THE KOHLER STRIKE - 1954 to 1960

BY

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CHAPTER I

INTRODUCTION

On April 5, 1954, the union employees of the Kohler Company, a manufacturer of plumbing equipment, were called out on strike by Local 833 of the United Automobile Workers of America. This strike, destined to last for seven years, marked the culmination of a labor-management dispute that can be traced back as far as 1947.

This strike involved illegal picketing, violence, and the destruction of property in and around the communities of Kohler and Sheboygan, Wisconsin. For a period, the strike was reminiscent of the labor struggles of the 1930's. At one point the parent U.A.W.-A.F.L.-C.I.O. (hereafter referred to as U.A.W.-C.I.O.) directed a nationwide boycott of Kohler products. Although relatively unsuccessful, this action helped spread the effects of the strike throughout the United States.

The combined forces of state and federal mediation agencies were brought to bear upon the dispute, and yet the controversy dragged on. Unofficial efforts at mediation made by the governor of Wisconsin, along with judges, mayors and town councils, came to naught. Countless man-hours were lost. For fifty-four days, the Kohler plant was shut down because of mass picketing. So emotional were the issues that families were divided and friendships destroyed. Because of the extreme length of the strike, and because of violence more reminiscent of earlier times this case may be considered a significant event in the course of labor history.

The dispute came before the National Labor Relations Board (N.L.R.B.) when the Union charged Kohler Company with a variety of unfair labor practices. The Board's ultimate decision went against Kohler on most of these charges and was eventually appealed through the courts, where it was sustained by the Supreme Court on June 4, 1962. Bargaining was resumed shortly thereafter.

In the give and take world of collective bargaining, the problem of an occasional breakdown that results in a strike is to be expected. Indeed, an absence of such breakdowns would surely indicate domination by one side or the other in the process. On the other hand, a collapse of labor-management negotiations that creates a strike as bitter and prolonged as the one at Kohler presents a problem of more than usual interest -- one worthy of further investigation.

Regardless of the Board's decision, it appears that neither side in this dispute is blameless, but that certain actions, attitudes and beliefs on the part of both Kohler Company and the U.A.W.-C.I.O. caused the breakdown of the collective bargaining process. It is the purpose of this thesis to investigate the case and thus determine the validity of the above conclusion.

As pointed out earlier, the extreme length and violence of this strike sets it apart from the general run of labor conflicts and suggests a fertile field for a study of this nature. In addition, it is a strike about which a great deal of information has been made available. Besides the published findings and decision of the N.L.R.B., the dispute was the subject of exhaustive hearings before the Select Committee on Improper Activities in the Labor or Management Field, more commonly called the McClellan Committee. The Kohler Company has compiled an

extensive amount of information -- largely reprints from periodicals and material written and published by themselves. The U.A.W.-C.I.O. is relatively silent in that they supply only one pamphlet explaining its position. Professor Sylvester Petro has written two books, The Kohler Strike, Union Violence and Administrative Law, and Power Unlimited -- the latter having a section devoted to the Kohler strike.

In the preparation of this manuscript, the majority of the research effort was directed toward the Intermediate Report of the N.L.R.B.'s Trial Examiner, the N.L.R.B. Decision and Order, and the transcript of the hearings before the McClellan Committee. Taken together, these sources include every important phase of the strike, as well as reporting related events that took place before the strike began. In addition, it was necessary to review certain of the cases cited as precedents by the Board and the courts.

The bulk of the information supplied by the Kohler Company and the U.A.W.-C.I.O., though interesting, was of little value because of its obvious bias and its lack of documentation. It was useful in providing an early history of Kohler operations, and occasionally as a source of Company or Union policy and opinion. The books by Petro were likewise of limited value. This stems from the fact that he merely used Kohler's experiences as a vehicle for his real purpose, which was to attack the judicial processes of the N.L.R.B. Also, his bias in favor of the Kohler Company is quite obvious.

Chapter Two is devoted to an historical description of the Kohler Company, its operations, early experiences with organized labor, and the general conditions that preceded the strike. Chapter Three deals with actual events that took place during the strike. Since a complete

description of all aspects of the strike is beyond the scope of this paper, this chapter is confined to a discussion of those situations which have a direct bearing on the N.L.R.B. decision. Chapter Four presents the account, with analysis and evaluation, of the N.L.R.B. Decision and Order. Also outlined in this chapter are the Board's remedy and subsequent court actions. Chapter Five contains the summary statement and major conclusions.

CHAPTER II

HISTORICAL BACKGROUND

Early History[1]

The Kohler Company was founded on December 3, 1873, by John Michael Kohler, who had immigrated to this country from Austria at the age of ten with his family. J. M. Kohler, twenty-nine years old, imbued with confidence in the future of agriculture in the United States, began the manufacture of farm implements at Sheboygan, Wisconsin. During the early years, production was limited to the farm implements. Payment was often received in goods rather than in cash. As the company grew, other products were introduced such as enameled cast iron ware for chemical laboratories, kitchen stove reservoirs, drinking fountains, and enameled steel cooking utensils. In 1883 the addition of enameled cast iron plumbing fixtures foreshadowed the Kohler Company as it exists today. The shift to plumbing fixtures as the principal item of manufacture came at the turn of the century.

For many years the principal item of manufacture was bathtubs. The company now produces its own pottery for the production of vitreous china sanitary ware, and manufactures brass plumbing fittings and fixtures along with a line of heating equipment. Further diversification came when the

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[1]"John Michael Kohler, Pioneer," Kohler of Kohler News, December, 1954, pp. 3-7.

company expanded into the production of engine-driven electric plants, air-cooled engines and precision controls for aircraft, industrial and automotive uses.

John M. Kohler was a pioneer in the decentralization of manufacturing. In 1899 he began the construction of a foundry some four miles west of Sheboygan, which was considered to be "out in the country."

Despite a fire that destroyed the new plant, the project was rebuilt and became a success. J. M. Kohler did not live, however, to carry out his plans for a complete rural manufacturing community. This work was carried on by his sons, Walter and Herbert. Walter J. Kohler served as President of the Company from 1905 to 1940, when he was succeeded by the youngest of the Kohler heirs, Herbert V., who still serves as Company President and Chairman of the Board. Under the guidance of these two men, Kohler Company has grown to become a world-wide manufacturer of plumbing products.

Since 1940, under the direction of Herbert V. Kohler, the manufacturing plant has undergone a complete modernization program designed to provide the Kohler worker with the best facilities with which to apply his skill. The Kohler Company has long regarded itself as a pioneer in the development of beneficial working conditions for industrial employees. The Company claims that under its direction the following was accomplished:[2]

1. The eight-hour day was inaugurated in 1911, a generation before the steel industry shifted from the twelve hour day.

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[2]"Company a Pioneer," Kohler of Kohler News, April, 1955, p. 6. In addition see letter from Kohler Company, August 10, 1962, reproduced in Appendix A.

2. A workmen's compensation program was voluntarily introduced in 1917, two years before the state of Wisconsin put into effect a workmen's compensation law.

3. A safety program held Kohler's 1954 injury frequency rate to 8.84 accidents per million man hours compared to a national average of 15.5 in the sanitary ware and plumbers' supply industry.

4. Group life insurance and health and accident benefits were introduced in 1916. In 1950 a group hospital and surgical insurance plan was put into effect.

5. A fully funded pension plan was developed and inaugurated in 1950.

The Company further takes pride in the fact that through the years no major layoffs have ever been necessary, nor has there ever been a shut-down of the plant due to business conditions. During the depression of the 1930's the Company, in order to provide jobs, spread the work load and reduced working schedules. In so doing, they built up the largest inventory of plumbing fixtures in the world.[3] Such a record has prompted the Company to state:

> This is an enviable, if not incomparable, record in industry. It is the basic philosophy of the organization to provide good jobs at good pay, good working conditions, and job security to attract and hold the type of worker who, through pride in his skill, will uphold the ideals and purpose of Kohler of Kohler.[4]

Kohler Village

The Kohler Company is located in Kohler Village, an incorporated

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[3]"John Michael Kohler, Pioneer," Kohler of Kohler News, p. 7. In addition see letter from Kohler Company dated August 10, 1962.

[4]Ibid.

community integrated into the general plant area near Sheboygan. It is pointed out by Kohler Company that the Village is widely known throughout the United States and to people abroad as a fine example of a planned industrial community, where practically all the residents own their own homes and the property upon which they are built.[5]

Sylvester Petro, in his book, The Kohler Strike, points out that Kohler Village represented the realization of a dream of John M. Kohler -- to combine living and working conditions in a pleasing environment.[6] Care was taken to merge the production facilities with the Village in such a manner that the Company neither dominated nor became lost within it. To provide for transients, business callers and single employees, the Company began to operate the American Club, which provides hotel facilities and permanent lodging. The hotel facilities consist of some one hundred rooms, along with other common features such as a cafeteria and bar. Residence in the American Club, whether permanent or temporary, is open to the public, regardless of affiliation with the Kohler Company. At the time of the strike, there were both employees and non-employees living at the Club.

The UAW-CIO pictures the Village as an example of the feudal domination of the Kohler Family. According to this union:

> . . . The Kohlers were Barons in Austria. They controlled the land, and those who worked their estates. They brought their concept of the master-servant relationship with them when they came to this country after the civil war.
>
> They built the Kohler plumbing ware factory and the adjoining Kohler Village. Workers were supposed to live in the Village.[7]

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[5]"Company a Pioneer," Kohler of Kohler News, p. 6.

[6]Sylvester Petro, The Kohler Strike (Chicago, 1961), pp. 1-4.

[7]U.A.W.-A.F.L.-C.I.O., The Kohler Workers Story (Detroit, no date), p. 6.

In this regard, the Union challenged the Kohler statement that the Village is for workers and suggested that the Village was built for the convenience of management.

> . . . It's a pretty little village all right . . . for supervision.
>
> Kohler Company normally employs a production force in excess of 3,300; has another 350 supervisors and foremen; a battery of top officials and several hundred office workers. Yet, as the sign shows, the number of men, women and children in Kohler is only 1,716.
>
> By actual count only 119 production workers and their families live in Kohler Village. The rest live in nearby Sheboygan and the surrounding villages.[8]

The Kohler Company remains silent on this charge that the Village is actually populated, not by workers, but by management and supervisory personnel.

The Strike of 1934

In 1933 the Kohler Workers Association (K.W.A.) was organized. According to the National Labor Relations Board (N.L.R.B.) trial examiner, "evidence showed that the K.W.A.'s organization in 1933 was instigated and sponsored by Respondent [Kohler Company] under such circumstances as to justify the characterization under present day standards that it was a 'dominated union'."[9] Soon thereafter, in 1934, the American Federation of Labor (A.F. of L.) attempted to organize Kohler production workers. A recognition strike resulted. During this strike, a violent riot ensued. A brief account of the riot is relevant to the present study because some of the illegal strike actions taken by the U.A.W.-C.I.O. in 1954 were justified on the basis of its experience with the Kohler Company and with

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[8] Ibid., p. 19.

[9] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1146.

the police during the 1934 riot. These illegal actions and their justifications are examined in Chapters Three and Four. The New York Times characterized this riot as a:

> . . . savage battle between 400 special deputies and a mob of some 1500 strikers and sympathizers who stormed the Kohler Manufacturing Company plant, hurling bricks, stones, and clubs.[10]

The article continues;

> . . . Women and children were in the ranks of the besiegers, and their presence kept the deputies, stationed inside the plant grounds, from using tear gas, stench bombs, and guns until it became apparent that this was the only recourse.[11]

According to The New York Times account, the riot was precipitated by a large mixed group of strikers and sympathizers gathered at the south end of the Company grounds. At the time, special deputies, under the command of a Captain E. R. Schenike, of Kohler Village, were stationed both inside the plant grounds and outside the factory area and in the American Club. The riot began with the booing of special police and some name-calling directed at Company officials. Apparently a brick thrown through a window of the plant touched off the riot, and the bombardment of the plant began. The mob moved north, hurling bricks and other objects at the employment office and company infirmary. Up to this point the police still had made no move. The attack reached its height with an assault upon the administration building. Plant authorities reported by telephone that "stones as big as grapefruit"[12] were hurtling along the corridors. The deputies took the following described

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[10] The New York Times, July 28, 1934, p. 1.

[11] Ibid.

[12] Ibid.

action:

> . . . Finally, when the attack reached its height, the deputies sallied forth. Tear gas and stench bombs filled High Street, on which the infirmary fronts. The police went into action with night sticks, and the demonstrators met them with sticks and clubs. Although it was said not all deputies were armed with guns, shots began to ring out. It was impossible to tell whether only one or both sides were firing.[13]

The riot was finally put down but only after two men in the mob were killed by gunfire and forty-seven persons injured. None of the police were seriously hurt.

The following day, Governor Schmedemen of Wisconsin dispatched troops to Kohler to maintain law and order, after Sheriff Ernst Zehms told him that he was unable to control the disorders caused by the strikers at the plant.[14] The article from The New York Times continues, casting considerable doubt on the U.A.W.-C.I.O's apparent inference (see below) that the Kohler Company and the special police were entirely responsible for the deaths and injuries.

> . . . The call for troops came after the rioters had shown their determination in the night attack and had also shown their possession of guns by firing on a civilian, John Steger, photographer for the Chicago Tribune. Mr. Steger was not injured but his automobile was struck in several places by some dozen or more shots fired at him when he approached the picket lines.[15]

The inference that the U.A.W.-C.I.O. considers Kohler responsible for the riot, the deaths, and the injuries was brought out at hearings investigating the Kohler Strike of 1954 before the Select Committee on Improper Activities in the Labor or Management Field (McClellan Committee). While being questioned concerning picket activity during the 1954

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[13] Ibid.

[14] The New York Times, July 20, 1934, p. 11.

[15] Ibid.

Kohler strike, Allen Grasskamp, president of Local 833, U.A.W., C.I.O. (the Kohler local) made the following statement under oath:

> . . . There is testimony which was later borne out, and which we had practical knowledge of at the time. We had our suspicions of it that this company was again well equipped as in 1934, when two were killed and forty seven wounded; that they had guns, and they had tear gas. Our people were out there altogether, because they were going to see that this stuff wasn't used on the people in 1954, as it was in 1934.[16]

The U.A.W.-C.I.O.'s insistence upon blaming the Kohler Company stems in a good part from the fact that a Kohler employee, Mr. Edmund J. Biever, now Kohler's plant manager, was on leave from the Company to serve as assistant police chief of Kohler Village. According to Biever's testimony before the McClellan Committee, he was serving in this capacity under an appointment by the Village Board. On the night of the riot he was in charge of a group of special police that was stationed at the American Club.[17] Mr. Biever further testified that at no time during the riot did he discharge any type of firearm other than a gas gun.[18] Still further evidence that the U.A.W.-C.I.O. blames Kohler (through Mr. Biever) for the 1934 violence is found in its strike booklet which carries the following account of the affair:

> . . . In 1934, Edmund Biever, then assistant police chief of Kohler Village, admitted under oath that he directed that tear gas be fired at strikers so that coal cars could be brought into the plant. He testified that he later directed a private Kohler force to fire tear gas when a crowd formed outside the plant.
>
> In the ensuing confusion, a fusilage of shots rang out. Biever said, under oath, that his gas gun brigade had obeyed orders to fire

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[16]U.S., Congress, Senate, Select Committee on Improper Activities in the Labor or Management Field, Hearings, 85th Cong., 2d Sess., 1958, p. 8349. Cited hereafter as Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958.

[17]Ibid., pp. 9459-9461.

[18]Ibid., pp. 9461-9465.

into a railroad bank near the highway.

Two men were killed by bullets . . . not gas. Forty seven men, women and children were wounded, many seriously. Most were shot in the back.[19]

It is interesting to note that what The New York Times refers to as a mob and a riot, the U.A.W.-C.I.O. prefers to call a "crowd formed outside the plant" and "ensuing confusion." A coroner's inquest into the riot deaths was held, resulting in the following inconclusive statement:

It clearly appears from the evidence that the decedents came to their death in a general gun fight between rioters and deputies in the Village of Kohler on the night of July 27. The deputies, both county and Village, were acting in line of duty in the suppression of a riot, as required by the Wisconsin statutes. The persons who fired the fatal shots, and whether they were deputies or members of the mob, remain unknown. The deaths were most unfortunate, and equally so was the riot which led to the shooting.[20]

The 1934 strike was settled later in that year when the K.W.A. won a recognition election, supervised by the National Labor Relations Board under Section 7 (a) of the National Recovery Act. This election was protested by the loser, the A.F. of L., on the grounds that the K.W.A. was Company sponsored; however, the protest was rejected by the Board on March 26, 1935, and the N.L.R.B. directed the Kohler Company to recognize K.W.A.[21]

Events Leading Up To The Strike of 1954-60

U.A.W.-C.I.O. Local 833 wins National Labor Relations Board election. During the ten years that followed certification of K.W.A., employer-

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[19]U.A.W.-A.F.L.-C.I.O., The Kohler Workers Story, p. 7.

[20]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, pp. 9457-9458.

[21]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1146.

employee disputes were of a minor nature -- those common to most collective bargaining arrangements. Hints of major discontent on the part of the employees first appeared in 1946.[22] A group of the K.W.A. members expressed dissatisfaction with the wage rates negotiated by the Union's bargaining committee. This dissatisfaction culminated in the election to majority office in K.W.A. of a slate of officers representing the dissident faction. The new group successfully negotiated a collective bargaining contract in December, 1950 which was ratified by the membership. This contract was negotiated with some difficulty; agreement came only after a threatened strike.

Attempts to reopen negotiations for contract modification and renewal proved futile, and it was during this period that the new officers of K.W.A. began investigating the possibilities of affiliation with an international union. Continued inability to improve the 1950 agreement along with a general feeling that "they were not getting what the rest of the workers all over the country were getting"[23] prompted the leaders of the independent union to seek international union connections.

In 1951, the U.A.W.-C.I.O. made its first attempt to organize the workers at Kohler Company. An N.L.R.B. sponsored election was held in March of that year; but the election was won by K.W.A. and the union was duly certified. Just over one year later, on June 10, 1952, a second N.L.R.B. election was held. This time, the U.A.W.-C.I.O. was successful, receiving 52.6% of the total votes cast.[24] Thereupon, U.A.W.-C.I.O.

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[22]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, pp. 8371-8374.

[23]Ibid., p. 8371.

[24]Ibid., p. 9487.

Local 833 was certified as bargaining agent for the Kohler employees in the bargaining unit. The bargaining unit included all production and maintenance employees of the Company.

First bargaining with U.A.W.-C.I.O. Local 833. In his investigation of the Kohler strike, the National Labor Relations Board's trial examiner looked closely at bargaining relations between Kohler and Local 833 immediately following the Union's certification. He found that the Kohler Company fulfilled its obligations and bargained in good faith, with the result that a contract was signed in February, 1953.[25] It was further reported that the Union was apparently satisfied with the contract, referring to it as a "good one," one "we can accept with pride."[26] Further negotiations took place in the following summer (May to August) under terms of a three-month-wage reopener in the contract. These talks resulted in a three-cent wage increase, and marked the end of bargaining under the February, 1953, contract.[27]

Prestrike Bargaining. The original contract, signed in February, 1953 between Kohler and the U.A.W.-C.I.O. Local 833, was scheduled to terminate on March 1, 1954. Accordingly, the Company and Union entered into negotiations on a new contract on February 2nd, concerning themselves with contract proposals from both parties plus the reconsideration of the 1953 contract. These negotiations were carefully investigated by the trial examiner. The bulk of this section is based on his

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[25]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1149.

[26]Ibid.

[27]Ibid., pp. 1149-1150.

findings.[28] It was determined that bargaining sessions in February progressed satisfactorily. Nevertheless, the Union contended and the National Labor Relations Board General Counsel found that agreement was confined strictly to minor points, so no agreement was reached on major issues.

Since negotiations had not progressed to the point at which an acceptable contract seemed likely, the Union suggested that the expiring contract be extended through March to gain more time for bargaining. Kohler refused this offer but suggested an extension of the existing contract for one year. This suggestion was refused by the Union. Thereupon, Kohler Company offered this alternative proposal which the Union also rejected:

> . . . a three cent per hour general wage increase effective March 1, conditioned on acceptance of the Company's last contract proposal of February 15, with such changes as had been agreed upon and with the existing pension and insurance plans to remain in effect.[29]

At this point, the Union called in a conciliator from the Federal Mediation and Conciliation Service. The offer quoted above assumes considerable importance, for it is the basis upon which the principal charge of an unfair labor practice against Kohler Company rests. Subsequent meetings were held during the early part of March with the federal conciliator in attendance. By March 8, both sides had reached their basic position and the Union announced it would take a strike vote on March 14.[30] Although further meetings were held in March and early April, no

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[28] Ibid., pp. 1151-1152.

[29] Ibid., p. 1152.

[30] Ibid.

progress was made. The April meetings were conducted with the knowledge that a strike vote had passed and that the Union had called a strike for April 5, 1954.

The Seven Basic Issues

Failure to reach an agreement prompted Local 833 to vote strike action. Before investigating the circumstances surrounding the strike vote, it is necessary to examine the areas of deadlock. To those familar with this prolonged labor controversy, these areas have become known as the "Seven Basic Issues," which are as follows:

Seniority. The trial examiner's report states that substantial progress toward agreement had been reached on job protection through seniority. In negotiations following the advent of the strike, a difference in the interpretation of the ten per cent deviation clause (a clause which allows the company ten per cent deviation from seniority on lay-offs) came to light for the first time. Thus it turned out that there had actually been no agreement on seniority at all.[31] The Union maintained that Kohler would use the ten per cent seniority deviation "as a device for laying off the workers most likely to stand up for their rights . . . could make a man who filed a grievance a marked man."[32] The Union appeared adamant on this issue. In its letter of August 10, 1954, presenting modified demands, it asked, "an amendment to the seniority provisions to provide for lay-offs according to seniority only."[33]

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[31] Ibid., p. 1157.

[32] U.A.W.-A.F.L.-C.I.O., The Kohler Workers Story, p. 4.

[33] Petro, p. 114.

The deadlock was apparent in view of the Company's answer:

> . . . The company does not agree that seniority shall be made the sole factor to be considered in the event of a lay-off or for any other purpose.
>
> In order to be fair to all employees and to maintain an efficient operation, merit and efficiency of performance must continue to be given consideration as well as seniority.[34]

The Company also argued that regardless of the method selected for determining layoffs, "it will not present much of a problem, since there have been no layoffs at Kohler for seventeen years."[35]

Insurance. The life and hospitalization insurance benefits available to Kohler workers were described as inadequate by the Union. They asked increases in the amounts of life insurance plus disability coverage and benefits. In addition, they demanded a full-coverage type of hospital plan which would cover all bills regardless of amount. The Company offered no changes, proposing to continue the insurance plans as they then existed. Such was the situation at the time of the strike. In later negotiations, concessions in this area which were offered by Kohler were accepted by the Union spokesmen.[36]

Pensions. Kohler Company had sponsored a pension plan for many years and had proposed no changes in it. The Union objected to the plan because it was voluntary, required employee payments, and provided, in the Union's opinion, inadequate benefits. In its place, the Union proposed its standard, non-contributory, funded plan, to be jointly administered. Neither side would change its attitude prior to the strike. As

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[34]Ibid., p. 117.

[35]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 9642.

[36]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1157-1158.

in the case of insurance coverage, the Company offered some concessions after the strike had begun proposing that retirement benefits under the Company plan would be increased so that its payments would be comparable to those available under the Unions' standard plan mentioned above. A deadlock remained, however, in the area of employee contributions.[37]

The Enamel Shop. In this shop, enamel is applied to bathtubs and other fixtures and baked on under high temperature. Working conditions, in the words of Trial Examiner Downing, "were arduous and had posed thorny problems dating back into K.W.A. days."[38] The shop had operated continuous eight-hour shifts without a definite lunch break. This had been possible since the process was such that the men could eat while fixtures were heating.

The Union demanded a paid twenty-minute lunch period in the form of a four per cent lunch-time allowance. This demand was based on the fact that the 1953 contract had provided such an allowance in certain other continuous, three-shift, twenty-four-hour-per-day departments. These latter departments also handled jobs where the work cycle did not provide sufficient time for eating lunch.[39]

The Company flatly rejected this demand. The rejection is based on the belief that the proposed paid lunch allowance was a subterfuge for a pay increase in as much as the men would continue eating lunch on slack time as they had before, not suffering any wage loss. Kohler also pointed out it did not grant a paid lunch period so long as eating was

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[37] Ibid., p. 1158.

[38] Ibid.

[39] Ibid., p. 1159.

possible without interruption of a continuous work cycle; that only four per cent of its employees received such a paid lunch period.[40] This major dispute was never settled.

Arbitration. In the original contract of 1953, arbitration was provided as a step in the grievance procedure. In the course of negotiations, it became apparent that a difference of opinion existed over the intent of some of the arbitration provisions, especially as to whether discipline and discharge cases were arbitrable. Kohler offered two proposals: the first would, (according to Company spokesman Lyman C. Conger), clarify and definitely exclude items which Kohler felt were excluded by implication in the former contract. The second proposal would delete a provision that provided for a judicial test of the arbitrator's jurisdiction.[41] The Union proposed only elimination of the judicial challenge of the arbitrator's jurisdiction.

To an outsider, this may not appear to be an area in which a deadlock should occur. However, at the time of the strike, Examiner Downing found the following situation to exist.

> By and large it can be said that the Union wanted as many things as possible to be subject to arbitration and that the Respondent wanted to eliminate as many as possible.[42]

The basic area of disagreement boiled down, in subsequent negotiations, to the arbitrability of discipline and discharge cases.[43]

Union security. The union shop issue presented a major stumbling

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[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] Ibid.

block to the successful culmination of negotiations. The Kohler Company was and is probably more emphatic in its opposition to compulsory union membership than it is to any other single labor practice in the labor-management field. Opposition to the union shop is basically a moral rather than an economic concern in H. V. Kohler's thinking. His interpretation of the worker's position when employed under a union shop clause was expressed unequivocally in the following quote. "In effect, you cease to be an American with those God given, inalienable rights the forefathers asserted in the Declaration of Independence."[44]

The official Company position was stated before the McClellan Committee by Lymon C. Conger, Kohler's chief negotiator.

> . . . We have been and we are opposed to compulsory unionism in any form. It is the right of any American citizen to determine for himself what organization he shall belong to and how he will bargain for the reward for his efforts. No one union, management or both together has a right to take this decision away from him.[45]

The U.A.W.-C.I.O. rationale of the validity of the union shop demand was explained before the McClellan Committee, during testimony of several union leaders. Alan Grasskamp testified to the effect that the union shop was needed because:

> . . . if we didn't get exactly what an employee thought he ought to have, the first thing you are faced with is the threat that "If you don't get what I want, I will drop out of the union."
> We think they have a moral responsibility to pay their share of the fare for negotiating these benefits for them.[46]

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[44]"The Right to Work," Address by Herbert V. Kohler on the Manion Forum Network, September 28, 1958, p. 4. Available in pamphlet form from Kohler Company, Kohler, Wisconsin.

[45]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 9499.

[46]Ibid., p. 8377.

Walter Reuther, President of the U.A.W.-C.I.O., voiced similar sentiments:

> I am saying that in the area where the union takes care of the problems of the workers, that the worker who gets the benefits should help pay for the cost . . .[47]

The validity of such a hypothesis obviously rests on an assumption that union activity results in benefits in excess of what could be obtained through individual bargaining.

Kohler's position of opposition was maintained throughout the negotiations. The Union is quoted by Examiner Downing as being "prepared to fight"[48] for a union security clause. Neither side had budged an inch on this issue at the time of the strike.

In later negotiations the Union relaxed its position, advocating lesser forms of security such as maintenance of membership, and automatic dues check-off. The trial examiner, in 1957, found that abandonment by the Union of the maintenance of membership and check-off demand was "left uncertain on the entire record."[49] In any event, it appears the Union finally capitulated on this point in March of 1958. It presented a statement of the remaining disputed areas, which contained no reference to a union security provision, to the McClellan Committee.[50]

Wages. The importance of the wage dispute will be examined closely in Chapter Four which is devoted to the N.L.R.B. Decision and Order. As was pointed out earlier, (see page 16), the Company's actions in dealing

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[47]Ibid., p. 10100.

[48]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1160.

[49]Ibid., p. 1161.

[50]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 9643.

with the wage question led to its being found guilty of an unfair labor practice. At this point, it is sufficient to state that at the time of the strike, the Union had demanded a twenty cent per hour general wage increase plus ten cents extra per hour for skilled trades workers. As previously cited, Kohler responded with an offer of three cents per hour, dependent upon the Union acceptance of the last Company contract offer.[51]

The Shell Department

Although not one of the seven basic issues, Kohler's actions with regard to temporary shell department employees figured prominently in the N.L.R.B. decision, and became an important point of contention in negotiations with the Union.[52] Prior to the strike, Kohler was engaged in the production of shells under a national defense contract with the United States government. The department established to produce these shells was considered temporary. The 1953 contract provided that employees hired for work in such departments would be temporary employees, subject to release upon termination of defense contracts. The contract further provided that permanent employees, transferred to a temporary department would continue to hold and acquire seniority. Any temporary employee transferred to a permanent job would be granted seniority, after ninety days in the permanent position, dating from his original hiring.

Well before the strike, on March 2, 1954, Kohler Company advised the Union that its shell contract was being terminated on June 30, 1954, that

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[51]"Intermediate Report and Recommended Order," Kohler Company 128 N.L.R.B. 122 (1960), p. 1162.

[52]Ibid., pp. 1165-1166.

"temporary help will be released on or before that date,"[53] and that permanent employees in the department affected would be returned to their former or comparable jobs if possible. Temporary employees with one year or more of service were to receive vacation pay earned during one year's employment.

Effective July 1, 1954, the Company officially terminated the employment of fifty-three of the temporary workers, all of whom were out on strike. The remaining twenty nine temporaries, who remained at work during the strike were transferred to permanent positions under terms of the 1953 contract, as were permanent employees actively employed in the shell department at the time. Those permanent employees out on strike received no such notice of transfer.

At a later date, five of the released temporaries applied for and received permanent jobs plus seniority retroactive to their date of hiring. Then on November 22, 1954, the Company advised the remaining temporary employees of the supplemental shell contract which had been awarded and invited them to return to work as temporary employees. Four accepted and were hired. Upon conclusion of the second defense contract, these men were transferred to permanent departments with seniority dating from the date of rehiring.

The Strike Vote

As a result of the impasse that developed over the seven basic issues, U.A.W.-C.I.O. Local 833 held a strike vote on March 14, 1954. The results were announced as 88.1 per-cent in favor of calling Kohler workers

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[53] Ibid., p. 1165.

out on strike.[54] Subsequent testimony before the McClellan Committee revealed the following with regard to the strike vote.[55] During questioning by Senator Curtis of Nebraska, Local 833's President Grasskamp verified that at the time of the vote, the Union had between 2,400 and 2,500 members. Of these, approximately 2,000 attended the meeting, with 1,105 voting in favor of the strike and 104 against. The difference between the number of ballots cast and the estimate of attendance was explained by Grasskamp as follows:

> There was a process that everybody had to identify themselves and everybody had to get a secret ballot, and many people did not vote. There were many people that walked out of the meeting, and had voiced as they left that if the people voted for a strike, they would be in favor of it, and they left the meeting.[56]

Briefly summarized, Grasskamp's testimony showed that of an approximate membership of 2,400 persons, 1,105 or slightly less than fifty percent actually cast a vote in favor of striking. Unfortunately, there is no way to determine with accuracy the sentiments of those union members who left the meeting without voting.

A further indication of the Union's relative strength might be found by comparing the number voting to strike with Kohler's total work force of 3,344. On this basis it can be said that the U.A.W.-C.I.O. called Kohler workers out on strike when only about one third of the workers affected had positively stated a desire to take such action.

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[54]William L. Collins, "Highlights and Chronology of the UAW-CIO Strike at Kohler Company," Kohler Company Press Release, March 8, 1960, p. 8.

[55]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 8340.

[56]Ibid.

From the above it might be surmised that the Local 833 members were not really behind the Union in it's decision to strike. It should be noted that a strike vote is rarely a reliable indicator of a worker's real desire. This stems from the fact that employees will normally vote in favor of going on strike regardless of their true feelings, due to the realization that voting against a strike authorization undercuts the union's bargaining position. When voting in favor of a strike, many are actually hoping to so arm the union that its demands will be met without the strike taking place. Such an attitude adds strength to Grasskamp's claim, quoted above, that most of those leaving the strike meeting without voting were actually willing to vote in favor of the proposed strike. Further evidence supporting his contention is found in the fact that of the approximately two thousand people on the picket line, only a handful were positively identified as being other than regular Kohler employees. Nevertheless the true feelings and desires of the 3,300 employees cannot be known.

In any event it seems likely, though this is unconfirmed, that the Kohler Company interpreted the results of the strike vote as being an indication of weakness in the Union's position, and that this belief strengthened its resolve to fight the strike to the bitter end. Regardless of these considerations, the fact remains that the strike vote of March 14, 1954, signaled the beginning of what was to become one of the longest single labor disputes in this country's history.

CHAPTER III

THE KOHLER STRIKE OF 1954

The strike which commenced at Kohler Company on April 5, 1954, was marked by violence, property damage and illegal conduct. Mass picketing, in the words of a Local 833 publication, kept the plant "shut down like a drum"[1] for a period of fifty-four days. Due to the extreme length of this strike, which involved many hundreds of isolated incidents, a detailed description is beyond the scope of this study. Therefore, the following account will be confined to highlights of the affair, especially those pertinent to the N.L.R.B. Decision and Order.

Mass Picketing

The first U.A.W.-C.I.O. Local 833 strike act was to blockade all plant entrances with a mass picket line, estimated from 1200 to 2500 people.[2] Trial Examiner Downing described the action as follows:

> . . . A shifting group, acting as a sort of advance guard, usually formed in Industrial Road on occasions when groups of nonstrikers approached the lines in an effort to enter the plant. On a number of such occasions the nonstrikers were physically blocked, pushed, shoved, and prevented from entering. In some instances the pickets refused to permit entrance despite requests of Police Chief Capelle (of Kohler Village) to let the workers into the plant. On these and other occasions the pickets yelled

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[1]Local 833 publication quoted in William L. Collins, "Highlights and Chronology of the UAW-CIO Strike at Kohler Company," Kohler Company Press Release, March 8, 1960, p. 9.

[2]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1192-1194.

and shouted such things as, "Hold that line," "No one gets through," and "Go home scab, go home."[3]

Further evidence of the prohibitive nature of the picketing was heard during the hearings before the McClellan Committee when Mrs. Alice M. Tracey, a nonstriker, testified:

Well, when we attempted to go to work, the picket line - or it was not a picket line; it was people standing in the industrial road - came out to meet us and on the boulevard and they held us back.[4]

Mrs. Tracey further testified that the police chief and his deputies attempted unsuccessfully to open the line for those desiring to go to work. She also recounted that her shoe was partially torn off by Mr. Jesse Ferrazza[5] who "tromped" on her feet.[6]

A second witness, also a nonstriker, Harold N. Jacobs, testified to the following:

. . . I went down there the first morning at the regular scheduled work hour to go to work and approached my normal gate of entrance and I was blocked by some automobiles and by massed pickets.[7]

Mr. Jacobs confirmed Mrs. Tracey's testimony that the officers were unable to open the line, and in answer to a question from Senator Ives concerning threats, replied:

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[3]Ibid., p. 1192-1193.

[4]U.S., Congress, Senate, Select Committee on Improper Activities in the Labor or Management Field, Hearings, 85th Cong., 2d Sess., 1958, p. 8387. Cited hereafter as Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958.

[5]Jesse Ferrazza was identified to the McClellan Committee by Local 833 President Grasskamp as an administrative assistant from the U.A.W. office in Detroit, who was at Kohler to participate in negotiations.

[6]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 8388.

[7]Ibid., p. 8394.

They told me that if I drove my car in, they would tip it over, and I had phone calls, and I recognized the man's voice, and he told me I was going to get beat up if I drove across the line. He said, "We are not a bunch of kids. If you think you are going to get in, you are not going to get in today or any other day."[8]

Union spokesmen, when appearing before the McClellan Committee, admitted under persistent questioning that their picket line did prevent people who wished to work from entering the plant. McClellan, while questioning Harvey Kitzman, Director of Region 10 U.A.W.-C.I.O., asked if it was not the real purpose of the picket line "to keep out of the plant workers who wanted to work?"[9] Kitzman, after conferring with his counsel, replied "yes, absolutely, yes."[10] In previous testimony, Kitzman attempted to justify such action on the basis that it would discourage the use of strike breakers and because, to quote directly:

. . . They knew that in 1934 company guards had opened fire on another peaceful picket line. They knew these company guards had killed two men and wounded 47 men, women, and children. All but two persons were shot in the back. And so they were afraid and they know that in numbers there was at least some safety, since they figured the company wouldn't open fire on such a large group of unarmed workers.[11]

Mr. John Konec, a striker and picket line captain, was asked by Committee Counsel Kennedy whether the purpose of the picket line was to keep nonstrikers out of the plant. He replied, "Yes, that was true at that time."[12] The President of Local 833, Allen Grasskamp, also admitted to Counsel Kennedy that the picket line denied plant entry to those wishing

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[8] Ibid., p. 8395.

[9] Ibid., p. 8556.

[10] Ibid.

[11] Ibid., p. 8546.

[12] Ibid., p. 8587.

to work.[13]

Walter P. Reuther, President of the U.A.W.-C.I.O., also attempted to justify, in part, union action on the picket line by referring to the 1934 strike. In answer to questions from Senator Goldwater, concerning the mass picketing, Reuther answered to the effect that the conduct of the pickets, not the number, was the important factor.[14] He went on to state:

> . . . It is how they conduct themselves. I think there is no question about it that pickets were there in large numbers for a number of reasons, first because they were afraid, because of the 1934 strike and the shootings, and, secondly, because the company challenged the union saying "you don't represent the majority" and this was their way of demonstrating broad support for the strike.[15]

The actions of the massed pickets clearly prevented those desiring to work at Kohler from doing so. Thus, the picketing was illegal under both federal and state law. Section 8 (b) (1) of the National Labor Relations Act of 1947 (Taft-Hartley) guarantees employees the right to refrain from union activities (in this case, a strike) and declares it an unfair labor practice for a labor organization to restrain or coerce employees in their exercise of this right.[16] The Wisconsin statutes likewise prohibit such actions as were employed in the mass picketing. The Wisconsin Statute reads as follows:

> 343.683 Preventing pursuit of work.
> Any person who by threats, intimidation force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wageworker,

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[13] Ibid., p. 8351-8352.

[14] Ibid., p. 10023.

[15] Ibid.

[16] U.S., Statutes at Large, LXI, pp. 140-141.

or who shall attempt to so hinder or prevent shall be punished by fine not exceeding $100.00 or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment in the discretion of the Court. Nothing herein contained shall be construed to prohibit any person or persons off the premises of such lawful work or employment from recommending, advising or persuading others by peaceful means to refrain from working at a place where a strike or lockout is in progress.[17]

Faced with the inability to operate its plant due to apparent illegal action, the Kohler Company refused to continue negotiations, "holding that union violence and militancy is not collective bargaining, but collective dictation."[18] On April 15, Kohler Company filed a complaint with the Wisconsin Employment Relations Board (W.E.R.B.) on the following basis:

. . . It was alleged that the union members had engaged in mass picketing, thereby obstructing ingress to and egress from the Kohler plant; had interfered with the free and uninterrupted use of public highways; had prevented persons desiring to be employed by Kohler from entering the plant; and had threatened them and their families with physical injury.[19]

At a hearing on May 4, the W.E.R.B. consulted with the parties and suggested that they resume bargaining and agree on what would constitute legal picketing. In the meantime, the Union had asked for an adjournment to prepare briefs for a federal court action it was bringing to enjoin the W.E.R.B. from proceeding. The adjournment was granted by the board, under certain conditions -- one of which involved a limitation on picketing. The Company thereupon agreed to resume bargaining and met with Union negotiators on May 7. The session was fruitless. However, at the

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[17]Wisconsin Statute 343.683 quoted in Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 8354.

[18]"Kohler Company Refuses to Bargain Under Duress," Kohler of Kohler News, April, 1955, p. 17.

[19]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1168.

close, the Union suggested continued negotiations that evening and over the weekend. The Company refused, citing the need for time to prepare for the pending federal court action brought by the Union. In addition, it was pointed out that regular bargaining sessions in the past had excluded weekends. Consequently, the Company announced it would be perfectly willing to continue as before, meeting again on the following Monday. The Union refused the offer, and "resumed picketing of the same type which had gone on since April 5."[20] It seems obvious that at this point ill feeling between the two parties had reached such a state that neither was really trying to resume effective bargaining.

With this turn of events, the W.E.R.B. proceeded with hearings and on May 21, issued an order directing the Union to cease and desist from:

> . . . obstruction or interference with ingress and egress from the plant, hindering or preventing by mass picketing, threats, intimidations or coercion of any kind the pursuit of work or employment by persons desiring thereof, the intimidations of the families of such persons, and the picketing of their domiciles.[21]

Union leaders ignored this order, informing the strikers it was not enforceable and would not change the picketing in any way. The board thereupon went into the Circuit Court of Sheboygan County seeking enforcement of its order. Faced with this action, the Union agreed to abide by the W.E.R.B. order. The Circuit Court therefore adjourned its hearing, with the provision that the matter could be called up for hearing on twelve hours notice, in the event of a violation of the order. Thus the mass picketing ended and bargaining was resumed on June 1.[22]

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[20] Ibid., p. 1169.

[21] Ibid.

[22] Ibid.

A county circuit court injunction enforcing the W.E.R.B. order was granted on September 1, 1954, due to the massing of demonstrators at the homes of non-striking workers in violation of the order.[23] As noted above, the Union challenged the W.E.R.B.'s jurisdiction over the mass picketing at Kohler Company; this challenge eventually reached the United States Supreme Court. The basis for the action stemmed from the fact that during the 1940's and early 1950's, the Supreme Court had generally held that state regulation of unions in areas covered by Sections seven and eight (13) (1) of the Taft-Hartly Act was unconstitutional.[24] Since the Union action, which the W.E.R.B. was attempting to halt, clearly fell under the above sections of Taft-Hartly, the Union's appeal seemed on firm ground. Such was not the case, however. In a decision handed down on June 4, 1956, the Supreme Court upheld the state court's enforcement order of the W.E.R.B. cease and desist ruling.[25]

Property Damage and Violence

Immediately after the strike began, and continuing until January of 1957, Kohler Company testified there occurred about 800 individual acts of property damage, violence, and vandalism directed against non-striking employees (including those hired after the plant reopened). A complete record of these happenings, supported by affidavits, was compiled by the

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[23]William L. Collins, "Highlights and Chronology of the UAW-CIO Strike at Kohler Company," Kohler Company Press Release, March 8, 1960, p. 13.

[24]Charles O. Gregory, Labor and the Law (New York, 1961), p. 567.

[25]U.A.W. v. Wisconsin Employment Relations Board, 351 U. S. 266 (1956).

Kohler Company and was entered into the record of the McClellan Committee.[26] Testimony of a Sheboygan police officer quoted below lends support to Kohler's claim. A summary of their statements to the committee shows assault, paint bombings of homes and autos, bricks hurled through picture windows, tire slashings and car dynamiting. In one extreme case, a worker's summer cottage was broken into and the contents sprinkled with sulphuric acid. In addition to this evidence, the Committee also heard from several witnesses who had been subject to property damage, and who further substantiated the Kohler testimony that damage had been done to the homes and property of non-striking Kohler employees.[27]

Two instances of violence stand out in particular in this strike. On June 18, 1954, Willard Van Ouwerkerk, age 50, was assaulted and seriously injured by William Vinson, a union man.[28] Vinson, who had been sent by his local in Detroit to assist the Kohler workers in their cause was subsequently arrested for this crime and sent to prison.[29] The second incident involved the beating of William Bersch, Sr., sixty-five years of age and his son, William Jr., both of whom were Kohler employees. On June 16, 1959, John Gunaca, also a Detroit local member assisting Kohler workers, was sent to prison for this attack.[30]

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[26]Senate Committee on Improper Practices in the Labor and Management Field, Hearings, 1958, pp. 8794-8816.

[27]Ibid., pp. 8709-8733, 8751-8788.

[28]Ibid., p. 8870.

[29]New York Times, November 13, 1954, p. 33.

[30]Ibid., June 16, 1959, p. 28.

The importance of these incidents stems in part from the fact that (with the exception of two other minor convictions) these cases represent the only two cases of illegal action directed at non-strikers in which the guilty parties were apprehended. The circumstances surrounding the convictions were investigated by the McClellan Committee during its interrogation of Steen W. Heimke, Captain and later Chief of Police in Sheboygan, Wisconsin.[31] During his testimony Heimke revealed that the police department had on record 930 complaints involving damage, vandalism, violence, threats, and altercations between strikers and non-strikers. In all but four cases, these actions were directed against non-striking Kohler employees. In only four instances, including the Vinson and Gunaca cases described above, were arrests made that resulted in convictions. The third was the result of a non-striker becoming so annoyed by strikers that, when drunk, he threw paint on a striker's car. The remaining case involved two strike sympathizers who were apprehended throwing beer cans against a house. According to Heimke's testimony, none of the other cases was ever solved.[32]

During his appearance before the committee, Chief Heimke expressed two opinions, both of which are relevant to a study of this strike. Senator Mundt asked:

> In other words, you are trying to tell us, apparently, that the fear of the union was so great, or of strikers was so great, that even when a non-striker was hurt or attacked, and a witness saw him and reported it to you, when you went out to the man who had been injured, he was afraid to swear out a warrant and, consequently, you could not make an arrest;

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[31]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, pp. 9335-9338.

[32]Ibid., p. 9337.

is that what you are saying?[33]

Chief Heimke replied:

> That is right. The fear that had been built up in the community prevented the people from coming in to file complaints with the police department.[34]

In a second exchange, Senator Mundt asked whether the police drew any conclusions concerning the fact that nearly all these illegal actions were directed against non-strikers. Heimke replied that they had entered the investigation with an open mind and investigated all possibilities,

> . . . But as the strike progressed, it became more and more apparent that all the offenses were against the workers, which led to only one conclusion, that we had to suspect that it was the union who was after workers trying to keep them from working.[35]

The subject of damage and violence that accompanied the Kohler strike was brought up during the interrogation of nearly all Union witnesses before the McClellan Committee. The most thorough probing came during the appearance of Robert Burkhart, an international representative for the United Auto Workers. He was sent to Kohler in 1953 by the U.A.W.-C.I.O., to assist in the organization of Local 883 and was, for all practical purposes, in charge of the strike operations.[36] At several points Burkhart stated his opposition to violence and incidents such as those which had taken place in Sheboygan. Consequently, he denied the Union's responsibility for them.[37] In summary, Senator Mundt asked:

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[33] Ibid., p. 9323.

[34] Ibid.

[35] Ibid., pp. 9321-9322.

[36] Ibid., pp. 8621-8625.

[37] Ibid., pp. 8633-8636.

Now your testimony in general was that you did nothing to incite violence, and nothing to encourage violence, and you could not be responsible for incidental examples of violence because nobody was pointed out who did it, and it was unable to determine whether it was done by your friends or your enemies?[38]

To this Burkhart replied, "Yes, that is correct."[39] This same witness, Robert Burkhart, made frequent strike reports to the membership via radio. Quoted below are excerpts from his broadcast remarks concerning the non-strikers, many of whom had suffered damage or violence.

. . . because they are the ones who are prolonging this strike, and anything that happens to those people will --- and I am not saying this as any plea to violence against them in any sense of the word --- but anything that happens to them as being accursed from now on out, if I can use such a term as that, certainly they have got to live with it. They made their bed and they have got to lie in it.

Now, we know who they are. We have taken pictures of them. We have taken down their license plate numbers, we have made notes of what their names are, and just like anything else in life, every action has a reaction. You cannot do anything in this life but that something happens in consequence for your actions and those people should not go without those consequences.[40]

. . . in my home community Philadelphia it isn't necessary to have a picket line around the plant, not thirty five pickets, not six pickets. We usually station one or two guys out there and sometimes, as I said before on other occasions, we merely put a sign on the gate. I predict to you that the time is coming in Sheboygan county, after these people learn the lesson they have coming to them, that it will no longer be necessary for us to have large picket lines either. They will have learned their lesson and learned it well.[41]

Statements such as these, especially when issued by a high ranking union organizer, would seem to cast considerable doubt on the sincerity with which he and other union spokesmen proclaimed abhorrence of violence

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[38] Ibid., pp. 8636-8637.

[39] Ibid., p. 8637.

[40] Robert Burkart's radio address quoted in Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 8644.

[41] Ibid., p. 8645.

and vandalism. The acceptance of this viewpoint should not be made without reservation. Responsible union members and leaders are as opposed to violence and vandalism as are other members of society. But the union attitude toward the strikebreaker, or "scab," and toward the employer who hires strikebreakers, is that such persons are stealing their jobs. A worker commonly feels that he has a property right in his job, even while he is on strike. Accordingly, a strikebreaker and the employer involved are committing a type of theft, or an act of "violence." Therefore the union feels it is justified in returning the "violence" perpetrated against its members. They are merely protecting their "property" -- in this case their jobs. While agreement with such an attitude is certainly not universal, its existence should be recognized before judgement is passed.

In any event, it appears that the Union must assume a part of the responsibility for the violent actions that took place in Sheboygan. Inflammatory speeches such as these must certainly contribute in some measure toward inducing bitter strikers to take actions they might otherwise deem unwise.

Home Demonstrations

As noted above, on September 1, 1954, the W.E.R.B. asked court enforcement of its order because of violations of the section forbidding intimidation of families and picketing of homes. These so called "home demonstrations" were investigated by the N.L.R.B.[42] The demonstrations

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[42]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1195-1196.

began as small neighborhood name-calling affairs; strikers, and often their families, would greet the returning non-striker with name-calling and heckling. This localized action soom attracted the attention of others, including the Union publicity directors and the local newspapers. Before long they "became disgraceful spectacles of mob proportions, with as many as 400, 500, and even 700 persons assembled."[43] The Union's part in this affair was pointed out by Examiner Downing as follows:

> The Union's strike bulletin of August 7, stated, for example:
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> "RECEPTION COMMITTEE . . . In a few days the activities of the 12th Street reception committee for the homecoming scabs has grown to such proportion that it now equals anything the North siders can put on . . . The gathering of people formed in front of 2216 S. 12th shortly after 3:30 on Monday to welcome scab Robert Heling . . . Five more homes were visited before the demonstrations came to an end."
>
> Though disclaiming that the demonstrations were planned by the Union, the Union's publicity was plainly designed to inspire and encourage their continuation and spread.[44]

The report further concludes that there was no evidence that any striker had gone to the demonstrations at the direction or suggestion of the Union or any Union officer.

Secondary Boycott

On September 30, 1954, the U.A.W.-C.I.O. announced a nationwide boycott against Kohler products.[45] Accounts of the boycott, from Union and Company sources are available in the testimony before the McClellan Committee, along with Kohler and U.A.W. C.I.O. publications. However, in an attempt to reduce bias and to gain a third-party-viewpoint on the

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[43] Ibid., p. 1196.

[44] Ibid., p. 1195.

[45] Collins, p. 14.

boycott, its operation and its effectiveness, this section is based on accounts found in U.S. News and World Report[46] and in Fortune.[47] Both sources agree that the boycott was instituted by the Union when it became apparent that efforts to shut down production had definitely failed and the strike seemed in danger of being lost. Although the boycott is an old union weapon, a consumer boycott on a nationwide scale with overall coördination by the U.A.W.-C.I.O. is rare.

To operate its boycott, the U.A.W.-C.I.O. divided the country into twelve districts with an international representative in charge of each. Each district had a force of men who, in effect, were salesmen against Kohler products. These men visited contractors, architects, and public officials, urging them to refrain from the use of goods manufactured by Kohler. The most powerful weapon in an action such as this, coöperation from union plumbers who install the fixtures, was virtually denied the Union. The plumbers were warned by their own union (an A.F.L.-C.I.O. affiliate) to avoid refusing to install or to handle Kohler fixtures. Such refusal could lead to a charge against the plumbers of illegal secondary boycott under provisions of the Taft-Hartly Act. Had the plumbers been free to support their brother union in this venture, a concerted refusal on their part to install Kohler fixtures could have caused the Company to capitulate to Union demands.

Reports concerning the effectiveness of the boycott vary, depending upon the source of information. During 1956 and 1957, the Union spokesmen

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[46]"Will a Boycott Win When a Strike is Failing?", United States News and World Report, January 25, 1957, pp. 106-109.

[47]"Pressure by Boycott," Fortune, August, 1956, pp. 185-186.

claimed that Kohler production was cut substantially. The Company claimed its business was close to normal. In addition, a local newspaper survey, cited by Fortune, showed only spotty success with most major cities in the country relatively unaffected.[48] How much the boycott actually cost the Kohler Company and its dealers will probably never be known. It definitely failed in its ultimate objective, namely, to bring about the submission by the Company to Union demands.

Employment Office Picketing

This rather short-lived phase of the strike, the employment office picketing, occurred during December 1954, and January 1955.[49] It was the basis for the Company's discharge of some thirty striking employees. The N.L.R.B. investigation found:

> . . . there were frequent instances when groups of pickets interposed themselves between approaching applicants and the entrance to the employment office, that the applicants either had to push their way through or walk around the pickets, and in the latter cases the pickets sometimes again shifted to interpose themselves, as the applicants attempted to sidestep them.[50]

As a result of these actions, the W.E.R.B. brought contempt proceedings against nineteen strikers and union officers for failure to obey its court enforced cease and desist order. After the hearing, the court found violations on the part of sixteen of those charged with contempt.[51]

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[48] Ibid., p. 186.

[49] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1196-1198.

[50] Ibid., p. 1198.

[51] Ibid.

This marked the end of any concerted illegal picketing action by the strikers.

Clayboat Riot[52]

A vessel from England, loaded with special clay used by Kohler in its manufacturing process, was due to arrive at Sheboygan on July 5, 1955. Kohler made arrangements for a small firm, Buteyn Brothers, to unload the clay when it arrived. The scheduled unloading never took place, prevented by a rioting mob. The unloading equipment brought to the dock by the Buteyn Brothers was damaged to the extent of six to seven thousand dollars.[53] Steen W. Heimke, then a captain of the Sheboygan Police Department, was dispatched to the scene. He testified before the McClellan Committee that he received no cooperation from Union officials, the county sheriff or the Mayor of Sheboygan in efforts to break up the mob. He further testified that attempts to move out the unloading equipment, the principal object of the mob's rage, were hampered by the fact that the tires had been punctured. In addition, there were not enough officers present to protect the equipment subsequently brought in to help move out the Buteyn Brothers' property. The equipment was finally removed with the help of the county highway department whereupon the crowd dispersed.[54]

As in the case of the home demonstrations, the Union disclaimed any responsibility for the people's gathering at the dock or for their conduct during the melee. Again, while no direct proof is available, the Union

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[52]New York Times, July 7, 1955, p. 53.

[53]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 9194.

[54]Ibid.

appeared to have a guiding hand in the affair. Prior to the arrival of the clayboat, the regular union radio strike broadcast stated:

> Also in the news, a clayboat loaded with clay for Kohler Company is expected to dock in Sheboygan Harbor sometime Saturday or Sunday. It is expected, of course, that a number of people will be on hand to meet and greet the clayboat when it arrives.[55]

Since this same program (a regular feature of the strike) was also used to deliver instructions to strikers and pickets, Senator Curtis suggested that this announcement was really an order for strikers to appear at the dock. Of course, the Union felt this implication was unjustified.

The principal Union figure present at the clayboat riot was Donald Rand, an administrative assistant to Emil Mazey, U.A.W.-C.I.O. International Secretary-Treasurer. Rand testified he was in Sheboygan to assist the local Union.[56] Under close questioning by committee counsel Robert Kennedy, he repeatedly denied that he or the Union were responsible for the actions taken by the strikers or had taken steps to promote the mob's presence at the dock.[57] That Rand's pleas of innocence failed to convince the Chief Counsel is evidenced by the following exchange:

> MR. KENNEDY. You went down to the dock three times, did you not?
> MR. RAND. Yes.
> MR. KENNEDY. Isn't it very peculiar that you happened to arrive at the dock on the three occasions when the crane was about to appear?
> At 7 o'clock in the morning you were there, and 11 o'clock in the morning you were there when all of this violence was done to the crane, and you were there again at 6 o'clock in the evening when they were trying to get the equipment out. That is the situation.
> And isn't it very peculiar that you happened to show up -- the international organizer of the UAW -- at the very time that these acts of

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[55]C.I.O. radio broadcast quoted in Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, pp. 9159-9160.

[56]Senate Committee on Improper Activities in the Labor or Management Field, Hearings, 1958, p. 9213.

[57]Ibid., p. 9235.

violence took place, and where these incidents occurred?

MR. RAND. I don't think that there was any accident insofar as me being there. I was not there all of the time. I was there for an hour, and I didn't come down there for any other reason than to see what was going on.

MR. KENNEDY. It doesn't make any sense. You were there at 7 o'clock and you had the conversations with Buteyn. You went back to your office and you came back at 11 o'clock, and at that time the equipment on the crane was wrecked. You stayed for a half hour, and the equipment on the crane was wrecked. You went back to your office and you remained in your office and you came back in the evening.

Then you swore at the man who was trying to get the equipment out of the dock. Those are the facts. And whenever there was some act of violence, or whenever there was a disturbance, Don Rand was there.[58]

Further support for Kennedy's apparent skepticism in regard to Rand's part in the riot is found in testimony of Peter Buteyn, whose equipment was damaged in the affair. He was asked whether there was any doubt in his mind that operations at the dock were being directed by Donald Rand. Buteyn replied:

There is no doubt in my mind but that he played a part in it, Mr. Chairman. Whether he played it alone or not, I wouldn't say. There might be others with him.[59]

Finally the N.L.R.B. recognized the Union's responsibility for the clayboat incident when, at a later date, they issued an order to the U.A.W.-C.I.O. to cease and desist from interfering with firms doing business with Kohler, specifically those unloading clayboats.[60]

Evictions From Kohler Company Owned Dwelling Places

On or about December 16, 1954, Kohler notified eight striking employees, residing in the company-operated American Club that, due to a

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[58] Ibid., p. 9275.

[59] Ibid., p. 9194.

[60] New York Times, September 6, 1955, p. 52.

shortage of rooms, they would be forced to vacate on or before January 1, 1955.[61] Five of the eight left prior to January 1, while the remaining three were awakened on that date and threatened with having their rooms double locked against them. These strikers thereupon moved out. None of these tenants was delinquent in his rent payments. Their average seniority with the Company was twelve years. All, however, were actively participating in the strike.

Two striking employees leased company-owned dwellings, together with small garden plots (about one half acre). When the leases expired on December 31, 1954, these tenants were likewise notified that it would be necessary for them to move out. Lymon C. Conger, Kohler's chief negotiator, said "we needed those houses for occupancy by people who were being employed by the Company."[62] Both lessees asked and received six-month extensions plus one additional month, in order to allow children to finish the school year and in order to find suitable quarters. Then they vacated as the Company had ordered. Both evicted strikers were longtime (eighteen and fifteen years) employees who had rented Company houses for several years.

Contract Negotiations

During the term of the strike, negotiations continued on an intermittent basis. Certain Kohler actions during these meetings form the basis for the N.L.R.B. decisions regarding "good faith" bargaining on the

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[61]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1186-1187.

[62]Ibid., p. 1187.

part of Kohler Company.[63] For the most part, the meetings which are of major interest occurred during the period from May 7, 1954 through September, 1954, and during August of 1955. As already noted, the Kohler Company refused to bargain with the Union during the initial period of mass picketing. In addition, subsequent actions on the part of the Union, such as the home demonstrations and assault cases, induced Kohler to cut off negotiations -- an attitude later upheld by the N.L.R.B.

May 7, 1954 negotiations. It has already been noted that Kohler Company filed a complaint with the W.E.R.B. charging that the Union's picketing action constituted an unfair labor practice. The Company asked for a cease and desist order. During the hearings before this Board, it was suggested to both parties that they resume negotiations and that the protagonists attempt to arrive at agreement on action constituting legal picketing. After some discussion, a meeting was arranged for May 7, 1954. The mass picketing was suspended then. No agreements were reached during the day. But as the normal closing time neared, the Union asked if Kohler would continue talks during the evening and over the following weekend (May 7th being a Friday). This request was refused by Kohler's representative, Lymon C. Conger, on the basis that previous negotiating procedures had excluded evenings and weekends. He further stated that he was willing to continue on the following Monday according to the established procedure. The Union refused Conger's offer. Mass picketing was resumed whereupon Kohler Company again withdrew from negotiations.

June and August negotiations. Once the Union had ceased mass picketing, in compliance with the W.E.R.B. order, negotiations were resumed.

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[63] Ibid., pp. 1168-1174.

The first session, lasting from June 1st to 25th, was described by the Trial Examiner:

> Negotiations were carried on almost daily from June 1 to 25. On the surface, at least, substantial progress was made toward reaching an agreement. Burkart testified that during those meetings Respondent made "the most important concessions" which it had made, and his summary of negotiations of June 20, showed numerous concessions and changes proposed or agreed to on the major issues of seniority, pensions, and insurance, as well as on other matters. Speaking on the Union's daily radio program during this period, Burkart similarly acknowledged that improvement had been made in the contract, and Grasskamp referred to the Company's apparent bargaining in good faith on major issues. The daily strike bulletins also carried similar comments on the Company's apparent sincere willingness to explore avenues of agreement.[64]

Despite these apparently encouraging signs, no final agreement was reached on the seven basic issues of conflict. Around June 24th, Conger pointed out that an impasse appeared to have been reached. He also raised the issue of violence and vandalism perpetrated against non-striking Kohler employees. He stated that if such actions could not be halted, Kohler would again discontinue bargaining. Further meetings yielded no progress; the vandalism continued. On June 29, Kohler Company notified the Union that the Company was discontinuing the bargaining sessions.

Meetings were resumed on August 4, 1954, with discussions centering on the seven major issues. After an exchange of letters setting out each side's major position, Kohler negotiators were asked "if the Company had made its final offer and if there was room for any further movement on the Company's part."[65] Upon being advised that this offer was final, Local President Grasskamp replied, "If this is the Company's final offer, the hinges on the door are in good working order and you can use them."[66]

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[64] Ibid., p. 1170.

[65] Ibid., p. 1171.

[66] Ibid.

Kohler men accepted the invitation and left the meeting. Negotiations remained suspended until September 1, 1954.

September negotiations. The negotiations which took place during September occupy an important place in the N.L.R.B. decision. These talks were given considerable attention by Trial Examiner Downing in his Intermediate Report.[67] The talks were initiated by Judge Armond F. Murphy, the judge hearing the W.E.R.B.'s application for a county circuit court order enforcing its cease and desist order against the Union. Judge Murphy, having had some experience in arbitration and mediation, suggested that the meetings be resumed. The Union quickly agreed. But Conger, Kohler's chief negotiator, expressed the view that any further meetings would be futile.

At the judge's insistance, a meeting was arranged for September 1st. Several other meetings with Judge Murphy followed, some with only one party and others jointly. The Trial Examiner points out that Kohler Company, true to its prediction of futility, set the tone of the meeting when they stuck to their offer of only a three-cent wage advance, even though it was pointed out that agreement with this term would mean a complete capitulation by the Union. On the question of capitulation by the Union, Judge Murphy gave the following testimony in regard to Kohler's position:

> He [Conger] said that there had been a bitter strike in 1934; that it resulted in 20 years of labor peace, and that he was going to insist that this strike bring to the Company twenty years of labor peace, and that at some place along the line he said, "We are going to teach the Union a lesson."[68]

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[67] Ibid., pp. 1172-1174.

[68] Ibid., p. 1172.

During the course of meetings, Judge Murphy met with Union representatives who told him that they would accept a seven-cent-wage increase. The judge became convinced that such an offer contained more than a reasonable chance of settling the strike. Judge Murphy testified before Trial Examiner Downing that in a meeting with Kohler to present the offer, he was surprised by Conger's unequivocal refusal and reiteration that there would be no further wage increase.

The trial examiner quotes testimony from the Union negotiator Kitzman to support the judge's contention that a wage increase of seven cents would wipe out all other areas of disagreement and settle the strike:

> Finally the Union told the judge that he could tell Mr. Kohler that we would take last year's arbitration clause, take our chance with it, and that we would take seven cents and three cents for the skilled trade workers. If that could be agreed to we had an agreement . . . . We told him that all the other issues in dispute would be washed out by this agreement.[69]

Kohler's opinion, as expressed by Judge Murphy, was one of extreme doubt as to whether certain other issues, such as seniority, were actually out of the way; and that a settlement could be reached based on wages alone.

It was during the September negotiations, in a private meeting between Conger and Murphy, that Kohler revealed its intention to discharge some of the strikers guilty of illegal conduct. It was stated that there might be fifty such cases, including, in all likelihood, those union members around the bargaining table. This matter was later discussed during the open meetings. It then became Judge Murphy's belief that wages and the return of the strikers constituted the principal issues separating the parties. Mr. Emil Mazey, Secretary-Treasurer of the U.A.W.-C.I.O.,

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[69] Ibid., p. 1172.

(who, the Trial Examiner points out, was not present at the early meeting when the above Union offer was made through Judge Murphy) took issue with Judge Murphy on this opinion, stating that, "the rest of the issues were still in the picture."[70] Professor Petro quotes Mazey during the N.L.R.B. hearings as follows:

> I disagreed very sharply with Judge Murphy. I said that the balance of the issues were still in the picture, and that the question of the return of the strikers to the job was not an issue, that the Union would insist on every striker being returned to his job without discrimination if a settlement were to be reached with the company.[71]

On September 12th and 13th, two articles by Chesly Manly concerning the Kohler strike appeared in the Chicago Tribune.[72] In his account of the September negotiations, the Trial Examiner makes note of these articles, pointing out that a part of the material in them was obtained from Kohler Company sources, and portions were reprinted in Kohler's publications, People. The lead article begins with the frank statement that the U.A.W.-C.I.O. had lost the strike and goes on to relate that the opinion of some public officials in Sheboygan County supported this view. The importance the N.L.R.B. attached to these articles will become apparent during the analysis of the Board's decision.

Negotiations following September, 1954. In the words of the Trial Examiner, subsequent negotiations were:

> . . . significant mainly in that certain aspects not only confirm the earlier findings of a refusal to bargain but show affirmatively that Respondent engaged in further acts and conduct which independently constituted refusals to bargain, as well as discrimination. Briefly it can be found that no progress was made on the contract issues, and that the

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[70]Ibid., p. 1174.

[71]Sylvester Petro, The Kohler Strike (Chicago, 1961), p. 28.

[72]Chicago Tribune, September 12th and 13th, 1954.

question of the reemployment of strikers became more and more of an obstacle, particularly after Respondent discharged 90 strikers on March 1, 1955.[73]

Since no progress was made toward settlement of contract issues during these meetings, space will be awarded only the August, 1955 talks which are important to an understanding of the N.L.R.B. decision.[74] These meetings were mainly concerned with the issue of reinstatement of all strikers, including those discharged for misconduct. Failure to reach any agreement in this area eventually caused their collapse. Early in August, the Company had renewed a wage settlement offer made earlier during July, 1955 meetings. This offer provided a one year contract, incorporating provisions already agreed to, along with a general wage increase of five cents, plus an additional five cents to nonincentive workers and a re-employment plan excluding only those discharged for unlawful conduct. Upon refusal of this offer at a mass union meeting, Kohler Company placed the wage portion of the offer into effect without notification to the Union, which learned of the decision through a Kohler newspaper release.

The walkouts of Kohler Company during contract negotiations, the unilateral granting of wage increases, the evictions from company-owned dwelling places, and the discharge of selected shell department employees lead the U.A.W.-C.I.O. Local 833 to prefer charges of unfair labor practices with the N.L.R.B. Following hearings before the Board's Trial Examiner, a Decision and Order was issued on August 26, 1960.

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[73]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1176.

[74]Ibid., p. 1179.

CHAPTER IV

THE N.L.R.B. DECISION - ANALYSIS AND EVALUATION

During July of 1954, U.A.W.-C.I.O. Local 883 filed a complaint with the National Labor Relations Board, charging Kohler Company with unfair labor practices under the provisions of the National Labor Relations Act of 1947. Held before N.L.R.B. Trial Examiner Downing, the resultant hearing was prolonged for nearly three years, ending with the issuance of the Trial Examiner's Intermediate Report.[1] Both parties filed exceptions to the Intermediate Report. In due process of law, the entire matter was placed subsequently before the N.L.R.B. The Board, having reviewed the proceedings, issued its Decision and Order on August 26, 1960.[2] Kohler Company appealed the Decision and Order to the United States Court of Appeals for the District of Columbia Circuit, seeking a review of the Board's adverse determinations. In the same Court, the Union sought reversal of the Board's sanction of the discharges of seventy-seven Kohler strikers for illegal conduct. The N.L.R.B. petitioned the Court asking enforcement of its order. The Court's determination in these matters is discussed at the conclusion of this chapter.

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[1]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960).

[2]Kohler Company, 128 N.L.R.B. 122 (1960).

Cause of the Strike

The U.A.W.-C.I.O. charged that the strike was provoked by unfair labor practices on the part of Kohler Company. Basically, these charges involved the assertions that: (1) from the start of negotiations, Kohler Company engaged only in surface bargaining through delay and interruption of bargaining sessions, in bargaining with the purpose of undermining the status of the Union, and in a demonstrated determination to defeat the goal of collective bargaining as defined by law; and (2) by Kohler's refusal and/or delay in supplying certain information in regard to rates of pay, information which the Union had previously requested.

In the first instance, the Board denied the Union charge, agreeing with the Trial Examiner, who failed to find any evidence proving that Kohler engaged only in surface bargaining prior to the strike. In reaching this decision the Board cited, as an example of Kohler's willingness to bargain, the successful negotiations that resulted in the 1953 contract, a contract widely praised by Union spokesmen. In addition, it is pointed out that negotiations on a new contract (the 1953 agreement expiration date was March 1, 1954) were suggested by Kohler as early as December, 1953, but due to the Union's request for additional time did not actually commence until February 2.

A review of these early meetings showed much progress had been made on minor matters. Despite Kohler's requests, the Union avoided discussing more basic matters at the early meetings. Final positions were later assumed by both parties during the March meetings. As a strike seemed imminent, both sides began strike preparations though negotiations continued.

By late March, it was Kohler's contention that the only real issue on the table was whether or not the Union was willing to accept the Company's proposals. At this time, the Union's chief spokesman, Robert Burkhart, stated "the Union was there to negotiate . . . and if you (Respondent) are not here to negotiate there is the door, you are free to go through it at any time."[3] Kohler thereupon left the negotiations.

Summarizing, the Board noted: (1) Kohler urged early negotiations, though the Union delayed them; (2) Kohler urged the parties to take up basic issues, while the Union insisted on settling minor matters first; (3) Kohler never failed to attend regularly scheduled meetings, withdrawing only at the Union's invitation. Further, no evidence was presented proving Kohler's intent to undermine the status of the Union; nor could Kohler's strike preparations (made in the face of a Union affirmative strike vote) be held as evidence of failure to bargain in good faith. In conclusion, the Board decided that:

> In view of the foregoing, and the entire record in this matter, the Board finds that the evidence as a whole does not support the allegation that the Respondent was engaged only in surface bargaining prior to the strike.[4]

With regard to the charge that the Kohler Company failed to supply or delayed supplying certain wage information thus provoking the strike, in part, the Board ascertained that the following situation existed. The 1953 contract had provided for a study of job classification and wage inequities. In this regard, the Union, orally, and later in writing, requested information about average incentive earnings in all incentive

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[3]Ibid., p. 1068.

[4]Ibid., p. 1070.

operations. To lighten the burden of this task, the Union agreed to accept these reports a division at a time. The first report, covering the pottery division, was delivered in December of 1953.

In February, 1954, after the negotiations began on the new agreement, the Union renewed its request for the material. Conger said the report on the enamel-ware division was available, but he wished to check it himself. He then proposed that the subject of inequities be dropped until the regular bargaining issues had been disposed of. The Union agreed that these matters could be left until later negotiations. It was not until August 8th, well after the strike had commenced and after a heated Union request on June 11, that the enamel-ware report actually was delivered with the date, June 14, 1954.

Following this, as part of a modified contract proposal, the Union again requested information on wage inequities. The Kohler Company responded by complaining that previous attempts to settle the inequity issue had failed. They claimed that this was due in part to the Union's insistence on the presentation of information which was neither readily available nor necessary for bargaining. The remaining information, or about thirty-five per-cent of that requested, was never supplied.[5] In addition to this, the Board pointed out that during February negotiations, the Union had requested some separate wage data for certain tool and die workers, and that this data was likewise never furnished.

The Board thereupon determined, in agreement with the Trial Examiner, that the requested information was necessary to proper performance of the Union function; therefore, the request was considered appropriate. The

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[5] Ibid., p. 1072.

problem of wage inequities, although not one of the seven major issues, might have provided a basis for further agreements had it been solved. It was held further that Kohler was justified in delays prior to June 11, because no apparent urgency had existed up to that point. Any delay past June 14, (date of the enamel-ware report) was held unjustified. Therefore the Board found that Kohler, because of its delay on or about that day, failed to bargain in accord with the provisions of the Taft-Hartley Act. In addition, the same ruling was applied to Kohler's failure to supply the remainder of the information requested.

Kohler's defense of its position in regard to this charge was predicated on these facts:

> . . . (1) both parties considered the subject of inequities a side issue which had been sidetracked early in the negotiations, and therefore the delay in furnishing the information did not impede the process of bargaining; and (2) its time was fully occupied with more vital matters, namely, bargaining with the Union and attempting to obtain legal relief from the mass picketing.[6]

> With respect to the failure to furnish the remaining thirty-five per-cent of the average incentive earnings, the Respondent contends, inter alia, that the matter of inequities was settled during the early August bargaining by agreement reached on the procedure to be followed after the Union returned to the plant and therefore, it was not incumbent upon it to supply any additional information until the strike was over.[7]

The basis for the Board's decision in this matter was found upon its rejection of the Kohler argument. In the Board's opinion, the evidence pointed only to the fact that the issue was merely postponed rather than sidetracked. It was further asserted that due to lack of data, the Union had been unable to present cogent proposals on wage inequities in early negotiations. Therefore, the Union agreed to postpone bargaining on this

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[6] Ibid., p. 1073.

[7] Ibid., p. 1075.

issue until the information was supplied. In summary, it is noted that, even though actual negotiations were postponed by agreement, there was no agreement that delivery of the data was to be postponed. Furthermore, states the Board, the record showed at least four Union requests for the material following the agreement to delay negotiations.

The Board dismissed Kohler's "vital matter" argument by stating that:

> . . . It would appear incongruous to find that it was more "vital" to meet with the Union than to supply, with reasonable promptness, that information without which there could be no intelligent bargaining on at least one issue which separated the parties during those meetings, and that information which may have led to further agreements and conceivable the ultimate elimination of the picket line.[8]

It was pointed out subsequently that the record provided no evidence that Kohler's time was occupied so fully that it could not comply with the Union's request within a reasonable time; nor was there any evidence that the clerical checking necessitated Conger's personal attention. With regard to Kohler's failure to supply the remaining thirty-five per-cent of the data, the Board rejected this argument also, pointing out that the evidence showed the agreement referred to by Kohler concerned only job content and job standards unrelated to the matter of incentive earnings.

Summarizing, the Board pointed out that, (1) Kohler, prior to the strike, did not engage in surface bargaining; (2) prior to the strike, Kohler did not refuse to bargain through refusal to supply certain requested information; therefore, "the strike was caused by failure of the parties to reach a contract and was for economic reasons at its inception."[9]

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[8]Ibid., p. 1074.

[9]Ibid., p. 1077.

Conversion to Unfair Labor Practice Strike

The conversion of what the Board had determined was an economic strike at its inception to an unfair labor practice strike was based on Kohler's actions in regard to the three-cent wage increase granted the non-striking workers.[10]

In reviewing the situation, the Board found that the Kohler Company had not offered the Union the three cent increase, in connection with the expiring contract. The Company offer had been tied to the acceptance of Kohler's contract proposal of February 15. It was then pointed out that the three-cent increase, along with continuation of the 1953 contract, was put into effect unilaterally, and without notice to the union (italics mine). The Board based its decision, with respect to continuation by Kohler of the February, 1953, contract, on the following:

> The Respondent's bargaining committee indicated that Respondent would "continue the past practice and operate along the lines of the expiring contract." On March 10, through its publication, People, Respondent notified its employees that the checkoff authorizations expired with the contract and were no longer recognized, but that the pension and insurance plans would continue unchanged. With respect to other contract provisions, it stated:
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> > Some employees seem to be of the opinion, either through confusion or misrepresentation, that the company now may take away rights and privileges that they have enjoyed over the past years (many of which were in effect long before there ever was a contract with this union). Such is not the case. While there is no contract in effect at this time, many times in the past the company has operated without a contract. It plans no radical changes in its policies which have been carefully worked out over the years even though no contract exists.[11]

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[10] See Chapter II, p. 16.

[11] Kohler Company, 128 N.L.R.B. 122 (1960), p. 1077.

The Board's findings continue, pointing out that substantial differences existed between the February 15th proposed contract and the 1953 contract. Kohler's actions prevented the Union from obtaining credit or reward for the increase actually granted by the Company. Since Kohler had never offered the three cents, plus the old contract, which they demonstrated their willingness to grant, no impasse on wages could be said to exist prior to the strike. The N.L.R.B. then concluded that this action constituted refusal to bargain within the provisions of the Taft-Hartley Act. The basis for such a decision is found in the following statement by the Board:

> It is well settled that the act presupposes that an employer will not alter existing conditions without consulting and granting the exclusive bargaining representative an opportunity to negotiate on any proposed changes, and for an employer unilaterally to grant a wage increase without first consulting the exclusive bargaining representative and giving it an opportunity to negotiate, regarding such proposed changes is evidence of bad faith. Morever, wage increases granted at a time when rates are an issue and under circumstances calculated to minimize or deny the effectiveness of the bargaining representative constitutes action indicating bad faith. On the other hand, the Board and courts have held that under certain circumscribed conditions where the increases were given in such a manner as not to disparage the Union or the bargaining process it was lawful for an employer to grant a wage increase even though wage rates may be an issue in bargaining and the parties have reached no impasse. The Respondent claims that its conduct meets such circumscribed conditions.[12]

According to the Board, Kohler did not discuss or offer the wage increase it ultimately granted, nor did it suggest to employees that it had discussed this matter with the Union or that the Union had rejected the proposal. Instead, Kohler placed the increase into effect without notice, discussion, or negotiation, consistently denying the Union the opportunity of accepting the increase as granted. In support of this latter

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[12] Ibid., pp. 1078-1079.

contention, the Board cited the September negotiations wherein Kohler stated that if the Union wished to renew the old arbitration clause, it could do so. But the Company made the stipulation that the Union must take the entire old contract as it stood previous to the strike -- without the three-cent increase in wages.[13] Therefore, it was found that "the unilateral wage increase disparaged the Union and the collective bargaining process"[14] as defined in Taft-Hartley.

After determining that the increase was actually granted effective June 1, 1954, the Board turned its attention to the matter of whether this action prolonged the strike and thus converted it to an unfair labor practice strike.[15] In reaching a decision on this question the Board observed that the increase was granted at a time when negotiations were resuming (after interruption due to the mass picketing), and that the issue of wages was a major one separating the parties. In the Board's opinion, the unilateral granting of the wage increase without public notice at that particular point in the strike was not consistent with good-faith collective bargaining.

In addition, it disparaged the Union as a collective bargaining agent at a critical time; namely, when the plant was reopening and negotiations were being resumed. It is further pointed out that Kohler must have been aware that the Union, to maintain their reputation and their position as representative, would be forced to continue the strike until they were able to achieve the minimum benefits Kohler had voluntarily

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[13] Ibid., p. 1078.

[14] Ibid., p. 1080.

[15] Ibid., pp. 1083-1084.

bestowed upon the non-strikers. Thus, Kohler's refusal to offer three cents plus the old contract (which Kohler held would be rewarding the Union for striking) created a situation wherein, theoretically, the strike would never end.

On this basis therefore, the Board determined that:

> . . . the Respondent aggravated its differences with the Union, particularly on one of the admitted major issues of bargaining, i.e., wages, and created a serious impediment to the settlement of the strike, with the result that the economic strike was prolonged and consequently converted into an unfair labor practice strike.[16]

The significance of this decision lies in the fact that established Board practice (upheld by the courts) permits employers to retain workers hired to replace strikers during an economic strike. When the employer, through some violation of the law, converts an economic strike to an unfair labor practice strike, the Board requires that replacements hired after conversion must be fired, if necessary, in order to reinstate the returning strikers.[17] In Kohler's case, this becomes extremely important, inasmuch as they had assured replacements they were receiving permanent employment and would not be dismissed to accommodate returning strikers.

Kohler Company defended its action by citing the Bradley Washfountain case wherein the courts upheld the granting of wage increase during contract negotiations.[18] A review of this case shows that contrary to Kohler's action, the employer in question offered the Union the identical wage and other benefits which it subsequently placed in effect. In

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[16] Ibid.

[17] Charles O. Gregory, Labor and the Law (New York, 1958), p. 372.

[18] National Labor Relations Board v. Bradley Washfountain Company, 192 F. 2d 144 (1951). Also listed in N.L.R.B., Court Decisions Relating to the N.L.R.A. (Washington), VIII.

addition, the employer notified his employees that this proposed increase had been offered to the Union's bargaining committee and rejected by them on the basis that the wage adjustment was unsatisfactory. Kohler Company clearly did not grant its employees the identical terms which it had placed before Local 833's bargaining group. Neither did the Company suggest to the employees that such an offer had been rejected by their bargaining committee. In light of this behavior, it is difficult to disagree with the Board's statement: "We cannot conceive facts more unlike those presented in Bradley Washfountain or conduct more calculated to undermine the effectiveness of the bargaining agent."[19]

Professor Petro's main criticism of the Board's findings follows a purely legalist approach.[20] He holds that the old contract had expired, hence ceased to exist; therefore, the ruling that Kohler granted the three-cent increase plus the old contract is an impossibility. In support of his contention that the old contract was not granted, he calls attention to the fact that not all contract provisions (dues check-off) were continued by Kohler. Petro's reasoning clearly ignores the Board's wording of its findings, as quoted on page 58, and hence must fail. While it is true the Board often referred to Kohler's action as granting "three cents together with the provisions of the 1950 contract"[21] they clearly defined the continuation of past practices common to that contract as being synonymous with that document. Furthermore, by granting a three cent wage increase, and by continuing to operate along the lines of the

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[19]Kohler Company, 128 N.L.R.B. 122 (1960), p. 1080.

[20]Sylvestro Petro, The Kohler Strike (Chicago, 1961), pp. 47-54.

[21]Kohler Company, 128 N.L.R.B. 122 (1960), p. 1078.

old contract, Kohler conveyed to non-striking employees a program which it had denied the Union. This action constituted an unfair labor practice as the law is presently interpreted. The fact that the old contract had expired is irrelevant.

Discharge of Shell Department Employees

The N.L.R.B. found the treatment of temporary employees in the shell department to constitute an unfair labor practice, holding that Kohler discriminatorily fired the fifty-three workers for the sole reason that these employees were on strike. The finding further maintains that employees later rehired under a second similar defense contract were discriminated against in that the Company failed to offer them the same seniority privilege granted non-striking temporaries. Finally, the Board concluded that Kohler failed and refused to bargain with the Union during June negotiations when it discharged some and transferred other temporary workers without notification to, or negotiation with, the Union. The Board held that all these unfair practices prolonged the strike.[22]

Since the Board did not see fit to include its reasoning on this matter, merely noting its agreement with the findings of the Trial Examiner, it is necessary to turn to the Intermediate Report for an explanation of the ruling.[23] In laying a foundation for the finding, attention is drawn to negotiations on the subject which took place following the shell department contract termination announcement of March 2, 1954.

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[22] Ibid., p. 1084.

[23] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1165-1168.

These discussions occurred principally during June, and resulted in the following agreement: should jobs become available, these employees would receive first consideration for rehiring during a ninety-day period. If rehired during this period, these workers would receive seniority from their original employment date.

The Trial Examiner then proceeds:

> In the discussions concerning the shell department employees no differentiation was made as between strikers and nonstrikers, and the Respondent at no time prior to July 1, notified the Union of its intention or plan to differentiate between them with respect to their tenure, status, seniority, or transfer rights. Neither did Respondent notify the Union of the discharges on July 1, of the basis of its selection, of the identities of the discharges, or of the fact that it was according transfer and seniority privileges to the non striking temporaries whom it retained.[24]

As to the charge of discrimination, the examiner decided that the evidence shows that the fifty-three were discharged only because they were on strike. He based his reasoning on the fact that only those on strike were dismissed, while nonstrikers were retained in permanent jobs. In addition, discrimination is seen in the awarding of seniority dating from original employment to only those rehired prior to the new shell contract, while denying any seniority to those rehired to meet the second contract. The refusal to bargain charge is based on the fact that the discharges were carried out without any notification to the Union, other than the announcement of March 2nd, and that no question as to who would be released or retained was submitted to negotiation.

The Kohler defense rests on two points; (1) its actions were in strict accord with the old contract and the agreement reached in subsequent negotiations, and (2) had they dismissed strikers and nonstrikers

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[24] Ibid., p. 1166.

alike, they would have locked out the nonstrikers; an offer of transfer to the strikers would have constituted solicitation, thus leaving themselves vulnerable to a charge of unfair labor practice on either count.

The Trial Examiner refused to accept either argument of the Kohler defense. His position was that, while Kohler had dismissal rights, nothing in the contract or agreements justified the basis of its selection; i.e., firing strikers only. It is noted that the notice of March 2 indicated all temporary employees would be dismissed. This ignores the fact that as of March 2, Kohler had no way of knowing that its plant would be under strike, and that in order to operate it would need those temporary employees willing to work. Regarding the second contention of Kohler, the trial examiner held that all that was required of Kohler was the making of the offer of employment on a non-discriminatory basis, and that a charge of solicitation could have been avoided had the offer been made through the Union, and not offered directly to the strikers. On this point it is concluded:

> . . . Yet though the June negotiations covered the subject of temporary employees in general fashion, and included the Respondent's agreement to give "consideration" to the temporaries for other employment, Respondent gave no hint of its plan to transfer only the nonstrikers, thereby removing from the orbit of the bargaining negotiations a matter with which the Union as the statutory representative of all the employees was directly concerned and on which it was entitled to bargain.[25]

The point is then made that:

> . . . whether negotiations on the subject would have been successful or unsuccessful, they were a necessary step in performance of Respondent's obligation to bargain with the Union and to avoid unilateral action which would derogate from the Union's status as the bargaining representative of all employees.[26]

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[25] Ibid., p. 1167.

[26] Ibid.

While the findings of the trial examiner concerning the shell department discharges are undoubtedly valid, they appear to be grounded more than anything else on a technicality. Downing puts considerable emphasis on the fact that Kohler's announcement of March 2 indicated that all temporaries would be discharged, but that their subsequent action excluded non-strikers. This, the trial examiner found, indicated that fewer jobs were available than there were people to fill them, so that negotiation concerning those to be retained was clearly called for. In addition, the action resulted in discrimination against the strikers. Kohler apparently could have avoided this charge had it released all the workers as it indicated it would do, and then had rehired those willing to work as permanent employees through normal employment channels. The end result of this action would have been the same as demanded by Downing for legality; hence the suggestion that this ruling is grounded on a technicality.

As to the charge of discrimination in the re-employment of striking temporaries under the second shell contract, Kohler's guilt is clear. Strikers who responded to the job offers under the second contract were only granted temporary employment, although permanent employment was at the same time being granted new employees with no previous experience at Kohler.

Unfair Labor Practice Charges Associated With Labor-Management Negotiations

May Negotiations. The Union charged the Kohler Company with failure to bargain in good faith when the Company refused to meet during the weekend that followed resumption of bargaining on May 7. The Board denied this charge, citing the fact that Kohler did agree to meet on the

following Monday as prescribed by previously established procedure.[27] In addition, they accepted Kohler's explanation that it needed the weekend to prepare for the Federal Court action pending. The Board pointed out that this was essentially the same reason the Union had given when requesting a delay in the W.E.R.B. hearings on mass picketing.

June and August Negotiations. The Board found that the negotiations conducted during June and August lacked good faith on the part of Kohler. Principal basis for this finding was in Kohler's refusal to bargain on wages; i.e., its continued refusal to offer the 1953 contract plus three cents wage increase.[28] In further support of its finding, the Board called attention to Kohler's actions with regard to the shell department employees, its use of detectives during this period, and its failure to supply the requested wage information within a reasonable period. The Board pointed out that while these latter actions did not necessarily impede contract negotiations on the seven basic issues, they did furnish evidence supporting the Board's position.

September Negotiations. The N.L.R.B., in agreement with the findings of the trial examiner, held that Kohler entered the September negotiations with intent to avoid an agreement; that throughout these talks, and at all times thereafter, Kohler refused to bargain in good faith.[29] Here it is again necessary to turn to the Intermediate Report in order to understand the reasoning behind the finding.[30] Examiner Downing, following a summary

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[27] Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1084-1085.

[28] Ibid., pp. 1085-1086.

[29] Ibid., p. 1086.

[30] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1172-1176.

of the June and August negotiations stated:

> But in any event, the final insight into Respondent's true attitude and intent was supplied during the September meetings. The upshot of those meetings, as Conger had predicted in advance, was futile. But what the evidence showed was that the futility was due to Respondent's deliberate contriving; that Respondent was bargaining not to reach but to avoid agreement; that it was seeking the Union's complete capitulation, not simply for a normal contract term, but pursuant to its announced intention "to teach the Union a lesson" (for having called the strike), it envisioned a settlement which would bring the Company twenty years of labor peace, as had the 1934 strike.[31]

Reasons advanced by the trial examiner to support his contention that Kohler Company was not bargaining in good faith include the lack of a pretense of bargaining during the meetings with Judge Murphy, and the forestalling of a chance that the Union might accept the three cents offer (already granted nonstrikers) by imposing its forfeiture as a condition of acceptance by the Union of the old arbitration clause during private meetings with Judge Murphy. It is further stated that the Company's change in attitude toward avoidance of an agreement apparently came from its feeling that Kohler had won the strike. The basis for this observation (since the Company had never made such an announcement) is the articles in the Chicago Tribune written by Manley who, it is held, relied largely upon information supplied by the Company. Therefore the trial examiner had drawn the following conclusion: "It is apparent from the entire evidence that Respondent had entered the September negotiations with intent to avoid agreement."[32]

In addition to the findings of the trial examiner, the Board called special attention to its belief that Kohler first revealed its intention

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[31] Ibid., p. 1175.

[32] Ibid.

to refuse re-employment to those it felt were guilty of gross unlawful conduct in the meetings with Murphy. At the time that Harvey Kitzman, the Union's representative, made his settlement offer to Judge Murphy, he was unaware of this new issue which was to stall a settlement. Therefore, in the Board's opinion, Mazey's later remarks that no settlement could be reached without complete reinstatement could hardly cast doubt on the integrity of Kitzman's proposal.[33]

Professor Petro's principal disagreement with the N.L.R.B. ruling concerns the right of either party during collective bargaining negotiations to stiffen its position when they feel that they have won the conflict.[34] After noting that newspaper articles (Manley's), whatever their source, are an unsound basis for a decision of this nature, Petro continues:

> But even if the inference were sound it would have been legally irrelevant. There is nothing illegal when one party concludes that it has been victorious in a strike. Furthermore, there is nothing illegal when conduct is adjusted in accordance with such a conviction. If a union raises its demands because it feels that it can win or has won a strike, the law does not hold that the union has committed an unfair practice or a refusal to bargain. The law is the same for both union and employer; both have a duty to bargain in good faith. Therefore, it is perfectly lawful for an employer to stiffen in his position when he feels that the economic facts are with him . . . .
>
> And that is of course, all that the Kohler Company did during the September negotiations.[35]

Petro's comments appear logical; it would seem naive indeed for anyone, including the N.L.R.B., to expect an employer who has apparently broken a strike with his production approaching normal to appear at the

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[33]Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1086-1087.

[34]Petro, pp. 67-72.

[35]Ibid., pp. 68-69.

bargaining table and to make major concessions. The Board, however, rightfully found that in this instance the Kohler Company went far beyond an attitude of "stiffening resistance" during the September negotiations. The Board decided that Kohler was determined not only to force the Union to accept the Company's terms but also to punish the Union for striking in the first place. In making this decision, the Board depended heavily on the testimony of Judge Murphy, and seemed especially influenced by the following statement, quoted earlier, concerning Conger's attitude.

> He said that there had been a bitter strike in 1934; that it resulted in twenty years of labor peace, and that he was going to insist that his strike bring to the company twenty years of labor peace, and that at some place along the line, he said, "We are going to teach the union a lesson."
> Judge Murphy added that, "On the question of twenty years of labor peace, I heard that said many times, and everybody did."[36]

In addition to the above, the Board credited numerous items of testimony by Judge Murphy to the effect that Kohler's attitude with regard to bargaining in good faith consisted of appearing at the sessions without making any pretense of reaching an agreement. It appears from the above that while Petro's arguments may have general relevance, especially in regard to the right of a party to stiffen its position, Petro's arguments do not controvert other evidence that Kohler was no longer bargaining in good faith.

Break-off of Negotiations by Kohler. Kohler Company, on April 5 (beginning of the strike), June 29, and August 18, 1954, broke off negotiations in protest against various forms of misconduct on the part of the Union. Each of these instances resulted in a charge of an unfair

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[36]"Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), p. 1172.

practice being lodged against Kohler by the Union. The N.L.R.B. supported Kohler's position in regard to the period from April 5 to June 1, as evidenced by the fact they did not find Kohler guilty of failure to bargain in good faith prior to June 1. There remained, however, the terminations of June 29 and August 18. In both these instances, the Board upheld Kohler's actions, basing its decision in the former case primarily on the assault by Vinson and in the latter on the home demonstrations. But on several occasions following the August 1 breakoff, Kohler Company did break off negotiations -- terminations not attributed to misconduct on the part of the Union -- and the Board found each instance following August 18, 1954, to constitute a refusal to bargain.[37]

August 5 Wage Increase

The N.L.R.B. found that Kohler Company separately and independently violated the Taft-Hartley Act by granting unilaterally to the nonstriking employees the August, 1955 wage offer rejected by the Union. This unfair labor practice contributed to the prolongation of the strike.[38] The Board made no statement concerning the decision, other than its agreement with the finding of the Trial Examiner.[39] Examiner Downing holds that there was no impasse on wages at this point, but merely an exchange of proposals. In addition, he cites the failure of Kohler Company to advise the Union of its intention to grant the increase and its ill-advised

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[37] Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1087-1088.

[38] Ibid., p. 1088.

[39] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1179-1180.

announcement of the increase through the newspapers. These latter actions were held to be further evidence of Kohler's lack of good faith and its deliberate public disparagement of the Union and the collective bargaining process.

At first glance it might be concluded that Kohler's action in granting the wage increase was legal (following Bradley Washfountain), in as much as the entire offer was rejected at the Union's mass meeting. Petro adopts this line when he states: "an employer may unilaterally adopt proposals which the union has definitely rejected."[40] A closer examination of the record fails to substantiate so literal an interpretation. It shows that during the August negotiations the wage offer was merely a part of an overall proposal, which included a re-employment plan. Negotiations during this period centered on the employment issue with practically no time spent on other contract issues, including wages. It will be recalled that in the Bradley Washfountain case the employer's action came only after prolonged negotiations on that specific subject. More importantly, the Bradley Washfountain court emphasized the fact that the intended actions of the Company were clearly made known to the Union negotiators before any action was taken. In addition, the employees also were informed of all circumstances by the Company, so that in no way was the Union disparaged in the eyes of the employees. No action of this sort was taken by Kohler Company. Their behavior in this instance clearly places them outside the law while upholding the validity of the Board's Decision and Order.

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[40]Petro, p. 40.

Solicitation, Interference, Restraint, and Coercion

The Union charged Kohler with twenty-one specific acts of interrogation, solicitation, interference, restraint, and coercion, of which all but two alleged acts occurred after the strike had begun. The Board upheld only two of these charges.[41]

The first case involved solicitation of a skilled enamel color mixer. The Board relied upon evidence developed during the N.L.R.B. hearing which proved that this particular employee, a striker, was approached by his former supervisor and offered benefits not ordinarily forthcoming if he would return to work on even a part time basis.

The second case, one of coercion, occurred before the strike began. The employee involved was a chief steward and was engaged in handling a grievance for one of the Union members. His supervisor approached the steward and suggested that the grievance was really unwarranted. The supervisor advised him that to continue processing would put him in a bad light with the Company and would not help his Company record. Later another foreman approached this employee, and suggested that as a result of the steward's efforts in the Union behalf, "you will be out in the cold,"[42] should the strike be unsuccessful. The foreman suggested that he drop his Union affiliation and come to work in a different department. The Board found the remarks of both men, the supervisor and the foreman, of a restraining nature, tending to discourage the employee's activities as chief steward.

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[41] Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1088-1091.

[42] Ibid., p. 1091. A misprint on this page leaves out "you" as shown in authors quote.

Evictions

The Board found that Kohler's treatment of strikers living in the American Club, plus two employees who rented Company dwellings, was discriminatory; and therefore was an unfair labor practice.[43] Their decision is not discussed in the order, but is based on the Trial Examiner's Intermediate report.[44]

In both cases, the decision rests on evidence which supports the contention that the action was taken solely because the men were on strike, and hence was discriminatory, tending to discourage Union membership. Evidence cited includes the fact that the eviction notices were sent only to strikers, with no attempt to evict non-employees residing in the dwelling places, although the Company reportedly required a large number of rooms for active employees. Neither was any attempt made to convert transient rooms to permanent status, nor were any transient rooms offered to the evicted strikers.

The trial examiner concludes:

> But whether viewed as simple discrimination, or as retaliation for continuing on strike, or as coercion to abandon the strike, the evictions were an unlawful restraint on the employee tenants' rights to engage in the strike as guaranteed by Section 7 and 13 of the Act [Taft-Hartley]. The tenant strikers still remained employees under the Act, and Respondent could not lawfully restrain or coerce them in the exercise of those rights.[45]

While not being explicit, the Trial Examiner held that the findings in the American Club evictions applied in a like manner to the treatment

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[43] Ibid., p. 1092.

[44] "Intermediate Report and Recommended Order," Kohler Company, 128 N.L.R.B. 122 (1960), pp. 1188-1189.

[45] Ibid., p. 1188.

of the men leasing company-owned houses, so that these evictions were likewise considered an unfair labor practice on the part of Kohler Company.

Unlawful Surveilance

The Board found that the Kohler Company "received, freely accepted, and paid for many detective reports concerning matters plainly outside the scope of lawful inquiry."[46] Basically those reports concerned: (1) beliefs of the strikers concerning issues involved in the strike, i.e., whether the strike was broken or not, and chances of a Union settlement at less than current demands; (2) inquiry into the private lives of Union leaders; and (3) checks on movements of Union leaders at strike headquarters and other common meeting places of strikers. All these actions were cited by the Board as being in violation of Taft-Hartley and hence constituting a series of unfair labor practices.

In addition, the Board refers to the reports of an interview with a professional strikebreaker, Ralph Knox, and a personal visit to him by a Kohler official, Lyman Conger. It also cited discussion in which the detectives suggested placing listening devices in the Union strike headquarters. No violation was found in these instances, inasmuch as no evidence was presented to show that these suggestions were ever carried out. The Board stated that discussions of such a nature added support to its previous finding that Kohler Company failed to bargain in good faith after June 1, 1954.

Kohler Company defended its actions in this matter on the grounds

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[46]Kohler Company, 128 N.L.R.B. 122 (1960), p. 1099.

that it employed detectives in order to obtain information pointing to the perpetrators of unlawful acts, and to attack the credibility of Union witnesses.[47] Had they confined their actions in this manner, the decision probably would not have gone against them. The record reveals, however, that the blanket surveilance which the Company effected was far broader than that necessary to detect law breakers.

One report, in particular, did more than any other to discredit the Company's defense and to convince the Board of the correctness of its decision. This report concerned an investigation into the activities of one Albert Gore, a counsel for the Board's General Counsel.[48] It was found that Kohler's detectives were, unknown to Gore, present when he discussed the case with Sheboygan city and county officers and that a complete report of this meeting was made to Kohler officials. Other reports covered Gore's parentage, place and time of birth. Such actions as this, along with the suggested "bugging" of union rooms cast sufficient doubt on Kohler's defense to invalidate it.

Discharge of Selected Strikers

The Kohler Company discharged ninety strikers for illegal activity in connection with the strike. The acts cited were in connection with the mass picketing, home demonstrations, and employment office picketing. The Union contested seventy-seven of the discharges on the grounds that the men were fired, not because of strike misconduct, but because of their Union membership or connected activities on behalf of the strike.

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[47] Ibid., p. 1100.

[48] Ibid., pp. 1100-1102.

The Trial Examiner pointed out that the real issues in the matter revolved around whether or not the workers discharged actually engaged in the activities as charged, and whether or not such conduct was sufficient to remove them from protection of Taft-Hartley.[49]

The Union readily agreed that mass picketing and physical restraint of the type employed at the Kohler plant was unprotected activity, and that Kohler could have legally discharged all of the some 2,500 workers involved. However, it was maintained that Kohler Company condoned and waived as grounds for discharge, activity of this nature. The Company had notified its employees, prior to the strike, that it would not re-employ any strikers guilty of illegal conduct during the strike; yet before discharging the ninety strikers, many workers who engaged in mass picketing were reinstated. In addition, the Union alleged many of those who engaged in mass picketing were not listed for discharge, citing Lymon Conger to the effect that he did not consider mere presence on the picket line as grounds for discharge.

The Trial Examiner upheld the Union contention, finding that Kohler Company did condone and waive as ground for discharge mere presence on the mass picket line. For the discharge to be valid, such presence must be accompanied by evidence of actual participation in denial of employee entrance to the plant. Two of the five Board members agreed with the Trial Examiner in this finding.

The remaining Board members, constituting a majority, disagreed. They held that all those on the line, whatever their activities, must have

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[49] Ibid., p. 1102-1109.

been aware of the object of the picketing, and by their participation did deny admittance to non-strikers. They further observed and held that:

> Under any circumstances, condonation of the mass picketing as a ground for the discharge of those strikers now in issue may not be lightly presumed, but must clearly appear from a preponderance of the evidence. Thus, while it is true that the Respondent reinstated many strikers who were known to have engaged in this unprotected activity and may have offered to hire still others, it cannot be inferred that the Respondent condoned and waived the misconduct of all participants. Moreover, it is clear that even prior to the discharges the Respondent indicated that there were some strikers who would not be taken back because of their misconduct. This does not reveal an attitude of forgiveness on the part of the Respondent, nor is there any other evidence showing express forgiveness by the Respondent of the dischargees participating in the mass picketing (Chairman Leedom and Member Rodgers do not mean to suggest that such an expression is indispensable to a finding of condonation). In addition, while it is true that in some cases participation in mass picketing was not considered in the selection of those discharged, and while Conger did not recommend that all participants in the mass picketing be discharged, such testimony, taken at its face value, in the majority view, shows nothing more than Respondent exercised its privilege of selecting those strikers to be discharged.[50]

Based on these findings, the majority thereupon concluded that the Union did not establish, through a preponderance of evidence, that Kohler had condoned or waived mass picketing as a basis for dismissal.

The Board found grounds for the remainder of the dismissals in the evidence of employee participation in the home demonstrations and the employment office picketing. As was the case with mass picketing, the Trial Examiner refused to uphold discharges wherein only participation was proved, holding that this was not an unprotected activity unless accompanied by evidence of some overt act, such as yelling, jeering or otherwise intimidating those who chose to continue to work, or to enter the employment office.

The Board again overruled the Trial Examiner; a majority found that

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[50] Ibid., p. 1105.

mere presence at the home demonstrations and/or employment office picketing was sufficient grounds for a valid discharge. In arriving at such a ruling the Board observed that employees, by their presence at the home demonstrations, "tacitly lent approval to the entire scene even though they did not join in the yelling and shouting."[51] Validation of the discharges concerned with employment office picketing rested on the same grounds as those established by the Board with regard to the mass picketing of the plant itself.

The Board, after finding Kohler not guilty of an unfair labor practice in discharging seventy-seven of the workers, nevertheless did judge them guilty on such a count for refusal to negotiate with the Union concerning those to be discharged. During the course of the hearings, Kohler Company offered to withdraw the discharge of one striker. The Trial Examiner held that such an offer was tantamount to admission of error in other cases, and that negotiations on the subject might have dissuaded Kohler from making further discharges. The refusal of Kohler to enter into such negotiations led the Board to uphold the ruling that such action constituted an unfair labor practice which tended to prolong the strike.

Remedy

Upon finding the Kohler Company guilty of the various unfair labor practices just summarized, the Board ordered that it cease and desist from such practices and resume bargaining with Local 833 upon request.[52]

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[51] Ibid., p. 1107.

[52] Ibid., pp. 1111-1115.

The Board prescribed the following remedy to correct the damages that resulted from Kohler's acts.[53]

1. Upon application, all employees, except those lawfully discharged, who had not been permanently replaced prior to June 1, 1954 (date of conversion from an economic to unfair labor practice strike), must be reinstated to the same equivalent position without prejudice to seniority or other privileges. If necessary, any person hired on or after that date must be dismissed in order to make room for returning strikers. If, after such dismissal, jobs are still unavailable for returning employees, their names should be placed on a preferential hiring list, with priority determined by normal seniority procedures. These men will then be offered first choice for reinstatement as jobs become available. Also, Kohler was ordered to make whole any workers entitled to reinstatement for any loss of pay suffered should Kohler refuse, for any reason, to rehire them in the manner prescribed by the Board.

2. The shell department employees, since their discharges were found discriminatory, were eligible for re-employment and would ordinarily be entitled to back pay from the date of their discharge. Normal Board practice in situations involving a discriminatory discharge, which occurs when the worker is on strike, is to allow back pay only from the date on which reinstatement is requested. The Board's decision is based on the theory that it cannot be determined how much pay loss occurs due to the employee's strike activity until the striker requests reinstatement. The shell department employees were therefore granted the same back pay privileges as the regular employees.

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[53] Ibid., pp. 1109-1110.

3. Each person discriminately evicted from his dwelling (American Club or rented home) was to be offered immediate repossession of his former abode or its substantial equivalent. Also, Kohler must make the evicted employee whole for any loss suffered by reason of the evictions.

4. Lastly, the remedies set out would apply equally to any similar unfair labor practices which Kohler might commit through failure to obey the cease and desist order. In the Board's opinion this action was deemed necessary due to Kohler's past behavior with regard to the Company's unfair labor practices.

Kohler Company's letter of March 1, 1961, attests to the fact that the Company complied with the N.L.R.B. order, excluding only the requirement that bargaining with Local 833 be resumed.[54] The Company's position on the bargaining issue was that the local no longer represented a majority of Kohler's employees. Therefore, the Company felt that they had a right to refrain from bargaining until an N.L.R.B. election was held to determine the Union's majority status. Resumption of bargaining was thereupon held in abeyance, pending outcome of the appeal of the Board's Decision and Order.

Appeal of the National Labor Relations Board Decision and Order

The United States Court of Appeals for the District of Columbia Circuit considered the following petitions with regard to the N.L.R.B. Decision and Order.[55]

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[54]Letter from George C. Gallati, Public Relations Department, Kohler Company, Kohler, Wisconsin, March 1, 1961.

[55]National Labor Relations Board v. Kohler Company, 300 F. 2d 699 (1962).

1. No. 16182, wherein Kohler Company asked for a review of the Board's adverse determinations in the case.

2. No. 15916, in which the U.A.W.-C.I.O. Local 833 challenged the refusal of the Board to reinstate seventy-seven employees discharged for misconduct. In addition, the Union contended that the Board was in error in finding that Kohler bargained in good faith during the unsuccessful negotiations that culminated in the strike.

3. No. 16031, a petition from the N.L.R.B. seeking enforcement of its Decision and Order rendered subsequent to the Kohler hearings. Each of these petitions will be examined in turn.

The Court, in a split decision, denied Kohler's petition for a review of the Board's adverse determinations, finding that the record "amply supported"[56] the Board's decision. They concluded that by adopting the Board's analysis they rendered further discussion of this phase of the appeal useless.

The remainder of the majority opinion is concerned with the Union's appeal. In the matter of the discharges the Court, in part, upheld the Union in that it remanded the action to the Board for further study in the light of the Court's opinion. In so doing, it accepted the Union's contention that the Board should have considered the Thayer doctrine[57] when it denied reinstatement to the workers in question. According to the Court:

Thayer holds that where an employer who has committed unfair labor

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[56]Ibid., p. 701.

[57]National Labor Relations Board v. Thayer Company, 213 F. 2d 748 (1954). Also listed in N.L.R.B., Court Decisions Relating to the N.L.R.A. (Washington), IX.

practices discharges employees for unprotected acts of misconduct, the Board must consider both the seriousness of the employer's unlawful acts and the seriousness of the employees' misconduct in determining whether reinstatement would effectuate the policies of the Act.[58]

In a footnote to this statement the Court explains that the policies of the Act are to protect the rights of employees to organize and bargain collectively, and to insure that labor organizations respect employer's rights and do not jeopardize the public safety. It is then pointed out that, despite exceptions by both the Union and the general counsel, the Board's decision referred neither to the Thayer doctrine nor to the consideration that it required.

The N.L.R.B. defended its sanction of the discharges on the grounds that balancing was rendered unnecessary inasmuch as Section 10(c) of the Taft-Hartley Act provides:

. . . No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged . . . if such individual was suspended or discharged for cause . . .[59]

Since the Board had found the discharges to be "for cause," they contended that they could not order reinstatement. The Court refused to accept this plea, because of the fact that the Board, in its Decision and Order, did not allude to the "for cause" provision of Section 10 (c), and hence did not rely on it in refusing reinstatement. In arriving at this decision, the Court cited Securities and Exchange Commission v. Chenery Corporation[60] which states: ". . . the grounds upon which an administration order must be judged are those upon which the record discloses that its

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[58]National Labor Relations Board v. Kohler Company, pp. 702-703.

[59]U.S., Statutes at Large, LXI, p. 147.

[60]Securities and Exchange Commissions v. Chenery Corporation, 318 U. S. 80 (1943).

action was based."[61]

The Court also found for the Union in the second instance, holding that the Board should not have ignored inferences that could be drawn from the Company's pre-1953 labor relations history as to Kohler's attitude toward collective bargaining. In arriving at this conclusion the Court cited National Labor Relations Board v. Truitt Manufacturing Company[62] which states:

> . . . A determination of good faith or want of good faith normally can rest only on an inference based upon more or less persuasive manifestations of another's state of mind. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination.[63]

In light of the above the Court, on January 26, 1962, granted the Board's petition for enforcement (No. 16013), with the following exception.

> . . . So much of its order as denies reinstatement to seventy-seven discharged employees will be set aside and the case remanded for further proceeding in light of this opinion and for modification of the Board's order if necessary.[64]

By such order, the Court has directed the Board to reconsider that portion of its Decision and Order that pertained to the seventy-seven discharges and the finding of good faith bargaining on the part of Kohler, prior to June 1, 1954. If, in view of the court's opinion, the Board decides that its original order was in error, an amended order is to be issued that will be reviewable or enforceable on petition to the Court.

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[61] Ibid., p. 87.

[62] National Labor Relations Board v. Truitt Manufacturing Company, 351 U. S. 149 (1956).

[63] Ibid., p. 155.

[64] National Labor Relations Board v. Kohler Company, p. 707.

Chief Judge Wilbur K. Miller dissented in this opinion. The dissent is best summed up in the following quote:

> On the basis of matters which I regard as trivia -- feeble efforts of Kohler to protect itself against open warfare -- the Board's order went against the employer. In ordering its enforcement, the majority opinion goes even further. I do not believe any purpose would be served by a detailed discussion of subjects not heretofore treated in this dissent; suffice to say I disagree with the majority opinion. Its refinements of reasoning do not impress me as sufficient to justify its reward of the Union for unconscionable conduct.[65]

The Kohler Company, on April 23, 1962 filed a further appeal of its case with the United States Supreme Court.[66] But on June 4, 1962, the high court issued an announcement to the effect that it did not choose to review the Kohler Company v. N.L.R.B. case. The effect of such an announcement is to allow the majority opinion of the Circuit Court to stand as law, and to terminate litigation of the case.

Kohler Company thereafter signified its willingness to comply with the Circuit Court's decision, stating such compliance publicly in a letter to its customers dated June 19, 1962.[67] On June 28, 1962, eight years after the strike began, negotiations between the U.A.W-C.I.O. and the Kohler Company were resumed in Sheboygan, Wisconsin.[68]

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[65] Ibid., p. 711.

[66] Letter from George C. Gallati, Assistant Director of Public Relations, Kohler Company, Kohler, Wisconsin, August 10, 1962.

[67] Letter from L. L. Smith, Executive Vice President, Kohler Company, Kohler, Wisconsin, June 19, 1962.

[68] U.A.W. Solidarity, July 1962, p. 3.

CHAPTER V

SUMMARY AND CONCLUSIONS

The United States Supreme Court, on June 4, 1962, rejected Kohler Company's request for review of the U. S. Court of Appeals decision enforcing the N.L.R.B. Decision and Order. The action resulted in a resumption of labor-management negotiations at Kohler, Wisconsin, during June of 1962. The early years of the strike were characterized by violence, beatings, vile language, and mass demonstrations both at the plant and at the homes of non-striking Kohler employees -- efforts designed to discourage their continued employment by Kohler Company.

U.A.W.-C.I.O. Local 833, through mass picketing, prevented the plant from operating for a period of fifty-four days. The Company eventually obtained a cease and desist order from the Wisconsin Employment Relations Board and resumed manufacturing operations, utilizing those employees unwilling to strike plus replacement for the strikers.

Once operations resumed at the plant, and the strike seemed in danger of being lost, the Union filed several unfair labor practice charges against Kohler Company. One principal charge was that Kohler caused the strike by refusing to bargain following expiration of the original collective bargaining agreement; another charge was the commission of an unfair labor practice by unilaterally granting a three cent per hour wage increase that had been previously refused by the Union.

The N.L.R.B. rejected the first contention, finding that Kohler's

record of bargaining during previous contract negotiations with the Union, along with the negotiations that preceded the strike, failed to substantiate the charge that the strike was for reasons other than economic at its inception.

The second major charge was upheld, the Board finding that Kohler Company failed to bargain within the meaning of Taft-Hartley when they granted non-striking employees a three cent per hour wage increase while continuing to operate within the framework of the expired union contract. This action converted what had started out as an economic strike into an unfair labor practice strike. As a result, employees hired as replacements after the conversion were liable for discharge in order to accommodate returning strikers.

In addition to these major findings, the Board judged Kohler guilty of a number of instances of discrimination and further refusals to bargain. Both parties to the dispute appealed portions of the Board's Decision and Order to the U. S. Court of Appeals where, in January, 1962, the Board's order was upheld and enforced with minor exceptions.

The Kohler Strike was extended over such a long period of time that upon receiving the final favorable verdict the U.A.W.-C.I.O. was prompted to state:

> . . . the scope of the victory was diminished by the years of long legal delays, the hardships and suffering of the Kohler strikers, and the expenditure of $12 million of the Union's strike fund.[1]

A partial explanation for the extension of this conflict can be found in the violence, vandalism, and mass picketing which accompanied the strike. In addition, there was the adamant attitude with which

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[1] U.A.W. Solidarity, July, 1962, p. 3.

Kohler Company fought the strike. A partial explanation for this attitude seems to lie in a reluctance by Kohler Company to recognize that wage and working conditions are subject to negotiation with union people and are, therefore, no longer a matter of management prerogative alone. The thorough investigation which these events necessitated consumed three years of hearings and amassed a record of twenty thousand pages. These hearings were also delayed due to frequent interruptions in order for the participants to engage in related court actions or to locate witnesses.

A second major delay occurred from October, 1957, when the Intermediate Report and Recommended Order was handed down, to September, 1960, when the Court's Decision and Order was released. It is not surprising that the Board, hearing all the cases that it must, required a considerable amount of time in order to review so voluminous a record. However, delays of this nature seem excessive, and suggest that perhaps the time has arrived to consider further revision of the National Labor Relations Act so as to speed its procedures.

In view of the time that elapsed during the N.L.R.B.'s consideration of the Kohler case, the delay that occurred after the appeals to the federal courts seems somewhat insignificant. Nevertheless, these actions consumed an additional two years. The delays encountered in judicial processes are well known. Since little improvement in these processes is likely to occur in the immediate future, a speeding of the N.L.R.B. dispute procedure seems indicated, at least from the standpoint of this particular strike.

A second area in question concerns whether or not our present labor legislation favors unions which engage in illegal strike activity, such as the mass picketing at Kohler Company. The review of this case shows

that the besieged company was able to gain relief through the Wisconsin Employment Relations Board, but that fifty-four days passed before such relief was effected.

It should be pointed out that had this action failed, relief could in all probability have been obtained through the N.L.R.B. However, the blame for the delay that did occur appears to lie not with current labor legislation, but with the local law enforcement, which failed to open picket lines that were clearly illegal. The same conclusion must be drawn with regard to the home demonstrations and vandalism perpetrated against non-striking Kohler employees.

Attention is next directed to the overall treatment Kohler received under terms of the Act as administered by the N.L.R.B. Here it must be reiterated that the analysis in Chapter IV found little cause to question the validity of the Board's decisions with regard to unfair labor practices committed by Kohler Company.

More importantly, it appears that the Board and the trial examiner went to great lengths in order to investigate all angles of the dispute and to make sure that fair and equitable treatment was afforded each party. It is difficult to discern how a broadening of present labor legislation would have materially affected Kohler's fate in this particular case. This leads to the conclusion that, based on the experiences of this strike, the present statutory limitations on the activities of labor and management are satisfactory.

If the above conclusions are to be accepted, and the law is not biased toward labor, what explanation can be advanced for the seeming paradox of Kohler Company's being judged the guilty party in a dispute where the Union engaged in flagrant and open violation of the law?

The answer to this question is twofold. In the first place, the Union was found guilty before the W.E.R.B. of illegal conduct and served with a court-enforced cease and desist order. This action eventually forced the abandonment of these tactics and weakened the Union's position considerably. The fact that this verdict received little publicity relative to judging Kohler's guilt does not alter the finding that both parties broke the law.

Secondly, it seems that a major share of the blame for Kohler's guilt must be laid not to open defiance of the law, but to inept handling of the Company's activities during the period of the strike. Many of the acts of discrimination and refusal to bargain came at a time when the strike had been clearly broken. With things "going their way," it is strange indeed that the Company's policy makers were not more careful in their actions. Even the three cent per hour wage increase, the most damaging unfair practice engaged in by the Company, came at a time when the plant was being reopened and production resumed.

From the above, it must be concluded that Kohler bore the brunt of the guilt in this strike, not because our present legal structure or the National Labor Relations Board are "anti-business," but because the Company acted hastily and on dubious legal advice.

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BOSTON
CHICAGO
CLEVELAND
DETROIT
HOUSTON
KANSAS CITY
LOS ANGELES
MILWAUKEE

KOHLER CO.

FOUNDED 1873

KOHLER, WISCONSIN

MINNEAPOLIS
NEWARK
NEW YORK
PHILADELPHIA
RICHMOND
ST. LOUIS
SAN FRANCISCO
SEATTLE

August 10, 1962

Mr. Lanny W. D. Gallup
Department of Economics
University of Oklahoma
Norman, Oklahoma

Dear Mr. Gallup:

I am glad to learn from your letter that your thesis has progressed as well as it has and that you are now on the last lap. It must be a great feeling.

As for your specific questions, Kohler Co. inaugurated the eight-hour day on its continuous operations in 1911 and its workmen's compensation programs were begun in 1917 on a self-insured basis.

Regarding our current frequency rate of injury, it has remained quite constant and at a very admirable level. The frequency rate for Kohler Co. in 1961 was 8.4, so you will see that there has been somewhat of a gradual decline since the figure for 1954 was published, and as I have said the variations are only slight ones from year to year since about 1956. We give most of the credit for this admirable record to a constant educational program that is conducted among supervision and the production and maintenance employees, with constant stress being placed on making the employees aware of accident sources and keeping them conscious of the problem.

If I told you in a letter that there had been no major layoff since the 1930's, I used the wrong choice of words. Actually, the company went through the depression of the 1930's without any layoffs due to economic conditions. What it did was to keep the work spread so that all employees shared in it, and of course that reduced the working schedule at some periods in some divisions to as low as one day a week.

But the policy worked out and gradually as business picked up the employees were put back on a lengthening work week until normal was reached. It gave us a huge inventory but that is the way we got over the depression.

KOHLER CO. NO. 2 August 10, 1962

Mr. Lanny W. D. Gallup
Norman, Oklahoma

Early in August, I believe it was August 2, 1960, economic conditions forced the company to reduce some divisions to a 32-hour work week, and a few employees were laid off. Those were the first layoffs in two or three decades. Those laid off at that time were given their jobs back, and the people who had been working a 32-hour week were restored to a 40-hour week in February and March, 1961.

The term "bargaining unit" here is used rather generally and it includes all production and maintenance employees in our several divisions; i.e., the pottery, the engine and electric plant division, brass, precision controls, foundry, packing and shipping, the enamel division with its several departments and the power house. Those not included can be classified as supervision and office employees.

Kohler Co. on April 23, 1962, filed its appeal with the United States Supreme Court. The Supreme Court on June 4, 1962, issued a very brief announcement that it chose not to review the Kohler Co. NLRB case. It gave no reasons, which is the usual thing when the high court declines to review.

If you wish to have any further information, please let me know. I wish you the best of luck upon the completion of your thesis.

Sincerely,

George C. Gallati

George C. Gallati
Assistant Director
of Public Relations

vj

BOSTON
CHICAGO
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RICHMOND
ST. LOUIS
SAN FRANCISCO
SEATTLE

March 1, 1961
IN REPLY REFER TO

Mr. Lanny M. D. Gallup,
1523 West University
Stillwater, Oklahoma

Dear Mr. Gallup:

In reply to your letter of February 26, I am sending you a packet of material which, in its total, answers most of your questions.

You will note that Professor Sylvester Petro's recent book analyzing the legal issues of the strike includes an excellent summary of the basic areas of disagreement (the seven major issues, so-called) which separated the company and union viewpoints. When the last bargaining discussions were held those seven major issues were still factors as unresolved issues.

The economic implications of the strike as far as the company is concerned would be very difficult to assess. It is the firm conviction of the company's officers that Kohler Co. gained more business than it lost during the boycott for the simple reason that Americans resent being told what they can buy or what they cannot buy. The strike was called off by the United Auto Workers last September 1 and the boycott was ended at the same time. Kohler Co. early last September hired back somewhat more than 300 remaining strikers upon application by the UAW for their reinstatement. The assimilation of these men was a payroll cost factor, of course, but they have been restored to their former jobs, or comparable work, without undue incident.

In the months and years before last September 1, the company had rehired every one-time striker who applied except 90 who had been discharged for flagrantly illegal conduct -- violent conduct -- during the worst period of strike disorder. The National Labor Relations Board has formally upheld the company in its discharge of 89 of those 90 discharged for unlawful conduct. Those strikers rehired before last September 1 totaled slightly more than 1,100, and they were restored with full seniority and other privileges according to their service records.

As I stated, the strike has been over since last September 1. All of those who wanted to return and applied are back at work. Kohler Co. has complied with the National Labor Relations Board's order of last August 26 relating to the rehiring of remaining strikers who wished to return. Certain other phases of the board's decision and order are awaiting the outcome of the review by the United States Circuit Court of Appeals that has been sought both by the United Auto Workers and Kohler Company, one point at issue, in the company's case, being the board's order that the company resume bargaining with Local 833 of the UAW. It is the company's position that until an NLRB election is held in the plant to determine whether Local 833 has a majority. in plant and is the legally-established bargaining agent, it is the company's right and prerogative to await such an election before resuming bargaining negotiations with the UAW. Basically, however, the company is challenging the board's finding that the company converted what was an economic strike into an unfair labor practice strike after the strike began on April 5, 1954, and prolonged the strike by those alleged unfair labor practices.

If the company is reasonably successful in its appeal, the circuit court of appeals may well reverse the board in its finding that (1) unfair labor practices were committed and (2) that those asserted practices could have prolonged the strike, as the board assumed they did.

Mr. Petro explains the legalities of these issues very well, and I am sure you will be interested in reading his analysis on this very important phase of the NLRB case.

Should you wish any further information on any specific points, please do not hesitate to write to me.

I wish you the best of luck with your research thesis. I don't think you could have chosen a more interesting subject for your graduate study project.

Sincerely,

George C. Gallati

George C. Gallati,
Public Relations Department.

fc

KOHLER CO.
FOUNDED 1873
KOHLER, WISCONSIN

OFFICE OF
THE EXECUTIVE VICE PRESIDENT

June 19, 1962

TO OUR CUSTOMERS:

Following the United States Supreme Court's recent action in declining to review our strike case, Kohler Co. and the United Auto Workers union -- AFL-CIO -- are scheduled to resume collective bargaining negotiations on Thursday morning, June 28, at Sheboygan, Wisconsin.

The resumption of collective bargaining negotiations is the principal effect of the Supreme Court's refusal to review the case.

Immediately after the Supreme Court's action was announced June 4, this statement by Lyman C. Conger, Chairman of the company's Management Committee, was released to press and radio:

> "We will comply with the order of the appellate court.
>
> "We have already complied with most of the provisions of the National Labor Relations Board's order, including those provisions requiring offers of reinstatement to striking employees."

On the question of reinstatement, the UAW on September 1, 1960, applied for the reinstatement of a list of persons which contained many inaccuracies and was obviously taken from some former list.

The company at that time offered to reinstate all for whom the union applied except:

> Those discharged for unlawful conduct during the strike.
>
> Those who had voluntarily retired on company pensions and social security.
>
> Those who had voluntarily terminated their employment here to take permanent work elsewhere.

Those receiving workmen's compensation for permanent disability.

Those who had died.

Those who were not Kohler Co. employees when the strike began.

Those already reinstated and working.

Kohler Co. since June, 1954, had hired back those who applied -- all except the ones refused reinstatement because of flagrantly unlawful strike conduct.

It is the company's position that there is no back pay due present or former Kohler Co. employees under the labor board's order of August, 1960, because those whose reinstatement was required under the NLRB order and who accepted the reinstatement were promptly reinstated as the order directed.

There is no NLRB order assessing any back pay, and if any such order should be issued it would be subject to review by the courts.

Of the 77 persons whom the company discharged for lawless behavior earlier in the strike, and whose dismissals were upheld by the NLRB in its order, their status was not changed by the Supreme Court's action.

The United States Court of Appeals merely remanded the cases of those 77 to the labor board for further proceedings "and for modification of the board's order, if necessary."

Because the Supreme Court gave no reasons for denying the review requested in the company's petition, it is possible that the court's members took the view that the case in its present form -- with the appeals court's remand of two issues to the NLRB for further consideration -- was incomplete and that a review at this time would be premature.

The action does not necessarily mean that the Supreme Court may not elect to review the issues of the case in the event that the NLRB and Court of Appeals bring forth a further decision.

Sincerely,

L. L. Smith

HB

VITA

Lanny Willis DeLancy Gallup

Candidate for the Degree of

Master of Science

Thesis:

Major Field: Economics

Biographical:

Personal Data: Born in Stillwater, Oklahoma, July 9, 1926, the son of Willis D. and Ione Gallup.

Education: Attended grade school and high school in Stillwater, Oklahoma; graduated from Stillwater High School in 1944; received the Bachelor of Science degree from Oklahoma State University in 1950; completed requirements for the Master of Science degree in May, 1963.

Professional Experience: Served two years with the United States Navy as a Radioman 3rd class. Graduate assistant in Agricultural Economics, Oklahoma State University, academic year 1950-1951. Employed by Shell Oil Company from 1951-1960, as analyist in the Crude Oil Purchasing Division.