of the practice may also be made to know the significance of industrial espionage and surveillance by reading this paper.

The second objective of the study is to investigate the operation of the agency set up by the federal government to prevent labor espionage and surveillance within the framework of the legislative enactment which first prohibited the practice. The agency is the National Labor Relations Board set up in the National Labor Relations Act of 1935.

This is a case study. In the preliminary stages of the study it became apparent that the case study method would afford the most expeditious manner in which to present the
problem of labor espionage and surveillance in all its many forms. No attempt has been made to evaluate the actions of any party in the cases covered; rather, the emphasis is directed toward presenting facts as they occurred in order to fulfill the purpose given above.

The cases on which the foundation of this study rests were taken from the published reports of the National Labor Relations Board of the cases coming before it.\(^1\) Since the Board has exclusive power to enforce the provisions of the Act, it is believed that the reports of its activities offer the best avenue by which a comprehensive presentation may be made of the subject. The index which accompanies the reports of National Labor Relations Board decisions\(^2\) was consulted to find the types of espionage and surveillance encountered by the Board and the key cases pertaining to each type.

The material for the historical background of labor's efforts to secure protective legislation was taken from several standard works in the field of labor legislation.\(^3\) Some of these same references were used in the brief discussion of Board procedure following the historical background. The source of greatest value, however, in that part

\(^1\)Decisions and Orders of the National Labor Relations Board, U. S. Government Printing Office.


of the study devoted to summarizing Board procedure was a bulletin published by the U. S. Department of Labor concerning procedures and practices under the National Labor Relations Act of 1935. 4

This is not a general study of unfair labor practices prohibited in the National Labor Relations Act. Rather, the scope has been limited to include only a small but important part of subdivision (1) of Section 8 of the Act, viz., industrial espionage and surveillance.

Although Section 8 (1) of the Act was not changed by the amendments brought about by the Taft-Hartley Act, 5 the scope of this study extends only to cases of espionage and surveillance arising while the NLRA was in operation.


CHAPTER II

WHY A NATIONAL LABOR RELATIONS ACT?

The emergence of the merchant capitalist in the last quarter of the eighteenth century was perhaps the culminating factor in the train of events leading to the separation of interests between the master employer and his journeymen and apprentices.

Before the merchant capitalist the master employer worked with his men, often at the same bench. He knew their needs and problems because they were his own problems. The primary object with them was to turn out a product of sound quality and fine workmanship, at a monopoly price, while the capitalist was moved primarily to lay his hands on goods in large quantities and to sell them to retailers at a small profit per item.

The expansion of railroads and waterways in this country and the increase in cheap goods available in England, as a result of the Industrial Revolution just then gaining impetus there, made the capitalist a mighty man. His demands for more and cheaper goods, and his ability to secure them from other countries, served to turn the economy to ruinous competition in which the most flexible of the cost of production factors
was considered to be labor, and it was labor that was cut most drastically in order to produce the cheapest product.

The inevitable outcome of a situation of this kind was trade unionism. And in an atmosphere of antagonism between labor and management it was only a short time until it became apparent that some sort of control over industrial relations was necessary.

The first trade union in America\(^1\) won its first organized strike for higher wages after nine weeks of negotiations. However, their next attempt to strike for higher wages met with charges of combining to increase their pay and to injure others, an attempt which was held by the courts to be "criminal conspiracy." The courts held this collective action to be criminal conspiracy on the basis of interpretation of English common law. This was the beginning of a long period during which unfavorable court decisions destroyed thousands of American unions.

Of the small number of cases concerning labor recorded in the first half of the nineteenth century, one feature dominated the picture; they all dealt with one problem, conspiracy. English common law declared a combination of workers to raise their wages to be criminal conspiracy, and it was this law the courts followed during this period.

\(^1\)The Federal Society of Journeymen Cordwainers, 1794, Harris, American Labor, p. 11.
In 1842 the celebrated case of Commonwealth v. Hunt\(^2\) was decided by the Supreme Court of Massachusetts. At that time no other labor conspiracy case had been tried in a Massachusetts court, and there was no precedent to be followed. This was the first case that recognized some good in organized labor, regardless of possible illegal acts by individual members of unions. This case is considered to be the first court recognition of the right of workers to form labor organizations.

It was during the 1880's that labor met with the most severe court interference. It was about this time that anti-union employers began to make use of the court injunction to prevent concerted action by labor unions. Originally, injunctions were designed to protect property, and, in order to enjoin labor organizations against striking for any purpose, the concept of property was modified by the courts to include expected profits. Eugene V. Debs figured in an outstanding case of injunction during the Pullman strike of 1894. Debs was later convicted of contempt of court and sentenced to jail for refusing to comply with the injunction.\(^3\)

The distortion of anti-trust laws into anti-union weapons was the next obstacle organized labor had to surmount. The most important of the anti-trust laws that the courts

\(^2\) M. Metcalf (Mass.), 111.

\(^3\) E. E. Witte, *Government in Labor Disputes*, p. 121.
held to include labor unions was the Sherman Anti-trust Act of 1890. Much controversy came about over the question of whether or not the Sherman Act was intended to apply to labor unions. The U. S. Supreme Court decided in the Danbury Hatters case\(^4\) that an examination of the debates in Congress at the time the Sherman Act was passed clearly indicated it was intended to include organized labor in its scope. Those who contended that the Sherman Act was intended to include labor unions in its coverage based their contentions upon the fact that an amendment offered by Sherman expressly exempting labor was omitted in the final draft of the bill. Those who opposed including labor unions in the Act argued that no one in Congress was of the opinion that it could in any way be construed to apply to labor unions, and that the amendment offered by Sherman was omitted because it would have been superfluous.

The Sherman Act was invoked against labor in seven cases in 1893 and 1894,\(^5\) after which little was heard of the Act in connection with labor disputes until the Danbury Hatters case in 1908. In the Danbury Hatters case a hat manufacturer of Danbury, Connecticut, brought suit against 197 workers for organizing a nation-wide boycott, which the manufacturer claimed was a conspiracy to prevent him from selling his

\(^4\)Loewe v. Lawlor, 208 U. S. 274 (1908).
\(^5\)Witte, op. cit., p. 63.
product in interstate commerce. The court held against the union and fined the members $240,000.

The Erdman Act of 1898 granted employees of interstate railroads a measure of federal protection by outlawing the discharge of these employees for reason of their belonging to a labor union. This recognition of labor's right to organize and bargain collectively lasted only until 1908, when the courts, exercising the doctrine of judicial review, declared the protection afforded labor by the Erdman Act unconstitutional. Suit was brought against a supervisory employee of an interstate railroad for firing a man, reportedly for union activities. The court held in favor of the supervisory employee, making the following statement:

As the relations and the conduct of the parties towards each other were not controlled by any contract other than a general employment on one side to render services to the employer—no term being fixed for the continuance of the employment—Congress could not, consistently with the Fifth Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization.  

During this long period of attempted control of industrial relations by the courts, a few weak attempts to improve the situation had been made by the federal government. The Senate Committee on Education and Labor was formed in 1882 to study the nature and causes of labor disputes

---

7 Ibid.
and to recommend legislation. The U. S. Strike Commission was organized in 1894 to study the Pullman strike of 1894 in an effort to determine the causes behind it and to make recommendations. The Anthracite Coal Strike Commission was appointed by Theodore Roosevelt to study a strike by the United Mine Workers which had lasted twenty-three and a half weeks, and represented one of the best organized and conducted strikes in labor history at that time.

During and preceding the activities of the various government commissions for the study of labor disputes, some of the states had already pioneered in the field of protective labor legislation. The first regulatory laws concerning labor go back as far as 1842 when Massachusetts and Connecticut passed bills that established ten-hour work days for children. Besides the regulation of child labor, early regulatory laws were concerned with the labor of women. More difficulty was encountered in attempts to legislate on the length of the work day of adult women. It was an Oregon case that finally declared the regulation of woman labor constitutional.\(^3\)

Other moderately successful state legislation to protect the rights of labor was passed up to the time of the first World War. Hours of work for men, wage regulation, the right to organize, and workmen's compensation laws were all given

attention on the state level, without being universally accepted up to the first World War.

The federal government's next attempt, following the Sherman Act, to give labor legislative protection was in the Clayton Act\(^9\) in 1914. Section 6 of this act stated:

\[
\ldots \text{the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.}
\]

On the strength of Section 6, organized labor hailed the Clayton Act as its "Magna Charta" and enthusiastically accepted the act as its liberator from the injustices of the Sherman Act.

This enthusiasm waned in the five years immediately following the enactment of the Clayton Act as inferior courts frequently handed down decisions against labor on the labor sections of the Act. The U. S. Supreme Court finally removed all doubt on the labor provisions of the Clayton Act when it held in 1921 that the status of labor with regard to antitrust laws was not changed by the act.\(^{10}\)

---

\(^9\) 38 Stat. 730.

\(^{10}\) Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 Sup. Ct. 172 (1921).
The Supreme Court ruled:

There is nothing in this section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination in restraint of trade as defined by the antitrust laws.

As the situation developed it became apparent that labor's position under the antitrust laws was worse after the passage of the Clayton Act than before. Prior to the act, only the federal government could secure an injunction against unlawful restraint of trade, while Section 16 of the Clayton Act provided that any private party injured through any unlawful restraint of trade might bring an injunction suit against persons guilty of such conduct.11

For a short time before America entered the war, labor unrest was widespread. The building, metal, and clothing trades in particular were beset by strikes and industrial disputes, but other areas until then undisturbed by industrial disputes were also affected.

As a result of this labor unrest, with its threat to the war potential of the country, the federal government intervened in a manner which at that time was considered drastic. In August of 1917 a Labor Adjustment Board

11Witte, op. cit., p. 69.
consisting of representatives of the government, labor, and employers was established to deal with labor disputes. Other boards or committees were appointed in conjunction with other boards and departments of the government for the sole purpose of handling labor relations.

Lack of unification among the boards and committees caused an unsatisfactory showing in dealing with labor problems arising in connection with war activities by these first government agencies of intervention. Thus, in January, 1918, the Secretary of Labor appointed a War Labor Conference Board, consisting of five members nominated by the National Industrial Conference Board, an organization of employers, five members nominated by the American Federation of Labor, and two public members, one nominated by each side.

The War Labor Conference Board recommended the establishment of the National War Labor Board, which was done in April, 1918. Its purpose was to mediate and conciliate in industrial disputes threatening war production and to act as a central court of appeals for the various special government agencies created in different industries. This board was tripartite in composition, including members selected by labor, members selected by management, and two neutral representatives of the public.

The War Labor Conference Board recommended the government policies that were adopted to guide the National War Labor Board in its work. These policies declared:
The right of workers to organize in trade unions and to bargain collectively, through chosen representatives, is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever. Employers should not discharge men for membership in trade unions, nor for legitimate trade union activities.12

In this declaration of principles and policies the federal government recognized for the first time the right of labor to organize and bargain collectively through representatives of its own choosing.

In its capacity as a mediatory and conciliatory body, the National War Labor Board did not have the power necessary to equalize the bargaining power of labor with that of management. For this reason, labor objected to the continuance of the National War Labor Board after hostilities had ceased. And because management felt that the Board promoted the spread of labor unionism, it, too, was willing to see war-time industrial boards and agencies go out of existence soon after the war ended.

In 1919, a National Industrial Conference convened in Washington to attempt a solution of the great industrial battle which began after the government boards and agencies were allowed to go out of operation. This Conference was very short-lived. An agreement could not be reached between labor and management on the meaning and methods of collective bargaining, and, after an eleven-point proposal

---

which would have been acceptable to labor was rejected by management, the conference collapsed. This failure marked a temporary cessation of government attempts to regulate industrial relations.

The early years of the 1920's saw labor lose much of the ground for which it had fought so hard. The depression of 1920-1921 decimated the ranks of organized labor. Many workers dropped out of labor unions which were losing numerous strikes designed to stop the wage cuts that were accompanying the widespread unemployment. Women who had entered industry during the war dropped out in great numbers with the onset of the depression. The membership of labor unions in 1923 was 3.6 millions as compared to the 1920 mark of five millions. "In these three years the loss in membership wiped out half of the wartime gains."\(^{13}\)

In 1920 the government had to face the problem of returning the railroads, which it had operated since December, 1917, to private ownership. It was finally done in the Transportation Act of 1920, or the Esch-Cummins Act. Labor was dissatisfied with the Esch-Cummins Act from the beginning. They had fared well under government operation, receiving fair treatment and considered as decent people who were doing a job to promote the winning of the war. The Railroad Labor Board, established in the Act, proved

---

\(^{13}\)Harold W. Metz. *A National Labor Policy*, pp. 4-5.
inadequate. Local adjustment boards were authorized by the Act but very few of them were established. This was because labor preferred national adjustment boards. The Railroad Labor Board, then, was badly overworked. This, coupled with the unsatisfactory results of the non-compulsory decisions of this board, led to the abolition of the Transportation Act of 1920 by the Railway Labor Act of 1926. The 1926 Act returned to the mediation system, both labor and management being opposed to the decision powers of the Railroad Labor Board of the 1920 Act.

The most significant feature of the Railway Labor Act of 1926 was that it gave labor something for which it had fought since its earliest beginnings, the sanction by law of collective bargaining through representatives of their own choosing. The Act withstood the test before the U. S. Supreme Court in 1930 when a lower-court injunction prohibiting carriers from supporting a company union was confirmed and the constitutional right of a union to be represented by the officers of a national union was affirmed.14

The passage of the Norris-La Guardia Act15 in 1932 was labor’s first real protection against injunctions secured against collective action. This Act divests federal courts

of injunctive powers in cases growing out of a labor dispute, except as provided by Section 7; states that the policy of the Act is to foster labor's right to form labor organizations without interference by the employer; outlaws yellow dog contracts; identifies nine specific situations protected from injunctive process; adds the further jurisdictional requirement that the complainant must have made reasonable efforts to negotiate the differences existing; eliminates the omnibus type of injunction; provides for expeditious appeal; allows a jury trial in contempt cases not committed in the court's presence or near thereto; and provides a broad definition of a labor dispute.

It seemed at this time that labor's rights in the field of collective bargaining and organizational activities had at last been recognized by all. Subsequent investigations, however, showed that many carriers were guilty of gross violations of the Railway Labor Act of 1926. This investigation, conducted by the office of the Coordinator of Transportation (this office originated in the Emergency Transportation Act of June 16, 1933), found that

...the carriers formed employee organizations and controlled constitutions and by-laws; they supervised the choice of representatives; they supervised and prescribed methods of electing representatives; they contributed financial support; they paid representatives of employees as such; they collected dues; they extended special privileges to members of company unions; they clearly used coercion to prevent the employee from using free choice in the selection of the labor organization or representatives; they
discriminated against employees for membership or non-membership in a labor organization—in short, the carriers were guilty of the whole gamut of such practices as would prevent the growth of organized labor and freedom in organization and collective bargaining. 16

The coordinator then recommended that the Railway Labor Act of 1926 be rewritten. This was done and enacted as the 1934 amendment. This amendment broadened the coverage of the Act and set up additional machinery to administer it. The National Mediation Board was to assist in changing or re-drawing agreements between carriers and employees. The National Railway Adjustment Board was set up to settle disputes growing out of the interpretation of existing agreements.

The 1926 Railroad Act and its amendments of 1934 represent labor's most notable triumphs up to that time. This legislation was an unequivocal protection of labor's right to organize and bargain collectively.

Labor's problem now became that of further broadening the scope of national labor legislation to include industrial labor as well as that of the carriers. The National Industrial Recovery Act17 was enacted on the same date as the Emergency Railroad Transportation Act, June 16, 1933, and was an attempt to give industrial labor the protection afforded


1748 Stat. 198.
railroad labor. But the protection provided in the two enactments was vastly different.

The National Industrial Recovery Act, which labor regarded as another "Magna Charta," really did not prevent company domination of unions; did not outlaw the company union; imposed no duty on employers to meet with representatives; did not encourage organization; and did not protect the unions and employees. "There were no separate enforcement provisions for violations even remotely comparable to the Railway Labor Act. . . ."\(^8\)

Section 7 (a) of the National Industrial Recovery Act reiterated and added to the labor policies adopted by the government in 1918 to guide the National War Labor Board in its work. Section 7 (a) states:

> Every code of fair competition, agreement, and license, approved, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

\(^8\)Bowman, op. cit., pp. 27-28.
The National Labor Board was created by executive order to handle the labor disputes arising after the passage of the National Industrial Recovery Act. This board was headed by Robert F. Wagner as chairman and was composed of representatives of labor and industry. The board had jurisdiction only in cases involving violations of Section 7 (a). The powers of the National Labor Board were limited to mediation and sticking the likeness of a blue eagle on the office doors or windows of companies that complied with the orders of the board.

Wagner introduced a bill into Congress for the purpose of remedying the defects in the machinery of the National Labor Board. The bill was not adopted but Congress did pass a joint resolution, Public Res. 44, 73rd Congress, authorizing the President to establish one or more boards to investigate labor disputes under Section 7 (a) of the National Industrial Recovery Act. This board was set up and began operations in July, 1934. It was called the National Labor Relations Board, and was made up of one representative each from industry, labor, and the public, and having a permanent administrative head. The (old) National Labor Relations Board was not successful in its efforts to equalize the bargaining

---

19 Generally referred to as the (old) National Labor Relations Board to avoid confusing it with the board with the same name set up in the National Labor Relations Act of 1935.
power of workers with that of their employers because it suffered from the same lack of enforcement powers that plagued its predecessor, the National Labor Board.

Several other circumstances served to render the National Industrial Recovery Act ineffectual. The coverage of industries was incomplete, including only those which had formulated codes of fair competition approved by the President. Moreover, a plethora of labor boards (each industry had its own board) resulted in ineffective administration because of the lack of coordination among the industries in establishing labor standards or procedures. Another defect contributing to the downfall of the N. I. R. A. was the indefiniteness of the unfair labor practices under Section 7 (a) and the corresponding ambiguity of functions of the various boards.

By the spring of 1935, the economy had recovered sufficiently to cause big business to feel there was no longer any need for the N. I. R. A. The grudging acceptance of management of the labor policies set up by the government in the depths of the depression changed to demands that the Act be done away with. This was done by the U. S. Supreme Court, which declared the Act unconstitutional.20 "So ended the greatest peacetime effort of the American people to do collectively what individually they failed to accomplish--

---

to make themselves the master of the industrial machine instead of its victim.  

This brief sketch of the background of labor's struggle to even the bargaining powers of labor and management brought to the threshold of labor's mightiest bid for equality with employers, the National Labor Relations Act of 1935. From World War I until 1935 labor legislation was directed more and more toward labor's goal, the right to organize and bargain collectively. But each new legislative enactment lacked the necessary punch to grant labor that right. It was either too full of loopholes to be enforceable, or the courts would declare it unconstitutional, or lack of administrative coordination would render it impotent.

These attempts at protective legislation for labor, while unsuccessful on the industrial level, provided valuable experience in future efforts in that direction. As in all fields of knowledge, subsequent legislation in the field of labor reflected the lessons learned in the past.

With the intention of coordinating all the gains in the field of organization and collective bargaining, Wagner introduced into the Senate in February, 1935, the bill that was to become the National Labor Relations Act of 1935, more popularly known by the name of its chief sponsor as the

---


22 Ibid.
Wagner Act. The Senator's brilliant arguments on behalf of the Act were based on the thesis of greater economic stability through better economic balance, a goal attainable only when there is cooperation between employer and employee on the basis of equal bargaining power. Thus, the Congress recognized that industrial strife over union recognition was too costly, and enacted the Wagner Act, which restated the basic principle that workers have the right to organize and bargain collectively through representatives of their own choosing. And, for the first time, an agency with adequate enforcement powers was set up to enforce the provisions of the Act.

Congress approached the task of equalizing the bargaining power of workers with that of their employers by outlawing certain employer practices. These outlawed practices are contained in Section 8 of the Act:

It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. 23

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment

23 Section 7 states: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."
to encourage or discourage membership in any labor organization. Provided, that nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees . . . in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees.

Each one of these prohibited employer practices requires interpretation before it can be enforced. The National Labor Relations Board was set up in the Act to perform this function.

As originally set up, the Board was composed of three members appointed by the President for a term of five years. The work of the Board is carried on in Washington where it issues the Rules and Regulations outlining the procedures to be followed in the handling of cases. The actual investigations of labor disputes are conducted by regional offices maintained by the Board in twenty cities in the United States and two outside the continental limits of the United States, Hawaii and Puerto Rico.

The jurisdiction of the Board is limited to two areas:

(1) the prevention and remedy of unfair labor practices of employers which discourage or interfere with self-organization of employees or the practice of collective bargaining, and

(2) the designation of bargaining representatives.
Section 8 (1) of the Act is the most comprehensive of all the unfair labor practices listed. Violations of any of the other four subdivisions of Section 8 are, per se, violations of Section 8 (1), for it stands to reason that dominating a company union, discharging an employee for union activity, refusing to bargain collectively, and discrimination because of proceeding under the Act interfere with, restrain, and coerce workers in the rights guaranteed them in Section 7. The primary function of Section 8 (1) is to prohibit unfair labor practices not listed in Section 8.

The subject of this paper, labor espionage and surveillance, is one of the employer practices which are unfair to labor only under Section 8 (1). The question may occur to the reader as to how it came about that espionage and surveillance of the union activities of labor was declared by the Board to be a violation of Section 8 (1). The answer to that question will be seen in an examination of the procedure followed by the Board in its investigation of charges of unfair labor practices.

At the outset, a charge must be filed with a regional office of the Board stating that the employer involved has engaged in practices unfair to labor. The filing of the charge is a must. The Board cannot initiate an investigation on its own.
The case is then assigned to a field examiner for investigation. In his investigation, the field examiner attempts to secure all the pertinent facts with regard to the alleged unfair labor practices. Parties to both sides of the charge are interviewed, and the cooperation of the employer named in the charge is requested.

The importance of this preliminary investigation by the field examiner cannot be minimized. The disposition of the whole case hinges on the report submitted to the Board of this investigation. Thus, the first time it was charged that an employer, by engaging in espionage and surveillance of the union activities of his employees, had interfered with, restrained, and coerced them in the exercise of rights guaranteed in Section 7 of the Act, it was the field examiner's report that verified the merits of the charge and resulted in the issuance of a complaint by the Board.

The step immediately preceding the issuance of the complaint, which is an attempt by the field examiner to arrive at an informal settlement of the case, is indicative of the basic philosophy underlying the reasoning of the Board in the prosecution of the functions assigned it in the Act. The informal settlement is not designed to compromise the provisions or policies of the Act. Rather, it is designed to promote better labor-management relations, an aim which

---

is more likely to be realized when the two parties to a dispute cooperate in the settlement than when it is effected by a directive from a third party.

Two alternatives to the informal settlement and the issuance of a complaint are the withdrawal of the charge or the dismissal of the charge. If the field examiner's investigation reveals that the charge of unfair labor practice is without merit or that the Board lacks jurisdiction in the case, the regional director recommends that the person or the labor organization which filed the charge withdraw it. If the charge is not withdrawn upon the regional director's recommendation, he may refuse to issue a complaint, which, in effect, dismisses the charge. Statistics show that during the ten years immediately following the passage of the Act only 8.2 per cent of all cases of unfair labor practices charges by employees were closed by formal action. Of the remaining cases, 42.7 per cent were settled by informal procedures; 16.0 per cent were dismissed by the Regional Director; and 33.1 per cent were withdrawn.25

If a complaint is issued, it is accompanied by a notice of hearing. The hearing is usually conducted in the area in which the charge originated, and is open to the public. The trial examiner who presides over the hearing is sent

25Ibid., p. 9.
from Washington. Each party to the suit is represented by
counsel, and a regional attorney presents the government's
case.

In the hearing of a charge of labor espionage and sur-
veillance, counsel for the person or labor organization
filing the charge seeks to prove that the employer against
whom the charge is made interfered with, restrained, and
coerced his employees in the exercise of the rights guaranteed
them in Section 7 of the Act. Counsel for the employer will
either deny that such practices were engaged in, or will seek
to prove that such practices did not constitute a violation
of Section 8 (l) of the Act.

Counsel for the Board and the trial examiner will
examine and cross-examine the various witnesses who testify
on behalf of either labor or management, make a study of the
background of labor-management relations in the company or
of the employer named in the charge, and attempt to reconcile
the testimony and the background with the charges. A very
important aspect of the hearing is the general attitude and
demeanor of the witnesses. The trial examiner considers
this carefully when he accepts or rejects testimony. For
example, if a supervisory employee of the company or em-
ployer involved in the case is called upon to deny or defend
a statement or action he is accused of having made, and he
makes vague statements on the witness stand, or smirks and
winks at his fellow witnesses for the defense, the trial
examiner will very likely discredit the testimony of this witness. The same criterion is used on testimony by witnesses for labor.

At the conclusion of the hearing the trial examiner prepares an intermediate report, containing the findings of fact and his recommendations as to how the case should be decided. This report has several functions:

1. To offer the parties opportunity for immediate and voluntary compliance with its terms so as to avoid the necessity of formal Board decision;

2. To inform the parties as to what the Board will probably order them to do;

3. To define the issues to be argued before the Board in cases where the parties differ with the trial examiner's appraisal of the controversy;

4. To provide the Board with the judgment of the person who conducted the hearing and observed the witnesses.26

After the Board examines the intermediate report, it renders its decision. If the Board finds that there has been no violation of the law, the complaint is dismissed. If it finds that there have been practices which constitute a violation of Section 8 (1), it issues an order divided into two parts. The first part is negative, directing the employer to cease and desist from the unfair labor practice

---

26 Ibid., p. 34.
complained of; e.g., espionage and surveillance of the union activities of his employees. The second part of the order is affirmative, directing the employer to remedy the effects of his unfair labor practices. The Board has found the effects of labor espionage and surveillance to be such things as discharges, demotions, and the discouragement of the organizational activities of employees for the reason that they feared for their jobs if they continued such activities. In case where discharges were found by the Board to be caused by the fact that those discharged were engaging in union activities, the affirmative order of the Board directs the reinstatement of those discharged and reimbursement of back pay, the amount being the difference between what the person discharged has earned since his discharge and what he would have earned had he not been discharged.

The power behind a decision of the Board is not within the decision itself but in the federal courts and the Supreme Court of the United States. The decisions of the Board are subject to appeal by the employer in the suit to the Circuit Courts of Appeals, and, by the same token, the Board may petition a Circuit Court of Appeals for enforcement of its decision if the employer refuses to comply with it. Either the Board or the employer may petition the U. S. Supreme Court to review a Circuit Court decree. If the courts uphold the decision of the Board, and the employer still refuses
to comply, he is inviting contempt proceedings with possible fines or imprisonment.
CHAPTER III

CASES OF ESPIONAGE AND SURVEILLANCE--PART I

Espionage and surveillance of the union activities of employees by employers came to the attention of the Board early in its administration of the Act. In view of the failure of the Board to set forth a concrete, clear-cut definition of labor espionage and labor surveillance in the report of their cases, it is to be assumed that it used the general definition found in a standard dictionary. Here espionage is defined as "the practice of spying on others, or the employment of spies."¹ Surveillance is defined as "oversight; close supervision; now, close watch."²

Labor espionage and labor surveillance, while related, are not the same thing. By deduction, the Board considered espionage to be the process of secretly spying on the union activities of employees and organizers; mingling with the employees on their jobs, as one of them, in order to overhear any talk of union organizing plans; and the systematic submission of reports to employers as to the information gained. Espionage is carried on in a variety of ways. It

²Ibid.
may be done by employees of a business, whose employer or supervisor instructed them to spy on their fellow employees; a private detective may be the medium through which employers seek to learn of the union activities of their employees; detective agencies made many contracts with employers to provide labor spies for their places of business. Other methods of espionage will arise in the course of this paper.

The following quotation from the La Follette Senate Investigating Committee attests to the efficacy of espionage as an anti-union weapon:

Espionage is the most efficient method known to management to prevent unions from forming, to weaken them if they secure a foothold, and to wreck them when they try their strength. 3

Surveillance, again by deduction, is considered by the Board to be the open observation of employees in their union activities by employers or employees in supervisory positions who have the indirect authority to hire and fire. This includes attendance of union meetings, sitting in a conspicuous position near the place of a union meeting, driving around the vicinity of a union meeting in an automobile, and other activities, obviously for the purpose of letting the employees know they are being observed by those who control their employment and causing them to fear for their jobs.

The Board soon found itself faced with the problem of making decisions with regard to espionage and surveillance of union activities. It had to consider all the infinitely complex factors surrounding charges of this nature, arising out of the testimony of the many employers who felt justified in any action that would prevent "outside" labor unions, run by "foreigners," "radicals," "communists," "thugs," and so forth, from sharing in the formation of their labor policies, and that of a labor force that was equally determined to protect the rights guaranteed them in the Act. The problem of arriving at a just decision in the face of much conflicting testimony, much of which comes from over-zealous attempts by the parties to the suit to promote their own ends, was one of some magnitude, as will be illustrated in the pages to follow.

Espionage and surveillance was first brought to the attention of the Board in the first case to come before it after going into operation.\(^4\) The treatment of this case will be somewhat more extensive than those to follow in order that the reader may see the factors the Board had to consider in the cases coming before it.

\(^4\) *Pennsylvania Greyhound Lines, Inc. v. Local Division No. 1063 of the Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America*, 1 NLRB 1.
In this case the surveillance of employees' union activities was carried on by the superintendent of the Pittsburgh, Pennsylvania, garage belonging to the bus line. This superintendent, accompanied by another company official, openly maintained surveillance of a union meeting of the maintenance employees, who were making initial efforts to form a union. They sat in a car parked near the entrance of the meeting place and observed the employees who were entering.

Espionage was practiced by the regional manager through a man whom he paid for that purpose. He testified that this spy was employed by him "as an undercover man to check on whether the drivers were congregating in saloons and drinking excessively."

This surveillance and espionage was defended by such claims as "curiosity," or that an official had been "in one way or another invited down by the boys," or those maintaining surveillance did not know it was a union meeting or what kind of meeting it was--it might have been a "dance." The regional manager testified he did know of the surveillance of the union meeting by the garage superintendent but had only been told that some mechanics and drivers had attended a meeting of some kind and did not know that the meeting concerned a labor organization.
Charges were brought against the bus line by the maintenance employees for discharging nine men for union activities. The Board's first concern, after determining that the company's activities were interstate in nature, was to investigate the background of labor-management relations in the company. This pioneer case before the Board was destined to give great weight to the historical background approach. Examinations of previous company attitudes toward organized labor did much to guide the Board when the question of credibility arose over the company's testimony.

Here the background showed the company setting up an employee association in 1933, the whole plan originating from management. A look at the plan shows it to be company-dominated, giving employees very little voice.5

The employees soon tired of the Employee Association, after a little experience revealed the fictional nature of

5. Membership in the Association is automatic to all non-supervisory employees.
2. Only members, and consequently only employees, may be eligible for the office of representative.
3. The by-laws of the Association amended only by a two-thirds vote of the Joint Reviewing Committee. Since management and employees share equally in membership on that Committee, management has veto power over any proposed change in the Association.
4. No provision made for employee meetings.
5. All expenses of the Association borne by management.
6. Department heads may refuse to enter into joint submission to the Joint Reviewing Committee, which allows management to choose the matters it would "talk over" with employees.
the equality of bargaining power supposedly contained in it. Accordingly, in 1934 and 1935, interest began to be shown in an outside labor organization. A charter was secured from the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America on May 7, 1935. On May 20, 1935, the president of the local formed by the charter was discharged for taking time off from work to attend to a matter in connection with the company’s Employee Association. No objection had been made before to this practice. At the time of the discharge the president of the local was told by the regional manager, "You are not kidding us. We know what you are doing."

Other testimony not denied by the company showed that much open hostility was expressed toward unions. The superintendent of the garage repeatedly questioned employees about the union and warned and advised them not to join. He told one employee to keep out of the union "if he and his wife and kids did not want to go hungry."

The garage foreman was very outspoken in his hostility to the union. To one employee he said, "You use your head. If you fellows mess around with that union you’re going to get fired." After demoting another, he said, "You should have kept your nose clean and kept out of the union."

The following statement by the Board shows its reaction to the defenses shown in Greyhound’s testimony:
The testimony of many of the officials as to their knowledge of the activities of the employees during this period, when placed against the background of hostility and bias described above, is revealing because of its unreality and contradictions.... Such testimony is incredible. The indifference of the officials, their air of careful unconcern, the studied avoidance of the word "union" in their conversations describing the activities of the employees, the naive ignorance of the type of meetings their employees are holding, are impossible of belief. The testimony points to a constructed case and only serves to emphasize the hostility and bias of the management testified to in the uncontradicted evidence of the employees. . . .

In the same statement the Board took the position with regard to surveillance of the union activities of employees that

. . . the maintenance of open surveillance of the union meetings of the employees is a vicious form of restraint and coercion, especially when coupled as here with threats of discharge, for it has the obvious intent of placing the employees in fear of their jobs because of their activities in connection with the union.  

The employment of a detective for the purpose of spying upon the employees and reporting to the employer as to which employees joined a labor organization was found by the Board in another early case to constitute a violation of Section 8 (1) of the Act.  

This is the key case concerning the use of detectives for labor espionage.

The background of the relations between Fashion Piece Dye Works and its employees showed a generally hostile

---

6Ibid., p. 22.
7Fashion Piece Dye Works, Inc. v. The Federation of Silk and Rayon Dyers and Finishers of America, 1 NLRB 285.
attitude evinced by the company toward labor unions. This was seen in the threats of discharge made by a foreman when a petition was found in the men's room asking for fewer hours and higher pay.

Earlier, a number of the employees had asked for a raise. It was promised to them but they never did receive it. In the fall of 1935, some of the Dye Works employees met with a union organizer and joined the Federation of Silk and Rayon Dyers and Finishers of America. The next day, four of these men were discharged. When they asked the reason, the general manager, who discharged them, told them he had had a detective trailing them the day before and knew that they were engaging in union activities. He made it clear that this was the reason for their discharge. A fifth man was discharged by the foreman a few days later. He would give no reason for doing so, saying that if he gave the reason, he would get himself in trouble. Later the foreman told the discharged man the reason was that he was a union member, held union meetings in his home, and attended other union meetings.

None of the evidence given above was denied by the Dye Works; therefore, the discharges were held a violation of Section 8 (1) of the Act. In its conclusions the Board made the following statement:

By employing a detective for the purpose of spying upon its employees in the course of their efforts to
exercise the rights guaranteed in Section 7 of the Act and to report to the respondent as to which employees joined the Union, the respondent has interfered with, restrained and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act.\footnote{Ibid., p. 190.}

Another case of labor espionage involving the use of detectives came before the Board upon charges by the employees of a large electrical company.\footnote{Consolidated Edison Company of New York, Inc. and its Affiliated Companies v. United Electrical and Radio Workers of America, Affiliated with the C. I. O., 4 NLRB 71.}

The use of detectives was admitted by Consolidated Edison, but it was denied that they were used for the purpose of investigating the union activities of its employees. It was maintained that in any event the employment of detectives did not extend beyond November, 1936, and so was a moot point.\footnote{The complaint in this case was issued May 12, 1937.}

The detectives used here were provided by the Railway Audit and Inspection Company, one of the five largest detective agencies in America, and one of the most active in industrial espionage work. The manager of the office of the Inspection Company used by Consolidated Edison testified that the services rendered included investigation of the union activities of the respondent's employees. Circulars and leaflets of various unions trying to organize the plant were sent to the detectives for investigation. Individual
employees who were believed by the company to be active in union work were trailed and reports were submitted to the company of their activities. Two men who were discharged were admittedly trailed for this purpose.

From the latter part of 1933 until the Supreme Court upheld the constitutionality of the NLRA of 1935, the company exerted every effort to maintain a company-dominated union in all its affiliated plants. After the Supreme Court decision, the man in charge of the company's labor policy told the employees that the company intended to recognize the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor. Accordingly, organizers from the International Brotherhood of Electrical Workers were allowed access to the plants during working hours while organizers from United Electrical and Radio Workers of America were denied that privilege.

The charge brought against the company was for the use of industrial spies and for discharging six men for union activities. The Board decided in favor of the United Electrical and Radio Workers and made the following statement with regard to the use of industrial spies:

\[\text{Associated Press v. NLRA, 301 U. S. 103; NLRA v. Jones and Laughlin Steel Corp., 301 U. S. 1; NLRA v. Fruehauf Trailer Co., 301 U. S. 49; NLRA v. Freedman-Harry Marx, 301 U. S. 58; Washington, Virginia, and Maryland Coach Co. v. NLRA, 301 U. S. 142. These were all decided April 12, 1937, and gave the Act broad coverage.}\]
The respondent's contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November, 1936, is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondent's own employees, or that the practice will not be resumed in the future.

Police departments have, on occasions, been found to work with management in labor surveillance and espionage. An early case of this practice came about on charges by the dock hands of a steamship company.12

Agwilines is, along with Clyde-Mallory Steamship Lines, an operating division of Atlantic Gulf and West Indies Steamship Lines. The situation herein described came about in Tampa, Florida, where Agwilines operated a dock for the handling of cargo for Clyde-Mallory Lines. The dock hands at the pier of Agwilines were Negroes, who worked in gangs of eleven to twenty-two men. The leader of each gang is a "header," usually coming into the position naturally because of leadership ability. "Headers" were withdrawn and replaced at will by the company. Discipline was handled by depriving employees of their jobs for from one to three weeks.

The dock hands were paid thirty-five cents per hour, but the irregular shifts of loading work made the average weekly

12 Agwilines, Inc. v. International Longshoremen's Association, Local No. 1402, 2 NLRB 1.
earnings eight to nine dollars. In August or September, 1935, the men became so dissatisfied with the wages, hours, and working conditions that they began to talk of the need for a union. In December, 1935, they received a charter from the International Longshoremen's Association.

Investigation by the Board showed that Agwilines had an espionage system of many years' standing to get detailed information of union activities of its Tampa employees. Detailed spy reports were also received of the activities of the organizer for the International Longshoremen's Association.

The city police were asked by Agwilines to check on the organizer to see if he was an "accredited representative." The agent of the company who went to the police gave as a reason: "If somebody was going to come in here and call a strike on us, it would pretty seriously disrupt us, and I would like to know it in as far advance as I could and keep our principals informed."13 Later he said the organizer might be a "fake," preying upon the employees.

This police interview was held concurrently with the first attempts by the employees to organize, "and points to the conclusion that this visit to the Chief of Police had for its sole purpose the hope that the organizer might be

13Ibid., p. 7.
driven from the city, thus crippling and rendering ineffectual the desire of the longshoremen to organize.\textsuperscript{14}

A similar case arose on the west coast in 1937, involving a cloth manufacturing company.\textsuperscript{15} The complaint in this case arose from alleged company interference in an election ordered by the Board among the production, maintenance, and shipping department employees. The background of labor relations in the plant showed a great amount of strife and a marked determination by Oregon Worsted to defeat any self-organization attempts of its employees. The records showed a previous case wherein the company had failed to comply with an order by the Board to reinstate an employee and to disestablish a company union.

Surveillance and espionage of Oregon Worsted's employees was maintained through the Industrial Relations Association of Portland. The business of this association was labor relations. It discouraged union contracts, was opposed to collective bargaining, believed in the open shop, provided labor spies to employers, furnished financial aid, private guards, and police protection to employers engaged in breaking strikes.\textsuperscript{16}

\textsuperscript{14}Ibid.

\textsuperscript{15}Oregon Worsted Company v. United Textile Workers of America, 3 NLRB 36.

\textsuperscript{16}Ibid., p. 54.
The Portland Police Department kept a list of names of union members in the city, acquired in part from the Industrial Relations Association, and in part through their own spies paid from funds supplied by the chief of police. The city attorney refused to turn over to the Board reports of espionage, in the possession of the police department, carried on among the Oregon Worsted Company employees.

The activities of the police in cooperating with the company in this case resulted in the following comment from the Board:

> The record plainly discloses that the police and detectives made superficial examinations, evasive reports, destroyed the evidence, and in general acted in such a manner as to cast grave doubt on the good faith and motive behind the purported investigation.\(^{17}\)

County sheriffs have also been found to cooperate with management in surveillance and espionage of the union activities of workers. An example of this is seen in a case brought against an Ohio gas company.\(^{18}\) The employees of the company were engaged in organizing a local in the early part of 1940. Testimony, undenied by the Ohio Fuel Gas Company, revealed that from the outset, these organizing efforts were met with discouraging comments from company officials, calculated to discourage union membership and to hinder self-organization among the employees.\(^{19}\)

---

\(^{17}\) Ibid., p. 52.

\(^{18}\) Ohio Fuel Gas Company v. The United Mine Workers of America, 28 NLRB 667.

\(^{19}\) Ibid., p. 673.
At the request of an official of Ohio Fuel Gas, the county sheriff took down the license numbers of employees attending the second organizational meeting of the United Mine Workers. This was done and the license numbers turned over to the company.

In its defense in regard to the surveillance by the sheriff, Ohio Fuel Gas contended that statements made by company officials and the surveillance of the union meeting did not intimidate the employees, and therefore were not violations of the Act.

To this contention, the Board cited a previous case wherein it was held that the activities of an employer that are calculated to interfere with employees in the exercise of their rights guaranteed in Section 7 of the Act constitute an unfair labor practice, regardless of whether the activities may have failed in their purpose or intent.\textsuperscript{20}

An El Paso, Texas, case\textsuperscript{21} shows another use of the county sheriff in surveillance work. The familiar patterns of anti-union statements were found to have been made to the employees by the refinery's supervisory employees at the beginning of organizational activities. The Board went to

\textsuperscript{20}Brown Paper Mill Co., Inc. \textit{v. NLRB}, 103 F (2d) 867 (c.c.a. 5), enforcing 12 NLRB 60.

the trouble of establishing this in order to ascertain the company's attitude toward labor organizations.

On the evening of the first meeting held by employees of the refinery, two supervisory employees, one of them the general foreman, sat in a car directly across the street from the United Mine Workers' meeting hall and saw and identified a number of refinery employees enter the meeting. These men testified that their presence so near the hall was a coincidence. The Board rejected this explanation in view of previous anti-union statements and the fact that the foreman reproached several men he had seen at the meeting for having attended.

The second occasion of surveillance is the one in which the sheriff's office began to emerge as a co-conspirator with management against labor. This occurred some two and a half months later at another United Mine Workers meeting. This time the surveillance was conducted by the employee who had accompanied the general foreman the time before and a watchman from the refinery. At the hearing before the Board these men produced a letter from the sheriff's office requesting them to help in finding a fugitive who had robbed a post office. The letter gave an address in the same block as the union meeting hall as a possible place to find the fugitive. The letter specified no particular spot on the block in which the fugitive might be found, or any particular company he might be expected to keep, and no day or hour when
he might be expected to appear. The sheriff also testified and attempted to corroborate the testimony above. In view of the evidence, the Board felt the letter angle to be false, and made the following statement: "... the letter assumes the aspect of a clumsy piece of fabrication designed solely to give Simpson an excuse for his presence at the union meeting place ... we are not even persuaded that it was in existence at the time of the occurrence under discussion." 24

The Board held that both of the acts of surveillance described above were interference with, restraint and coercion of the employees in the exercise of the rights guaranteed in Section 7 of the Act.

The employers' association has been found to have, as one of its functions, the promotion of espionage of union activities. A section of the by-laws of the Harlan County Coal Operators' Association reveals its opposition to the

22Ibid., p. 1075. The letter is reproduced in full and submitted as evidence at the hearing.

23Simpson described himself as the company's "special agent" and as its first aid man, in charge of the safety department and the fire equipment. The Board held that Simpson's position was supervisory.

24Ibid., p. 1076.

25One object of the association is: "The establishment of cordial and peaceful relations between the employer and employee, but resisting with all it's power and influence all movements to force the coal operators to recognize or adopt the so-called 'closed shop' policy or practices." 4 NLRB 207.
closed shop. The association figured in a case brought against one of its member-companies in which it was found that the member-company secured its spies for its labor espionage through the association.26

Coincident with the time of an organizational drive in Harlan County, Kentucky, the association raised its membership dues from one-half cent per ton of coal mined to one cent per ton and hired a "detective field man," who had long been a deputy sheriff in Harlan County, and a force of deputy detectives numbering from twelve to fifteen men. Some of these deputies were assigned to jobs in the mines to report on talk of union organization, while others were engaged to spy on the activities of United Mine Workers organizers. The deputies reported their findings to the chief detective who in turn relayed the information to officials of the association. Several persons were identified as having worked with the chief detective in espionage activities, but he denied that they were among his subordinates. The Board held that the chief was an untrustworthy witness and that the men named had accompanied him in his various anti-union activities.

It developed that the salaries of the labor spies were paid by the Operators' Association from a general fund kept up by the dues of member companies. The Clover Fork Coal

---

26 Clover Fork Coal Company v. District 19, United Mine Workers of America, 4 NLRB 202.
Company claimed to have resigned from the association some three years before the present complaint was issued against them. The ledger of the association showed a notation with regard to the Clover Fork Coal Company to the effect that it had resigned on the date claimed by the company. However, the Board's examination showed that the ink used for that notation was of a color different from that of the ink used in other notations for that period, but identical with the color of ink used for notations during and subsequent to the time of this case. The secretary for the association finally admitted in the hearing that he made the notation just prior to the issuing of the complaint.

From all the evidence it is clear that the respondent must be held responsible for the anti-union activities of the Association, and that the illegal acts of the Association are, in effect, the acts of the respondent.\(^{27}\)

The Southern Lumber Operators' Association, another association dedicated to the principle of the open shop, provided labor spies to a member lumber company in a similar case.\(^{28}\)

The procedure here was to send an operative on the staff of the Pinkerton Detective Agency to the plant of the Crossett Lumber Company. His job was to work in the plant of the company as a regular employee, join the union, and do everything

\(^{27}\)Ibid., p. 211.

\(^{28}\)Crossett Lumber Company v. United Brotherhood of Carpenters and Joiners of America, 3 NLRB 440.
in his power to destroy the union. As the situation developed, the spy became a member of the union and succeeded in getting himself elected vice-president of the organization. This position gave him the opportunity of inspecting the membership rolls and getting the identity of its members. This information was turned over to the association, which relayed it on to the company charged with unfair labor practices in this case. Through these reports the officials of the Crossett Lumber Company were able to keep constant surveillance over the union activities of their employees.

The company attempted to justify its use of espionage in the following statement:

The acquiring of secret information by managers of plants may be the subject of criticism and yet secret information is sought and has always been by the Government and by persons on whom the burden of great responsibility is made to rest. . . . Whatever may be said of the practice, it seems to have been used by mankind since the time when Moses sent spies into the Land of Canaan and Jehovah, under whom he directly acted, did not appear to disapprove of the act. 29

To this defense the Board answered:

It is a recognized fact that the use of labor spies is a frequent and cogent producer of industrial strife and we have invariably condemned such use as an unfair labor practice. 30

The charges brought against the company by the union stated that forty-one men were discharged for joining the union. The Board made a thorough examination of each

29 Ibid., p. 448.
30 Ibid., p. 449.
individual discharge$^{31}$ and concluded that all but fifteen of the discharges were for the reason of union membership and activity and because the company desired to discourage union activity among its employees. The evidence plainly indicates that the company engaged in espionage of its employees for the purpose of interfering with, restraining and coercing them in regard to union activities.

Officials of a company can exert a powerful influence over its employees in their union activities by either implying or expressing an anti-union attitude. The exercising of surveillance by these officials over the meeting places and organizers of unions, coupled with other actions expressing hostility to unionism, coerces their employees in the exercise of rights guaranteed in Section 7 of the Act.

This was established in a case brought against a shoe manufacturer for maintaining surveillance over his employees' union meetings.$^{32}$ Testimony by employees showed that the foreman of the finishing department, the assistant superintendent, the superintendent, and the president of the company had on various occasions been seen driving slowly around the vicinity of the meeting hall at the time meetings were being held.$^{33}$ This was not denied by the company. Soon after the

---

$^{31}$Ibid., pp. 453-496.

$^{32}$Williams Manufacturing Company, Portsmouth, Ohio, v. United Shoe Workers of America, Portsmouth, Ohio, 6 NLRB 135.

$^{33}$Ibid., p. 138.
organizing activities were started in the plant, fourteen members of the union were discharged, thirteen of whom had diligently solicited members for the union.

Other testimony revealed that the officials of the company supplemented their surveillance with other anti-union activities, these consisting of threats to close down the plant indefinitely, the disparaging of unions and union officials, and efforts to execute yellow dog contracts with the employees.

The president of the company testified in his defense that he had never spoken to any of his employees about the United Shoe Workers in a specific way, but had merely spoken generally, upon requests for advice. His words were about the trouble and discord going on all over the United States and the advisability of "taking it easy" and seeing what the movement led to. He testified he told employees that if the union movement proved itself he wanted to go along with them, for what was good for the employees was good for the company. 34

The Board, taking into consideration the surveillance of union activities and the subsequent discharges, rejected this denial of anti-union activities on the part of company officials. Part of the Board's conclusions went as follows:

We find that the respondent, by questioning, advising, urging, warning, threatening, and intimidating

34 Ibid., p. 139.
its employees with regard to membership in the union, by exercising surveillance over the meeting places and organizers of the union, ... has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.\footnote{Ibid., p. 144.}

A case in which the owner of a bedding company kept the union activities of his employees under surveillance shows a slightly different approach by an official in the practice.\footnote{Stover Bedding Company v. Upholsterers Allied Crafts, 15 NLRB 635.} The owner of the company attended the initial organizational meeting of his employees. Upon being asked to leave by the chairman, the owner replied that he, himself, had been a member of a labor organization and that he favored the federation with which Upholsterers Allied Crafts was affiliated.\footnote{American Federation of Labor.} He then proceeded to address the group telling them they were free to join a union but that if his "low-paid help"\footnote{The "low-paid help" were workers compensated at lower rates than other employees because of their comparative inexperience.} could not bring him a profit he would lay off every low-paid man in his plant.

The Board held this to be a warning to his lower-paid employees not to form a union. It took its position on the matter with the following statement:

Considered in the light of the respondent's superior economic position, his threat of possible loss of employment in the event of unionization,
made at the very time when his employees had assembled with other employees to form a union, showed unmistakable hostility to such self-organization. By expressing such hostility and threat, the respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed under the Act. 39

CHAPTER IV

CASES OF ESPIONAGE AND SURVEILLANCE--PART II

The use of the professional labor spy from detective agencies for the purpose of learning of the union activities of employees has been, without exception, condemned by the Board as an unfair labor practice. In the cases to be examined now, it will be seen that the professional labor spy is indeed a real threat to the right of workers to organize and bargain collectively.

Five large detective agencies have done the major part of business in this field of labor espionage. It is not a new practice in labor relations. In the words of Herman Weckler, vice-president and general manager of the De Soto Corporation, and himself a worker up from the ranks, "It has been a practice that has been in existence for years. It is a practice we have grown up with."  

---


2Ibid., p. 8.
Various reasons have been given by employers and detective agency officials for this particular type of anti-union activity, the chief of which are "(1) protecting industry against radicalism and communism; (2) preventing sabotage (closely linked to the first); (3) detecting theft; (4) improving efficiency in methods and workers; and merging into (5) improving relations between employers and workers, or 'human engineering.'"3

One of the methods used by employers in their effort to escape the ban on espionage was to claim that their activities were not directed against their employees' unions. The Board encountered a situation of this kind in a case described in the chapter preceding this one.4 It was proved to the satisfaction of the Board that the use of detectives for labor espionage constitutes a violation of Section 8 (1) of the Act.

A west coast company was involved in a similar case in 1938.5 The Wm. J. Burns International Detective Agency provided the labor spies for espionage in this case. In 1936, some friction arose between the elevator operators and other employees of the house. The Portland, Oregon, manager of the

3Ibid., p. 9.

4Consolidated Edison Company of New York, Inc. and its Affiliated Companies v. United Electrical and Radio Workers of America, Affiliated with the C. I. O., 4 NLRB 71.

Burns Agency testified that one secret operative was assigned to Montgomery, Ward & Co. at that time. However, after the union drive got under way, the number was gradually increased until some ten or twelve labor spies were employed. These spies were assigned to regular jobs in the plant where they were in a position to spy on the activities of their fellow employees and report their findings to the detective agency. These reports were forwarded by the detective agency to officials of Montgomery, Ward. To make the job of espionage even more complete, some of the spies joined the union, spoke at union meetings, and even wormed their way into meetings of the union's executive committee. By attending these meetings they were able to report to their superiors the future plans of the union well in advance of the execution of them and even before the other employees were informed of the plans. The Board held that these activities constituted interference, restraint and coercion of employees in the exercise of rights guaranteed them in Section 7 of the Act.6

Pinkerton's National Detective Agency was found to have masked its labor espionage work by alluding to anti-communist activities as its work in all its communications with its client.7 Investigations by the Board showed that Bethlehem Steel utilized the services of Pinkerton's from 1935 to

6Ibid., p. 546.
7Bethlehem Steel Corporation v. Steel Workers Organizing Committee, 14 NLRB 539.
April, 1937. The bills for these services were made out on plain paper, in order to keep the agency's letterhead out of the transaction, with an employee of Bethlehem Steel appearing as the debtor and an employee of Pinkerton's appearing as the creditor.

Robert A. Pinkerton, president of the agency, testified that the service rendered by his agency was to investigate certain plants and the towns in which the plants were located "to determine whether there were any indications of violence or damage being done or contemplated to either persons or property of the company."

An example of the type of records kept by the Pinkerton Agency is seen in a journal sheet describing the services rendered;

    Phila., July 3rd, 1936.
    Client stated that they have received information that radicals and other outside disturbers have been sent to Buffalo to annoy, harass, and disturb their employees. They desire us to investigate these different characters as they desire to protect their employees. They expect us to keep them posted up to the minute on events and conditions as they occur from day to day.

Other significant quotations from the Pinkerton journal sheets are:

    Our client desires that we establish additional contacts to determine to what extent Communists and radicals are influencing their employees at Johnstown, Pa.
They desire us to purchase information from someone in Johnstown on local conditions, also the activities of various men who are trying to annoy and disturb their employees in that town.\(^8\)

While written reports to Bethlehem Steel were discontinued by Pinkerton in August, 1936, testimony revealed that conferences were held between a Pinkerton representative and a Bethlehem representative, one every two weeks until February, 1937. The activities of the Steel Workers Organizing Committee were frequently discussed at these conferences.

The Board concluded that the terms "communistic," "radical," "outside disturbers," "harassing, annoying, and disturbing loyal employees" were merely subterfuges to cover the principal aim of the investigations, that of obtaining information relating to union activity and organization.\(^9\)

The Board's investigations included a study of the employee representation plans which had been promoted by Bethlehem Steel in one form or another from 1918 up to the time of this case. The Board found these plans to be company-dominated. Exhibits of notices to employees from management showed much hostility expressed toward outside labor unions replacing the employee representation plans.

---

\(^8\) The reference to "purchasing information from someone" is in regard to "correspondents," from whom information is purchased by operatives of detective agencies. An interesting description of how these correspondents are "roped" or "hooked" may be seen in Chapters 35 and 36 of Labor Spy by GT-99, an anonymous work published by the Bobbs-Merrill Company, New York, 1937.

\(^9\) Bethlehem Steel Corporation, op. cit., p. 627.
The Board's interest in this background of Bethlehem's labor relations stemmed from its experience in using such back-
grounds as a basis for crediting or discrediting the testi-
mony of witnesses for an employer in a Board hearing.

Bethlehem Steel defended its hiring of detectives on the grounds that the Act in no way forbids the secret ob-
servation of union activities per se. Their argument was that such observation is in violation of the Act only if (1) the employees know they are under surveillance and for this reason are intimidated into exercising or refraining from exercising any rights guaranteed in the Act, or (2) the employer uses the information gained in this manner to do something that constitutes an unfair labor practice.

This contention was rejected by the Board and the use of detectives for espionage purposes held a violation of Section 8 (1) of the Act. The Board's reasoning is summed up as follows:

These contentions are without merit. In our view, surveillance of union organization constitutes an interference with the employees' right to self-organization, even though there is no showing that the specific information obtained was used in the com-
mission of an unfair labor practice.10

Another case in which a labor spy from a professional agency gained his information by becoming a member of the union resulted in his being exposed.11 The operative

10Ibid., p. 628.

assigned to spy on the union activities of the employees joined the union soon after it was chartered. He attended union meetings, entertained the employees, and offered money to some of the employees. It was not long after the spy had joined the union that a subcommittee of the Committee on Education and Labor of the United States Senate investigated the industrial espionage activities of Corporations Auxiliary Company,\textsuperscript{12} which provided the labor spy in the case. This, added to the suspicion already held of the spy because of his extravagant spending and generosity, resulted in his exposure at a union meeting some six months after he had joined.

The vice-president of Borg-Warner received daily written reports from the spy and after reading and studying their contents destroyed them. The vice-president testified that the reports related to mechanical difficulties, waste, or to the personnel, and safety practices. He was generally very evasive in his answers to questions about information gained concerning the union activities of the employees.

The Board concluded that the man whom the Amalgamated Association of Iron, Steel, and Tin Workers had exposed as a spy was the Corporations Auxiliary operative who made reports to the vice-president, that he was not qualified.

\textsuperscript{12}See Report of the Committee on Education and Labor pursuant to S. Res. 266 (74th Congress), Part 4, Corporations Auxiliary Company.
instructed, and did not have the opportunity to study and report on mechanical difficulties, waste, or safety practices, and that at least part of his reports concerned the union activities of the employees of Borg-Warner. The use of the spy was held a violation of Section 8 (1) of the Act.

Under-cover operatives recruited from the ranks of a company's employees is another method of labor espionage used by anti-union employers. In one of the many cases in which this method was used, the program was under the direction of the house police.13

The charge stated that the company maintained a system of labor espionage over its employees in the exercise of their rights to organize. The charge also specified some complementary anti-union activities; viz., threatening and warning employees of the house to refrain from becoming or remaining members of the Warehouse Employees' Union, and refusing to reinstate fifteen discharged employees because of their union membership and activity. The term "complementary" is used here because the overt anti-union activities were fostered by the knowledge of the employees' union activities gained by labor espionage.

The chief of the house police recruited the under-cover operatives from among the employees by approaching

them under the pretext of enlisting their aid in apprehend-
ing thieves among the employees of the house. They were
promised promotions in a short time if they accepted the job.

A few days after the employee agreed to become an under-
cover operative for the company, he would receive from the
police chief by mail a bulletin of mimeographed instructions
regarding the duties expected of him. The fact that the
instructions were mimeographed indicated to the Board that
the espionage system was staffed by a good-sized number of
under-cover operatives.

In addition to dealing at length with petty thievery
within the organization, the instructions to the under-
cover operatives also called for reports of "constant ex-
pressions of dissatisfaction, or remarks directed against
the employees' immediate superiors, the management, or the
Company in general, causing other employees' minds to be in
a constant state of unrest."

As the under-cover operative continued his work of es-
pionage, the true nature of his job became more apparent.
The communications from the director of the espionage soon
dropped all pretense and began to deal exclusively with the
union activities of Montgomery Ward employees. The follow-
ing is a sample of a letter written to an under-cover operative
who had served in that capacity for more than a year:

The management is very much interested in knowing
the full details of the present labor situation
throughout the house, namely, what the attitude is
of the persons who have recently joined Local 120, what benefits they expect to derive from it, what their general attitude is towards this movement, also if there is any talk of organizing the house as a whole. . . . Please destroy this letter as soon as read.14

Testimony in the case revealed that several employees asked to do under-cover work for the company refused to do so. One employee, who was later elected president of a C. I. O. local, was promised a much better job in the company if he would become an under-cover operative. The employee refused to do so. The personnel director made it a point to call this employee in the next day to tell him that the "better job" he had referred to had been filled.

The manager of the St. Paul house testified that he had instructed the house police to discontinue all use of under-cover operatives in the early summer of 1937.15 Nevertheless, in December, 1937, during a strike of Montgomery, Ward employees, the police chief met the president of the union and told him that under-cover operatives were still in the union.

The company maintained that, in view of the order by the management to discontinue the use of under-cover operatives, the action by the police chief described above was done on his own initiative and that the company was not responsible.

14Ibid., p. 195.
15Evidence showed the espionage system had been in operation since January or February, 1935.
The Board rejected this contention in these words:

The respondent inaugurated an espionage system and authorized Honan [the chief of house police] to engage in under-cover operations on its behalf. Honan did so. Thereafter the respondent notified Honan to discontinue the spying, but, despite such notice, Honan continued the respondent's espionage system. There is no showing that the respondent sought to make clear to its employees, or even to the operatives themselves, that it had abandoned its espionage. The respondent obviously did not take effective action to insure the discontinuance by Honan of his activities. . . . It is responsible for the violations of the Act involved in the use of labor spies.16

The company further maintained it could not be charged with engaging in an unfair labor practice by maintaining its system of espionage because there is no showing that any employees were actually interfered with, restrained, or coerced, because of this espionage, in the exercise of rights guaranteed in Section 7 of the Act. To support this contention the company argued that many of the employees whom it had utilized to spy on their fellow employees joined the Warehouse Employees' Union and therefore could not have been coerced by the company's practice of espionage.

To this the Board said:

The respondent's contention is plainly fallacious. It is sufficient that the conduct which constitutes the gravamen of the unfair labor practice normally results in interference, restraint, and coercion; it is immaterial that the proscribed conduct does not produce the desired result. . . . That the employees whom the respondent instructed to spy upon their fellow employees renounced their activity and joined the Union does not legitimize the respondent's unlawful conduct.17

17 Ibid., p. 199.
The Board's somewhat lengthy treatment of this case of espionage further brought out that Montgomery, Ward resumed its espionage system in the spring of 1938. The company contended that this time the espionage was not for the purpose of securing confidential reports of its employees' union activities: "... the under-cover agents are not instructed, either expressly or impliedly, to report on any union activities."

The Board, however, was not convinced that labor espionage had been discontinued at the St. Paul house. The instructions to the under-cover operatives were still essentially the same as before and neither by word or action had the operatives been instructed to discontinue reporting on the union activities of the employees. The Board found that this use of labor spies was a violation of Section 8 (1) of the Act.

A slightly different use was made of an employee as a spy in a case involving a prominent tire manufacturer. 18 The employee in this case was elected president of the first collective bargaining unit entered into by Lee Rubber and Tire employees in 1934. This was the Federal Labor Union of the American Federation of Labor. The employee-spy first made his reports of union activities to the National Corporation Service, a detective agency whose services had been

18 Lee Rubber and Tire Corporation v. United Rubber Workers of America, Local 102, 18 NLRB 100.
employed by Lee Rubber and Tire at approximately the same
time that the Federal Labor Union was organized. In December,
1934, the corporation discontinued the services of the de-
tective agency, and from that time until May, 1936, the
employee-spy sent reports of union activities directly to
the Rubber and Tire Company. Some time in 1935, this spy
ceased to be president of the Federal Labor Union but con-
tinued to be a member of this organization and of the or-
ganization which succeeded it at the plant, Local 29 of
the United Rubber Workers of America. He continued to be a
member of United Rubber Workers until his employment with
the company terminated in November, 1936.

The company did not deny the testimony about the
employee-spy but contended that it was immaterial because
it was related to events occurring before the organization
of the C. I. O. affiliate of the United Rubber Workers of
America, which brought suit against the company. The Board,
however, admitted the evidence to the record in order to
show the background of the company's attitude toward unions.
The remainder of the case deals with surveillance of union
activities of employees of the company by supervisory offi-
cials, and the testimony of the employees regarding this
practice was made the more credible in view of past practices
of espionage.

Many cases involving the use of company police for
labor espionage and surveillance have come before the Board.
An especially violent labor-management dispute in which company police were found to have engaged in espionage and surveillance\textsuperscript{19} is the next case discussed.

The organizers for the Steel Workers Organizing Committee were the principal objects of police surveillance in this case. At the very beginning of efforts to organize the employees of Republic Steel, the organizers were trailed by men who were recognized as having been previously seen in the uniform of company police at a plant of Republic Steel. They were trailed day and night for three or four months on all their organizing trips. The company police made no effort to hide their activities, and even took rooms in the same hotel as the organizers.\textsuperscript{20} An employee of Republic Steel was followed by these men to his home after a midnight meeting staged by the Steel Workers Organizing Committee, and they were seen for several days afterward parked near there for hours at a time.

On another occasion some employees of Republic Steel held a fish fry. Several Steel Workers organizers attended for the purpose of talking to the men about union membership. They were followed there by the company police who succeeded in staying so close to the organizers that they had no opportunity to speak to any of the employees.

\textsuperscript{19} Republic Steel Corporation v. Steel Workers Organizing Committee, 9 NLRB 219.

\textsuperscript{20} This type of trailing is known as "rough shadowing."
Sometime later the organizers were on their way to a nearby town to visit a prospective member. They were followed by two automobiles, one of them driven by the two company policemen who had originally begun the surveillance. The other was apparently driven by men there for the same purpose because the drivers of both cars attempted to run the car driven by the organizers off the road and succeeded in preventing them from visiting the prospective member.

The organizers sought the protection of the county sheriff, who promised to arrest the men the next time they were seen maintaining surveillance. This the sheriff did, but he released the men when they told him they were Republic Steel Corporation police. When the organizers attempted to press charges against them they were told by the district attorney that there was no law prohibiting such activities. None of the above testimony was denied by Republic Steel.

By this open surveillance the company police were able to make the employees of Republic Steel afraid to be seen in the company of the Steel Workers organizers or permit them to come to their homes. Therefore, the first organizational meetings were held in secret, as one employee who testified put it, "out of town after night, out in corn fields, in parks, and different places where we thought nobody was watching us."
Preliminary investigations by the Board revealed a history of employee representation plans, which were found by the Board to be completely company-dominated, and much hostility expressed toward any outside union. When the Steel Workers Organizing Committee began its campaign to organize the employees of Republic Steel, a notice signed by the highest officials of the corporation was issued from which the following excerpts are taken:

The leader of this drive is John L. Lewis, head of the Coal Miners' Union. He is not connected with the steel industry. . . . Representatives of radical and communistic groups are helping in this movement. . . . The real aim of the present organization drive is to establish a closed shop. . . .

Your Employee Representation Plan is not run by outsiders. It works. . . . You would have to pay money to be dictated to by somebody you did not even know.

The methods customarily used by professional union agitators and organizers are force, coercion, and intimidation of workers and their families. . . . Conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management will not be tolerated.21

All this background of hostility toward labor unions was considered by the Board in arriving at its decision that the espionage and surveillance of employees and Steel Workers organizers constituted a violation of Section 8 (1) of the Act.22

Supervisory employees, e.g., foremen, have many times engaged in surveillance of the union activities of the

21 Republic Steel Corporation, op. cit., pp. 238-239.
22 Ibid., p. 384.
employees in their department. The Board found each of these cases to constitute interference, restraint, and coercion of the employees in the exercise of rights guaranteed in Section 7 of the Act, for the reason that the actions of supervisory employees could only be construed to reflect the attitude of management, thus causing the employees under surveillance to fear for their jobs.

A case in point involved the supervisory employees of a paper mill.23 The foremen in the Paper Mill were very active in their anti-union work, including the surveillance of union meetings. This they did by stationing themselves across the street from the union hall on several occasions early in the organizational campaign of the International Brotherhood of Paper Makers and observing the employees who entered. The foremen named in the complaint denied any surveillance of these employees, but the Board was convinced by the mutually corroborative testimony of several employees affiliated with the International Brotherhood of Paper Makers that the surveillance was carried on.

In rejecting the testimony of these supervisory employees, the Board also considered the statement made by the general manager of the Paper Mill to officials of the International Brotherhood of Paper Makers that the policy of the company,

---

prior to the passage of the National Labor Relations Act of 1935, was not to employ union men. He further declared his intentions of doing everything in his power to prevent these brotherhoods from organizing his employees. The steps taken to discourage efforts of the brotherhoods to organize the employees of the Paper Mill included the formation of a Brown Paper Mill Employees Benefit Association, found by the Board to be company dominated.

All this was considered in the Board's statement:

\[24\] Despite the denials \[24\] we are convinced by the testimony of the I. B. P. M. members that all of the above-mentioned supervisors were watching the employees who attended the meetings of the I. B. P. M. with the intent of discouraging such attendance.\[25\]

Another in the long series of cases in which surveillance of employees was maintained by supervisory employees involved a foreman who was particularly aggressive in his anti-union activities.\[26\]

This foreman was present in the tavern on the ground floor of the Labor Temple on the evening of the first organizational meeting of the Burnham Company employees. He was requested to leave the tavern by the A. F. of L. organizer in charge of the meeting, for the reason that his presence

\[24\] International Brotherhood of Paper Makers.


\[26\] Frederick H. Burnham Company v. Local No. 95, International Glove Workers' Union of America, Affiliated with the A. F. of L., 19 NLRB 970.
served to intimidate the employees from attending the meeting. The foreman denied any previous knowledge of the meeting and claimed that his presence in the tavern at the same time of the meeting was purely coincidental. However, he was seen several times subsequently driving his car back and forth in front of the Labor Temple while union meetings were being held. On the morning following each of these meetings, the foreman approached a certain employee and let him know that he and other employees had been observed attending the union meeting the night before. The foreman did not deny the events described above.

The Board held his activities to be surveillance of the union activities of the employees, designed to discourage their efforts to organize and bargain collectively, and as such interfered with, restrained, and coerced them in the exercise of rights guaranteed them in Section 7 of the Act.\textsuperscript{27}

An unusual case in this particular group concerning the surveillance of the union activities of workers by supervisory employees is one in which the anti-union actions centered around a female supervisor of a baking company.\textsuperscript{28}

In the fall of 1937 an organizational drive was begun in one of United Biscuit Company's plants. A meeting was announced

\textsuperscript{27}\textit{Ibid.}, p. 973.

\textsuperscript{28}United Biscuit Company of America v. Biscuit & Cracker Local No. 131; Bakery, Tea, Coffee, Yeast & Pretzel Drivers Local No. 264; and Auto Mechanics Local 1053, \textsuperscript{38}NLRB 778.
to discuss the formation of a local. On the evening of the
meeting, cars drove up before the hall but no one came in.
The organizer in charge of the meeting went out to investi-
gate and found the occupant of one of the cars to be the
forelady of the baking department. Her answer to organizer's
query as to the reason for her presence there was that it was
"none of his business."

The organizer called another meeting a month later at
his home. The forelady was again present outside the meet-
ing place, and again none of the employees appeared.

Three employees testified that prior to the first an-
nounced meeting, the forelady had told them that she in-
tended to watch the meeting place and threatened to discharge
anyone attending. The forelady denied these activities, but
she "did not impress the Trial Examiner as a credible and
reliable witness." The Board held that she did keep the two
union meetings under surveillance and did make the statements
attributed to her.

The Board proceeded to prove that surveillance was
practiced and that it coerced the employees in their union
activities, pointing out in support of this contention the
unmistakable hostility subsequently expressed by United
Biscuit Company toward any unionization. Officials of the
company and supervisory employees questioned employees about
their union activities, granted a wage increase without
being requested to do so, held meetings with the employees
to emphasize that unions were unnecessary in the plant, threatened to cut production so "you fellows will be all working short time," and in general warned all against forming a union.

Former police officers were employed to maintain surveillance over the union activities of the employees of a coffee company under the guise of being present solely to guard company property.\(^{29}\) The president of the three companies, all three of which have the same officers, sought the advice of a public-relations firm as to the policy to be followed in dealing with an impending strike of Cook Coffee, Central Tea, and Home Tea employees. At that time, the employees were at work under an oral agreement for a ninety-day truce following a strike called because officials of the companies refused to meet with representatives of an independent union formed by the employees. Soon after the strike started the independent union affiliated with the C. I. O.

As a result of this conference with the public-relations firm, a man was hired to provide guards for the plants of the companies. There were about fifteen men in this group, many of them former Detroit police officers.\(^{30}\) Officials of the companies testified that the duties of these men were

\(^{29}\)Cook Coffee Company and Central Tea Company and Home Tea Company v. United Tea and Coffee Workers Union, Local 155, Affiliated with United Wholesale Employees of America, 22 NLRB 967.

\(^{30}\)Ibid., p. 974.
merely to guard the premises of the companies from 7 p.m. to 7 a.m. and to be around on Monday mornings when the men were loading the trucks. However, the guards who testified at the hearing added that their duties further included spying upon the employees. One of the guards, a retired inspector of the Detroit Police Department, testified that he was instructed "to protect these men and see what was going on and everything we heard, to turn it in." The threatened strike did not materialize and the guards were dismissed about two weeks after the expiration of the truce.

The Board credited testimony by the employees of Cook Coffee, Central Tea, and Home Tea that they were questioned on numerous occasions about their union membership and activities, were told that a union was unnecessary, and were told to abandon their activities in the union. The companies denied these practices, but the entire record of the management's anti-union conduct served to refute the denial. The denial was made in the face of earlier testimony, undeniable by the companies, that the manager had been unmistakably opposed to organizational activities among the employees from the very beginning of it.

All this was considered by the Board, which concluded that the former police officers were brought in, not principally to guard the premises of the companies, but to keep under surveillance the employees of the companies.\footnote{Ibid., p. 976.}
CHAPTER V

SUMMARY AND CONCLUSION

This study will be summarized so as to include five aspects of labor espionage and surveillance, which have, in effect, been covered in the paper. These include (1) types of espionage and types of surveillance; (2) methods employed in maintaining espionage and surveillance; (3) the defenses submitted by employers for engaging in these practices; (4) the reasoning of the Board in answer to employer defenses; and (5) the effects of espionage and surveillance on the right of employees to organize and bargain collectively through representatives of their own choosing.

To facilitate the clarity of presentation, types and methods of espionage and surveillance will be combined, as will also employer defenses and Board reasoning in answer to these defenses. Along with the summary of the effects of espionage and surveillance on collective bargaining, some general conclusions will be discussed which the writer has found implicit in the facts.

Types and Methods of Espionage and Surveillance

As might normally be expected, private detectives and detectives from professional agencies were employed to do
most of the work in the field of labor espionage. The methods used by detectives to accomplish their missions have been seen to follow a general pattern, which may be classified in two parts: (1) individual employees or groups of employees who are believed by their employers to be active in union organization are trailed and their activities reported to their employers; and (2) the detectives take jobs in the plant of an anti-union employer, appearing to be ordinary employees. In this capacity they are able to overhear any talk among the regular employees about plans of union organization. In case a union has already been formed in the plant, the detective will become a union member, faithfully attend all union meetings, seek to be elected to executive posts in the union, speak at union meetings, and do anything else possible that will enable him to learn all about the union and its plans.

Detectives have digressed from this pattern, to be sure, in their methods of espionage of union activities. An example is the use of "correspondents," who are employees "roped" or "hooked" into submitting reports to professional labor spies of the union activities of their fellow employees. These "correspondents" are secured by assurances in the beginning that the reports they are submitting are merely to aid the company to maintain efficiency, or that the reports are for the use of insurance companies to check
on the safety measures practiced by the plant in which the "correspondent" works. The employee finally gets in too deep to get out and so is "hooked."

Another digression from the pattern in the methods used by this type group is the device used by a detective agency of making its records and all its correspondence with a client appear to be the records and correspondence of an agency concerned with anti-communist work instead of its real work, industrial espionage.

The detective with his methods did not nearly exhaust the types and methods of espionage and surveillance utilized by anti-union employers. Public officers have been found to be very active in this work. In this group, police departments have cooperated often with employers in espionage and surveillance. In one of the cases covered in this study, the police department of a large city kept a list of names of employees in the city who were union members. This list of names was secured in part from an Industrial Relations Association supported by employers in the city and in part through spies paid by the chief of police. Employers of the city had access to the list of union members for use in their anti-union program.

Another instance of cooperation by police departments with employers in anti-union activities was in a case in which the chief of police made what the Board considered an
unnecessary check on the union organizer who was trying to organize the workers of a certain employer. This was done at the request of the employer.

The county sheriff is another powerful public officer used by employers for espionage and surveillance. In this study, a sheriff cooperated with employers in anti-union activities in one case by taking down the license numbers from the cars of employees attending a union meeting and turning the numbers over to the employer, and in another case by defending the presence of two supervisory employees near a union hall on the evening of a meeting. This was done by producing as evidence an obviously fabricated letter supposedly requesting the presence of the two supervisory employees in the area of the union hall to help in apprehending a criminal.

Employers' associations have played an important part in labor espionage and surveillance. By combining, several companies or employers were enabled to support a constant system of espionage and surveillance of the union activities of their employees. One of the employers' associations involved in a case in this study provided spies for a coal company, part of them to work with the miners and report on talk of union organization, and part of them to report on the activities of union organizers. Another employers' association sent Pinkerton spies to the plant of a member company.
The spy became a member of the employees' union and succeeded in being elected president of the organization. In this position he was able to inspect the membership rolls and get the identity of its members, information which was turned over to the company.

The under-cover operative recruited from the ranks of a company's employees to spy on his fellow employees is another type of espionage and surveillance encountered by the Board in its investigations of unfair labor practices. This is similar to the use of the "correspondent," mentioned above. These spies were secured under the pretext of aiding the company to detect petty thievery within the organization. The employees who accepted the offer of jobs as labor spies were given raises in pay, and, in some cases, those employees who refused to become spies were demoted or refused promotions due them. As regular employees, there was no doubt of their being able to learn all about the plans the other employees might have to form a union.

Company police are another medium through which employers have maintained espionage and surveillance over the union activities of their employees. In this study, company police have been seen to trail an organizer attempting to form a union among the employees of a steel company. The company police used a device known as "rough shadowing," in which no attempt is made to conceal the fact that they
are trailing someone. The police took rooms in the same hotel with the organizer, stayed near him each time he approached the employees to discuss unionism, and prevented him from visiting a prospective union member in a nearby town by running his car off the road. Individual employees were also "rough shadowed."

Foremen and high company officials provide another type of espionage and surveillance for this study. Some of the methods used by foremen in surveillance work were stationing themselves across the street from a union hall on several occasions early in the organizational campaign of the employees and observing those who entered the meetings; one foreman being present in a tavern on the ground floor of a union hall on the evening of the first organizational meeting of the employees under him and subsequently driving his car back and forth in front of the union hall while meetings were being held; and, as in the case of the female supervisory employee discussed in the study, parking in front of a union hall on the evening of an organizational meeting and repeating the action a month later when a meeting was called at the home of the organizer.

In another instance, several high company officials were seen by their employees driving slowly around the vicinity of a union hall at the time meetings were being held. The owner of a company attended the initial organizational meeting of his employees, addressed them without being asked, and
refused to leave upon being asked to do so, saying he was
once a union member himself.

Several former police officers were hired by an em-
ployer to maintain surveillance and espionage over the ac-
tivities of his employees. The employees were supposed to
think the former policemen were there to guard the property.
Testimony at the hearing, however, brought out the fact that
their duties further included that of spying on the employees
and reporting any talk of organizing plans.

**Employer Defenses and Board Reasoning**

One employer made the following statements in his de-
fense in the first case covered in this study:¹

1. A spy was employed as an under-cover man to check
on whether the employees were congregating in saloons and
drinking excessively.

2. Those maintaining surveillance did not know it was
a union meeting or what kind of meeting it was--it might
have been a "dance."

3. Company officials did know of the surveillance of
the union meeting by supervisory employee but had only been
told that some of the employees had attended a meeting of
some kind and did not know it concerned a labor organization.

¹Pennsylvania Greyhound Lines, Inc. v. Local Division
No. 1063 of the Amalgamated Association of Street, Electric
Railway and Motor Coach Employees of America, 1 NLRB 1.
(4) The union meeting was attended out of "curiosity," or because an official had been "in one way or another invited down by the boys."

At the outset of the hearing, the Board had made an examination of the background of labor-management relations in the company and found a very active program of anti-unionism. The Board's reaction to the defenses of espionage and surveillance in this particular case is seen in the following statement:

The testimony of many of the officials as to their knowledge of the activities of the employees during this period, when placed against the background of hostility and bias described above, is revealing because of its unreality and contradictions. . . . Such testimony is incredible. . . . The testimony points to a constructed case and only serves to emphasize the hostility and bias of the management testified to in the uncontradicted evidence of the employees. . . .

Another employer defense admitted the use of detectives but denied that they were used for the purpose of investigating the union activities of employees.\(^2\) In the same case the employer attempted to defend his use of detectives for espionage purposes by maintaining that the employment of them did not extend beyond a date well in advance of the issuing of the complaint by the Board.

Again, the Board found a long history of anti-union attitudes in the background of the company's labor-management relations.

---

\(^2\) Consolidated Edison Company of New York, Inc. and its Affiliated Companies v. United Electrical and Radio Workers of America, Affiliated with the C. I. O., 4 NLRB 71.
relations. This had a very important place in the Board's reasoning, which was:

The respondent's contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November, 1936, is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. . . .

Another defense submitted by an employer for maintaining surveillance over a union organizer by getting the police department to check on him to see if he were an "accredited representative" went like this: "If somebody was going to come in here and call a strike on us, it would pretty seriously disrupt us, and I would like to know it in as far advance [510] as I could and keep our principals informed." Later, the employer expressed the fear that the organizer might be a "fake," preying on the employees.

The Board found that this employer had an espionage system of many years' standing to get detailed information of union activities of his employees. It compared this with the fact that the police interviewed the organizer at a time when the employees were making initial attempts to organize and concluded that the purpose of requesting the assistance of the police was solely the hope that the organizer might be driven from the city, thus crippling and rendering ineffectual the desire of the longshoremen to organize.

\[^3\text{Agwilines, Inc. v. International Longshoremen's Association, Local No. 1402, 2 NLRB 1.}\]
The employer in another case maintained that the surveillance of the union meeting did not intimidate the employees and therefore was not a violation of the Act. To this defense the Board cited a previous case wherein it was held that the activities of an employer that are calculated to interfere with employees in the exercise of their rights guaranteed in Section 7 of the Act constitute an unfair labor practice, regardless of whether the activities may have failed in their purpose or intent.

A foreman testified that his presence in a car directly across the street from a union meeting during the initial stages of organization of the employees under him was a coincidence. The Board rejected this explanation in view of previous anti-union statements which were undenied by the company, and the fact that the foreman reproached several men he had seen at the meeting for having attended.

In a case in which it was established that an employers' association provided labor spies to maintain espionage over the employees of its members, the employer claimed that his company had resigned from the association some three years before the complaint was issued against it. A man

---

4 Ohio Fuel Gas Company v. United Mine Workers of America, 28 NLRB 667.

5 Brown Paper Mill Company, Inc. v. NLRB, 103 F(2d) 367 (c.c.a. 5), enforcing 12 NLRB 60.

6 Clover Fork Coal Company v. District 19, United Mine Workers of America, 4 NLRB 202.
identified as the chief of the spies sent to this company by the association denied that several men named as having worked with him in espionage activities did so.

The Board's examination revealed that the notation in the ledger of the association, which was to the effect that the employer had resigned from the association on the date claimed, was entered in ink of a color different from that of the ink used in other notations for that period, but identical with the color of ink used for notations during and subsequent to the filing of the charge.

As to the denial of the chief of the labor spies, his general attitude on the witness stand, where he was very vague in his testimony, led the Board to hold that he was an untrustworthy witness and that the men named had accompanied him in his various anti-union activities.

Another employer defense presented to the Board invoked divine sanction of his practice of espionage and surveillance.7 "... Whatever may be said of the practice, it seems to have been used by mankind since the time when Moses sent spies into the land of Canaan and Jehovah, under whom he directly acted, did not appear to disapprove of the act." The defense also made the statement that the

---

7Crossett Lumber Company v. United Brotherhood of Carpenters and Joiners of America, 8 NLRB 440.
acquiring of secret information has always been a practice of the government and of persons on whom the burden of great responsibility rests.

The Board's investigation showed that the labor spy used by the employer above was instructed to do everything in his power to destroy the union of which he became a member. Thus, the practice of espionage was not directed toward the securing of secret information alone, but was interference, restraint, and coercion of employees in the exercise of rights guaranteed in Section 7 of the Act. So reasoned the Board, which made the following statement:

It is a recognized fact that the use of labor spies is a frequent and cogent producer of industrial strife and we have invariably condemned such use as an unfair labor practice.

Espionage conducted by detectives from a professional agency was defended in another case by the contention that the Act in no way forbids the secret observation of union activities per se, that such observation is in violation of the Act only if (1) the employees know they are under surveillance and for this reason are intimidated into exercising or refraining from exercising any rights guaranteed in the Act, or (2) the employer uses the information gained in this manner to do something that constitutes an unfair labor practice.

Bethlehem Steel Corporation v. Steel Workers Organizing Committee.
To this the Board replied:

These contentions are without merit. In our view, surveillance of union organization constitutes an interference with the employees' right to self-organization, even though there is no showing that the specific information obtained was used in the commission of an unfair labor practice.

This is another of the long list of precedents established by decisions of the Board.

An employer who employed a detective to work in his plant, join the union of his employees, and submit written reports of what he learned testified that the spy was hired to check on mechanical difficulties, waste, personnel, and safety practices. When asked to produce the written reports from the detective, the employer testified that they had been burned after he had read and studied them. He was generally very evasive in his replies to questions concerning the information gained of his employees' activities through these reports.

The evasive conduct of the employer about the true nature of the detective's business in the plant, compared with the mutually corroborative testimony of the union members to the effect that the detective was bent on destroying the union, all contributed to the Board's conclusion that the detective was not qualified, or instructed, and did not have the opportunity to study and report on mechanical difficulties, waste, or safety practices, and that at least part of his reports concerned the union activities of the employees.
A company involved in the use of under-cover operatives recruited from its own employees admitted the practice, but the company defended itself in regard to a later use of the under-cover operatives by claiming that the house police chief had continued the practice on his own initiative after the company had ordered it discontinued, and this practice therefore was not the responsibility of the company.

The Board reviewed the company's inauguration of the espionage system and the alleged order to discontinue it. The Board looked askance at the contention that the house police chief had brazenly disobeyed orders of the company to discontinue the practice. The Board took its position on the matter with the following statement:

... There is no showing that the respondent sought to make clear to its employees, or even to the operatives themselves, that it had abandoned its espionage. The respondent obviously did not take effective action to insure the discontinuance by Honan [the house police chief] of his activities... it is responsible for the violations of the Act involved in the use of labor spies.

This same company further maintained that there was no showing that any employees were actually interfered with, restrained, or coerced, because of the system of espionage, in the exercise of rights guaranteed in Section 7 of the Act, and, therefore the company could not be charged with a

---

violation of Section 8 (1) of the Act. The company argued that many of the employees who were spies joined the union and so could not have been coerced by the company's practice of espionage.

The Board reasoned:

The respondent's contention is plainly fallacious. It is sufficient that the conduct which constitutes the gravamen of the unfair labor practice normally results in interference, restraint, and coercion; it is immaterial that the proscribed conduct does not produce the desired result.

An employer defense in another case involving the use of an employee-spy\(^{10}\) was that the espionage was conducted before the organization of the union bringing the charge and therefore was immaterial to the case. The Board, however, admitted the evidence to the record in order to show the background of the company's attitude toward unions.

Effect of Espionage and Surveillance on Collective Bargaining

It has been seen that the direct effects of espionage and surveillance of the union activities of workers have been discharges of union men and women, especially those most active in union affairs, demotions, and a generally hostile atmosphere created by employers and supervisory employees toward those who express an interest in labor organizations.

\(^{10}\) Lee Rubber and Tire Corporation v. United Rubber Workers of America, Local 102, 18 NLRB 100.
However, the principal philosophy underlying the practice of espionage and surveillance, and the effect it has upon employees, is the discouragement of the union activities of these employees for the reason that they fear for their jobs as well as their safety from bodily harm. In the words of the Board:

... The maintenance of open surveillance of the union meetings of the employees is a vicious form of restraint and coercion, especially when coupled as here with threats of discharge, for it has the obvious intent of placing the employees in fear of their jobs because of their activities in connection with the union.\textsuperscript{11}

Thus, in the first case reported by the Board in its activities under the Act, the practice of espionage and surveillance of the union activities of employees was declared to have the intent and effect of interfering with, restraining, and coercing workers in the exercise of the right to organize and bargain collectively through representatives of their own choosing.

Espionage, maintained by paid spies, over the union activities of workers, while more subtle than surveillance, has essentially the same effect on workers as surveillance. The maintenance of espionage received the following comment from a Senate subcommittee which made an investigation of the practice:

\textsuperscript{11} Pennsylvania Greyhound Lines, Inc., op. cit.
Espionage is the most efficient method known to management to prevent unions from forming, to weaken them if they secure a foothold, and to wreck them when they try their strength.¹²

¹² La Follette Senate Investigating Committee, see Chapter III.
BIBLIOGRAPHY

Books


Government Bulletins


Reports


Cases


Associated Press v. NLRB, 301 U. S. 103.

Brown Paper Mill Company, Inc., v. NLRB, 103 F(2d) 367 (c.c.a. 5), enforcing 12 NLRB 60.
Commonwealth v. Hunt, Metcalf (Mass.) 111.


NLRB v. Freidman-Harry Marx, 301 U. S. 58.

NLRB v. Fruehauf Trailer Co., 301 U. S. 49.

NLRB v. Jones and Laughlin Steel Corporation, 301 U. S. 1.


Washington, Virginia, and Maryland Coach Co. v. NLRB, 301 U. S. 142.

Agwilines, Inc. v. International Longshoremen’s Association, Local No. 1402, 2 NLRB 1.

Bethlehem Steel Corporation v. Steel Workers Organizing Committee, 14 NLRB 539.


Clover Fork Coal Company v. District 19, United Mine Workers of America, 4 NLRB 202.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies v. United Electrical and Radio Workers of America, Affiliated with the C. I. O., 4 NLRB 71.

Cook Coffee Company and Central Tea Company and Home Tea Company v. United Tea and Coffee Workers Union, Local 155, Affiliated with United Wholesale Employees of America, 22 NLRB 967.

Crossett Lumber Company v. United Brotherhood of Carpenters and Joiners of America, 8 NLRB 440.

Fashion Piece Dye Works, Inc., v. the Federation of Silk and Rayon Dyers and Finishers of America, 1 NLRB 265.
Frederick H. Burnham Company v. Local No. 95, International Glove Workers' Union of America, Affiliated with the A. F. of L., 19 NLRB 970.

Lee Rubber and Tire Corporation v. United Rubber Workers of America, Local 102, 18 NLRB 100.


Ohio Fuel Gas Company v. The United Mine Workers of America, 23 NLRB 667.

Oregon Worsted Company v. United Textile Workers of America, 3 NLRB 36.

Pennsylvania Greyhound Lines, Inc. v. Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, 1 NLRB 1.


Republic Steel Corporation v. Steel Workers Organizing Committee, 9 NLRB 219.

Stover Bedding Company v. Upholsterers Allied Crafts, 15 NLRB 635.

United Biscuit Company of America v. Biscuit & Cracker Local No. 131; Bakery, Tea, Coffee, Yeast & Pretzel Drivers Local No. 264; and Auto Mechanics Local 1053, 38 NLRB 778.

Williams Manufacturing Company, Portsmouth, Ohio, v. United Shoe Workers of America, Portsmouth, Ohio, 6 NLRB 135.