

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR THE
PROVINCE OF BRITISH COLUMBIA

Between:

W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE, C. W. CARON and S. JENKINS, sued on behalf of and as representing BOILERMAKERS' and IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 (otherwise known as Boilermakers' and Iron Shipbuilders' Union, Local No. 1) and IRON AND SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and THE EXECUTIVE COMMITTEE TO WHICH THEY RESPECTIVELY BELONG, and W. RENWICK, W. McGAW and ROY AQUINO, sued as trustees of the said BOILERMAKERS' AND IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and G. FARRINGTON, DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE BRAATEN, SIDNEY BELT and DAVID PEARSON sued on behalf of and representing THE PRESS AND INVESTIGATING COMMITTEE of the said BOILERMAKERS' AND IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1,

(Defendants)

Appellants,

And:

MYRON KUZYCH,
(Plaintiff)

Respondent.

Record of Proceedings

Messrs. Nemetz, Gervin & Co.,
Solicitors for Appellants.

Messrs. Gard, Lyell & Co.,
48, Gresham Street, E.C. 2,
London Agents.

Messrs. Sutton, Braidwood & Morris,
Solicitors for Respondent.

Messrs. White & Leonard,
4, St. Bride's St.,
Ludgate Circus, E.C. 4,
London Agents.

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Portions of record which the Appellants objected to being included on the ground that they were unnecessary or irrelevant.

- a) The representative Order of Mr. Justice Macfarlane, being Exhibit No. 2.
- b) The Canadian Congress of Labour Constitution, being Exhibit No. 3.
- c) Agreement between Canadian Congress of Labour and the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, being Exhibit No. 5.

ADDENDA AND CORRIGENDA

p.372, l.32: "west coast" should be "West Coast."

p.437, l.12: After "and" and before "standing" insert the words "members of."

p.440, l.41: "Now" should be "not."

p.527, l.4: "welding" should be "welder."

p.565, l.14: Add "told" after "I was."

It is agreed that the following references, namely: p.369, ll.11 and 12; p.376, l.20; p.379, l.8; p.421, l.39; p.431, l.23; p.431, l.36; p.432, l.4; p.440, l.32; p.445, l.40; p.627, l.16; refer to the Press & Investigating Committee.

It is agreed that the following reference, namely: p.385, ll.36 and 37, refers to the Shipyard General Workers Federation of British Columbia.

p.416, l. 21, refers to Marine Workers Holding Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

(Before the Honourable Mr. Justice Whittaker)

751/45

Vancouver, B.C.

Between:

MYRON KUZYCH,

Plaintiff,

And:

10 W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE,
 C. W. CARON and S. JENKINS, sued on behalf of and as rep-
 resenting BOILERMAKERS' and IRON SHIPBUILDERS'
 UNION OF CANADA, LOCAL No. 1 (otherwise known as
 BOILERMAKERS' and IRON SHIPBUILDERS' UNION,
 LOCAL No. 1) and IRON and SHIPBUILDERS' UNION
 OF CANADA, LOCAL No. 1. and THE EXECUTIVE COM-
 MITTEE TO WHICH THEY RESPECTIVELY BELONG,
 and W. RENWICK, W. McGAW and ROY AQUINO, sued
 as trustees of the said BOILERMAKERS' and IRON SHIP-
 BUILDERS' UNION OF CANADA, LOCAL No. 1 and G.
 20 FARRINGTON, DAVE CLARK, FRED DUNCAN, K.
 GARRISON, ORVILLE BRAATEN, SIDNEY BELT and
 DAVID PEARSON sued on behalf of and as representing
 THE PRESS and INVESTIGATING COMMITTEE of the
 said BOILERMAKERS' and IRON SHIPBUILDERS'
 UNION OF CANADA, LOCAL No. 1,

Defendants.

NO. 1

ENDORSEMENT ON THE WRIT

The plaintiff's claim is for:

30 (a) A declaration that the plaintiff is a member in good
 standing of Boilermakers' and Iron Shipbuilders' Union of Can-
 ada, Local No. 1, otherwise known as Boilermakers' and Iron
 Shipbuilders' Union, Local No. 1 (hereinafter referred to as the
 "said defendant Union");

40 (b) A declaration that the proceedings to expel and which
 purported to result in the expulsion of the plaintiff from the said
 Union upon the charges set forth in a letter from the said de-
 fendant Union to the plaintiff under date of the 26th of Feb-
 ruary, A.D. 1945, namely the actions of the Press and Investigat-
 ing Committee and of the meetings of the defendant Union pur-
 ported to have been held on the 19th day of March, A.D. 1945,

RECORD

In the Supreme Court of British Columbia

No. 1

Endorsement on the Writ

RECORD
 ———
*In the Supreme
 Court of British
 Columbia*
 ———
 No. 1
 ———
 Endorsement
 on the Writ
 (Continued)

are illegal, null and void and of no effect in that no jurisdiction existed therefor;

(c) A declaration that the by-laws of the said defendant Union purported to have become effective on the 8th day of August, A.D. 1944, are null, void and of no effect and do not confer jurisdiction on the said defendant Union or any of its agencies thereof to expel the plaintiff for the reasons purported to have been advanced for the said expulsion;

(d) An injunction to restrain the said defendant Union from giving effect to the resolutions purporting to have been passed at the meetings of the said defendant Union held on or about the 19th day of March, A.D. 1945; 10

(e) An injunction compelling the Union to advise and notify North Van. Ship Repairs Limited that the plaintiff is a member in good standing of the said Union;

(f) An injunction restraining the said Union from black-listing the plaintiff and advising any person or persons that the plaintiff is not a member in good standing of the said Union;

(g) Damages for the wrongful expulsion and/or wrongful suspension of the plaintiff as a member of the said Union by the said Union; 20

(h) Damages for treating the plaintiff as being expelled or suspended from the said Union after the time when by law he was a member in good standing of the said Union;

(i) An injunction to compel the said Union to treat and consider the plaintiff a member in good standing of the said Union;

(j) Such further and other orders or judgments as to this Honourable Court may seem meet or necessary in the premises;

(k) The costs of this action. 30

No. 2
 ———
 Amended State-
 ment of claim

NO. 2

AMENDED STATEMENT OF CLAIM

(Amended pursuant to the order of the Honourable Mr. Justice Whittaker, February 2, 1949.)

WRIT ISSUED the 14th day of May, A.D. 1945.

1. The plaintiff is a welder and resides at 3558 Fraser Avenue, in the City of Vancouver, in the Province of British Columbia.

2. The defendant, W. L. White, is a labourer and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia. 40

3. The defendant, W. Schwartz, is a labourer, and resides

at 835 West 15th Avenue, in the City of North Vancouver, in the Province of British Columbia.

4. The defendant, J. Nuttall, is a labourer, and resides at 218 West 1st Avenue, in the City of North Vancouver, in the Province of British Columbia.

5. The defendant, W. Gee, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

6. The defendant, C. W. Caron, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

7. The defendant, S. Jenkins, is a labourer, and resides at 265 East 2nd Avenue, in the City of North Vancouver, in the Province of British Columbia.

8. The defendant, W. Renwick, is a labourer, and resides at 562 East 4th Avenue, in the City of North Vancouver, in the Province of British Columbia.

9. The defendant, W. McGaw, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

10. The defendant, Roy Aquino, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

11. The defendant, G. Farrington, is a labourer, and resides at 362 West 3rd Avenue, in the City of North Vancouver, in the Province of British Columbia.

12. The defendant, Dave Clark, is a labourer, and resides at 917 McArthur Crest, in the City of North Vancouver, in the Province of British Columbia.

13. The defendant, Fred Duncan, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

14. The defendant, K. Garrison, is a labourer, and resides at 202 East 3rd Avenue, in the City of North Vancouver, in the Province of British Columbia.

15. The defendant, Orville Braaten, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

16. The defendant, Sidney Belt, is a labourer, and may be found at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia.

17. The defendant, David Pearson, is a labourer, and resides at 172 West 2nd Avenue, in the City of North Vancouver, in the Province of British Columbia.

RECORD

*In the Supreme
Court of British
Columbia*

No. 2

Amended State-
ment of Claim

(Continued)

RECORD

*In the Supreme
Court of British
Columbia*

No. 2

Amended State-
ment of Claim

(Continued)

18. The defendant, Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, is a trade union or association consisting of some 15,000 members and purporting to operate under a constitution, set of rules of agreement, and carrying on business or having its chief place of business at 339 West Pender Street, in the City of Vancouver, in the Province of British Columbia, and is a local chartered union of the Canadian Congress of Labour, and the members of this Union have agreed to the provisions of, and have agreed to be bound by, and are in fact bound by the constitution of the Canadian Congress of Labour and in particular are bound by Article Fourteen with respect to the internal management and government of the said defendant Union. 10

19. At the time of the commencement of this action the following were the officers of the said Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, namely: the defendant, W. L. White, is President; the defendant, W. Schwartz, is the First Vice-President; the defendant, J. Nuttall, is the Second Vice-President; the defendant, C. W. Caron, is the Secretary-Treasurer; and the defendants W. Gee and S. Jenkins are members of the Executive Committee. 20

20. The Executive Committee of the said Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, is a body consisting of the President, the Vice-President, the Secretary-Treasurer and two other members to be elected by the said defendant Union, constituted under the constitution of the said defendant Union having the powers and duties more specifically set out therein and therein mentioned, and consists of the defendants mentioned in paragraph 19 of the Statement of Claim herein, and the said defendants are sued herein as members of the said Executive Committee and as composing in the aggregate the said Executive Committee. 30

21. The defendants W. Renwick, W. McGaw and Roy Aquino are trustees of the said Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, and they are governed by and their duties are more specifically set forth and mentioned in the said Constitution of the said defendant Union and they are sued herein as trustees of the said defendant Union in their capacity as trustees as exercising general supervision over the property and money of the said defendant Union. 40

22. At the time of the commencement of this action the following persons, namely: G. Farrington, Dave Clark, Fred Duncan, K. Garrison, Orville Braaten, Sidney Belt and David Pearson constituted the Press and Investigating Committee of the said Union and the said Press and Investigating Committee was and is a body consisting of the said persons purporting to be

constituted under the constitution of the said defendant Union and having the powers and duties more specifically set out therein and therein mentioned and the said defendants are sued herein as members of and constituting the said Press and Investigating Committee and as composing in the aggregate the said Press and Investigating Committee.

23. That all times material to this action prior to the 1st day of January, A.D. 1944, the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, was a local union chartered
 10 by the Canadian Congress of Labour as a chartered local union of the said Canadian Congress of Labour as defined by the constitution of the said Canadian Congress of Labour and the said Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, had as its constitution the constitution specified and set forth in Article 14 of the Constitution of the Canadian Congress of Labour.

24. On or about the 1st day of January, A.D. 1944, the defendants, Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, ceased to be a local chartered union of the said
 20 The Canadian Congress of Labour and became an affiliate union of the said The Canadian Congress of Labour and retained as its constitution the said constitution set out in Article 14 of the constitution of the said The Canadian Congress of Labour save and except all reference to the said The Canadian Congress of Labour need not apply and at all times material to this action and at the present time the said Article 14 has been the constitution of the said defendant Union even despite the purported changes which the defendant Union endeavoured to make in its set of by-laws purporting to become effective on the 8th day
 30 of August, A.D. 1944.

25. On or about the 11th day of November, A.D. 1942, the plaintiff legally joined and became a member of the said defendant Union, Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, hereinafter referred to as the said defendant Union, and was accepted by the said defendant Union as a member thereof, and the plaintiff paid such dues and assessments as were charged by the said defendant Union and the said defendant Union accepted the said dues and assessments in consideration of the plaintiff being a member thereof.

40 26. Since the said date, namely, the 11th day of November, A.D. 1942, and at all times material to this action the plaintiff was and remained a member in good standing of the said defendant Union.

27. On or about the 14th day of February, A.D. 1945, certain charges against the plaintiff as a member of the defendant Union

RECORD

*In the Supreme
Court of British
Columbia*

No. 2

Amended Statement of Claim

(Continued)

RECORD
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 ment of Claim
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were purported to have been filed by one C. J. McKendrick, a member of the defendant Union, which charges were in the words and figures following, namely:

(1) That on or about the 10th day of December, 1944, he, the said Myron Kuzyeh, called, held or assisted in holding an unauthorized public meeting to discuss internal business of the said Union, such meeting being in fact held at 856 Seymour Street, Vancouver, B.C., contrary to Article 26, Part B, Section (2) (1) of the said by-laws.

(2) That between the month of October, 1942, and the 10 month of December, 1944, he, the said Myron Kuzyeh, was on divers occasions guilty of conduct unbecoming a member of the said Union and committed acts discreditable to it in that he, the said Myron Kuzyeh, did publicly oppose established policies of the said Union by campaigning against the closed shop principle and the principle of dues check-off contrary to Article 26, Part B, Section (2) (e) and (f) of the said by-laws.

(3) That between the 22nd day of November, 1944, and the 3rd day of December, 1944, the said Myron Kuzyeh vio- 20 lated a part of the obligation oath (to wit): "I will never wrong a member of this Union . . . or see him wronged if it is in my power to prevent it. . . ." by failing to repudiate certain radio broadcasts which were made over station CKNW on his behalf or in his name by person or persons not members of the Union, such broadcasts having contained statements which were wilfully slanderous of a member of the Union, to wit, William Stewart, contrary to Article 26, Part B, Section 2 (c) and Article 22, Section 6, of the said by-laws.

28. On or about the 19th day of February, A.D. 1945, at a 30 meeting of the said defendant Union the said charges in like effect were read at a meeting of the said defendant Union and were referred to the said Press and Investigating Committee of the said defendant Union for hearing.

29. The said defendant Union did not have the jurisdiction to refer the said charges to the said The Press and Investigating Committee which it purported to do and the said committee did not have the proper or any authority to hear the said charges against the plaintiff.

30. On or about the 13th day of March, A.D. 1945, the said 40 The Press and Investigating Committee of the said defendant Union purported to hold a meeting for the hearing and investigation of the said charges and to prepare a report for submission to a general meeting of the said defendant Union, all of which it lacked authority and jurisdiction so to do, as there was no con-

stitutional provisions in the constitution of the said defendant Union.

31. On or about the 19th day of March, A.D. 1945, the defendant Union purported to hold a meeting for the hearing of the report of the said The Press and Investigating Committee, at which time the said report was read and the defendant Union purported to vote for the expulsion of the plaintiff from the said defendant Union and in fact purported so to expel him.

32. At the aforementioned meeting of the members of the said defendant Union the said defendant Union purported to expel the plaintiff from membership in the said Union but such suspension was not in accordance with the provisions of the constitution of the said defendant Union.

33. The said defendant Union did not thereby expel the plaintiff from membership in the said defendant Union although it purported so to do.

34. The said The Press and Investigating Committee of the said defendant Union lacked jurisdiction to hear the said charges against the plaintiff because:

20 (a) The said committee did not take the evidence submitted on the said hearing on oath;

(1) The said committee was not duly constituted in that certain persons purporting to sit thereon in trial of the plaintiff on the said charges and signing the report of the said committee relating thereto, namely S. C. Belt, K. Garrison and D. Pearson, or one or more of them, were not duly elected to the said committee in accordance with the by-laws of the defendant Union, or at all or otherwise entitled to try the plaintiff on the said charges, or at all;

30 (b) The plaintiff was prevented from being represented by counsel although he requested the said committee to allow him to be so represented;

(c) The said committee did not allow the plaintiff ample opportunity to adduce evidence contrary to the said charges;

(d) The said committee prepared its report on insufficient evidence and contrary to the evidence submitted.

40 35. The said defendant Union lacked jurisdiction at its meeting when it purported to expel the plaintiff by reason of the fact that the said defendant Union did not allow the plaintiff sufficient time or opportunity to present his defense adequately or at all, nor was he given sufficient time to speak to the charges and the various accusations made by the members of the said defendant Union at the said meeting and by reason of the fact

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that the plaintiff had not prior thereto been tried by a duly constituted tribunal or committee of the defendant Union.

36. On or about the 22nd day of March, A.D. 1945, the said defendant Union wrongfully and maliciously notified the North Van. Ship Repairs Limited that the plaintiff had been expelled from the said defendant Union.

37. The said notification was false to the knowledge of the defendant Union and various of its members and executive governing bodies and officers and all the defendants concurred in sending the said notification and conspired together to send the noti- 10
fication to the injury of the plaintiff.

38. On or about the 29th day of March, A.D. 1945, the said North Van. Ship Repairs Limited, the employer of the plaintiff at the said date, notified the plaintiff that a demand had been made upon it and that the employment by it of the plaintiff terminated as of the said date pursuant to the provisions of collective labour agreement which the said defendant Union had with the said North Van. Ship Repairs Limited.

39. On or about the said 29th day of March, A.D. 1945, the said North Van. Ship Repairs Limited, the employer of the plain- 20
tiff, discharged the plaintiff from its employ upon receipt of notification by the defendant Union as aforesaid and the plaintiff has suffered damages as a result thereof in loss of wages from the said date to the date hereof. Particulars thereof are as follows:

To wages as Welder from the 29th day of March, A.D.
1945, to the 29th day of November, A.D. 1945—\$165.00
per month— \$1,280.00

And the plaintiff has suffered damages in loss of payments to the Unemployment Insurance Commission which his employer would ordinarily have paid during the said period of time. 30

40. The plaintiff has and will suffer further damages in loss of wages until the trial of this action or until he is properly recognized by the said defendant Union as a member thereof as he is prevented from securing employment as a recognized trade union member in good standing of the said defendant Union.

41. The charges hereinbefore referred to did not show or disclose any conduct unbecoming a trade union member or contrary to the policy of the defendant Union.

42. The plaintiff did not at any time call, hold or assist in holding any unauthorized meeting or meetings to discuss internal 40
business of the said defendant Union contrary to the provisions of the constitution or purported constitution of the said defendant Union, and was not guilty of such charges.

43. The plaintiff did not commit acts discreditable to the defendant Union in permitting radio broadcasts as charged

against him in the said charges, hereinbefore mentioned, and the plaintiff never was under any duty to repudiate the same nor were the said broadcasts wilfully slanderous of the said William Stewart, a member of the defendant Union, and the plaintiff denies ever taking such oath as is referred to in paragraph 27 of the Statement of Claim herein.

44. The plaintiff never publicly opposed established policies of the said defendant Union and in particular the closed shop principle, and the principle of dues check-off, and if the plaintiff
10 ever did speak in opposition to such policies which is not admitted but denied then such opposition was only at the Board of Arbitration by way of constructive criticism and in electioneering.

45. The defendant Union never did formulate or adopt a policy of the closed shop principle or the principle of dues check-off.

46. The plaintiff never did wrongfully and maliciously seek to call in question the integrity of the defendant Union's then President, Mr. William Stewart, and if the plaintiff did make any statements concerning the said William Stewart, which is
20 not admitted but denied, then the same were made privately for the consideration of the members of the defendant Union and in electioneering in due course in favour of the election of the plaintiff and against the election of the said Mr. William Stewart, as an officer of the said Union.

47. At the meeting of the said defendant Union the said defendant Union purported to have adopted the recommendations of the Press and Investigating Committee and expelled the plaintiff, thereby causing him damage, which said expulsion was illegal, malicious and without justification.

48. The defendant Union will not treat the plaintiff as a member in good standing of the said defendant Union unless compelled so to do by an injunction of this Honourable Court.
30

49. The plaintiff has requested the defendant Union to treat him as a member in good standing and to treat the said expulsion as a nullity, but the said defendant Union has refused and neglected so to do and still refuses and neglects so to do.

50. The defendant Union purported to expel the plaintiff under and by virtue of certain by-laws to become effective and having been passed on the 8th day of August, A.D. 1944, and
40 in particular Article 25 thereof which said by-laws were not duly passed nor were they effective at any time or times material to this action.

51. The defendant Union purported to expel the plaintiff from its regular meetings pursuant to Article 7, Section 7, of its by-laws purporting to have been passed on to be effective

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from the 8th day of August, A.D. 1944, which said article and section were never passed or adopted in proper form as part of the constitution of the defendant Union.

52. The said purported by-laws of the said defendant Union purported to have been passed and become effective as of the 8th day of August, A.D. 1944, are over ten folios in length and the plaintiff will crave leave to produce and refer to a printed copy thereof on the trial of this action which printed copy purported to be an exact copy of the original and have been published and circulated by the said defendant Union to its members as such. 10

53. The defendant Union, and various of its members and in particular the members mentioned in the style of cause herein, wrongfully and maliciously and to the prejudice of the plaintiff, carried on a campaign against the plaintiff to create ill will and ill feeling by the members of the defendant Union towards the plaintiff and succeeding in so doing to the effect that the members of the Union at the meeting on which the report of the Press and Investigating Committee, the members of the defendant Union voted for the expulsion of the plaintiff not on the merits of the said report but as a result of the prejudice and ill feeling 20 so engendered as aforesaid.

54. The said ill will and prejudice were engendered by certain members of the Union and in particular the then President, William Stewart, and the then Secretary, C. W. Caron, and one Simpson, by conspiring together to eject the plaintiff wrongfully and illegally from meetings of the defendant Union.

55. The plaintiff was wrongfully and illegally ejected from the meetings of the defendant Union under the following circumstances and on the dates hereinafter mentioned (inter alia) as follows: 30

(a) The plaintiff came to the regular business meetings of the defendant Union on Monday, the 3rd day of July, A.D. 1944, at the defendant Union's regular meeting place and took his seat therein; whereupon the said C. W. Caron arose from the elevation where the Executive were accustomed to sit and came to the chair of the plaintiff and tapped the plaintiff on the shoulder and motioned for the plaintiff to follow him, taking him to the entrance to the hall and advising him that he must leave, giving various reasons for such action, whereupon the plaintiff left the said meeting. 40

(b) The plaintiff came to the special meeting of the Welders' and Burners' section of the defendant Union on the 12th day of July, A.D. 1944, at the said meeting place and was similarly requested to leave, which the plaintiff did to avoid unnecessary commotion.

(c) The plaintiff came to the regular business meeting of the defendant Union held on the 17th day of July, A.D. 1944, and was stopped at the door by Mr. White, the business agent, who stated that he could not allow the plaintiff into the said meeting on instructions from the Secretary-Treasurer of the said defendant Union.

10 (d) The plaintiff came to the regular business meeting of the defendant Union on the 7th day of August, A.D. 1944, and was prevented from entering by a person unknown to the plaintiff, and after waiting some ten minutes the Secretary-Treasurer, Mr. C. W. Caron, advised him that he must leave.

20 (e) The plaintiff attended the regular business meeting of the defendant Union on the 21st day of August, A.D. 1944, whereupon a resolution was passed to exclude the plaintiff from the said meeting, and during the discussion on the said resolution insulting and defamatory statements were made respecting the plaintiff by the President of the Union and others to the prejudice of the plaintiff, and the plaintiff was wrongfully and illegally excluded from the said meeting.

(f) The plaintiff attended the regular business meeting of the defendant Union at the place aforesaid, on the 7th day of November, A.D. 1944, and took his seat, whereupon Mr. Caron approached the plaintiff and asked him to leave the meeting, and upon refusal by the plaintiff the said Mr. Caron requested the acting warden of the said defendant Union to remove the plaintiff from the meeting, whereupon the said warden seized the plaintiff by the lapel of his coat and led him out of the said meeting.

30 (g) The plaintiff attended the regular business meeting of the said defendant Union on the 20th day of November, A.D. 1944, and took his seat, and when the meeting was called to order a resolution was passed purporting to be pursuant to Article 7, Section 7, of the constitution of the defendant Union, that the plaintiff leave the meeting; the plaintiff was not permitted to speak to the said resolution or take part in the discussion thereof, and upon the said resolution purporting to be passed the plaintiff left the meeting.

40 (h) The plaintiff attended the regular business meeting of the defendant Union at the place aforesaid on the 4th day of December, A.D. 1944, and took his seat thereat, whereupon a motion was passed as stated in the preceding sub-paragraph, and upon the plaintiff refusing to leave a person unknown to the plaintiff seized him by the lapel of

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the coat and proceeded to drag him out of the hall, and two other persons unknown to the plaintiff pushed the plaintiff towards the door of the said hall.

(i) The plaintiff attended the meeting of the defendant Union on the 18th day of December, A.D. 1944, and took his place thereat, whereupon a similar resolution was passed without the plaintiff having an opportunity to speak to the same, and the plaintiff was forced to leave the meeting.

(j) On the 8th day of January, A.D. 1945, the plaintiff attended a regular meeting of the defendant Union and was wrongfully and illegally expelled from the said meeting by resolution without the opportunity of speaking in his defence. 10

(k) On the 5th day of February, A.D. 1945, the plaintiff again attended the regular meeting of the defendant Union and was excluded therefrom on motion illegally passed without an opportunity of speaking on the said motion or in his own defence.

(l) On the 11th day of February, A.D. 1945, the plaintiff attended a special meeting of the defendant Union and a motion was passed to exclude the plaintiff, on which motion the plaintiff spoke in his own defence, and the said motion was not passed and the plaintiff remained and took part in the said meeting. 20

(m) On or about the 19th day of February, A.D. 1945, the plaintiff attended a regular meeting of the said defendant Union and a motion was passed to exclude the plaintiff without the plaintiff having an opportunity to speak on the said motion, and the said motion was illegally and wrongfully passed and the plaintiff was excluded from the said meeting; 30

and as a result thereof the plaintiff has suffered damages.

56. The said defendant Union and various of the members thereof also published or caused to be published articles which further were slanderous to the plaintiff and created further ill will and prejudice and thereby damaged the plaintiff, which said publications are hereinafter referred to in particular, as follows:

KUZYCH DRAINS \$1600 OF WORKERS' MONEY

This is the key to the whole question in regard to this particular case. We, the trade unions, will retain the right to determine who is a trade unionist, and we are of the opinion, with justification, that Myron Kuzych certainly is not a trade unionist. 40

We therefore say that the expulsion of Myron Kuzych

was correct in principle. New charges are now pending against Myron Kuzyeh, and our union will determine whether his past and present actions are a violation of the provisions of our by-laws, after the Press and Investigating Committee has brought its report and recommendation to the Union meeting.

10 If Myron Kuzyeh intends to take us to court again he will be placing the entire trade union movement on trial, as to whether a trade union has the right to discipline its members for violation of union policies and individual member's obligations.

Every honest trade unionist who attended the special meeting called by the Boilermakers' Local No. 1 on February 27th will have been sickened by the exhibition of hooliganism displayed by the Henderson-Kuzyeh disrupters, which effectively blocked all attempts at democratic discussion of the extremely grave issues that were before the meeting.

20 Seven hundred union men and women, deeply concerned over an important Union problem, came to the meeting for the purpose of hearing and participating in a most thorough and most complete discussion, only to be cheated of that right by a rowdy minority.

The chairman again and again appealed for order so that the Union could conduct its affairs with self-respect and decency in line with the best traditions and honor of the working class.

It was obvious, however, that the cabal of disruptionists had ganged up on the meeting and were present for the sole purpose of preventing any democratic discussion.

30 They exhibited a ruthless determination to prevent at any cost the presentation to the meeting of the facts contained in the report of the investigation which had been conducted by the Shipyard General Workers' Federation Executive Committee.

The clique of disrupters succeeded to the extent that mob tactics of howling and shouting, cat-calling and booing prevented the reading of the report which the trade unionists had come to hear.

40 However, this cynical anti-working class manoeuvre has confronted the membership of the Boilermakers' with an entirely new and extremely dangerous situation. **THIS UNION IS NOW FIGHTING FOR ITS VERY EXISTENCE.**

The campaign of Hitler-like rumormongering, the

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spreading of lies and vicious slander in the yard combined with gangster disruption of Union meetings smacks of a Fascist-inspired plot to destroy the trade union movement from within.

It is a far more serious threat to our whole working class movement and our hopes for a future of jobs and security than the C.M.A. or any other combination of manufacturers and industrialists.

Never has it been so essential for every honest worker to rally to the defence of his Union and its democratic traditions as it is right now. In printing herewith excerpts from the report of the investigation conducted by the Shipyard General Workers' Federation, we are doing so with the object of getting at least some vital information to the membership at large. 10

The Shipyard General Workers' Federation is one of many proud achievements of the Boilermakers' Union. Out of the struggle for this local for responsible trade unionism, and local autonomy, was born the Shipyard General Workers' Federation, and through this medium a powerful amalgamation of West Coast shipyard unions was brought about. 20

The effectiveness of the shipyard worker to determine the conditions of his employment has more than doubled as a result.

Those who now seek to destroy the Federation by separating the identity of Boilermakers' and Iron Shipbuilders' Union, Local No. 1, from the identity of the Federation, are playing a rotten game of treachery and betrayal. While others build, they tear down and destroy—try desperately to set worker against worker on the basis of political beliefs—spreading hatred and fear, bigotry and discord. 30

57. By wrongfully expelling the plaintiff from certain of the meetings of the defendant Union the plaintiff was prohibited from speaking to certain motions purporting to adopt a constitution of the defendant Union and was prohibited from voting on the said resolutions, which was his right as a member in good standing of the said defendant Union, all of which acted and tended to the prejudice of the plaintiff.

58. At the said meetings the members of the defendant Union, and in particular the persons mentioned in the preceding, dealt with the plaintiff in a manner and under such circumstances to humiliate the plaintiff and embarrass him and to cause ridicule and contempt from the members of the Union who were present at the said meeting, which influenced and prejudiced the members of the said defendant Union in their voting for the ex- 40

pulsion of the plaintiff as herein mentioned, and the plaintiff has suffered damage as a result thereof.

59. At the meeting of the defendant Union held at the regular meeting place on the 27th day of February, A.D. 1945, Mr. W. L. White and Mr. Norman McSween assaulted and beat the plaintiff, severely bruising and cutting his face and kicking him, all of which took place in the presence of members of the defendant Union, causing ridicule and contempt and hatred to be engendered by the various members present towards the plaintiff,
10 whereby the plaintiff has suffered damage.

60. Certain members of the defendant Union, and in particular Mr. W. L. White and Mr. C. W. Caron, have consistently conspired together to injure the plaintiff and have thereby caused him damage and financial loss by circulating defamatory statements amongst the members of the defendant Union to the prejudice of the plaintiff, and in particular at the said meeting of the 20th of November, A.D. 1944, hereinbefore mentioned, the said Mr. W. L. White said of the plaintiff that he was anti-union and anti-working class, that he was the tool of the capitalistic class,
20 that he was hired by the capitalistic class to testify against the defendant Union at the West Coast Arbitration on the subject of the closed shop, and that the plaintiff was not a fit and proper person to sit in the said meeting, all of which statements were false and malicious to the knowledge of the said Mr. White and were calculated to injure the plaintiff and to hold him up to ridicule and contempt of the members of the defendant Union and to create such a prejudice against the plaintiff that the said members would vote for the expulsion of the plaintiff.

61. Similar statements to those referred to in the preceding
30 paragraph and for a like purpose and with a like intended effect and whereby the plaintiff suffered damage and financial loss, were made at the meeting of the defendant Union held on the 4th day of December, A.D. 1944, wherein the plaintiff was referred to as ex-unionbreaker, an agent provocateur and other similar names.

WHEREFORE the plaintiff claims:

- (a) Damages in loss of wages from the date of his purported expulsion to the date hereof, estimated at the sum of \$1280.00;
- 40 (b) Damages for loss of wages from the date hereof until the trial of this action or until re-instated as a member in good standing of the defendant Union;
- (c) A declaration that the plaintiff is a member in good standing of Boilermakers' and Iron Shipbuilders' Union, Local No. 1 (hereinafter referred to as the "said defendant Union");

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(d) A declaration that the proceedings to expel and which purported to result in the expulsion of the plaintiff from the said Union upon the charges set forth in a letter from the said defendant Union to the plaintiff under date of the 26th of February, A.D. 1945, namely the actions of the Press and Investigating Committee, and of the meetings of the defendant Union purported to have been held on the 19th day of March, A.D. 1945, are illegal, null and void and of no effect in that no jurisdiction existed therefor;

(e) A declaration that the by-laws of the said defendant Union purported to have become effective on the 8th day of August, A.D. 1944, are null, void and of no effect and do not confer jurisdiction on the said defendant Union or any of its agencies thereof to expel the plaintiff for the reasons purported to have been advanced for the said expulsion; 10

(f) An injunction to restrain the said defendant Union from giving effect to the resolutions purporting to have been passed at the meetings of the said defendant Union held on or about the 19th day of March, A.D. 1945;

(g) An injunction compelling the Union to advise and notify North Van. Ship Repairs Limited that the plaintiff is a member in good standing of the said Union; 20

(h) An injunction restraining the said Union from black-listing the plaintiff and advising any person or persons that the plaintiff is not a member in good standing of the said Union;

(i) Damages for the wrongful expulsion and/or wrongful suspension of the plaintiff as a member of the said Union by the said Union;

(j) Damages for treating the plaintiff as being expelled or suspended from the said Union after the time when by law he was a member in good standing of the said Union; 30

(k) An injunction to compel the said Union to treat and consider the plaintiff as a member in good standing of the said Union;

(l) Such further and other orders or judgments as to this Honourable Court may seem meet or necessary in the premises;

(m) General damages;

(n) The costs of this action.

PLACE OF TRIAL: Vancouver, British Columbia.

DATED and delivered this 8th day of December, A.D. 1945. 40

C. WALTER HODGSON,
Solicitor for Plaintiff.

To: The Defendants,

And to:

JOHN S. BURTON, ESQ.,
Their Solicitor.

This Statement of Claim was dated, delivered, filed and served for and on behalf of the plaintiff by C. Walter Hodgson, Esq., solicitor for the plaintiff, and his place of business and address for service is Suite 301, Standard Bank Building, 510 West Hastings Street, Vancouver, B.C.

10

NO. 3

AMENDED STATEMENT OF DEFENCE

(AMENDED pursuant to the order of the Honourable Mr. Justice Whittaker, dated January 26, 1949.)

1. The defendants deny specifically each and every allegation of fact contained in Paragraph One (1) of the Amended Statement of Claim.

2. The defendants deny specifically each and every allegation of fact contained in Paragraph Two (2) of the Amended Statement of Claim.

20 3. The defendants deny specifically each and every allegation of fact contained in Paragraph Five (5) of the Amended Statement of Claim.

4. The defendants deny specifically each and every allegation of fact contained in Paragraph Six (6) of the Amended Statement of Claim.

5. The defendants deny specifically each and every allegation of fact contained in Paragraph Nine (9) of the Amended Statement of Claim.

30 6. The defendants deny specifically each and every allegation of fact contained in Paragraph Ten (10) of the Amended Statement of Claim.

7. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirteen (13) of the Amended Statement of Claim.

8. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifteen (15) of the Amended Statement of Claim.

40 9. The defendants deny specifically each and every allegation of fact contained in Paragraph Sixteen (16) of the Amended Statement of Claim.

10. The defendants deny specifically each and every alle-

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gation of fact contained in Paragraph Eighteen (18) of the Amended Statement of Claim.

11. The defendants deny specifically each and every allegation of fact contained in Paragraph Nineteen (19) of the Amended Statement of Claim.

12. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty (20) of the Amended Statement of Claim.

13. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-one (21) of the Amended Statement of Claim. 10

14. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-two (22) of the Amended Statement of Claim.

15. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-three (23) of the Amended Statement of Claim.

16. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-four (24) of the Amended Statement of Claim. 20

17. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-five (25) of the Amended Statement of Claim.

18. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-six (26) of the Amended Statement of Claim.

19. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-seven (27) of the Amended Statement of Claim.

20. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-eight (28) of the Amended Statement of Claim. 30

21. The defendants deny specifically each and every allegation of fact contained in Paragraph Twenty-nine (29) of the Amended Statement of Claim.

22. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty (30) of the Amended Statement of Claim.

23. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-one (31) of the Amended Statement of Claim. 40

24. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-two (32) of the Amended Statement of Claim.

25. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-three (33) of the Amended Statement of Claim.

26. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-four (34) of the Amended Statement of Claim.

27. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-five (35) of the Amended Statement of Claim.

10 28. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-six (36) of the Amended Statement of Claim.

29. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-seven (37) of the Amended Statement of Claim.

30. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-eight (38) of the Amended Statement of Claim.

20 31. The defendants deny specifically each and every allegation of fact contained in Paragraph Thirty-nine (39) of the Amended Statement of Claim.

32. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty (40) of the Amended Statement of Claim.

33. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-one (41) of the Amended Statement of Claim.

30 34. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-two (42) of the Amended Statement of Claim.

35. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-three (43) of the Amended Statement of Claim.

36. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-four (44) of the Amended Statement of Claim.

37. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-five (45) of the Amended Statement of Claim.

40 38. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-six (46) of the Amended Statement of Claim.

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39. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-seven (47) of the Amended Statement of Claim.

40. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-eight (48) of the Amended Statement of Claim.

41. The defendants deny specifically each and every allegation of fact contained in Paragraph Forty-nine (49) of the Amended Statement of Claim.

42. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty (50) of the Amended Statement of Claim. 10

43. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-one (51) of the Amended Statement of Claim.

44. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-two (52) of the Amended Statement of Claim.

45. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-three (53) of the Amended Statement of Claim. 20

46. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-four (54) of the Amended Statement of Claim.

47. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-five (55) of the Amended Statement of Claim.

48. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-six (56) of the Amended Statement of Claim. 30

49. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-seven (57) of the Amended Statement of Claim.

50. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-eight (58) of the Amended Statement of Claim.

51. The defendants deny specifically each and every allegation of fact contained in Paragraph Fifty-nine (59) of the Amended Statement of Claim.

52. The defendants deny specifically each and every allegation of fact contained in Paragraph Sixty (60) of the Amended Statement of Claim. 40

53. The defendants deny specifically each and every alle-

gation of fact contained in Paragraph Sixty-one (61) of the Amended Statement of Claim.

54. The defendants deny specifically that the plaintiff suffered damage or financial loss of any kind as a result of any unlawful action of the defendants.

55. The defendants further say that if the plaintiff suffered damage or financial loss, which is not admitted but denied, then the plaintiff was the author of his own misfortune.

56. In further answer to the Statement of Claim herein
 10 the defendants say that the defendant Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, at all times material to this action was a local union chartered by the Shipyard General Workers' Federation of British Columbia, which is a national union affiliated with the Canadian Congress of Labour by agreement with the said Canadian Congress of Labour. The defendant Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, operates under the charter granted to it by the said Shipyard General Workers' Federation of British Columbia and is bound by the said Constitution of the said Shipyard General
 20 Workers' Federation of British Columbia, and the By-laws of the said Boilermakers' & Iron Shipbuilders' Union of Canada, Local No. 1, and the plaintiff, as a member of the said Local Union No. 1, subscribed to and was bound by the conditions of the said Constitution and By-laws.

57. The defendants say that certain charges were made in accordance with the Constitution and By-laws as aforesaid against the plaintiff and the said charges were properly proceeded with as provided by the said Constitution and By-laws and a proper hearing was held by the Press and Investigation Committee of the
 30 said Local Union and the plaintiff was present and was heard and the said hearing was conducted in a fair, impartial and legal manner.

58. The defendants further say that the report of the Press and Investigation Committee as aforesaid was duly presented to a regularly constituted business meeting of the Local Union and the plaintiff was present, made a statement and was heard, and the said proceedings were conducted in a fair, equitable and legal manner and the plaintiff has no cause of complaint.

40 59. The said meeting after hearing the report of the Press and Investigating Committee, and hearing the witness produced by the complainant and the plaintiff, by a majority vote expelled the plaintiff from the Union.

60. The defendants say that if the plaintiff was asked to

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(Continued)

leave a meeting of the Union and was not properly heard it was because of his own conduct at the said meeting, in that he became so objectionable and so noisy that it was impossible to do otherwise than the meeting was forced to do.

61. The defendants say that the plaintiff attempted to obtain an injunction from the Supreme Court of British Columbia to restrain the Press and Investigating Committee from proceeding with the charges against him, and the said application was refused and the said charges were proceeded with in a lawful manner as provided by the Constitution and By-laws as aforesaid. 10

62. In further answer to the Amended Statement of Claim herein the defendants say that they have at all times acted in conformity with the Constitution of the Shipyard General Workers' Federation of British Columbia and the By-laws of the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, governing the affairs of the said Local No. 1, and the plaintiff is estopped in this action from claiming the relief prayed for and this Honourable Court has no jurisdiction to hear and determine the matters in question herein.

63. The defendants further say that the Constitution and 20 By-laws aforesaid provide that the decisions in respect to the matters herein of the membership of the Union by majority vote shall be final and conclusive and the plaintiff has no recourse to this Honourable Court in respect thereto.

64. The defendants further say that in accordance with the Constitution and By-laws as aforesaid the said defendant Boilermakers' and Iron Shipbuilders' Union, Local No. 1, has the right to expel its members in the manner provided by the said Constitution and By-laws and the plaintiff was fully aware of the said provisions and subscribed to the same on becoming a member 30 of the said Local Union No. 1.

65. The defendants say that the Amended Statement of Claim discloses no cause of action against the defendants.

66. The defendants further say that the plaintiff has no cause of action herein against the defendants on the grounds that the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, is or was an illegal association and having in its objects and its Constitutions and By-laws, objectives which are in restraint of trade and it maintains or maintained a policy of pursuing objects which are illegal in restraint of trade, as a consequence of which 40 its contracts of membership are null and void and this Honourable Court has no jurisdiction to grant the relief claimed in the action herein or any relief to the plaintiff.

THE DEFENDANTS PRAY that this action be dismissed with costs.

DATED at Vancouver, B.C., this 4th day of January, A.D. 1946.

“J. S. BURTON”

Solicitor for the defendants.

This Amended Defence is filed by John S. Burton, Esq., Solicitor for the defendants, whose place of business and address for service is 502 Credit Foncier Bldg., 850 West Hastings Street, Vancouver, B.C.

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*In the Supreme
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No. 3

Amended State-
ment of defence

(Continued)

IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Honourable Mr. Justice Whittaker)

751/45

Vancouver, B.C.

Between:

MYRON KUZYCH,

Plaintiff,

And:

10 W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE,
C. W. CARON and S. JENKINS, sued on behalf of and as representing BOILERMAKERS' and IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 (otherwise known as BOILERMAKERS' and IRON SHIPBUILDERS' UNION, LOCAL No. 1) and IRON and SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1. and THE EXECUTIVE COMMITTEE TO WHICH THEY RESPECTIVELY BELONG, and W. RENWICK, W. McGAW and ROY AQUINO, sued as trustees of the said BOILERMAKERS' and IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 and G. FARRINGTON, DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE BRAATEN, SIDNEY BELT and DAVID PEARSON sued on behalf of and as representing THE PRESS and INVESTIGATING COMMITTEE of the said BOILERMAKERS' and IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1,

20

PROCEEDINGS AT TRIAL

A. W. Johnson, Esq., and C. C. Locke, Esq. appearing for the Plaintiff.

J. S. Burton, Esq., appearing for the Defendants.

30 Mr. Johnson: My lord, in this matter I appear for the plaintiff, Mr. Locke being with me.

Mr. Burton: I appear for the defendants, my lord.

The Court: I am afraid I have not had an opportunity of reading the pleadings.

40 Mr. Johnson: My lord, this is an action which comes to your lordship by way of a second trial and perhaps I should start by reading the order of the Court of Appeal, if I may have that. The judgment of the Court of Appeal is the 17th of June, 1947, and it says, "This appeal having come on for hearing before this Honourable Court on the 5th day of June A.D. 1947 and on the 6th day of June A.D. 1947 in the presence of Mr. Charles Kelly Guild and Mr. Darrell Thomas Braidwood of Counsel for the Appellant, and Mr. John S. Burton of Counsel for the Re-

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spondents, upon reading the appeal book herein and upon hearing counsel for the appellant and respondents and upon the court ordering that the said Appeal should stand over for judgment, and the same coming on this day for judgment in the presence of counsel for both sides, this Court Doth Order and Adjudge that this Appeal be and the same is hereby allowed."

I should explain that the action of the plaintiff failed, and the plaintiff appealed from that dismissal and succeeded—succeeded I should say in getting a new trial.

Mr. Burton: I think it was the other way around; the defendants succeeded in the trial. 10

Mr. Johnson: The judgment proceeds, my lord: "And this Court Doth further Order and Adjudge that the judgment of the Honourable Mr. Justice Macfarlane dated the 16th day of December, A.D. 1946, be and the same is hereby rescinded and wholly set aside and a new trial be had between the Plaintiff and Defendants." Then it goes on with regard to costs, my lord.

Now what I think my learned friend was referring to a minute ago was the fact that the Court of Appeal heard the defendants on the issue of the illegality plea, which was not set up in the Court below, although I did not appear in the trial; and in the Court of Appeal the respondent pleaded that the association was an illegal one, and on that issue the case was sent back for retrial. 20

The Court: The plaintiff appealed?

Mr. Johnson: The plaintiff appealed.

The Court: The respondent was . . .

Mr. Johnson: The trade union.

The Court: And you say they set up on the appeal that the union was a . . .

Mr. Johnson: An illegal association, and I understand although I was not counsel in the case, that was the issue which decided the matter, and the case was sent back for a new trial on that ground. It is rather an unusual sort of judgment, because apparently the Court of Appeal did not deal with the case on the merits at all but merely sent it back. The reason I mention that is I assume that this case will not be confined to a trial on the issue of the illegality of the trade union but the matter will be tried on its merits again. 30

The Court: Yes. Are these previous decisions reported?

Mr. Burton: My lord, the first one of Mr. Justice Macfarlane is reported at 1947 1 W.W.R. page 332 and the decision of the Court of Appeal, which was given over me at the time just simply ordering a new trial contains no reasons but it is contained in an application for leave to appeal to the Supreme Court of Canada, and that is reported in the new issue of W.W.R. volume 2 at 732. I think my learned friend should allow me to refer to this par- 40

ticular judgment of the Court of Appeal as it expresses the issue rather clearly.

The Court: What is the number of the page?

Mr. Burton: Page 732, my lord.

Mr. Johnson: As my learned friend points out the judgment itself was never reported but incidentally there was an application for leave to appeal to the Supreme Court of Canada and incidentally the learned Chief Justice of British Columbia made some remarks on what were the reasons for granting the new trial. I would like to point out what my position is with regard to the second trial; that is, whether the second trial will proceed on the basis of the merits of the action, and presumably my learned friend will be allowed to set up the amendment which he has already submitted to me, alleging that the trade union is an illegal association and we are prepared to consent to such an amendment in view of what happened in the Court of Appeal. But your lordship will see if the issue is confined to whether the trade union is legal it is really a waste of time for us to appear at all because unless we proceed to deal with the merits, win or lose, we don't get anything by it. If we cannot have another trial on the merits, the decision of illegality means nothing to us.

The Court: Supposing it is illegal.

Mr. Johnson: The effect is we are out of court. We cannot sue them.

The Court: There is nothing to sue?

Mr. Johnson: The whole thing is tainted with illegality and void from the point of view of public policy, and restraint of trade, but of course we are prepared to argue it. It just depends on whether your lordship says that is a preliminary issue or to go ahead with the case on its merits.

The Court: It might save a lot of time if we did that.

Mr. Burton: I would like to say this, my Lord. I do agree with my learned friend that if the new trial were confined strictly to the plea of illegality, then he has nothing to gain by being here because if the constitution is held to be illegal then the action of course fails, and if it was found to be legal then the action has already failed, because Mr. Justice Macfarlane has already decided the other issue. I might point this out by way of clarity. The first trial was had at some length; there were a lot of witnesses; a great deal of argument back and forth and then the decision was given some months later after a great deal of consideration by the learned trial judge Mr. Justice Macfarlane. From that my learned friends appealed, and when it came on before the Court of Appeal, as counsel it has occurred to me that I had left out one argument. Strictly the argument was that there was no evidence of any importance because the evidence was

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already before the Court. It contained the by-laws of the association . . .

The Court: The Court of Appeal did not decide this was not an illegal organization did it?

Mr. Burton: No.

The Court: It stated that was an issue to be tried.

Mr. Burton: The court gave no reasons at all when it handed down judgment. It said there would be a new trial by reason of an issue raised which had not been previously raised. By way also of clarity I should read a portion of the judgment of the Court of Appeal what the Chief Justice said orally on an application which I made to appear. This came on before the full court—at least before the same judges that had presided at the time; his lordship, the Chief Justice, said this, “The motion for leave to appeal . . . (reading).” Those are the instructions if I may say so, instructions to your lordship and it does not say it is narrowed to the one point of illegality. My lord, may I say this, the question of illegality in the Court of Appeal was only a very small part of the argument. I only raised that because I thought as Counsel I should raise every point that was available to me, but I did raise it and whether or not it was decided one way or the other the Court of Appeal presumably could have dealt with the other issues involved in the appeal which my learned friend had brought, but there is no finding on that at all, so I presume the whole matter is again before your lordship. While the illegality can be construed as a preliminary objection nevertheless the difficulty is as to the size of the evidence. I think all the evidence must go in to try that issue of illegality because the issue raises the question of the union, its functioning, its by-laws and how it operates, and to go strictly into that position it might be your lordship could reserve that particular issue because I think it is involved.

As counsel I might say, my lord, the law is not too clear. Then we will have the witnesses and I have brought them from some distance, at least one of them, and we might have to bring him back again, should your lordship decide against me on the illegality question. In order to consider this as a preliminary objection, on the basis of deciding that issue first, it might mean we might have to segregate the evidence and call some of it one time and some another. If it was wholly independent of this evidence that would be a different situation, but my learned friend will have to call evidence and I may be in the position of putting my clients on the stand without the plaintiff giving evidence. I don't think his evidence is important along the line of illegality and I prefer not to be put in the position of putting the defence witnesses in first, if you are ultimately to proceed

along the lines of the whole case. First I wish to file an application to amend which my learned friend is agreeing to, to amend my pleadings to include this issue of illegality.

The Court: You are not opposing that.

Mr. Johnson: No, my lord. I believe my learned friend has made it clear that he wants the amendment in the form in which he sent me a copy. That is right?

Mr. Burton: Yes.

Mr. Johnson: And presumably the issue of illegality will
10 be in issue without having to amend our statement of claim in any way?

The Court: Yes, that is understood, Mr. Burton?

Mr. Burton: Yes, my lord.

The Court: It would seem that the whole thing is before me again and you are for the plaintiff; I do not want to suggest what course you should follow.

Mr. Johnson: We are prepared to go on.

The Court: All right.

Mr. Johnson: Now, my lord, if I might outline this with
20 a short statement. In this action the plaintiff is seeking to be re-instated in this Union, the defendant Union, from which he claims he was wrongfully expelled in March, 1945. He is also asking for damages for wrongful expulsion, and for the termination of his employment with the North Van. Ship Repairs where he was employed at the time, and where he had been employed since November, 1942, the employment having been terminated by the Union implementing the closed shop agreement which they had with the North Van. Ship Repairs in the year 1940. Now the
30 evidence will be also that the plaintiff took similar action when he was expelled previously in December, 1943. He then brought an action for re-instatement and for damages, which was tried before Chief Justice Farris on October 30 and 31 of 1944. But before the action came to trial, evidence will be led to show that the plaintiff was voluntarily re-instated by the Union, and I think the only issue at the trial was the assessment of damages. Now in this action the plaintiff will say that instead of voluntary re-instatement and in spite of the judgment of Chief Justice Farris he was refused admission at any of the Union meetings. He was boycotted and a campaign was carried on against him,
40 by the executive largely, which influenced the membership, and although the plaintiff attempted to attend meetings, and take his share of the Union duties and so on, and even in spite of his being on the occasion of the December elections in 1944 nominated for the presidency of this Union, he was nevertheless victimised, and eventually he was expelled in a manner which the plaintiff says was completely invalid, and after a trial, which was unfair,

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by a tribunal which was invalidly constituted. Reference will be made to the constitution of this Union and the various changes that were brought about in the constitution, and the illegal effect of these changes. It will be shown that the Union started out as a chartered local union of the Canadian Congress of Labour and then there was a little difficulty and an agreement was signed between the Union and the Canadian Congress of Labour which had the effect of apparently cancelling the charter, but exactly what the effect of that agreement on the contract of membership of the plaintiff in this Union is, remains a matter to be determined. It will also be shown that the defendants purported to pass certain by-laws to regulate the business of the Union and Union affairs after this change, after this split with the Canadian Congress of Labour. The validity of the by-laws, the manner in which they were passed, will also be canvassed, and the plaintiff will seek to show that the by-laws were invalidly passed and had no legal effect at all. I think I'd better commence by filing certain exhibits and perhaps my learned friend and I may agree on some of these exhibits which may not be strictly proved, if my learned friend agrees.

First of all I would like to file the judgment of the Court of Appeal as exhibit 1, and secondly the representative order of Mr. Justice Macfarlane. I think it is in these files there, Mr. Registrar. I might be able to find out what exhibit it was before. I think it is exhibit 26 there. This was the order made by Mr. Justice Macfarlane with respect to the representatives of the Union and what persons were nominated to represent the unions in this action. Perhaps I could pass on to the next one. That is Exhibit 2.

(JUDGMENT OF COURT OF APPEAL MARKED EXHIBIT No. 1.)

(ORDER OF MR. JUSTICE MACFARLANE MARKED EXHIBIT No. 2.)

The Court: Wait until I describe that.

Mr. Johnson: It is a representative order of Mr. Justice Macfarlane and the date is November 14, 1945. Then the next exhibit I tender is the Canadian Congress of Labour Constitution. I think my learned friend will be satisfied with that. That was filed before as Exhibit No. 1. Perhaps we could use the exhibits that were put in at the previous trial. Here is one—I don't think it is marked.

Mr. Burton: If there are too many in, it may be confusing later on.

Mr. Johnson: Very well.

(CONSTITUTION CANADIAN CONGRESS OF LABOUR
MARKED EXHIBIT No. 3.)

Mr. Johnson: I would like my learned friend to produce the closed shop agreement between the defendant Union and the North Van. Ship Repairs, of January, 1940.

Mr. Burton: It was not filed in the court below. I mean in the first trial.

Mr. Johnson: There was a copy filed in the previous trial between the plaintiff and this Union, the case of M. Kuzyeh
10 and White.

Mr. Burton: I produce a copy. It was multigraphed, my lord, and there is no question about it being the proper copy. There is one. It is with this proviso I do not think it can be called a closed shop agreement. It is a union shop agreement.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 4.)

Mr. Johnson: The reference I wish to make in this exhibit which is No. 4 I believe now is to paragraph 28 (reading). The next exhibit I would like to tender is the agreement between the Canadian Congress of Labour and this Union of the 3rd of
20 December, 1943.

Mr. Burton: Is that not in already?

Mr. Johnson: Yes, I think we have that in the first trial. It is Exhibit No. 2.

(AGREEMENT REFERRED TO MARKED EXHIBIT No. 5.)

The Court: Who are the parties to this agreement?

Mr. Johnson: The Canadian Congress of Labour and the defendant Union. Before I pass from that, my lord, I would like to explain that this is in effect what I call the peace treaty between the Canadian Congress of Labour and this Union. There
30 had been difficulty, I think my learned friend will agree, and there were law suits between different factions in this Union, and this is an attempt to clear that up. In paragraph 6 of the statement, it says as follows: as of the 1st day of January, A.D. 1944, the party of the second part, that is the Union, shall cease to be a chartered local union of the party of the first part and shall not be subject to any constitutional rights or obligations pertaining to a chartered local union therein but shall be considered for all purposes an affiliated union, subject to the constitutional disposition of the Canadian Congress of Labour.
40 Now the Canadian Congress of Labour which is here as Exhibit No. 3, and by Article 14, deals with chartered local unions and sets out the provisions under which they are to operate, and by paragraph 6 of this agreement of the 3rd of December, 1943, it is apparent this Union will no longer be a chartered local union

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but take on the status of an affiliated union. Then the agreement goes on to provide for the formation of a federation of shipyard workers, and other unions, to join together and become a federation which would be affiliated to the Canadian Congress of Labour, presumably pursuant to that agreement . . .

The Court: What paragraph is that?

Mr. Burton: Seven.

Mr. Johnson: Seven, my lord. I will read it (reading). Now there was an agreement entered into on the 10th of April, 1944, between the Canadian Congress of Labour and the Shipyard Workers' Federation, and I think that was put in previously, as Exhibit No. 5—no, Exhibit No. 3, please. 10

(AGREEMENT OF THE 10th OF APRIL, 1944, MARKED AS EXHIBIT No. 6.)

The Court: The parties to that, again?

Mr. Johnson: The parties to this are the Canadian Congress of Labour and the Shipyard General Workers' Federation of British Columbia, and it was signed by a number of unions. My lord, I do not think there is any necessity to detail these unions, but a number of the unions got together and joined this federation. Then that federation had a constitution. If my learned friend has no objection I will file the constitution. 20

Mr. Burton: No.

Mr. Johnson: It is dated the 27th of February, 1944, and sometime previous to this agreement . . .

(CONSTITUTION DATED 27th OF FEBRUARY, 1944, MARKED EXHIBIT No. 7.)

The Court: That is the constitution of . . . ?

Mr. Johnson: The Shipyard General Workers' Federation of British Columbia. Now the next exhibit I would like to tender is a letter of December 7, 1943, from the defendant Union to the plaintiff notifying him of certain charges. Now those charges were the charges which were the subject of this action which was tried before Chief Justice Farris, but the reason I want to have that letter in now is that one of the chief charges laid against him, and which resulted in his expulsion from the Union the second time, was the same charge which was made in the first case; the same charge resulting from some appearance before a certain Board of Arbitration, on which Mr. Justice Wilson sat as a commissioner and where the plaintiff gave certain evidence, that as a result of the evidence he gave before that Board, charges were made against him, and those charges resulted in his expulsion from the Union the first time. Then, as I say, he brought an action for re-instatement. One of the charges for 30 40

which he was expelled the second time was for the same appearance before the same Board. That is why I want the letter in.

10 Mr. Burton: I am objecting to it on this basis. It has nothing to do with this case at all. It happened in that first trial—my learned friend has not conveyed the whole impression as to what happened at that trial before his lordship the Chief Justice. What his lordship simply found was that in expelling Kuzyeh they had not acted in accordance with their own constitution; they had not given enough days notice, or some such defect as that. It is nothing to do with the merits of the case at all. He did not go into the question of whether he was rightfully or wrongfully expelled. It was simply that the procedure was out of order, and counsel, Mr. Stanton, accepted the position that he was wrongfully expelled and it was only a question of damage. Following the suggestion on which my learned friend seeks to put that in, he might put in half a dozen things; there might be half a dozen charges that Kuzyeh might bring. We are dealing with only one charge.

The Court: What is the nature of the letter?

20 Mr. Johnson: It notifies the plaintiff of the charges which he would have to answer to the Union, and one is the appearance before this Board of Arbitration which was seeking to discuss the question of the closed shop, and as I say, the same charge was laid against him later and resulted in his expulsion for the second time.

The Court: The second expulsion arises out of the same incident?

30 Mr. Johnson: No, there were three charges laid against him. One was his appearance before this Board of Arbitration. As I say, that charge was laid against him and resulted in his expulsion in the first instance.

The Court: Yes, it arises out of the same incident.

Mr. Johnson: Yes.

The Court: In one respect, anyway?

Mr. Burton: Well . . .

Mr. Johnson: Yes.

40 Mr. Burton: It arises only in this way that he was charged with that. There was no adjudication—there may at some time have been some question of adjudication. My learned friend tells me that the point in this case was that he was only given 6 days notice instead of 7. He was 1 day out of 4. It happens in the charge before the Court that charge was one of several others. The only basis on which my learned friend can produce it is that we laid a similar charge previously. I submit that is not relevant evidence.

The Court: I cannot very well rule on it unless I see it.

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Mr. Johnson: I draw attention to paragraph 53 of your statement of claim which sets up that one of the things of which we complain is that the defendant wrongfully and maliciously and to the prejudice of the plaintiff carried on a campaign against the plaintiff to create ill will. We say that this is an instance of that; that although the charge was presumably dead, it was not resurrected until a year after. What happened was that this purported expulsion in the first instance was in December, 1943, for an appearance before the Board of Arbitration which took place in October, 1943. The Union voluntarily reinstated the man in June, 1944, and his action went to trial in October, 1944. The expulsion of which we complain did not take place until March, 1945, and yet they go right back to October, 1943, and make the charge against him of appearing before this Board of Arbitration, which had already been made the subject of charges in December, 1943. 10

The Court: This letter is dated December 7, 1943, and it has reference to his appearance before that Board.

Mr. Johnson: Yes.

The Court: I do not see why it should not be admitted, Mr. Burton. 20

Mr. Burton: There is only one thing; there may be another law suit and another law suit.

The Court: You agree that this second expulsion—one of the reasons given was his appearance before the Board in 1943.

Mr. Burton: My lord, I have not looked at the charge again, but we will come to that very quickly. It is Exhibit 58. No, it was not specifically . . .

Mr. Johnson: It is in the evidence. It appears in the evidence. 30

Mr. Burton: In cross-examination. He was cross-examined in the first trial on his appearance before that particular tribunal but it is not the subject of the charge here. The charges are as follows: "That on or about the 10th day of December, 1944, he, the said Myron Kuzych, called, held, or assisted in holding an unauthorized public meeting to discuss internal business of the said Union, such meeting being in fact held at 856 Seymour Street, Vancouver, B.C., contrary to Article 26, Part B, Section 2 (1) of the said by-law. And the second charge that between the month of October, 1942, and the month of December, 1944, he, the said Myron Kuzych, was on divers occasions guilty of conduct unbecoming a member of the said Union and committed acts discreditable to it, in that he, the said Myron Kuzych, did publicly oppose established policies of the said Union by campaigning against the closed shop principle and the principle of dues check-off contrary to Article 26, Part B, Section 2, C and F, of the said 40

by-law." That would be the only place my learned friend could say it would come in.

Mr. Johnson: That is where it comes in.

The Court: You say it is not relevant to this trial?

Mr. Burton: I say it is not relevant. It has to do with another charge. He might bring up all sorts of things against the Union. It will come out in the evidence, undoubtedly.

The Court: It is very difficult for me to decide, not having heard the evidence.

10 Mr. Johnson: Perhaps I should leave it over until the plaintiff goes into the box and gives evidence about it.

The Court: Is that all right, Mr. Burton?

Mr. Burton: Yes.

Mr. Johnson: The next submission I have is a letter from the defendant Union to the plaintiff dated the 21st of June, 1944, regarding his re-instatement.

Mr. Burton: Well, I would have the same objection to that, my lord. Whether he was in and out of the union has nothing to do with this law suit.

20 The Court: What is the date of that?

Mr. Johnson: June 21st, 1944. I have explained already that the defendant Union voluntarily re-instated this man before the first trial and my instructions are that before Chief Justice Farris, all that happened after the 21st of June, 1944, was discarded; a cut off was made as of the 21st of June, 1944, and the damages were to be up to the 21st of June, 1944. So my statement is that June 21st, 1944, is a very important date and it commences with one of the chief complaints in this action although we have to go back before the course of conduct.

30 The Court: You say that letter is not relevant.

Mr. Burton: Pursuant to the judgment of the Chief Justice; you did not give him 7 days notice; you only gave him 6. You had better re-instate him; and will re-instate him.

The Court: That is later.

Mr. Burton: Yes, he might have been re-instated two years before, and I submit it has nothing to do with the relevancy.

The Court: You say it is not relevant.

40 Mr. Burton: I explained — I don't know whether I have made it quite clear, but the Chief Justice did not hear this case until October 20th, 1944, so they had voluntarily taken this man back and re-instated him.

The Court: Are you leaving that one over, also?

Mr. Johnson: Very well. Some by-laws were attempted to be passed in 1944 and I would ask my learned friend to produce the draft by-laws.

Mr. Burton: They were submitted. We filed—yes, I don't

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know which one—there were about half a dozen draft by-laws. You had better take them in the order in which they were put in in the other case, if you wish to put them in. I don't know if it is the proper time to put them in because evidence will be led on them.

Mr. Johnson: I don't know whether we can lead the evidence. The plaintiff cannot say "I kept the by-laws;" but the by-laws were put in at the last trial and there were a number of draft copies; there is a draft by-law, a master by-law, and a printer's copy and finally a printed copy. I would like to put those in. 10

Mr. Burton: I have no objection. This is hardly the time to do it. They were produced from my custody. They come from the defendant's custody.

The Court: Who put them in on the first trial?

Mr. Burton: I put them in for the defence and I know I have to tie them in but if my learned friend wishes to put them in now it is quite all right with me.

The Court: Have you got them?

Mr. Burton: Take them in the order in which they were put in. There are multigraphed sheets and there were inter-lineations. 20

Mr. Johnson: I want to be quite sure as to what these by-laws are because I did not appear at the first trial.

Mr. Burton: Exhibit 28—produce that—exhibit 28 in the first trial. That is the first one I see in the index.

The Court: You would like to look them over?

Mr. Johnson: I have had an opportunity to look those over and I don't quite appreciate the difference between those different copies and the draft by-laws that were introduced. As my learned friend said there are one or two copies of draft by-laws. I would like them in the right order and the right date on which those drafts were submitted to the membership. 30

The Court: Take all the time you need.

Mr. Burton: I think they were put in at that time in the order of date.

Mr. Johnson: No.

.. Mr. Burton: Take out exhibits 28, 29, 30, 31 and 32 and 34 and then my learned friend can look them over and see.

Mr. Johnson: I notice first of all that exhibit 28 filed in the last trial, has no date on it. I would like to ask my learned friend the date actually this draft by-law was submitted to the membership. 40

Mr. Burton: I will refer to the membership—page 203 of the Appeal Book. You can look this up if you like, Mr. Johnson. That is the way it was put in, page 207. It was identified, my

lord, as the first draft that was submitted. The date was not recorded, but it was simply the first draft.

Mr. Johnson: Very well, my lord. I am satisfied with that. This will be the first draft.

(FIRST DRAFT REFERRED TO MARKED EXHIBIT No. 8)

Mr. Johnson: Now there is another draft submitted by my learned friend dated May 1944 which purports to be—

Mr. Burton: That is the second one. That appears at page 206 of the Appeal Book.

10 (SECOND DRAFT REFERRED TO MARKED EXHIBIT No. 9.)

The Court: What is the date of that?

Mr. Johnson: May 1944. Now, there is another here. I don't quite appreciate what it is. It is also dated May '44 and it has certain pen changes. This is the first amendment I am told, of the second draft. Is that right?

Mr. Burton: Exhibit 30—I will have to refer to the evidence, line 20, page 208; the first amendment of the second draft; that is what it says. That will be exhibit 10.

20 (FIRST AMENDMENT OF SECOND DRAFT MARKED EXHIBIT No. 10.)

The Court: The only date I have is May.

Mr. Johnson: It is dated May 1944.

Mr. Burton: The previous exhibit was May.

Mr. Johnson: Yes, also May. Now another copy is tendered and it has pencilled in blue, "Master copy." It was filed as Exhibit 31 at the previous trial.

Mr. Burton: At page 209; that is the date that appears on it. I don't think it appears in the evidence.

30 Mr. Johnson: The date appears as April 6th, 1944; cross date of May '44 substituted. My lord, I asked my learned friend whether those changes were made as at May 2nd, 1944.

Mr. Burton: What happened was that the master draft was prepared on April 6th, 1944, and then the interlineations and corrections made as of May 2nd, 1944, so that the document would appear as a mimeographed sheet as of April and as of May. The person in charge of the drafting put the changes in, brought up to May 2nd.

The Court: How shall I describe that?

40 Mr. Burton: It is the master copy of the draft by-law.

Mr. Johnson: Containing all the amendments up to May 2nd, 1944. I will ask my learned friend whether he can produce any draft by-laws, a master copy containing all of the amendments prior to the printer's copy.

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Mr. Burton: My lord, I just make this observation so that it will stand on the record. I am not saying that contains all the amendments. There may have been others that are not written into it.

Mr. Johnson: All I am asking my learned friend is whether there is another master copy which brings the matter later than May 2nd, 1944.

Mr. Burton: There is the completed copy. The printer's copy would be perhaps the last, exhibit 34 in the first trial.

Mr. Johnson: I asked my learned friend was exhibit 32— 10

Mr. Burton: As far as I can go at the moment—we will have a witness on the stand and he said this in the Court of Appeal: "I believe according to the notice that may have been the copy which helped the staff to prepare the final draft." I would ask to mark that as exhibit 32. That is all that was stated so I think it was the copy for the printer.

The Court: That would be the final then?

Mr. Burton: I don't know if it is the final one. I think several came in to the printer.

The Court: The final draft for the printer. Can I describe 20 it that way?

Mr. Burton: Yes, my lord.

(FINAL DRAFT FOR PRINTER MARKED EXHIBIT No. 13.)

Mr. Johnson: We have no date on it except May 1944.

Mr. Burton: If we put it in my learned friend can cross examine on that. It will probably come out in the evidence.

The Court: All right, I won't put "printer's copy".

Mr. Johnson: That is another here which was exhibit 34, and it has written in "printer's copy." It is a loose-leaf; I don't know whether this is later than the previous one. It is not dated. 30 It was exhibit 34 at the last trial.

Mr. Burton: Here is what it says in answer to the question of Mr. King; that is marked printer's copy on each and every page. That is to avoid confusion. I presume it is the final copy submitted to the printed containing all the amendments up to date. So it would look to be, as far as I can tell at this time, to be the final copy.

Mr. Johnson: Now we have the printed by-laws, my lord.

The Court: Final copy exhibit 13.

Mr. Johnson: Yes, the final printed by-laws marked Feb- 40 ruary 8th, 1944. I presume my learned friend has no objection to this being filed?

Mr. Burton: No.

Mr. Johnson: I would ask my learned friend if he is prepared

to admit that there have been no subsequent amendments to these printed by-laws.

Mr. Burton: I don't know that. Nothing came out in the evidence. In any event, it has nothing to do with this case.

The Court: That is Exhibit 14.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 14.)

Mr. Johnson: There are certain minutes of this Union, my lord, I would like to have my learned friend produce; the minute book if possible.

10 Mr. Burton: My lord, the minutes on the previous trial were all submitted to counsel for the plaintiff, and they were all taken from the Minute Book. It is a very large Minute Book and the Union—one of its articles is an oath of obligation that matters are to be kept secret. I simply made an arrangement with counsel for the plaintiff at that time to submit all minutes which had anything to do with this case at all where the name Kuzyeh was mentioned; so the by-laws were considered and the Minute Book was carefully gone through and all the pages taken out and most of those minutes were exhibits in the first trial. Counsel for
20 the plaintiff discarded certain minutes as not being necessary and of those some are missing. My learned friend knows that. I have advised him two or three were exhibits in the previous trial are missing. I cannot produce them. I have informed my learned friend and told him of the circumstances under which they were missing. This trial was held almost 3 years ago and it was in April or May 1946 and subsequent to the rest those documents, unfortunately in my office, were taken by mistake by the persons in charge of the cleaning up of the office; they were in a spot where they should not have been and were thrown away. There are
30 only two or three sets of these minutes and I have assured my learned friend there was nothing of any consequence in those.

The Court: Everything except those discarded by the plaintiff were put in?

Mr. Burton: Yes, the plaintiff had his right; he examined them all and he went through them on discovery and put in those he wished.

Mr. Johnson: Some of the difficulty here arises from the Union's policy of having a loose-leaf minute book. They do not appear to have anything but a loose-leaf system and as a result some
40 of the minutes cannot be duplicated. I am prepared to go ahead with what we have here. It is the only thing I can do under the circumstances and I think we have already some minutes filed in the first trial, minutes of certain meetings. I would like to have my learned friend's consent to those minutes going in at this trial.

Mr. Burton: Yes. I might say with regard to the loose-leaf

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notebook they are very copious notes and it would be very difficult to have them typed with a union of this size. If you are anxious to have the minutes, get them out.

Mr. Johnson: Yes, the minutes of evening meeting, January 20th, 1944 were the first filed before. I would explain here that apparently these meetings were held in the morning and in the evening. When the by-laws became effective presumably this system was followed; that a meeting would be convened in the morning and then there would be a recess and the meeting would again reconvene in the evening apparently to enable the different workers on the different shifts to attend. Just how that was worked out we wish to canvass further when we have the evidence. That is a preliminary explanation of that so that the minutes of the meeting—of January 20th, 1944 would be produced. They will be exhibit 14 here. 10

Mr. Burton: It will be 15 here, will it not?

Mr. Johnson: What is 14?

Mr. Burton: 14 is the printer's copy.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 15.)

Mr. Johnson: Then the next one is the Minutes of the morning meeting of March 16th, 1944. 20

Mr. Burton: That is exhibit 47 below.

(MINUTES OF MARCH 16, 1944, MARKED EXHIBIT No. 16.)

Mr. Johnson: Then the minutes of meeting of June 5th, 1944.

(MINUTES OF JUNE 5, 1944, MARKED EXHIBIT No. 17.)

Mr. Johnson: Minutes of the evening meeting of July 3rd, 1944.

(MARKED EXHIBIT No. 18.)

Minutes of the morning meeting of August 7th.

(MARKED EXHIBIT No. 19.)

And the evening meeting of August 7th.

(MARKED EXHIBIT No. 20.)

Minutes of the morning meeting of August 21st, 1944.

(MARKED EXHIBIT No. 21.)

Minutes of the evening meeting of August 21st, 1944.

(MARKED EXHIBIT No. 22.)

The consolidated minutes of the morning-evening meetings of August 21st, 1944. 30

(MARKED EXHIBIT No. 23.)

The Court: Will you wait a minute.

Mr. Johnson: Minutes of the morning-evening meeting November 20th, 1944.

(MARKED EXHIBIT No. 24.)

Mr. Burton: It is November 25th in the appeal book. It is exhibit 24. I am sorry I don't know that we have those in that way.

Mr. Johnson: This is exhibit 35, in the previous trial. That
10 is November 20th, 1944, minutes of the morning-evening meeting.

Now minutes of the morning-evening meeting of December 4th.

(MARKED EXHIBIT No. 25.)

The Court: November 20th will be exhibit 24.

Mr. Johnson: Yes, and the next minutes of December 4th the morning-evening meetings will be exhibit 25.

I have some that my learned friend produced this morning in chronological order; December 18th, 1944, morning and evening meetings.

20 Mr. Locke: That was not a previous minute.

(MINUTE MARKED EXHIBIT No. 26.)

Mr. Johnson: Morning and evening meetings of January 5th, 1945.

(MARKED EXHIBIT No. 27.)

Now my learned friend produces the original minutes of a meeting of January 22nd, 1945.

The Court: Morning and evening?

Mr. Johnson: Yes, morning and evening.

(MINUTES MARKED EXHIBIT No. 28.)

30 Then my learned friend produces what I suppose to be a copy of the minutes of the afternoon meeting of January 29th, 1949.

Mr. Burton: The afternoon.

(MINUTES MARKED EXHIBIT No. 29.)

Mr. Burton: This is also new.

Mr. Johnson: Yes. My learned friend produces what purports to be an original minute of the meeting of February 5th, 1945, morning and evening, to which is attached, my lord, something that perhaps might not belong to it because it is a resolution dated March 19th and seems to be attached.

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Mr. Burton: Yes, it has nothing to do with this if I might take it off.

Mr. Johnson: I would like to file them together if I may . . . with the resolution attached dated March 19th, minute marked exhibit No. 30.

(MINUTES MARKED EXHIBIT No. 30.)

Mr. Johnson: Then the minutes of the morning and evening meetings, February 19th. That was in the first trial.

(MINUTES MARKED EXHIBIT No. 31.)

Minutes of the morning and evening meetings of March 19th, 1945. 10

Mr. Burton: This is new. They've not been in before.

Mr. Johnson: I don't think so.

(MINUTES MARKED EXHIBIT No. 32.)

Mr. Johnson: That is all the minutes . . .

Mr. Burton: I have located another set of minutes. I made an extract, only an extract of the minutes because of the meeting on July 3rd, 1944. That was in the minute book. We went through every minute there was and that is entirely new. It does not appear in the affidavit of documents; if my learned friend wishes 20 it.

Mr. Johnson: We have already put in the minutes of the evening meeting. I would like to know what this purports to be; if it is the morning meeting.

Mr. Burton: I will let my learned friend know this afternoon what it is. I have another minute which is also marked in another case, apparently the 27th. That is the one you asked for in a letter.

Mr. Johnson: I would like an opportunity of seeing this.

Mr. Burton: You can look at it first and file it later. I don't 30 want you to put this in if you don't wish to.

Mr. Johnson: Yes, this is the morning meeting of February 27th, 1945.

Mr. Burton: I thought you would want it in.

(MINUTES MARKED EXHIBIT No. 33.)

Mr. Johnson: That really should go in before the others. There is a copy of a letter from the defendant to the plaintiff dated November 20th, 1944, which my learned friend produced and this is what it says, my lord.

(LETTER READ AND MARKED EXHIBIT No. 34.) 40

Now the next exhibit I would like to tender is a report of the investigating and press committees.

Mr. Burton: That was already filed, was it not; that was previously exhibit 41.

(REPORT MARKED EXHIBIT No. 35.)

Mr. Johnson: Then the charge of C. J. McKendrick dated February 14th, 1945.

(DOCUMENT MARKED EXHIBIT No. 36.)

Mr. Burton: Both of those are part of exhibit 16.

Mr. Johnson: Well, put the letter in. This is the letter notifying the plaintiff of the charges. It is dated February 25th, 10 1945. I won't read it now. I will read it later, and then the accompanying letter is dated what date . . .

Mr. Burton: That is one exhibit.

Mr. Johnson: Yes.

The Court: You're not putting them in separately?

Mr. Johnson: No, just as your lordship pleases. I think the two go together, the letter and the charge both.

The Court: All right, one exhibit.

Mr. Johnson: Then there is a letter from the defendant to the plaintiff March 14th, 1945. This, my lord, is a letter in the 20 following terms:

(LETTER READ AND MARKED EXHIBIT No. 38.)

There is a letter from the defendant to the North Vancouver Ship Repairs of March 23rd, 1945.

The Court: North Vancouver Ship Repairs?

Mr. Burton: It is J. W. Thompson.

Mr. Johnson: It is to J. W. Thompson, Manager, North Vancouver Ship Repairs, dated March 23rd, 1945.

(LETTER READ AND MARKED EXHIBIT No. 39.)

Mr. Johnson: Then there is a letter from the North Van- 30 couver Ship Repairs to the plaintiff of March 29th, 1945, which I will put in.

Mr. Burton: Yes, that is exhibit 20 in the first trial, is it?

Mr. Johnson: Yes, Exhibit 20; March 29th, 1945. A letter from the North Vancouver Ship Repairs Limited to Myron Kuzych, the plaintiff.

(LETTER READ AND MARKED EXHIBIT No. 40.)

Mr. Johnson: Now there is a newspaper clipping from the Main Deck which was the official organ of the Union, I believe, of March 2nd, 1945. I think it is noted February 2nd . . . it should 40 be actually March 2nd, 1945.

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Mr. Burton: It is not an organ of the defendant, but of the General Shipyard Workers' Federation.

The Court: The Main Deck?

Mr. Burton: It is marked the official organ of this Union of the defendant. That is the point I wish to make.

Mr. Johnson: I think at one time at any rate it was. I will not read that for the moment.

(NEWSPAPER CLIPPING MARKED EXHIBIT No. 41.)

It has a printing date of February 2nd. The next one is the typewritten procedure of the press and investigating committee. 10
 It is headed, my lord, the procedure of the press and investigating committee, and it is a typewritten sheet, two sheets, setting out the way in which this trial by this committee will be conducted. I do not think I need bother your lordship with it for the moment.

(DOCUMENT MARKED EXHIBIT No. 42.)

Mr. Johnson: Now, my lord, I will call the plaintiff.

MYRON KUZYCH, the Plaintiff herein
 being first duly sworn, testified as
 follows:

EXAMINATION BY MR. JOHNSON:

20

Q. Where do you live?

A. 319 East 19th Avenue.

Q. What is your occupation?

A. I am a welder.

Q. Have you been working recently?

A. I have not worked since the day I was dismissed from the North Van. Ship Repairs.

Q. For how long have you been a welder?

A. I have been a welder from November 12th, 1942 until my final expulsion from the North Van. Ship Repairs. 30

Q. Did you take a course of training to become a welder?

A. Yes, I took a Government sponsored training to become a welder.

Q. How long did that take and when did it take place?

A. It took me six weeks immediately previous to me being sent to the North Van. Ship repairs on or about November 12th, 1942.

Q. You say you were sent to the North Van. Ship Repairs. Will you explain that?

A. One of the stipulations under which the Government 40 trained welders was that when the welder passes the welding test he must accept—

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Mr. Burton: My lord, if my learned friend has the regulations, I think we should put them in. Otherwise it is hearsay evidence.

Mr. Johnson: What I want to get from the plaintiff is that he was sent from the welding school to the North Van. Ship Repairs. I think the plaintiff has already said that.

The Witness: That is true.

Mr. Johnson: I don't want a long-winded explanation as to who told you to go there.

10 Q. You were sent under Government regulations?

A. That is correct.

Q. You started to work there when?

A. On or about November 12th, 1942.

Q. Was there a Union operating at the North Van. Ship

A. Yes, there was a Union operating at the North Van. Ship Repairs.

Q. Was there more than one Union?

20 A. Immediately when I came to work there I came across no evidence of being more than one.

Q. What was the name of that Union?

A. The Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1.

Q. That is the defendant in this action?

A. That is correct.

Q. Did you join that Union?

A. I joined that Union.

Q. Did you pay dues to that Union?

A. Yes, I paid dues.

30 Q. When you first went to work there did you pay dues?

A. No, at first I only paid a donation.

Q. For how long and when did that commence?

A. That commenced about a month after I began to work at the North Van. Ship Repairs and continued until about the time when the case—the first case was heard by Mr. Justice Smith, early in 1943.

Q. You became a member of this defendant Union?

A. Yes.

40 Q. Soon after you went to work at the North Van. Ship Repairs?

A. Yes.

Q. Did anything significant in your relation to the Union happen in 1943?

A. There were a number of things that occurred which made me aware that some power or group was operating and which was quite contrary to the interests of the working man at the

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North Van. Ship Repairs and to the extent for which it was possible for me to object to these abuses—

Mr. Burton: My lord, we don't want a speech from this man about the defendant Union.

The Court: No, I do not think that is necessary.

Mr. Johnson: Did you take any part in the affairs of the Union?

A. None.

Q. Did you know if the Union was under the aegis of the Canadian Congress of Labour at that time? 10

A. Yes, I knew that at the beginning; that it was under the aegis of the Canadian Congress of Labour, and then subsequently a suspension took place and then subsequently they were alleged to have—

Q. You say the Canadian Congress of Labour suspended this Union?

A. That is correct.

Q. When was that?

A. As near as I understand—

Mr. Burton: Again he is speaking from hearsay. If this witness was there and saw it suspended let him speak to it. 20

Mr. Johnson: Were you at any meeting where the membership was notified that the Union had been suspended?

Q. Was it a matter of general knowledge in the yard?

A. No.

Q. All right, what happened in October 1943?

A. In October 1943 I attended as a witness before the West Coast Board of Arbitration.

Q. What were they doing?

A. The Board was deliberating on the feasibility or non- feasibility in recommending a closed shop at the West Coast Shipbuilders Limited, and its subsidiary, the Hamilton Bridge. 30

The Court: Where?

A. At the West Coast Shipbuilders Limited, and its subsidiary, the Hamilton Bridge.

Mr. Johnson: You say that you gave evidence before this Board?

A. That is correct.

Q. How did you come to give evidence?

A. As a result of a letter that I received from Mr. Justice Wilson informing me that if I presented myself at the court my evidence would be admitted. 40

Mr. Burton: If the witness has the letter I would like him to produce it, because he is not entitled to give the contents of the letter unless he produces or says that he cannot.

Mr. Johnson: I think the witness has the letter but I don't think it is important that it should go in.

Mr. Burton: He cannot give evidence about it unless he does put it in.

Mr. Johnson: The point is that you did attend before this Board, and you did give evidence?

A. That is correct.

Q. What I want to know is, how you came to give evidence. Had you been following the Board's proceedings?

10 A. I was at all times very interested in the activities of the new executive which took over as of the beginning of 1943.

The Court: The beginning of what?

A. Of the Boilermakers' Local No. 1 and inasmuch as I saw grave abuses—

Mr. Burton: Now, my lord, I object to that. I think he should be directed that he cannot give his opinion. We don't know whether there were abuses or not. We are considering abuses.

The Court: No, I do not think that is admissible.

20 A. Then I shall answer in that way that I attended before the Board because I wanted to hear what argument the President and the executive would advance in support of the award of the Closed Shop at the West Coast.

Mr. Johnson: Who was the President at that time?

A. Mr. William Stewart.

Q. Did you hear Mr. William Stewart give evidence before this Board?

A. Yes.

30 Q. How did you manage to give evidence if you were working at the time?

A. I was continuously on the graveyard shift; that is, from 12 midnight until 7.30 in the morning, and the rest of the day was entirely all mine. I had sufficient opportunity to have my full sleep and still attend the hearings without any loss of time, and certain sessions of the Board being open to the public, I merely walked into the court.

Q. You gave evidence before the Board?

A. That is correct.

Q. What was the tenor of the evidence that you gave?

40 A. The tenor of my evidence that I gave was that—

The Court: Before you go into that I think you better adjourn until 2.30.

(PROCEEDINGS ADJOURNED TO 2.30 p.m.)

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(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT 2.30)

MYRON KUZYCH, resumes stand.

EXAMINATION CONTINUED BY MR. JOHNSON:

Q. Now, Mr. Kuzych you were telling us just before the intermission of the evidence that you were giving the Board in 1943 of the West Coast arbitration?

A. That is correct.

Q. What was the tenor of the evidence that you gave before the Board? 10

A. The tenor of the evidence consisted of the opinion that the then executive of the Boilermakers' and Iron Shipbuilders' Union, No. 1, did not merit the award of the Closed Shop at the West Coast.

Q. Did you take any stand on the advantage to Unions generally of the Closed Shop?

A. No.

Q. Did you speak in favor of the Closed Shop or the Open Shop before the Board?

A. I believe I spoke in favour of the Open Shop. 20

Q. You were an opponent of the Closed Shop policy?

A. That is right.

Q. Was the principle of the Closed Shop ever discussed at any meeting of this Union that you attended?

A. No.

Q. Did you know in fact whether it was the Union policy?

A. The Closed Shop?

Q. Yes?

A. No.

Q. Were the members of the Union working in any Open Shop? Were members of the defendant Union working— 30

A. In any Open Shop—to the best of my knowledge, yes.

Q. How many shipyards were operating at the time?

A. Four shipyards.

Q. How many of those were Open Shop to your knowledge?

A. One, I know of.

Q. What was that?

A. The West Coast Shipbuilders Ltd.

Q. Do you know what the finding in the West Coast Arbitration was? 40

A. Yes.

Q. What was it?

A. It was in favour of the West Coast Shipbuilders Ltd., remaining an Open Shop.

Q. Remaining an Open Shop?

A. Yes.

Q. Was the report of the Chairman published?

A. Yes.

Q. And you saw that report?

A. I saw that report.

Q. As the result of the evidence which you gave before that Board, was any action taken against you by the Union?

A. Yes, charges were then preferred against me by three men. Mr. Delaney, Mr. Renwick and one other individual who
10 at the moment I cannot recall, and there were three charges in this letter, but the central charge . . .

Mr. Burton: If there were any charges, my learned friend should produce the charges if he intends to lead evidence on it.

Mr. Johnson: That is what I was trying to do this morning, my lord. And I would like to show the witness the charge that he received and have him identify that and put it in as an exhibit. This was the one preferred in December, 1943. May I have a ruling on that?

Mr. Burton: I am not objecting to it at all.

20 The Court: There is no objection?

Mr. Burton: I am objecting to it, but first I am objecting to his giving evidence of what the document stated. He has to produce it. Now if he produces it I am objecting to its production at all. It is the basis of another lawsuit. We might go on eternally . . .

The Court: You mean it was used in another lawsuit?

Mr. Burton: Yes, the first trial.

The Court: Am I not retrying the first trial?

Mr. Burton: No, this is not the first trial this man had
30 against the Union; this is not the first lawsuit with the Union. He has been in lawsuits with the Union since 1943.

The Court: You are not referring to the trial before Mr. Justice Macfarlane?

Mr. Burton: The one before the Chief Justice. He succeeded. I am objecting to it because what happened in the previous suit or what charges were laid at another time are not in issue at this time and I object to the evidence.

The Court: Certain charges were made against this man
40 as the result of it, and the action of the Union in dismissing him was based on those charges.

Mr. Burton: That is correct. But he had a trial on that. We are not trying it again here.

Mr. Johnson: That is just the point. We say the charges read against him were a repetition of those preferred in the first place in 1943. I am attempting to show that by putting in the document, showing the actual nature of the charges.

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The Court: I will admit it subject to your objection.

Mr. Burton: So that we are clear on that, the judgment of the learned Chief Justice is reported at 61 British Columbia B.C. Reports at page 27 (citing).

Mr. Johnson: May I have the letter which was filed in the action of Kuzych vs. Stewart, please? This one . . .

Mr. Burton: May I read it first?

Mr. Johnson: I show you a letter which is addressed to you dated December 7, 1943. Did you receive that letter?

A. Yes.

The Court: From whom?

Mr. Johnson: From the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, per Thomas G. McKenzie, Secretary-Treasurer.

The Court: Exhibit 43.

(LETTER MARKED EXHIBIT No. 43.)

Mr. Johnson: And attached to that letter was there this copy of the charges dated November 15, 1943?

"A. That is correct.

Q. You received that at the same time as you received the letter; the charges which I am showing you now? 20

A. Yes, with the additional two people; I could not remember whether C. W. Caron and Mr. W. Shearer . . .

Q. They are different men altogether?

A. They were the men who signed those charges at that time.

Mr. Johnson: Might that go in as one exhibit, the letter and the accompanying charges?

The Court: Yes.

Mr. Johnson: I will read the letter, my lord, addressed to Myron Kuzych, and then the charges dated November 15. 30

Q. You received those charges. Did you attend at the time and place stated in that letter?

A. Did I what?

Q. Did you attend at the trial?

A. No, I did not.

Q. For what reason?

A. Having discovered that the entire proceedings were not in accordance with the constitution of the Canadian Congress of Labour, I did not attend. I wrote a letter to that effect, or rather caused the letter to be written to that effect, and did not attend the trial at all. 40

Q. There was no trial held then?

A. I don't know what happened.

Mr. Burton: Surely my learned friend has gone far enough leading. I did not object before. He did not say anything about

the trial being held and he asked him a question, "No trial was held." He said he was not there and would not be there. Surely that is a leading question.

The Court: I thought perhaps it was common ground but if not, do not lead, Mr. Johnson.

10 Mr. Burton: There was a trial, my lord. I ask my learned friend to read the letter that this man caused to be written. He wrote a letter stating that he would not attend because the proceedings were not in order. I would like him to produce it. I have not seen it in the affidavit. It is the second or third letter that has cropped up I didn't know of before.

Mr. Johnson: I am trying to ascertain the facts. All I am trying to find out from this witness is whether the trial took place or not.

Mr. Burton: The witness says he wrote a letter. I would like to see the letter. If he is going to talk about a letter, he should produce it.

Mr. Johnson: That can be struck out of the record.

20 The Court: He can say he wrote the letter. Have you got the letter, Mr. Johnson?

Mr. Johnson: I have not got the letter, my lord. I have never seen the letter.

The Witness: I believe I still have it. I am not positive, but I do believe I have the letter, or rather a copy of it. The original went to Local No. 1.

The Court: Perhaps you can produce it, Mr. Burton?

30 Mr. Burton: You see, we are trying another charge now, the subject matter of a previous lawsuit. I didn't know we were going to be involved in that. There is no affidavit of production in that. The plaintiff does not make an affidavit of documents, saying he has those letters. We are going into another lawsuit completely. I think we should have—I should be furnished with all the documents which my learned friend produces or refers to in connection with the other charge.

Mr. Johnson: I am going to leave this subject altogether as soon as I ascertain from the witness there was no trial held.

The Court: Put it this way: Was there any trial held?

Mr. Johnson: Was there any trial held?

40 A. I do not know. I did not attend it.
Q. As the result of your non-attendance did you receive any further communication about the subject from the Union?

A. Yes.

Q. Tell me what it was.

A. I received a further communication informing me that I was expelled from the Union, from the Boilermakers' and Iron Shipbuilders' Local No. 1.

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Mr. Johnson: I think that letter was filed as an exhibit. May I have that, please? This is a letter informing him of his . . .

Mr. Burton: This is not notifying him; but notifying the North Van. Ship Repairs.

Mr. Johnson: That is the wrong letter then. Is it disputed?

Mr. Burton: No.

Mr. Johnson: Then it can perhaps be taken as admitted that the defendant wrote to the plaintiff informing him of his expulsion from the Union.

The Court: That is all you want to prove? 10

Mr. Johnson: Yes.

The Court: Is that admitted?

Mr. Burton: Yes, it is admitted, my lord, but with this reservation, after a trial which this witness has given evidence did not take place. I think it states in the letter he had a trial and in his absence he was expelled. Show him Exhibit 43.

Mr. Johnson: It is the letter to the plaintiff that I am looking for.

Mr. Burton: It was in that Exhibit 43 when you first gave it to him. 20

The Clerk: This is Exhibit 43.

Mr. Johnson: I think we can take it as admitted. We have not got this letter, but I understand counsel for the defendant admits that the defendant notified the plaintiff that he was expelled from the Union on or about December 8, 1943. May I also have an admission that was followed up by a notification to J. W. Thompson, Personnel Manager of the North Van. Ship Repairs on the same date notifying the employer that Myron Kuzych has been suspended from our Union and as such is no longer a member in good standing? 30

Mr. Burton: Yes.

The Court: What is the second admission?

Mr. Johnson: An admission of a letter being sent by the defendant Union to J. W. Thompson, Personnel Manager of the employer, the North Van. Ship Repairs.

The Court: Have you the date of the letter?

Mr. Johnson: The 8th December, 1943.

The Court: To the . . .

Mr. Johnson: To the North Van. Ship Repairs, notifying them of the suspension of the plaintiff from the Union; that he 40 was no longer a member in good standing.

Q. Now, as a result of that . . .

The Court: Did not the letter go further than that?

Mr. Johnson: That is all it says, my lord.

The Court: That he was no longer a member in good standing?

Mr. Johnson: Yes, it does not seem to invoke any provisions of the Closed Shop agreement.

Mr. Burton: That is in pursuance of the contract which my learned friend has already put in as an exhibit. The Union is bound to notify the employer.

The Court: I see.

Mr. Johnson: As the result of that communication was your employment terminated?

A. Yes, sir.

10 Q. As of what date?

A. As of December 8th, or 9th, 1943.

Q. Now, for how long did you continue without employment?

A. Until November, 1944.

Q. Did you receive any communication from the Union in the meantime?

A. Yes, sir.

Q. What was the nature of that?

20 A. A letter to the effect that as of June, 1944, I was reinstated into the membership of the Boilermakers' Local No. 1, and was now a member in good standing.

The Court: As of June, 1944?

A. As of June, 1944.

Mr. Johnson: I think that letter was put in the other action. May I have that letter of June 21, 1944?

Mr. Burton: My objection still stands; I presume, my lord, all those letters have been taken out of another lawsuit.

The Court: Were none of these in as exhibits in the trial before Mr. Justice Macfarlane?

30 Mr. Burton: No, they are all taken out of the Stewart file. That is the trial which took place before the Chief Justice.

Mr. Johnson: Where the same parties are involved.

The Court: You have the same objection to this?

Mr. Burton: Yes, my lord.

The Court: I will admit it subject to your objection.

Mr. Johnson: Did you receive that letter?

A. Yes.

Mr. Johnson: This letter reads as follows, addressed to Myron Kuzych (reading).

40 The Court: Exhibit 44.

Mr. Johnson: Did the receipt of that letter affect your status as an employable person?

A. No.

Q. Just explain that.

A. I applied back at the North Van. Ship Repairs and was informed . . .

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Mr. Burton: My lord, I am objecting.

Mr. Johnson: This is something that they did.

The Court: He is saying what somebody told him.

Mr. Johnson: Were you able on the strength of that communication to get back into employment with the North Van. Ship Repairs?

A. No.

Q. You applied?

A. I applied.

Q. What was the reason?

10

Mr. Burton: My learned friend is trying to get it in another way. Surely it is not admissible evidence.

The Court: I do not think that what the North Van. Ship Repairs told him would be evidence, Mr. Johnson.

Mr. Johnson: Were there jobs available? Was there work to be done in the North Van. Ship Repairs?

A. Yes.

Q. Was it or was it not on account of your status that you were not able to obtain work?

Mr. Burton: My lord, I am still objecting. I don't know 20 why my learned friend . . .

The Court: That is just another way of getting at it.

Mr. Johnson: Very well, my lord.

Q. The fact is you were not working during that summer of 1944?

A. That is correct.

Q. As a result of your reinstatement did you attempt to take part in the affairs of the Union?

A. As soon as I was reinstated I called at the office of the Local, Boilermakers' No. 1, and paid my dues and attempted to 30 attend the first meeting.

Q. When was that?

A. As nearly as I can recall it was July 3rd or thereabouts.

Q. What happened on that occasion?

A. I entered the meeting . . .

Q. By the way, was that in the evening or the morning?

A. It must have been in the daytime because there was a picture show of some sort going on and the window blinds were drawn, so I take it must have been the daytime. It must have been the morning meeting. 40

Q. Was this a regular business meeting?

A. No, it was a special meeting of Subsection E of the Welders and Burners.

Q. You are referring to that special meeting?

A. That is correct. That was the first meeting I attempted to attend.

Q. And what happened?

A. I entered the hall and took my seat and remained there for perhaps five minutes, when Mr. W. C. Caron tapped me on the shoulder and motioned that I follow him. So I rose.

Q. Did you know Mr. Caron as an officer of the Union?

A. I knew him only as Shop Steward of the North Van. Ship Repairs. He was also a welder there, and he motioned that I follow him, so I quietly rose and followed him outside of the hall.

Q. Yes?

10 A. Then he told me that I could not attend that meeting. I asked him why. He said that he did not know, but that I could not attend the meeting. I drew his attention to the fact my dues were paid, I had received a letter saying I was a member in good standing. He informed me that would make no difference and I must leave the meeting or that I would be ejected. Not knowing what it was all about and not wishing to cause any disturbance, I left the meeting and reported the matter to my counsel.

The Court: To whom?

A. My counsel at that time.

20 Mr. Johnson: Your legal counsel?

A. My legal counsel.

Q. Mr. Hodgson?

A. Mr. C. W. Hodgson, barrister.

Q. Were there any other meetings?

A. Yes, there were other meetings.

Q. Tell me if you can what dates those were held?

A. I cannot clearly remember now all the dates.

Q. How often were the meetings of the Union held?

30 A. Ordinarily on the first and third Monday of every month, and then there were special meetings sometimes in between. Another meeting I remember. I do not recall the exact date, but I entered the hall and I took my place, and motion was made by Mr. W. Caron that I leave the hall and that I be expelled. Without allowing me any opportunity of speaking on my own behalf I was ordered out of the meeting by Mr. William Stewart. Thereupon . . .

Q. Wait a minute. Was that before or after the motion was passed, expelling you?

A. Ordered out of the meeting?

40 Q. You said that a motion was passed. Was it as a result of the motion being passed that you were expelled from the meeting?

A. I didn't say that the motion was passed. I said that the motion was made.

Q. What happened then?

A. Then Mr. Stewart ordered me out of the meeting and

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inasmuch as I endeavored to point out that there was no discussion on the motion, a member by the name of Mr. Dave Clark, and some other man who I do not recall, came up to me. Mr. Dave Clark took me by the lapel of my coat and began to drag me out of the meeting, and the other man assisted him and they did not relinquish their hold on me until I was out of the door.

Q. When was that?

A. I do not exactly remember the date, but I think it was sometime in July or the early part of August.

The Court: Of 1945?

10

A. 1944.

Mr. Johnson: You say that these meetings were held every two weeks?

A. Yes, every two weeks.

Q. Did you attempt to gain entrance to all those meetings?

A. Yes, every business meeting and every meeting to which I felt I was entitled to be at I attended.

Q. Do you remember a meeting on August 7th?

A. There might have been a meeting. Unless some specific thing had happened I don't perhaps recall the exact dates.

20

Q. Do you recall the morning meeting or evening meeting?

A. Sometimes I believe I attended the morning meeting and sometimes I attended the evening meeting, but I believe that in 1944 they were all evening meetings I attended.

Q. Do you remember something happened at the meeting on August 21st?

Mr. Burton: What year?

Mr. Johnson: 1944.

The Witness: Yes, I remember the meeting of August 21st specifically. It was a meeting—it was the evening meeting and I entered the hall and I barely was seated when a motion was made that I be expelled, and at that time a discussion on the motion was allowed by other people, other than myself. I was not allowed to speak but I remember at that time Mr. Matthew Mills, past president of the Boilermakers' Local No. 1, asked Mr. William Sewart on what ground I was being expelled inasmuch as I was reinstated and was paying my dues.

30

Q. Who was Mr. William Stewart?

A. Mr. William Stewart was then President of the Local and in the chair at the meeting and in the presidency of the meeting. Then Mr. Stewart replied to Mr. Mills clearly that I was being expelled upon no by-law of the Union or no constitutional ground but upon the advice of Mr. John Stanton, and then a vote was taken, and as I say without me having any opportunity to speak on my own behalf, the motion was passed that I be expelled, and I left the meeting.

40

- Q. Had you at that time been the subject of any further charges?
- A. No.
- Q. You were in good standing?
- A. Yes, I was in good standing. I may add that at this particular meeting on August 21st all manner of false accusations were made against me and I was called a number of names, and it was following that that the vote was taken and I was ordered to leave by Mr. William Stewart, and I left.
- 10 Q. At that time there was a suit pending in which you were the plaintiff and the defendant Union was the defendant?
- A. That is correct.
- Q. Did that come to trial?
- A. That came to trial.
- The Court: A trial . . .
- A. Between myself and the Boilermakers' and Iron Shipbuilders' Union, Local No. 1.
- Mr. Johnson: Q. That was an action taken by yourself against Stewart et al?
- 20 A. That is correct.
- Mr. Burton: So that we may be clear is that the one where the decision of the Chief Justice was given?
- Mr. Johnson: Yes.
- Q. That action was for the reinstatement in the Union?
- A. For reinstatement in the Union and for damages.
- Q. That action had been taken before you were reinstated on June 1st, 1944?
- A. Yes.
- Q. That action came on for trial?
- 30 A. Yes.
- Q. What was the result of that action?
- A. The result of that action was that it was admitted that I was wrongfully and illegally expelled, and damages of \$160.00 per month —
- Mr. Johnson: I think we can dispense with that. The judgment speaks for itself.
- Mr. Burton: Q: The judgment was for \$1000 and costs.
- The Witness: That is correct.
- Mr. Johnson: Q: The judgment delivered was shortly after
- 40 — the written judgment was written shortly after the trial but the judgment was delivered right at the trial on October 31st, 1944?
- A. That is correct.
- Q. Following that judgment did you seek admittance to the regular business meeting of this Union?
- A. Yes.

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Q. Just describe what happened?

A. The same procedure exactly except perhaps more vehement than before and I was not allowed in the Union meetings. Sometimes I was stopped at the door and arbitrarily not allowed into the meeting and other times motions were made to expel me and without being given an opportunity to speak in my own behalf. I was always either led out or told to get out.

Q. Were those motions made after certain other business was transacted?

A. No, those motions were always the first order of the 10 meeting before even the minutes were read out.

Q. Did you have any opportunity at all, following your successful action, to take part in Union affairs?

A. No opportunity whatever.

Q. Did you go back to work?

A. Yes.

Q. When?

A. Immediately after the trial I reported at the North Van. Ship Repairs, and was told, "I am sorry —".

Q. Were you taken back? 20

A. Within two weeks after my application I was taken back to work.

Q. Did you continue to work for the North Van. Ship Repairs?

A. I continued to work for North Van. —

Q. Until when?

A. Until March 1944.

Q. Until the employment was terminated on what account?

A. On account of the second letter being sent to Mr. Thompson, purporting that I was expelled. 30

The Court: Q: Now you started work again when?

A. On or about November 1st — November 12th or perhaps the 13th, 1944.

Q. You worked until what date?

A. Until March 1945, March 23rd, I believe.

Mr. Johnson: Q: There or thereabouts?

A. Yes.

Q. There are I believe annual elections of the officers of the Union?

A. That is right. 40

Q. When were those elections held?

A. They are usually held on or about December 12th of every year.

Q. Were you nominated for office in this Union in 1944?

A. Yes, sir.

Q. For what office?

A. The office of the President.

Q. Who were the other nominees?

A. There were originally several, Mr. Henderson, Mr. William Stewart, Mr. Bayne, and perhaps two or three more that I cannot recall.

The Court: Q: You were nominated in December 1944?

A. That is correct, my lord.

Mr. Johnson: Q: You took part in a campaign?

A. No, I took no part in the actual campaign myself.

10 Q. Do you remember whether there were any other elections pending at the same time, December 1944, of any other kind?

A. Yes, there was a federal election, a provincial election and I believe a municipal election.

Q. Now Mr. William Stewart who was one of your opponents in this race for the presidency of the Union, was he engaged in any other election?

A. Yes, he was a candidate in the federal election.

Q. And in what interest?

A. In the interests of the Labour Progressive Party.

20 Q. Was there a meeting held at which certain statements were made and of which complaints were made later by the Union. Was there a meeting in December '44.

A. Yes, there was a meeting held on Seymour Street.

Q. Now describe how that meeting came to be held and the part you played in it?

A. I didn't know anything about the meeting or how it came to be held and I played no part save that I was told that there would be a meeting and I came to the door and informed them that I was there and would like to be admitted and was
30 then admitted. After a while I was admitted.

Q. You took no part in calling the meeting?

A. I took no part in calling the meeting.

Q. What was the result of that meeting with regard to the presidency?

A. The result of that meeting was that we unified our platform against Mr. William Stewart and made it a straight two-way ballot between Mr. Henderson and Mr. William Stewart.

Q. And in the election who was the successful candidate for the presidency?

40 A. Mr. Henderson.

The Court: Q: Where was that meeting held; Seymour Street, did you say?

A. It was on Seymour Street and on or about the 10th day of December, 1944.

Mr. Johnson: Q: When did the actual balloting take place for this election?

A. On December 12th, 1944.

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The Court: Q: What did you say the result of that meeting was, you unified—

A. We unified the platform between Mr. Henderson and myself and made it a straight two-way ballot between Mr. William Stewart and Mr. Henderson.

Mr. Johnson: Q. Now were charges preferred by the Union against you about that time?

A. Shortly after the election the first set of charges against me were preferred.

The Court: Q. You are speaking of the election of December 12th?

A. Speaking of the election of December 12th, 1944.

Mr. Johnson: Q. Yes.

A. And shortly after that election so that is in January 1945, the first set of charges were preferred against me by Mr. McKendrick, a member of the Boilermakers' and Iron Shipbuilders' Union Local No. 1.

Q. What was the nature of those charges?

The Court: What was that name?

Mr. Johnson: McKendrick. 20

Mr. Burton: Perhaps my learned friend could read the charges.

Mr. Johnson: Q. Were they written charges?

A. They were written charges.

Q. Do you have a copy of these charges?

A. No, I have not a copy of these charges.

Mr. Burton: They are in court, are they not? Are they not an exhibit?

Mr. Johnson: I don't think they were put in, were they?

Mr. Burton: Are they not the basis of this lawsuit? 30

Mr. Johnson: Oh, no.

Mr. Burton: I never heard of this before.

Mr. Johnson: Q. What was the nature of the charges then?

A. The nature of the charges were exactly —

Mr. Burton: My lord, my learned friend will have to produce some documents. I have been through this case for the third time. This is the first time I have ever heard of them. There is no affidavit of production and he gives evidence of charges laid.

Mr. Johnson: I think I can turn it up in a moment. There is a minute on it on January 5th, 1945, if I can have Exhibit 27, 40 please. My learned friend evidently has not read those minutes. (Reading).

Mr. Burton: Those are the charges we are dealing with today?

Mr. Johnson: No, those charges were withdrawn and new charges laid later.

Mr. Burton: Then I would like my learned friend to produce the charges.

The Court: Are they set out in these minutes?

Mr. Johnson: They are not set out at all. There is just the bare motion that the charges be accepted —

10 Mr. Burton: I think my learned friend should restrict himself to that without giving the contents of them.

The Court: That is about all you can do, Mr. Johnson.

Mr. Johnson: Q. What happened in connection with those charges. Did you receive any communication from the Union?

A. Yes.

Q. What was the nature of that?

A. Of the first charges?

Q. Yes?

20 A. The nature of the first charges were exactly the same as the nature of the second charges.

Q. Did you receive any communication from the Union as to what was going to happen in connection with the first charges?

A. That I was to remain away from the meetings of the Union, and that I was to make myself ready for the trial committee which was to sit later on in the month on a date about which I would be notified.

Q. Were you notified of that date?

A. No, I came within 30 days and I was informed that the letter had lapsed; that there was some defect.

30 Q. Who informed you of that?

A. Mr. W. Caron.

Q. Personally?

A. Yes.

Q. What position did he occupy?

A. That of secretary-treasurer.

Q. What reason did he give?

A. He gave no explanation except there would be no trial.

Q. You then received other charges, did you not?

A. I then received — I then attended another meeting.

40 Q. Had you been attending meetings of that Union or attempting to attend them in January, 1945?

A. No. After being expelled from the meeting on January

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1st and having received a letter that I am to abstain from the meeting until the charges are dealt with I remained away from the meeting until February 19th.

Q. When you refer to the meeting of January 1st, you don't mean the meeting was held on New Year's Day?

A. No, on January 5th.

Q. You remained away from the Union?

A. I remained away from the Union until February 19th by which time I was informed the charges had lapsed and that I considered myself entitled to attend further meetings. 10

Mr. Johnson: May I see those meetings of January 29th and January 5th. I think it is Exhibit 31. I think there is one before that. My lord, Exhibit 31 is this minute; charges were read against Brother Kuzych and it was moved, seconded and carried that Brother Kuzych be barred from all meetings until this case be disposed of. Now my lord, the other meeting was dated January 5th. I wish to point out those are new charges apparently and under the date of February 19th.

Mr. Burton: We are now down to the charges here, are we?

Mr. Johnson: Yes. 20

The Court: They were preferred at the meeting of February 19th?

Mr. Johnson: Yes.

Mr. Burton: But they were actually laid on February 14th.

Mr. Johnson: We will come to that.

Mr. Johnson: Q. When did you first hear of these charges?

A. Some considerable time after February 19th; towards the end of February.

Q. Were you at the meeting on February 19th?

A. Yes, I was. 30

Q. What transpired?

A. As soon as the meeting was called to order the motion was made that I be expelled and again without any opportunity to speak on my own behalf or anything of that nature, the meeting voted that I be expelled and I left the hall.

Q. And did you subsequently receive copies of the charges?

A. Yes, sometime towards the end of the month. Probably on the 29th or the 30th.

The Court: Q. February?

A. Sometime either towards the end of February or very early in March I received those charges.

Mr. Johnson: Might I have Exhibit 16 at the first trial, please?

Mr. Burton: You mean the 1944 trial? I think we may as well put those papers away and we won't have any confusion. 40

Mr. Johnson: I beg pardon. We have that in. It was put in this morning as Exhibits 36 and 37. I show you a letter. A copy of a letter dated February 26th, 1945, addressed to you, sent from the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1 (Reading). Did you receive that letter?

A. Yes.

The Court: Q. Is it Exhibit 36?

Mr. Johnson: Exhibit 36, my lord.

Q. At the same time did you receive a copy of the attached 10 charges by C. J. McKendrick?

A. That is correct.

Q. Dated February 14th, 1945?

A. That is correct.

Q. And this is the first time you had heard any of the charges when you received this letter?

A. That is correct.

Mr. Johnson: My lord, I would like to read those charges, if I may. (Reading).

Q. There were three charges?

20 A. That is correct.

Q. And charge one which I read was that you held or assisted in holding unauthorized public meetings to discuss the business of the said Union?

A. That is correct.

Q. You have already given evidence about the meeting on Seymour Street?

A. Yes.

Q. Was that the occasion to which this charge refers?

A. Yes.

30 Q. Was it a public meeting?

A. No.

Q. What was the nature of the meeting?

A. It was a private meeting of the members of the Boilermakers' No. 1, to unify the platform and to make it a two-way ballot between Mr. Stewart and another candidate.

Q. It was entirely an election meeting?

A. It was entirely an election meeting.

40 Q. What about the second charge, "That between the month of October 1942 and the month of December 1944, he, said Myron Kuzych was on divers occasions guilty of conduct unbecoming a member of the said Union and committed acts discreditable to it in that he, the said Myron Kuzych, did publicly oppose established policies of the said Union by campaigning against the closed shop principle and the principle of dues check-off." On

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that occasion did you campaign against the principle of the closed shop?

A. The only time I publicly opposed the principles of the closed shop was at this arbitration and that at no other time do I recollect saying or having any occasion or opportunity to argue about the closed shop or the dues check-off.

Q. What do you know about the closed shop principle of dues check-off being established policies of the Union?

A. I know nothing of that as being established policies of the Union.

Q. As to the third charge, did you fail to repudiate certain radio broadcasts which were made over radio station C.K.N.W. on his behalf or in his name by person or persons not members of the Union. (Reading). Were such broadcasts made?

A. There were broadcasts made over C.K.N.W.

Q. What was the nature of them?

A. They were purely political broadcasts during that election time.

Q. You mean in connection with the Dominion election?

A. No, in connection with the Boilermakers' election of 20 December 12th, 1944.

Q. Were they made by you?

A. No, they were not made by me.

Q. Were they made on your behalf?

A. They were made in my behalf to the extent that towards the end of every broadcast, the broadcasters urged that the Boilermakers' vote for me as President of the Boilermakers' Local No. 1 for 1945.

Q. I show you Exhibit 37. Did you receive this letter of March 14th, 1945?

A. Yes.

Mr. Johnson: This, my lord, is a letter under the signature of C. W. Caron, Secretary-treasurer, addressed to the plaintiff by registered mail, "Please be advised that your attendance at the next general business meeting of this Union on Monday, March 19th is herewith permitted.

"As you will also be permitted to issue your statement to the general membership at that time, with reference to the trial held on Tuesday, March 13th, we would request that you file a copy of your statement with the office, to be included in the records of the case."

Now before the meeting of Monday, March 19th, there had been a trial?

A. That is correct.

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- Q. And you had attended at the trial?
 A. That is correct.
 Q. On what date?
 A. On or about March 12th or 13th. There was an adjournment and I don't recollect the exact dates, but I know that the Boilermakers' and Iron Shipbuilders' Local No. 1 asked for an adjournment and I consented to it.
 Q. And before the trial were you handed certain typewritten memos of the procedure that was to be adopted at the trial?
 10 A. That is correct.
 Q. Have you seen that before?
 A. Yes, that was the memo.
 Q. Did you agree to this?
 A. No.
 The Court: Is that an exhibit?
 Mr. Johnson: Exhibit 42.
 Q. Now did you attempt to have certain friends of yours attend the trial?
 20 A. Yes.
 Q. What was the result of that?
 A. They were not admitted.
 Q. In what capacity did they wish to appear at the trial?
 A. Being members of the Boilermakers' Local No. 1 in good standing, I merely wished them to attend as observers of this trial.
 Q. What were the names of those men?
 A. Mr. Frank Mole and Mr. — I believe Mr. Jack McPhetor.
 Q. You wished to have those men there as observers?
 30 A. Merely as observers.
 Q. Who denied you that privilege?
 A. To me Mr. Caron denied the privilege but I think Mr. Simpson denied the privilege.
 Q. Was Mr. Caron present at the trial?
 A. Yes.
 Q. Were you familiar with the members of the trial committee?
 A. No, only some.
 Q. Who were the members of the trial committee?
 40 A. I don't recall all the names, I recall the name of Mr. Farrington, Mr. Clark, Mr. Bell, Mr. Brookhead, but the others escape me at the moment.
 Q. What exception did you take to the —
 A. Prior to that trial I explained that I was there merely

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as a matter of courtesy and that I did not intend to defend myself, and for the reason that I felt that that particular trial committee had no jurisdiction to fire me and then I added several supplementary —

Q. First of all you said you objected to the committee that in the first place they had no jurisdiction?

A. That is right.

Q. And there were other reasons?

A. Yes.

Q. What were they? 10

A. I objected on the ground of strong prejudice which had previously been deliberately created against me and which I had never had any particular opportunity to rectify.

Q. Prejudiced by whom?

A. By the shop stewards and officers of the Boilermakers' Local No. 1 and Mr. Farrington in particular and Mr. Dave Clark were the men I have personally known to be the parties to that prejudice. That was one reason. I also objected to Mr. Stewart being the counsel for Mr. McKendrick, who was the official lawyer of the charges, on the ground that he was the party that was involved or mentioned in the charges. 20

Q. What do you say about the fairness of the trial?

A. It was not fair.

Q. In what respect?

A. It was not fair, because at the time — what there was of that trial — for Mr. William Stewart acted not only as counsel but as the plaintiff, and most of the witnesses and he just seemed to domineer the entire show, and he was not censured by the trial committee for conducting himself in that fashion.

Q. Were you notified by the trial committee of their findings? 30

A. Yes.

Q. At that time?

A. No, I was merely notified of the findings after I attended that meeting, the notice for which I received.

Q. You were invited to attend the regular business meeting on March 19th, was it?

A. I believe it was March 19th.

Q. And you did so attend?

A. I did so attend. 40

Q. What happened at that meeting. First of all tell me who was in the chair?

A. Nuttall — Mr. Nuttall was in the chair.

The Court: How do you spell it?

Mr. Locke: Nuttall.

The Witness: Mr. Nuttall was in the chair and I gathered that the trial committee had arrived at the conclusion that I be —

Mr. Burton: I don't care what he gathered, but what was said?

The Witness: That I was to be expelled, and I was given — I believe then the report of this committee was read and following that report I was allowed to go to the front of the hall and was told that I would be given ten minutes to speak on my own behalf.

10. Mr. Johnson: Q. Did you speak in your own behalf?

A. I did speak in my own behalf, but not for the full ten minutes, because there was a considerable amount of heckling, interruptions, catcalling and noises of various kinds.

Q. How many people approximately were present at that meeting?

A. I would say around 400, maybe 450.

Q. What happened after that? Was a vote taken?

A. I don't know. I was asked to leave the meeting before the vote was taken.

20 Q. Yes, did you subsequently receive a letter from the Union?

A. Yes, I subsequently received a letter from the Union to the effect that I was expelled.

Q. May I have that letter, Exhibit 38. At that meeting you spoke of where you were expelled, did the Chairman make any remarks?

30 A. Yes, at that meeting prior to the vote and prior to the request that I leave the meeting, the Chairman, Mr. Nuttall delivered a five minute address to the membership against myself, calling me various names, the chief of which was that I was a "fink" and that I was generally no good.

Mr. Burton: My lord, I wonder if the witness would say if he heard this, because he has already said that he had to leave the meeting before it voted. I don't want it on the record unless he heard it.

40 The Witness: I did hear it. I was just saying that just prior to the request by him that I leave the meeting and prior to the vote Mr. John Nuttall delivered this, what I would gather was a five-minutes address denouncing me as a bad man — no good individual for the Union. I specifically remember him using the word that I was a "fink".

Mr. Johnson: What kind of—

A. A "fink" and that I was a tool of the capitalist class

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and that generally I should be expelled anyway, and then I was asked to leave.

Q. Were you present when the report of the trial committee was brought in?

A. Yes.

Q. Those remarks of the chairman, were they made before or after you spoke to the meeting?

A. After I spoke to the meeting.

Q. What do you understand by the expression a "fink"?

A. I have looked it up in the dictionary and could find no explanation of the word, but in American mythology I find that there was apparently a man by the name of Johnny Fink respecting to whom there is a history that he betrayed some of his fellow men and subsequently came to an untimely end, and over his gravestone was written, "Here lies John Fink" 10

Mr. Johnson: I —

Mr. Burton: If my learned friend wishes to give evidence he had better get on the stand. I don't know what this has to do with it, if my learned friend has to go into mythology —

Mr. Johnson: You wanted to find out what the expression "fink" meant. 20

Q. Did you receive this letter dated March 31st, 1945; that is Exhibit 38?

A. Yes.

Q. Now was your employment terminated about this time?

A. About this time.

Q. Under what circumstances?

A. Under identically the same circumstances as the prior one.

Q. Did you receive a letter from the North Van. Shipyards at that time? 30

A. Yes.

Q. Exhibit 40. Did you receive this letter? (Reading).

A. Yes.

Q. As the result of that communication your employment was terminated?

A. Was terminated.

Q. As of what date?

A. As, I believe of the 21st of March, or thereabouts, 1945.

Q. The letter is dated the 29th of March? 40

A. Then, as of that date.

Q. Did you obtain — attempt to obtain other employment?

A. Yes.

Q. Just describe what you did?

A. Following this termination I was at the Selective Service at least 30 separate times, and got at least 30 separate work permits to seek employment at other places, but I was never able to secure that employment as a Union man and have never been able to work as a Union man from that day to this.

Q. What were you making in the way of money at that time? What were your wages?

A. My wages were about, after the taxes and so on deducted, about \$160.00 per month.

10 Q. What taxes?

A. Well, there is the usual tax that was deducted from the wages and I believe there was the compulsory tax. Then there was compensation.

Q. Putting it in terms of wages by the hour, what was the hourly wage?

A. The hourly wage was \$1.00 an hour.

Q. And you worked how many hours a week?

A. I worked every day, that is seven days at 8 hours every day.

20 The Court: Q. Your take-home pay was \$160.00?

A. Roughly speaking about \$160.00 per month, sometimes more, sometimes less.

Mr Johnson: Q. Now what are you seeking in this action?

A. I am seeking in this action, first reinstatement into the membership of this Boilermakers' and Iron Shipbuilders', Local No. 1, I am seeking an injunction restraining them from treating me in any other way than as a member in good standing of the Boilermakers' Local No. 1, with all the privileges of attending meetings and voting on the various affairs of the Union and taking part in the affairs of the Union, and also damages which have resulted to me as a direct result of what I claim to be the wrongful and illegal expulsion from the Boilermakers' and Iron Shipbuilders', Local No. 1.

Q. Just one further thing. I told my learned friend that I intended to add this to the affidavit on production, my lord. This was a printed bulletin put out. It was not produced at the first trial. Has my learned friend any objection to this going in?

Mr. Burton: No, not to that.

Mr. Johnson: I show you a paper, a printed paper. Have you seen that before?

40 A. Yes.

Q. Where did you first see that?

A. I saw that first at the North Van. Ship Repairs on the morning of December 12th, 1944.

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Q. Where was it?

A. It was at the North Vancouver Ship Repairs. It was handed to me by the shop steward and supporters of Mr. William Stewart.

Mr. Johnson: I tender this as an Exhibit. It is under the printed signature of William Stewart, President, and it is merely an election bulletin saying election is going on. I would like to just read it.

The Court: Where does it appear — it is just a bulletin?

Mr. Johnson: Just a bulletin on the election day, or just 10
prior to the election. Mr. Kuzych was running for President
and Mr. Henderson was running for President too. This is what
it says:

(BULLETIN MARKED AND READ EXHIBIT No. 45)

Q. That was merely an election bulletin?

A. That is right.

Q. What exhibit number is that?

A. Exhibit No. 45.

Mr. Johnson: Do you object to this. My lord, I am tendering another bulletin which is the Shipyards' Journal bulletin, and 20
on the strength of the constitution of the Shipyard Federation
which is already filed as an exhibit, and I have already shown
the Union as a member of that Federation, I submit that I am
entitled to ask this witness if he had seen this and the circum-
stances under which he had seen it in order to lay the foundation,
of making it an exhibit in this case.

The Court: Any objection.

Mr. Burton: Yes, my lord, on this basis. It is a document
of the Shipyards Workers Federation, not the defendant. It is
quite true that the Federation gives a charter to this Local which 30
is now the defendant in this action, but on the basis on which my
friend would seek to introduce this document, he can bring in
documents of other sorts, such as the Canadian Congress of
Labour. They publish a good deal of literature. Perhaps on
the same subject. I cannot be bound by what other people say
on issues in this case. I say it cannot possibly be introduced.

Mr. Johnson: I think I might put it in or tender it as per-
haps one for identification only because I think one of the defend-
ants wrote it and if he goes in the box I can prove it.

Mr. Burton: You might prove it. I don't think you should 40
put it in at all at the moment.

Mr. Johnson: At the moment I shall just show it to the wit-
ness and ask him the circumstances under which he had seen it.

The Court: There is not much object in having it marked for identification, is there.

Mr. Johnson: It is referred to, my lord, in the Statement of Claim.

Mr. Burton: Just because it is referred to in the Statement of Claim does not make it admissible evidence. In fact he has about 60 pages in the Statement of Claim.

Mr. Johnson: We allege in paragraph 56 the said defendant Union and various of the members thereof also published or
 10 caused to be published Articles which further were slanderous to the plaintiff and created further ill-will and prejudice and thereby damaged the plaintiff which said publications are hereinafter referred to in particular, as follows: — and then it sets out —

Mr. Burton: My learned friend will have to prove it is published by the defendant. Can you prove it was written or published by one of the defendants?

Mr. Johnson: We think we can. Of course, we have to get an admission from the defendant, Mr. Caron.

20 The Court: No, his name does not appear. I do not think you can do anything with it at the present time.

Mr. Johnson: I will leave that then. There is one further matter I have to take up with you. You remember attending a public meeting in North Vancouver sometime after your expulsion?

A. Yes.

Q. The occasion was what?

A. The occasion was to find ways and means of obtaining money for the purpose of purchasing for the shipyard workers
 30 the various wartime homes situated there.

Q. This was a public meeting?

A. This was a public meeting.

Q. Who was chairman of the meeting?

A. Mr. Thompson was the chairman of that meeting.

Q. Mr. Thompson; what are his initials?

A. R. H. Thompson, I believe.

Q. Was he a member of the Union?

A. Yes, he was a member of the Union.

Q. Were certain speakers invited to attend that meeting?

40 A. Yes, and James Sinclair spoke on behalf of the Liberal Party.

Q. Mr. Sinclair?

A. Yes. Mrs. Dorothy Steeves spoke on behalf of the

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C.C.F. and Mr. John Nuttall spoke on behalf of the Labour Progressive Party.

Q. This Mr. John Nuttall, was he the same man you referred to as being the chairman of the meeting which expelled you?

A. That is correct.

Q. What part did Mr. Nuttall take in this public meeting?

A. As soon as the meeting was called to order —

Mr. Burton: First I think my learned friend should establish that this case was discussed or the Kuzych case came up. He may be trying to show the political part of Mr. Nuttall. A lot of public meetings have been held. 10

Mr. Johnson: This meeting is relevant to show the bias and animosity which pursued the plaintiff even after he was expelled, by the man who was chairman of the meeting at which he was expelled and who was supposed to be impartial.

The Court: Q. Reference was made to the plaintiff?

Mr. Johnson: At this public meeting. That is what I want to bring up.

Mr. Burton: My lord, Mr. Nuttall was there representing a political party, not the Union. Apparently that is the evidence of my learned friend. He said Mr. Sinclair was there representing the Liberal Party, Mrs. Steeves the C.C.F. and Mr. Nuttall the L.P.P. How does that bind the defendant? 20

The Court: Is Mr. Nuttall a defendant?

Mr. Locke: Yes.

Mr. Burton: A great number of these defendants were not even served.

Mr. Johnson: The Statement of Claim sets up a course of conduct which were pursued by the executive and members of this Union certain members of the Union against the plaintiff, making him the victim of a conspiracy. In this Mr. Nuttall happened to be the chairman of the very important meeting; the meeting which passed on the plaintiff's expulsion and the plaintiff had already given evidence that the chairman so far forgot the impartial character of his office as to allow himself to make certain statements. We want to go further and show that even two months after the expulsion, after the employment had been terminated that certain statements were made by this man Nuttall along the same lines. 30

The Court: You are examining to show what? 40

Mr. Johnson: Only that there was this concerted attempt to get rid of this man and he was pursued even after the expulsion.

Mr. Burton: Mr. Nuttall was not served in his personal

capacity but on behalf of the Union. He is not sued personally. The claim is only against the Union and the style of cause shows that, and the brief shows that. My instructions are Mr. Nuttall was there representing some other body entirely, another association entirely, which had nothing to do with the Boilermakers', the defendant in this action, and anything one member of the Union may say . . . the evidence is that there are 17,000 members of the Union, and what each one said outside would not be . . .

The Court: It is clear he was not there representing this
10 Union.

Mr. Burton: Yes, that is right. He just happened to be chairman of the meeting which voted for the expulsion of the plaintiff.

The Court: Unless it goes to show that the procedure the Union adopted was illegal or unconstitutional I do not think it would be admissible.

Mr. Johnson: Q. Tell me one more thing in connection with the meeting in February? You remember a meeting in which you were forcibly ejected?

20 A. Yes, I remember a meeting of the Boilermakers' Local No. 1 on February 27, 1945, which was called for the purpose of deciding whether or not there should be an impartial audit of the Union by proper chartered accountants and inasmuch as my January charges had lapsed, and I had no knowledge of any February charges pending, and my dues being paid, I attended that meeting. I came there with the evidence to show that such an impartial accounting was justified and had the documentary evidence with me. However, as soon as it was discovered that I was in the meeting a motion was made that I be expelled and
30 the motion was not put—was not allowed for discussion. I was not allowed to speak against that motion. The vote was not taken, but I was still ordered to leave the meeting. I stood still and endeavored to ask the chairman that the motion be discussed and then that it be properly put to the vote, but I could not make myself heard because of all the shouts and catcalls and names that were directed against me, and at that time Mr. McSween and another individual whom I cannot at the moment recall seized hold of me and began dragging me down the hall towards the door, kicking and beating me as I was being dragged. In the
40 course of the scuffle an attempt was made to wrest from my hand the briefcase which I held on me and which contained the evidence, but they were unsuccessful because I held onto that briefcase with both hands, particularly as the briefcase had no handles on it. When they put me out into the hall, just before the door, where the majority of the members could not see me, then the

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other top stewards and members of the Union began to beat me properly. My face was split, I got a cut under my eye. I received multiple blows to the body and then I was shoved downstairs and my attackers pursued me clean down to the door and kicked me out of the door into the open street.

Q. Were any of the executive officers of the Union amongst the attackers?

A. Yes, Mr. White was included among those attackers.

Q. What office did he hold at the time?

A. At that time I believe he was a business agent, and subsequently became president. 10

Q. As the result of that attack you took action?

A. As a result of that attack I took a legal action and Mr. White was found liable.

The Court: Q. What?

A. Was found liable.

Mr. Johnson: A civil action, my lord.

CROSS EXAMINATION BY MR. BURTON:

Q. Witness, dealing with the last matter first, when it is still fresh in our minds; that this particular meeting that you spoke of when you were dragged and bruised and multiple this and that, you came prepared for such an emergency, did you not? 20

A. No, I did not.

Q. And did you not bring photographers from the daily papers?

A. No.

Q. Photographers were there?

A. I knew nothing of it.

Q. You knew pictures were taken of you?

A. No, I don't. 30

Q. Witness, I put it to you that you notified the newspapers that they should be present at that meeting and have photographers there.

A. I did not.

Q. You are sure you did not?

A. Quite sure.

Q. Did you cause anyone else to do that for you?

A. No.

Q. And were photographers there?

A. I don't know. 40

Q. We will have lots of evidence to show that they were there and you knew they were there. Do you wish to change your story, or do you persist?

A. That depends at that time. I learned after the fracas they were there, but not at the time. . . . I am taking it you refer to the time of the assault?

Q. At any time at that meeting?

A. After I was thrown out on Pender Street, yes. I believe some man who was a reporter for some paper approached and spoke to me, but who he was or what paper he represented, I didn't know.

10 Q. Were photographers there to take a picture of you being thrown out?

A. No.

Q. Did you know you would be thrown out of the meeting before you went there?

A. No.

Q. You had every reason to expect you would?

A. No.

Q. Were you not told repeatedly you should leave the meetings for your own safety, because somebody might do something worse to you? Were you not told that repeatedly?

20 A. No.

Q. We will have . . .

A. Perhaps once I was told that.

Q. You remember the first trial, do you?

A. What?

Q. The first trial?

A. Before Mr. Justice Macfarlane?

Q. Yes. And you remember several witnesses giving evidence, they repeatedly warned you harm might come to you if you did not leave the meeting?

30 A. Yes, I heard them give that evidence, and, of course, that was not true.

Q. As a result of this action, or as a result of this assault, you took certain individuals to court?

A. That is correct.

Q. In the Supreme Court of British Columbia?

A. That is correct.

Q. And you are a familiar figure in the Supreme Court of British Columbia, are you not?

40 A. My own modesty will restrain me from making any comments.

Q. And as the result of the newspaper publicity, you have already approached the newspapers to make sure they get a good story of today's proceedings?

A. That is not correct.

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Q. That is completely untrue?

A. That is completely untrue.

Q. Did you see any newspaper man relative to a news story?

Witness, you better be frank about this?

A. Yes.

Q. Did you?

A. No.

Q. You did not?

A. No.

The Court: Is this relevant?

Mr. Burton: This, my lord, is going to credibility. This is a very important issue in this case. However, I will drop that.

Q. When you took this matter to court, I understand that you got judgment against Mr. White for \$50.00, is that right?

A. I believe so.

Q. And your action against the other individuals was dismissed?

A. Against the other two.

Q. And the wind-up of the whole thing was you did not get anything?

The Court: What?

Mr. Burton: Q. You did not receive any money out of that lawsuit, did you?

The Court: Not costs?

Mr. Burton: There was a set-off of costs, my lord.

Q. Is that not correct?

A. It is correct.

Q. And the total amount of the damages which his lordship, Mr. Justice Coady, considered you were entitled to was \$50.00 (fifty dollars)?

A. That is correct.

Q. Witness, coming back to your first advent into this country—by the way, when did you come here?

A. On or about 1928.

Q. And where from?

A. From the Ukraine. The Polish-Ukraine.

Q. In 1928?

A. Yes.

Q. What did you work at between 1928 and 1942?

A. During the summertime I worked first on the farm; then in British Columbia on the railroad and in the wintertime I attended school.

Q. You did not work in the winter, but were attending school?

- A. Yes.
- Q. That was to learn the language?
- A. Correct.
- Q. Did you attend school every year from 1928 to 1942 in the wintertime?
- A. From what time?
- Q. '28 to '42?
- A. In the last two years, just night school, but prior to that I attended day sessions of the public schools and high schools.
- 10 Q. Had you, prior to the time you took this government course, ever had any experience in welding?
- A. No.
- Q. What was your total experience prior to joining the North Van. Ship Repairs; was it a total of six weeks?
- A. That is correct.
- Q. And were you a finished welder and experienced in six weeks?
- A. In that type of work, yes.
- Q. What type is that?
- 20 A. The type that was employed in the shipbuilding industry during wartime.
- Q. Is that any different from other types of welding?
- A. I don't know, I have never done any other types of welding.
- Q. If you were going to go back to welding today, what type would you do?
- A. Well, that would depend on what there is to do in the shipyards.
- Q. Would it have to be in the shipyards?
- 30 A. Or wherever else the Boilermakers' and Iron Shipbuilders' Local No. 1 held the contract.
- Q. Suppose you forget the Boilermakers' for a moment, and wanted to get a job somewhere else, what type of work would you do and be able to do?
- A. What I have done in the shipyard, and also what I learned in the course, which I took at my own expense at the Vancouver Tech., while I was working at the North Van. Ship Repairs.
- Q. You are an experienced man. You are a skilled man in welding, are you not?
- 40 A. Welding is a considerable craft. I know that I was skilled enough to hold my job where I was working, but just as to whether I am skilled in every respect I would not care to make such a sweeping statement, because I frankly don't know.

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Q. Can you do any class of welding; are welding or acetyline?

A. Arc welding and acetyline.

Q. You can do both of those? Could you weld all types?

A. No, there are some rare types I have never had experience in welding.

Q. Can you do welding pressure work?

A. No, I didn't have any training in welding pressure work apart from what I was given at the North Vancouver Ship Repairs, to weld oil tanks. 10

Q. Witness, there is no doubt that during the time that you have been out of work, that you could have obtained employment in welding if you wished to, outside the question of the Union. Just forget about that. Outside of the question of the Union, could you have obtained employment? You could undoubtedly have found employment in other places, could you not?

A. I don't know; I have never sought any other employment, except under those terms.

Q. You have never sought other employment in welding since you left the Boilermakers'? 20

A. Outside of those terms; that is, as a Union man.

Q. In other words you put yourself squarely into position you were not obliged to seek employment outside of being a Union man?

A. That is correct.

Q. And you then say, and put yourself in this position in this court, that because you assumed that you are illegally expelled the Boilermakers' must pay your salary which you have lost, simply because you refuse to work in any other way, except as a Union man? 30

A. Can you split that up for me?

Q. You put yourself in this position that you are entitled to damages on the basis that you were not required to seek any other work as a non-Union man?

A. That is correct.

Q. Now there are other unions, are there not, which you could have joined which would have provided the same type of employment which you had with the Boilermakers' when you were a member of the Boilermakers'?

A. I don't know whether there are or not; unless I have my Union card and on the withdrawal of that Union card and endeavored to join another union, I would not know what the status would be. 40

Q. You did not inquire?

A. Without a Union card or a withdrawal Union card there would be no point.

Q. Did you inquire?

A. No.

Q. But you put yourself on the basis that you are going to belong to the Boilermakers' Union or nothing, is that right?

A. That is correct, until such time as I can properly use that card of withdrawal and join another union.

10 Q. You mean until such time as this court gives you some damages?

A. No; such time as my Union membership is in order, and then I can employ that Union membership card and upon withdrawal from this Union, employ it to join the membership of another union.

Q. You could have withdrawn from the Boilermakers' at any time, could you not?

A. Yes, I could have.

Q. But your love for the Boilermakers' was such that you considered you wanted to stay with them. Is that right?

20 A. My employment terminated at the North Van Ship Repairs and I had no recourse but to seek other employment.

Q. You have had a stormy career in the Boilermakers' Union?

A. I don't know.

Q. Has it not been stormy from the first time you ever entered into the Union?

A. What do you mean by the term stormy?

30 Q. We went into that at the first trial, but it might help if I just refer to it. Did you not give evidence that there was only one meeting you ever attended that you did not cause trouble—at the Boilermakers'.

Mr. Johnson: Well . . .

Mr. Burton: You can answer the question.

Mr. Johnson: Which evidence is it? Where is the reference?

Mr. Burton: First we will go to 105 of the Appeal Book.

The Court: Have you another copy?

Mr. Burton: I can let you have a copy, my lord.

The Court: Where are you reading from?

40 Mr. Burton: At page 105, my lord, the start of the cross examination. The first question, as a matter of fact.

“Q. As a matter of fact, Mr. Kuzych, you have had quite a stormy career with the North Van. Ship Repairs or the Boilermakers' Union, haven't you?

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"A. I don't know whether I would say it was very stormy. I had a difference of opinion on a number of points.

"Q. And your difference of opinion started the moment you joined the Union?

"A. No, my difference of opinion started before I even paid my donation."

Were you asked those questions and did you make those answers?

A. I don't recollect whether I was asked them.

Q. We are going to read a lot of them and you look over 10 the transcript. This is a book which was prepared by your counsel. Better look over it. I want to save a lot of time, because I am going to read quite a lot; start right there.

A. Well, that is what appears to be in the record.

Q. Witness, I wish to point this out by way of observation. When I read those questions his lordship is following me, and so is your counsel to see if I read correctly, and I will read from the book and when I read from the book I will ask is this the transcript of what happened in the court below. Do you now say that you were asked those questions and gave those answers? 20

A. Yes.

Q. And were those answers true?

A. As nearly as I can recall now.

Q. Do you wish to change them?

A. Yes, I wish to change them in this case, that I would very much like to understand clearly what you mean by the term "stormy," and perhaps then I may be able to answer even clearly than I did on the previous trial.

Q. In this country "stormy" means that it is not tranquil. Do you know what tranquil means? 30

A. Well, there is somewhere a word for that; quiet.

Q. Stormy is the opposite?

A. Yes.

Q. Having that understanding of the word "stormy," what have you now to say?

A. No, I would say it was not stormy.

Q. Do you wish to change your answer; that your differences of opinion even started before you even paid your donation? Do you wish to change that answer?

A. Yes, I wish to change that answer to this extent, that 40 what I perhaps meant about differences of opinion then—I would like to say my inquiry—I made my inquiries to paying the donation but there was no difference of opinion between anyone and myself.

Q. In 1946, when you gave this evidence, did you under-

- stand the meaning of the words "difference of opinion"?
- A. Yes, I believe I did.
- Q. And the question is very clearly explained or the answer?
- A. Yes.
- Q. They are your words, not mine: "My difference of opinion started before I even paid my donation." Is there anything ambiguous about that?
- A. No, there is nothing ambiguous, but I think I was under a misapprehension at that time. I don't think I was correct.
- 10 Q. In what way were you not correct? Did your difference of opinion start afterwards?
- A. I don't know whether the difference of opinion started immediately after. I know that upon making inquiries such as I deemed were necessary then, I paid donations and that is all that I recall at that time.
- Q. Now, you know what you are talking about. Then they were your words. Did you have a difference of opinion before you paid your donations or not?
- A. At the moment I would only say I do not recall.
- 20 Q. But three years ago you recalled clearly.
- A. Until perhaps three years ago I had a clear picture.
- Q. Now if the picture was clear then, and then undoubtedly this answer is correct?
- A. At the moment I do not know.
- Q. If your recollection was clearer then and is not as clear now, would you say that the answer you gave then expresses the situation better than you are expressing it now?
- A. No, I would not want to commit myself to that.
- 30 Q. On the next page at line 8, your answer, "No, I would not say that."
- Perhaps I better start with the first question at the top of the page.
- "Q. You hadn't any thought in the world of joining the Boilermakers' Union, had it not been you were forced in order to work at the North Van. Ship Repairs?"
- "A. No, I wouldn't say that. I would have wanted to examine the by-laws and constitution before I could have made such a sweeping statement as to not join it at all, but until that time I had nothing to go upon except the fact I had to join in order to work."
- 40 Were you asked that question and did you make that answer?
- A. I may have made that answer. If the thing appears in the report I have no doubt I was asked that question.
- Q. Is that answer true?

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A. Yes.

Q. It is true?

A. That is right.

Q. When you paid the donations you had not an opportunity to see the by-laws at all?

A. No.

Q. And you did not know what the aims and objects of the Boilermakers' were at the time you made the donations?

A. No.

Q. Then why do you say just above, you had a difference of opinion even before you paid your donation? 10

A. That is not explained; that I perhaps did not have any difference of opinion. Perhaps I was under a misapprehension when I made that original statement.

Q. They are your words? You say now, you were under a misapprehension when you said what you have just said in your own words?

A. That is correct.

Q. Is it not a fact that you saw Mr. Thompson and he told you that the conditions of your employment were such that you must join the Union if you wished to remain at work? 20

A. That is correct.

Q. Did you not tell Mr. Thompson—did you not plead that if there was any way you could carry on your work without joining the Union . . .

Mr. Johnson: Which does my learned friend mean: plead or ask?

Mr. Burton: I think it was pleaded, but I will say asked.

A. No, I did not.

Q. What conversation did you have with Mr. Thompson about the question of joining the Union? 30

The Court: Who is Mr. Thompson?

Mr. Burton: He is the Manager of the North Vancouver Ship Repairs—he was the personnel manager. He was the man to whom the letter was written notifying him that Mr. Kuzych was not now a member of the Union.

Q. What conversation did you have with Mr. Thompson with regard to you having to join the Union in order that you remain at your employment?

A. As I remember at this time, the gist of my conversation with Mr. Thompson was that certain demands had been made upon me to join the organization, which purported to be a Union here, and I wanted to ask him what that Union was, particularly as a case was pending before the Supreme Court of Canada, and 40

whether it was incumbent upon me to join it, and that was all that I asked him.

Q. And he told you that you must join?

A. He told me that I must join.

Q. When you joined the Boilermakers' Union at that time you did so only because you had to remain at work; that is fair?

A. That is correct.

Q. You had no love for the Boilermakers' Union?

10 A. I had no love, and I had nothing—I knew nothing about them.

Q. Since that time you have really not had any love for the Boilermakers' Union?

A. No, I would not say that. I think I am quite impartial so far as the Boilermakers' Union itself is concerned.

Q. Quite impartial despite the fact you sued them once and got damages of \$1,000 and then were reinstated; despite the fact you sued members for assault and that you had maintained this action for three years; you still say you are impartial as far as the Union is concerned. Are you truthful in that, witness?

20 A. Yes, I am.

Q. Why did you want to join. Why do you want to join the Boilermakers' now?

A. Because it is the only means by which I can obtain my Union card and my employment as a Union man, and also in future, if I am obliged to join any other union, it is the only way I can join any other union.

Q. Witness, you know perfectly well you can join any other union under those circumstances?

A. No, I don't.

30 Q. But you have not even inquired to find out?

A. No, I have not.

Q. You know that there are dozens of unions in this city in the same line of work that you were in that you could have joined?

A. I don't know about that.

Q. And the only reason you wanted to join the Boilermakers' is because of the fact you had to, in order to work at the North Van. Ship Repairs, is that correct?

40 A. I have to; not solely to join the North Van. Ship Repairs. I might explain, to work anywhere where the Boilermakers' No. 1 hold the contract, but it would be then at least as a member of the Boilermakers', Local No. 1.

Q. When you went down to the Unemployment, or rather the Selective Service in order to get work, you went there with

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the knowledge and let them know, did you not, that you were not a member of the Boilermakers' Union; that you were an expelled member. You knew that?

A. Yes, I knew that.

Q. Did you tell them that?

A. I don't recall whether I did tell them that, I think the matter came up naturally as an explanation as to why my employment was terminated at the North Van. Ship Repairs.

Q. And you told the Selective Service the only employment you would accept would be as a member of the Boilermakers' Union; is that right? 10

A. No, I merely applied for employment from the Selective Service.

Q. For any type of work?

A. In the sphere of welding that I was qualified for.

Q. And were you offered any other position?

A. Yes.

Q. Why did you not take it?

A. Because at no place was the employer able to engage me as a Union man, specifically of the Boilermakers' Local No. 1. 20

Q. In other words you go to the employer and you say "Mr. Employer, I am not a member of the Boilermakers' Union and I don't choose to join any other union; will you employ me as a union man?"

A. No, I didn't say anything of that.

Q. What did you say?

A. I merely came and submitted to the personnel manager my Selective Service permit to seek the job, and at places where I was told I may be employed I asked whether they were able to employ me as a member of the Boilermakers' and Iron Shipbuilders' Local No. 1. 30

Q. Yes?

A. Where the answer was they had no job for me that terminated it. Where the answer was they could, but they could not employ me as a member of the Boilermakers' No. 1, that was the end of the conversation.

Q. Did they say they could employ you outside of the Union as a non-union man?

A. There were several places where I could have been employed as a non-union man. 40

Q. But you refused those?

A. That is right.

Q. Were there any places where you could have been employed had you joined another union?

A. I don't know.

Q. Did you ever inquire at any place of employment whether there was any union in existence that you could join and work?

A. No.

Q. In other words, witness, it is quite clear that you were relying on what you term your legal rights to make this Union pay for the fact that you could not work as a member of the Boilermakers' Union?

A. I don't understand that.

10 Q. You relied specifically on your Union rights, as you assumed them to be, that you could make this Union pay?

A. What legal rights do you refer to?

Q. In this case—that you are invoking in this case or attempting to invoke?

A. That I was expelled wrongfully and illegally?

Q. Yes.

A. That is right.

The Court: Q. You mean you were preparing to lay a claim for damages. Is that not what you mean?

20 Mr. Johnson: No, I think what my learned friend meant was that the plaintiff was relying on the decision of the Chief Justice where the Chief Justice said, not exactly in these words, he did not have to seek employment as a non-union man. That was the basis of the judgment.

Mr. Burton: Q. Answer the question of his lordship. You were building up a claim for damages by refusing to accept other employment?

A. No, why should I be building a claim for damages?

30 Q. You are not averse to claiming damages. You are asking damages?

A. I am not averse to collecting damages. I know I am averse to being wrongfully and illegally expelled and I sued for reinstatement.

Q. And as a result of being wrongfully expelled you said, "I won't work anywhere else; the Boilermakers' will pay for that."

A. No, no.

Q. Did you not just say so?

The Court: I don't think he understood you.

40 Mr. Burton: Q. You refused to work at any other employment, did you, except as a Union man?

A. Yes, of the Boilermakers' Local No. 1.

Q. You were not interested in any other union. You would

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not join any other union. You would accept employment in no other union. It must be this one, the defendant in this case.

A. As long as I am under the expulsion and have no other card I could not go anywhere else, but if my status in the Union was normal, things might have been entirely different.

Q. But you did not try to join any other union?

A. No, because I could not.

Q. I asked you that before and you said you did not even inquire?

A. That is true. I did not even inquire because I was satisfied I could not. I may have been wrong in that. 10

Q. You were satisfied in your own mind that you could collect damages off this Union?

A. I was not concerned with the damages.

Q. You were not?

A. No.

Q. Why did you sue them in the first place and get a \$1,000?

A. In order to return to the North Van. Ship Repairs or some place where the Boilermakers' Local No. 1 held a contract, as a Union member. 20

Q. You did not attend on the first trial because you found out it was not in accordance with the constitution?

A. Yes, I informed the officers of the Union to that effect.

Q. And they did what they could? And admitted they were wrong?

A. No, they wrote a letter back to my solicitor telling him I had misinformed my solicitor. And I was at liberty to act as I saw fit.

Q. You knew you had a legal technicality in that first case and that is the reason you did not attend? 30

A. At that time, as now, I was not sufficiently schooled in law to understand anything about it. I just had the ordinary feeling that I was wrongly and illegally expelled and took what legal steps I thought proper.

Q. You have already told this court . . .

The Court: We will adjourn.

(PROCEEDINGS ADJOURNED TO JANUARY 27, 1949)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT.)

MYRON KUZYCH, resumes stand.

CROSS-EXAMINATION CONTINUED BY MR. BURTON:

Q. Mr. Kuzych, what was the first occasion that you saw the by-laws of the Union?

The Court: Saw what?

Mr. Burton: The by-laws and constitution.

A. Which by-laws do you refer to?

10 Q. Well, the draft by-laws or the final form.

A. Can you show me which by-laws you are referring to, please? Oh, this.

Q. Well, we will take these first. When did you first see the printed by-laws?

A. As nearly as I can recall, it was some time in November or December of 1944.

Mr. Johnson: That is Exhibit 14.

Mr. Burton: November or December of 1945. And they had, then, been effective since August 8, 1944?

20 A. I saw on the cover that they were effective then, yes.

Q. Now, when did you see a draft of those by-laws?

A. The first draft came to me about July or August of 1944.

Q. That was prior, in any event, to the time when they became effective?

A. Yes.

Mr. Johnson: Now, the witness does not know when they became effective.

Mr. Burton: He said August 8th.

30 Mr. Johnson: He said he gathered they were alleged to become effective then.

Mr. Burton: Well, the date they were alleged to become effective.

A. Yes.

Q. Now, may I have Exhibit 22 in the first trial? I do not know what number it is.

Mr. Johnson: It might be Exhibit 8 or 9. The first draft was put in as Exhibit 8.

Mr. Burton: I have got the record and it says it is marked as Exhibit 22.

40 Mr. Locke: It says in the first trial it was admitted by consent.

The Registrar: I think it was 22, but it is not in as an exhibit.

Mr. Burton: We will put it in now.

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Q. Now, witness, I show you draft by-laws and I inform you that those draft by-laws were produced from your counsel's custody on the 1st of April.

A. Yes.

Q. Now, do you recognize them as such?

A. Yes.

Mr. Burton: I will ask to have these draft by-laws marked as Exhibit 46.

The Court: Exhibit 46.

(BY-LAWS MARKED EXHIBIT No. 46.) 10

Mr. Johnson: May I ask my learned friend, for the purpose of clarity, whether these by-laws are the same as Exhibits 8 or 9, the first exhibits put in on this trial?

Mr. Burton: I would say they might be. I have not compared them. They are at great length and there were five or six drafts put in. They will be similar to one or the other.

Q. Now, witness, Exhibit 46 in this case, which you have just identified, when did that first come into your possession?

A. As I have said, as nearly as I can recall some time in July or August, 1944. 20

Q. Were these draft by-laws not available to all members of the industry in North Van. Ship Repairs?

A. I don't know. I was not in the yard then and I could not attend the Union meetings.

Q. At that time?

A. At that time.

Q. You were not working at that time?

A. I was not working at that time.

Q. Well, where did you get these by-laws?

A. I beg your pardon? 30

Q. Where did you get them?

A. They were given to me, I believe, at my place of residence when I stayed on Fraser Street.

Q. By someone?

A. By someone who was a member of the Boilermakers' Local No. 1.

Q. And I presume you read them?

A. I read them, yes.

Q. Now, you stated in evidence, I think, already that when you first made your donation to the Boilermakers' Union, that you did not wish to join until you had had an opportunity of thoroughly studying their constitution and by-laws, isn't that correct? 40

A. I did not say I did not wish to join until I thoroughly

joined, because this might mean I would not join. I merely said I wanted to have an opportunity of studying the by-laws and constitution prior to joining.

Q. Now, I refer you to the evidence on the original trial at page 107, at line 12: "Q. You had made your donation and yet you were told by Mr. Thompson you must join if you wanted to stay there?"

10 "A. The discussion between me and Mr. Thompson didn't have anything to do with the donation. It was demanded I sign a certain application, which demanded of me an allegiance to a certain set of by-laws and constitution, which at that time I had no opportunity to study, and I asked Mr. Thompson whether I was obliged to. I explained to him I had already made the donations to the Union but I asked whether I was obliged to join the Union without first having the right to examine the by-laws and constitution.

20 "Q. And the alternative to that would have been to leave the North Van. Ship Repairs, is that right?"

"A. I didn't know. As I had no by-laws and the constitution before me, I had no actual alternative to it because had I left the North Van. Ship Repairs and gone back to the Selective Service, I would have had to give some logical explanation as to why I left the North Van Ship Repairs in the first place, and I would do no such thing because I had no knowledge of what the regulations were at that time."

30 Mr. Johnson: My learned friend read that "I don't know." I have it here, "I did not know."

Mr. Burton: It is my grammar perhaps; it has possibly the same meaning.

Mr. Johnson: I don't know anything about that.

Mr. Burton: Anyway, it is "I did not know." Now, witness, were you asked those questions and did you make those answers?

A. Yes, as nearly as I can recall, I made those answers.

Q. And were those answers true?

A. As nearly as I can recall, at that date they were true.

40 you had an opportunity to study the by-laws?

A. No, that is not quite correct.

Q. In what way do you wish to qualify that?

A. I merely wish to say before making up my mind whether joining or not joining, I wished the opportunity of studying the

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by-laws, but it is quite possible after studying the by-laws I might have joined once I knew what it was. That is all.

Q. Now then, witness, did you obtain a copy of any by-laws at that time?

A. At which time?

Q. Well, at the time you joined.

A. The first time?

Q. Yes.

A. No.

Q. You knew the Canadian Congress of Labour by-laws were the ones which governed this Union at that time?

Mr. Johnson: The constitution.

Mr. Burton: The constitution of the Canadian Congress of Labour was the constitution that governed this Union at that time.

A. What is the question?

Q. You knew the Canadian Congress of Labour's constitution was the constitution under which the Boilermakers' Union was operating at that time?

A. No.

20

Q. When did you first learn that?

A. I learned that after the first set of charges were laid against me.

Q. You found that out when you were charged?

A. Yes.

Q. And where did you get those by-laws?

A. Those by-laws were first furnished to my solicitor, Mr. Banton.

Mr. Johnson: My learned friend refers to by-laws.

Mr. Burton: Well, the constitution. We know what we are talking about, I think. This is an exhibit in this case. I shall try to be more exact—Exhibit 3 in this case.

A. Yes.

Q. However else I call it, this is what it is. Now, you gave that to Mr. Banton, your first lawyer.

A. Yes. No, I didn't. I didn't give it to him. It was sent to him by Mr. Stanton, following a letter which Mr. Banton wrote.

Q. And you had an opportunity of considering it?

A. Then.

Q. And your lawyer?

40

A. Yes.

Q. And you and your lawyer found out a mistake had been made in the proceedings.

A. That is right.

Q. And the mistake was you had not been given sufficient time?

A. As nearly as I can recall, that is correct.

Q. Now then, witness, as a result of your knowledge that a mistake had been made, you did not attend the trial?

A. That is correct.

Q. To answer the charges?

A. That is correct.

Q. Because you knew you had a technical position?

10 A. No, I didn't attend the charges on another ground.

Q. What was that?

A. I beg your pardon?

Q. What was that?

A. I feared—I feared appearing before an alleged tribunal which had no jurisdiction to try me, I might acquiesce or consent to being tried by such a tribunal and thus prejudice myself later or me, and destroy my right of appeal later if such right still existed anywhere.

20 Q. Well, it was a technical position—a legal position on which you were relying. There is no doubt about that?

A. Yes.

Q. And then you started action on the 26th of February, 1944, for damages.

A. No, I did one other thing before that. I made it very clear to Mr. Stanton what the mistake was and what the situation was, and asked him that I be reinstated and that unless I am reinstated, in view of the fact my livelihood was at stake, I should have no other alternative but to take a legal action against Boilermakers' Local No. 1, although I would greatly regret to do so.

30 Mr. Stanton did not . . .

Q. Now, witness, I know your fondness of going into these matters at great length, but I really only want an answer to the question I asked. You told Mr. Stanton it was illegal and you wished to be reinstated, and then you issued a writ when he did not reply . . .

A. Yes, and that . . .

Q. And then, you issued a writ?

A. In February, '44.

Q. In February, '44?

40 A. Yes.

Q. I hope to have it in front of me so I don't have to tax my memory. Now, witness, in June of that year you were reinstated?

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A. That is correct.

Q. And despite your reinstatement, you proceeded to trial, which came on in the latter part of October and obtained your damages?

A. That is right.

Q. And during that time you knew the objects of the Boilermakers' Union, didn't you?

A. No, I couldn't say I honestly knew. I never had any opportunity to learn that definitely.

Q. Why didn't you? 10

A. Because during my membership in the Union, the matter never came up, and during my absence I had no way of learning.

Q. But you were very anxious when you joined the Union first that you should know what the objects were before joining?

A. That is true.

Q. And despite that fact — I have forgotten the date —

A. November 12, 1942.

Q. Despite the fact you were a member from November, 1942, until October, 1944, you had been acquainted with the Union? 20

A. Yes.

Q. You knew its operation?

A. Yes.

Q. And you say after two years you did not know what its aims or objects were?

A. That is correct; I had no absolute knowledge of them.

Q. What do you mean by absolute knowledge?

A. That is to say, I could not say anything with certainty.

Q. All right. Now then, witness, when did you first know that the Boilermakers' Union favoured a policy of closed shop? 30

A. I don't know. I don't know that to this date.

Q. You don't?

A. No.

Q. Despite the fact when you joined the North Van. Ship Repairs, you were told it was a closed shop and you would have to join the Union or get out? And you still say you don't know that to this date.

A. Well, I wasn't told that by the Union. I was told that by Mr. Stewart and his LPP henchmen.

Q. By Mr. Stewart and his LPP henchmen? 40

A. Yes.

Q. Which you are very anxious to bring out — and he was an officer of the Union?

- A. Yes.
- Q. And at that time you did not believe him, is that what you say?
- A. I did not disbelieve him and I did not believe him; I could not say.
- Q. And you still don't know?
- A. No.
- Q. Now, the by-laws which you have identified — I will correct that — it is an Exhibit of the Boilermakers' Union, 10 Exhibit 14 in this case — it came into your possession, as near as you can recall, in November, 1944.
- A. Yes.
- Q. And the draft you, at some time previously, had read it?
- A. Correct.
- Q. I will read from Exhibit 14, Article 2 — subsection (c). Well, it starts out this way: "The objects and purposes of this Union are" — that is the defendant Union, the Boilermakers in this action — "(c) to consummate closed shop agreements in order to establish an equitable and lasting relationship with the 20 employers." Now, you read that?
- A. Yes.
- Q. And you still say you did not know and you don't know to this date that this Union advocates a closed shop policy?
- A. No, as a member I did not know that.
- Q. Now, all the members of the Boilermakers' Union subscribe to the by-laws, do they not?
- A. I don't know.
- Q. Well, when you signed up you knew that you had to be governed by the by-laws of this Union, did you not?
- 30 Mr. Johnson: What by-laws is my learned friend referring to?
- Mr. Burton: Exhibit 14.
- Mr. Johnson: Yes, effective August 8, 1944.
- Mr. Burton: Q. You knew you had to follow the constitution as it then was of the Canadian Congress of Labour?
- A. I knew that.
- Q. And you knew also, when you remained a member of this Union, after the date of these by-laws, you were subject to them?
- A. No.
- 40 Q. You did not know that?
- A. No.
- The Court: Are these the by-laws of the defendant?
- Mr. Burton: Of the defendant — Exhibit 3.
- Q. Now then, witness, you stated you did not know the

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aims and objects of the Union. How did you know that you were not served with that notice requesting an expulsion? How did you know that that was not served in time?

A. The first or the second?

Q. The first one.

A. After obtaining a copy of the Canadian Congress constitution, I looked at the procedure that was set out therein and I noticed what appeared to me like certain discrepancies, but up until that time I only felt I was wrongfully expelled. I had no knowledge there was a matter of legality entered into it, and it was only after Mr. Banton, the solicitor, looked at it, he told me I was wrongfully expelled and illegally, as well, and that is the first time I learned of that. 10

Q. Now then, you did, however, read the by-laws through, did you not?

A. Yes.

Q. And the parts that you were interested in was your legal position?

A. Well, the matter pertaining to my expulsion.

Q. And the aims and objects were not of much concern to you at that point? 20

A. No.

Mr. Johnson: What is my learned friend driving at? I want to be perfectly clear about this. When the plaintiff joined this Union, it was in 1942, and the by-laws were not passed and they are not shown to be effective until 1944, and these charges emanated — something that happened in November, 1943 — I would like to have that clear.

The Court: Is there anything in the Canadian Congress of Labour about that? 30

Mr. Burton: There is — not specifically setting up closed shop, but their general principles.

Mr. Johnson: That is the point.

Mr. Burton: Article Two says — no, Article One—Section 1: "The purpose of the Congress shall be to promote the interests of its affiliates and generally to advance the economic and social welfare of the workers of Canada." And: "It shall seek to accomplish this in the economic field by developing the widest and the most effective organizations of the workers, establishing wherever necessary, Organizing Committees for this purpose." 40

Q. Doesn't that mean to you, as a Union man, the widest possible organization — a closed shop?

A. No, the very opposite.

Q. Now, we shall have something to say about that later on. Now then, witness, leaving that to one side, you say that when you joined the Union the Canadian Congress of Labour

constitution did not set up a closed shop and you knew that?

A. No, I didn't even know that.

Q. You didn't even know it didn't.

A. No, how could I? I didn't know until after the charges were laid —

Q. Well, you knew then?

A. Just a minute — after the charges, did I know what?

Q. That the constitution did not specifically set out it was in favour of a closed shop?

10 A. Yes, as near as I can recall now, it did not set out a closed shop.

Q. But you knew the aims and objects of all the workmen were that they were in favour of a closed shop, didn't you?

A. No.

Q. Now witness, you did, however, know, when you got the Exhibit 3 in this case — that is the by-laws of the defendant Union, you did know then that the by-laws set out —

Mr. Johnson: Exhibit 14 —

Mr. Burton: Pardon me, Exhibit 14 —

20 Q. You did know then that the by-laws set out that the Union, as expressed in the by-laws, was in favour of a closed shop?

A. No.

Q. I will read this again so that we shall have no misunderstanding about it: "The objects and purposes was to consummate closed shop agreements in order to establish an equitable and lasting relationship with employers." You read that, didn't you?

A. Yes.

30 Q. And you still say you did not know the Constitution provided that that should be one of the aims and objects of this Union?

A. No.

The Court: No, he did not say that. He said he did not know how the membership as a whole felt about it.

Mr. Burton: Q. Well, you knew, at least, that the by-laws set out that was one of their aims and objects?

A. That is better. I knew the by-laws set that out, but I did not know how the members felt about it.

40 Q. Do you mean to say all those members over in the North Van. Ship Repairs, you did not know how the members felt about a closed shop?

A. No.

Q. But you had occasion to find out later on, didn't you, how they felt?

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A. I don't think I found out to this day, yet.

Q. By the way, how was it that you came to appear before this Arbitration Board on the West Coast?

A. As I have already explained, I was interested in what the arguments would be advanced in favour of a closed shop, never having had any opportunity to hear organizations, I felt here was an opportunity to hear something to that effect, and I went there to attend it in order to learn something of these alleged great advantages of a closed shop, particularly as it was offered by LPP officers. 10

Q. Witness, I wish in future you would kindly omit to refer to them as LPP officers. I am instructed that is not the case. These are officers of the Union, and never mind about the LPP part of it, if you don't mind. Now, witness, proceed.

A. Well, there is nothing more. I was interested in knowing what arguments a man like Mr. William Stewart could possibly advance that would justify a closed shop anywhere, and possibly on the West Coast.

Q. And then you said that Mr. Justice Wilson wrote you a letter and asked you to come? 20

A. That is correct.

Q. And how did he get your name?

A. He got my name by my writing a letter to him.

Q. You didn't tell that in your direct examination, did you?

A. Well, I wasn't asked it, I don't believe.

Q. Now, you wrote a letter to Mr. Justice Wilson asking to appear?

A. No.

Q. What did you ask, then?

A. At the conclusion of the second session of the hearing, 30 Mr. Wilson said any man who was a member of Local Union No. 1, in good standing, he had the right to testify at that arbitration or abide by the decision thereof, and taking cognizance of that remark I wrote a letter to Mr. Justice Wilson.

Q. And then you were invited to attend?

A. No, Mr. Justice Wilson wrote me a letter asking me further details as to the evidence I proposed to give, and then he wrote me a letter inviting me to attend.

Q. Now, I will read you from the evidence given at the first trial on that subject, at page 112. 40

A. Which first trial are you referring to?

Q. Of this case.

A. Yes, sir.

The Court: What line?

Mr. Burton: I will start at line 4. The rest has nothing to do with it. "Subsequently to that I wrote a letter to the Chairman of the Board saying I was in possession of certain evidence and information which I felt the Board should have before giving its final decision, and I received a letter inviting me to give my testimony, and that is how I appeared before the Board of Arbitration."

Q. Did you give that answer?

A. That is true. That is correct.

10 Q. Now, the purpose of the Arbitration Board was an attempt by the Boilermakers' Union (that is the defendant in this action) to obtain a closed shop agreement with the West Coast Shipyard, among other things, isn't that correct?

A. Yes, as nearly as I understand it, that is correct.

Q. You knew that was the purpose of the arbitration, and that the brief that was submitted by the Boilermakers, isn't that correct?

A. Well, I don't know anything about the brief. I don't think I ever seen the actual brief.

20 Q. By the way, did you hear Mr. Stewart give evidence?

A. Yes, I believe I did.

Q. I think you heard that yesterday. Would you be surprised to know Mr. Stewart conducted the proceedings?

A. Yes.

Q. Did you hear him give evidence?

A. Yes.

Q. Despite the fact that he was presenting the case and not giving evidence, you knew he was a counsel on the case. You said so yourself, did you not?

30 Mr. Johnson: What are you referring to?

Mr. Burton: The Arbitration Board proceedings.

The Witness: Well, I remember Mr. Stewart — as nearly as I can recall now, it would appear that Mr. Stewart's position was dual, both as counsel and as a witness. I remember him being in the witness stand on one occasion — and cross-examining the Manager of the West Coast Shipyard, and when the Manager asked for Mr. Stewart to be cross-examined, he refused to give evidence, and now I don't know what position he was in.

Mr. Burton: Q. Well then, you knew he wasn't?

40 A. Well, in that way I don't know how he was able to cross-examine someone and then refuse to be cross-examined.

Q. Now witness, you stated yesterday you heard Mr. Stewart give evidence. Is that true or false?

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A. Well, if he took the witness stand he must have been giving evidence.

Q. Did you see him in the witness stand?

A. Yes, I saw him in the witness stand being cross-examined — no, I saw him cross-examining a witness.

Q. But was he in the witness stand giving evidence?

A. No, he refused to give evidence.

Q. Then the evidence you gave yesterday is not true.

A. No, I didn't.

Q. Now, I am instructed, Witness, Mr. Justice Wilson, in 10 giving his invitation, did not open the invitation to all workers in the industry, but confined it to employees of the West Coast Shipyard. Is that right or not?

A. I beg your pardon?

Q. I am instructed that instead of giving an open invitation that Mr. Justice Wilson invited only employees of West Coast Shipyard to give their views. Is that correct?

A. That is not correct.

Q. Now then, you did attend the arbitration and you did give evidence? 20

A. That is correct.

Q. And what was the date?

A. As nearly as I can recall, sometime in October — the 12th or thereabouts.

Q. 1943. And you spoke or you argued for approximately three hours, is that correct?

A. No, I gave testimony and I was cross-examined and so on — I don't recall just how long.

Q. Well, it would be approximately three hours you were on the stand? 30

A. Yes, approximately; I would gather that.

Q. And you were at that time a member of the Boilermakers' Union in good standing?

A. Yes.

Q. Now, witness, did you have any axe to grind against the Boilermakers' Union?

A. How?

Q. I will put it this way: Did you have any bias against them, or were you fair minded about it all?

A. Do you mean by the Union, the members of the executive? 40

Q. The Union?

A. The Union to me is a soulless thing, and I don't know exactly what you mean.

Q. You know what I mean all right. Did you have any bias against the Union to which you belonged?

A. Well, leaving apart the fact that I was a member of the Union, I would say no.

Q. You didn't have any at all?

A. No.

Q. And you felt well disposed towards the Union?

A. I kept my feelings and decision in respect to the Union in abeyance until I found out sufficient to know something about it.

10

Q. And did you do that on the Board of Arbitration?

A. It helped a great deal.

Q. What helped?

A. To learn — by listening to the presentation for the closed shop and the opposing presentation, it helped me a great deal to clear up a number of points, receiving the various merits and demerits of a closed shop.

Q. You went there to learn something?

A. Yes.

20

Q. And how is it you were able to testify for three hours and appear as an authority on the subject, if you went there to learn?

A. Well, I did not appear as an authority, but as I listened to the testimony, and compared it with what I had observed in the Vancouver Ship Repairs, I was able to observe some very glaring discrepancies between the two.

Q. And did you say anything of a derogatory nature against the Boilermakers' Union?

A. No, the Union as a body was not involved. It was the executive.

30

Q. Then did you say anything derogatory against the executive?

A. Well, what do you mean by the term derogatory?

Q. Well, anything that would reflect discredit?

A. Well, I only stated what I knew to be the fact, and how that reflected I don't know. I left that for the Board to decide.

Q. You did that without any bias, and without any leanings whatever — just dispassionately.

A. That is correct.

40

Q. Now, I read to you from page 142 — the last two lines, of the first trial. Now, this is the evidence which you gave, the transcript which I read to you at that time. These are the questions given to you in relation to your arbitration proceedings and what you said there.

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"Mr. Burton: I will read it all again and then I will let it go at that."

On page 143. These are the questions given to you in relation to the arbitration proceedings and what you said there, — a transcript of what you said on the arbitration proceedings, so that I can make myself perfectly clear:

"Q. Do you believe in a closed shop?

"A. No, I am opposed to a closed shop, upon the principle, that I am willing to submit to a closed shop and tolerate it as any evil, or rather to put up with it just as long as it is necessary but not a minute longer. 10

"Q. You mean, if you have to accept it; but as soon as you can get out from under, you will.

"A. Well, 95 percent of the Boilermakers in a closed shop will.

"Q. Just speak for yourself.

"A. Well, I think I can honestly say that for the others too. After studying all the pros and cons of a closed shop, constitution included; and for the time being, if I had to submit to this I consider it a very great evil." 20

And then I make an interjection:

"I don't know why my friend asked me to read this.

"Q. The closed shop?

"A. Yes, and dangerous to society. I would tolerate it just as long as it was necessary, and as soon as civilization raises a voice and gets them to move one step forward, I would do so also.

"Q. You are intending to do that when the opportunity presents itself?

"A. If the civilized opportunity presents itself." 30

And my interjection is:

"It is a question of civilization now, is it, witness?

"Q. You don't believe in the present trade unionism that exists in Canada. You substitute for it an industrial union?

"A. A general industrial union.

"Q. What do you mean by that?

"A. A union that stands in contra position to anything that is spurious, or a fake, such as, for example, the Boilermakers' Local No. 1.

"Q. You are a member of the Boilermakers' Union? 40

"A. An unwilling member, as I said before."

And then the transcript goes on. Now, were those questions asked you and did you give those answers?

A. That is correct.

Q. Now, witness, were you asked those questions and did you give those answers on the first trial?

A. That is correct.

Q. And are those answers true?

A. Essentially they are true, and now I would like to add this qualification: It is to be taken together with everything else that I stated at the Board of Arbitration — they are clear and presented a true picture, but as taken out of the context with the rest of the evidence, they tend to create a coloured picture.

10 Q. In other words, witness, what you said there was this: The Boilermakers' Union is spurious and a fake. Now, you say in conjunction with other things that that would mean what it says. Is that what you are telling me?

A. That is correct.

Q. Just tell me then, correctly, in what way those words "spurious" and "a fake" don't mean what they say.

10 A. In this way: Proceeding from the principle that the Union derives all its power from the members, and the executive are merely the servants of the members, and having shown the Board of Arbitration that the Executive under Mr. Stewart's domination, acted in absolute disregard of the members' wishes, 20 as I pointed out — that the Union, apart from the members' aspect of it, did not operate as a proper union, and in that sense was spurious and faked, because the Executive usurped for itself powers which it did not have and was not entitled to, apart from the wishes of the membership.

Q. Now, witness, I have given everything that is given in this context and your answer is this:

"A union that stands in contra position to anything that is spurious or a fake."

30 The Union — I don't see any word executive there.

The Court: Where are you reading, Mr. Burton?

Mr. Burton: On page 44, my lord.

"A union that stands in contra position to anything that is spurious or a fake, such as, for example, the Boilermakers' Local No. 1."

Now, where in that sentence did you say the executive was spurious and that Bill Stewart was not following the wishes of the membership?

40 A. I didn't say it, but that continued, to my understanding — at any rate, in the minds of the chairman and Board of Arbitration, because at no time did I ever have any cause or reason to speak disparagingly of the members. These people were helpless—they were just people in the grip of Mr. Stewart. They

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could not help themselves. It was Mr. Stewart and his members that committed all those acts that I have complained about.

Q. Well, the Union meets twice a month, doesn't it?

A. To the best of my knowledge, yes.

Q. And the Union was composed at that time of nearly 17,000 men?

A. As near as I understood, it was 18,500.

Q. And you say that the president can mould and do what he likes and the membership follows him, no matter what he does?

A. If you would understand this, to your astonishment you would know how the LPP operate. 10

Q. Well, I have had enough of this LPP, and I object to your mentioning it again.

Mr. Johnson: I suggest that he should be given a certain freedom of speech.

The Court: Yes, if he suggests a political party operated in that Union, I think it would be admissible.

Mr. Burton: It was not even in existence at that time, my lord. He has not proven it and I submit he is not entitled to carry on making those statements. This is a Union and this is not a political party, neither LPP or Conservative. 20

Mr. Johnson: Well, evidence will be given to the effect that Mr. Stewart stood as an LPP candidate in North Vancouver, and if this witness wishes to give evidence as to that —

The Court: Well, I think this witness has already given that evidence.

Mr. Burton: Q. Now, witness, I stopped you at the word LPP. Do you mean that Mr. Stewart ran or did run the affairs and policy of the Boilermakers' Union of Canada—he, himself?

A. I didn't quite understand you about stopping me at the word LPP. What am I to answer you now? 30

Q. Well, just answer this question. Do you mean to say Mr. William Stewart had control of the policy and the affairs of this Union at that time in his hands?

A. Absolutely.

Q. And all the members followed him like sheep?

A. They were unable to do anything else.

Q. How do you explain that the by-laws of this Union developed, as already is in evidence, through a series of drafts and final proof, and contained the clause that this Union favours a closed shop? 40

A. I cannot account for it, because I was not at any of those meetings. I was excluded from those meetings and I know nothing of it.

Q. But those by-laws which your counsel has put in show that they were adopted by a majority vote.

Mr. Johnson: It doesn't say anything of the kind.

Mr. Burton: Q. Now, you ran for president of this Union, did you not?

A. I was nominated for president, yes.

Q. And did your name go on the ballot?

A. Yes.

Q. And despite the fact that you already had a private meeting in which it was agreed that Mr. Stewart and Mr. Henderson should make it a two-way fight —

10 A. No, I ran before that.

Q. When was that that you ran?

A. Well, as nearly as I understood, there was a time period which allowed the nominations for presidency and then there was a time period beyond which a member could not withdraw from the presidency and had to run whether he wished to or not.

Q. Now, I show you a ballot — if you will look this over and see if it is the ballot when you ran for president.

A. If I look at the ballot, I see what?

Q. Is that the ballot that was used at the time you ran
20 for president?

A. That is the ballot.

Q. That is marked.

Mr. Johnson: I object to that. This shows the number of votes alleged to have been cast for each candidate. I don't think it is admissible on that question, and it is the form of ballot that my learned friend is getting at.

Mr. Burton: We can prove it.

The Witness: Put in the blank form.

Mr. Burton: Q. Witness, how many votes did you receive?

30 A. As a matter of fact, I don't know the exact number but I know it was very little.

Q. Would the correct number be 21?

A. Probably, or thereabouts. As a matter of fact, I was astonished that I received that many, because I asked everybody not to vote for me.

Q. Do you know how many votes Mr. Henderson received, who won the nomination?

A. I don't know. I knew it was enough to defeat Mr. Stewart and that is all that concerned me.

40 Q. Mr. Stewart subsequently became the president of the Boilermakers' Union, did he not?

A. No, not that I know of.

Q. Now, witness, I am going to read from page 144, the evidence of the first trial at line 22. I am reading from the Examination for Discovery. I had better start at line 20:

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"Q. I will read now from your Examination for Discovery held on April 18th, at page 99, question 588:

"Q. Now, you have made a detailed study of Trade Unionism, have you not?

"A. I hope I have. I don't know whether I really have. I have tried to make a detailed study. I will say I have tried to make a detailed study of Trade Unionism.

"Q. Do you know of any trade union today whose policies you agree with?

"A. No, I don't. 10

"Q. That is all.

"A. That is, you mean in existence, is that what you mean?

"Q. Do you know of any?

"A. In existence?

"Q. Yes.

"A. No, I don't know of any in existence at the moment.' "

Now then, I will ask you if those questions were put to you and if you made those answers.

A. I beg your pardon?

Q. I will ask you whether those questions were asked you 20 and did you make those answers on the first trial?

A. Yes.

Q. Are they true?

A. Well, to the extent that I have had any contact with those unions, it is true.

Q. Just answer the question. Are they true?

A. I haven't had knowledge of every type of union, but to the extent that I have they are true.

Q. Well, do you still feel the same about it?

A. To the extent that I have had knowledge of other unions, 30 yes.

Q. Well, witness, do you know yourself of any union in existence today with which you agree?

A. I would have to have a greater knowledge of the various unions and the way they operate, before I could make an unqualified answer.

Q. The ones you have studied, do you agree with any of them?

A. No, not with those I have studied.

Q. And you don't agree with the Boilermakers' Union 40 policy, that is sure, isn't it?

A. I don't know yet.

Q. How do you think you are going to find out?

A. When we discuss the matter of the closed shop, and such

executives as we had then and have now, we might get to some understanding as to what to do for the best.

Q. Now, witness, do you wish to belong to the Boilermakers' Union?

A. It is the Union which has taken — which has been wrongful and has illegally taken from me the Union membership card, and I must regain this membership card first to earn my livelihood as a Union man, and secondly, if it ever becomes necessary to join a union, I must have a proper withdrawal card from this Union to go elsewhere.

10

Q. And is that your only reason?

A. Yes.

Q. Despite the fact you don't agree with its principles?

A. I don't know what its principles are yet.

Q. Now, witness, why did you wish to join it in the first place?

A. I was sent — you mean back in the North Van. Ship Repairs in 1942?

Q. Yes.

20

A. Is that the question?

Q. Yes.

A. Why did I wish to join it?

Q. Yes?

A. Because it was the only way I could work on the job.

Q. Now, witness, I am reading to you from page 174, the first trial, commencing at line 21, and I am reading from the Examination for Discovery which I put to you at the trial.

The Court: Line what?

Mr. Burton: Line 21, my lord — continuing on that page — that is my own page, 241. Now, this is the question:

30

“Q. But you knew in January, 1943, that there was an agreement with the Union whereby the North Van. Ship Repairs was a closed shop?

“A. Yes.

“Q. And it has been a closed shop ever since and this is April, 1946, and you still know it, don't you?

“A. That is correct.”

Now, we will stop there, witness. You knew in April 1946, and you knew in January, 1943, that there was such an agreement for a closed shop between the Boilermakers' Union and the North Van. Ship Repairs?

40

A. You are speaking of an agreement and not the policy?

Q. Yes.

A. I knew there was an agreement.

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Q. And you knew there was a closed shop?

A. Yes, an agreement, I should say.

Q. And a Union shop.

“And it has been a closed shop ever since, and this is April, 1946, and you still know it, don't you?”

“A. That is correct.”

That is what you say there, witness. Now, witness, don't quibble about it. You know the North Van. Ship Repairs is a closed shop. You know that.

A. No, I know it operated under a closed shop agreement 10 at that time, but whether the membership supported that or not, I could not tell you.

Q. Now, I will continue reading — this is the last line on page 174:

“Then, why do you want to belong to the Boilermakers' Union?”

“A. I want to belong to the Boilermakers' Union for this reason: That the Boilermakers' Union is the first union to which I have ever belonged?”

Now, were you asked those questions and did you make those 20 answers?

A. Yes, I believe that is the case.

Q. Are they true?

A. No, they are not true in the sense there was another union to which I belonged, but the union I belonged to was one that had nothing to do with a closed shop connection.

Q. Now, I will ask it again —

“Why did you want to belong to the Boilermakers' Union?”

“A. I want to belong to the Boilermakers' Union for this reason: That the Boilermakers' Union is the first union to 30 which I have ever belonged?”

Does that say with closed shop principles?

A. No, but I think that is what was in the back of my mind. I did not say it had closed shop principles.

Q. Why didn't you say in answer to this question it was the first union you belonged to that had closed shop principles?

A. I don't know. I guess I did not know that.

Q. Now, when I asked you the same question today, you said the reason you wanted to belong to it was that you could be put back in the position of being a member and having a proper 40 membership card, and join any other union you wished.

A. That is correct.

Q. So these answers are not correct, or are they both correct?

A. One answer is partially correct and the other answer is correct.

Q. Why didn't you think of that when I asked you the question on Discovery three years ago?

A. I don't know why I didn't. I guess I just didn't think of it.

Q. Now, line 15. I will read the question again — and I will read it down to line 19:

“Q. Why did you not say it was the first big union you ever belonged to?”

10 “A. I don't happen to recall, but the questions came rather rapidly to me and I probably never thought of that.”

Were you asked that question and did you make that answer?

A. I don't recall at the moment, but perhaps I have.

Q. Is that correct?

A. What is correct?

Q. Is it correct?

A. What?

Q. The answer that you gave.

A. What was the answer?

20 Q. All right, I will read it again:

“I don't happen to recall, but the questions came rather rapidly to me and I probably never thought of that.”

Mr. Johnson: You should read the question.

Mr. Burton: All right, I will read the question.

“Q. Why did you not say it was the first big union you ever belonged to?”

“A. I don't happen to recall, but the questions came rather rapidly to me and I probably never thought of that.”

Now, is that correct?

A. Yes, that is right.

30 Q. Now, when you were asked on the first trial if this was the first union you ever belonged to, you didn't say then you were only referring to closed shop unions, did you?

A. I don't recall.

Q. Well, going back to line 8, “Were you asked those questions and did you make those answers? A. Yes.”

Now, let us be very clear about it. You say this is the first union you ever belonged to, and then in this answer you say:

40 “Yes, I should like to qualify that question. Apparently when I said that I did not mean it was the very first union to which I ever belonged. I meant it was the very first union of any size or proportions to which I ever belonged.”

Now, did you make that answer?

A. I don't recall at the moment, but perhaps I have.

Q. Now, is that answer true?

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The Court: What answer?

Mr. Burton: The answer I have just read.

"Yes, I should like to qualify that question. Apparently when I said that I did not mean it was the very first union to which I ever belonged. I mean it was the very first union of any size or proportions to which I ever belonged."

Q. Is that answer true?

A. It is relatively true. I belonged to another union. I belonged to the A. F. of L.

Q. Well, when you say relatively true, what do you mean by that? Do you have two types of evidence, one relatively true and one true? 10

A. Well, I think every truth is relative. It is not a matter of two answers. It is just that one is relative to the other.

Q. Now, this morning when I put this question to you as to why you wanted to belong to this Union and you said it was the first union and then you qualified it by saying it was the first closed shop union. Now, why didn't you give that answer at the first trial?

A. I don't know. Possibly it didn't occur to me at the time. 20

Q. You have thought that up since.

A. No, not specifically, but every time you ask me a question some aspect comes up that at the moment I think important, and I say it.

Q. Now, the truth is you did belong to another union.

A. That is correct.

Q. A couple of other unions, in fact.

A. That is correct.

Q. So the answer is totally untrue?

A. No, not totally.

Q. Just relatively? 30

A. Relatively.

Q. Now, witness, what was the first union you belonged to?

A. The first union I belonged to was a building trades union, an A. F. of L. branch, I believe.

Q. Now, I am going to read the evidence, it will be quicker, I think. First I will read on page 176, at line 8 — line 7. This is my question. I say:

"Q. I will read further on your Examination for Discovery, question 249: 40

"Q. I want to ask you this, I am a little curious. What do you know about unionism? You never belonged to any other union besides the Boilermakers', did you?

"A. That is true. I never belonged to any other."

Now, is that true, did you make that answer?

A. As nearly as I can recall, yes.

Q. And is that answer true?

A. No, it is not true to the extent that I have belonged to other unions.

Q. You didn't say there that it was the first union you belonged to, and you didn't say, as you said this morning, that it was the first union with a closed shop, did you?

A. No, I didn't.

10 Q. And you led the Court to believe you never did belong to another union?

A. Well, to the extent the question was put to me, to that extent, I suppose I did.

Q. "Q. You never belonged to any other union besides the Boilermakers' Union, did you? A. That is true, I never did belong to any other."

Now, that is what you say here. Is there any other way that that answer can be construed, except to mislead the Court?

A. I suppose there is, providing it was asked me again as to the nature — feeling that we were dealing strictly with Boiler-
20 makers' No. 1, I endeavoured to confine myself to that.

Q. Well, then I asked you to go beyond that and asked you if that was the only union you ever belonged to.

A. No.

Q. Well, I did ask you that.

A. No, I don't remember, possibly you have.

Q. I will come to that — line 25 — reading the question:

"Q. You told me here you never did belong to any other union. Do you wish to take that back?"

30 "A. Well, I did belong to a union in the building trade. It was an A. F. of L. union. I did belong to it.

"Q. And what was the name of it?"

"A. I believe it was the Building Trades Union.

"Q. Were you accepted?"

"A. Yes, I was accepted.

"Q. Why did you quit it?"

"A. Because there was a difference of opinion arose among the members."

And then I interject:

40 "There again you had some difference of opinion, so that should impress it upon your mind.

"A. That is right.

"Q. The same as in the Boilermakers'."

Now that is the difference of opinion I am talking of,

"A. Something of a similar nature.

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"Q. And were you expelled?

"A. No.

"Q. You quit?

"A. No, we didn't quit, we resigned, or rather we succeeded
... — seceded it should read —

"We seceded — the section that this agreed with the original
principle, we seceded and we formed a union of our own."

Well now, what was the disagreement there, witness?

A. Well, it was quite some time ago, and I don't remember
all the details. I paid very little attention to it; it not being a 10
closed shop it did not affect my livelihood and I paid very little
attention to it, but as nearly as I can remember some agreement
was coming up between the employers and these working men and
this business agent or secretary — I don't quite recall his office
— made some remarks to these employers to the effect that they
did not know their business and they would have to have a man
to look after their business; and it created a considerable furor,
and made it difficult all around; and from those conditions other
conditions developed, and that is all I can recall of the incident
now.

Q. Well now I asked you, witness, if it was a similar differ-
ence of opinion as in the Boilermakers'. That is your answer is it?

A. That what?

Q. I asked you if you had a difference of opinion among the
members the same as the Boilermakers', and your answer was,
"Something of a similar nature." Is that the only explanation
you can give of that?

A. That is the best explanation I can give of that, and even
at that —

Q. It is only relative, I presume? 30

A. Yes, it is.

Q. Now witness, did you actually write letters yourself to
other members of the Union asking them to secede and join a
union of their own?

A. No.

The Court: Do you mean secede from this Union?

Mr. Burton: Q. Did you write a letter to the Union threat-
ening to withdraw, or telling them you were going to withdraw?

A. That is right.

Q. And that you were going to take some members with you? 40

A. No.

Q. But you did take some members with you?

A. I didn't take them. They rather took me with them.

Q. And you were elected President?

A. Yes.

Q. And the next line, line 21.

"Q. That is two unions you belonged to before?

"A. Yes.

"Q. And how many members belonged to that?

"A. I believe out of a general membership at that time out of 200 some 40 or 60 belonged to that separate body that we formed.

"Q. How many?

"A. 40 or 60.

10 "Q. What was the name of that union?

"A. We called it the Industrial Union. I forget the actual name, but I know the name Industrial was incorporated in it. It was a section of the hodcarriers — you have to understand that, and the name of the hodcarriers predominated in it, but I cannot give you at the moment the name of that Union, but I can supply it for you later.

"Q. And how long did you belong to it?

"A. I belonged to that union until the time the war . . ."
— I have the war —

20 Mr. Johnson: Yes, "the war was declared".

Mr. Burton: ". . . the war was declared and the Union had ceased and the building trade automatically dissolved itself, and from there I went into the Welding School and from there into the Boilers' Union."

Now witness, you belonged to one union and you seceded from it and you joined another and became President of it, and remained in that union until the war. What explanation have you to offer as to your answer to the question that you never belonged to a union before?

30 A. Well, except the idea I had when you were questioning me, the cause of a closed shop predominated in my mind and I did not think of the others as of relative importance.

Q. You did not think of that at the first trial, did you?

A. No, I didn't.

Q. This is the first we have heard of that. And the next question,

"Q. And how long were you a member of that union?

"A. I was a member of that union between half a year and three-quarters of a year."

40 "Q. Were you asked those questions and did you make those answers?

"A. Correct."

Now witness, just for the sake of the record, were you asked those questions and did you make those answers?

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A. I don't recall, but no doubt I was.

Q. Well, are those answers correct?

A. As nearly as I can recall now, yes.

Q. And on page 179, line 7. I am again reading from your
Discovery.

"Q. But it was just before you joined the Boilermakers'
Union?

"A. That is right.

"Q. And you remember joining the Boilermakers' Union.
Now why couldn't you remember you were president of this 10
other union?

"A. Well, the Boilermakers' Union has impressed itself
far more in my mind than that union.

"Q. And that is your only explanation, is it?

"A. Yes."

Were you asked those questions and did you make those
answers?

A. As nearly as my recollection goes those answers were
true.

Q. Now three years ago at the time of the first trial the only 20
explanation you had to offer was that the Boilermakers' Union
had impressed itself on your mind before and you had forgotten
these other two previous unions?

A. That is true.

Q. Now when did you think of these other two answers you
have given me just now?

A. I don't know when I thought of them. You asked me
a question and I gave you an answer. That is the best I can tell
you.

The Court: We will adjourn now for five minutes. 30

(PROCEEDINGS RESUMED AFTER SHORT AD-
JOURNMENT.)

MYRON KUZYCH resumes stand:

CROSS-EXAMINATION CONTINUED BY MR. BURTON:

Q. At page 180 of the first trial, witness, I read from line 3:

"Q. Do you remember my asking you on discovery, page 15
—we are talking about the time you had to join this Union
—'And if it had not been for that of course, you would have
joined immediately? A. I would have met my financial
obligations or made my contribution immediately, but I would 40
have requested the right to examine very carefully the by-
laws and constitution of the Union before actually becoming
a member so as not to cast any doubt as to my willingness to

support the Union financially. I would have made my monetary contributions regardless immediately.'

"Now your answer there is, you would not join the Union unless you looked very carefully into their constitution and by-laws?"

"A. That is correct.

"And I presume that would be for the purpose of seeing whether they were alleged by-laws or not?"

10 "A. No, I have in the past joined one or two organizations and I discovered later on that complications could arise out of joining the organization, and for that reason after — by the time we came to the Boilermakers' Union I discovered that joining an organization rashly without studying all that could be learned about it, is not the best possible thing that a working man can do. For that reason in order not to be accused of hedge-hogging or some such terms as are applied I showed myself willing to pay what would at that time be donations, but I did want to see the by-laws and constitution and I stated so then.

20 "Q. As a matter of fact, witness, there is no association you have ever joined that for some reason you had to get out of in Canada. Can you tell me an organization today that you belonged to three years ago?"

"A. No."

Mr. Johnson: My transcript is, "Did not want to see the by-laws."

Mr. Burton: Well, my copy says, "Did want".

The Court: It should be "did".

Mr. Burton: Yes.

30 Q. Now, witness, were you asked those questions and did you make those answers?

A. As nearly as I recall them, yes, I did.

Q. And they are true?

A. Yes, as nearly as I can recall, they are true.

Q. Now witness, you told me a moment ago, or a short time ago, that you did in fact join this Association and you did not acquaint yourself with those by-laws for a long time to come, is that not right?

A. Which Association are you speaking of?

40 Q. I am asking you — that you did not acquaint yourself with the by-laws for quite a length of time?

A. I don't know what you are referring to.

Q. You say here, "But I would have requested the right to examine very carefully the by-laws and constitution", and then you say, "I discovered that joining an organization rashly with-

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out studying all that could be learned about it is not the best possible thing that a working man can do". Now did you study this carefully so that you would not be too rash?

The Court: Study what?

Mr. Burton: The Boilermakers' principles and constitution and so forth.

The Witness: You are referring to the Canadian Congress of Labour Constitution.

Q. You know perfectly well what I am referring to, you say here, "Joining an organization rashly" without studying the constitution—did you study all you could about the Boilermakers' union before you joined?

A. I endeavoured to.

Q. And undoubtedly one of the principles you found out was a closed shop?

A. No.

Q. And that answer is as truthful as all the other answers you have given today, is it?

A. That is right.

Q. I will read you from page 182, line 13.

20

"Q. You say here that you believe in Unionism. Do you remember last night my putting discovery to you in which I asked you this question, 589, 'Q. Do you know of any trade union today whose policies you agree with?

"A. No, I don't."

"Q. How do you reconcile those two statements?

"A. I reconcile the two statements upon this ground, that unionism, which I have considerably studied, which I have been able to come upon is so far only in theory. In practice it has not yet come to be among the working men, but that is not the reason it is not good or it could not work, but simply because the working men have not come to that point of understanding where they have made it the governing principle of their form of unionism.

"Q. They have not discovered one in Canada yet. You state that? A. As nearly as I understand, no.

"Q. This is question 198 on the discovery.

"Q. Now you agree with the principles of the Boilermakers Union, do you?

"A. With the principles of the Union?

40

"Q. Yes, of the Union?

"A. No."

"You were asked that question and you made that answer?

"A. As nearly as I can answer it, yes."

Q. You were asked those questions and you made those answers, are they true?

A. Yes, as nearly as I can recall it, yes.

Q. Now I asked you before,

“Q. You agree with the principles of the Boilermakers’ Union, do you?”

“A. With the principles of the Union?”

“Q. Yes, of the Union?”

“A. No.”

10 Now how do you reconcile that with your statement today that you don’t know the principles?

A. Well, perhaps I didn’t understand your question.

Q. Well, I will read it to you again so that you will understand me.

“Q. Now you agree with the principles of the Boilermakers’ Union, do you?”

“A. With the principles of the Union?”

“Q. Yes, of the Union?”

“A. No.”

20 Now, how do you reconcile that with your statement today?

A. Well, I think there is a misprint when you say, answer yes.

Q. It is my question, “Yes, of the Union.” And your answer was “No”. I asked you if you believed in the principles of the Union, and you said “No”. Now, how do you reconcile that answer that you don’t know the principles.

A. Well, perhaps that is a wrong answer I made before.

Q. It is just a relative mistake, is that it?

30 A. Well, unless I know more definitely what those principles were, I could not say, but apparently offhand I made an answer to the extent of saying, “No”, but I could not truthfully do that either then or now.

Q. Well, you were on oath then, and this is your answer. And you mean you were not truthful then, is that what you mean?

A. No, I was truthful to the best of my knowledge of understanding the language.

Q. You understand better now, do you?

A. Yes.

40 Q. In other words you have learned better in three years, how to conduct yourself on the witness stand, is that what you mean?

A. No.

Q. Now line 15 . . .

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Mr. Johnson: The only thing I was going to say, my lord—you have not put it to the witness, he did give an explanation on the first trial. He read the answer—and you have not read this part yet.

Mr. Burton: (Reading.)

“Q. You were asked that question and you made that answer? A. Apparently I made that answer but I would like to qualify it to say that I never at any particular time of my membership in the Union had ever known exactly what the principles of this Union were.”

10

Now that is the answer you gave at that time?

A. Yes.

Q. Now I will continue on. So much for that. By the way, witness, you don't believe in the principles of any trade union? That is, there is none you exactly agree with?

A. Well, I wouldn't be able to say none because I would not be able to say —

Q. Well, to the extent you are acquainted?

A. Well, to the extent I am acquainted with Boilermakers' No. 1, until I know one way or the other, I am not able to say. 20

Q. Well, why do you mention particularly the Boilermakers'?

A. Well, that is what I am not able to say.

Q. Well, you belonged to two unions before this and you have studied trade unionism extensively, and as far as your investigations have gone you do not agree with any trade unionism today, is that correct?

A. To the extent of my investigations, I don't.

Q. Have you a trade union principle of your own?

A. A theory, but I differentiate between a theory and a principle to this extent: A theory does not become a principle until after it has been tried and is worked out.

Q. What is your political party today?

A. I have no political party.

Q. I will read on, line 50.

“Q. So much for that. The first political you joined in this country was what?”

“A. The Young Communist League.

“Q. And you are still a member?”

“A. No.

40

“Q. What happened there?”

“A. I resigned from the membership.

“Q. Did you resign from the membership, from that union, the same as you did from the Socialist party?”

“A. No.

- "Q. A different kind of resignation?
 "A. Well, that is, my reasons were entirely different."
 Now you were asked those questions, and did you make those answers?
 A. As nearly as I can remember.
 Q. "Q. But it was the same type of resignation, 'I hereby resign', the same type?
 "A. The formality, I presume, is the same."
 Now, were you asked those questions and did you make those answers?
 A. As nearly as I recall.
 Q. Now turning over to page 184,
 "Q. Did you belong to any political party?
 "A. Yes.
 "Q. Which one?
 "A. I belonged at one time to one that went under the name of Young Communist League and subsequently to that I resigned from the Young Communist League and made myself acquainted with the platforms and policies of all the prevailing parties, the Conservatives, Liberals and the C.C.F.
 "Q. And you disagreed with them?
 "A. Yes, with the Liberals, Conservatives and C.C.F.'s, yes, and then I joined the Socialist Labour Party.
 "Q. And do you belong to it now?
 "A. No, I don't belong to it now.
 "Q. When did you stop belonging to it?
 "A. I resigned, I believe, at least three or four years prior to the war. I don't remember exactly the date."
 And then I asked you the question,
 "Q. Were you asked those questions and did you make those answers?
 "A. Correct."
 Q. And then I quote from page 60, question 375.
 "Q. Do you belong to the Social Labour Party of Canada?"
 Mr. Burton: I understand the correct word is Socialist — however it is the Socialist Labour Party.
 "Q. Do you belong to the Social Labour Party of Canada?
 "A. No, I don't belong to the Social Labour Party of Canada.
 "Q. Did you ever belong?
 "A. Yes, I did belong at one time.
 "Q. And what happened, did you resign?
 "A. Yes, I resigned and subsequently — I resigned.
 "Q. You resigned?
 "A. That is right.

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"Q. And that was the only reason you left, was it?

"A. I beg your pardon?

"Q. I say, that was the only reason you left, because of your resignation. They didn't ask for your resignation, I suppose?

"A. They didn't ask for my resignation at the time that I resigned, no.

"Q. When did you resign?

"A. I don't remember the exact time, but it was in the summer of 1938 or '39. 10

"Q. That you resigned?

"A. That I resigned.

"Q. The summer of what?

"A. 1938 — 1937 or 1939, I believe.

"Q. You can't tell me which?

"A. I am not certain at the moment.

"Q. And was it in the early summer or the late summer?

"A. It was about the middle of the summer as nearly as I can recall.

"Q. Why did you resign? 20

"A. A certain situation arose within the party which I deemed could be best solved by my resignation from the party until such time as certain allegations which I made then shall prove themselves by natural evolvment of time, and until such time I felt the best thing for me to do was to resign and I resigned.

"Q. And were they sorry to have you go?

"A. That of course, I think would remain for them to say.

"Q. Have they ever indicated to you that they wanted you to retain your membership and to reconsider your resignation or anything of that kind? 30

"A. Yes, there has been one or two indications to that effect made.

"Q. And that was you could reconsider your resignation?

"A. Well, I wouldn't go so far as to say they wished me to reconsider my resignation, but that perhaps a reconsideration of the whole situation might bring to my becoming a member again.

"Q. Were you ever expelled from the Socialist Labour Party of Canada? 40

"A. Yes.

"Q. When?

"A. Subsequent to my resignation I was expelled.

"Q. Yes, why would you need to be expelled if you had already resigned?

"A. The Socialist Labour Party of Canada has a certain set of principles and rules by which it proceeds, and on the basis of those it is necessary for the Socialist Labour Party, apparently, to proceed in the manner in which they proceeded.

"Q. You mean, in other words, since you have resigned and were no longer a member that they still required by their rules and regulations to formally expel you?

"A. I would say, offhand, that is probably the closest characterization of the situation, yes.

10 "Q. And it wasn't anything to do with the fact of whether or not you were a good or bad member of the organization?

"A. Well, I wouldn't go so far as to say that either. I have no knowledge of the matters which the executive took under consideration.

"Q. Yes. Do you know the rules of the Socialist Labour Party?

"A. Well, I knew them well then, and I have a general understanding of them now.

20 "Q. Do you say their rules provided if you resigned they still must expel you in order to get you off their books?

"A. No, I wouldn't go so far as to say that their rules provided that. Their rules provided for a certain procedure in such matters, and whatever decision they arrived at is the decision in that particular case, but I don't suggest that it has anything to do with the general standing rule.

"Q. Why then were you expelled?

"A. Well, I don't think those matters are known to anybody except the members of the committee there."

Then question 400,

30 "Q. And you are quite positive, are you, that it was necessary for them to expel you even though you had resigned?

"A. Well, I don't say I am positive. I feel that the members of the Socialist Labour Party proceeded in the manner which they considered necessary, according to their rules, and did what they deemed was necessary or the right thing to do. As to whether I think it was necessary or not, I am not really in a position to say.

"Q. I take it then, of course, you did not give them any grounds for them to take such drastic action as to expel you?

40 "A. I may have been advertently. By merely handing my resignation I may have given them the grounds, I don't know."

Mr. Johnson: Now is my learned friend going to continue to read all of this?

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Mr. Burton: I am just about through. Do you want me to put the question to him?

Q. Were you asked the questions I have read and did you give those answers?

A. Yes.

Q. Are those answers true?

A. As nearly as I can recall it.

Q. Now I will read at line 20.

“Q. Do you suggest by simply resigning you would have carried on in the manner unbecoming a member and entitling them to expel you?”

“A. I am not in a position to pass any opinion on that. I can only report what happened.”

Now will you give me Exhibit 24 in the first trial? First I will ask you were you asked those questions and did you give those answers?

A. As nearly as I can recall.

Q. And those answers are true?

A. As nearly as I can recall.

Mr. Burton: It would be in the first trial, Mr. Registrar. 20

Mr. Johnson: I know what my learned friend seeks to put in and I am going to object to it. It is a letter from the Socialist Labour Party to the Union, and I don't think it has any relevancy and I am going to object to its going in.

Mr. Burton: My lord, the letter was marked as an exhibit in the court below, and I put it to the witness and he identified it. It is marked on the examination for discovery and was allowed in at the trial.

The Court: Was it objected to there?

Mr. Burton: No, it wasn't, my lord. I put it to the witness 30 as to whether this letter expressed the truthful situation, or expressed the situation as it existed at that time. I will ask to put it in now. The witness can deny it, of course, but I read it to him at the trial and it was put in and allowed.

Mr. Johnson: I don't think the letter can be put in—the statements in it are not at all relevant.

The Court: I think he could show the situation as it was then, and on that ground, I think it would be admissible.

Mr. Burton: Now, witness, on the previous trial I showed you this letter and you read it? 40

A. Yes.

Q. And it was marked Exhibit 24 on the previous trial?

A. Yes.

Q. Will you read the letter?

- A. Yes.
- Q. That is correct, is it?
- The Court: Put the question specifically to him.
- Mr. Burton: Shall I read the letter and ask him specifically the question?
- The Court: Well, he has read the letter. Now what question do you want to put to him?
- Mr. Burton: Do you agree with what is complained in this letter?
- 10 A. No, I don't.
- Q. Were you expelled from the Labour Socialist Party on July 25th, 1937, for conduct unbecoming a Labour member?
- A. Yes, I was expelled.
- Q. Therefore the letter is true?
- A. No.
- The Court: It has not been marked.
- Mr. Burton: No.
- The Court: Your answer is what?
- A. As near as I can remember that is around the date I
20 was expelled, but the reasons they state there—that may be the way they see the matter, but I don't think it is quite correct.
- The Court: What was the date, Mr. Burton?
- Mr. Burton: The expulsion took place on July 25th, 1937.
- Q. In other words, witness, you were expelled on July 25th, 1937, from the Socialist Labour Party, and when the party suggested it was because of conduct unbecoming a member you disagreed with that?
- A. Yes.
- Q. But they probably thought that themselves?
30 A. Yes.
- Q. But you had a different idea?
- A. Yes.
- Q. In other words you had the belief, did you not, that they had expelled you because you had resigned, isn't that right?
- A. Well, I am not in a position to say what they expelled me for. All I know is I resigned and handed in my resignation.
- Q. Yes, you probably resigned when you saw trouble coming?
40 A. No.
- Q. Wasn't there a trial on that issue?
- A. No.
- Q. Were charges not preferred against you?
- A. No. Charges were not preferred against me.
- Q. Now, witness, did this party not take over—was it not succeeded by the party to which you swore allegiance?

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A. I had no allegiance to any party.

Q. Not now, but at the time of this trial, hadn't you? Didn't you have allegiance at the time of this first trial to the Industrial Union—Socialistic Industrial Unionism, isn't that your theory?

A. No, I had no allegiance to that, either at the first trial or when it came to the North Van. Ship Repairs.

Q. But you believe in a union now called Socialist Industrial

trial . . .
A. Socialist Industrial Unionism, and that is only on a theory. 10

Q. Does this party believe in this theory?

A. Yes, they are the sole advocates of it.

Q. And you believed in that theory at that time?

A. Yes.

Q. And you don't believe in it at this time?

A. I still believe in it.

Q. It is unfortunate you could not continue to be friends. Well, I will read on. I have referred to the letter that was then marked. It isn't now. At line 17, at page 189.

"Q. Now, witness, have you any explanation to offer other than what I have read to you from your discovery to reconcile the fact of the resignation from you when their letter said you were expelled because of conduct unbecoming a member? 20

"A. No, I have no explanation other than what I have already said. I believe I have done at the moment what was the best thing to do. How it appeared in the eyes of the members of the Socialist Labour Party I have no way of knowing.

"Q. Would you still say you were expelled because of the resignation? 30

"A. It might be, and it could be perhaps that at the time I was in no position to submit all the evidence which would have involved the welfare of another member, and that could have been another reason.

"Q. Were you notified you would be expelled, or that application was made for your expulsion?

"A. Yes, sir, I was notified unless I give greater explanation as to why I handed in my resignation it might lead to expulsion." 40

Now, witness, were you asked those questions and did you make those answers?

A. As near as I can remember.

Q. Why did you tell me no charge was laid for your expulsion?

A. Because I believed there was no charge. I don't know of any charges that were laid.

Q. I will go back and read that question again.

"Q. Were you notified you would be expelled or that application was made for your expulsion?"

"A. Yes, sir, I was notified unless I gave greater explanation as to why I handed in my resignation it might lead to expulsion."

10 Now, are you serious that if you had given greater explanation why you resigned you would not be expelled, and you were notified to that effect?

A. Well, that is what happened.

Q. Well, did you appear before any body or any committee or anything like that at the time of your expulsion?

A. No, but I remember being there at the time of handing in my resignation.

Q. Well, that was a formal matter—you resigned and that was all there was to it. You just handed it in?

20 A. Well, there was some meeting going on at the time. They were all there.

Q. Was that at the time you were expelled?

A. No.

Q. Well, at the time you were expelled did you appear before any committee or any party or member of the executive?

A. Not that I recall at the moment.

Q. Now, I will read on.

"Q. Did you appear before them on the expulsion proceedings?"

30 "A. Well, I never understood they were expulsion proceedings. It was more an informal discussion.

"Q. That is what happened—resulted—

"A. Following that.

"Q. And at that time you had received, or did you receive a letter?"

"A. No, I had resigned before that.

"Q. And at the time of your resignation you appeared before them on these proceedings?"

40 "A. When it was intimated to me it might lead to expulsion I appeared in an effort to point out such a drastic action was not necessary, but apparently they felt otherwise and that was all there was to that."

Now, were you asked those questions and did you make those answers?

A. Yes, as nearly as I recall.

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Q. And those answers are true, are they witness?

A. As nearly as I can recall.

Q. And you say here seriously such a drastic action as resigning would lead to expulsion.

A. I beg your pardon?

Q. It might lead to expulsion?

A. I didn't follow you.

Q. I will read you the last question.

"Q. And at the time of your resignation you appeared before them on these proceedings? 10"

"A. When it was intimated to me it might lead to expulsion, I appeared in an effort to point out such a drastic action was not necessary."

Now, where did you appear?

A. Well, I don't recall at the moment. As near as I recall there was just a group of people there. It was quite informal and the details are not clear in my mind. It is a long time ago.

Q. Why did you tell me a moment ago you did not appear before anybody or any group?

A. Well, because as near as I can remember, I didn't. 20"

Q. Well, you remember three years ago—and you made this answer,

"A. When it was intimated to me it might lead to expulsion I appeared in an effort to point out such a drastic action was not necessary, but apparently they felt otherwise, and that was all there was to that."

Now, according to this answer, you appeared before them and told them it was not necessary to expel you, but they expelled you anyway?

A. Well, I don't recall, it is a long time ago. 30

Q. Now, witness, after all this happened in the Boiler-makers' Union, you conducted a series of broadcasts, didn't you?

A. After all what happened?

Q. Well, we will get the date first. You conducted a series of broadcasts on Saturday night over the radio station in Vancouver, did you not?

Mr. Johnson: On Saturday night?

Mr. Burton: Yes, it was a Saturday night program. I heard it myself.

The Witness: What time are you referring to? 40"

Q. Did you at any time do that? You know whether you did or not? Did you at any time conduct a series of broadcasts over a local radio station on Saturday nights?

- A. Yes, CKWX.
- Q. When was that?
- A. I don't recall the dates now when it began or when it ended.
- Q. May I have Exhibit 25 in the first case? Now, was that also not carried over CKNW in New Westminster?
- A. No.
- Q. Now, just by way of an example I will show you a transcript. It would appear to be a transcript of one of your addresses.
- 10 Do you recognize this?
- A. Yes.
- Q. And you gave this broadcast?
- A. Yes.
- Q. Now, my lord, this is the transcript called, "Seventh Address delivered over the CKWX, Saturday, December 29th, 1945, by Myron Kuzych." Now, witness, at that time this trial had been commenced, or this action had been commenced, had it not?
- A. Which action?
- Q. This present one?
- 20 A. Commenced before—where?
- Q. The writ was issued on May 14th, 1945?
- A. Yes.
- Q. That is in this present action?
- A. Yes.
- Q. And this radio broadcast was on December 29th, 1945, so the action was pending. That is correct, is it not?
- A. I believe the action was pending, yes.
- Q. And at that time had you known what the Boilermakers' policy and principles were in respect to closed shop?
- 30 A. No.
- Q. You did not know then?
- A. No.
- Q. Because you don't know yet and you would not know then. But you had a good idea, had you not?
- A. No.
- Q. Now, this is a very long document and I will just read two paragraphs of it,
- 40 "Thus we have it. Only this will happen. Only these will be employed. The future tense and the future intent to institute and enforce certain conditions is unmistakable. This, and the right to this employer-union attempt to govern other men's future, we challenge and dispute. Regardless of what excuses the closed shop worshippers offer in support of so outrageous an act, regardless of their claim that this was done to advance the cause of unionism, we still challenge and

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dispute it. Indeed, we go further than that. We denounce it as a very clever trick, conceived ONLY for the special benefit of the few, and instigated with every cunningness of an ambush. As for the closed shop labor-dictators' claim that it was done in support and for the sake of unionism, we can only answer: Oh, unionism. Of all the anti-union things that are committed in thy name. Just like patriotism or democracy, or autonomy, or self-government is the last refuge of every tyrant, so equally 'unionism' is the last resort of the closed shop dictators' strangulation of unionism." 10
Now, you gave that broadcast.

A. Speaking generally it had nothing to do with the Boilermakers' Union. It was speaking generally of the closed shop.

Q. You did not intend it to have any reference to the Boilermakers' Union?

A. The Boilermakers' Local No. 1 did not enter into my consideration. It was a broadcast discussion respecting the pros and cons of a closed shop in general.

Q. Put on by you and paid by you?

A. Put on by me but paid for by the members of the society 20
that sponsored the broadcast.

Q. Which society?

A. The Industrial Society of British Columbia.

Q. Is that society still in existence?

A. Yes.

Q. Do you still belong to it?

A. Yes.

Q. And I thought you said you did not belong to any political body?

A. That is not a political society. 30

Q. And you say that none of your hearers would think you were speaking of the Boilermakers' when you gave that broadcast?

The Court: Well, what he thought about it does not matter, does it?

Mr. Burton: I submit he gave this for certain reasons.

Q. Why did you talk of a closed shop?

A. Because our society, as an educational society, thought that the time had come when a closed shop should be discussed—just a closed shop in general, and that is all that the closed shop 40 was.

Q. Now, when you say, "Just like patriotism or democracy or autonomy or self-government is the last refuge of every tyrant, so equally unionism is the last resort of the closed shop dictators' strangulation of unionism," what did you mean?

A. I thought lots of time a tyrant will employ these means for the purpose of strengthening his own position.

Q. And self-government is a matter of tyrants?

A. No, I don't think so.

Q. Now I will read the next paragraph and then I am through with this.

10 "The above brilliant quotation"—you are quoting from someone—"is so apropos to the subject before us that we need but to substitute 'closed shop' for the words 'slavery' and slave states, and Lincoln's observation goes straight to the heart of our problem, just as surely as if those immortal words were written today. It also proves that tyrants and their tactics haven't changed any either. Self-government was used as a last refuge of the scoundrels of those days, unionism and democracy is used as the last refuge excusing the closed shop today."

You meant that when you gave that broadcast, did you?

A. Yes, speaking generally of the closed shop.

Mr. Burton: We will mark this, my lord.

20 (DOCUMENT MARKED EXHIBIT No. 47.)

Q. Now, witness, I think you also wrote a letter.

Mr. Johnson: Let me see it first.

Mr. Burton: Do you want to see it? I just got it this morning. Just look at that and see if you are the author of that epistle.

Mr. Johnson: This is not disclosed, of course, in the affidavit of documents. This is the first time I have even read it.

Mr. Burton: Well, we have about twenty of these broadcasts that were not disclosed either. I submit I am entitled to use it in cross-examination.

30 The Court: Oh, I think so, but you should have time to consider it, Mr. Johnson?

Mr. Johnson: I haven't even read it yet.

Mr. Burton: I never read it myself until this morning, and it just happened to be in an old dusty file in the Boilermakers' office.

The Witness: I honestly don't remember writing that letter. I may have written it, but at the moment I don't recall.

Q. Did you give anyone else authority to put your name at the bottom of any article?

40 A. No.

Q. Well, perhaps witness, you had better give it a little consideration. Did you ever write a letter to the South Hill News?

A. I don't recall writing a letter to the South Hill News.

Q. Did you write an article to be published in the South Hill News?

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A. Not under my name, no.

Q. Did you write any article under any other person's name then?

A. No.

Q. Do you know Mr. Albert Foote of the South Hill News?

A. Yes, I know Mr. Foote.

Q. Did you give him a copy of something you asked him to print for you at any time?

A. Mr. Albert Foote asked me on several occasions to prepare certain articles for him, and one of those I may have given him—it was a series of articles, which he later suggested that they be taken to the Vancouver Sun and published, and the Vancouver Sun as near as I can remember, agreed to purchase those articles. There was a tremendous amount of writing going on in Mr. Albert Foote's basement, so I don't recall just what they were.

Q. Witness, did you give him this article to publish under your name?

A. I don't recall it.

Q. Would you say that Albert Foote had no authority to publish that article under your name?

A. I would say yes.

Q. All right.

Mr. Johnson: It is a letter to the editor of the South Hill News and there is no date on it.

Mr. Burton: Well, his name is there, and whether he did it with authority or without authority, I will find out.

Q. Did you get paid for those articles that you wrote?

A. I don't recall.

Q. Witness, you cannot recall it. Surely you would recall a matter of that kind when you had not made any money for three years. You should recall whether you got paid for those articles you wrote or not. Now let us be frank about this?

A. I don't recall.

Q. Now I will continue reading at page 191 at line 14. I have just finished with this article which is Exhibit 47, and I will now read line 13.

“Q. You made that address?

“A. Yes, and I would like as a qualification that in order that the full sense of that address, of those words, be had, that the broadcast as a whole should be considered. When a word or a phrase is taken out of its context, it is quite easy to give it an impression it may not have if taken together with the other things.

“Q. It would be pretty hard to read this into any other context and give it any other meaning—the closed shop is synonymous with slavery?”

“A. No, it would not be very difficult. It would be quite easy, to evolve on those words alone a picture that had nothing whatever to do with the picture which I presented in the entire broadcast.”

And then I quote again:

10 “Q. Self-government was used as a last refuge of the scoundrels of those days, and unionism and democracy is used as the last refuge excusing the closed shop today. Would it not be difficult to give any meaning, no matter what the context is, except what the words say?”

“A. It could very easily be taken to mean more or imply into it more than I had originally implied.

“The Court: I do not think it is necessary to go into it further.”

Now I am reading further, my lord.

20 “Q. Now, witness, those broadcasts were on behalf of what organization?”

“A. The Genuine Socialist Industrial Unionists of British Columbia.

“Q. And are you a member of that society?”

“A. Yes.

“Q. And the broadcasts have now ceased?”

“A. That is correct.

“Q. For lack of funds?”

30 “A. No, not for lack of funds, the directorate resolved to terminate the broadcast for various reasons, one of which being that this trial was on and they felt it to be in the best interests to terminate the addresses for that reason.

“Q. And was it not a fact that at the second last broadcast the right to go on the air was refused because the censor had turned down your broadcast?”

“A. That is correct.”

Apparently the director of the radio station thought—

Mr. Johnson: Well, what the director thought is not evidence.

Mr. Burton: All right, he has given his answer.

40 Q. Now, witness, I put it to you, in view of what you have already said, that you appeared before the West Coast Arbitration proceedings and you gave radio broadcasts and you at all times had shown that you disagreed with the closed shop principle. And further that you deliberately in those arbitration proceedings proposed something which was entirely different to

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the brief presented by the Boilermakers' and do you not think that the Boilermakers'—the members of the Boilermakers' Union were quite justified in refusing you the right to attend meetings and conduct yourself . . .

A. How do you mean, that I proposed to the Boilermakers' something different—what did I propose at the arbitration?

Q. You talked against the closed shop?

A. I did not talk about it.

Q. Did you not talk against the closed shop?

A. No, I merely showed, under certain headings, evidence 10 which was contrary to the one submitted by Mr. William Stewart, that I proposed nothing else.

Q. Did you not propose an open shop?

A. No, I don't recall proposing an open shop. Perhaps something to that effect might have come out on cross-examination or something, but on direct examination all I was concerned with was to show that the situation in a closed shop was quite different to what was portrayed by Mr. William Stewart, that is all.

Q. But in any event you were against the closed shop no matter how it was portrayed, were you not? 20

A. Until I know definitely just what is implied, I am neither for or against it.

Q. Why did you say in your broadcasts closed shop is akin to slavery?

A. Possibly on what I knew it appeared to me that way, but if I know more it might be different.

Q. In other words you might change your mind?

A. Yes.

Q. But three years ago you were talking against closed shop and calling it slavery? 30

A. I didn't call it slavery, I said it had the appearance of being akin to slavery.

Q. "The above brilliant quotation is so apropos to the subject before us that we need but to substitute 'closed shop' for the words 'slavery' and 'slave states.'" Now, what did you mean by that?

A. Will you please finish the last of that question?

Q. "The above brilliant quotation is so apropos to the subject before us that we need but to substitute 'closed shop' for the words 'slavery' and 'slave states' and Lincoln's observation goes straight to the heart of our problem." Now, witness, what did you mean when you said that over the radio? 40

A. I meant on the basis of the knowledge such as I possessed it had the appearance of being akin to that slavery and that was on the basis of what I had known of a closed shop so far.

- Q. And do you still have that idea?
 A. Yes.
 Q. You don't know?
 A. Not 100%.
 Q. Well, what right had you to give addresses over the radio on a subject you did not know?
 A. I did not say I did not know altogether.
 Q. Well, to the extent you knew of it you passed it as slavery?
 10 A. Yes.
 Q. Do you think that the Boilermakers' of Canada would agree with you?
 A. I would have to know what the membership's opinion of that is first before I would say yes or no.
 Q. Now, witness, the first meeting you ever attended of the Boilermakers—the first one you were at, and no one knew you—you had an objection to make, didn't you?
 A. No, not the very first.
 Q. Well, the second one? You know that, because I have
 20 it here.
 A. Yes, I remember there was one meeting where I made an address for about five minutes and showed certain discrepancies, and that is all.
 Q. Was that the first meeting or the second meeting?
 A. I don't recall, it is a long time ago.
 Q. It was one of the early meetings, wasn't it?
 A. Yes.
 Q. Long before any action was taken against?
 A. Yes.
 30 Q. And you had just recently become a member of the Union?
 A. That is right.
 Q. And you had a financial statement and you questioned in open meeting the details of that statement?
 A. Yes.
 Q. And you had already gone to the office and got the information you asked for on that?
 A. No, I didn't.
 Q. Well, just tell us what happened.
 40 A. I was given a copy of that statement, but no explanation was forthcoming and it was with the intention of obtaining the information I went to the meeting—with the intention to get the information.
 Q. Well, wasn't the information you requested told you it had to do with wages by the executive?
 A. No.

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Q. Well now, I will look that up at the next adjournment. Now, witness, since you have left the Boilermakers' . . .

A. I have never left them.

Q. Now, by the way, on page 292 of the Appeal Book, my lord—and I will furnish you with this copy, it is marked; this is Volume 2.

The Court: You have it there, have you?

Mr. Burton: Yes, my lord.

Mr. Burton: Q. Certain questions of your examination of your discovery were put in and I will read from page 292. 10

Mr. Johnson: My lord, I see the examinations for discovery were read in on behalf of the defendants. I don't know if that is usual in your lordship's court, and the practice is objected to and was sustained in the court of the Chief Justice—reading portions of the discovery into the record. The Chief Justice having taken the stand it is the privilege of counsel for the defendants to examine the witness in the box.

Mr. Burton: I made that same objection.

The Court: If he says the answers were correct, then did it become evidence—if they were not correct, did they become 20 evidence?

Mr. Burton: Well, it is still examination for discovery and I can cross-examine on it.

The Court: I think you can cross-examine him on it, but I don't think you should read too far without asking him if he was asked those questions and if those answers were true.

Mr. Burton: I was trying to save time. Would you give me the examination for discovery of the defendant?

The Court: Are you going to read from the Appeal Book?

Mr. Burton: I will read from the discovery itself, it is the 30 same thing, which I am entitled to do. I took the same objection as my learned friend did in another court last week and I was told I could do it either way. Possibly we can get together on that.

The Court: Well, what are you reading now?

Mr. Burton: I am reading the examination for discovery of the plaintiff Myron Kuzych.

The Court: Is that in this trial or the other one?

Mr. Burton: In this one. We are all through with the other one. This was in April and the question is 292—no, I am sorry, 40 285.

The Court: I have not got that.

Mr. Burton: I am reading it from the original. It is found in the Appeal Book at 292, question 285.

“Q. Now, Mr. Kuzych, I will go back to the other question I asked you. You knew that the fundamental principle of the

Boilermakers' Union is the closed shop. You know that, don't you?

"A. I know it now.

"Q. And you knew it in January, 1943?

"A. Yes, following that encounter I had with the man with the application form."

Were you asked those questions on your examination for discovery and did you give those answers?

10 A. As nearly as I can remember I was asked those questions, and as nearly as I can remember I gave those answers.

Q. Were those answers accurate?

A. No, not exactly.

Q. Just relatively?

A. Well, apparently I got mixed up between the closed shop contract and the closed shop principle.

Q. Now, Mr. Kuzych, I will read it again.

"Q. Now, Mr. Kuzych, I will go back to the other question I asked you. You know that the fundamental principle of the Boilermakers' Union is the closed shop?"

20 Now where is the word "contract" in there?

A. There is no word "contract" in there, but apparently I was confused. The principle was never mentioned to me and it was only on the contract.

Q. Well, I will inform the court the word "contract" was never used. The principle was . . .

A. The word "contract" was used by the man in the yard.

Q. Well why didn't you tell me you did not understand my question and that you wanted clarification of it?

30 A. Well, I don't know. I thought possibly you meant what I meant.

Q. Well, is there any difficulty in understanding those words, "You know that the fundamental principle of the Boilermakers' Union is a closed shop"?

A. Yes, but a person might have in his mind a thought that means an entirely different thing, but yet in the answer he gives an impression of something else, and the only answer I can give is that I got confused between the contract and the principle. But I was made aware of this contract and that is the only explanation I can give for making such an answer at that time.

40 Q. Do you know the difference between a closed shop and a union shop?

A. Essentially the difference—I don't charge my memory with the verbatim difference—but essentially as I understand a closed shop it specifically controls the union membership in the particular industry or job; whereas the union shop allows a cer-

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tain period in which a man may be employed to such an extent that if a union has not enough men—a non-union man may be employed by the company, but that this man must become a member within a certain time. That is as nearly as I understand the difference.

Q. And which was in existence in the North Van. Ship Repairs at the time you joined?

A. Well, at the time I joined it I had the understanding that it was a union shop inasmuch as—and the reason I arrived at that conclusion was that I was engaged at the North Vancouver Ship Repairs without any reference to the Union, but I was continually being told it was not a union shop. It was a closed shop. 10

Q. You understood it as such. Did it really make any difference?

A. Yes, it made a great deal of difference. One means one thing and the other another thing, and I did not know which it was but I was being told it was a closed shop.

Q. And then you went to the Board of Arbitration and said it was a fake?

A. Instead of talking of the entire Board I spoke of the spuriousness, meaning the executive that dominated Local No. 1, and I did not speak of the membership at all. 20

Q. You didn't say so?

A. Respecting the membership, no, but the executive, yes. It was the executive, to the best of my understanding, that was being considered before the Board of Arbitration.

Q. But it would not make the slightest difference to you whether the contract that the Van. Ship Repairs was a closed shop agreement or a union shop agreement; the principles were the same? 30

A. No, it is not the same.

Q. What is the difference?

A. Well, I have already explained in one only union men are employed. That is, closed shop; and the union shop means if they cannot employ union men non-union men may be employed by the employer, but they must become union members within a certain time.

Q. And what did you say to the Commissioner about the Van. Shipyards?

A. All that I was showing to the Board were the varying discrepancies between what Mr. Stewart alleged and what the true state of affairs was. 40

Q. Now, witness, you obtained Unemployment Insurance benefits after your expulsion from the Union, did you not?

A. That is correct.

- Q. How long did that continue?
 A. I don't recall the exact date, but it continued until it expired.
 Q. Now, if you obtained damages in this case, you would of course give credit for the amount of Unemployment Insurance you have received?
 Mr. Johnson: That is a matter of law, is it not?
 Mr. Burton: Well, I think you ought to know where to start and where to stop. If there are any damages it surely should be
 10 based on what he has actually lost.
 The Court: Damages are given on the basis of Unemployment Insurance having been given.
 Mr. Burton: Well, when was it cut off?
 A. I haven't the faintest idea. I can look it up.
 Q. Did you appeal the ruling of the Unemployment Insurance to a referee?
 A. Yes.
 Q. On what basis?
 A. I don't recall the basis at the moment.
 20 The Court: What ruling do you mean?
 Mr. Burton: He was cut off because he refused to work.
 The Witness: No, no, my insurance expired, that is all.
 Q. Is that what you appealed?
 A. I don't recall just at the moment.
 Q. Well, you know you appealed, so let us know why you appealed and on what basis?
 A. I don't recall at the moment, but I possess these papers and I can let you know.
 Q. Well, the referee turned you down?
 30 A. As near as I can remember.
 Q. Well, you do remember, don't you?
 A. Not thoroughly.
 Q. Well then, did you appeal to an umpire from the referee?
 A. Possibly, I don't remember at the moment.
 Q. If you had not been turned down you would not have appealed to an umpire, would you?
 A. I don't know.
 Q. But if you had been accepted and your appeal allowed you would not go any further?
 40 A. I don't know.
 Q. You mean if you had a ruling in your favour you would have gone further?
 A. Well, the Unemployment Insurance has never impressed itself on my mind very much and I never thought of it very much.
 Q. Then in turn did you appeal to Mr. Justice Cannon the whole decision?

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ation

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A. I don't remember.

The Court: When was this?

A. I was obtaining my Unemployment Insurance after my expulsion in 1945.

Q. That is three years ago. You don't remember that?

A. I don't remember exactly. I have these documents at home, and whatever documents I have I am quite prepared to bring here. I honestly don't remember, but my membership was then at stake, and that is what I was trying to do, to reinstate myself in the membership so there would be no damages of any kind. 10

Mr. Burton: Q. Now, witness, you appealed to Ottawa, you remember that?

A. I don't honestly remember it, Mr. Burton, but if I have done so I will present everything I have.

Q. It was so important that you should be reinstated here everything else went out of your mind, is that it?

A. Well, my membership was predominate in my mind.

Q. And in the meantime you had help?

A. Yes. 20

Q. And the Unemployment Insurance offered you some livelihood?

A. Yes.

Q. And was the Unemployment Insurance the only source of your livelihood from that time to this?

A. No.

Q. How else did you receive support?

A. I lived on my friends and borrowed from them and lived how best I could.

Q. And you have made no money except that Unemploy- 30
ment Insurance from that time to this?

A. That is right.

Q. And you live at 319 East 19th Avenue?

A. Yes.

Q. And who took out the permit for that house to build it?

A. Mrs. Sabrina Costa.

Q. Were you never at the City Hall to get the permit your-
self?

A. I was there helping her to get it.

Q. Did you speak to the man yourself in the Engineering 40
Department to help her take out that permit?

A. No, she may have been there too.

Q. Now I put it to you quite fairly, witness, one of the wit-
nesses in this case was directly behind you at the time you took
that permit out?

- A. That is right. I recollect the witness; I remember seeing Mr. King behind me at the time.
- Q. Did you work on the construction of that house?
- A. I helped.
- Q. Whose house is it?
- A. It belongs to Mrs. Costa.
- Q. Now, you were a bachelor at the time of this case?
- A. That is right.
- Q. And despite the fact that you had only Unemployment Insurance for only a short time you have been able to live and able to get married in the meantime?
- A. That is right.
- Q. And you paid nothing on this house?
- A. No.
- Q. Did you at one time have an office in the Province Building?
- A. Not except I got just my food out of it—I was given board at the house of Mrs. Costa and her family's house.
- Q. Why did you work there for just the board you could get?
- A. Because I had to live.
- Q. And then you come to this court and say you have earned nothing?
- A. Well, when I say nothing, I mean nothing in actual wages.
- Q. Well, isn't getting your food actual wages, and your board.
- A. Well, I never looked at food and board actually as money. I had food before and I was given the wages apart from that.
- Q. But you had to buy food out of your wages, hadn't you?
- A. Oh, yes.
- Q. And you now live in this house that you helped to build?
- A. Yes.
- Q. On what basis?
- A. I beg your pardon?
- Q. Do you pay any rent?
- A. No.
- Q. Well, what do you do for free rent?
- A. I don't do anything.
- Q. And this is Mrs. Costa's house—or whatever her name is—she lets you live in this house rent free?
- A. No, Mrs. Costa's my wife.
- Q. Then why did you call her Mrs. Costa?
- A. Well, you didn't ask me as to whether we were married; you asked me who obtained the permit.
- Q. I asked you who owned the house and you said Mrs. so and so?

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A. Mrs. Costa.

Q. So the fact is that Mrs. Costa owns the house? Just answer yes or no.

A. As near as I can understand the title is in the name of Mrs. Costa.

Q. And that is your wife?

A. Yes.

Q. And why hedge about that, witness?

A. I am not hedging.

Q. Did you ever have an office in the Crown Building? 10

A. Yes.

Q. And when was that?

A. Oh, that was previous to the time—maybe a year ago or a year and a half ago.

Q. Since this lawsuit?

A. Yes.

Q. And what were you doing in that office?

A. I beg your pardon?

Q. What were you doing in the office—what work?

A. Just work which was entailed in respect of these broad- 20 casts and so on.

Q. The broadcasts were in 1945, were they not?

A. Yes.

Q. And a year and a half ago what were you doing in that office?

A. Well, the Society to which I belonged had a certain amount of work to do and I helped to do it, and that is all I done.

Q. Were you paid for it?

A. By the Society?

Q. Yes? 30

A. No, I was not paid for it.

Q. Did you get any money for any of these broadcasts?

A. No.

Q. Did you get any money for any writing you might have done for that Society?

A. Except an article for the B.C. Digest, respecting the closed shop and open shop, and I got \$20.00 for that.

Q. You wrote an article on the difference between a closed and open shop?

A. No, it was pros and cons—just an article—that is to say 40 article showing the side that will exhibit some of the disadvantages of the closed shop.

Q. And which side did you take?

A. It was the pro and con respecting the closed shop, and I took the cons side.

- Q. That is in favour of the closed shop?
 A. No, it is opposing the closed shop.
 Q. Oh yes, of course. Now, witness, you got \$20.00 for that.
 Was there anything else you got? You are trying to get damages
 from this Union and we want to know why you didn't work in
 your trade.
 A. There was nothing else that I remember.
 Q. Now, you told me Mrs. Costa gave you board?
 A. I beg your pardon?
 10 Q. Well, whoever it is, Mrs. Costa gave you board?
 A. Yes.
 Q. Was she your wife then?
 A. No.
 Q. That was a free offering on her part?
 A. Well, I got the food at her place.
 Q. And this house was entirely her proposition?
 A. Yes.
 Q. And you have no interest in it at all?
 A. No.
 20 Q. You just worked there for your board?
 A. Yes.
 Q. And that is as truthful as anything you have said today?
 A. Yes.
 Q. Do you know the B.C. Federation of Trade and Industry?
 The Court: I think we will adjourn now until 2:30.

(PROCEEDINGS ADJOURNED UNTIL 2:30 P.M.)

(PROCEEDINGS RESUMED AT 2:30 P.M.)

MYRON KUZYCH resumes stand.

CROSS-EXAMINATION CONTINUED BY MR. BURTON

- 30 The Clerk: You are still under oath.
 A. Yes.
 Mr. Burton: Q. At the adjournment, witness, I asked you
 if you knew the B.C. Federation of Trade and Industry, and I
 think you said you did?
 A. No, I do not believe I answered it.
 The Court: No, I do not think so.
 Mr. Burton: Q. Well, do you?
 A. Well, I know of many, that is I know of many organiza-
 tions. I have heard them mentioned.
 40 Q. Never mind about many; do you know this one?
 A. How do you mean do I know it?

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Q. Well, has it an office in the Crown Building?

A. I beg your pardon?

Q. Has it an office in the Crown Building?

A. I don't know.

Q. When you had an office in the Crown Building, did it have an office there?

A. I don't know.

Q. Have you had any relationship whatsoever with the B.C. Federation of Trade and Industry?

A. No. 10

Q. Have you ever written articles for them?

A. No.

Q. Have you ever received money from them of any kind?

A. No.

Q. Witness, when did you first start to build this house at 319 East 19th Avenue?

A. I did not commence to build it. Do you mean when I helped to build it?

Q. Yes.

A. Yes, I don't remember the date. 20

Q. Well, give it to me as nearly as you can.

A. Well, as nearly as I can remember the construction began sometime last year, early in January or February of last year.

Q. That is the construction itself of the house?

A. That is right.

Q. In January or February of last year?

A. That is right.

Q. That is, the first time anybody did any work on it was in January or February of last year?

A. As nearly as I can recollect, yes. 30

Q. And when did you start to work on it?

A. Well, about that time.

Q. Well, you started right at the beginning didn't you?

A. Well, there was the excavation that had to be done and so on before I did anything. I began after the excavation was done.

Q. Well, was that January, 1948? When you say last year, you mean '48?

A. Yes.

Q. And when were you married? 40

A. On November 20, 1948.

Q. So you have been married only three months—two months?

A. Yes.

The Court: Q. What is the address of that?

- Mr. Burton: 319 East 19th.
- Q. So you have only been married two months?
- A. Well, since November 20th, whatever time that is.
- Q. What was your object in giving your wife's name or describing her by her unmarried name?
- A. I beg your pardon?
- Q. What was your object in describing your wife by her single name?
- A. Well, you asked me who owned the house, and that is
 10 who owns it, and she owns it as nearly as I can understand under her single name.
- Q. You would not know that though?
- A. I beg your pardon?
- Q. You wouldn't know that?
- A. I didn't say I don't know.
- Q. But you understand that?
- A. As nearly as I understand it.
- Q. Do you know it or not?
- A. As nearly as I understand it that is how it is.
- 20 Q. You don't wish to go any further than that?
- A. Well, I don't know.
- Q. But you have been married two months and you don't know whether your wife owns the house or not?
- A. She owns the house.
- Q. And you understand she owns it under her single name?
- A. That is as I understand it.
- Q. And when you told me Miss so and so owned the house, you tried to give me the impression it was someone outside of yourself, and someone not your wife?
- 30 A. No, I just tried to answer you as correctly and properly as I could.
- Q. And honestly?
- A. Yes.
- Q. And you think it quite right, that your wife who owns the house in her maiden name, that you did not disclose it; you think that is honest?
- A. I disclosed it when you asked me.
- Q. But not until? Now, witness, did you do any work for any other organization since your suspension from this Union
 40 to the present date?
- A. For any other . . . ?
- Q. For any other organization, by means of writing letters or articles or radio broadcasts or in any other manner.
- A. No.
- Mr. Johnson: For which he was paid.

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Mr. Burton: Yes, for which he was paid?

A. No.

Q. Have you charged your memory to see whether you were the author of an article to the editor of the South Hill News?

A. I thought about it and I don't know anything about it.

Q. You don't remember anything about it?

A. No, sir.

Q. And would you go so far as to say that whoever printed that article used your name without your authorization?

A. That is right. 10

Q. Now, witness, in order to make sure we have everything on the notes, I propose to go over some more evidence—the first examination for discovery held on April 16th, 1946, at question 247.

The Court: What page is that?

Mr. Burton: Page 37, my lord, question 247.

Mr. Johnson: We haven't got a copy of that. We were not acting in the first trial and the documents seem to have been lost, but we perhaps can get along without it.

Mr. Burton: Well, my lord, if you wish it, I am only going 20 to read the one quotation.

“Q. I want you to be frank about it?

“A. I am being frank about it. I am not concerned whether I could or not. All I desire is to have the right to state my views on the closed shop principle, and if the majority of the men still wish to vote for it and take the responsibility that falls from that type of information then as a good Union man it will be my duty to follow them.”

Did you make that answer?

A. As nearly as I can remember I was asked that question 30 and I made that answer.

Q. And that is true?

A. That is true.

Q. And you still say if the majority of the men wish a closed shop you would not oppose it?

A. If the majority of the men after discussion of the pros and cons still wish a closed shop, and my livelihood was affected, I would have no alternative but to follow them.

Q. Well, supposing your livelihood was not affected?

A. Then I would not have anything to do with it. 40

Q. Well, in the case at Bar you know that the Boilermakers' Union have it as the cause of their very existence—that is in their by-laws—a clause stating that their objects and purposes are among other things to consummate closed shop agreements?

- A. I know that the document alleges that, but that has nothing to do with the membership and the decision.
- Q. Who passed the by-laws?
- A. I don't believe the by-laws were ever passed.
- Q. And you don't even believe they were voted on?
- A. By the majority of the membership? No.
- Q. Were they voted on at the regular meetings?
- A. I don't know. I was not at the regular meeting.
- Q. Well, why do you say you don't think they were passed?
- 10 A. Because they would have to take leave of their senses to vote for a document like that.
- Q. That is, 17,000 men would have to take leave of their sense to vote for a closed shop agreement?
- A. No, for a document like that.
- Q. Now, Exhibit 4 in this case is an agreement between the Vancouver Ship Repairs Ltd. and Boilermakers' Union, Local No. 1, and this is what you alleged to be a closed shop agreement, do you not?
- A. What is that?
- 20 Q. It was put in by my learned friend. This is an agreement of the North Van Ship Repairs. You might look at it. That is it, isn't it?
- A. Yes.
- Q. And you say that the organization and the membership that entered into this agreement must have departed from their senses?
- Mr. Johnson: He didn't say that.
- The Witness: I didn't say that.
- Mr. Burton: Q. Well, do you say it now?
- A. No.
- 30 Q. Do you say if they put it in their constitution . . .
- A. No, I say if they passed on those entire by-laws as they stand.
- Q. No, you said if that clause was in it they must have departed from their senses. You didn't say anything about the entire by-laws. In other words, what you meant by that was, in order to vote for this document, the by-laws, they would have to take leave of their senses?
- A. As they stand.
- Q. Now, witness, you had these by-laws on their effective
- 40 date, August 8th, 1944?
- A. Yes.
- Q. And you remained a member after the effective date, 8th of August, 1944?

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Mr. Johnson: The alleged effective date.

Mr. Burton: Well, after the alleged effective date of these by-laws, the 8th of August, 1944, you remained a member of this Union?

A. Yes.

Q. Now I read from page 23, Article 22, Section 5.

The Court: What exhibit is that?

Mr. Burton: I think it is 14, my lord.

The Court: What article?

Mr. Burton: Article 22, Section 5, Subsection 5.

"Any person who in the future is admitted to membership in the Union, and any person who, after the effective date of these By-laws, remains a member of this Union, shall be deemed to have entered into a contract with this Union and with every other member therein, whereby in consideration of the benefits bestowed by such membership, such person undertakes to accept, endorse, and at all times abide by the Terms of the Oath of Obligation set forth in the next following clause."

And then the oath of office is given:

"I,, do solemnly promise that I will in accordance with the Constitution and By-laws of the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, Vancouver, British Columbia (hereinafter called the Union), remain a member until I have been granted a withdrawal card, or transfer card or until expelled; that I will not violate any of the provisions of said constitution, by-laws or working rules of this Union, nor its schedule or hours and wages; and I hereby authorize this Union to act exclusively on my behalf as my collective bargaining agent with any employer of labour by whom I am or may be employed at work coming within the jurisdiction of this Union; and I give this Union the right to arrange for the check-off of the monthly dues, and assessments authorized by a general membership meeting."

And so forth. There are several clauses. You know what they are, don't you?

A. No.

Q. All right, I will read them to you.

"I further promise in the event of a claimed grievance by me against the Shipyard General Workers' Federation of British Columbia (hereinafter called the Federation), or against this Union, that I will faithfully observe the procedure of and fully accept the findings of the Trial Board and Appellate Tribunal set up within this Union and the said Federation; and I further promise that I will not become a

member to any suit at law or in equity against this Union or the Federation, until I have exhausted all remedies allowed to me by said Constitution and By-laws.

"I further promise that I will do all in my power to advance the interests of this Union and of said Federation and all its duly affiliated Local Unions; and recommend to membership only such persons whom I believe to be worthy to become a member.

10 "I further promise that I will never wrong a member of this Union or any Local Union affiliated to said Federation or see him wronged if it is in my power to prevent it. I further promise that I will never divulge any secrets of this Union to any person or persons who are not known to me to be members in good standing; and I further promise that I will at all times give Union labor preference in filling any position of which I may have control and give preference to Union label goods and services. To all of which I pledge my sacred honour."

Now you knew that that was in the by-law, did you not?

20 A. Yes, I remember reading it there.

Q. And you knew in the by-laws there was this provision which I have just read you, if you remained a member you would subscribe to the by-laws?

A. If I deemed the by-laws were properly passed and there was an effective date, but none of those things have taken place.

Q. Did you notify the Union after you received those by-laws that in your opinion they were not properly passed?

A. No, I wished to state to them from the floor of the meeting . . .

30 Q. Just answer my question and never mind speeches. Did you notify them?

A. No.

Q. Did you withdraw from membership?

A. No.

Q. In other words, knowing that provision you remained a member?

A. Knowing that?

Q. Answer yes or no.

A. Well, I merely know it was that alleged provision.

40 Q. These clauses were in these by-laws — alleged provision or not alleged provision, and knowing that was in there you remained a member of the Union?

A. That is correct.

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Q. And did you appeal to the president of the Executive Committee to this set-up in the by-laws?

A. No.

Q. Why not?

A. Because deeming the entire by-laws to be improperly passed and deeming the alleged Trial Committee having no jurisdiction to try me, I saw no further reason to go any further than except to inform the Trial Committee that they were acting without jurisdiction and let the matter stand at that.

Q. Now, witness, you went further than that, didn't you? 10
Did you not apply to the Supreme Court of British Columbia, to the Honourable Mr. Justice Wilson, for an order to restrain the trial proceedings on the ground that it had no jurisdiction?

A. That is correct.

Q. And what happened to that application?

A. Upon that application, to the best of my remembrance, Mr. Justice Wilson did not go into the . . .

Q. Never mind all that—it was refused, was it not?

A. Well . . .

Q. Was it dismissed or not, yes or no? 20

A. It was dismissed.

Q. So your attempt to prove to the Supreme Court of British Columbia the Investigating Committee had no jurisdiction failed?

A. That is right.

Q. And because it failed, or for whatever reason, you elected to attend them on that trial?

A. Yes, I was advised to attend by my counsel, Mr. Hodgson.

Q. And the same counsel advised you not to attend the previous one, because he had found a technical error? 30

A. No, the first trial had nothing to do with Mr. Hodgson.

Q. Who advised you on that?

A. Mr. Banton.

Q. Did he advise you not to attend?

A. No.

Q. And you did not attend because you had a technical objection?

A. No, I didn't attend for the reasons I have already explained.

Q. Well, why did you attend this one? 40

A. On the advice of Mr. Hodgson.

Q. Because your application to the Supreme Court had failed?

A. That is partially correct.

Q. That is relatively correct?

A. Yes, that is relatively correct, and then there are other reasons.

Q. Now then, witness, if these by-laws were not in order and were alleged—as you said, in Exhibit 14, then you would say, would you not, that the constitution of the Canadian Congress of Labour would apply?

A. That is correct.

Q. And under the Canadian Congress of Labour constitution, there is an appeal, is there not? I will read it to you.

10 Mr. Johnson: I think that is a matter of law.

Mr. Burton: My friend has put in the constitution, and let us not waste any time about it.

Mr. Johnson: I will point out to the Court the trial was held under these by-laws and anything held under another procedure is irrelevant.

The Court: But I presume he can read it to the witness and ask him if he knows anything about it.

Mr. Burton: I will submit either trial, under this constitution, was held illegally.

20 Q. Now, page 29 of the Congress of Labour constitution. Exhibit 3 in this case, and I will read from Article 14, Section 19, Subsection (5):

“Such meeting of the Local may either adopt or reject or amend the verdict and recommendations and the decision of the Local, whether such adoption, rejection or amendment shall constitute the disposition of such charge, subject to the right of the member so charged or the member who preferred the charges to request a review of such disposition by the Executive Committee of the Congress for such recommendation or action as it shall decide.”

30 Did you know that that clause existed?

A. Yes.

Q. And did you take any steps to ask for any remedies under that clause?

Mr. Johnson: I suggest this again is a matter of law. The Article to which my learned friend has referred sets out the procedure for the trial of a member charged with offences, and my learned friend has only read out one of those paragraphs and there are others, and the procedure is different under the Canadian Congress of Labour than under trials of this Union.

40 Mr. Burton: Well, I merely asked him if he did anything under this section. The by-laws are in, and we can argue that.

Q. You did not take any steps under that section?

A. No.

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Q. Now, witness, before luncheon we discussed the question of your selective service, and you say it ran out.

A. Yes.

Q. And you appeal that?

The Court: Do you mean selective service or the Unemployment Insurance?

Mr. Burton: Pardon me, the Unemployment Insurance.

Q. It ran out?

A. Yes, as nearly as I remember, it ran out.

Q. Well, witness, you do remember, don't you? 10

A. I am just telling you what I can answer. As near as I can remember, that was the case.

Q. And you appealed it?

A. As nearly as I can remember, I appealed it.

Q. Well, you don't deny you appealed it, do you?

A. No, I don't deny it.

Q. Could you appeal it if it had run out?

The Court: Is that not a matter of law?

Mr. Burton: Well, what did you appeal it on?

A. I don't remember. 20

Q. Didn't you appeal it on the grounds you were refused Unemployment Insurance because you refused to work?

A. I don't recollect that.

Q. That could be so, though?

Mr. Burton: Now, my lord, I have just received by air mail from Ottawa a decision with respect to this particular case that we are discussing, and I should like to submit it to the witness.

The Court: Has your learned friend seen it?

Mr. Burton: No, he hasn't, and I haven't seen it yet myself. I may be taking a chance. I might say that we wired Ottawa, just in time to have this reach us today. 30

Mr. Johnson: My lord, I would object to any questions on this. It purports to be the decision of the umpire of the Labour Board.

Mr. Burton: Mr. Justice Canon, Umpire, Labour Relations.

Mr. Johnson: And there are certain sections with regard to taking employment and the necessity of taking employment as a Union man, and there is a decision on this point by the Honourable Chief Justice Farris in Kuzych vs. Stewart on this point.

The Court: What do you want to ask him about it? 40

Mr. Burton: He said he did not know whether he had appealed or not, and the second ground is . . .

The Court: Well, if he says he does not know he appealed . . .

Mr. Burton: I have a record of it.

- The Court: How is it we have not had it?
- Mr. Burton: Well, unfortunately it has only arrived (reading same).
- The Court: The copy itself is not signed.
- Mr. Burton: No, it is not signed by the umpire but it comes under the category of an Order-in-Council and has the same effect.
- The Court: But it does not appear in any publication like the Canada Gazette?
- 10 Mr. Burton: I don't know, I am not sure.
- The Court: Well, that does not, anyway.
- Mr. Burton: No, I would say this. I don't think I can put it in as a document, but I think I am entitled to cross-examine the witness on it.
- The Court: I suppose you are entitled to read it over to yourself and ask him questions on it, but I don't think you can submit it to him though.
- Mr. Burton: Very well. Now, your lordship, I wish you to stop me if you think I am going too far in this. I don't wish to
- 20 offend against the Rules of Evidence.
- Q. Mr. Kuzych, did you receive a copy of a decision of Lucien Canon, the umpire, dated October 3rd, 1945?
- A. I don't remember.
- Q. If I show you this, perhaps it would refresh your memory. Perhaps I might do that, my lord.
- The Court: I think so.
- Mr. Burton: Q. I show you what I have received as a copy. Would you look that over and say whether you have received a document like that before?
- 30 The Court: I suppose this is in mitigation of damages. Is it, Mr. Burton?
- Mr. Burton: Also credibility.
- The Witness: I cannot honestly remember ever receiving this. The only thing is, I can only look at all the files I possess, and if it is there I will tell you, but I don't remember it.
- Mr. Burton: Q. In reading this document you see your name is mentioned?
- A. Yes.
- The Court: I do not think you can cross-examine him on
- 40 that document. You can ask him the certain questions.
- Mr. Burton: Very well, my lord.
- Q. Well, in view of the fact that you have read this . . .
- A. Yes.
- Q. So that there may be some refreshment as far as your

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mind is concerned, did you file a claim for benefits on April 11th, 1945, for Unemployment Insurance?

A. Yes, as nearly as I can remember at the moment, that is what happened.

Q. And was your claim allowed, and did you receive benefits for thirty-three days?

A. I remember receiving some benefits, for what length of time I don't remember now.

Q. Well, on June 5th, 1945, were you notified that a position of a welder with the Lawrence Manufacturing Company at a rate of remuneration of \$1.00 an hour for an eight-hour day was offered to you? 10

A. I don't remember being notified of that. I only remember going to the Selective Service and going to various places seeking employment.

Q. Did you go to the Lawrence Manufacturing Company?

A. I may have. I don't remember at the moment, but I went to thirty or forty different places.

Q. Were you then informed unless you accepted such employment, your benefits would be cut off? 20

A. I don't recall it at the moment. Perhaps I was.

Q. And on December 6th, 1945, were you notified of a position with the Dominion Bridge Company in Vancouver on the same conditions as the Lawrence Manufacturing Company?

Mr. Johnson: What do you mean by the same conditions?

Mr. Burton: \$1.00 an hour.

Mr. Johnson: As a non-Union worker?

Mr. Burton: Well, you have had the benefit of reading this.

Mr. Johnson: Well, that is a fact, the employment was non-Union. 30

Mr. Burton: Q. You would not deny you were offered this work in a non-Union shop as a non-Union man?

A. No, I wouldn't deny it. To the best of my recollection I went there and applied for work as a Union man.

Q. And because you would not accept it, you were cut off Unemployment Insurance?

A. Yes.

Q. And you appealed that?

A. Probably I did. As I say, the evidence is there—and I can supply that evidence, but I don't remember it now. 40

Q. You don't remember whether you appealed to Ottawa in a matter of that kind?

A. At the moment, I don't remember.

Q. And that particular benefit represented the only source

of income you have had from that day to this, and you don't remember it?

A. I don't remember.

Q. Now, I just forget whether I asked you this before or not—Exhibit 4—the North Van. Ship Repairs closed shop agreement—or I think it is referred to as that with the Boilermakers, is dated 2nd January, 1940.

A. That is what I saw there.

Q. And you did not go there until 1942, is that correct?

10 A. Yes.

Q. And you know at that time Mr. William Stewart was not the president of the Boilermakers' Union?

A. At what time?

Q. In 1940?

A. I don't know if he was the president.

Q. You know he was not the president?

A. He was not the president.

Q. And when you mentioned a while ago that these agreements were consummated by William Stewart, of LPP domination, it had nothing to do with that agreement, had it?

20 A. I don't recall saying that some of the agreements were consummated by LPP domination—I remember saying the membership was dominated by the Stewart regime, but I said nothing with regard to the contract.

Q. And apparently the contract that was entered into by Mr. William Stewart . . .

Mr. Johnson: There is no evidence of that. The document is signed by the membership of the Union.

Mr. Burton: This document is signed by L. C. Campbell
30 and A. Young.

A. I believe I had occasion to meet Mr. Campbell once, but I don't know anything about Mr. Young.

Q. Anyway, they are not signed by Mr. Stewart?

A. No.

Q. And you further said that Mr. Stewart had dominated the thought of the Union in the closed shop principles. Isn't that the tenor of your evidence?

A. I don't know that he dominated the members in subscribing to the closed shop principle. I know he dominated them
40 insofar as the expression of the members were concerned.

Q. Yes?

A. And what went on from then on, I am not in a position to say.

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Q. Now, you were a member of the Union when Mr. William Henderson defeated Mr. Stewart for president?

A. Right.

Q. And you were on the same ballot for president?

A. Yes.

Q. And you know Mr. Clark? You gave evidence yesterday that he grabbed you by the lapel of the coat on one occasion and escorted you to the door.

A. That is right.

Q. And you know him, do you not? 10

A. Yes, I knew him then quite well.

Q. And you are sure it was Clark who did that?

A. As nearly as my memory serves me, it was Mr. Clark; I may be wrong.

Q. There is no question about it — you have given that evidence already.

A. Well, as nearly as I can recollect it, that is correct.

Q. Now, will you point out Mr. Clark in the courtroom—do you see him here?

A. I don't seem to see him. 20

Q. You don't see him?

A. No.

Q. Have you looked at everybody in the courtroom?

A. Yes.

Q. And you don't see him?

A. Oh yes, I believe that is the man (indicating).

Q. Is that Mr. Clark? Mr. Clark, stand up, please.

A. Yes.

Q. You say Mr. Clark grabbed you by the lapel in this particular meeting and escorted you out? 30

A. Yes.

Q. There is no doubt about it?

A. As nearly as I can remember at the moment.

Q. At the moment—you are here under oath telling these things.

A. Yes.

Q. Did you do any sanding of floors in the last little while for a neighbour of yours?

A. I beg your pardon?

Q. Did you sand any floors for a neighbour in the last year 40 and a half?

A. Yes, I helped in the sanding of the floors for the lady next door on East 19th.

Q. Did you get paid for it?

A. No.

Q. You did not charge for it?

A. No.

Q. Witness, do you know that Mr. Stewart was elected president by acclamation of the Union in 1943—in '43?

Mr. Johnson: Is my learned friend making that statement?

Mr. Burton: Q. I am asking you if you know whether that is true or not.

10 A. No, I don't.

Q. You were a member of the Union, then?

A. No, but I was never allowed to attend any meetings or take part in them.

Q. In 1943?

A. Except one or two in the very beginning, but at no time when I attended do I know he was elected president by acclamation.

Q. Did you attend an open-air meeting in the Athletic Park in 1943?

20 A. No.

Q. But you were able to go at that time, weren't you? You know the meeting I have referred to?

A. I cannot recall for the moment, but there might have been such a meeting.

Q. Now, witness, when you joined the Union, you did so under protest, didn't you—or when you made your first application?

30 A. I did so under protest insofar as not being able to see the by-laws and constitution, but not against the idea of joining the Union. It was just the necessity of joining it before seeing its constitution and the by-laws that I protested against.

Q. Now, as briefly as I can, I will refer to certain evidence given in the Lower Court. I am reading from page 109, line 18. I am sorry to be so long, my lord, but it is rather important that I get all this evidence on the record. Line 18:

"Q. Why did you join the Union then? That is what I am asking you.

"A. I joined the Union because it was insisted on.

"Q. You didn't have any love for the Boilermakers' Union, did you?

40 "A. I don't know.

"Q. Have you ever had any love for it since you joined it to the present time?

"A. I still don't know. I don't know anything of their pol-

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icy or anything. I can state on the principles of unionism, I am in wholehearted agreement.

"Q. With the Boilermakers?

"A. No, not with the Boilermakers. Speaking of the principles of unionism in general, I don't know, and to this day I don't know, what the policies of the Boilermakers' Union are, and until such time as I am in that position to say one way or another, I don't know."

Those questions were asked you and you made those answers?

A. Yes.

"Q. And you still wish to be a member, don't you? 10

"A. I still wish to be a member.

"Q. You are asking for a declaration from this Court that you are a member?

"A. That is correct.

"Q. Of a Union that you don't even know yet what its principles are. Is that what you are saying?

"A. That is correct.

"Q. In other words, when you told the Arbitration Board in the West Coast Arbitration proceedings on October 13, 1944, that you were an unwilling member of the Boilermakers' —you said that, didn't you? 20

"A. That is correct, I said it."

Were you asked those questions and did you give those answers?

A. As nearly as I can remember, I was asked those questions and I gave those answers.

Q. Were they true?

A. As near as I can remember, they are true.

Q. And page 111, starting at line 4: 30

"Q. Now then, with regard to that, for a moment, you weren't asked to go by the Union over to the arbitration proceedings, were you?

"A. No, I wasn't.

"Q. You were a member of the Boilermakers' Union when you went over?

"A. Yes.

"Q. You went over and told an arbitration board of your internal troubles in the Boilermakers', didn't you?

"A. No, that isn't quite correct, Mr. Burton. 40

"Q. Did you tell them owing to the manner in which you were forced to join this Union, you were an unwilling member?

"A. That was one of the things, yes."

And on page 13 . . .

The Court: Well now, are you going to put the question to him —

Mr. Burton: Q. Were you asked those questions and did you make those answers?

A. As nearly as I can remember.

Q. And is that correct?

A. As nearly as I can remember.

Q. And the last line on page 113:

10 "Q. When you said this, 'A union that stands in contra-
position to anything that is spurious, or a fake, such as for
example, the Boilermakers' Local No. 1,' to test your know-
ledge or your idea of what words mean, do you say that is
derogatory to the Boilermakers' Union?"

"A. I don't think so. I think that I deem it to be the truth.

"Q. That is the only difference, whether it is the truth or
not. You say that being the truth, it isn't derogatory?"

"A. To the best of my ability to judge from the things that I
saw in my Union, I came to the conclusion a long time ago
it was spurious as a union.

20 "Q. And a fake?"

"A. And a fake."

I will continue reading so as to get the context, my lord.

"Q. Your answer a moment ago would lead me to believe
this: If you call a man a thief, then if in fact he is a thief
and it is the truth, it isn't derogatory?"

"A. Oh no, I wouldn't say that.

"Q. You say your words are not derogatory to the Union.

"A. I did not refer to my Union as a thief.

"Q. No, just as a fake, that is all.

30 "A. That is right; as a fake and spurious.

"Q. Your answer to me a moment ago was true?"

"A. In my opinion.

"Q. It is still your opinion?"

"A. It is still my opinion.

"Q. And it has been ever since?"

"A. It has been ever since."

Now, witness, were you asked those questions and did you
make those answers?

A. As nearly as I can remember, yes.

40 Q. And are those answers true?

A. As nearly as I can remember, those answers are true.

Q. And as nearly as you can remember, the Union was spuri-
ous and a fake?

A. Well, when I am speaking of the Union, I am not speak-

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ing of the membership, I am speaking of the executive, and in speaking of the executive alone under the then domination of Mr. Stewart, and now probably his co-worker, Mr. White, and the manner in which they dragooned the Boilermakers?—I say yes, it is a fact, because it does not give the members an opportunity to arrange its affairs in a democratic way, and dispense justice along the lines of natural justice.

Q. Did you ever use the words in speaking of the Union—the executive—as spurious?

A. I don't remember saying the executive. 10

Q. Why didn't you say that at the first trial?

A. No one has asked me to differentiate or specify. That was what was in my mind.

Q. But, witness, those were your words.

A. Yes.

Q. Now, witness, who was the executive in toto at the time you made your application to the Arbitration Board?

A. Mr. William Stewart and Mr. William MacKenzie, and, oh, several others whose names I do not recall at the moment, but I think they are all in the Statement of Claim. Their names 20 can be had.

Q. Witness, there were seven officers of the Union at that time—seven officers of the Union and you have named two.

A. Yes.

Q. Can you name any more?

A. Not at the moment, I can't.

Q. Were they all spurious and fakes?

A. They were all under the domination of Mr. Stewart.

Q. Despite the fact Mr. Stewart was elected at one meet- 30 ing and defeated at another?

A. I am talking of the time of the arbitration.

Q. Are they still under his domination?

A. Whose domination?

Q. Mr. William Stewart and Mr. William White?

A. Yes.

Q. And they are still a fake and they are still spurious?

A. As far as the executive goes.

Q. And the membership has not got enough sense to kick them out?

A. They haven't civilized means to do it properly. 40

Q. Now, who is on the executive today?

A. Well, there is Mr. White, and Mr. Malcolm McLeod.

Q. But Mr. Malcolm McLeod happens to be dead.

A. Yes, I remember that. He was in that position until he

was dead—I don't know them all at the moment, but they are there—I haven't been able to be at the meetings, so I cannot say.

Q. Can you remember any other than William White?

A. No, not at the moment.

Q. And there are nine officers today, are there not?

A. I don't know.

Q. Do you say all nine officers of that Union are spurious and fakes?

The Court: You asked him that question before and he said
10 they were under the domination of Mr. Stewart.

Mr. Burton: That was at the time of the arbitration. But because he has given the evidence that they are still spurious and still fakes.

Q. But you can name only William White?

A. Yes.

Q. And in spite of that, you say all the officers are spurious and fakes?

A. I would come to that conclusion, because I cannot understand how any officer could be an officer of the Union under its
20 present set-up and still have their interests at heart.

Q. That is, anyone who would act under the by-laws as we have them in Exhibit 14—anyone who would be an officer would be spurious and fakes?

A. That is correct.

Q. Is there anyone you have any respect for?

A. Oh, yes.

The Court: Well, you do not need to answer that.

Mr. Burton: Q. Now, witness, at page 117—

30 “Q. The alleged policy of the Union, the defendant in this action, up to the present time, has been a closed shop, has it not?

“A. As nearly as I understand it, yes.

“Q. It still is and was at the time you belonged to it?

“A. Yes.

“Q. You took a plan of opposition before the Board of Arbitration when the Union was seeking a closed shop with the West Coast?

“A. Yes.

40 “Q. It might be that would turn the scale and decide against a closed shop in the West Coast?

“A. I have no way of knowing it.

“Q. Would you think, as a Union man of any kind, that the membership of the Boilermakers' Union would be happy about you going over to the West Coast Shipyard and trying

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to prevent something they were trying to bring about?

"A. I contend the members never brought it about. I don't think the members knew any more than I did about it."

Were you asked those questions and did you make those answers?

A. Yes, as nearly as I can remember I was asked those questions and I made those answers.

Q. And when you answered the question: "The alleged policy of the Union, the defendant in this action, up to the present time, has been a closed shop, has it not?"—Now, that doesn't say 10 the executive, witness—and your answer was: "As nearly as I can understand it, yes." And the next question was: "It still is and was at the time you belonged to it? A. Yes." Now, have you any qualification to make of those answers?

A. Except I had the standing idea it was the contract and the policy.

Q. Is there anything said here about a contract?

A. No, there is not.

Q. The question was: "The alleged policy of the Union, the defendant in this action, up to the present time has been a closed 20 shop?" Is there any way in your mind that you can confuse that with contract?

A. Yes, because the contract continuously has been hammered at me.

Q. And the Boilermakers' has other contracts, has it not?

A. I don't know.

Q. Are you not referring instead of to the contract, to the by-laws?

A. I don't know.

Q. You don't know—page 118—line 3:

30

"Q. You see the by-laws of the Union here marked as an exhibit?

"A. Yes.

"Q. You have heard the evidence that from January, 1944, until August of 1944 they were discussed at the meetings. You heard that evidence. You put it in yourself, or your counsel did, and showed the minutes.

"A. That is correct.

"Q. I will read you from Article 2 of the Objects on page 3 of the by-laws, which says this: 'To consummate closed shop 40 agreements in order to establish an equitable and lasting relationship with employers.' Now, did you read that article in the by-law?

"A. Yes, after I obtained what alleges to be the by-laws, I read them.

"Q. You say this alleges to be the by-laws?

"A. Yes."

You were asked those questions and you made those answers?

A. Yes.

Q. Has my friend any objection?

Mr. Johnson: Yes, yes, I do object, because the evidence that my friend refers to was taken at the first trial. "You have
10 heard the evidence that from January, 1944, until August of 1944 they were discussed in the meetings. You heard that evidence. You put it in yourself, or your counsel did, and showed the minutes. A. That is correct."

I don't think that should be in here at all. It should not be in this record at all.

Mr. Burton: I have read it to him, my lord, and I don't know what else I can do. In Exhibit 46 in this case, which are produced from your custody or from your client's custody, it appears on page 1 of the Articles—Article 2:

20 "The objects and purposes of this Union are to organize all workers within its jurisdiction on an industrial basis. . . ." and so on:

"And to consummate closed shop agreements in order to establish an equitable and lasting relationship with the employers."

Q. Now, those are the by-laws, the sections of the by-laws that I have just read to you.

A. I don't know.

Q. Well, at any rate you have read these by-laws. You said
30 that this morning.

A. I read that draft—it alleges to be a draft—and that is all I can remember.

Q. But you know that thousands of copies of these drafts were circulated around, don't you?

A. I don't know anything of the kind.

Q. All right. Page 125. Now, witness, I think this morning we had a little discussion about how many meetings were harmonious, and I said I would look it up at the next adjournment, and I will ask you these questions:

40 Did you have any disagreement with the Union on the first meeting that you attended?

The Court: Which line are you referring to?

Mr. Burton: I will read it later, my lord. I am just asking the question, and then I will read the evidence.

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No. 5

Myron Kuzych

Cross-Examination

(Continued)

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Q. Did you have any disagreement with the Union at the first meeting you attended with reference to the balance sheet?

A. No, not at the first meeting.

Q. Was it at the second meeting?

A. I don't recall. It was a meeting after I obtained a copy of the financial statement.

Q. Did you go to the office and ask for an explanation of certain items?

A. I went to the office first and asked for a statement of its financial affairs—a financial statement—and having been given it I asked for an explanation, and there was a girl there, as nearly as I can recall now, and she could not give me any explanation. She just gave me a statement and said she did not know anything about it.

Q. Well, you were a new member of the Union at that time?

A. Well, I joined in 1942.

Q. And no one else made any objection to this financial statement in the meeting, did they?

A. Maybe they have; I don't know; I don't remember.

Q. Now, I will read at line 17:

“Q: I will come back to what I started out with at the beginning, and that is you did have a stormy career in the Boilermakers' Union and you didn't attend any meeting at which you didn't have trouble. Was there one meeting you ever attended that you didn't have trouble in with the Boilermakers' Union?”

“A. Yes.

“Q. There was one?”

“A. Yes.

“Q. When was that? I am surprised to hear that.

“A. One meeting very early in January, 1943. I entered the meeting hall and I wasn't stopped . . .”

Now, may I pause there. You joined in November, 1942, is that what you say?

A. Yes.

Q. That is, you donated then? You were not a member until some time later, were you?

A. Well, I don't know. I made my donations and I signed my application card early in 1943.

Q. 1943. So this meeting was held—this is the meeting at which there was no trouble—January, 1943, and of course you would be a very new member at that time. There is no doubt about that?

A. Well, if I knew what meeting you are referring to and what has transpired . . .

Q. Well, I asked you if there was one meeting where you did not have trouble and you said there was one meeting very early in 1943, and your answer was: "One meeting very early in 1943, I entered the meeting hall and I wasn't stopped."

Now, at the very earliest you were entitled to attend meetings in November, 1942—that was the very earliest, wasn't it?

A. I don't know.

Q. Now, witness, you were not in the North Van. Ship Repairs until November, 1942, were you?

10 A. That is true.

Q. And the very earliest that you could attend a meeting of the Boilermakers' would be after you got there?

A. Well, I didn't join the Union until after I got there and made those donations.

Q. Well, you would be a very new member. Let us establish that first.

A. Well, new or not, I was a member then, perhaps of two months' standing or so.

Q. Well, you say here:

20 "One meeting very early in January, 1943, I entered the meeting hall and I wasn't stopped. Anyway, it was immediately after I was handed an application blank and there was some discussion on the floor, and subsequently to that the floor was thrown open to general discussion, and I took the platform for about five minutes. At that time I pointed out the irregularity and I pointed out that although I appreciated the difficulty of the old executive with the executive of the Canadian Congress of Labour, nonetheless I deplored the method that was used, and I said I believed I was influenced by George Bernard Shaw, who at the time I was reading, and that the executive at that time should take care not to commit any other acts of this nature lest they lose their heads themselves in this blind attempt to survive, and that was about the only thing that was said. Later on, in the alleged trial, one of the members brought the matter up. He remembered that one remark I made and that is the only time that I was allowed into the Union meeting and was allowed to take the platform for about five minutes.

30 "Q. That was in January, 1943?

40 "A. Yes, I believe it was; the very first meeting.

"Q. Wasn't it at that meeting that you objected to the financial statement—in your first meeting of the Union?

"A. Oh no, this was at the first meeting in February some time.

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“Q. The following month?”

“A. Yes.”

Were you asked those questions and did you make those answers?

A. As nearly as I can remember.

Q. Do you wish to take back your answer that you made a moment ago, when I brought up the question that you had difficulty at the very first meeting you attended?

Mr. Johnson: He said the first meeting in January, 1943.

Mr. Burton: Q. Well, the first meeting in January, 1943? 10

A. Well, what do you mean—what do you imply by the term “difficulty”?

Q. Well, we will come to that. First you were surprised you were not stopped.

The Court: He does not say that.

Mr. Burton: He said, “I entered the building and was not stopped.”

The Witness: Well, because prior to that I attempted to enter the meetings and I was stopped.

Mr. Burton: Q. You don't know? 20

A. I don't know, but apparently that was the reason that caused me to make the other remark later.

Q. Now you say here, “At that time I pointed out the irregularity . . .”

Now, what was the irregularity you pointed out at that time?

A. I don't recollect what was the irregularity at that time, but there was some.

Q. And you referred to George Bernard Shaw?

A. Which I perhaps must have been reading at that time, yes. 30

Q. Now, isn't it a fact from the very start of your advent into this Union, you have made trouble?

A. No.

Q. At the first meeting, or at a meeting which you attended a very short time after you joined the Union, you told the Union there were irregularities, is that not right?

A. On that particular occasion, I told them there were irregularities, yes.

Q. And you continued that right through your whole career with the Boilermakers', did you not? 40

A. No.

Q. Oh, by the way, you knew there was an open air meeting in the Athletic Park, didn't you?

A. I cannot recall at the moment.

Q. Well anyway, if it was an open air meeting, no one would be stopped there, would he?

A. I don't know anything about it.

Q. Well then, we will go on to page 127. We are dealing with this particular meeting about the financial statement. I had better read the question before on page 126:

"A. This was at the first meeting in February some time.

"Q. The following month?

"A. Yes.

10 "Q. Three years ago?

"A. Yes.

"Q. That was probably your second meeting, was it?

"A. It was either the third or fourth.

"Q. Mr. Kuzych, you said you didn't make your donation until January, 1943, and meetings are held actually every two weeks?

"A. Yes, that is correct.

"Q. There could not have been very many meetings, if it was February?

20 "A. You will recall that was the financial statement for the month of January, which meant that it wasn't read until the first or maybe even the second meeting of the month of February.

"Q. In any event, it was about that time?

"A. It was about that time; that is correct.

"Q. So you were in the Union, we will say, less than two months, and you even didn't have your dues card before you got into an altercation about the financial statement.

30 "A. I wouldn't say I got into an altercation. I discovered there was a certain sum of money in this financial statement that wasn't, in my opinion, properly accounted to the members, and I merely wanted to find out what became of that sum of money, but there was no actual altercation about it.

"Q. You got up and maintained it rather vigorously on the floor?

"A. Yes, at the special meeting at the Union hall on February 12th I vigorously did demand that it be explained to me what became of the sum, and I was ejected from the meeting.

40 "Q. You previously had a full explanation and knew you had one?

"A. No.

"Q. Didn't you say on discovery you got a statement from the office and heard the sum you hadn't heard read was for salaries?

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"A. Yes, that is correct.

"Q. You knew where it went and all you did was make an issue at the meeting?

"A. No, I only saw what was on the statement, but up to that time I had no official explanation of that.

"Q. All right. Since that time you have had trouble with the Union. You haven't had one meeting that was harmonious since that time, isn't that right?

"A. Since that time, no, there wasn't a meeting. It was harmonious enough. For example, at the meeting of August 21st, the evening meeting of August 21st, at the time when Mr. Stewart said there were no constitutional grounds for expulsion. There was no difficulty between myself and the members in the meeting until I rose to speak on that. Up to then there was harmony in the air. That was when the difficulty arose. 10

"Q. What meeting was that?

"A. The evening meeting of August 21st.

"Q. Of what year?

"A. 1944, and I entered the meeting and was allowed in, and I believe I remained in the meeting for half an hour or three-quarters of an hour, and when the discussion was thrown out on the floor on the aid to the shipyard workers in the east, and I rose to speak, Mr. Stewart terminated the motion, but up to that time there was no difficulty." 20

Well now, did you make those answers and were you asked those questions?

A. Yes, I made those answers.

Q. "Didn't you say on Discovery you got a statement from the office and heard the sum you hadn't heard read was for salaries? A. Yes, that is correct." That was what you said before. Now, what explanation have you to offer as to your statement today that you didn't know what it was for and you were given no explanation? 30

A. As near as I can recollect, I was given a statement, but no explanation, and it was at the meeting I endeavoured to obtain an explanation of the particulars, as I hadn't heard it read out to the members.

Q. Now, witness, I will say it again: Did you make an issue of that at the meeting—of that financial statement? 40

The Court: Is that alleged under the by-laws? You are trying to show a course of conduct.

Mr. Burton: I am trying to show the course of conduct was the other way. I want to show this course of conduct was on this man's part. I am doing this for the record.

Q. Page 129, line 8:

"Q. In any event, that was the only meeting outside of the first that was really harmonious?

"A. And there was another one, the meeting of February 11th, a special meeting at which the motion was made, but I had the opportunity to speak against that motion and the meeting voted I remain in the meeting.

"Q. That was a special meeting; it wasn't a general meeting?

10 "A. That is correct. It was a sub-local of the welders and burners.

"Q. Held in North Vancouver? It wasn't in the hall?

"A. No, it was in the hall.

"Q. How many were there?

"A. I really can't say. Probably I should imagine between 40 and 60."

Were you asked those questions and did you make those answers?

A. Yes, I was asked those questions and I made those answers.

20 Q. And were they true?

A. As near as I can remember, yes.

Q. And that particular meeting was a special meeting?

A. Yes, of the welders.

Q. And that was the only other harmonious meeting that you can think of?

A. That is right.

30 Q. And at page 132, line 15. I have pretty well covered this, my lord. I don't think I need to read it, about his remaining a member. Page 135—well, I think I have covered that also, my lord, thoroughly enough. And 139, I have covered that also. I am getting along faster than I thought. Line 19 . . .

Mr. Johnson: What page?

Mr. Burton: On page 140, line 18. I had better go back to the question—it would be line 16:

"Q. Three trials before the Supreme Court of British Columbia against the Union to which you belong might furnish some evidence along that line as to how they might judge you.

40 "A. The parties who are in Court can understand the situation, yes, but not the general membership.

"Q. You mean to say, Kuzych, you could go into a meeting of this Union after three law suits and sit beside another member and call him brother?

"A. I never was very fond of the term brother. I think

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if a man is a worker of the world, that is good enough, but it isn't a question of what I would call him, it is a question of what good I could do for the Union. That is my opinion." Were you asked those questions and did you make those answers?

A. As nearly as I can remember.

Q. And are they correct?

A. As nearly as I can remember, yes.

Q. Now, I will just refer to one or two of the minutes. Now, in the minutes of the meeting of the Union held on August 21st, 1944, at 8 in the evening . . .

The Court: What exhibit?

Mr. Burton: Exhibit 22 in this case; I will read this minute:

"At this point Brother Kuzych rose to speak—numerous speakers objected to Brother Kuzych being in attendance at the meeting. Moved, seconded and carried that because Brother Kuzych is suing this Union for damages that he (Kuzych) be excluded from meetings of this Union until the damage suit is finally concluded."

Q. Were you there when that motion was made?

20

A. No, that motion was not made when I was there.

Q. Well, you know the by-laws provide if anyone sues the Union, they can be excluded from the meetings of the Union until the disposition of the law suit?

A. No, I didn't know that.

Mr. Johnson: Well, when my friend is referring to the by-laws, there is no evidence that they were passed at this time.

The Witness: I remember at that meeting Mr. Stewart was asked why I was there, and Mr. Stewart said it was purely on the advice of Mr. Stanton, the solicitor . . .

30

Mr. Burton: Q. That was at that meeting?

A. On August 21st.

Q. But you didn't wait for any motion to be presented to the meeting. The motion was that you should be ejected, or be asked to leave because you were suing the Union?

A. That motion was not made in my presence.

Q. As a matter of fact, my lord, the by-laws were not in final form at that time. My friend is right on that point. Now, witness, we come down to a very essential point on this case, and that is the trial itself.

40

Do you say that the trial, before the press and investigating committee, was not investigated on a fair and proper basis?

A. That is correct.

Q. And what are your objections to it?

A. As near as I can recall now, I stated my objections to

the alleged Trial Committee first: That it lacked jurisdiction—consequently, because of the prejudice that was whipped up against me, and that some of the members who were on that very trial committee were once among those disseminating that prejudice. I objected to Mr. Stewart being the counsel for Mr. McKendrick, because Mr. Stewart was the one apparently who considered himself wronged, and I believe there were two other objections at the moment that I cannot recall now.

10 Q. Well, we will have them all here. You objected, did you not, that the trial was not on oath or that the witnesses gave their evidence without being sworn?

A. That is correct. That is one reason, also.

Q. And you know that the by-laws do not require that, do you not?

A. Which by-laws?

Q. The alleged by-laws—Exhibit 14 in this case—the by-laws under which the Union was operating.

A. Well, those alleged by-laws do not provide for it, that is true, but I objected on that ground.

20 Q. And you know that no other person than a Union member would be allowed to attend any meeting of the Union. You know that, do you not?

A. Yes.

Q. So in order to administer an oath, there would have to be someone in authority—a member of the Union, isn't that right?

A. I don't know anything about that.

Q. And there was no notary public present?

A. I don't know.

30 Q. Or any commissioner for swearing a witness who belonged to the Union, that you know of?

A. I don't know.

Q. And you objected because you were not allowed to have outside counsel, did you not?

A. That is right.

Q. And you know the by-laws provide you are entitled to counsel, but he must be a member of the Union?

A. Which by-laws—those alleged by-laws, you mean?

Q. Exhibit No. 14.

A. Yes, I recall something to that effect.

40 Q. And did you avail yourself of counsel.

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A. Yes.

Q. Who was your counsel?

A. I had hoped for Mr. C. W. Hodgson to come.

Q. Did you avail yourself of counsel, as provided by the constitution?

A. No.

Q. Did you ask that Mr. Hodgson be allowed to attend for you?

A. Yes.

Q. Who did you ask? 10

A. I don't know now. I believe it was the Trial Committee.

Q. Did you ask in writing?

A. No.

Q. Do you mean that you arrived at the meeting and asked that Mr. Hodgson be allowed to attend?

A. Yes.

Q. Was he there?

A. He wasn't there, but he was in his office and could easily be called.

Q. Witness, I put it to you that you made no such request. 20

A. That is not right.

Q. Who did you request it from—what member of the Investigating Committee?

A. I don't remember now, but I believe it was Mr. Farrington, who gave me to understand he was the chairman, and it was from him; but I believe I spoke to the general Trial Committee as a whole.

Q. But, witness, you are not quite sure of that, are you?

A. I am not sure who I asked, but I recall asking.

Q. And you made arrangements for Mr. Hodgson to be made 30 available.

A. Yes.

Q. You are sure about that?

A. Yes.

Q. Did the Committee say it was impossible under the by-laws?

A. They just refused, that is all.

Q. Now, I come to the various other charges. On page 156, line 24. I say the first objection which shows in this transcript was the one about the oath, and I have already covered that. 40
Line 24:

“Q. Now, your next objection is as to jurisdiction.

“A. That is correct.

“Q. Would you state that again, please, as to what objec-

tion you took at the trial as to the jurisdiction of the Committee to hear the complaint?

"A. I stated at the time of that alleged trial that it had no jurisdiction to proceed with that trial.

"Q. And what were the grounds?

"A. I did not state any grounds. I just stated that it had no jurisdiction because, as—I do not clearly remember if I stated any grounds. I believe I went no further than to say it had no jurisdiction.

10 "Q. You had previously, just a few days before, applied to this Court, the Supreme Court of British Columbia, urging that the Committee had no jurisdiction, did you not, and applied for an injunction?

"A. That is correct.

"Q. And Mr. Justice Wilson refused your application?

"A. That is right.

"Q. And the result of that was that this Court has held that the Press and Investigating Committee did have jurisdiction?

20 "A. That is correct."

Mr. Johnson: I object to that evidence going in, my lord. I don't think it should have been allowed in at the time, and it does not follow as a conclusion.

Mr. Burton: Well, that may be a question of construction.

The Court: A refusal of the motion for injunction does not settle anything.

Mr. Burton: Well, it tried to stop the Investigating Committee . . .

The Court: It does not decide the question of jurisdiction.

30 Mr. Burton: I am merely putting it in for what it is worth.

Mr. Johnson: And I submit it should have been objected to at the time.

The Court: Well, what the Court held—that is not in question here.

Mr. Burton: Well, anyway, he applied to the Court for a Writ of Mandamus and it was refused, but I don't mind that question being struck out.

The Court: Well, you are going down now to line 13.

40 Mr. Burton: Well, the question on line 13 and the answer can be struck out.

The Court: All right, you are down to line 12.

Mr. Burton: Down to line 12, and I skip to 15.

"Q. Now, despite that, you made a big point before the Press Investigating Committee that they had no jurisdiction.

"A. That is correct.

"Q. That was your main point?

"A. Well, that was one of the main points. There are other

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points, but that was the main point.

"Q. And throughout the hearing, was it not the fact you kept drilling on that, that the Press Investigating Committee had no jurisdiction?

"A. No, I don't think I kept on drilling. I stated it at the beginning and I let it go at that.

"Q. Did you not continuously throughout the hearing tell the members of the Committee that you were going to take the matter to court anyway?

"A. No, I did not." 10

Now, I will stop there and ask you if you were asked those questions and if you made those answers?

A. As nearly as I can remember.

Q. And now we will proceed to page 158:

"Q. Witness, did you refer to the fact you intended to take that matter to court?

"A. I stated at the time once that it would be necessary to take this matter before a court of competent jurisdiction, but that is all that I stated. 20

"Q. In other words, you considered that you were not bound by the Press Investigating Committee at all and the matter would have to be adjudicated in court?

"A. Well, the Press Investigating Committee, as nearly as I could understand them—I came there voluntarily, or rather they came there voluntarily with the idea of conducting the trial, and I soon discovered it was merely an investigation.

"The Court: You are not answering the question. Put the question to him.

"Mr. Burton: Q. My question was that you treated the trial of the Investigating Committee as a nonentity, and you intended to take the matter to court in any event? 30

"A. I felt that seeing the reasons for which I have objected to that trial; I stated I might have to take the matter before a court of competent jurisdiction, and that was all.

"Q. And you knew that the by-laws provided for such a hearing, did you not; the by-laws of the Union?

"A. Yes, at that time.

"Q. And you knew that?

"A. Yes.

"Q. And you referred to these by-laws and they were referred to on the injunction proceedings, when you applied for your injunction? That was all threshed out at the time, is that right? 40

"A. I believe so. I cannot quite recall.

"Q. There is no question in your mind that according to

the by-laws and the rules governing this association, they had a perfect right to hold that hearing?

"A. The only thing put doubt in my mind was the fact that they came with typewritten sheets and informed me that these were the proceedings they had upon and they were going to follow up that particular trial.

"Q. And does it not provide in the constitution and the by-laws that the Press Investigating Committee will draw up an agenda or a form which the trial will take; that is, the procedure to be adopted at the trial?

10

"A. I don't recall that point."

Were you asked those questions and did you make those answers?

A. As nearly as I can recall, I was asked those questions and made those answers.

Q. Are those answers true?

A. They are not quite true in the sense as far as I was able to recall, I stated those were the accepted by-laws and so on, and I never had it in my mind that they were the accepted by-laws or that that committee was properly constituted or that they had jurisdiction for acting.

20

Q. Now, is that a qualification to the answer you gave?

A. Yes.

Q. And at that time, that qualification did not occur to you?

A. Well, I don't remember.

Mr. Burton: Now, I should like to have that agenda which was filed by my learned friend.

Mr. Locke: It is Exhibit 42.

Mr. Burton: That is right, Exhibit 42.

30

Q. Now, witness, I show you this agenda, Exhibit 42 in this case, and ask you if you will tell me in what way you objected to that, or what particular part of it you objected to.

A. I objected to it on the ground that I did not see anything similar to it in the alleged by-laws.

Q. That is the only objection?

A. As near as I can remember now, that is it.

Q. Now, witness, we will go over this:

"The procedure of the Press and Investigating Committee in the trial of Myron Kuzych shall be as follows: All the parties to the trial shall first be brought into the room where the committee is to hold its hearings, and then be advised as follows:

40

"The witnesses for the complainant shall be kept in one hall, separate from the witnesses of the defendant. After they have given their evidence, they may stay in the committee

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rooms and hear the rest of the trial, but they shall not under any circumstances be allowed to go back among the other witnesses who have not been heard. They may, if they so desire, leave the building, but only if all their evidence is in." Have you any objection to that, or had you at the time?

The Court: You mean, did he take any objection at the time.

Mr. Burton: Yes, did you take any objection to that at the time?

A. No, I was not asked seriatim. I was just asked generally. 10

Q. Your only objection was you had not seen it before?

A. Yes.

Q. And having read it and having gone over it, is there anything unfair about this agenda?

A. Yes, in this particular instance there is, because of the condition of prejudice that prevailed in the Union. It was impossible for me to get witnesses who were members of the Union and who could safely testify on my behalf, and it was impossible for me to get anyone who was a member in good standing and who would be willing to serve as counsel on my behalf, because of the threats and so on that had been made against me. 20

Q. You say owing to your position in the Union, you could not get witnesses and you could not get counsel?

The Court: No, he said he could not get witnesses who could safely testify. Is that not what you said?

A. Yes.

Mr. Burton: Q. But, witness, you were quite safe enough there, weren't you?

A. I ~~don't~~ know. I came there to attend regardless.

Q. Are you serious when you say it was unsafe to bring witnesses? 30

A. I don't mean the immediate physical injury to them then, but later on, their jobs might have been taken away from them or they might have been assaulted there at the time. It happened to me before and it could have happened then.

Q. Did you express that idea to the Investigating Committee?

A. No, they didn't ask.

Q. Did you express it?

A. No. 40

Q. Well, was there anything unfair about the agenda itself? This agenda was drawn up in the way the trial would proceed. Was there anything unfair in itself?

A. The agenda per se was not unfair if the conditions made it possible for to conduct ourselves accordingly, as it existed.

Q. In other words, the only unfair thing about it was the prejudice which had been built up against you?

A. Yes, and I could not . . .

Q. Well, you cannot say there was anything unfair about the agenda and the mode of carrying on the trial—that is, the manner of carrying it on?

A. No, I cannot say that. What I will say is because of what had happened against me previously, it was impossible for me to conduct myself insofar as witnesses and counsel are concerned
10 according to that agenda which was then presented to me.

Q. Now, apart from what I have already said: “The witnesses for the complainant shall be kept in one hall separate from the witnesses of the defendant.” Was there anything unfair about that?

A. No, not if I could have had witnesses.

Q. “At the commencement of the trial, and after the witnesses have retired to their respective rooms, the charges against the defendant will be read out to the complainant and defendant by the recording secretary.” Is there anything unfair about that?

20 A. No.

Q. “After the charges have been read out, the defendant will be asked how he pleads, guilty or not guilty. When he has pleaded, the complainant will call his first witness and continue to call them until all of them have been heard.” Is there anything unfair about that?

A. No, not under ordinary circumstances, but I didn’t even get to plead. I pointed out even before we got to the pleadings, that the alleged Trial Committee did not have any jurisdiction.

Q. And did you not plead?

30 A. No.

Q. But there is nothing unfair in it up to that point . . . what I have just read? If there was someone else involved other than yourself, there would be nothing unfair about it?

A. Under normal circumstances, no.

Q. You did not complain of any unfairness in what I have read?

A. No, no one asked me about it.

Q. And you did not complain?

A. I beg your pardon?

40 Q. You did not complain?

A. I stated my objection and that was it.

Q. You did not object to the agenda yourself?

A. Yes, I did, on the ground I did not see it in the alleged by-laws.

RECORD

*In the Supreme
Court of British
Columbia*

Proceedings at
Trial

Plaintiff's
Evidence

No. 5

Myron Kuzych

Cross-Examination

(Continued)

RECORD

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Myron Kuzych

Cross-Examination

(Continued)

Q. Well, that is the only objection you took, and that is the only objection you could have against this agenda?

A. No, I wouldn't say it is the only objection I could have, but it was the only one I could have then.

Q. "All witnesses will be placed on their honour as Union members to tell the truth without evasions or reservations?" Was there anything unfair in that?

A. For this reason it was unfair—in all other instances where a man's livelihood is not tampered with, the honour oath would probably suffice, but when it gets to the serious business of taking a man's livelihood away from him, I think an oath should be administered. 10

Q. Do you not think a Union member's oath—of his obligation as a Union member—do you not think that is binding?

A. Well, you see, I was not dealing with the ordinary Union member; I was dealing with Mr. White and his associates, and on them it was not binding. At least, it gives that appearance.

Q. And you think it would be better if it is under oath?

A. Yes.

Q. "The defendant will then call his witnesses and continue to call them until such times as all have been heard." Is there anything unfair about that? 20

A. Well, not if I could have had witnesses, but I wasn't.

Q. "The complainant shall then be allowed a rebuttal." Is there anything unfair about that?

A. No.

Q. "Members of the Press and Investigating Committee shall be allowed to examine and cross-examine witness for either side." Is there anything unfair about that?

A. No, if there were witnesses. 30

Q. "The complainant, defendant, their counsel, the Union's counsel, if one is appointed, and anyone named in the charges may examine or cross-examine witnesses; such procedure must be kept within the bounds of common decency and order and rules of evidence." Is there anything unfair about that?

A. No, not if they had been kept within those bounds.

Q. "Statements not relative to the charges shall be ruled out of order by the chairman." Is there anything unfair about that?

A. No, if they had been ruled out of order, they wouldn't. 40

Q. And at page 160, line 6-7:

"Q. Did they follow the procedure set out in the typewritten sheet, which they gave to you, and if they did not, in what way did they depart from it?

"A. I cannot recall at the moment just in what particular

way they departed from the procedure. I was not acquainted enough with it to be able to notice any typewriting on the spot. It was something that was in the room just about five minutes after the investigation begun."

Were you asked those questions and did you give that answer?

A. Yes.

Q. And are they true?

A. As near as I can remember.

10 of the question, my lord:

"Q. . . . you were not represented by counsel?

"A. No.

"Q. But you had the opportunity, according to the by-laws?

"A. I had the opportunity to be represented by any member of the Union, but I did not have the opportunity to be represented by a recognized, practising barrister.

"Q. By a lawyer. And you were informed in the letter you had authority to appoint counsel in the Union?

"A. Yes.

20 "Q. And the Union was also represented by a member of the Union?

"A. Yes.

"Q. There were no lawyers there at all?

"A. No.

"Q. And the by-laws provide for that, do they not?

"A. Yes, the by-laws provide for that.

"Q. And you knew that?

"A. Yes.

30 "Q. Now, you said that the other objections—I have taken them down verbatim, as I could—you had no opportunity to present your evidence. Did you call any witnesses?

"A. No, I did not call any witnesses.

"Q. Did you ask for any witnesses to be called on your behalf?

"A. Yes, I asked for witnesses to be called then that would sit at the trial and have an opportunity to observe.

"Q. Whom did you ask to be called?

"A. I asked, I believe, Mr. Frank Mole, Mr. McPheator—and I don't know whether there were one or two more or not.

40 "Q. Were they present?

"A. They came but were not allowed in.

"Q. Allowed where?

"A. Into the trial room.

"Q. Did you bring them as witnesses?

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Cross-Examination

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Cross-Examin-
ation

(Continued)

"A. Not as witnesses on my own behalf, but witnesses to observe the general proceedings.

"Q. Did you ask this committee to allow you to bring or put on the stand those witnesses that you have just mentioned?

"A. No.

"Q. You did not?

"A. No.

"Q. Now, why do you suggest you had witnesses not allowed to be called? 10

"A. I did not say that I had witnesses who were not allowed to be called. I said witnesses came who were not allowed into the trial room.

"Q. That was your only objection?

"A. That was my objection.

"Q. And you did not intend to call them?

"A. No, I merely wished them to observe the proceedings.

"Q. So they could give evidence on the court case which you contemplated?

"A. No, I had no such idea in my mind. I merely wished 20 them to see the procedure."

Were those questions asked you?

A. Yes.

Q. And you gave those answers?

A. Yes.

Mr. Johnson: Just for the sake of the record, that second name is McPheator.

Mr. Burton: Page 164, line 5:

"Q. Now, you had ample opportunity to present your case, did you not, at the trial? 30

"A. Well, no, for the same reason I did not know what the Union's case was, and the Trial Committee, instead of trying—instead of proceeding to try began to put a whole series of interrogatory questions to me, which I suppose should have been done a long time before, and therefore I would have known what the situation was. I had no knowledge.

"Q. You had a knowledge of the charges you would be up against?

"A. That is right.

"Q. Did you expect that you would be furnished with the 40 evidence that would be brought against you at the trial or at the hearing?

"A. No, but I felt I would at least have an opportunity to meet the people beforehand, whoever were laying those

charges against me, and verify their intentions, and bring such evidence as I thought would be necessary. Also, the one thing that concerned me a great deal would have been to ask those people that the witnesses I brought to that trial would not in any way be molested, or in any way incriminated and so on and so forth.

10 "Q. If I can understand what you mean you thought that you should have the opportunity to approach all the witnesses for the Union before the trial, consult with them as to what they were going to say and talk it over with them?

"A. Not quite the witnesses but the principals in the trial.

"Q. Who?

"A. The man, for example, who lays the charges from the Union—the person who was going to be the Union's counsel.

"Q. Now, the person who laid the charges, Mr. McKendrick, did you go to see him?

"A. No.

"Q. Were you told you could go and see him?

"A. No.

20 "Q. Were you informed you could not see him before the trial?

"A. No, I was not told.

"Q. Did you make any offer to see him?

"A. No.

"Q. And you know he lays a charge?

"A. Yes, after I received the charge in a registered letter I knew he laid it.

"Q. On the trial did you not cross-examine all the witnesses for the prosecution as they were brought against you?

30 "A. The few witnesses that were brought against me, I made an effort to cross-examine on the spur of the moment to demonstrate that the claims they had made were not exactly founded.

"Q. Do you mind just answering? You did cross-examine?

"A. I did the best I could, but under the circumstances I don't think I did myself justice.

"Q. You did not do a good job?

"A. No.

40 "Q. And you were given an opportunity to have somebody help you in the Union and you refused?

"A. Well, I didn't exactly refuse.

"Q. You did not take advantage?

"A. I did not find anyone that knew enough about the case in view of everything that was said, to be able to help me.

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No. 5

Myron Kuzych

Cross-Examination

(Continued)

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Myron Kuzych

Cross-Examination

(Continued)

"Q. Did you approach anybody and ask them?

"A. No.

"Q. As a matter of fact, I presume, witness, you could not find anyone biased in your favor. That is the fact, is it not?

"A. No, it is not the fact. I could have found people who are in my favor, but who were not able to act as counsel on my behalf because they were never able to get at the facts of the thing.

"Q. The trial lasted from 7:30 at night until midnight?

"A. That is right. 10

"Q. And my reckoning is, that is four and a half hours, and my instructions are that you took over two and a half hours in your defence, is that right?

"A. Oh no.

"Q. How long did you take?

"A. In my defence at the end of the trial I don't believe I took more than fifteen minutes.

"Q. At the end of the trial, but you talked continuously throughout?"

Mr. Johnson: "Continually," not "continuously." 20

Mr. Burton: Yes, "continually."

"Q. At the end of the trial, but you talked continually throughout?

"A. Just in reply to the questions that were put to me and the cross-examination and so on.

"Q. And you were not cut off for time? The trial would have lasted until the next morning if you wished it?

"A. No, the trial would not have lasted until morning. When I began to speak the Trial Committee towards the end, that is towards 12 o'clock, the Trial Committee definitely 30 showed signs of weariness and one member said 'We cannot be here all night.'

"Q. But you were not cut off?

"A. Well, I figured not to weary them I would make it as brief as I could.

"Q. You were not cut off on time. I have your discovery. I want you to be frank about it. Do you remember being asked that question, if you were cut off for time, and your answer was 'No'?

"A. If you mean that a man got up and said 'This is enough' 40 that was not the case, but I could see by the general behaviour of the Trial Committee that they wished the proceedings to come to an end, and I did everything I could to bring it to an end as rapidly as possible.

"Q. And you brought it to an end?

"A. Yes, I brought it to an end.

"Q. You said at the end, I believe, that it was a courteous hearing, that you had a courteous hearing?

"A. Yes, I said it was a courteous hearing.

"Q. Now, at the meeting before the Press Investigation Committee—before I leave that, your counsel has produced a typewritten sheet which you complain about. Read that over and tell me in what particulars you are prejudiced by that procedure.

10 "A. I objected here—'all witnesses will be placed on their honour as Union members to tell the truth without evasion or reservation' — I objected to that point because it was not an oath.

"Q. You don't think that being on your honour, as a member of the Union, is sufficient to enable one to tell the truth?

"A. Well, by the time that Trial Committee . . .

"Q. Was that your only objection?

"A. Yes, I objected to the fact that the proceedings were decided upon so rapidly just before the meeting before the trial, and also that part that provided for no oath.

20 "Q. That was the only part?

"A. As near as I remember?"

Now, were you asked those questions and did you make those answers?

A. As nearly as I can remember, I was asked those questions.

Q. And did you make those answers?

A. As nearly as I can remember.

30 Q. Now, witness, you did not make any mention that you could not get witnesses who could safely come to the trial, did you?

A. No, I was merely asked if I had any objection to the procedure, and I gave the original answer and that is all that was ever asked, and they disregarded the original answer and went ahead.

Q. But you knew you were entitled to call witnesses?

A. Yes.

Q. And I read again at page 166. Your answer is:

40 "I could have found people who are in my favour, but who were not able to act as counsel on my behalf, because they were never able to get at the facts of the thing."

Now, that is quite different to not being able to attend safely, isn't it?

A. Not at all.

Q. I didn't hear anything about that word safely until this afternoon. You didn't mention that before, did you?

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Cross-Examin-
ation

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Mr. Johnson: I submit this witness should not be asked what happened two years ago at this trial.

Mr. Burton: Very well.

Q. Now then, page 169 . . .

The Court: Is there much more of this reading?

Mr. Burton: No, my lord, I am almost finished this part and I wish to get it all on the record on the trial.

The Court: It seems to me it would have been better to bring the evidence out fresh.

Mr. Burton: Well, it seems to me if I read them they are 10 made part of the record.

The Court: Well, when you read two or three pages to the witness, it is very difficult for him to remember everything you have read. Where are you reading now?

Mr. Burton: Page 169. I am just trying to do this in the interest of time. I want to get this on the record.

The Court: All right, proceed.

Mr. Burton: Q. Now, Mr. Kuzych, you know that the by-laws provide—Exhibit 14—the by-laws of the Union that “after the Press Investigating Committee make their report, it is then 20 referred to the general meeting”?

A. Yes, I know what alleges to be the by-law makes that provision.

Q. What alleges itself to be the by-laws, is that clause?

A. Yes.

Q. And you were given notice of that meeting?

A. Yes.

Q. And you attended?

A. Yes.

Q. And you were allowed ten minutes—after the report of 30 the Committee would be filed?

A. It was said I would be allowed ten minutes, but I wasn't allowed that time.

Q. Were you cut off?

A. Yes, Mr. Nuttall said I had my ten minutes, but I didn't.

Q. I think you said in answer to my learned friend yesterday you did not take your ten minutes.

A. Well, what I meant was during that time they said I would be allowed ten minutes there were so many interruptions 40 and catcalls, I did not have the ten minutes to speak in my behalf, and for that reason I did not take the ten minutes.

Q. Did you time yourself with a watch?

A. No.

Q. Did the complainant have ten minutes as well as you?

A. I don't know.

Q. The by-laws provide for that, do they not?

A. Yes, the alleged by-laws allegedly provide for it.

Q. Perhaps you had better keep to that.

The Court: He says the alleged by-laws allegedly provide for it.

Mr. Burton: Yes, it a very accommodating word.

10 Q. Now, I would like to have the Press report of the Investigating Committee. I don't know whether it is in or not.

Mr. Johnson: Yes, it is No. 35.

Mr. Burton: I am afraid I shall have to read this, my lord. It is set out in the appeal book, isn't it? I can read it from the typewritten copy better than that. It is page 381 of the appeal book, and I am reading, my lord, from the typewritten copy, because it is easier than reading the pencil notes.

"That M. Kuzych be found guilty as charged on all three counts by individual poll of each separate charge.

20 "We members of the Press Committee having heard all the evidence in the trial of M. Kuzych, and having surveyed the said evidence both oral and documentary, are of the opinion that no other conclusion than that the said Brother M. Kuzych is guilty as charged.

"The charges are of a very serious nature, involving not only individual members of the Union but the organized Union as a whole and its organization structure and its aims and objects.

30 "The first charge of which in our opinion he is guilty of concerns a direct violation of the by-laws, part B, Article 26, Section (2) (1). Brother Kuzych did not deny that he called, held or assisted in holding an unauthorized public meeting to discuss internal business of the said Union in view of the fact three witnesses testified that he attended said meeting.

40 "On the second charge M. Kuzych refused to make any statement at all, only that he opposed the closed shop in principle. Documentary evidence was introduced by the plaintiff which the defendant recognized as a true copy of evidence he gave at the West Coast Arbitration Board. In the said evidence he stated his whole attitude toward closed shop and the Boilermakers' Union was hostile in the extreme. It is quite certain in the minds of the Committee Brother Kuzych is inalterably opposed to the closed shop policy of this union and has publicly campaigned against it. Therefore, on this count we find him guilty.

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"On the third charge Brother Kuzych failed to repudiate slander against W. Stewart.

"On cross-examination, Kuzych became most evasive, frequently suffered loss of memory. Yet he demonstrated that he has a most remarkable memory in that he could remember quotations from speeches he had made at Hastings Auditorium some two years ago. He admitted that he knew the persons who made the broadcasts and that he had read them.

"When asked if he had taken any step to repudiate the statements over the radio by his campaign supporters, he said he could not remember. 10

"It is too much to ask the Committee to believe that a man could or could not repudiate statements and fail to remember if he had done so. Therefore, we find the brother guilty as charged and submit the following motion and on behalf of the Committee—R.M.S.&C. That six members of the Press Committee be paid the \$2.00 per meeting as called for in the by-laws. Meetings of March 13th and March 16th.

"R.M.S.&C. That Brother Hadley be paid the \$2.00 for acting as warden during meeting of March 13th. That Brother Farrington be reimbursed for time lost in connection with Kuzych hearing." 20

And so on. And then the rest does not concern us—

"I move the report be accepted."

"D. B. Clark; S. C. Belt; F. Duncan; K. Garrison; O. Braaten; D. Pearson; G. Farrington."

Now, my lord, I wish to cross-examine slightly on this, but I see it is 4:30.

The Court: Yes, we will adjourn until 10:30 tomorrow morning. 30

(PROCEEDINGS ADJOURNED TO JANUARY 28, 1949,
 AT 10:30 A.M.)

MYRON KUZYCH resumes stand.

The Clerk: You are still under oath.

CROSS-EXAMINATION BY MR. BURTON CONTINUES:

Q. Mr. Kuzych, you told me yesterday that you would look through your papers and see about the question of an appeal under the Unemployment Insurance Act to the Umpire at Ottawa.

A. Yes, sir.

Q. Did you do that? 40

A. Yes, sir.

Q. What did you find?

A. As far as I was able to find the appeal book is in the hands of a friend of mine, but there is an appeal book, therefore there must have been an appeal book made up and an appeal, but I do not recall that decision being attached to it. The friend of mine that I inquired of in this matter doesn't seem to have any recollection of that decision being there. It may have been detached, but I can see that the appeal book, although it is not in my possession . . .

10 Q. Was that done through a lawyer, that appeal book?

A. No, it was prepared by myself.

Q. But prior; with that in mind there isn't any doubt you did appeal?

A. That's right.

Q. Is it a fact then the stand you took was that you had been offered positions in similar work, that is as a welder, at the same rate of pay, \$1.00 per hour, but you refused unless you would be employed as a Union welder, specifically a member of the Boilermakers' and Iron Shipbuilders' Union, Local 1?

A. That's correct.

20 Q. So that the basis of your appeal was that under Section 32 of the act, that is the Unemployment Insurance Act, that you contended that you did not have to seek employment otherwise than as a union man, and could still obtain Unemployment Insurance benefits?

A. I don't recall the exact section now.

Q. In any event that was your stand, was it not, whether its Section 32 or some other section?

A. My stand was I refused to work except as a union man, specifically of the Boilermakers' and Iron Shipbuilders' Local
30 No. 1.

Q. And the Unemployment Insurance Commission refused that submission and dismissed your appeal?

A. That is correct.

Q. So that that would mean, would it not, that there would be no place that you could work or that you could accept employment except where this particular Union, the Boilermakers' Union, held the contract of employment, is that right?

A. If I was a member of that Union, that's right.

Q. You refused to work except under those conditions?

40 A. That's correct.

Q. In other words it was silly for you to go looking for work because you weren't a member of the Boilermakers' Union and refused to work under any other status?

A. It was never proven I was not a member of the Boilermakers' Union.

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(Continued)

Q. When you were sent to the Lawrence Manufacturing Company did you tell them you were a member of the Boilermakers' Union?

A. I said it was alleged that I was not, but I contended that I was.

Q. Yes?

A. That the matter was under decision pending before the court, and until such time I would accept employment if they would engage me as a Union man, specifically a member of the Boilermakers' Union, Local No. 1. 10

Q. You knew the Lawrence Manufacturing Company had no contract with the Boilermakers' Union?

A. No, I merely went wherever I was sent.

Q. You went there to go through the form of telling them you would have to be employed as a member of the Boilermakers' Union or you wouldn't work?

A. No, I went there at the instructions of the Selective Service.

The Court: What was the name of that firm?

Mr. Burton: Lawrence Manufacturing Company, my lord. 20

Q. Now, when you went to the Lawrence Manufacturing Company you knew perfectly well, did you not, that no member of the Boilermakers' Union would have any rights to be employed as a member of the Boilermakers' Union?

A. No.

Q. Did not the same position occur in reference to the Dominion Bridge Company Limited?

A. That is correct.

Q. On June 6th, 1945, you were notified of a similar position with the Dominion Bridge Company under the same conditions? 30

A. I don't remember the date. I remember going to the Dominion Bridge.

Q. You refused this second offer of employment for the same reason?

A. That is correct.

Q. You knew, did you not, that the Boilermakers' Union had no contract whatsoever with the Dominion Bridge?

A. No, I didn't.

Q. Did you know that any welder working there would not have any privileges or benefits under the Boilermakers' Union? 40

A. No, I didn't.

Q. Did you attempt to find out?

A. No, beyond discussion of the actual job no discussion took place between the personnel manager and myself.

Q. Were you told when you mentioned being a member of the Boilermakers' Union, didn't they tell you that they had no contract with the Boilermakers' Union?

A. I don't recall being told anything of the kind.

Q. If they had a contract with them wouldn't you proceed with the matter and attempt to be employed?

A. I was merely told to the best of my recollection that
10 I would not be employed on those terms and that ended, as far as I recall, the discussion.

Q. In other words, witness, there is no doubt you were relying on the decision of the Chief Justice of this Court by which you had previously been awarded damages?

A. How do you mean?

Q. You were relying on the decision of the Chief Justice?

Mr. Johnson: He is not entitled to . . .

Mr. Burton: I am just asking.

A. Mr. Farris says he was a truthful and frank witness
20 and he should be . . .

Q. Mr. Justice Macfarlane didn't have that to say.

A. He didn't say the contrary. I remember the thing that impressed me was that.

Q. And at that time when you were on the stand you were only giving evidence on damages?

A. I don't recall how long I was on the stand at the moment, but whatever it was . . .

Q. That was damages only, you know that.

A. There was considerable discussion arose respecting
30 closed shop and other things.

Q. While you were on the stand?

A. In the stand and during cross-examination.

Q. If you were not relying on that where did you get the idea you could refuse work except to work as a member of the Boilermakers' Union; where did that idea get into your head?

A. It occurred to me that in as much as a working man joined the Union in principle in order to protect himself upon a job, then in principle it couldn't possibly be proper to expel him from the union and hence from a job because it makes it
40 impossible for him to live. I live as a union man among other union men and it puts me in a position where I may be the cause of various industrial disturbances and strikes and all manner of things, and upon that principle I proceeded right from the very beginning.

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(Continued)

Q. The principle you proceeded on was you were going on with this court action for damages, wasn't that your principle?

A. That wasn't the only principle.

Q. You were an unwilling member of the Boilermakers' Union, you told that to the Board of Arbitration, that you were unwilling.

A. When I said I was unwilling I was referring to the executive; it had nothing to do with the other members.

Q. That is a long phrase. The fact is you said you were an unwilling member. 10

A. Referring to the executive.

Q. There was nothing stopping you from resigning from this Union.

A. Which union?

Q. The Boilermakers' Union.

A. At which time?

Q. At the time when you gave evidence. You were a member in good standing?

A. Yes.

Q. Why didn't you resign? 20

A. I had no cause. I was a member in good standing.

Q. There were lots of unions in Vancouver in the particular trade in which you are engaged.

A. I don't know.

Q. In other words you don't agree with any unions whose principles are not the same as yours. You don't agree with the Boilermakers' Union, and you were an unwilling member, and you refused to resign and look around for another union which would suit you?

A. There are four questions all at once. 30

The Court: That is right.

Mr. Burton: That is rather confusing, my lord.

Q. Witness, have you any other reason to suggest why you did not resign from the Boilermakers' Union and join another union?

A. I had no reason. I had to live.

Q. Yes.

A. I was working there and that was that.

Q. I am reading from page 199 of the first trial, starting at line 15: 40

"Q. How have you lived since your Unemployment Insurance ran out?

"A. Since my Unemployment Insurance ran out I have lived on a small stipend given to me by my counsel.

"Q. Is it not a fact that you were far more interested in broadcasting than you were in looking for another job?"

"A. No.

"Q. Did you seriously look for another job?"

"A. Very seriously.

"Q. And you were offered a job in the West Coast, and the only reason you refused was because it was an open shop?"

"A. No, I was not offered a job as a Union man. I was only offered a job as a non-Union man.

10 "Q. You relied on the decision of the Honourable Chief Justice of this Court. Is that not why you turned down that job?"

"A. I felt until such time as a court of competent jurisdiction ruled as to my Union status I would grievously injure myself if I accepted a job as a non-Union man, and be faced with serious future obligations if I had done so.

"Q. That is your only reason?"

"A. That is my reason."

Were you asked those questions; did you give those answers?

20 A. I think so, Mr. Burton.

Q. Are they correct?

A. I think so, Mr. Burton.

Mr. Johnson: Are they true.

Mr. Burton: Q. Are they true?

A. Yes.

Q. Were they true then?

A. I think so.

Q. Are they true now?

A. I think so.

30 Mr. Johnson: There is a reference here to a stipend by counsel.

Mr. Burton: I will come to that.

The Court: Mr. Kuzych, where Mr. Burton is reading, if he comes to any part that you think is wrong, that you didn't say or wish to explain, just stop him.

A. Thank you very much, my lord.

Mr. Burton: Q. Now the first part of this answer when you said that you lived on a small stipend given you by your counsel, you were not referring to your present counsel?

40 A. No.

Q. And not Mr. Braidwood?

A. No.

Q. Now coming to the next question when I asked you about

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the question of broadcasting, you were of course running a series of broadcasts which we have already covered?

A. That is correct.

Q. In that broadcast you had certain statements to make derogatory—contrary to the closed shop?

A. Did you say derogatory?

Q. They were contrary.

A. I endeavoured to present arguments that would show the other side of the closed shop.

Q. Now I will ask this question and leave this phase of it. 10
There isn't any doubt in your mind is there, as far as the Boiler-makers' Union is concerned, as long as they maintain the closed shop principle you never will agree with their principle?

A. That is not correct.

Q. It isn't correct?

A. No.

Q. You, however, do not agree with the by-laws, with the statement of the by-laws as to their aims and object being to consummate a closed shop agreement; you do not agree with that? 20

A. For the plain reason I do not agree that is in the by-laws.

Q. If that is in the by-laws do you agree or disagree?

A. If I had a proper opportunity to present what I hold to be valid argument against it and it was properly debated and discussed and decided by a referendum vote of the majority of the members, I would then abide by the majority decision.

Q. You would still not agree with the principle of the closed shop?

A. No, I would not agree with it, but I would abide by that majority decision. 30

Q. As long as that is the majority decision you are not in favor of their principles?

A. What is the majority decision?

Q. Of the Union, if it is?

A. If what is the majority decision?

Q. The closed shop.

A. However I would.

Q. If it were a majority decision you would not agree with it but you would abide by it? 40

A. Well . . .

Q. Yes?

A. I would not agree with it but I would abide by it.

Q. Your only quarrel is that you say that is not a principle of the majority of the members of the Union?

A. That is correct.

- Q. And now, witness, you know, do you not, a Mr. Bawn, of the South Hill News?
- A. Yes, I met Mr. Bawn at Mr. Albert Foote's place.
- Q. You have been in their plant, have you?
- A. In where?
- Q. In the plant of the South Hill News, the newspaper.
- A. Yes, I went to see Mr. Albert Foote one time.
- Q. Not more than once?
- A. As far as I remember, no, only once.
- 10 Q. Did you go to the home of Mr. Bawn or Mr. Foote?
- A. I went to Mr. Foote's home once and to Mr. Bawn's once or twice.
- Q. Did you not make a proposition to the South Hill News whereby that paper would publish your material, which you wished to publish on a basis where it would not cost you anything, in return for services you would render?
- A. I beg your pardon?
- Q. Did you make an offer to the South Hill News that you would render certain services to them if they would print the
- 20 material you wished to publish without cost to yourself?
- A. No.
- Q. You are quite sure of that?
- A. Quite sure.
- Q. Did you make any proposition to other publishers of newspapers in reference to publishing material for yourself?
- A. No.
- Mr. Johnson: I don't know what this has to do with the case. Is it on credibility?
- Mr. Burton: I am coming to an article.
- 30 Q. Mr. Kuzych, we come back to this article I faced you with.
- A. Yes.
- Q. The article is headed "Editor, South Hill News," and it says "Myron Kuzych, 3558 Fraser Avenue."
- A. Yes.
- Q. Having charged your memory, did you write that letter?
- A. No.
- Q. You say you did not?
- A. I say I did not.
- 40 Q. You have read the article, have you not?
- A. I believe I have.
- Q. It refers to the Boilermakers' Union?
- A. I believe it does, yes.

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Q. I wish you would read it.

Mr. Johnson: It's a letter to the editor, not an article.

The Court: He has looked at it and said he didn't write it.

Mr. Burton: Q. Were you living at 3558 Fraser Avenue
at one time?

A. At one time.

Q. Until you left there to get married?

A. Yes.

Q. Two months ago?

A. That's right. 10

Q. And you were living there at the time this action first
came to trial?

A. That's right.

Q. Did you ask the South Hill News to publish any ma-
terial which they refused to publish?

A. Mr. Albert Foote was the first one who suggested I
write at all. It was Mr. Albert Foote who ultimately suggested
I show some of my material to the Vancouver Sun. I took the
Vancouver Sun magazine editor some of my material but it was
refused. Furthermore, Mr. Albert Foote personally asked me 20
to write him an article for the South Hill News. As far as one
article which Mr. Albert Foote asked me to write and I did write,
and finally that article was not published, but I did not do that
on my own accord. I was asked for that article by Mr. Albert
Foote.

Q. It wasn't published?

A. It wasn't published.

Q. Do you know why?

A. No, I don't know why.

Q. Did you ever write any article for that particular per- 30
son which was published?

A. Yes, I did.

Q. Did you write any letters that were published?

A. No, not any letters.

Q. Just articles?

A. Just articles.

Q. Now, witness, you stated to my learned friend that your
income would be approximately \$1.60 a day?

A. No.

Q. I meant \$160.00 a month. 40

A. That is correct at the time.

Q. I am belittling you too much there. Now, out of that
would come income tax?

A. No, that was after income tax was deducted.

Q. How many days a week did you work?
 A. At one time—at the time when I worked there I worked continuously.
 Q. How long did that happen?
 A. Well, that was on the staggered production plan. I worked every day except every seventh day was my shift off.
 Q. At the time you were in the Boilermakers' Union, how many days a week were you working?
 A. I believe six days.
 10 Q. Isn't it a fact you are not allowed to work more than six days?
 The Court: He did not say more, he said six days.
 Mr. Burton: He gave evidence here he worked more.
 Mr. Johnson: When?
 Mr. Burton: In chief he said seven days a week.
 The Court: I thought it was six days.
 Mr. Burton: He said a dollar an hour, seven days a week. I have it very clearly. It's not worthwhile turning up the evidence. It was one of the things I made a particular note of.
 20 The Court: You may be right.
 Mr. Burton: Q. \$1.00 an hour, 7 days a week?
 A. Well, I meant seven days was the continuous production plan. I was only given one shift in seven days off.
 Q. In 1945 was it not a regulation in effect that six days was the limit of the work, 44 hours a week, isn't that right?
 A. There may have been. I don't know.
 Q. I can show you the Hours of Work Act. In any event you worked, witness, six days a week?
 A. That's right.
 30 Q. That's all you were paid for. Now my instructions are for a single man working for a dollar an hour for six days a week, the net income, after taxation, at that time would not amount to more than \$120.00 a month. What have you to say to that?
 A. Well, I can't agree with that. I think it was higher than that. I believe I still have all the receipts, all the stub cheques, and I do not remember seeing any great difference between those and how they were before I was expelled for the first time. I made no issue of it.
 Q. In any event you were working during this period; I
 40 suppose you would know what the deduction was?
 A. No, but I know the rate was the same: \$1.00 an hour.
 Q. The deductions may not have been the same?
 A. The deductions may not have been the same. The rate was the same. I don't know.

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Q. I presume you filed an income tax return for the year 1944?

Mr. Johnson: Now, my lord, is that . . .

Mr. Burton: I am not pressing that.

Q. Now, witness, your qualifications as a welder were six weeks in school, is that correct?

A. That is correct, and training.

Q. Did you learn acetylene welding?

A. Yes, I went to Vancouver Tech and studied acetylene welding on my own. 10

Q. When?

A. While I was working at North Van. Ship Repairs.

Q. Have you ever worked as an acetylene welder?

A. No, I never had occasion to work at it because when I was employed it was at arc welding.

Q. When you told me before you were both an arc and an acetylene welder you relied on your training, not on practical experience?

A. On my experience as an arc welder; on my training and experience as an arc welder. 20

The Court: An arc welder?

A. Electric arc welding.

Q. a-r-k?

A. a-r-c.

Mr. Burton: Q. Now, as a result of your acetylene welding training, are you familiar with the melting temperatures of the various metals, such as steel, copper, bronze, etc?

A. I don't think I have the figures in my mind but I have the data on that, yes.

Q. But no practical experience in it? 30

A. No practical experience in it, yes.

Q. How long would you say it would take to become experienced in acetylene welding?

A. Well, I don't know, never having had any experience yet, I wouldn't hazard a guess. I take it a great deal depends on the man's nature and propensities and abilities, and a great deal more.

Q. There are one or two sections I wish to read. When you attended the meeting of the general membership after the Investigating Committee had made this report, did you again object to the jurisdiction of the meeting—of the Investigating Committee to try that? 40

A. Yes, I objected to their jurisdiction before that meeting.

Q. You objected before the Press and Investigating Committee and again at the meeting?

A. At the meeting of the membership or what there was of the membership at that meeting.

Q. In the Press and Investigating Committee's report did you repudiate the slander which you were alleged to have made against Mr. Stewart?

A. I beg your pardon?

10 Q. Did you repudiate the slanderous statements which you were alleged to have made against William Stewart?

A. Where?

Q. At the Press and Investigation Committee hearing; I am referring to Exhibit 42 in this case—no it's not 42—41.

The Court: You are asking him if at the trial he repudiated the allegations against Mr. Stewart?

Mr. Burton: That's right; the trial before the Press and Investigating Committee, Exhibit 41.

Q. Did you repudiate the slanderous you were alleged to have made against William Stewart?

20 The Court: Did he deny he made them?

Mr. Burton: Q. Did you deny having made any slanderous statements against William Stewart?

A. Yes, I don't even believe at this trial committee I was asked to deny. I believe Mr. William Stewart went on to allege I made the statements, but as nearly as I can remember I don't think I was even asked. I don't think that was even asked of me.

Q. You conducted your defence, however, and you gave evidence?

30 A. Every time I rose I made it very clear and I told the committee that what I am saying I am merely saying as a matter of courtesy, and endeavouring to restrain the alleged committee from trying; but it cannot be said I conducted a cross-examination. I may have made one or two remarks to show the impossibility of the alleged charge. At that I stopped.

Q. We have covered this so many times. You did cross-examine on that evidence?

A. Well, Mr. Burton, cross-examination is a great thing. I have been cross-examined now for two days. At that time I probably asked one or two questions.

40 Q. The trial lasted from 7:30 till midnight?

A. Yes, on the basis of the many things alleged if it had lasted for a week it would have been scarcely enough.

Q. In any event you did not tell the tribunal which tried you that you did not slander Mr. Stewart?

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A. The honest answer to that is as nearly as I remember I wasn't asked, and I don't recall telling them.

Q. Evidence was given you did slander Stewart?

A. Mr. Stewart came on that allegation.

Q. You gave a defence, never mind a long rignarole, you did put in a defence, did you not?

A. No, I cannot honestly say I put in a defence.

Q. Now, witness, I show you a newspaper article referred to in the first trial.

Mr. Johnson: I object to the newspaper article. 10

Mr. Burton: I am showing it to him. You may object. It was identified in the first trial.

Mr. Johnson: It was let in improperly.

Mr. Burton: You know what it is?

The Court: It was put in at the first trial?

Mr. Burton: Yes, my lord.

The Court: I cannot rule on it if I don't know what it is.

Mr. Burton: May I submit it to the witness?

Mr. Johnson: It's a report which purports to be a report on what took place at a meeting and what was said at the meeting 20 by the plaintiff amongst others. I submit that isn't evidence at all.

Mr. Burton: Q. Witness, before I try to put it in, I haven't tried to put it in yet, would you read that?

The Court: I don't think you can even submit it to him. You can ask him if he said something.

Mr. Burton: I thought I would refresh his mind.

The Court: You can't refresh his mind by that.

Mr. Burton: All right.

Q. Were you at a meeting in the Pine Hall in which you may have spoken in support of the candidature of James Dow 30 for president of the Union?

Mr. Johnson: What year was that?

Mr. Burton: See if he remembers. I don't know myself.

A. This refers . . .

The Court: Mr. Kuzych, just answer the question. Were you at the meeting in the Pine Hall?

A. Yes, I was at a meeting at the Pine Hall.

Mr. Burton: Q. You know what I am talking about, in 1943?

The Court: Q. You were at a meeting, the rest of the 40 question was did you speak in favour of the candidature of Mr. Dow?

A. That is correct.

Mr. Burton: Q. And did you say William Stewart had falsified the Union accounts by reading some out to the Union meeting and withholding the rest?

A. No, I did not say that. I pointed out at that meeting, which had to do with elections, a year prior to the ones which were the basis of this trial, and I read out the financial statement and I left it entirely to the people who were taking part in that election to decide upon the matter. What the reporter who apparently wrote that article wrote, I don't think I am
10 responsible for that.

Q. Did you see the article after the meeting?

A. I beg your pardon?

Q. Did you see the article after the meeting?

A. Yes, I believe I saw the article after the meeting.

Q. Did you write to the newspaper to repudiate it?

A. I don't recall writing, but I believe I did endeavour to see, to trace who the reporter was, but I have had no success, and at that the matter stopped.

Q. You could have written to the editor of the paper and
20 demanded a retraction, could you not?

A. I could have.

Q. You didn't do that?

A. It didn't occur to me at that time. This was a year prior to these matters; had nothing to do with the election of 1944; Mr. Dow was not a candidate in that, it was a year prior.

Q. Mr. Kuzych, is it not a fact that the allegation made here against William Stewart was one of the charges on which you were suspended from the Union?

A. No, that matter never came up before that alleged trial.

Q. Then there were other alleged slanderous statements?
30

A. That is right, correct, but that article never was.

Q. Did you make a review of the activities of the Boiler-makers' Union during the last year?

The Court: At that same meeting?

Mr. Burton: Q. At that same meeting?

A. I may have. I don't recall clearly but I may have.

Q. Did you lay a number of charges against Mr. Stewart?

The Court: What has this to do with the case? Mr. Stewart has his own remedy in the courts.

Mr. Burton: Q. This was given at the first investigation?
40

A. You are quite wrong, it was not.

Q. Those are my instructions.

A. That article was never brought up at that alleged trial at all.

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Q. If the article wasn't brought up, was the subject matter of the article brought up?

A. Not that I recall.

Q. Did you ever hear Mr. Stewart give a financial statement?

A. I beg your pardon?

Q. Did you ever hear Mr. Stewart give a financial statement to the Union?

A. No.

Mr. Johnson: In 1943? 10

Mr. Burton: At any time?

A. The only time I was at a Union meeting was in 1943, that was the only time I could possibly be there, early in '43.

Q. Did you not accuse Mr. Stewart of giving a falsified return?

A. No, I pointed out it was read to the meeting when Mr. Stewart was present at the meeting, that's all I said.

Q. That was not a regularly called meeting of the Union?

A. Which meeting?

Q. The meeting I am referring to at Pine Hall? 20

A. It was another election meeting, during the election time of the Boilermakers' and Iron Shipbuilders' Union, Local 1, in the year 1943-44.

Q. It was not a regularly called meeting of the Union?

A. That the Union executive called?

Q. Yes?

A. No, the Union executive did not call that meeting.

Q. Or the membership, it wasn't a regular meeting of the members of the executive?

A. The membership was there. 30

Q. It was by special invitation; the whole membership was not invited to attend?

A. I believe it was announced in the press.

Q. How many were there?

A. I don't recall at the moment how many were there. I remember that a number were there.

Q. Now, witness, I see the article suggests twenty. Would that be about the right number?

A. Possibly, if it says twenty it's probably right.

Q. At a membership meeting the usual number is between 40 four and five hundred?

A. Oh no, as nearly as I understand from what I saw, I saw meetings when I was able to attend before I was expelled, there was no more than about ten men in the morning meeting.

- Q. A general meeting?
 A. General meeting, morning meeting.
 Q. You have told me this was not a regularly called meeting?
 A. That is true.
 Q. Let's go from there. Was internal business discussed by you at that meeting—internal business of the Union?
 A. Do you mean by that, that account of the activities of the executive were internal business?
 10 Q. Yes?
 A. If you consider that internal business of the Union, what was done by the executive alone, it was discussed. I do not think it was internal business of the Union. I think it was internal business of the executive.
 Q. You make a distinction?
 A. Yes.
 Q. I suppose the executive belongs to the Union?
 A. I would rather say the membership belonged to the executive, as things were constituted.
 20 Q. A reporter was invited to this particular meeting, was he not?
 A. I don't know.
 Q. You just talked about the reporter yourself; you tried to find him afterwards? Was there a reporter there, or . . .
 A. There might have been, but I don't know.
 Q. Why would you try to find the reporter after if you don't know whether he was there or not?
 A. I saw the article in the paper and tried to find out who he was.
 30 Q. Now, there was another meeting on Seymour Street called, was there not, at which the question of picking candidates to oppose Stewart was discussed?
 A. A year later.
 Q. Did you call that meeting?
 A. I did not.
 Q. Were you present?
 A. I was present.
 Q. Was it a regularly called meeting of the Union?
 A. By that you mean was it called by the executive; is that
 40 what you mean?
 Q. First, was it called by the executive?
 A. No, it was not.
 Q. Was it a regularly constituted meeting as far as the by-

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laws were concerned, as far as the alleged by-laws were concerned?

A. I would say it was in this sense, if the executive were there things would have gone on the same as any other.

Q. Was Stewart invited to that meeting?

A. I don't know.

Q. Was he there?

A. He was not there.

Q. The purpose of the meeting was to have a political issue bared, was it not? 10

Mr. Johnson: My lord, this witness says he didn't call the meeting. How would he know the purpose of the meeting?

Mr. Burton: Q. There was evidence in chief of political forces. The meeting was called to unite the political forces and to pick out a candidate to beat Mr. Stewart. That was your evidence?

Mr. Johnson: Maybe that is what transpired. What transpired is all right, not the purpose.

Mr. Burton: Q. What transpired?

The Court: He says he didn't call it. 20

Mr. Burton: Q. You were present at it and you spoke?

A. That is correct.

Q. Did you intend to have your name placed in nomination against Mr. Stewart?

A. The purpose of the meeting was to weigh the possible qualifications of the two candidates, Mr. Henderson and myself, and each candidate was requested to deliver a brief address, by means of which I take it the rest present were able to judge the qualities of their candidates.

Q. I didn't ask you for that. I asked you a straight question. Was your name put forward in nomination to be a candidate to oppose Stewart? Now that's a simple question, answer yes or no. 30

A. No.

Q. Did anybody suggest your name be put forward?

A. Yes, there were members that suggested it.

Q. Did you decline?

A. Decline from what?

Q. From having your name put forward in nomination?

A. I couldn't decline according to the by-laws, but I could decline from asking members to vote; but I couldn't decline from running as president. 40

Q. You were named for president of . . . ?

A. For president of the Boilermakers' Union No. 1.

- Q. You subsequently withdrew your name?
 A. I could not withdraw.
 Q. Did your name go on the ballot at that time?
 A. That is correct.
 Q. The ballot I referred to yesterday?
 A. As nearly as I am able to remember.
 Q. Why was the meeting called for the purpose of uniting the political forces to oppose Mr. Stewart if you couldn't withdraw anyway?
 10 A. There were three candidates in the field: myself, Mr. Henderson and Mr. Stewart. I realized long ago, and Mr. Henderson afterwards realized, that if it went to the ballots in that order we would only serve to split the vote, and Mr. William Stewart would be elected by a plurality although not a majority.
 To unify the ballot so it will be a straight two-way ballot, one member had to withdraw, but it was pointed out at the meeting you could not withdraw because the alleged by-laws passed at a certain date made withdrawal unlawful, or unconstitutional, or whatever you wish to call it. I, therefore, thought that the
 20 only thing that I could see that would still be a proper method would be for me to continue running but to ask the members not to vote for me but to vote for Mr. Henderson. That was adopted.
 The Court: How do you suggest this is relevant?
 Mr. Burton: I didn't ask for this speech.
 The Court: I mean your questions?
 Mr. Burton: He gave evidence in chief about political controversies. This is one of the reasons he was subsequently expelled. Under another section of the by-laws it was provided
 30 that no internal business can be discussed . . .
 The Court: You say this is internal business?
 Mr. Burton: I would say it is. Whenever I ask this witness a question I get a speech.
 The Court: All right.
 Mr. Burton: Q. Did you attend a meeting, a public meeting, when the matter of a strike at the Ford plant was in issue?
 A. That is correct.
 Q. Were you ejected from that meeting?
 A. That is correct.
 40 Q. Who was the chairman?
 A. As nearly as I remember, Mr. Danny O'Brien.
 Q. That had nothing to do with the Boilermakers' at all, did it?
 A. No.

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Q. How many attempts to obtain work did you make after you were expelled a second time?

A. I think I can safely say about thirty or forty attempts.

Q. Did they emanate from the Selective Service Bureau?

A. Yes, I had a Selective Service job permit for every one.

Q. During what period of time would that be?

A. Immediately after the second expulsion and prior to the case which appeared ultimately before Mr. Justice Macfarlane.

Q. Have you since then made attempts?

10

A. No.

Mr. Locke: That's all, thank you.

(Witness aside)

JOHN McPHEATOR, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

No. 6

John McPheator

Examination

DIRECT EXAMINATION BY MR. LOCKE:

Q. Mr. McPheator, what is your occupation?

A. At present I am employed as the assistant manager of the Hastings East Canadian Legion. 20

Q. Hastings East branch of the Canadian Legion?

A. No. 185. I also hold the position of treasurer-manager of the Hastings East Veterans' Credit Union.

Q. You were once a member of the Boilermakers' Union, Mr. McPheator?

A. That is right, yes.

Q. You joined the Boilermakers' Union when?

A. I joined the Boilermakers' Union in October, 1942.

Q. You remained a member of the Boilermakers' Union till when? 30

A. August, 1945.

Q. During that period, Mr. McPheator, you held a position called shop steward, is that correct?

A. That is correct.

Q. Tell his lordship what a shop steward is.

A. A shop steward was elected by the men in the yard to more or less familiarize himself with the policy of the company you were employed under.

The Court: Q. Just a minute, to familiarize themselves with what? 40

A. The policies of the company. I am referring to wage

schedules for different tradesmen in that yard, and to look in general after all the members.

Mr. Locke: Q. You were a shop steward for a particular group of men?

A. That is right.

Q. Who were they?

A. I was—the welders in Gantry No. 1.

Q. In the North Van. Shipyard?

A. North Van. Ship Repairs.

10 Q. You know the plaintiff in this action?

A. Yes, I know Mr. Kuzych.

Q. When did you meet him approximately?

A. I believe I met him in either November or December of that same year.

The Court: 1942?

A. 1942.

Mr. Locke: Q. Now when you came to the North Vancouver Shipyards, you joined the Boilermakers' Union?

A. That is right.

20 Q. And were elected shop steward when, how long after you had been there?

A. It was a few months. I would say early—in the early part of 1943.

Q. Is a shop steward a union officer?

A. Well, he is considered a grievance man in the yard. If something should arise in the yard regarding any employee, in my case it would apply in particular to the welders, they would see their shop steward. When I was told about it as a shop steward I would go and consult the management about the grievance.

30 Q. In other words, you took a very prominent part in the affairs?

A. Yes, I endeavoured to be very conscientious while I was in there.

Q. Now, can you tell his lordship about internal friction or otherwise in the Union?

A. I believe I wasn't in the yard one month till I could see very, very obviously there was factions in that yard.

Mr. Burton: My lord, I am objecting to this evidence.

The Court: Could it not have a bearing on the question?

40 Mr. Burton: It is going to be hearsay.

Mr. Locke: Oh no.

The Court: No, he said he was there.

Mr. Burton: In the yard.

The Court: Yes.

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Mr. Burton: He can only say what people have told him. There can't be factions without conversation. I submit this, he can only give it in very general terms whether there was any difficulty.

The Court: That is all he has said so far.

Mr. Locke: Q. There were factions?

A. Yes.

Q. What did you observe that led you to that opinion or view; what did you see?

A. My observation was this, in the shop stewards' meetings there were opinions expressed that I, as an individual, took exception to. In some instances I have been told to shut up, that wasn't the way this Union was going to be run.

Mr. Burton: We are getting beyond it now. That is definitely hearsay. What happened to him has nothing to do with this.

The Court: What do you say, Mr. Locke?

Mr. Locke: Well, my lord, I submit the witness is certainly entitled to give what he saw and what he heard on those occasions. I have some authority on that. I would like to refer your lordship to page 84 of Phipson 6th Edition.

20

The Court: I think you can proceed along that line.

Mr. Locke: Q. You were talking about shop stewards' meetings. How many shop stewards are there?

A. In the welders there was in the neighbourhood of 24, no, pardon, that is we were allowed to meet once a month by the management. Actually there were shop stewards from the various departments, but usually there were about 24 from the welders, fitters, riveters, etc.

Q. Did you all come from the North Vancouver Shipyards?

A. That's right, from North Vancouver Ship Repair.

30

Q. Can you tell his lordship anything else about any group or faction in this Union?

A. Yes, it was very obvious to me that particularly the head shop stewards belonged to the L.P.P. That they told me personally myself, some of them belonged to the L.P.P.

Q. Do you know Mr. William White?

A. I do.

Q. And Mr. W. Schwartz?

A. I do.

Q. Mr. Nuttall?

A. I do.

Q. Mr. W. Gee?

A. I do.

Q. Mr. Caron?

A. I do.

- 40

Q. Mr. Jenkins?

A. I do.

Q. Members of the executives and defendants in this action, my lord. Have you any opportunity of ascertaining from any of these gentlemen as to whether they took one side or the other in this . . .

Mr. Burton: Now, my lord, we are getting on dangerous ground.

The Court: I think so. If one of these defendants said he belonged to the L.P.P. I think that would be admissible, although I do not know that I would hold that—I think perhaps it would be admissible.

Mr. Burton: I submit it's not relevant to the issue. Surely to prove they belong to the party would be no more relevant than their religious denomination.

The Court: How is it relevant?

Mr. Locke: I submit that these gentlemen belong to a group of people who as we say in our pleadings maliciously expelled the plaintiff. It is incidental that they did or did not belong to any political party. They could belong to any group, but if they acted as a group I submit I have to show there was a common denominator. Surely I am entitled to show they belonged to a group.

The Court: Would you not have to show that as a group, as members of that political party, they had a malicious purpose; you are not suggesting that are you?

Mr. Locke: I am suggesting this, my lord, may I refer to my pleadings, paragraph 53? "The defendant Union and various of its members, and in particular mentioned in the style of cause herein, wrongfully and maliciously and with prejudice to the plaintiff carried on a campaign against the plaintiff to create ill will and ill feeling by the members of the defendant Union towards the plaintiff and succeeded in so doing," etc. Further on in paragraph 56, "the said defendant Union and its various members thereof also published or caused to be published articles which further were slanderous to the plaintiff and created further ill will and prejudice, which said publications are hereinafter referred to," and particulars are given. In paragraph 57, "By wrongfully expelling the plaintiff from certain of the meetings of the defendant Union the plaintiff was prohibited from speaking to certain motions purporting to adopt a constitution of the defendant Union, and was prohibited from voting on the said resolutions which was his right as a member in good standing of the defendant Union, all of which acted and tended to the prejudice of the plaintiff." And in paragraph 58, "At the said meetings the members of the

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defendant Union, and in particular the persons mentioned in the proceedings, dealt with the plaintiff in a manner and under such circumstances as to humiliate the plaintiff and embarrass him," etc. There is the alleged conspiracy. Your lordship is familiar with the law of conspiracy. We cannot get into the minds of the conspirators. I have to show the conspiracy from external evidence, and the only way to do it is to show your lordship that a certain set of facts existed and the alleged conspirators had something in common. The way to do that without hearsay is to show that some of the men belonged to a certain group. 10

The Court: You are not suggesting there was a conspiracy against the plaintiff because of his political affiliations?

Mr. Locke: I don't venture to suggest any reason for it. I think that will have to be shown from the evidence—the reason for it. I don't make any such statement.

The Court: The plaintiff says he belongs to no political party.

Mr. Locke: There is one thing Mr. Burton cross-examined on. The plaintiff said he was at one time a member of the Young Communist League. Mr. Burton cross-examined him on that. 20
Later it turned out he resigned.

The Court: Mr. Burton objected to the L.P.P. being mentioned.

Mr. Burton: This is the first time at this trial such evidence has even been considered. There is no suggestion in the pleadings that politics had anything to do with it. There is no mention of the L.P.P. The reference I made to his political affiliations I brought up on the question of credibility because the man had said he resigned from the political party, and I proved he was expelled. That was the sole concern. The L.P.P. is a 30
recognized political party. I submit there is no foundation which can be laid for this type of evidence.

The Court: I would suggest a recess of five minutes.

(COURT RECESSED 11:45 TO 11:55.)

The Court: Mr. Locke, you have not alleged in your pleadings that the group belonging to the Labour-Progressive Party as such conspired against the plaintiff. If you were to ask the witness if the defendants belonged to the Liberal Party or the Conservative Party I would have to rule that out as irrelevant. The L.P.P. is a political party not declared to be illegal. I think 40
the same ruling would apply.

Mr. Locke: I may say I am not quite clear now as to what your lordship's ruling is. Am I to take it that if this man had

a conversation with someone who said he was a member of a certain political party that that is admissible?

The Court: That would not be admissible.

Mr. Locke: Q. You joined the Union in October, 1942?

A. That is right.

Q. Shortly after that time the Union had some trouble with the C.C.L. Is that correct?

A. That is right.

Q. Tell his lordship what that was.

10 Mr. Burton: First of all, does he know? Has he this knowledge? I don't want . . .

The Court: Would you repeat the question.

Mr. Locke: The question was, could he tell you anything about the trouble that occurred with the Canadian Congress of Labour shortly after he joined the Union.

The Court: That is all right.

Mr. Locke: Q. Of your own knowledge?

A. To the best of my ability, I understand there was some trouble between the executive of the Union and executive of the
20 C.C. of L., the Canadian Congress of Labour. Why it started, it may be hearsay but there was trouble between the executive of the Boilermakers' Union and the executive of the C.C. of L.

Q. Who was the president of the Boilermakers' Union when you joined?

A. William Stewart, at least as far as I know.

Q. Do you remember when Mr. Stewart was elected?

A. I believe—I was at a meeting at the park up here, I forget the name, up at 6th Avenue, where they play ball.

Q. Athletic Park?

30 A. I believe Mr. Stewart was elected there by acclamation.

Q. Can you remember the date of that?

A. No, I can't say I remember the date.

Q. Do you know who the secretary-treasurer of the Union was when you joined?

A. The secretary-treasurer was then—no, I couldn't say what his name was; no, not when I joined. I know Mr. Caron became secretary later.

Q. You mentioned you knew the plaintiff. When did you first have occasion to take notice of him?

40 A. Well, it was when he was charged with speaking in favour of—or at this West Coast Arbitration when he spoke against the closed shop.

Q. West Coast Arbitration?

A. West Coast Arbitration.

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Q. Do you remember what occurred, were you at the meeting, the Union meeting?

A. I was at all the Union meetings from the time I got my card and was admitted into the Boilermakers' Union. I made it a point particularly after I became a shop steward to attend all meetings.

Q. How often were these meetings held?

A. They were held the first and third Mondays of the month.

Q. First and third Mondays of the month?

A. Of the month.

10

Q. You attended all the meetings?

A. I attended all meetings, yes.

Q. Now where—you remember you were at a meeting when the matter of this West Coast Arbitration came up?

A. Yes I was.

Q. What subsequently happened to the plaintiff?

A. He was charged with testifying against the closed shop. I believe it was Mr. Caron made the charges.

Q. And as a result, what happened in the Union meeting when those charges were read?

20

A. Those charges were read at the meeting.

Q. What happened after that?

A. I believe Mr. Kuzych was expelled from the Union.

Q. Do you know if he came back into the Union?

A. Yes, he came back in the summer some time of 19—I believe it was 1943.

Q. Did he work during the time of his expulsion?

A. Not to my knowledge.

Q. You never saw him?

A. No, I couldn't say.

30

Q. There has been some testimony given here, witness, do you recall the year in which the charges against—the first charges against Mr. Kuzych were laid by Mr. Delaney and Mr. Caron?

A. Well, it's so long ago . . .

Q. You joined in 1942?

A. I did.

Q. Do you remember the date of the West Coast Arbitration here?

A. No, truthfully I couldn't tell you what date. I remember it coming up at the meeting.

40

Q. Was it any considerable time from the time you joined the Union, the time of the West Coast Arbitration?

A. I would say it was a few months from the time.

Q. That would have been in 1943?
 A. Yes.
 Q. After the hearing, you said the charges were drawn up?
 A. Yes.
 Q. And the plaintiff then recommenced to work in what year—just think?
 A. I didn't get you.
 Q. Just think back and see if you can recall with certainty the year in which the plaintiff . . .
 10 A. I believe it was the summer of 1944. I am not—I think that was the year, the date is something I can't . . .
 The Court: Q. You said 1943 before. You think it was 1944?
 A. I may have made a mistake, my lord. I believe it was '44 when I jog my memory now—the summer of '44.
 Q. During this time, the year 1944, evidence has been given there were certain by-laws to be considered by the Union. Were you in court when that evidence was given?
 A. By-laws?
 20 Q. Yes?
 A. Yes, I remember there was by-laws to be presented; that is draft by-laws to be amended as the membership desired.
 Mr. Locke: Exhibits 8, 9, 10—these are the draft copy of the by-laws.
 Q. Now, witness, I show you what has been marked in this trial—Exhibits 8, 9, 10. I would like you to tell me what, if anything, you know about them.
 A. Do I have to read all these?
 Q. No, what do you know about them; what are they?
 30 A. The draft by-laws.
 Q. Have you seen them or documents like them before?
 A. I have seen documents like this in the hall, yes.
 Q. Now how many copies of—do you know of your own knowledge how many copies of those were distributed, or if any were distributed?
 A. Well, there was a gentleman at the door. He was distributing them and some of the chairs in the hall. Every alternate chair in the hall there might be a draft copy of these by-laws in the chair.
 40 Q. I see.
 A. I know some of the members did not get the draft by-laws. There weren't enough around to get them.
 Q. Do you know whether the by-laws, the documents, were similar or otherwise to those?
 A. They were similar to these, yes.

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Q. Do you know what was the nature of these by-laws, did they purport to be by-laws passed under any particular constitution?

Mr. Burton: Surely, my lord, they speak for themselves.

Mr. Locke: Q. Did you ever see the document marked Exhibit 14 on this trial? Just tell me.

A. Yes, I have seen them.

Q. Were the draft by-laws—were the documents you saw drafts of this, do you know?

A. The documents . . . 10

Q. That I showed you; were they drafts of this, do you know?

A. I can't remember that.

Q. What do you remember about the passing of these by-laws?

A. Well, I remember Mr. King, I believe, was chairman.

The Court: Q. Mr. King?

A. Yes.

Mr. Locke: Q. He was what?

A. Appointed the chairman of the by-law committee.

Q. Chairman of the by-law committee, yes? 20

A. And the chairman announced we would take these up, as many as we could each meeting, and on one occasion the membership of that particular meeting thought it was going to be a lengthy procedure, and the chairman suggested we call a special meeting on the Sunday to go over these draft by-laws.

The Court: Q. You mean a special meeting of the whole membership?

A. Yes, my lord.

Mr. Locke: Q. Was anything done as a consequence of that suggestion? 30

A. I attended one Sunday, yes, and there was a few members arrived there.

Q. That was a Sunday general meeting of the Union?

A. Of the Union, yes.

Q. Then what happened?

A. There wasn't very much accomplished, and I remember one of the members getting up and suggesting we had better put Monday's date on these by-laws or it might not be legal procedure, the meeting being held on Sunday.

Q. You have mentioned there was a Sunday meeting. Was there any other meeting? 40

A. There was a suggestion we come back the following Sunday and I went, but there was nobody else turned up. Because I remember my wife said "You are back early."

Mr. Burton: Surely he can't give that evidence.

The Court: That is hearsay.

Mr. Locke: Q. There were two Sunday meetings?

A. There was actually only the one Sunday meeting.

Q. I would like to show you Exhibit 14.

The Court: Q. You were the only man at that particular meeting?

A. I didn't see anybody else there. I thought there was no purpose of staying around the hall.

10 Mr. Locke: Q. I show you Exhibit 14. You recognize those as the alleged by-laws of Boilermakers' Union No. 1?

A. Yes.

Q. You have seen them before?

A. I have seen that before.

Q. Are you familiar with the contents?

A. I studied the contents.

Q. I would like you to refer to Article 7, Sub-section 7. I would like you to read it, please.

20 Mr. Locke: My lord, I don't know whether you wish me to read this?

Mr. Burton: What is the number?

Mr. Locke: Article 7, Sub-section 7.

30 "(7) Any meeting of the Union may, by majority vote, rule on the admittance or the exclusion to, or from such meetings of any person or persons, including members in good standing, and may by such vote expel anyone, or more persons, including members in good standing, from such meeting; but such admittance, exclusion or expulsion shall apply only to the particular meeting in question and shall not affect the status of the person or number admitted, excluded or expelled at any future meeting."

Q. You have read that?

A. Yes.

Q. Were you ever at any meeting at which that was passed?

A. I never was at any meeting that was passed.

Q. You have given evidence that subsequently the plaintiff in this action went back to work. He went back to work subsequent to his reinstatement?

A. That's right.

40 Q. Can you tell his lordship anything you observed about the manner in which he was treated or otherwise by members of the Union, or any incident you saw?

A. Yes, as a shop steward I had permission from the management to check the "dirty money" as they call it, welders welding in tank where it was poor air; I had an hour, sometimes

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an hour and a half for to review their work and bring back a report to the supervisor, whether they were entitled to two hours' dirty money. While I was doing this, Mr. Kuzych had come to me on legitimate business, me being a shop steward, and asked if I would come down . . .

Mr. Burton: My lord, I object. How is this relevant, what happened to the dirty money, or . . .

Mr. Locke: I think you will see.

Mr. Burton: . . . giving evidence of what the plaintiff said?

Mr. Locke: Q. Don't say what the plaintiff said unless 10
it was in the presence of any of the gentlemen named as defendants in this action. He came to you about some business?

A. That's right.

Q. After he had done that, say what you did?

A. I went and examined his work.

Q. Did anything occur subsequently?

A. On my way back to make a report to the supervisor I was advised by a burner . . .

Q. Do you know his name?

A. No, I don't know his name, and he told me . . . 20

Mr. Burton: No, I am objecting.

Mr. Locke: Q. If you don't know his name, we will have to leave that, Mr. McPheator. Did you have any conversation in the yard with Mr. William White?

A. I did.

Q. Tell his lordship what was said to you.

A. When the election was coming up . . .

Q. May I direct your attention, tell us first, in order to keep on the subject I would like to direct your attention to any conversation you had with Mr. White concerning Mr. Kuzych? 30

A. Well, Mr. White told me personally that I'd better lay off talking to Mr. Kuzych or what they contemplated doing to him would also happen to me.

Q. Did you have any conversation—that's Mr. W. L. White?

A. W. L. White, I am looking at it now.

Q. Did you ever have any conversation with Mr. Dave Clark?

A. Yes, I did.

Q. Mr. Dave Clark is named as representing the Press Investigating Committee. Did you have any conversation with Mr. Clark regarding Mr. Kuzych? 40

A. Yes.

Q. What did he say?

A. He told me that Mr. Kuzych—in his own words, this

is Mr. Clark I am referring to, in his own words "He would be crucified by the trial committee."

Q. Now, do you remember—you remember the incident you have told of Mr. Clark. Do you know which trial committee he referred to?

A. The trial committee on the second charge.

Mr. Burton: Just give the conversation. It's just what he said. He can't say what it referred to. Just give the words.

The Court: Q. Was there more than one trial committee?

10 A. Mr. Kuzych was coming up for trial again.

Q. The second time?

A. The second time, yes.

Mr. Locke: Q. Now, you have given evidence about certain by-laws and the plaintiff gave evidence in which he said he was not allowed, admitted to certain meetings?

A. That is right.

Q. Do you recall any incident in which the plaintiff was not admitted to meetings?

20 A. Yes, I recall one incident where—that is he was allowed in the hall but as soon as the chairman took the gavel to open the meeting and the meeting was open, there were some members in the hall got up and moved and seconded that he be not allowed to stay in this meeting. The vote was taken right away. They had people all over the hall prodding other members so they would yell "Aye" so he would be extricated.

Q. A few minutes ago you mentioned Dave Clark. Do you recall any matter in which he figured?

A. Yes, I do.

Mr. Burton: Q. With the plaintiff?

30 A. Yes, I do.

Mr. Locke: Tell the Court.

A. I was at one meeting and I saw Reg Bullock—when I got to the top of the stairs I could see some fellows I had known for some time. I know their tactics. Strong-arm men the term is, Mr. Clark and two others. As soon as Mr. Kuzych came in, Mr. Clark said in my hearing to Reg Bullock: "There he comes, but we will make sure that he won't walk out because we will throw him out."

40 Q. Now, do you remember whether you were at the meeting at which the second charges were read out against Mr. Kuzych?

A. I was.

Q. March 18th, 1945. Who was the chairman at the meeting?

A. The chairman was Mr. John Nuttall.

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Q. He occupied a position in the Union at that time?

A. Yes.

Mr. Locke: He is named as a defendant, my lord.

Q. What do you recall at that meeting; what was said? Try to get it in chronological order.

A. Mr. Nuttall passed some very sarcastic remarks concerning Mr. Kuzych and was trying for to persuade the members to extricate him from the meeting. I protested as an individual paid-up member in that Union that he shouldn't try to persuade the members and they should do their thinking in their own way. 10

Q. You mentioned Mr. Nuttall said this. At what meeting, before or after the report of the trial committee?

A. That was before the trial committee brought in a report.

Q. What happened after the report of the trial committee; they reported and then certain statements were allowed to be made?

A. That's right.

Q. How were the statements made and how did the meeting conduct itself? 20

A. Well, Mr. Stewart gave some explanation and also Mr. Kuzych gave an explanation, but while Mr. Kuzych was giving an explanation there was lots of jeers and cat-calling all over the hall.

Q. Now, I would like to show you Exhibit 5 in this action. That is a document covering the compromise between the CCL and the Boilermakers' Union. Have you ever seen it before, and if you have, have you seen its terms?

A. I can't say I have seen a document like that.

The Court: Q. What is your answer? 30

A. I can't say I have seen that document.

Mr. Locke: Q. Do you know its terms?

Mr. Burton: He said "I haven't seen a document like that."

Mr. Locke: Q. Obviously you don't know its terms?

A. No.

Q. Can you say if any document like this was ever presented at any Union meeting when you were present for the approval or otherwise of that meeting?

A. Not to my knowledge.

The Court: What is the date of it? 40

Mr. Locke: Q. The 3rd of December, 1943. I would like to have Exhibit 6. I show you a document marked Exhibit 6 in

this action. Have you ever seen it before and do you know its terms?

A. No, sir.

Q. Was it ever presented to any Union meeting at which you were present?

A. Not in my presence.

Q. To be ratified or revised by the meeting?

A. Not in my presence.

10 Q. Now I neglected—you have given evidence previously about some occasion in which Mr. Kuzych was ejected from a meeting. Do you recall a meeting of February 19th, 1945?

The Court: Is that the meeting at which the report of the trial committee was made?

Mr. Locke: Q. The meeting at which the charges were preferred?

A. Yes.

Q. You recall that meeting?

A. I do.

20 Q. Tell the Court of any incident that occurred at that meeting.

A. Well, that was the evening that Mr. Kuzych was man-handled.

Q. Yes, what happened then?

Mr. Burton: I am sorry, what did he say?

Mr. Locke: Q. Did you say man-handled?

A. Yes.

Q. Who took part in it?

A. Mr. William White and a fellow by the name of Mc-Sween.

30 Q. What happened?

A. They practically threw him down the stairs.

Mr. Burton: What was the date?

Mr. Locke: February 19th, 1945.

Q. Do you know the date?

A. That was the meeting of February, 1945.

Q. How many meetings were there in February, do you know?

A. The usual two meetings per month unless we were notified otherwise.

40 Q. Were there any other special meetings in that month of February that you recall.

A. I can't recall.

Q. Now, reference has been made to an election which oc-

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curred and reference has also been made to a meeting on Seymour Street. Do you know anything about either of those?

A. Yes.

Q. What was the election? Evidence has been given that it concerned the election of Mr. W. Stewart and others. Do you recall that?

A. Yes.

Q. Were there any other elections pending at that time, other than this election?

A. I just don't know. 10

Q. First of all, was Mr. White standing for president?

A. Mr. Stewart.

Q. Who opposed him?

A. Mr. Henderson.

Q. Mr. Henderson?

A. And Mr. Kuzych was standing for president.

Q. Those are the only elections that you remember?

A. That's right.

Q. Were there any other elections pending?

A. Yes, the election of the secretary-treasurer and the ex- 20
ecutive.

Q. At the same time?

A. At the same time.

Q. Were you a candidate?

A. Yes.

Q. What were you a candidate for?

A. For secretary-treasurership.

Q. Did you have an opponent?

A. I did.

Q. What was his name? 30

A. Mr. Caron.

Q. These were all the elections for the Boilermakers' Union?

A. That is right.

Q. Were there any other elections pending inside or outside the Boilermakers' Union at that time?

Mr. Burton: Surely that has nothing to do with this?

Mr. Locke: Q. The elections were in due course held. What happened to you?

A. I was defeated by Mr. Caron.

Q. What vote was announced? 40

A. I think there was about a hundred votes or something like that difference between his total and mine.

Q. Out of a total vote cast . . .

A. Around 1400 and something, around the 1400 mark.

Q. Fourteen hundred total?

A. No, he had 1400, I believe, or something over 1400. I was pretty close to . . .

Q. Now, did you ever see Mr. William White in regard to these elections; did you have any conversation with him regarding the elections?

A. Mr. William White, yes.

Q. Where was he; what did he say?

A. Well, I was welding a butt on a ship deck. Mr. William
10 White came to me—this was a day or two prior to the closing date, you were nominated and then there was a date set you could withdraw if you so desired.

Mr. Burton: I am objecting to this. The question whether Mr. White was going to be elected . . .

Mr. Locke: You brought it up.

The Court: You are going to bring evidence as to what Mr. White said to the witness?

Mr. Locke: Yes.

The Court: He is one of the defendants.

20 Mr. Burton: But it must be material to the issue. He has indicated the nature of the evidence as to the presidency. He hasn't identified it with the plaintiff. Whether Mr. White was going to be elected surely has anything . . .

The Court: It is difficult to say whether it has.

Mr. Locke: The nature of the evidence is we simply say that certain facts relevant to this election are essential to prove to your lordship there was a faction which conspired against this man. Mr. Kuzych and Mr. McPheator were present at the Seymour Street meeting. This may or may not be related to that.

30 The Court: All right, Mr. Locke.

Mr. Locke: Q. Yes, Mr. McPheator?

A. Mr. White came and asked me if I would be kind enough to withdraw my name and not run against Mr. Caron. I told him I would not, the men had asked me to run, I was going to run. He said if I withdrew my name they would be quite willing to take Mr. Schwartz's name out and put my name in as first vice-president, but I refused to withdraw my name for secretary-treasurer of the Union.

40 Q. Were you ever—were you ever in attendance or nearby where the trial of Kuzych was conducted, by the Press and Investigating Committee?

A. No.

Q. Do you recall Mr. Kuzych giving evidence?

Mr. Burton: Was he here? He shouldn't have been. We didn't ask for exclusion. I think my learned friend should ex-

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haust his memory before he does that. It is in the nature of cross-examination.

The Court: I hardly think it is a correct way of putting it.

Mr. Locke: Perhaps I can get it another way.

Q. You will recall that Mr. Kuzych was tried by the Press and Investigating Committee?

A. I do.

Q. Did you have anything to do with the trial, or attempt to have anything to do with the trial?

A. Yes, I and another member went and asked permission 10 to sit in and act as observers to what would take place, and we were refused.

Q. Who refused you admission?

A. Mr. Ed Simpson. I asked Mr. Caron . . .

Mr. Burton: Mr. Simpson? I don't think he is a defendant.

A. I asked permission . . .

Mr. Burton: No, witness.

Mr. Locke: Just a minute, Mr. McPheator. Don't say anything Mr. Simpson said.

A. I see.

20

Q. Did you see anybody else?

A. Mr. Caron.

Q. Did you have any conversation with Mr. Caron?

A. We had.

Mr. Burton: First, is he a member of the Press and Investigating Committee?

Mr. Locke: My lord, he is secretary of the Union? Just because he is not . . .

The Court: He is named here.

Mr. Burton: Not as a member of the Press and Investigating 30 Committee. The names for that are raised in . . .

The Court: This action is against the Union and against the Committee.

Mr. Burton: Yes, my lord, the Committee named. When the pleadings were drawn the Union was sued itself and then the Press and Investigating Committee also with the names of the members. Mr. Caron is not a member of that Committee. He could have gone to anybody and asked for permission who had no authority. Unless he went to the Committee in charge it should not be given in evidence. 40

The Court: I will admit it.

Mr. Locke: Q. You saw Mr. Caron, secretary-treasurer of the Union. What did he say?

A. He said that this was a hearing in camera. There was

nobody allowed in except legal advisers or some member that was going to act in that capacity.

Q. What happened after that; you didn't get in?

A. I didn't get in, no.

Q. There has been filed as an exhibit in this action, the report of the Press and Investigating Committee, Exhibit No. 35. This is the document I show you, the report of the Press and Investigating Committee, and certain signatures appear on the last page. Can you see those signatures? I am going to ask you
10 whose name is the first?

A. D. D. Clark.

Q. You know him?

A. I know Mr. Clark.

Q. Is he the same gentleman to whom you previously referred?

A. The same gentleman.

Q. The next man?

A. S. E. Bett, or is it Belt?

Mr. Burton: The names are in the style of cause.

20 Mr. Locke: They appear on the style of cause.

Q. G. Farrington?

A. I know him.

Q. Mr. Fred Duncan?

A. I can't say I know him.

Q. Mr. K. Garrison?

A. I don't know him.

Q. Mr. Orville Braaten?

A. I'm not sure about him. I might know him, I might not,
I am not sure.

30 Q. Sidney Belt?

A. I don't know him.

Q. Mr. David Pearson?

A. No, I don't know him.

Q. Do you know how many, if any, of the members of this Committee, were shop stewards?

A. I know Mr. Farrington and Mr. Dave Clark were both shop stewards.

Q. You have given in evidence previously that you attended all the Union meetings during your membership?

40 A. That is right.

Q. Were the meetings evenings or mornings both?

A. It was mostly evenings. I have attended mornings.

Q. Now, you will recall that reference was made to a meeting on Seymour Street?

A. Yes.

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Q. What was your part in that, or what transpired at that meeting? How did it come to be called?

A. That meeting was called by Mr. Frank Mole to get in touch with the other members who also wanted to have a real slate of honest men governing this Union.

Q. Subsequent to that meeting—that meeting was called and took place?

A. That's right.

Q. Were you there?

A. I was there. 10

Q. What happened—first of all, did the plaintiff appear, Kuzych?

A. He did, and there was a discussion there as to the advisability of letting him in.

Q. There was a discussion?

A. There was a discussion, yes.

Q. After that, what happened?

A. It was decided to let him in.

Q. He came in and took part in the discussion?

A. That is right. 20

Mr. Burton: What meeting is that?

Mr. Locke: Seymour Street.

Q. Now then, the election for president; Mr. Stewart was running for president and you said Mr. Henderson was running?

A. That is right.

Q. What were the results of the election?

A. Mr. Henderson won.

Q. That was in the month of December, and how long was Mr. Henderson president of the Union?

A. I think he wasn't in there no more than three months. 30

Q. What happened?

A. Mr. Henderson resigned.

The Court: Q. Three months from December, 1945?

A. December, 1944, till about February, my lord, I believe, 1945. The election was held at the end of the year. They were held each year at the end of the year.

The Court: I see.

Mr. Locke: Q. Were you at any meeting at which he resigned, and can you tell his lordship . . .

Mr. Burton: Now, my lord, we are not going into the whole story of the Boilermakers' Union. What has that got to do . . . 40

Mr. Locke: I will leave that, my lord. That is all.

CROSS-EXAMINATION BY MR. BURTON:

- Q. Witness, you talk about factions, and I presumed you belonged to one faction, did you?
 A. No sir, I belonged to no faction.
 Q. No faction?
 A. No.
 Q. Did you support Mr. Henderson in his election?
 A. Well, just what do you mean by support?
 Q. Did you vote for him first?
 10 A. That's my own business.
 Q. I am asking you.
 Mr. Locke: I object.
 Mr. Burton: Q. Did you support him?
 A. I supported Mr. Henderson?
 Mr. Burton: He talks about factions and refuses to tell me . . .
 The Court: You are not entitled to ask him how he voted.
 Mr. Burton: Q. Now, witness, did you actively support him?
 20 A. Actively support him?
 Q. Yes?
 A. Yes, I was proud to do it.
 Q. You and he were sort of identified together in the election?
 A. No.
 Q. Can you explain why he was elected and you weren't?
 A. That was the mind of the members.
 Q. They vote for the men, don't they?
 A. Yes.
 30 Q. It's not a question of factions at all, the way the men vote, they vote for the men—and he was a better man than you?
 A. Maybe so.
 Q. I am trying to show there is no faction. They vote for the men?
 A. I have no control over the men casting votes.
 Q. They didn't vote according to the faction. Do you honestly say men vote according to factions?
 A. Well, there was a lot of things went on that wasn't done in honourable fashion.
 40 Q. On both sides, perhaps?
 A. No, one side in particular.
 Q. Would you say this would be a correct figure: Mr. Henderson received 1641 votes and Mr. Stewart 1537?
 A. I can't recall exactly the figure. It was a close ballot the same as Mr. Caron's and mine.

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- Q. A hundred difference between you and Mr. Caron; 1047
 for you?
- A. I believe so.
- Q. Mr. Caron 1600; Mr. McPheator 1496?
- A. Something like that.
- Q. If there were factions, they were of fairly equal strength.
- A. Well, I have no power over the way the members . . .
- Q. You have given the evidence there were factions and
 I want to know were the factions about equally divided; did one
 control the other? 10
- A. No, one didn't control the other.
- Q. And unless it was internal friction, one side wanting
 one thing . . .
- A. One thing I do know, if my lord will let me make a state-
 ment, that all the ballots were not counted.
- Q. Can you prove that?
- A. I can testify.
- Q. Were you a scrutineer?
- A. I was a candidate.
- Q. Did you take any part . . . 20
- A. No.
- Q. Did you see the ballot being counted?
- A. I was outside. I did see hundreds of ballots thrown on
 the floor.
- Q. You are making that statement sincerely and honestly?
- A. I am definitely sincere.
- Q. Do you know who threw them on the floor?
- A. I don't know who threw them on the floor. It was the
 faction of the L.P.P. who were counting the ballots.
- Q. You were very anxious about the L.P.P. business? 30
- A. I had reason to be.
- Q. Do you belong to another political group?
- A. I don't belong to no political group.
- Q. I suppose you know that the C.C.L. has adopted the
 C.C.F. party as the official party?
- A. I have heard that.
- Q. By the way, did you have a scrutineer?
- A. I had Mr. Frank Mole.
- Q. Did he object to the proceedings?
- A. He certainly did. 40
- Q. What happened?
- A. Mr. White, when both Mr. Mole and I approached him
 why this took place, he just laughed and said "What are you

going to do about it?" We said we would like a recount. He said "You will have to put up the money to have a recount."

Q. That would be how much?

A. Probably cost \$400 or \$500.

Q. For a recount in the Union?

A. There would have to be another election if you wanted a recount.

Q. Do you know what a recount is, witness?

A. How are you going to recount ballots lying on the floor?

10 Q. Do you know whether they were lying on the floor before or after they were counted?

A. They took ballot boxes out of the room where my scrutineer was. We objected. When we got out to the hall the ballots were on the floor.

Q. Witness, you are decidedly biased in this case, are you not?

A. I beg your pardon?

Q. You have no kindly feelings towards Mr. Clark and Mr. Stewart?

20 A. No, I am here to tell the truth on what I observed.

Q. Why bring that up?

A. You brought it up; you asked me the question.

Q. I didn't ask for that.

A. No, I gave it to you anyway. You didn't ask for it, you got it.

Q. You were biased in favour of Mr. Kuzych?

A. I am not biased as far as Mr. Kuzych is concerned. I have nothing to do with Mr. Kuzych.

Q. Now, witness, you ran for another office at another time?

30 A. I ran for what office?

Q. Business agent?

A. That's right.

Q. You were defeated for that?

A. I was, yes.

Q. By Mr. Nuttall?

A. That's right.

Q. You don't like Mr. Nuttall?

A. I have nothing against Mr. Nuttall.

Q. You left the Union very shortly after that?

40 A. When I went to work somewhere else they made me join another union.

Q. You weren't asked to leave the Union were you?

A. No.

Q. Now, this meeting in the Seymour Hall about which you

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gave evidence, do you remember a man by the name of Lewis being ejected from the meeting?

A. No, I do not.

Q. You don't?

A. I don't know.

Q. Mr. Mole called the meeting?

A. Mr. Mole.

Q. Was it a regular meeting of the Union?

A. It was a meeting of the boys getting together to try to get a decent slate of officers. 10

Q. A faction; it wasn't a general meeting?

A. No.

Q. It was called by one man. I presume he invited only certain members of the Union; he didn't invite all the members?

A. Anybody that wanted to come.

Q. With what kind of invitation?

A. I beg your pardon?

Q. What kind of invitation—by letter?

A. Anybody we see in the yard, if they wanted to come to the meeting they were told. 20

Q. Were notices sent out to all the membership?

A. No.

Q. At that meeting, internal affairs of the Union were discussed, were they not?

A. I can't recall any internal affairs being discussed.

Q. What about the election of candidates?

A. Yes we wanted to elect a slate whom we thought would give justice and run the union in an honourable fashion.

Q. Were finances not discussed?

A. I can't recall finances being discussed. 30

The Court: Q. What did you say?

A. I can't recall finances being discussed.

Mr. Burton: Q. Was any statement made about irregularities in the finances?

A. That I cannot recall.

Q. You said Mr. Mole called the meeting because what he wanted was to have a set of officers which would — I have forgotten the words—a set of officers who . . .

A. No, he wanted a slate of officers that would run the Union in honest upright fashion and give every man the right to free speech and thinking, a privilege we certainly were denied in this Union. 40

Q. You told my friend the draft by laws were handed out by somebody at the door, is that right?

- A. That's right.
- A. And also distributed on every chair?
- A. Every alternate chair.
- Q. You would agree witness, any person who wanted a copy of those by laws could have obtained one?
- A. I would think they could have, yes.
- Q. You also said that the exhibit 5 in this case, an agreement shown you by my friend, which you didn't recognize, you said that to your knowledge, that never was presented to
- 10 you at any meeting?
- A. That is correct.
- Q. At which you were present. Was it the habit of the union to present agreements to everyone or read them out to the members?
- A. I don't know whether . . .
- Q. This is an agreement between the C.C.L. and the Boilermakers' and Shipbuilders' Union. Would it be the practice to pass that around for everyone to read?
- A. I never saw it myself.
- 20 Q. You wouldn't say that would be the practice, to pass around all agreements entered into?
- A. All I can say is I don't know what the practice was.
- Q. To the general meeting. You didn't attend the executive meeting?
- A. No.
- Q. You weren't an officer?
- A. No, I attended shop steward meetings.
- Q. You weren't classed as an officer of the Union?
- A. No.
- 30 Q. So the only meetings you would know about with reference to these matters would be the general meetings?
- A. The shop steward meetings.
- Q. Agreements of this kind wouldn't be discussed at shop steward meetings?
- A. Not to my knowledge.
- Q. Now witness, do you swear from the time you entered the Union in October 1942 until August 1945 that you attended every meeting?
- A. I attended every meeting.
- 40 Q. Never missed one?
- A. Never missed one.
- Q. There was never a time that you were out of town?
- A. No.
- Q. Never ill?
- A. No.

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- Q. Never had to work any overtime?
A. Usually it was on Sunday if I worked overtime.
Q. Did you absent yourself from the meetings for any period of time?
A. No.
Q. Not for five minutes?
A. If I had to go to the washroom.
Q. Did you ever absent yourself for half an hour?
A. Not to my knowledge.
Q. You say that now, after this period of time, three years? 10
A. Yes.
Q. There is no doubt at all you never missed one meeting?
A. I never missed a meeting all the time I belonged to the Boilermakers' Union.
Q. Now witness, did you yourself take any part in the by laws or the debate on them?
A. I believe I debated on them, certain by laws.
Q. Did you ever object to any clause in the by laws?
A. Oh, there is the odd one I objected to, I figured they should be amended. 20
The Court: Q. You thought they should be amended?
A. Some of them, when the draft by laws were read I figured some of them should be amended, but if I thought so and made the amendment the vote was taken and the original stood. I would feel that was quite satisfactory to me.
Mr. Burton: Q. You might be sustained sometimes?
A. That's right.
Q. Would you not say ample time was given to everyone who attended those meetings to fully and frankly debate the question? 30
A. I couldn't truthfully say that.
Q. Were you ever shut off?
A. Many times.
Q. Shut up?
A. Shut up.
Q. In regard to what section of the by laws?
A. I am not—you asked me if I was ever shut up?
Q. Yes?
A. I am not referring particularly to by laws.
Q. That's what I'm referring to? 40
A. To the by laws, no.
Q. There was never a time you were shut off on the by laws?
A. No.

Q. Is it not fair to say—wouldn't it be fair to say that at the time of this discussion the fullest opportunity was given everyone to make any suggestions or improvements to the by laws?

A. The way I felt about the by laws is this, that the executive was trying to rush the thing through so fast that ample opportunity was not given us to go into detail and analyze the contents of these draft by laws.

Q. How long did it take for the by laws to go through?

10 A. I would say it took all three meetings.

Q. Do you think that's rushing things?

A. Yes, in this respect my learned friend . . .

Q. What did you call me?

A. My learned friend. That the by laws—there was so much time spent on them when we were through it took us two hours and we had accomplished nothing or very little.

Q. That wasn't the fault of the chairman, was it?

A. I'm not going to blame the chairman at all.

Q. Nor the executive?

20 A. No, but I thought the executive were anxious to rush it through.

Q. Wouldn't it be a fact that the executive would like the members to take the by laws home and study them and be ready to ask questions and make amendments without having to study them at the meeting?

A. The executive did not want you to take anything.

Q. Never mind that. I am asking you if every opportunity was not given to study them at home?

A. No, to study them in the hall.

30 Q. When these by laws were given out and placed in every second chair the members could take them home?

A. I was not allowed to take them.

Q. Do you mean to say you had to leave them there?

A. That's right, that's where they were left.

Q. Did they have to be left, were you told?

A. I believe they collected them up for another meeting.

Q. Why couldn't you have put one in your pocket, there was no count?

A. I would have loved to have had the privilege.

40 Q. Why didn't you?

A. I was deprived of the privilege, told to leave them.

Q. How did Kuzych bring one in here?

A. He may have taken the opportunity of taking one. I didn't want to do that if they didn't want me to take it.

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The Court: Q. Were they ever read clause by clause?
A. They were read clause by clause my lord, that is so many of them, but some of them I never did hear.

Q. They were not all read?

A. They were not all read, no.

Q. Was there a discussion on them as they were read?

A. Yes, there was a discussion on them as they were read.

The Court: I think we will adjourn until 2.30.

(PROCEEDINGS RESUMED AT 2.30 P.M.)

JOHN McPHEATOR (resumed stand) 10

The Clerk: You are still under oath Mr. McPheator.

CROSS-EXAMINATION BY MR. BURTON (CONTINUED):

Q. Mr. McPheator, when we adjourned I asked you where Mr. Kuzych might have obtained the by laws, the draft by laws which he brought, and I think your answer was that he might have taken the opportunity of taking one?

A. Yes.

Q. Now you were a shop steward, weren't you?

A. That's right.

Q. Elected to that office, was it an election or were you 20 appointed?

A. I was duly elected.

Q. Elected to that office, and very shortly after you joined the Union?

A. It was in the same year, I think.

Q. You took quite a prominent part in the affairs of the Union?

A. In the affairs of the Union. When I told the boys that I would accept a shop steward's job I assured the boys also that I would look after their interests. 30

Q. You made it your job, did you not, as a successful and efficient shop steward to know what was going on in the Union?

A. I done my best to find out.

Q. It would be your duty and your privilege to consider any contracts and that sort of thing that the Union might enter into, familiarize yourself with them so that you would know what the Union was doing in that field?

A. No, I never interfered with any contract or made any enquiries. All I understood is that if we were in a closed shop—

The Court: You did not believe in a closed shop? 40

A. I approve of a closed shop contract.

- Mr. Burton: Q. Do you believe in the closed shop yourself?
 A. I believe in a closed shop, yes, provided the Union is run properly.
 Q. The principle of a closed shop—
 A. Yes, I believe in a closed shop if the union is run properly.
 Q. You don't believe, for instance, that a closed shop is analogous to slavery?
 A. No, I wouldn't say so.
 Q. Now what is the paper that ordinarily circulates among
 10 the members, or what ordinarily circulates among the members of the Boilermakers' Union?
 A. That would be the "Main Deck".
 Q. And as a shop steward and a union member I presume you agree with that?
 A. I did.
 Q. You have already said you didn't miss any meetings of the Union?
 A. That's right.
 Q. I presume you didn't miss any Main Decks either?
 20 A. I read all I got.
 Q. You would get them all?
 A. They used to leave them at the clocks when they were issued.
 Q. You always picked one up?
 A. I always picked one up.
 Q. I am instructed that the mimeographed copies of the by laws were also left at the clocks?
 A. I didn't see that.
 Q. You saw the Main Deck however, but not the mimeo-
 30 graph copies?
 A. Yes, that's right.
 Q. You will undoubtedly have a copy.
 Mr. Johnson: I object to anything that hasn't been put in evidence.
 Mr. Burton: This witness wasn't introduced before. This is cross examination and a certain matter arose on which I am entitled to cross examine without reference to a document. If he brings up a matter to which I have an answer that is not part of the defendant's case at all—I have an answer to what he said
 40 and surely I am entitled to—
 The Court: What is your question?
 Mr. Burton: My question is, you will have undoubtedly read the issue of the Main Deck of April 7th, 1944.
 The Court: I think on cross examination he can ask that.

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Mr. Burton: Take as long as you like, witness.

The Court: What is the date?

Mr. Burton: April 7th 1944.

A. Well, I can't remember ever seeing this one before.

Q. I thought your memory would fail you?

A. It certainly did.

The Court: I don't think comments like that are necessary.

Mr. Burton: This witness has told us he remembers every-
thing up to the present, remembers every meeting, had every
Main Deck—

Mr. Locke: The witness is not saying he remembers every
meeting.

Mr. Burton: He said he was at every meeting.

The Court: He said he was at every meeting.

Mr. Burton: Q. Now witness, you stated to me before,
and I gave you every opportunity, that you got all the Main
Decks, that they were underneath the clocks and you got them.

A. There were times that there were no Main Decks there.
Perhaps this was one. I was always looking for it but I didn't
always get one because there were none at the clock.

Q. You saw an article you didn't wish to—

A. I don't remember seeing this lady's picture.

Q. You are sure you remember you never saw that, that's
correct?

A. That's right.

Q. There is no doubt about that?

A. No doubt.

Q. No doubt at all?

A. No.

Q. This is April 7th, 1944, and it is now January 28th, 30
1949, almost five years ago, yet you can say you have never seen
this picture?

A. I can truthfully say that, yes.

Q. I will show you this picture and see if you've seen it
before. I show you a picture of another girl. See if you can
tell me—

Mr. Locke: What is this?

Mr. Burton: I am showing it to him.

The Court: I think you should show it to your learned
friend first.

Mr. Burton: Very well, my Lord. I will show it to him.
That was produced in Court. I was surprised to see it myself.

A. No, I have never seen that picture before.

Q. Witness, are you suggesting you have never seen this
picture before?

- A. If I didn't see it, I didn't see it.
- Q. Do you say you have never seen this picture before?
- A. That's right.
- Q. You swear that?
- A. Yes.
- Q. But you may have seen it before and—
- A. That's probable.
- Q. Is it probable you may have seen the picture before?
- A. Not to my knowledge.
- 10 Q. In one case it is probable, in the other case you know you didn't?
- A. I never have any recollection of having seen that Main Deck.
- Q. Do you have any recollection of an article being published in the Main Deck under the signature of the chairman of the By Laws Committee, have you any recollection of an article published by him in the Main Deck?
- A. I have not.
- 20 Q. Have you any recollection of any article in the Main Deck which says that the proposed new by laws are now available to members of the Boilermakers' Union and should be studied before the meeting, have you any recollection of that?
- A. I have not.
- Q. At any time?
- A. At any time.
- Q. You would deny that such an article appeared in the Main Deck?
- A. If it is there it must have appeared.
- 30 Q. I will continue, "When members can adopt, amend or reject the proposals set forth."
- Mr. Johnson: My learned friend should not read from it.
- The Court: That's not in as an exhibit?
- Mr. Burton: No, it isn't, my Lord. I will introduce it in my own case.
- Q. In any event witness, will you say that mimeograph copies of the by laws were not freely distributed and the members invited to obtain them and study them; did you say that?
- A. In the hall, we had them in the hall if we happened to get the chair they were on, but if we didn't get one we had
- 40 to look on with someone who did get one.
- Q. If this article is correct it says that they should be studied before the meeting? Would that not mean to you, they should be studied between one meeting and another?
- A. No, not necessarily.

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No. 6

John McPheator

Cross-Examination

(Continued)

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John McPheator

Cross-Examination

(Continued)

Q. Why would one study them before the meeting?

A. If a man was interested enough. I used to get to the meetings there half an hour before time in case there was something in the chairs so I could observe it and give it a little thought.

Q. You say seriously and honestly that you were interested in this Union and in the affairs of the Union, and in what was going on, you didn't see this article of which I have just read one paragraph?

A. Regarding Mr. King? 10

Q. Yes?

A. That's right, I didn't.

Q. Now witness, you ran against Mr. Nuttall in an election on two or three occasions, didn't you?

A. I just didn't get you.

Q. Do you remember opposing Mr. Nuttall for the chairmanship of the Welders and Burners Sub Local E of the Union?

A. Was that North Van Ship Repair?

Q. In the Boilermakers' Union?

A. I can't recall. 20

Q. You can't recall it?

A. No, I mean Mr. Nuttall worked in North Burrard and I worked in North Van Ship Repair. I don't see where I would run against him.

Q. Do you know Mr. Nuttall?

A. Yes, I know him well.

Q. He didn't work at North Van Shipyards?

A. I didn't know he worked at North Van Ship Repairs?

Q. If he worked at Burrard, I understand that that is where he worked, is that any impediment against him running against you for this committee? 30

A. The way we run our elections for shop stewards, shop stewards are in your own yard. I didn't know they were bringing shop stewards from Burrard North?

Q. I guess you didn't appreciate what I said. My question was did you run for chairman of the Welders and Burners Sub Local E of the Boilermakers' Union?

A. The whole of the shop stewards—

Q. Listen again. I have read it twice. Do you remember running against Mr. Nuttall for chairmanship of the Welders and Burners Sub Local E of the Boilermakers' Union? 40

A. I might have but I can't recall it.

Q. My instructions are you ran and were defeated?

Mr. Johnson: What year?

Mr. Burton: Q. During the time you were working in the Union, '43, 1943?

A. I know I ran for business agent, I remember that quite vividly, but about the shop stewards I can't recall it, I may have.

Q. Did you run against Mr. Nuttall for chairman of the Community Council in 1945?

A. I did.

Q. You were defeated?

A. I was defeated, yes.

10 Q. There were two elections you remember, but you don't remember the third?

A. Two elections?

Q. The one year that was put in where you were defeated for the office of secretary-treasurer?

A. Yes.

Q. Then there was the business agent?

A. Yes.

Q. You were defeated in that?

A. That's right.

20 Q. And then for this office at the Community Centre, but you do not remember running for chairman of Sub Local E?

A. I can't recall it.

Q. Now witness, you gave evidence of a conversation which you had with Mr. White in which Mr. White said "Lay off Kuzych or the same action will be taken against you" or words to that effect?

A. That's right.

Q. What was the date of that conversation?

30 A. I couldn't tell you the exact date but it was prior to the election.

Q. When was the election?

A. I think the election was around sometime in December.

Q. Of which year?

A. That was '44.

Q. Where was the conversation?

A. It was on the top of the ship when I was welding a butt near the aft deck house.

Q. Of which ship?

40 A. It was on No.—I believe I had been switched to No. 2 Gantry at that time.

Q. What time of the day?

A. That was going on between two or three o'clock I would say.

Q. What day of the week?

A. I couldn't tell you what day in the week, I can't recall.

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Cross-Examination

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Cross-Examin-
ation

(Continued)

Q. Was it raining?

A. No, it wasn't raining.

Q. It was a clear day?

A. It wasn't a sun shiny day, it wasn't raining.

Q. Yes?

A. You can't weld when it is raining.

Q. You didn't give evidence at the first trial in this case?

A. No.

Q. Were you in town?

A. I was living in North Vancouver, yes. 10

Q. And you—when did you first have occasion to consider again the question as to the day and time and place that the conversation with Mr. White in which he made that statement, when did you think of it again after it was made?

A. After it was made?

Q. Yes?

A. Well I thought about it ever since right through the present day.

Q. You remember all the details?

A. I remember things that he told me, things that I will 20 never forget.

Q. You remember he told you that between 2 and 3?

A. It was in the afternoon.

Q. It wasn't a clear day?

A. It wasn't raining.

Mr. Johnson: He didn't say—

Mr. Burton: Q. You remember the weather in 1944, this is now 1949 and you remember the weather that day?

A. I remember the whole episode. There are things my learned friend— 30

Q. The weather was important?

A. Because of being a welder. You can't weld when it rains. You should know that because water and electricity don't mix.

Q. Do you not weld under cover?

A. Sometimes if we can get it.

Q. Your only recollection of the weather was because you were welding so it couldn't have been raining?

A. Yes.

Q. You told the Court you know definitely it wasn't rain- 40 ing?

A. Yes, because I would be welding.

Q. You said it wasn't a sunny day?

A. That's right.

- Q. You know the sun wasn't shining and you know it wasn't raining?
 A. I remember it, yes.
 Q. If the sun had been shining would you know it?
 A. If the sun had been shining?
 Q. Yes?
 A. Well—
 Q. It might have been?
 A. I say it wasn't raining.
 10 Q. You told his lordship it wasn't sunshining?
 A. It wasn't a clear day, I remember that.
 Q. Was that all the conversation that occurred with him?
 A. That was the essence of the conversation.
 Q. Was there any other conversation that occurred with him?
 A. Not to my knowledge.
 Q. Mr. White came to you and he said "You lay off Kuzych or you will get the same action he is getting."
 The Court: He did not say that.
 20 Mr. Burton: Words to that effect.
 Mr. Locke: "Stop speaking to Kuzych."
 The Court: "Stop speaking to him."
 Mr. Burton: I wrote "Lay off." That's what it meant to me.
 Q. Whatever the conversation was about Kuzych, did Mr. White say that and then walk off?
 A. No, he stayed there and talked about generalities I presume.
 Q. You don't remember that?
 30 A. I can't remember all that the man mentioned to me. I know he was there expressly to inform me of this particular thing.
 Q. You know it was 2 o'clock in the afternoon, you know it wasn't—
 The Court: He did not say 2 o'clock.
 Mr. Burton: Between 2 and 3, I'm sorry. I didn't think an hour made any difference in five years.
 Q. You know it was between 2 and 3 in the afternoon?
 A. Yes, it was before we went off shift. We quit at 4.
 40 Q. Might it have been at 12?
 A. No, we ate at 12.
 Q. Might it have been at one o'clock?
 A. It could be any time between 1 and 4. My recollection is that it was between 2 and 3. It was in the afternoon.

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John McPheator

Cross-Examination

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Cross-Examin-
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Q. Yes. You can't remember any other part of the conversation except that?

A. I think we discussed generalities.

Q. But you don't know?

A. As far as going into detail as to what was discussed, I can't recall.

Q. Now, did you answer Mr. White?

A. Yes, I answered Mr. White.

Q. What did you say.

A. I told him I would speak to whoever I pleased. 10

Q. My instructions are that this conversation didn't take place. You still say it did?

A. I am sorry. I have already said it did take place.

Q. Now you gave evidence that Mr.—I think it was Mr. Clark—stated to you something about being crucified by the trial committee. Who said that to you?

A. Dave Clark.

Q. Where was that conversation?

A. In a little hut by the No. 3 Gantry.

Q. No. 3—?

20

A. Gantry.

Q. I don't know that term. On what ship?

A. That would be No. 3 Ship. There was 1, 2 and 3 Gantries. You named your ship according to the gantry.

Q. What day was that?

A. No. 3 Gantry.

Q. What day was that?

A. I can't recall the day.

Q. What kind of a day was it, clear, dark or rainy?

A. It was a cloudy day.

30

Q. What month was it?

A. I can't recall the month.

Q. You don't know the month. What day in the week was it?

A. No, I don't know.

Q. What time of day was it?

A. That was in the morning.

Q. About what time?

A. The current of my machine was stopped and I had been working on the ship and naturally when your machine has stopped you can't weld. When I came down there to see why my machine had been stopped, Mr. Clark, Mr. Lennie, and Mr. Tony Beck all asked me to come with them to this little hut at the end of 40

the Gantry. That's when Mr. Clark told me the trial committee would crucify Mr. Kuzyeh.

Q. Who else heard the conversation?

A. Mr. Art Lennie and Mr. Tony Beck.

Q. That day the weather was—

A. Cloudy.

Q. You remember the weather. You don't remember the month and you don't remember the day of the week, yet you remember the weather.

10 A. As I told you, my learned friend, that's one thing you do remember. We never weld when it is raining. We never work outside. That's one reason, because I was a welder.

Q. How do you know it was cloudy?

A. The weather was a more important factor to a welder than anything else, particularly as I was on butts on the side of the ship, that was usually my job. I know what I had to do before I came out in the morning.

Q. Would it make any difference to you on your job whether it was cloudy or the sun was shining?

20 A. It would quite often shine on the ships so we couldn't see.

Q. Would you have to stop work?

A. You would have to try and erect something for yourself.

Q. You had to do that frequently?

A. Once in a while. The most important part was in welding butts on the side of the ship and plates.

Q. I suppose there would be times you wouldn't know whether the sun was shining, you would be in the ship?

A. Yes.

30 Q. Now how do you know—this is rather important, we don't want to guess—how do you know on that morning the sun wasn't shining and that it was cloudy?

A. Because I told you already it was of major importance to a welder to know what the weather was.

Q. Did the sun shine the next day?

A. I can't recall whether it did or not.

Q. You are charging your memory with something that happened—what was the year?

A. That was in 1944.

40 Q. Charging your memory with something in 1944 and you remember distinctly it was cloudy and it wasn't sunshiny?

A. I just happened to remember. I've always observed the weather because of being a welder.

Q. Yes.

A. Yes.

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Cross-Examination

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Q. You didn't observe the weather the next day and can't tell what it was like?

A. I always observe the weather,

Q. What was it like the day before?

A. That is as far as incidents is concerned, because if it was raining I had to get some protection.

Q. You will admit it may not have been raining, but surely—do you mean to tell the court seriously that you know it was cloudy that day and not sunshiny on a day four years ago?

A. Yes, I remember. 10

Q. You don't remember the month?

A. I don't remember the month.

Q. You don't remember the day in the week?

A. The day, I don't remember the day.

Q. But you remember the weather?

A. Yes.

Q. You had another conversation with Clark as I understand or heard a conversation with Clark where Clark said to Kuzych—I've only got this down—"make sure you won't walk out because we will throw you out." Tell me again when that was? 20

A. That was in the meeting in the hall.

Q. What day, what time?

A. That was I believe in the December meeting.

Q. December of what year?

A. Of '44.

Q. Was that before or after the conversation with Clark you just described about being crucified by the Trial committee.

A. That was after.

Q. What kind of a night was that, was that raining? 30

A. I wasn't very much interested in the weather when I left work.

Q. Were you present at the meeting when Kuzych was expelled?

A. I was.

Q. You heard him make a defence of his position?

A. That's right.

Q. And you heard the reply of Counsel for the Union, that's right?

A. Who was the Counsel? 40

Q. Do you remember, we might as well test this feature. Do you remember who Counsel for the Union was?

A. I remember when he was expelled that Mr. Stewart spoke and then Mr. Kuzych spoke.

- Q. Didn't Mr. Kuzych speak—how long?
 A. Oh, I would say about between five and ten minutes.
 Q. You have talked to Kuzych about that since?
 A. I met him in the yard afterwards.
 Q. You talked about it recently?
 A. No sir.
 Q. Not at all?
 A. Haven't discussed it.
 Q. You are going by your memory now?
 10 A. That's right.
 Q. By the way, were you subpoenaed to come to this trial?
 A. I was not.
 Q. You were not?
 A. No.
 Q. At the meeting at which he was expelled, there was a vote taken, was there not?
 A. There was a vote taken.
 Q. Do you remember what that vote was, the detail of the result of that vote?
 20 A. It wasn't a referendum vote.
 Q. Was there—do you remember the details of the result of that ballot for his expulsion?
 A. I believe that there was somebody raised the question that another vote be taken.
 Q. Now witness, you have not answered my question. Do you remember what the result of the vote was of his expulsion?
 A. No, I can't tell you — you mean the number for or against? I can't tell you that.
 Q. Would it be 450 for and 12 against?
 30 Mr. Johnson: He doesn't know.
 A. I can't tell you what it was.
 Mr. Burton: Q. Now witness, supposing the vote was 450 on one side and 12 on the other would you say that was a question of factions, voting one faction one way and one another?
 A. Yes. I will tell you what transpired at that meeting. I heard with my own ears from the same Mr. David Clark that if they found anybody voting to sustain Kuzych in the meeting, they would deal with them accordingly.
 Q. I see. Were they ever charged with that?
 40 A. No.
 Q. Before the Union?
 A. What was the use?
 Q. Were the 12 men who voted for Kuzych charged or treated in the manner you suggested?

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Cross-Examination

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A. I never was charged.

Q. You were one of the 12?

A. I voted to sustain him in the meeting.

Q. You were one of the 12 and weren't charged so you didn't take that threat very seriously?

A. I didn't take any threat seriously.

Q. 12 men were brave enough to withstand this onslaught?

A. That is right.

Q. You are serious, witness, in saying one man making a threat like that persuaded a vote of 450 on one side against 12 on the other, do you say that seriously? 10

A. That would be quite possible. They had them all over the hall to prod them.

Q. Nothing was done about it?

A. Those were the methods they always used.

Q. There was nothing done about that situation, this faction didn't make any charge?

A. I protested to the men of the injustice but you might as well talk to the wall.

Q. You are not in the union today. You didn't remain long after that? 20

A. I remained till I left the yard.

The Court: Q. What did you say Mr. Clark said would happen if they sustained Kuzyeh?

A. They would get the works, they would get the same thing, they would really look after them, that was—the essence I got, my Lord, was that they would be the next to get the same as Kuzyeh was going to get that night.

Mr. Burton: Q. And that was Mr. Clark who said that?

A. That's right. 30

Q. You knew that Kuzyeh had sued the Union and collected damages?

A. I knew he had sued the Union.

Q. And got damages?

A. I heard that indirectly.

Q. Didn't Kuzyeh tell you that?

A. No, he did not.

Q. You went to this press and investigating committee as an observer for him?

A. Yes. 40

Q. As one of his friends?

A. As a member of—a paid up member of the Union.

Q. Did you go as one of his friends?

A. As a paid up member of the Union. I had no truck with Kuzyeh at all although I was accused of it.

- Q. You still haven't any truck with him?
 A. No truck with Mr. Kuzych at all.
 Q. Why did you come here.
 A. Because I wanted this Court to hear the truth of what happened in that yard.
 Q. You read the newspapers that this trial would be held?
 A. I did not.
 Q. How did you know?
 A. I was approached by Mr. Kuzych if I would come and
 10 testify to what I had seen and heard.
 Q. Yes?
 A. I said I would be glad to do so.
 Q. You didn't talk it over with him at all?
 A. No.
 Q. You didn't know what you were going to say?
 A. I didn't know what I was going to say till the questions were put before me.
 Q. Did you interview anyone in this case before you came here to give evidence?
 20 A. All I spoke to was the attorneys here.
 Q. You gave them a statement?
 A. I told them what I knew, yes.
 Q. And was Kuzych present when you told them?
 Mr. Johnson: How far are we going to go in this.
 Mr. Burton: He volunteered the statement, he had no truck with Kuzych.
 Q. Was Kuzych with you?
 The Court: When he went to see the solicitors?
 Mr. Burton: Yes my Lord.
 30 Mr. Johnson: That would be a matter of professional confidence.
 Mr. Burton: I am not asking what was said.
 The Court: You need not answer that.
 Mr. Burton: I submit, while I won't press the matter, I submit that's not a question of a professional secret. If I was to ask him what he told them that is privileged, but who was there with him—I submit that's perfectly admissible, I am asking him who was with him at the time.
 The Court: It is the usual practice for counsel to interview a
 40 witness before calling him.
 Mr. Burton: Quite, my Lord. I am going on this basis. He said he had no truck with Kuzych—
 The Court: What is the purpose of this question. That is the usual practice.

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Mr. Burton: He said he had no truck with Kuzych. I want to know if Kuzych took him there.

The Court: He said that Kuzych asked him if he would testify.

Mr. Burton: Very well my Lord.

Q. Now witness, the by laws of this Union, exhibit 14 in this case, are familiar to you, are they not?

A. I used to read the by laws, yes.

Q. You have a copy?

A. I haven't here.

Q. I thought you were reading from one. You have identified this?

A. Yes.

Q. You know what is in it?

A. Yes.

Q. You have read it over?

A. I studied it.

Q. And you studied it and when it was passed you took an active part, you were at the meeting?

A. I was at the meeting.

Q. Do you know the date the by laws came into effect, August 8th, 1944?

A. August 8th, 1944?

Q. It's printed right on it.

The Court: Isn't that a question of law.

Mr. Burton: I will put it this way.

Q. Is the effective date stated at August 8th, 1944.

Mr. Johnson: It speaks for itself.

The Court: It is the same thing.

Mr. Burton: I have another matter in mind.

The Court: The question whether the by laws are effective or not, whether they have any effective date, is a question of law.

Mr. Burton: My friend is taking that position. I am only asking this witness if the date of the alleged by laws was August 8th, 1944.

The Court: Isn't it set out there?

Mr. Burton: Q. Then we will come to this. After August 8th, 1944 did you read these by laws before you left the shipyard?

A. Yes, I read the by laws.

Q. And you were a member of the union from then until August, 1945, were you not?

A. August 1945.

Q. During the time August 8th 1944 until August 1945 you had possession of these by laws and knew their contents?

A. I studied them, yes.

10

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30

40

- Q. Did you take any objection to the by laws between August 8th and the time you left the Union.
- A. Did I take any objection?
- Q. To the by laws.
- A. I personally objected to some of them, yes.
- Q. When?
- A. Well, I felt that some of the by laws weren't—
- Q. Just answer when.
- A. When I took objection to them?
- 10 Q. Yes.
- A. Well—
- The Court: Do you mean before they were printed?
- A. I beg your pardon.
- Q. Do you mean before they were printed, you took objection before they were printed?
- A. Yes.
- Q. Or afterwards, which?
- A. I objected to some of the by laws before they were printed and after they were in there I didn't like some that were inserted.
- 20 Mr. Burton: But you nevertheless said the majority had accepted them, I will accept them too.
- A. I think there are some in here I never heard, that they inserted in here, seven, article seven, sub section 7 I never heard of on the floor of the meeting, and I certainly take exception to it.
- Q. You are taking exception to that because certain results have followed from that one?
- A. Not necessarily, no.
- Q. We will see what article 7, is it sub section 7, is. "(7) Any meeting of the Union may, by majority vote, rule on the admittance or the exclusion to, or from such meetings of any person or persons, including members in good standing, and may by such vote expel any one, or more persons, including members in good standing, from such meeting; but such admittance, exclusion or expulsion shall apply only to the particular meeting in question and shall not affect the status of the person or number admitted, excluded or expelled at any future meeting".
- 30 Did you object to that?
- A. I did.
- Q. On what grounds?
- 40 A. Because I presumed — I figured that any member in good standing, that no other member should have the power to extricate that member from the meeting.
- Q. What do you mean by extricate?
- A. The power to say he has to get out of the meeting.

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Q. That's your definition?

A. Maybe I used the wrong word.

Q. Supposing a member was so objectionable he was upsetting the tenor of the meeting, would you still say that he would have no power to expel him?

A. No and I told some of them that I objected to any member being persecuted. A man would make a motion and someone would second that motion—

Q. Supposing he didn't stay quiet, what would you do then?

A. It adds a little spice to the meeting. 10

Q. But too much spice would spoil the meeting?

A. Oh well.

Q. If you got too much spice don't you think it would be feasible to say he must behave himself or get out?

A. I figure—

Q. Wouldn't you think it reasonable if a man continues to be objectionable he should be asked to sit down or leave the meeting?

A. He could be asked to sit down or leave the meeting, but I would say in the first instance, he should be asked to sit down. 20

Q. You had strong views on that point?

A. I certainly did.

Q. Did you object then to this sub section when you read it?

A. I certainly did.

Q. You did? A. I objected at the meeting.

Q. Before it was passed? A. Yes.

Q. Now witness you objected at the meeting before it was passed, there is no doubt of that?

A. I mean after I got this.

Q. Now witness you know you just said something, you 30 objected in the meeting before it was passed, now didn't you?

A. When I got this, it never passed in the draft by laws. I said before that when it was printed here I strongly objected it shouldn't be inserted.

Q. It never came in the draft by laws. Now witness did you object to article 7 sub section 7 in a meeting of the Union at any time?

A. After we got this.

Q. When, what date?

A. That was the first meeting after these were available. 40

Q. The first meeting after these were available?

A. Yes.

Q. And what day of the week was that?

A. Well, it was Monday.

Q. The regular meeting?

A. The first and third Mondays were the meeting dates.

Q. Now, witness I show you exhibit 13 in this case. Would this seem to you to be the draft by laws?

Mr. Johnson: My Lord, exhibit 13 was put in subsequent to exhibit 12 which was the copy for the printers. If my learned friend can prove these—we tried to put them in the proper order. Presumably the copy for the printer was the one this was prepared from. What 13 is we are not sure. I don't think my learned
10 friend should put that to the witness as being a draft copy of the by laws.

Mr. Burton: I show you exhibit 13, what is it? This is exhibit 13 in this case. Look at it. What is it?

A. It says here, article 2—

Q. What is it, what is the document?

A. These are the draft by laws.

Q. Would they appear to be the same as the draft by laws you have seen—

The Court: Do you want him to read them.

20 Mr. Burton: If he wishes to. I want him to identify them.

A. I will have to read this to give you—

Mr. Burton: My Lord I will ask to sit down while he reads it. This is important. This witness wants to read them. I ask permission to sit down while he reads it.

The Court: It is quite immaterial to me.

Mr. Burton: Thank you my lord.

The Court: We will adjourn to give him an opportunity.

Mr. Burton: If we do I ask that he be not in communication with anyone.

30 The Court: You ask if they are the same as—

Mr. Burton: The by laws he has seen.

The Court: —the other draft by laws he has seen. How can he tell without reading them?

Mr. Burton: All right.

The Court: There are certain articles—

Mr. Burton: My Lord I do suggest that the witness be not allowed to discuss this with anyone while reading them.

The Court: We can adjourn for ten minutes.

40 Mr. Johnson: My Lord, what is the witness exactly to do. He cannot see anyone. He may be left here to read them through.

The Court: And he would have to compare them with the other by laws.

Mr. Burton: If that is the attitude I will withdraw the

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question entirely. I don't want to take the time of the Court. It is quite obvious these are similar to the ones he has seen.

Mr. Johnson: We don't admit anything.

The Court: I can compare them after all.

Mr. Burton: Q. Supposing we put it this way, I must have an answer, would those appear to be the draft by laws, mimeograph by laws, similar to what, whether exactly the same or not, similar to the ones you have seen?

A. As far as these are concerned this is the way we got them.

Q. Read the first paragraph and see if it sounds like the ones you have seen? 10

A. (No answer).

The Court: All right, Mr. Burton.

Mr. Burton: What was your answer?

A. I am of the opinion that these draft by laws became effective on September 1st, not August 8th.

Q. Will you answer the question. Exhibit 13, does that appear to be in substance and in form similar to the mimeograph by laws that you have seen?

A. Similar. 20

Q. To what you have seen?

A. Some of them I have seen.

Q. Did you see any that were similar?

A. Well I never saw—

Mr. Johnson: I think unless the witness studies these, he cannot say.

Mr. Burton: I will let it go because we will be here a long time if I don't.

Q. From what you see these do appear similar?

The Court: That doesn't mean a thing, Mr. Burton. You are dealing with a document that consists of several sheets. 30

Mr. Burton: I will give him the rest of them and ask him if any of these are similar to the mimeographed copies he has seen. Maybe he can't tell me that.

The Court: You mean they look like that?

Mr. Burton: If he reads a couple of paragraphs he can say.

The Court: They were put in. Your learned friend admits they're draft by laws?

Mr. Johnson: Yes my Lord.

The Court: Can the witness add anything to that? 40

Mr. Burton: I don't know why he hesitates. I don't know why he is in doubt.

The Court: He doesn't want to commit himself unless he compares them.

Mr. Burton: He has nothing to compare unless he has a copy.

Q. Witness, have you a copy that you saved from the time these by laws were read?

A. I was not allowed to take a copy out. I told you that before. I wanted to do it.

Q. All right, we will have some evidence on it. Now witness, I read from exhibit 13 which has been submitted by my friend, has been put in by him as an exhibit in this case. This appears
 10 on page 2 or page 3, I am sorry, article 7 sub section 7, “(7) Any meeting of the Union may, by majority vote, rule on the admittance or the exclusion to, or from such meetings of any person or persons, including members in good standing, and may by such vote expel any one, or more persons, including members in good standing, from such meeting; but such admittance, exclusion or expulsion shall apply only to the particular meeting in question and shall not affect the status of the person or number admitted, excluded or expelled at any future meeting.”

Now witness, did you ever see that before?

20 A. Not until these came out (indicating).

Q. Not till these came out?

A. I had never seen it before.

Q. Your answer to me a few moments ago that you complained of that before the by laws were passed was not correct?

A. I meant this, that in the draft by laws, I saw no account of what they printed in here, article 7 sub section 7.

Q. Afterwards I asked if you objected to that section and you said yes before they came out in printed form, did you not?

30 A. I guess if I said that, what I meant to say was I objected to it when it came out this way.

Q. In other words you wish to amend your answer now that after it came out in printed form you objected but not before?

A. That's right.

Q. Now witness, did you object at any meeting—you said that you objected at the first meeting after the by laws came out in printed form?

A. The first meeting that I had an opportunity to object on this I did.

40 Q. When was the first meeting you had an opportunity to object?

A. Well that was the first meeting after. I forget now, I can't recall we had one meeting in the month or not. It was the first meeting after these were distributed to us.

Q. You don't remember? A. No, I don't remember.

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Q. You don't remember whether it was a morning or evening meeting? A. It was an evening meeting.

Q. Why do you say that? A. I said—I believe I told you already that I thought any member in good standing should be allowed to stay in the meeting, they should not be expelled or asked to get out because I didn't like that procedure.

Q. Did you say the by laws should be amended again?

A. That by law should never have been in.

Q. Did you ask that the by laws be amended to strike out that by law? 10

A. I told them at the meeting.

Q. Did you ask that the by laws be amended to strike out that section?

A. I did.

Q. Did you give notice under the terms of the by laws of your intention to ask for an amendment?

A. No, I didn't because it was useless.

Q. Had you given notice it would have had to come up on the floor?

A. If I gave notice of motion, I would have to have a second- 20
er. It would have to come up at the meeting a second time and be voted on at the meeting.

Q. That's not impossible?

A. It wouldn't be impossible but it would be useless. Those fellows had so tied up the union no matter who you were or what you did it was no good.

Q. Why did you object at all, if it was so useless?

A. Because I can't stand by if a member of the organization is unjustly treated.

Q. Did anyone else object to 7 (7)? 30

A. Yes.

Q. In the meeting? A. Well I don't know whether they objected at that particular meeting.

Q. At any meeting?

A. Reg Bullock objected.

Q. When?

A. I believe it was the meeting after that.

Q. Anybody else?

A. There may have been some others that I don't know—

Q. Was there anyone else? 40

A. Yes, there was plenty objected.

Q. How many?

A. I know George Holmes and some of our executive that year.

Q. George Holmes, who else?

- A. An elderly gentleman on the executive, I can't recall his name.
- Q. George Holmes objected at the meeting to 7 (7)?
- A. He objected to the same thing.
- Q. At a meeting of the union?
- A. Yes.
- Q. In a formal meeting or a general meeting of the association he objected to 7 (7)?
- A. He asked on what authority you can put a man out.
- 10 Mr. Mills was another.
- Q. Did he object to the section being a by law?
- A. To the best of my knowledge, yes.
- Q. Do you wish to withdraw any of the names you said objected in open meeting to 7 (7) being in the by laws?
- A. Well, I can't say I wish to withdraw.
- Q. Do you wish to qualify that in any way?
- A. My objection was if any man was a paid up member of the union he has the right to speak his mind, that's all I can say.
- Q. Did anybody object to that section being in the by laws
- 20 7 (7), did anybody object to that being in the by laws except yourself?
- A. I told you.
- Q. Witness you said Mr. Holmes said he didn't like the idea?
- A. Mr. Mills objected to it too.
- Q. Did he object to the section being in the by laws?
- A. Yes he objected to this procedure.
- Q. Did he object to 7 (7) being in the by laws?
- A. Yes.
- Q. Before they were printed or after?
- 30 A. After they were printed.
- Q. Did anyone make any motion before the Boilermakers' Union to have 7 (7) amended or removed?
- A. I can't recall.
- Q. Now witness you were familiar were you not with this section of the by laws, article 17 subsection 5 page 15. Did you know that clause was there?
- A. Yes I think I remember that clause.
- Q. And the next, and you remained a member of the union for a year after this, or approximately?
- 40 A. August 1945.
- Q. About a year after you knew that clause was there?
- A. Approximately, yes.
- Q. Now I will read you what it says on the next page, in the oath of obligation "I will not violate any of the provisions

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of the said Constitution, by laws, working rules or schedule of hours or wages adopted by this union; and I hereby declare that I give this union exclusive bargaining rights with any employer of labour for working conditions coming within the jurisdiction of this union." You knew that was there also?

A. Yes I knew this was there.

Q. You remained a member of the union?

A. That's right.

Q. Now witness, there was a meeting you described at Athletic Park when Mr. Stewart was elected president? 10

A. That's right.

Q. You remember that meeting?

A. I was there.

Q. It was unanimous?

A. Mr. Stewart was elected by acclamation.

Q. I understand there were six thousand people present?

A. There was quite a number of people. I couldn't say whether there were six thousand.

Q. Would it be close to six thousand?

A. I would say there would be at least two thousand. I dont' know about six.

Q. We will compromise on two for the purpose of this. That was April 1943?

A. I believe it was.

Q. What is your explanation, so we will have it on record, as to why if what you say is true about the factions that Mr. Stewart was leading and the L.P.P. activities that he would be elected by the unanimous vote of two thousand people?

A. Because the average member was so discouraged it was useless to try to get in office, because if you were elected you would have the same thing. 30

Q. Would that apply to the two thousand people?

A. I don't mean that. I said the average individual. What was the use of being elected to any office if you had three or four others to kill your vote?

Q. Have you any explanation to offer why two thousand people would go to that meeting if they were so discontented.

A. There was quite a bit of confusion and disruption before that meeting.

Q. So much disruption that they all went and voted unani- 40 mously to—

The Court: He didn't say that.

Mr. Burton: Q. Is that what you meant? Didn't you mean to say that; I will put it this way, the dispute and dissatisfac-

tion and disruption, despite that all these people went there and voted unanimously for Mr. Stewart?

A. If they wanted to vote for him that was their privilege. What can I do about it?

Q. Yes. As a matter of fact witness, you ran for office after these by laws were passed, did you not?

A. What office?

Q. Did you run for any office, test your memory on that?

A. I am trying to think. Was that when I ran for business
10 agent, after that?

Q. Did you run for the office of secretary treasurer?

A. Oh yes, 1944. Stewart was '43.

Q. In November 1944?

A. Yes, that's right.

Q. Under these by laws exhibit 14, is that right?

A. Yes.

Q. Your answer is yes?

A. Under these by laws?

Q. Yes?

A. These by laws were in '44.
20

Q. And you ran in December 1944 or November 1944?

A. Yes.

Q. Is that right?

A. That's right.

Q. Under these by laws?

A. Yes.

Q. Don't nod your head.

A. I said yes.

Q. Now witness, you told my learned friend that exhibits
30 5 and 6 in this case were not previously known to you. You hadn't seen exhibit 5 before. Exhibit 5 is a contract between the Canadian Congress of Labour and the Boilermakers' Union which my friend has put in, unless he would like to withdraw it, dated December 3rd 1943. Now did you have any knowledge that such a contract was being entered into by the Boilermakers?

A. I did not.

Q. Did you know that the subject of the dispute between
40 the Canadian Congress of Labour and the Boilermakers' Union had been settled by an agreement which provided that the union would be affiliated to the C.C.L. through the Shipyard General Workers Federation, did you know that?

A. It was all hearsay to me. I was told by this one and that one about certain things.

Q. Didn't you see it in the newspapers?

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A. I might have but I can't really say.

Q. It was the headlines in the newspapers?

A. I have some recollection of that.

Q. That is the matter that is referred to in exhibit 5 in this case, is that right?

A. Exhibit 5, yes.

Q. And witness you attended every meeting and surely matters which were headlined in the newspapers were discussed were they not, at the meetings, this particular matter?

A. Some things were brought up. 10

Q. This particular one?

A. I think I said I haven't any recollection when the trouble was with the C.C.L.

Q. Did you hear that?

A. I heard one or two of them giving some evidence about it.

Q. The only real difference is you didn't see that contract presented to you?

A. No I did not.

Q. Outside of that you heard discussed, it was common talk in the union was it not? 20

A. It might have been discussed a little bit at meetings.

Q. It was discussed at meetings, was it?

A. They might have brought it up. I didn't know it was in existence.

Q. You may not have had your attention called to that particular part?

A. That's quite probable, possible.

(Witness aside.)

Mr. Locke: I will call Mr. Frank Mole.

Mr. Burton: May I make a request that witnesses be ex- 30
cluded. I was lulled into a false sense of security.

Mr. Johnson: We have one further witness, it is rather late to ask for that.

Mr. Burton: All right, I will withdraw it.

FRANK MOLE, a witness called on
behalf of the plaintiff, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LOCKE:

Q. Mr. Mole you live at 2850 Adanac Street, Vancouver? 40

A. Yes sir.

Q. What is your occupation now?

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- A. I am secretary manager of the Hastings East Branch of the Canadian Legion and also founder of the branch.
- Q. You joined the Boilermakers' Union in the summer of 1942?
- A. That's right.
- Q. What was your occupation?
- A. I was bolter-up in South Burrard yard.
- Q. You were what?
- A. I was bolter-up in South Burrard yard.
- Q. Subsequent to working in South Burrard yard you came to North Van Shipyard?
- A. That's right.
- Q. Sometime in the month of March 1943?
- A. That's right.
- Q. Do you know the plaintiff Kuzych?
- A. I do.
- Q. When did you first meet him?
- A. I first met him towards the end of that year, actually met him.
- Q. First actually met him, did you know of him before that?
- A. Yes, I knew of him.
- Q. There has been some evidence of factions. What can you say about it from your observations as a union member?
- A. Well I wasn't long in when I discovered the union was under some influence. I convinced myself—
- Mr. Burton: I object to that. He convinced himself—he may have convinced himself of anything.
- Mr. Locke: Q. Mr. Mole can you tell his lordship anything you observed yourself which led you to that opinion?
- A. Yes, I observed discrimination for one thing. Abuse was heaped on certain individuals.
- Mr. Burton: My Lord I object, I hope properly . . . He is making a lot of accusations at random.
- The Court: Yes, you must stick to facts, Mr. Locke.
- Mr. Locke: Q. Something special you observed Mr. Mole?
- A. The treatment of Kuzych.
- Q. What can you tell his lordship about that?
- A. He was ostracized in the yard.
- Q. By whom?
- A. By the shop stewards particularly and the members that work in the yard.
- Q. Do you know Mr. W. L. White?
- A. Yes I do.
- Q. Do you know Mr. W. Schwartz?
- A. I wouldn't be able to pick him out. I know him.

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- Q. Do you know Mr. Nuttall?
A. Yes I do.
Q. Do you know Mr. Gee?
A. I know him but I wouldn't be able to recognize him.
Q. You know Mr. Caron?
A. I do.
Q. And Mr. Jenkins? A. Yes sir I do.
Q. Were you ever present when any of the gentlemen whom
I have named said anything or had anything to do with Kuzyeh
in the yard? 10
A. To me? It was not to me?
Q. Something was said to—
A. Things said to me in connection with Kuzyeh.
Q. By any of these gentlemen?
A. Yes.
Q. Can you tell his Lordship who said it, when and where?
A. Dave Clark.
Q. Mr. Dave Clark is a named member of the press and
investigating committee. What did Mr. Clark say to you, where
and when? 20
A. Dave Clark was under the impression—
Mr. Burton: No my Lord.
The Court: All right.
Mr. Locke: I will endeavour to—
Q. I want you to tell the Court what Mr. Clark said to you?
A. Dave Clark told me that if I didn't back away from
following and backing up Kuzyeh I would get the business, that
I would have to get out of the yard. He used the term out of
the yard.
Q. Now can you remember the approximate date of that? 30
A. No, I cannot.
Q. Now you attended union meetings did you?
A. Some of them.
Q. Do you remember—evidence has been given that Kuzyeh
was expelled twice. Do you remember the first occasion that
Mr. Kuzyeh was expelled?
A. How do you mean, occasion, put out of the hall?
Q. No, I am talking—you remember evidence has been given
he was expelled from the Union once, and then a second time? 40
A. Yes.
Q. There was an earlier time, do you remember that?
A. I remember that.
Q. Were you at the union meeting?
A. I was at a union meeting.

- Q. Do you remember what happened after that?
 A. I remember him coming back to the yard.
 Q. Coming back?
 A. Reinstated and coming back to the yard.
 The Court: Q. That was in 1945?
 A. I think his reinstatement was 1944 prior to the general election of the Union. I think that's right.
 Mr. Locke: Q. Now do you ever remember Mr. Kuzych being expelled from any meeting?
 10 A. I do.
 Q. In the year 1944?
 A. I do.
 Q. What did you see?
 A. I saw them come and get him by the lapels in one particular instance.
 Mr. Burton: My Lord, may I ask the persons—
 A. Dave Clark to the best of my recollection my Lord.
 The Court: Yes?
 Mr. Locke: Q. What did Mr. Clark do?
 20 A. That's all I saw him do in that instance. There was others gone around Kuzych and I observed them at the top of the stairs.
 Q. Do you remember the approximate date of that meeting?
 A. No, I couldn't swear to the date.
 Q. Now you recall there were some elections of which evidence has been given. Mr. Henderson was running, Mr. McPheator and others were running.
 A. Yes.
 Q. You took an active interest in that election?
 30 A. Yes.
 Q. Whom did you help?
 A. I sponsored and acted as agent for Jack McPheator.
 Q. Running for the position of secretary-treasurer?
 A. Secretary-treasurer.
 Q. Evidence was given there was a meeting on Seymour Street in December 1944. Do you recall that?
 A. I do
 Q. Do you know who called it?
 A. Myself.
 40 Q. Under what circumstances?
 A. Under the circumstances of a group that was formed in the yard for the purpose of putting up a slate of candidates. I was asked by some of them—
 Mr. Burton: My Lord.

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Mr. Locke: Don't say what anyone said to you Mr. Mole, except these gentlemen.

A. I will say this, I rented the hall.

Q. You rented the hall?

A. I rented the hall and information went out—

Mr. Burton: I object again, my lord.

The Court: That is not admissible.

A. Information went out . . .

The Court: When an objection is made, just stop.

Mr. Locke: Q. You rented the hall?

10

A. I rented the hall.

Q. Was there a meeting held?

A. Yes.

Q. Were you there?

A. No sir.

Q. You don't know what happened at the meeting?

A. No sir.

Q. Did anyone assist you in arranging this meeting?

A. No sir.

Q. Now, at this election did you act in any capacity for any- 20
one?

A. I acted as scrutineer for Mr. McPheator and his slate of officers we sponsored.

Q. Tell us what happened.

Mr. Burton: My lord, I object. He scrutineered at an election in which Kuzych had no concern. He cannot give that evidence. We are not trying an election in the Boilermakers' shipyard in the year 1944.

The Court: It would be admissible if whatever was done was done by one of the defendants.

30

Mr. Burton: What they did in regard to somebody else . . .

The Court: The allegation here is there is a certain group.

Mr. Burton: Yes, my lord. But your lordship can see what follows; we will put in later evidence to show there was a group and that Mr. Henderson ran and was elected and Mr. McPheator represented the same party and was defeated. There is no foundation to say there was a faction.

The Court: The plaintiff says this arose out of the actions of certain people. It is the evidence of those actions which Mr. Locke proposes to get now.

40

Mr. Burton: My lord, I would submit as far as Kuzych was concerned the only way in which we objected to his actions was his personal actions, and not to Mr. Mole and Mr. McPheator who were associated with him.

The Court: He says his actions were dictated by . . .

Mr. Locke: I am not insisting on the matter if my learned friend is taking objection to it. I have something that I think is relevant.

The Court: All right.

Mr. Locke: I would like to have Exhibit 45, please.

Q. Mr. Mole, I show you Exhibit 45 in this action. Did you ever see it before, or anything like it? Can you tell his lordship under what circumstances you saw it?

10 A. To the best of my knowledge that was a circular given out the day before the election.

Q. Where was it?

A. At the North Burrard shipyard. To the best of my knowledge that was given outside the gate as the men came out of the yard.

Mr. Locke: My lord, this bulletin was read to you. It is headed "Attention Boilermakers" (BULLETIN READ.)

Q. Now, subsequently, do you remember after the election Mr. Kuzych was charged?

20 A. I remember he was charged.

Q. Can you tell his lordship were you at the meeting at which charges were read out against him?

A. I can't recollect that.

Q. Yes?

A. I can't recollect.

Q. Were you aware there was some trouble between the Boilermakers' Union No. 1 and the Canadian Congress of Labour?

A. I heard there was trouble.

Q. Did you know the difficulties were patched up?

30 A. I understood they were.

Q. I show you document Exhibit 5 in this action. It's an agreement to which there appear to be two parties, the Canadian Congress of Labour and the Boilermakers' and Iron Shipbuilders Union. Have you ever seen that before?

A. No sir.

Q. Or a copy of it?

A. No sir.

Q. Were you at any Union meeting at which anything was said about this document?

40 A. No sir.

Q. Did you have a chance to ratify it?

A. No sir.

Q. I show you Exhibit 6, an agreement between the C.C.L. and the Boilermakers' Union?

A. No sir.

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Q. Did you ever hear it discussed on the Union floor in a general meeting?

A. No sir.

Q. Now, you are the Mr. Mole to whom Mr. McPheator referred, who went to attend a meeting of the Press and Investigating Committee where Kuzyeh was supposed to be tried?

A. That's right.

Q. Tell his lordship what happened.

A. I asked to go in to the trial of Kuzyeh.

Q. Yes?

10

A. A member of the Union went and talked with Caron.

Q. You spoke to a member of the Union?

A. That's right. I was told . . .

Q. Just a minute.

A. . . . I couldn't go in.

Q. Did any of the executive come out and say . . .

A. Yes, came out. I saw him but didn't speak to him.

Q. Did you have any conversation with any member of the executive?

A. No.

20

Q. You didn't personally?

A. No.

Q. Did you go into the trial?

A. No sir.

The Court: I think you can ask him why he didn't go in?

Mr. Locke: Q. Why didn't you go in?

A. I was told . . .

The Court: Just a minute. Don't say what anybody told you. Were you allowed in the meeting?

A. No, my lord.

30

Mr. Locke: Q. Now, evidence has also been given about copies of the draft by-laws. You heard the evidence given about that? What have you to say about the distribution of those by-laws, if anything?

A. I never saw any.

Q. You never saw any?

A. No.

Q. Were they distributed around to your knowledge?

A. Not to my knowledge.

Q. Now, Mr. Mole, Mr. Kuzyeh gave evidence to the effect that his chances of becoming unemployed if he was expelled from the Union were—he said it would be impossible to obtain work. What have you to say about that?

A. I would agree it would be difficult.

40

Q. Why?

A. It's a recognized fact amongst unions . . .

Mr. Burton: My lord, I make this objection. This man is not qualified to be an authority.

Mr. Locke: My lord, he said he agreed with Mr. Kuzych that it would be difficult to obtain employment. He said he agreed and I asked him why.

The Court: As a union man can't he be qualified?

Mr. Burton: I don't know if a union man would know any-
10 thing about other unions.

The Court: I think he is entitled to answer that.

Mr. Burton: I shall cross-examine on it.

A. My lord, may I explain that I have been a union man almost all my life: I was a British Transport worker for years.

The Court: All right.

Mr. Locke: Q. Why would Mr. Kuzych find it impossible to obtain work?

A. It's a recognized fact amongst unions, when a man ap-
20 plies for membership he is asked the question "has he ever be-
longed to a union before? Yes. Are you in good standing in that
union?" As Kuzych couldn't say he was in good standing, his
chances wouldn't be very good of being taken into another union.
That's been my experience.

Q. Have you held office in a union before?

A. No sir.

Mr. Locke: That's all.

CROSS-EXAMINATION BY MR. BURTON:

Q. Do you know Mr. Kuzych quite well?

A. Not quite well. I know Mr. Kuzych.

30 Q. Now, witness, you told my friend that a person who is
not a member in good standing of one union and applied for
membership in another would have some difficulty in joining, is
that right?

A. Repeat that?

Q. A man who is not in good standing, a man having belonged
to the union and not being in good standing, would have some dif-
ficulty joining another union?

A. A man leaving a union not in good standing would have
some difficulty.

40 Q. Do you know that Mr. Kuzych belonged to a union in
the A.F. of L. long before he joined the Boilermakers'?

A. I didn't know that.

Q. And he found some difficulty in that union, and he with-
drew from that union. Did you know that?

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A. You are telling me now.

Q. Yes, I am. Apparently you weren't here when Kuzyeh gave evidence.

A. That's the first I have heard of that.

Q. Having belonged to a union he—I may say he not only seceded from that union but took forty to sixty members with him and formed a rival union. Now, would that have any effect on his later application to join the Boilermakers' Union or any other union?

A. Would it have any effect on him joining the Boiler- 10
makers'?

Q. Or any other union?

A. It may have a possible effect on some unions but what effect it would have on the Boilermakers' is beyond my comprehension.

Q. The Boilermakers' would take him in no matter what?

A. No, you're saying that.

Q. Explain yourself, I am not sure what you mean.

A. I couldn't tell you. I couldn't tell you what the Boiler-
makers' would do, or any other union. It's been my experience 20
that when a man leaves a union, he leaves not in good standing,
his chances of joining another is not very good.

Q. When a man secedes and takes forty to sixty men, does he leave a good standing?

A. It depends whether he asks for a withdrawal card or not.

Q. It might be awkward?

A. I couldn't say what they would do in this city.

Q. You haven't much respect for the unions in this city?

A. I have a lot of respect for the unions.

Q. In this city? 30

A. For unions.

Q. Answer the question. Have you respect for unions in
this city?

A. Yes.

Q. For all of them?

A. Yes.

Q. Including the Boilermakers'?

A. Yes sir, it's the union I have respect for.

Q. You haven't any respect for the executive officers of
this particular Union? 40

A. I didn't say that.

Q. I did. Answer the question.

A. You said that.

Q. I am asking you if you have.

- A. For the present executive or the executive when I was in the yard?
- Q. First, the executive when you were in the yard?
- A. I hadn't very much respect for them, no.
- Q. How about the present executive?
- A. I don't know much about them outside the president of the Union.
- Q. Mr. White?
- A. That's right.
- 10 Q. What about him?
- A. Well . . .
- Q. What have you to say about him?
- A. Nothing.
- Q. Have you respect for him?
- A. No, he didn't give me any reason to feel that way about him.
- Q. When you were in the Union, who was president?
- A. Mr. Stewart.
- Q. Who was vice-president?
- 20 A. That's something I can't tell you.
- Q. Who was secretary-treasurer?
- A. Caron.
- Q. Do you know the other officers?
- A. Right at the moment I can't tell you.
- Q. Right at the moment you can only name two?
- A. Yes.
- Q. There are seven officers?
- A. Yes.
- Q. You have no respect for the whole seven?
- 30 A. No respect for their policies.
- Q. Including the closed shop principle?
- A. Yes.
- Q. You did not approve?
- A. Oh yes.
- Q. With that principle you do agree?
- A. I agree with the closed shop, yes, provided it is a properly conducted closed shop.
- Q. On that aspect you don't agree with Mr. Kuzych?
- A. I hold no brief for Mr. Kuzych.
- 40 Q. Why did you come here?
- A. I was requested to come here to perform the duty, the duty of every citizen.
- Q. You didn't think to come when the first trial was held?
- A. I wasn't asked to appear as a witness then.

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Q. Now, then, witness, did you—what policies then of the executive when you were in the Union, did you disapprove?

A. They had a policy of discrimination, for instance. There was a certain influence controlling the Union, a political influence, and if you oppose that or talked against that political influence then you were under.

Q. Yes?

A. That's what I didn't approve of, political influence.

Q. You did do something about that by holding a meeting outside the Union?

A. I didn't hold the meeting.

Q. I thought you did?

A. No, I didn't hold the meeting.

Q. I am speaking of the meeting in the Seymour Hall.

A. I didn't hold that.

Q. You didn't call that?

A. No, I ~~wasn't~~ ~~in~~ the hall.

Q. I put it down here: "I called a meeting."

Mr. Johnson: I think he said he hired the hall.

Mr. Burton: Q. You say you did not call the meeting?

A. (No answer.)

Q. Don't nod your head.

A. I am listening to you.

Q. You did not call the meeting?

A. No, I didn't actually call the meeting.

Q. Did you tell the Court in reply to my friend that you had called the meeting?

A. Well, I said I was asked to find a hall by this group, our group. I got the hall.

Q. I know you said that.

A. I wasn't present at the meeting. The rest of the men were notified.

Q. Did you say you did not call the meeting? Did you not say "I called the meeting" on your direct examination?

A. I might have said that. May I hear that read?

(QUESTIONS AND ANSWERS READ BY STENOGRAPHER..)

Q. Now, witness, you now agree that you said that you had called the meeting?

A. No, I don't agree to that.

Q. What was read is actually . . .

A. And there is an explanation to go with that statement. It is this, that I bought the hall and notified the men. They knew

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where the meeting was going to be. I was asked to make arrangements for the hall.

Q. You said all that afterwards. Read the question again.

(QUESTION AND ANSWER READ.)

Q. Have you any reason—what reason have you to say those words should not mean exactly what they say?

A. I can safely say I am quite prepared to take the responsibility of that statement. It is not the way it is intended.

10 Q. Just so we will be clear, do you wish to withdraw that statement?

A. I am quite willing to stand by my statement, although it was meant another way.

Q. Never mind that. Was it the truth?

A. I speak the truth. There is an explanation that I have said to the way it was. That's it. I got the hall, I notified the men, they held the meeting. I wasn't at the meeting, and that's the true fact.

Q. Now, witness, let me ask you this question. I ask you again, did you call the meeting?

20 A. No, I didn't actually call the meeting.

Q. Now, Mr. McPheator gave evidence a short time ago in which he said you called the meeting. Was Mr. McPheator wrong?

A. Mr. McPheator probably meant the same as I did. That I got the hall and so notified the members of the group. I notified the members of the group.

Q. We won't be too concerned about what he meant. He said you called the meeting. Is he wrong?

30 A. I rented the hall and so notified the men, and the time . . .

Q. Witness, I will ask you again and I wish an answer so that we can go on. Mr. McPheator said you called the meeting. Is he wrong?

A. That was Mr. McPheator's impression.

Q. Then you did?

A. He is right in that impression.

Q. He explained the reason you wanted the meeting was you wanted justice to prevail, is that correct?

40 The Court: Did Mr. McPheator say that was the reason that this witness . . .

Mr. Locke: He didn't.

Mr. Burton: My impression was he used words to that effect.

The Court: The note I have is that the Seymour Street

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meeting was called by Frank Mole because they all wanted a slate of honourable men.

Mr. Burton: That's what I am referring to.

The Court: I don't think he said this witness.

Mr. Burton: It may have been identified with others. I just got Mr. Mole. It was the only name he mentioned.

Q. Now then, witness, Mr. McPheator said that your motivation with others, motivation of the group, was to elect a slate of honourable men?

A. Yes. 10

Q. To run against the other slate representing Mr. Stewart and others who were not suitable?

A. We didn't agree with what they did and the policy they formed.

Q. You held this meeting, not a regular general meeting?

A. It wasn't a meeting in connection with any business of the Union other than the election.

Q. You had no authority to call the meeting?

A. No, but I reserved the right to have authority in an election with the rest of the men. 20

Q. Just let's confine ourselves to the question. You have no authority to call a meeting of the Union?

A. No meeting of the Union was called.

Q. This was a meeting called for the express purpose amongst the men who wished to . . .

A. Who formed a group to put up some opposition.

Q. Now then, you discussed the other men, that is the other group representing the policies of Mr. Stewart or representing the other faction, did you not?

A. Yes. 30

Q. You called them a faction?

A. Yes, a faction.

Q. What did you call yourself?

A. A group.

Q. That wouldn't be a faction?

A. To my mind there is a bit of difference.

Q. The difference is one are honourable, the other dishonourable?

A. I never said that.

Q. Would you suggest that? 40

A. I wouldn't suggest that.

Q. One way or the other. You didn't believe in the motivation of the others?

A. I didn't believe in their policy and their workings.

- Q. Were you present at the meeting in Athletic Park when Mr. Stewart was elected by acclamation?
 A. No.
- Q. Were you present at all the meetings of the Union from the time you joined till the time you left?
 A. No.
- Q. What percentage approximately would you attend?
 A. Oh I wouldn't care to hazard a guess.
- Q. Perhaps half?
 10 A. I wouldn't hazard a guess of perhaps half.
- Q. You joined when?
 A. I joined in '42.
- Q. What month?
 A. I would say it was sometime around the month of May, I think.
- Q. When did you leave?
 A. When did I leave the Union? I left the Union in July. I left the North Van. Ship Repair July 4th, 1945, and I think I asked for a withdrawal card within four weeks of my leaving
 20 the yard.
- Q. You got your withdrawal card?
 A. I did, yes.
- Q. You were there from '42 until July 4th, 1945? Is that correct?
 A. That's right.
- Q. Were you present at any meetings of the Union when by-laws were discussed?
 A. Only one meeting where they were read off, so many of them, and they couldn't get through with them all, and it was
 30 put off till the next meeting.
- Q. Was there a full opportunity given for discussion?
 A. It didn't appear that way to me.
- Q. In what way?
 A. It was put off till the next meeting. They didn't have sufficient time.
- Q. At the next meeting?
 A. If I can recollect right that's what was done.
- Q. During the time they were read, there was ample time for the members to . . .
- 40 A. If I wasn't at that meeting . . .
- Q. At the meeting you were at?
 A. I told you what I know of the by-laws, at that meeting. I saw only one meeting that I recall something about by-laws. I told you something was said that they were put off; there was insufficient time.

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Q. But while they were being discussed wasn't there freedom of expression of opinion by the membership?

A. At this particular meeting?

Q. Yes?

A. I wouldn't say that there was any freedom of expression at any time I went to a meeting.

Q. Were you ever ejected from a meeting?

A. Pardon?

Q. Were you ever ejected from a meeting?

A. No.

Q. Were you ever refused the opportunity to speak?

A. No.

Q. Now, witness, my friend showed you Exhibit 5 and 6 in this case, which is a contract between the Canadian Congress of Labour and the Boilermakers' Union, Exhibit 5. You gave evidence this was never presented to any meeting?

A. I said I didn't recollect ever seeing that before.

Q. There were many meetings you weren't at?

A. That's possible.

Q. If the contract hadn't been presented to a general meeting, how could it have been approved?

A. What's that?

Q. The subject matter of the contract could have been approved by a meeting at which you were not present?

A. Decidedly.

Q. The same situation existed regarding Exhibit 6?

A. I never seen that either.

Q. It could have been discussed?

A. That could have been.

Q. The fact you weren't there wouldn't really mean anything at all?

Mr. Locke: Well, my lord . . .

Mr. Burton: That's all right; that's argument.

The Witness: No, it's not all right.

Mr. Burton: Q. You have gone to some length. You have identified Exhibit 45, and reading it over it says this: "Kuzych is quoted in part as saying: 'Mr. Henderson is a good union man, and I subscribe to his platform, because it coincided closely with my own.'" Kuzych was out for Henderson?

A. I don't know. I wasn't mixed up with Kuzych at no time.

Q. Did you see an article in the News Herald on December 11th, 1944, in which Kuzych is quoted as I have just quoted?

A. I might have seen it at the time. I might not have seen it.

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Q. There is no doubt Kuzych was actively supporting Henderson?

A. I don't know whether he was actively supporting Henderson. I don't know that. I wasn't concerned about Kuzych as far as the election went.

Q. Here is one thing you do know. I am reading again from the document. "It should be pointed out that a certain group met with Kuzych on Friday, December 8th, to discuss how best they could remove the present executive of the Union." You
10 know that occurred?

A. As far as I know, Kuzych was never invited.

Q. You know he was there?

A. I heard afterwards there was some discussion whether to allow him in or not, which proves there was no connection between our group and Kuzych.

Q. We will argue that. Did you know who was at the meeting?

A. I know of several.

Q. John McPheator?

20 A. Yes.

Q. Mr. Henderson?

A. Yes.

Mr. Locke: The witness said he wasn't present.

Mr. Burton: He is giving the evidence.

The Court: He said he was not there, he only notified certain people.

Mr. Burton: He said he knew some men that were.

A. I said I believed they were.

Mr. Burton: Q. You weren't there?

30 A. No, I wasn't there.

Q. You have reason to believe this John McPheator was there?

A. He told me he was. I know he was present.

Q. You had good reason to believe that Henderson was there?

A. I was told he was there.

Q. And Doug Franks?

A. I don't know about him.

Q. In any event, this document, Exhibit 45, is not quoting
40 the matter wrongly when it says these men were there. You wouldn't . . .

A. If Franks wasn't there that would be wrong.

Q. But you don't know?

A. No.

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- Q. Did you read the Main Deck?
 A. Once in a while.
 Q. Wasn't that the official organ of the Union?
 A. I believe it was.
 Q. You have been a good union man all your life?
 A. I can be a good union man without reading the Main Deck. I don't have to read the Main Deck to be a good union man.
 Q. You weren't sufficiently interested to read it?
 A. Sufficiently interested?
 Q. Yes? 10
 A. I had other things to read. I got too much. If I want to know what was going on at the Union, I would go to the meetings. I have seen the Main Deck, sure.
 Q. But you didn't go to so many meetings?
 A. I was at a few.
 Q. Now, witness, you gave evidence to the effect that Dave Clark told you that—I think you said that if you talked to, Kuzyeh you would be put out of the yard? I think that was the first remark.
 A. I think my statement was if I didn't quit lining up with 20 Kuzyeh that's what I would get.
 The Court: You will be some time, Mr. Burton?
 Mr. Burton: Yes I will, my lord.
 The Court: Then we will adjourn until 10:30 a.m. Monday.

(PROCEEDINGS RESUMED PURSUANT TO
 ADJOURNMENT)

FRANK MOLE resumes the stand.

The Clerk: You are still under oath, Mr. Mole.

CROSS-EXAMINATION BY MR. BURTON RESUMED:

- Q. Mr. Mole, I think when we adjourned I was asking you 30 about the time that Dave Clark was alleged to have grasped Kuzyeh by the tail of his coat. You remember that occasion, do you?
 A. I remember the incident, yes.
 Q. And was it at a regular meeting of the Union?
 A. Yes, a general meeting.
 Q. Was it morning or evening?
 A. Evening, I think; evening.

- Q. Did you attend the evening meetings or the morning meetings, as a rule?
- A. Most of the time it was evening meetings for me.
- Q. That you attended?
- A. Yes.
- Q. And you would say that this was an evening meeting?
- A. To the best of my recollection, yes.
- Q. What date was it?
- A. That is something I can't say for certain.
- 10 Q. Can you give an approximate date?
- A. That is also something I can't say for certain.
- Q. Well, do you know the year?
- A. Do I know the year?
- Q. Yes.
- A. Well, I would say it was 1944.
- Q. And you are sure it was 1944?
- A. That is to the best of my recollection.
- Q. To the best of your recollection, 1944. And what month in the year?
- 20 A. I couldn't tell you that for certain.
- Q. Was it winter or summer?
- A. Winter or summer?
- Q. Yes, or spring or fall? Do you remember that?
- A. I would say it was in the latter part of the year.
- Q. The latter part of the year?
- A. Yes.
- Q. That would be the latter part of 1944?
- A. That is what I would say, yes.
- Q. And did you see the incident alleged, yourself?
- 30 A. I saw Clark approach him, yes.
- Q. And what happened, exactly?
- A. Well, exactly what you asked me. I saw him put his hand on him.
- Q. Well, so we will know.
- A. That's all at this particular moment.
- The Court: Q. Put his hand on him?
- A. Yes, went to get hold of him; of his lapel.
- Mr. Burton: Q. Clark put his hand on Kuzych on the lapel of his coat?
- 40 A. Well, that is how it appeared to me. I was a little distance away, but he moved in on him and that is what I saw.
- Q. When you say "moved in on him," do you say he approached him?

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A. Well, certainly, that is what moving in means. You go forward.

Q. I just want to get it so we can understand one another's remark. If I walk over to the witness box now, would you say that?

A. No, I wouldn't use that term. I have already said I saw him put his hand on him.

Q. What did he do when he put his hand on him?

A. To the best of my recollection, that is what I saw and that is what I am telling you. 10

Q. Well, of course I want you to tell me what you saw.

A. Well, I have already said what I saw.

Q. That's right. Did he leave his hand there?

A. Well now, I didn't take a stopwatch out, you know, and time the thing by any means. I am telling you just exactly what I saw.

Q. Well, you won't need to repeat that again, witness. Tell me approximately how long he held his hand on the lapel.

A. It was a matter of seconds. It may be thirty seconds. It wasn't for long. There was others there, too. 20

Q. And then he took his hands away?

A. I couldn't exactly for sure give you detail of the whole business then. I saw him approach him, and that's what I saw happen, but there was others there.

Q. Did he shove him or anything of that kind?

A. I wouldn't say he shoved him, but he put his hands on him.

Q. Now, witness, you recollect that, and it was the end of 1944?

A. To the best of my recollection. 30

Q. And that is at least four years ago. This is 1949. And you remember that he went over and put his hand on his lapel, and you can't tell me the month of the year. You think it was the fall of 1944, and you really don't remember any other attendant circumstances, do you?

A. Well, I have already stated that I couldn't say for certain the dates and so on. You, yourself, say four years ago.

Q. But notwithstanding after four years' time, you distinctly remember that Clark went over and put his hand on the lapel of Kuzych's shoulder and left it there for approximately 40 thirty seconds?

A. Yes, and I say to you that certain incidents happen with an individual member . . .

Q. And that was one?

A. That's one. There is others.

- Q. But you are certain this was 1944?
 A. I said I wasn't certain, but I would say 1944.
 Q. Now then, witness, you said that Dave Clark came to you when you were in the drydock and said that you would be put out of the yard?
 A. That's right.
 Q. What day was that?
 A. That is something I couldn't tell you.
 Q. What year was it?
 10 A. I still say 1944.
 Q. You still say that. You could be wrong, though?
 A. Not in those incidents. It was pre-election.
 Q. And there was the election in 1944?
 A. No, I might have made a mistake there—yes, the election was on December 12, I think, 1944.
 Q. December 12th?
 A. To the best of my knowledge, December 12th. Another thing I remember, it was a Tuesday.
 Q. The election?
 20 A. Election day was Tuesday.
 Q. What day was this, then?
 A. Before that.
 Q. How long before?
 A. Well now, I couldn't tell you that.
 Q. Well, a month before?
 A. I can't tell you that.
 Q. Would it be a year before?
 A. The same year. The same year, naturally.
 Q. It might have been January, 1944?
 30 A. No, it wasn't that far back. It was only when I sponsored Jack McPheator as secretary that they turned the heat on me. There was others, lieutenants of Kuzych's, if you want to know something. Tony Beck . . .
 Q. Did you turn the heat on anyone?
 A. I defended myself as best I could.
 Q. Quite strenuously, wasn't it?
 A. Like a good citizen should do.
 Q. And you went all out for Jack McPheator as hard as you could?
 40 A. I did what any man sponsoring another man for an election should do, with propriety.
 Q. You were his official agent, were you not?
 A. Yes, I was his agent.

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Q. And in furtherance of his campaign, that is when you assisted in calling this meeting at the Seymour Hall?

A. That's correct.

Q. And I presume that you sometimes talked pretty plainly to the people you talked to, too, didn't you?

A. I talked in support of McPheator.

Q. That's right, and other people, of course, were talking in support of the other candidate?

A. Some, yes, but my conversation was showing cause and showing why. 10

Q. Now, you can't remember this conversation with Dave Clark, except that it was before the election and it was sometime in the year 1944?

Mr. Locke: He has done better than that. He said after he sponsored Mr. McPheator.

Mr. Burton: All right.

Q. Can you tell me whether it was morning, evening or afternoon?

A. Afternoon.

Q. And where was it? 20

A. In the welders' shack at North Van. Drydock.

Q. Who else were present at that time?

A. There was other men there, but I couldn't at the moment tell you who they were.

Q. And the other men present, I presume, had an equal opportunity of hearing?

A. Yes, if I can remember rightly, they were supporters of Jack McPheator.

Q. And you cannot name them?

A. No, I couldn't name them now. 30

Q. You don't know whether they could be brought here.

A. If I knew who they were, I could ask them to come.

The Court: Q. Where did the conversation take place?

A. In the welders' shack down on the drydock, my lord.

Mr. Burton: Q. Do you know what shift Clark worked on?

A. That particular day, he was going, I presume, either be going on in the afternoon at 4 o'clock or coming off. For sure, I can't tell you.

Q. Did you work the same shift as he worked?

A. At times, yes. I went from one shift to another over 40 the 24 hours period.

Q. Did you work that shift the same period as he?

A. I am not sure about that.

Q. So it could be that you were coming off and . . .

- A. I was definitely going on, because he was there waiting for me.
- Q. Waiting for you?
- A. Well, that's the way it appeared to me, because there was a burner, and because burners did go in the welders' shack.
- Q. Perhaps he was waiting for some of the others?
- A. No, the way he talked with me, he wouldn't. I would say he was waiting for me.
- Q. Perhaps you were waiting for him?
- 10 A. How could I do that? I was going on shift. I was like every other individual.
- Q. Did Dave Clark talk to anyone else in the group besides yourself?
- A. Not that I can recollect.
- Q. You see, the reason I am asking these questions, Mr. Mole, is that I intend to put Mr. Clark on the stand to tell what happened.
- A. I would say that that is good business on your part.
- Q. Thank you. Now, immediately after that statement, did
- 20 Mr. Clark leave?
- A. I opened the door and if you want the exact words, I remember those.
- Q. Yes.
- A. "Are you finished? Now, get out." And he went out.
- Q. And that is all that was said?
- A. That is all I said to him.
- Q. And other people heard that conversation, but you don't remember who they were?
- A. No, I don't remember who they all are.
- 30 Q. And they were friends of Mr. McPheator's?
- A. No. I figured they were supporters of Mr. McPheator.
- Q. And that is the same side you were on?
- A. Certainly, I was on the same side.
- Q. I am not blaming you.
- A. I am not blaming you for asking the question.
- Q. I think you said you had no definite recollection of the number of meetings you had attended.
- A. Not definitely.
- Q. And as far as you can say, the by-laws were properly
- 40 considered at any meeting you were at?
- A. I only recollect one instance of the by-laws, and I have already told you that. Something was said about they were not ready and put off for further consideration; something along those lines.

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Cross-Examination

(Continued)

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Cross-Examin-
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(Continued)

Q. How long had that meeting lasted at that time?

A. Well now, I couldn't tell you.

Q. It was the end of the meeting, wasn't it?

A. I wouldn't even be able to tell you that.

Q. The meetings lasted for some time, as a rule, did they not?

A. Yes, I would say they lasted the average meeting.

Q. Now, witness, you took some pains to tell my friend that you had been a union man all your life?

A. Well, yes, and I still am one, although at the moment 10
I am in no union; but I am still a union man notwithstanding.

Q. When you were asked—when you worked for the Canadian Linen Company, did you belong to the union?

A. No, there was no such union, and for your information, I tried to organize one.

Q. There was a Truck Drivers' Union?

A. Yes, and Laundry Workers.

Q. Why didn't you belong to that union?

A. There wasn't one.

Q. Was there a Teamsters' Union? 20

A. I didn't come under that.

Q. What work did you do in the laundry?

A. I was a salesman for twenty years.

Q. In the Canadian Linen?

A. In the linen business. I was with the Canadian Linen seven years.

Q. Your occupation with the North Vancouver Ship Repairs was just an interlude?

A. I left the linen business and went into the South Burrard, as I said previously, in 1942, and then to the Ship Repair. 30
I was at another place besides that.

Q. And in the Canadian Linen, you had a law suit?

A. I sure did; and I won it. I won it.

Q. Yes. And you say during that period of time there was no union that you could have belonged to?

A. Not while I was with the Canadian Linen.

Q. And you attempted to organize one?

A. Yes, I did. I attempted to organize one when I was at the Pioneer Laundry, 1921 to 1925.

Q. So the fact is that in all these years in the linen business, 40
you have not belonged to the union a great number of years?

A. I made a statement on Friday that I belonged to the Transport Workers of Great Britain, and that is true.

- Q. Well, I expect it to be true, witness. How long were you a member of that union?
- A. I was a member of that union when I was sixteen.
- Q. How long were you a member of it?
- A. Until I left the line of business.
- Q. Of course, I have no idea how long that would be. How long would it be?
- A. Well, I couldn't go to work and give you any dates on that kind of thing.
- 10 Q. Would it be twenty-five years or two years?
- A. Oh, no.
- Q. Well, three years?
- A. No, that is out of all proportion altogether.
- Q. Well, you just tell me the proportion.
- A. Two or three years, something like that.
- Q. So you belonged to the Transport Workers' Union in Great Britain for two or three years, and that is the only union you belonged to in England?
- A. I belonged to the Ship Stewards' Union. I sailed on the
- 20 White Star line.
- Q. For how long?
- A. I sailed the boats for quite awhile. I couldn't tell you approximately. Well, I suppose a year or two.
- Q. And during the time you were in that union, you would be sailing on the boats?
- A. Yes, sure, but it wouldn't have to be on the boats to be belonging. You have to keep your union cards up.
- Q. But that is what you did.
- A. I had to work for a living, didn't I? Is that all I did?
- 30 Q. Now, witness, perhaps . . .
- The Court: I do not think Mr. Burton meant that.
- Mr. Burton: Q. Witness, during the time you were on board ship, you would not be attending meetings of the union, would you?
- A. We had the same thing as you have here, shop stewards.
- Q. On the boat?
- A. That's right.
- Q. And that was about a year?
- A. No, I say a year or two.
- 40 Q. Well, that's all right.
- A. No, it is not all right. There is a qualification there for you.
- Q. Well, all right. Now, witness, did you belong to any other union in Great Britain?
- A. No.

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Q. So your experience in Unions in Britain was limited, then, to the Transport Union for a matter of, say, two or three years, and on board ship for a matter of a year or two?

A. Yes.

Q. When you came to this country, what Union did you belong to? A. When I came to this country?

Q. Yes

A. The Boilermakers.

Q. And you were a member for how long?

A. From 1942.

Q. Until when? A. Until I got out in 1945.

10

Q. That is three years? A. Yes.

Q. And you have not belonged to a Union since?

A. No.

Q. So your experience in Unions has been three years at the most in Transport, two at the most at sea, and three in the Boilermakers, which is eight, and that is the most that you can lay claim to? A. Sure.

Q. And you made a statement to my friend that you had been all your life a Union man?

A. I still am one.

20

Q. What Union do you belong to now?

A. Don't belong to one now.

Q. What Union are the laundry salesmen in now?

A. I couldn't tell you that.

Q. What Union are the teamsters in now?

A. Well, that is—

Q. Teamsters' Union? A. Yes, that is right.

Q. Does that Union take in all truck drivers?

A. I couldn't tell you that. I don't belong to it.

Q. Were you not a truck driver at one time for Canadian Linen? A. Yes, I started in as a delivery man. I was what you call a driver-salesman. Part time, I took stuff out and then I went out on the road and sold.

Q. Did you work the same shift as McPheator?

A. Occasionally; occasionally.

Q. All during this time when Clark spoke to you in the conversations referred to in the shack, when he told you that you had to get out, were you in the same shift as McPheator?

A. I couldn't tell you that. I never saw McPheator that afternoon.

40

Q. Will you tell me who was present when Clark put his hand on the shoulder of Kuzych?

A. I have already told you that I couldn't tell you.

Q. Couldn't tell me that? A. No.

- Q. You didn't see Kuzych assaulted or beaten up?
 A. I saw him hustled through the door and I saw the scuffle through the door.
 Q. Is that the time, the same time as Clark put his hand—
 A. I wouldn't say the same time. There was two incidents where I saw Kuzych put out.
 Q. You don't know whether it was the same occasion or not?
 A. I wouldn't say for sure, but I recognized White on one of the occasions.
 10 Q. Who was it hustled Kuzych through the door?
 A. I couldn't say for sure.
 Q. Well now, Mr. McPheator saw that incident, I think he said. You heard his evidence, didn't you?
 A. I heard something.
 Q. If Mr. McPheator saw that incident, he would be on the same shift as you, wouldn't he?
 A. Why would he be on the same shift as me? He could lay off, couldn't he?
 The Court: Do not ask questions.
 20 A. Well, I couldn't say for sure.
 RE-EXAMINATION BY MR. LOCKE:
 Q. Mr. Mole, you are not now selling linen?
 A. No, I am Secretary-Manager of the Canadian Legion, Hastings East Branch.
 The Court: Thank you, Mr. Mole.
 The Witness: My lord, may I leave on business, please?
 The Court: Do counsel require Mr. Mole any further?
 Mr. Burton: No.
 Mr. Locke: No, my Lord.
 30 The Court: You are excused.
 The Witness: Thank you, my Lord.

(Witness aside).

RICHARD HERBERT THOMPSON,
 a witness called on behalf of the
 plaintiff, being first duly sworn,
 testified as follows:

EXAMINATION BY MR. JOHNSON:

- Q. Mr. Thompson, were you a member of the defendant
 Union? A. Yes.
 40 Q. When did you join it? A. 1941.
 Q. How long did you remain a member?
 A. 1946.

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Re-examination

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Q. In which shipyard did you work?

A. North Burrard; Burrard Shipyard.

Q. All the time? A. Yes.

Q. What was your occupation?

A. Steel caulker.

Q. Did you ever attend any meetings of the Union?

A. Oh yes, yes.

Q. Did you have occasion at any meeting to see Mr. Kuzych, the plaintiff?

A. Yes, one of the meetings I remember, a meeting under the chairmanship of Mr. Henderson, a meeting at which he was charged, for the second time. 10

Q. When, approximately, would be the first time he was charged? A. Well, I can't give you that information. I don't remember.

Q. At any rate, you knew that the plaintiff was charged previously? A. Yes.

Q. And you say that Mr. Henderson was chairman of a meeting at which Kuzych was charged?

A. Yes. 20

Q. And what do you mean by "charged"?

A. Charged with giving evidence apparently at the West Coast Shipyards.

Q. Was this a morning meeting or evening?

A. An evening meeting.

Q. How frequently did you attend these meetings?

A. Not very frequently. There was a lot of meetings I missed.

Q. What exactly do you remember of this meeting that you have begun to tell us about?

A. Well, this particular meeting, because of the happening there, it impressed it on my mind. After the meeting was opened, the question of Kuzych remaining in the hall came up and there was a vote taken of the membership present, and he was expelled. 30

Q. How soon after the meeting was opened did that motion appear? A. Well, I would say it was the first proceeding, the first order of business.

Q. And you say the motion was to expel Kuzych from the meeting? A. That is right.

Q. What transpired? A. Well, he was escorted from the meeting, and after he was out Mr. Stewart proceeded to read the evidence or what is purported to be the evidence given in the West Coast hearings, and discussion of the evidence of the case took place after Mr. Kuzych was ejected from the hall. 40

- Q. Had the Trial Committee made a report at that time?
 A. No, not to my knowledge.
- Q. Were you at a meeting where the Trial Committee's report was read?
 A. Yes, I was.
- Q. What happened then?
 A. Kuzych was given ten minutes on the platform and there was a number of interruptions at the time, I remember—
- Q. What was the form of the interruptions?
 A. As I remember it, it was catcalls. I don't remember all the interruptions there were.
- Q. All I want to find out is whether Kuzych had an opportunity to speak.
 A. He did have an opportunity to speak, with interruptions, yes, for ten minutes.
- Q. Who was chairman of that meeting?
 A. Mr. Nuttall was chairman of that meeting.
- Q. Did you hear the chairman make any remark?
 A. After Kuzych left the platform, the chairman addressed the meeting for a short period of time.
- 20 The Court: Q. How long?
 A. A short period of time; I would say four or five minutes, maybe, or less.
- Mr. Johnson: Q. What was the nature of the chairman's remarks?
 A. Well, I don't remember the exact words, but they were to the effect that Kuzych was endeavouring to break up the Boilermakers' Union and he was a friend of the capitalist class and there was no place for him in the Union at any time.
- Q. Were these remarks made before or after the vote for the expulsion of Kuzych was taken?
 30 A. That was before.
- Q. How was the vote taken?
 A. Standing up.
- Q. What would you say about the way in which the vote was taken?
 A. Well, the vote was taken in quite a fair manner, I think, as far as the vote was concerned. The only thing that occurred there at that time was the fact that when the votes for Kuzych came up, there was a welder by the name of Jenkins sitting directly behind me who insisted on taking the names of the parties who voted for Kuzych.
- Q. Were there any threats made?
 40 Mr. Burton: My friend cannot do that, surely.
- The Court: By any of the defendants could be admissible, would it not?
 Mr. Johnson: Q. Did you hear any threats by the defen-

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dants, W. L. White, W. Schwartz, N. Nuttall, W. Gee, C. W. Caron and S. Jenkins?

Mr. Burton: My lord, I object to the form of the question. I submit it is cross-examination.

Mr. Johnson: I will not insist on the question, my lord. I do not wish to lead this witness.

Q. You say Jenkins insisted on taking the names of everybody who stood up?

A. That's right.

The Court: Q. What was the name? 10

A. Jenkins.

Mr. Johnson: Q. In what way were the names taken?

A. Well, I don't know if they were or not.

Q. How do you know he was taking names?

A. He was standing up naming people who were there.

I know he called my name.

The Court: Q. That was after those who had voted for Kuzych stood up? A. Well, as we who stood up to vote

for Kuzych, as we stood up he was calling the names to some party that was with him, my lord. I don't remember who the party was. 20

Q. Were the names of those who were voting against Kuzych taken? A. No, just those that voted for him.

Mr. Johnson: Were you at any meeting where by-laws were read out?

A. Yes, I was.

Q. Would you just tell how those by-laws came to be put before the meeting?

A. Well, there were copies of the by-laws distributed within the hall, and I got a copy of them. I had it in my possession and still have it somewhere; I don't know where. The by-laws were taken in sections, probably 1 to 5, or 1 to 10, and they were taken in sections and discussed each meeting. They were in groups. 30

Q. On how many occasions were these copies handed out?

A. I couldn't say, because I didn't attend all the meetings.

Q. But you were at one meeting that you remember?

A. Yes.

Q. And there was a copy of the draft by-laws?

A. Yes.

Q. Do you remember what month that was?

A. I do not. 40

Q. Now, some reference has been made here previously to article 7, subsection (7) of the printed by-laws and you saw, presumably, a copy of this printed by-law, Exhibit 14, did you?

A. Yes, I have seen it.

- Q. Are you familiar with Article 7, subsection (7)?
 A. Yes, I am.
- Q. Did you ever hear that subsection put to a meeting?
 A. Not at any meeting that I attended.
- Q. How many meetings do you think you were attending during the summer of 1944?
 A. Well, that is very difficult to say, because I used to work a lot of overtime and most meetings I did attend were afternoon meetings, and quite often I was working and was unable to attend.
- 10 Q. Did you attend any meetings in August, 1944?
 A. I cannot identify any of them by date.
- Q. Were you at any meeting where those by-laws were passed and finished and done with?
 A. No, I was not.
- Q. Were you at a meeting where a vote of thanks was given to the By-laws Committee for their work?
 A. No, I wasn't at that one, either.
- Q. Were you actively identified with some organization having to do with workers' homes?
 20 A. Yes, the Co-Workers' Co-operative.
- Q. What was the nature of your duties in connection with that?
 Mr. Burton: My lord, I have an objection to this unless it has some bearing on the—
 Mr. Johnson: It has some bearing on whether we are going to bring anything in against Mr. Nuttall, who was chairman of the meeting at which Mr. Kuzych was expelled.
 The Court: You had better go ahead. I cannot tell yet if it has a bearing.
- 30 Mr. Johnson: Q. Did you hold a meeting of this society?
 A. Yes.
 Q. Were you in the chair? A. Yes, I was.
 Q. When would that be, approximately?
 A. I believe it was in May, as nearly as I can recollect, of 1946. I believe it was 1946. I would not be sure.
 Q. Can you remember whether it was before or after Mr. Kuzych had been expelled from the Union?
 A. It was afterwards.
- 40 Mr. Burton: Well, my lord, now I do object to something that took place after the matters in issue in this action arose. Surely my friend cannot come into Court now and show bias to these defendants.
 The Court: How is it relevant, Mr. Johnson?
 Mr. Johnson: Well, it only shows that Mr. Nuttall made a

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certain motion to do with the plaintiff, and the nature of that motion I wish to have this witness bring out.

The Court: You still object, do you?

Mr. Burton: Yes, my lord, because Kuzyeh had been expelled from the Union long since. In fact, the first trial of this action took place and was over at the time of that meeting. It was April, 1946, at the time this action was first tried.

The Court: You say this motion throws some light on what happened previously?

Mr. Johnson: I think it would tie up, my lord, with the 10 meeting at which the plaintiff was expelled under the chairmanship of Mr. Nuttall.

The Court: All right.

Mr. Johnson: Q. Was this meeting a Union meeting?

A. No, it was a meeting called by the Co-Workers' Co-Operative.

Q. And you were chairman?

A. Yes.

Mr. Burton: I don't know whether your lordship has finally ruled on this or not, but this is not even a Union meeting. Surely 20 what people are saying outside cannot be evidence of what happened after the expulsion.

Mr. Johnson: That is just the point I am making, my lord, that it was not a Union meeting. It was a public meeting, and yet this motion was put on record.

The Court: Is it a public meeting?

Mr. Johnson: Well, it wasn't a Union meeting.

The Witness: It was a meeting, a public meeting, called by the Co-Workers' Co-Operative Society to discuss the housing situation, to which representatives of different groups and associa- 30 tions were invited.

Mr. Johnson: Q. Do you know Mr. Nuttall, one of the defendants here?

A. Yes.

Q. Was he at the meeting? A. Yes.

Q. Was he a representative? A. He was the representative of the Labour Progressive Party, and Mrs. Steeves was C.C.F. and Jimmy Sinclair was Liberal.

Mr. Burton: My lord, you have already-ruled-this evidence out as far as Kuzyeh was concerned. This is exactly the same meeting where Kuzyeh tried to get in for the L.P.P. and your 40 lordship ruled it out. Now, here is this witness coming along with the same meeting.

The Court: I do not know what the motion was, but it is

hard for me to see where a motion moved after the expulsion would have a bearing.

Mr. Johnson: Well, my lord, I don't wish to press it further than that, if your lordship does not wish to have me proceed with it. I am quite willing to abandon it.

The Court: Well, as I say, I do not know what the motion was, and it hardly seems to me that it would have a bearing on what took place prior to the expulsion. I think I would have to rule against it, Mr. Johnson.

10 Mr. Johnson: Very well, my lord.

Q. Now, the Union to which you belonged, these men who belonged to the Union, where were they working? Were they working in a number of shipyards in town? A. Yes.

Q. And you were working at the South Burrard?

A. No, the North Burrard.

Q. Do you know the plaintiff?

A. Mr. Kuzych.

Q. Yes? A. I just know him to see him. In fact, I did not know him until the trouble arose, and that brought my
20 attention to him.

Q. Did you ever go to any morning meetings?

A. Just one that I remember of.

Q. And that one that you attended, did you happen to attend the evening meeting on the same day?

A. Yes, I did.

Q. Was the business at the morning meeting the same as at the evening meeting?

A. Yes.

CROSS-EXAMINATION BY MR. BURTON:

30 Q. Mr. Thompson, what is your occupation now?

A. Manufacturer.

Q. So you left the industry in 1946?

A. That's right.

Q. And you haven't returned to it. At the time you were a caulker? A. That's right.

Q. And you had had experience in that line?

A. Yes, years before.

Q. That is on steel ships? A. That's right.

Q. You first gave your evidence of this meeting when Kuzych
40 was put out. Now, you say Mr. Henderson was chairman?

A. That's right.

Q. There is no doubt about that?

A. No.

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Q. My understanding is that Mr. Henderson was chairman of only a few meetings and he resigned, I think three in all.

A. That's right.

Q. So it would be one of those three meetings?

A. Yes.

Q. And you know Kuzych was charged for the second time?

A. That's right.

Q. Had you previous knowledge of your own of the first time that he was charged?

A. No, I didn't.

10

Q. How do you know it was the second time?

A. Just hearsay. I knew that there was a trial.

Q. And when my friend asked you in reference to the by-laws whether or not you had seen Article 7, subsection (7) presented in meeting, and you said no, you will admit, of course, that it might have been presented at a meeting at which you were not present?

A. No doubt.

Q. For instance, did you hear Article 2, subsection (c) discussed:

"The objects and purposes of this Union are: (c) To consummate closed shop agreements in order to establish an equitable and lasting relationship with employers." 20

Was that subsection discussed at a meeting at which you were present?

A. Yes, it was.

Q. And was it adopted? A. As far as I can remember it was.

Q. And you are in favour of closed shop principles?

A. Providing it is properly handled, I am.

Q. And there is no doubt that the membership at that meeting at which it was discussed were in favour of it? 30

A. They voted on it anyway.

Q. And it passed? A. As far as I remember.

Q. Do you know of any dissenter?

A. Not right offhand, no.

Q. It would be a surprise to you if there were any, wouldn't it?

A. It wouldn't particularly be a surprise, because I don't think it is generally accepted through the membership 100%. I don't know what percentage it would be.

Q. But it would be the majority, anyway? 40

A. Well, I am not prepared to say that.

Q. Well, you know that the Union had what amounted to

a closed shop at North Vancouver Burrard Ship Repairs in 1940, and still has? A. That's right.

Q. At the meeting when the trial report was held, as I understand the by-laws, an accused is tried before an Investigation Committee?

A. Yes.

Q. And a hearing is held at some length?

A. That is what I understand.

10 Q. And then that Committee decides the guilt or innocence of the accused?

Mr. Johnson: The by-laws speak for themselves, surely.

Mr. Burton: We are coming to that.

Q. And that report is presented at the general meeting?

A. Well, that is procedure.

Q. You were present at that meeting?

A. Yes.

Q. Did the trial investigating committee present its report?

A. I believe they did.

20 Q. Was that report unanimous, or were there any dissenters?

A. Not to my knowledge.

Q. And Kuzych was allowed ten minutes, am I correct?

A. That's right.

Q. And Stewart was allowed ten minutes?

A. Yes.

Q. And they both talked for ten minutes?

A. A number spoke. I don't know—I do know that Kuzych was allowed ten minutes.

Q. Yes, and he took ten minutes?

A. Yes.

30 Q. Now, at the vote, this man Jenkins tried to get the names of those voting for Kuzych?

A. That's right.

Q. You are not suggesting that was on behalf of the executive?

A. I am not making any statements of that description at all.

Q. Mr. Jenkins was sitting well back in the hall?

A. Yes.

Q. And getting the names for somebody sitting beside him?

A. That's right.

40 Q. It would be pretty hard for him to take the names of those voting against Kuzych?

A. He couldn't take them all.

Q. No, it was 450 approximately against Kuzych, and 12 for?

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A. I don't think he was trying to take the names of those against. He was trying to get a record, I think, of those voting for Kuzych, of which I was one.

Q. McPheator was there? A. Yes.

Q. And he voted for Kuzych?

A. Yes.

Q. And Mole? A. I don't remember.

Q. The point I am making is that it would not be hard to take the names of those voting for Kuzych, but it would be impossible to take the names of those voting against. 10

A. I was voting for Kuzych because I figured he had been unfairly dealt with.

Q. That was your opinion, but you didn't know a great deal about it?

A. I didn't know anything about it, but I was present at the meeting where Kuzych was expelled and the matter was discussed afterwards, and it peeved me so that I got up and went out myself. The procedure seemed unfair.

Q. But the majority thought against you?

A. Apparently, yes. 20

Q. Well, the vote was against?

A. Yes.

Q. So you did not mind if you were in the minority?

A. No, but at the same time I am going to stand on my own opinions just the same.

Q. I don't blame you for that. Now, witness, the fact was that you had known, had you, that Kuzych had already sued the Boilermakers and obtained a judgment? A. That's right.

Q. And gotten damages? A. That's right.

Q. And did you know he had applied to the Supreme Court 30 to try and prevent the Trial Committee hearing his trial at all, before the Trial and the Investigating Committee had heard the trial at all, that he had applied to this Court for an injunction to restrain them? A. No, I didn't know.

Q. So you were not in possession of all the facts?

A. That might be. I am just basing my opinion on what I saw.

Mr. Burton: Thank you, Mr. Thompson.

(Witness aside).

Mr. Johnson: My lord, that is all the evidence we have, 40 except for the reading into the Record of some questions on the Examination for Discovery, and Mr. Locke will do that.

Mr. Locke: My lord, if you have the appeal book of the first trial, the Discovery is the same with one exception, except

that at page 201 of Volume 1 of the Appeal Book, the questions on the examination of Mr. Caron, which I will read first.

The Court: Just a moment. You are reading from what line?

Mr. Locke: Page 201. It is about line 23, my lord. As a matter of fact, my lord, these questions are in Volume 2 of the Appeal Book.

The Court: Yes, I have not got the Examinations for Discovery.

Mr. Burton: I think the original would be in the file, my lord.

10 Mr. Locke: The questions are in the Appeal Book, my lord, but there is one question there that is not to go in. The Discovery, my lord, if you haven't got the original—

The Court: I have it now.

Mr. Locke: These are all inclusive, my lord: 1 to 23; 46 to 48; 54 to 65; 89; 103 to 107; 117 to 123; 140 to 146; 148 to 154; 156 to 158; 165 to 167; 170 to 183; 188 and 189; 239 to 249; 254 to 264.

My lord, 161 and 162 should have gone in.

The Court: They were in before.

Mr. Locke: Yes, they were in before, my lord. That list in
20 the Appeal Book is apparently defective.

(MR. LOCKE THEREUPON READ THE ABOVE DISCOVERY EVIDENCE TO THE END OF 166).

Mr. Locke: My lord, I am now asking that 167 should not go in. That will make it just 165 and 166.

The Court: Yes. Are you putting in the article from the "Main Deck"?

Mr. Locke: Yes, it is in already, my lord, as Exhibit 41.

The Court: Yes.

Mr. Locke: (Continues reading the above mentioned Dis-
30 covery to the end of Question 248).

No. 249 should not go in, my lord. There is nothing in it.

Mr. Burton: My friend has a sense of humour.

The Court: You are not putting 249 in?

Mr. Locke: No, my lord, I am stopping at 248.

(Mr. Locke thereupon continues reading to the end of the above noted Discovery).

That is all from the Discovery of Caron, my lord. The next questions are from the Examination for Discovery of Mr. White. They are to be found in the Appeal Book, my lord, at page 313.

40 The Court: You had better give them to me.

Mr. Locke: Yes. Questions 1 to 35; 71 to 74; 81 to 83; 98 and 99; 101 to 104; 111 to 127; 130.

RECORD

*In the Supreme
Court of British
Columbia*

Proceedings
at Trial

Plaintiff's
Evidence

No. 8

Richard Herbert
Thompson

Cross-Examin-
ation

(Continued)

RECORD

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Richard Herbert
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Cross-Examin-
ation

(Continued)

(AT QUESTION 29): It might be pointed out, my lord, that the draft by-laws were produced for the first time at the trial and were not produced at the examination.

(MR. LOCKE READING DISCOVERY, AT QUESTION 81)

My lord, the minutes appear to be the 20th of January, 1944, which are not in. Yes, they are in as Exhibit 15. That is the one that was—no,—there were some previous minutes. On the Discovery there were some typewritten minutes marked No. 11 and some longhand minutes of the same date, and Exhibit 12 refers to the longhand minutes. I am not certain whether those are in or not. I will check the file, my lord. No, they don't appear to be in, my lord. If I may, I will have to try and check that. 10

The Court: Yes.

(MR. LOCKE READING DISCOVERY, AT QUESTION 111):

Mr. Locke: Question 111, my lord, refers to what has been filed as Exhibit 19 in this action.

(MR. LOCKE READING DISCOVERY AT QUESTION 112): 20

“Morning meeting of August 7th.” I think he means evening meeting. The first question and answers, my lord, refer to the morning meeting. Exhibit 28, the morning meeting, is Exhibit 21 on this trial. Exhibit 29 are the minutes of the evening meeting, my lord, marked as Exhibit 22 on this trial.

(MR. LOCKE COMPLETES READING OF ABOVE MENTIONED DISCOVERY).

That is all the Discovery, my lord.

Mr. Johnson: That is the case, my lord.

The Court: We will have a five minute recess. 30

(PROCEEDINGS ADJOURNED FOR SHORT RECESS).

EXTRACTS FROM EXAMINATION FOR DISCOVERY
CHARLES WILFRED CARON

- 1 Q. Where do you live, Mr. Caron?
A. 1614 Robson Street.
- 2 Q. You are one of the defendants?
A. Yes.
- 3 Q. You have been sworn to tell the truth on this
examination?
A. Yes.
- 10 4 Q. You are a member, and you are Secretary of the
Boilermakers' Union, are you?
A. Yes.
- 5 Q. What is the proper name of the Union?
A. Union in relation to the action?
- 6 Q. No, what is the full name of your union?
A. Boilermakers' and Iron Shipbuilders' Union,
Local No. 1.
- 7 Q. Should the words "of Canada", appear in the name?
A. No.
- 20 8 Q. Did those words appear at any time?
A. Yes.
- 9 Q. When was the change in the name effected?
A. After the agreement was signed with the Canadian
congress of Labour.
- 10 Q. Would you know about what date?
A. It was in 1943 — I cannot remember the exact date.
- 11 Q. The word "and", Boilermakers' and Iron Ship-
builders', the word "and" is spelled out in full?
A. Yes.
- 30 12 Q. And appears that way on your seal?
A. We had two seals at the same time. One seal was
used in the earlier days.
- 13 Q. The proper name of the union is "Boilermakers'
and" — spelled out in full — "and Iron Shipbuilders' Union,
Local No 1"?
A. Yes.
- 14 Q. That is a trade union?
A. Yes.
- 15 Q. Consisting of a large number of members?
40 A. Yes.
- 16 Q. Approximately how many would you say?
A. At that time, in relation to this action, approximate-
ly 10,000.

RECORD

*In the Supreme
Court of British
Columbia*

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Evidence

No. 9

Extracts
Examination for
Discovery

Charles Wilfred
Caron

January 8, 1946

RECORD 17 Q. At the present time there are some thousands in
the organization.

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Charles Wilfred Caron
January 8, 1946
(Continued)

18 A. Yes.

18 Q. It is a big organization?

19 A. Yes.

19 Q. Who is the president of the Union at the present time?

20 A. William White.

20 Q. How long has he been president?

21 A. He was elected in 1945. 10

21 Q. What month?

21 A. The beginning of 1944, I cannot recollect the exact date.

22 Q. You are secretary of the Union?

23 A. Yes.

23 Q. How long have you been secretary?

23 A. Since the 1st of January, 1944.
* * * * *

46 Q. On the 8th of August, how did you adopt these by-laws of the 8th of August? 20

46 A. The same new by-laws were adopted by adoption at the meetings by various secretaries as they go along.

47 Q. Do you keep a record of the meeting?

47 A. Yes.

48 Q. Have you got those?

48 A. I haven't here. We had the by-laws that we were using. I do not know if they kept all the records of it.
* * * * *

54 Mr. Hodgson: Q. You mentioned, Mr. Caron, that these by-laws referred to in Exhibit 2 were passed at different meetings. How many meetings would there be? 30

54 A. I couldn't say, there were special meetings held to discuss the question of the by-laws.

55 Q. Was notice given to the members?

55 A. The decisions were passed at the meetings as to when the next meeting would be held and so on. And whenever a special meeting was called, posters would be put out in the industry notifying the members.

56 Q. Did you send individual letters? 40

56 A. No.

57 Q. You posted notices in the yard that there would be a general meeting?

57 A. Yes, and in some yards the management themselves put up the notice.

58 Q. Is it a fact you would have a meeting in the morning, and continue in the evening, calling it one session?

59 A. Yes.
 Q. Why would you do that?
 A. Because a number of the members would be working on the second shift, and therefore were not in a position to attend an evening meeting, and we wanted to give all members as opportunity to participate in the discussions, and therefore our meetings would start at 11 o'clock in the morning, and we would adjourn for a period, and re-convene at 8 o'clock in the evening, to provide an opportunity for everyone to attend, which is the basis on which we run the union.

10 60 Q. You say these bylaws were all passed at a meeting of the Union? They would be read and passed at the morning meeting, and again in the evening?
 A. Not all, some meetings were held on Sunday.

61 Q. Then, if you held a meeting on Sunday, it was not double-barrelled?
 A. No.

62 Q. Were some of these by-laws passed at some of these two-sectioned meetings?

20 63 Q. Unless there was a meeting on Sunday, the by-laws would have to be read at the morning and evening meeting, and voted on?
 A. Yes.

64 Q. And were put to two votes, and the majority passed?
 A. Yes.

65 Q. Were you present at all of the meetings during the discussion of the constitution?
 A. Yes.

* * * * *

30 89 Q. Did you know that the plaintiff — we will deal with that part later. What you say now is this, is it not, that all the by-laws mentioned in the document Exhibit 2 were duly passed prior to the 8th of August?
 A. Yes.

* * * * *

103 Q. I notice under paragraph 6, that from the 1st of January, 1944, your union ceased to be a chartered local union of the Canadian Congress of Labour. Is that right?
 A. That is correct.

40 104 Q. And it was not to be subject to any of the constitutional rights or obligations of the chartered local union?
 A. That is right.

105 Q. But, just was to be considered, an affiliated union?
 A. Yes.

106 Q. So that in reality on the 1st of January, it became

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Charles Wilfred Caron

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(Continued)

an independent union affiliated with the Canadian Congress of Labour?

A. Yes.

107 Q. You ceased to be a local chartered union of the C.C.L.?

A. Yes.

* * * * *

117 Q. I have it in paragraph 25 of the statement of claim, that on or about the 11th November, 1942, the plaintiff legally joined and became a member of the union. Is that date correct? 10

A. Possibly. We have his application on file.

118 Q. Will you check that date, and let us know if that is correct?

A. Yes.

119 Q. Now, in the spring of 1945, action was taken against the plaintiff to suspend him from the union. Is that correct?

A. I know that action was taken during that period. I do not know if the date is correct.

120 Q. Certain charges were laid against the plaintiff? 20

A. Yes.

121 Q. Have you a copy of those charges?

A. Which date?

122 Q. February, 1945?

A. February 14th, a charge was laid against him.

123 Q. Have you a copy of that?

A. (Produces) There were two charges around that period. One was dismissed. I cannot say if this is the first or second one.

* * * * *

30

140 Mr. Hodgson: What happened after the charges were read, Mr. Caron?

A. They were referred to the Press and the Investigation Committee?

141 Q. Was the procedure such that the by-laws were followed with respect to the charges?

A. Meaning what.

142 Q. Was the procedure followed. Did the Press and Investigating Committee have their meeting and report back to the meeting of the Union? 40

A. Yes.

143 Q. And the matter was discussed at the Union and the suspension voted on. Is that what happened?

A. Yes.

144 Q. Were you at those meetings?

A. Yes.

- 145 Q. Were you at the meeting of the Press and Investigating Committee?
A. No, I acted as a witness.
- 146 Q. Do you know whether or not the plaintiff was represented by counsel?
A. Not to my knowledge.
* * * * *
- 148 Q. Were there any oaths, or at least did you take an oath when you were present?
10 A. Not that I know of.
- 149 Q. You did not take an oath?
A. No.
- 150 Q. Do you know if any other witnesses were required to take an oath or not?
A. I don't think so.
- 151 Q. Did you hear the evidence given by the plaintiff at the meeting of the Press and Investigating Committee?
A. I heard the conclusion, that is the report of the Press and Investigating Committee.
- 20 152 Q. What happened with respect to the North Vancouver Ship Repairs at this time?
A. We had a collective agreement with the management.
- 153 Q. Did you send them a letter?
A. I did, on the instructions of the general meeting.
- 154 Q. Have you a copy of that letter?
A. We have it on file.
* * * * *
- 156 Q. There was a letter sent?
30 A. Yes, after he was expelled from the Union.
Mr. Burton: We will produce that letter.
- 157 Mr. Hodgson: Q. Have you a copy of the collective agreement that you had with North Vancouver Ship Repairs Ltd.?
A. Yes.
- 158 Q. Do you object to producing that, showing the provision you refer to?
- 161 Q. Did you know the plaintiff was discharged from employment in the North Vancouver Ship Repairs after you sent that notification to them?
40 A. Yes.
* * * * *
- 162 Q. Do you know that he has not worked there since?
A. Yes.
- 165 Q. He has not paid any dues?
A. No.

RECORD

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No. 9

Extracts
Examination for
Discovery

Charles Wilfred
Caron

January 8, 1946

(Continued)

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 (Continued)
- 166 Q. Nor would you take any if he offered them. Your answer is no?
 * * * * *
- 170 Q. There were several articles published about that, was there not?
 A. There may have been.
- 171 Q. Do you remember this article of February 2nd, 1945?
 A. Yes.
- 172 Q. What papers was that printed in, do you remember? That is out of the "The Main Deck", isn't it? 10
 A. Probably is The Main Deck.
- 173 Q. What is The Main Deck?
 A. The official organ of the Shipyard General Workers' Federation.
- 174 Q. I notice this article by C. W. Caron, did you write it?
 A. Yes.
- 175 Q. Did you write it for the publication of it?
 A. I sent it to the Main Deck.
- 176 Q. And asked them to print it?
 A. Of course. 20
- 177 Q. Did you send it in a private capacity or as secretary of the Union?
 A. All members of the Union are entitled to send anything they wish to the Main Deck.
- 178 Q. It is really the official publication of the Boilermakers' Union?
 A. It is the official organ of the Shipyard General Workers' Federation, and is utilized by that Union.
- 179 Q. The Boilermakers' Union?
 A. Yes. 30
- 180 Q. You knew this article would come to the attention of practically every one of the members of the Boilermakers' Union?
 A. Yes.
- 181 Q. How is this Main Deck distributed?
 A. It is distributed in the yard.
- 182 Q. What percentage would get a copy?
 A. A large percentage.
- 183 Q. Would 90 percent get a copy of it?
 A. I would imagine so. 40

(DOCUMENT REFERRED TO MARKED No. 6 FOR IDENTIFICATION)

* * * * *

- 188 Q. Now I think you told me the procedure was to hold

a meeting in the morning and a meeting at night and the total votes were counted at both these meetings in connection with any one resolution; was that the procedure?

A. Yes.

189 Q. And the morning and evening meetings were counted or treated as one meeting?

A. Yes.

* * * * *

10 239 Q. Now can you show us in your minutes where the Articles 25 and 26 were read at the meeting?

A. This was the last portion of the by-laws that were passed at the Union meeting?

240 Q. That is, 14 to 20, Articles 14 to 20?

A. Are you dealing with the Section that deals with discipline?

20 241 Q. Shortly, I want to know when they were read? You produce resolution of August 7th, which reads, "Brother King of the By-laws Committee read from Articles 14 to 20 of the by-laws. After discussion it was regularly moved" — And so on, "Since they have now been fully considered they should now become ruled — articles" — yes, that is 14 to 20 what other minutes have you got dealing with 25 and 26?

A. The only minute we have is what you have before you there, which is the final section of the by-laws that was adopted.

242 Q. That is not the question. You produce minutes showing articles 14 to 20. Now have you got any minutes dealing with 25 and 26?

A. Yes.

30 243 Q. Where are they?

A. It don't specify which article, but that is the by-laws in their entirety.

244 Q. Now I am asking you this, have you any notation in your executive minutes or any other minutes dealing with the effective date of those by-laws?

A. No, nothing outside of the original copies of those minutes.

245 Q. Those are the only minutes you have?

A. We have the original copy.

40 246 Q. You mean these are?

A. Copy in longhand.

247 Q. Copy in longhand, so that we have it clear on the records, now you are producing two pages from the minutes of August 7th and August 21st. And you say that those are

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Charles Wilfred
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January 8, 1946
(Continued)

all the minutes dealing with the final adoption of the by-laws and as to them going into effect?

A. Yes.

248 Q. That is clear? Have you any minutes of the executive committee dealing with that?

A. I can't say, I don't know.

* * * * *

254 Q. Now, Mr. Caron, the plaintiff says that he came to the regular business meeting of the Union on Monday, 3rd July, 1944, and took his place, took a seat, and that you arose from the elevation where the executive were accustomed to sit and came to the plaintiff and tapped the plaintiff on the shoulder, and motioned the plaintiff to follow you, taking him to the entrance of the hall, you advised him he must leave the meeting, giving him various reasons for the action, and the plaintiff left, is that right? 10

A. Yes, except the date: I can't verify the date.

255 Q. You remember doing that?

A. Yes.

256 Q. What reasons did you give him at that time? 20

A. The reasons I have given, that it was unwise.

257 Q. That it was unwise?

A. Yes.

258 Q. Did you insist on him leaving the meeting?

A. The member has the prerogative to remain if he wished to.

259 Q. Do you remember on the 12th day of July, requesting him to leave that meeting to avoid unnecessary commotion?

A. Yes. 30

260 Q. Do you remember that?

A. Yes.

261 Q. Now do you remember the regular meeting on the 17th of July, when the plaintiff was stopped at the door by Mr. White, the business agent?

A. Yes, I think I do.

262 Q. You remember that, and the plaintiff was not allowed to go into the meeting on instruction from you?

A. He was advised.

263 Q. Yes, did you give Mr. White instructions to tell Mr. Kuzych not to come to the meeting? 40

A. I advised Mr. White.

264 Q. You advised Mr. White?

A. To advise Mr. Kuzych.

EXTRACTS FROM EXAMINATION FOR DISCOVERY
WILLIAM LLOYD WHITE

- 1 Q. You are Mr. W. L. White, are you?
A. Yes.
- 2 Q. Where do you live?
A. 204 West Eighth Street, North Vancouver.
- 3 Q. And you have been sworn to tell the truth on this examination?
A. I have.
- 10 4 Q. You are the President, are you, of the Boilermakers' Union, the defendant in this action?
A. I am President of the Marine Workers' and Boilermakers' Industrial Union, Local No. 1.
- 5 Q. Is that the same Union as the one mentioned in these proceedings?
A. No, actually it is not.
- 6 Q. Well, what is the difference. Are there two unions?
A. There are three unions combined in the Marine Workers' and Boilermakers' Industrial Union.
- 20 7 Q. How about this Boilermakers' and Iron Shipbuilders' Union, Local No. 1. Are you an officer of that?
A. There is no Boilermakers' and Iron Shipbuilders' Union.
- 8 Q. What happened to that?
A. It became part of the Marine Workers.
9. Q. When did that occur?
A. Since the first of the year.
- 10 Q. That is the first of 1946?
A. Yes.
- 30 11 Q. But you were the President up to that time of this defendant Union?
A. Yes.
- 12 Q. And when did you take office?
A. Approximately a year ago.
- 13 Q. That would be sometime in March?
A. I believe it was in April, if I am not mistaken.
- 14 Q. In April, 1945?
A. Yes.
- 15 Q. Do you know anything about this trial of the plaintiff by the Press and Investigating Committee?
A. I know the plaintiff was tried before the Press and Investigating Committee.
- 40 16 Q. Were you at the trial?
A. Some of the time I believe I was there.

RECORD

*In the Supreme
Court of British
Columbia*

Plaintiff's
Evidence

No. 10

Extracts
Examination for
Discovery

William Lloyd
White

April 2, 1946

RECORD

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Plaintiff's
Evidence

No. 10

Extracts
Examination for
Discovery

William Lloyd
White

April 2, 1946

(Continued)

17 Q. But you were not the President at the time of the trial?

A. No.

18 Q. Do you know as a matter of fact whether the witnesses that were called at the trial were sworn on their oath?

A. No, not to my knowledge. No one has the power to administer an oath.

19 Q. So that the witness' evidence was not taken on oath?

A. No, not to my knowledge.

20 Q. Now, Mr. White, you were asked to produce the 10 minute book of the Boilermakers' Union. Do you have that with you?

Mr. Burton: We have the original minutes taken at the time in longhand, and we have also, the typewritten copies transcribed.

Mr. Hodgson: Have you got your affidavit of documents?

Mr. Burton: I have the form in rough, but it is not sworn.

Mr. Hodgson: I will just take a look at it. 20
(discussion between counsel).

21 Mr. Hodgson: Q. I understand, Mr. White, that you have the minute book of the defendant Union here, together with the pencilled notations taken by the secretary at the meeting. I would like you to produce the minutes for the meeting of July 3rd, 1944. Mr. White, in the extract of minutes furnished by your solicitor, it says, "at 9:20 during the evening meeting the regular order of business was suspended and the meeting proceeded to discuss the proposed bylaws. Moved, seconded and carried, that Articles 1 to 9, 30 which had been previously discussed, be adopted." Does that appear there?

A. Would you read that again?

22 Q. "Moved, seconded and carried, that Articles 1 to 9, which had been previously discussed, be adopted".

A. That is right.

23 Q. "Brother King on behalf of the By-laws Committee read from Articles 9 to 13. After discussion it was moved, seconded and carried, that these be adopted."

A. Yes. 40

(EXTRACT QUOTED ABOVE MARKED No. 1 FOR IDENTIFICATION)

24 Q. Now Mr. White, would you kindly produce for us the copies of Articles 1 to 9, as they have been read and

- previously discussed. Before doing that, these notes would indicate, Mr. White, that Articles 1 to 9, had been previously read and discussed, that is, read to the meeting and discussed. Do you have the copies of Articles 1 to 9, as they were read to the meeting, and the document from which they were read?
- A. They would be in the copy of the bylaws, I presume?
- 25 Q. I understand you had your by-laws printed at a much later date?
- A. Yes.
- 10 26 Q. Well, have you got among your documents, Articles 1 to 9, as they were read at the meeting?
- A. Not to my knowledge. We may have them, but not to my knowledge.
- 27 Q. Do you have any of the original draft by-laws which were submitted to these meetings?
- A. Not that I know of. There may be some on file but if there are, I have no knowledge of them.
- 28 Q. Will you undertake to have a search made?
- A. I can make inquiries.
- 20 29 Q. And will you produce them?
- Mr. Burton: If found.
- A. Yes, I see no objection to producing them. They were amended.
- 30 Mr. Hodgson: Q. Just so there will be no argument later on that point, these by-laws I take it were read from some document or sheet or memorandum, were they not — read to the meeting and discussed?
- A. I presume so, yes.
- 30 Mr. Hodgson: I would require, Mr. Burton, if those documents are not available, that they be set out in the affidavit of documents under documents which you previously had but do not now have.
- Mr. Burton: To make my position clear, I can't be responsible for a whole lot of drafts and pencilled notations and thousands of other documents which may have been used in the preparation of articles later adopted by the Union, no more than you can for all the notations you make on a trial.
- 31 Mr. Hodgson: Q. I understand that you, as president of this Union, are going to conduct a search to ascertain what documents these minutes were first read from?
- 40 A. Yes, I can make inquiries. As far as I know, I have no knowledge of them. These copies were distributed at the meeting when the bylaws were discussed.
- 32 Q. I am producing from documents which the plaintiff has, a draft set of by-laws dated May, 1944. Is that the docu-

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No. 10

Extracts
Examination for
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William Lloyd
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Extracts Examination for Discovery

William Lloyd White

April 2, 1946

(Continued)

April 12, 1946

ment that you refer to that was circulated amongst the members?

33 A. I couldn't say whether that is a copy of it or not.

Q. In any event, it is your evidence that draft by-laws were circulated?

34 A. Yes.

Q. In form similar to that?

35 A. Yes, I believe so.

Q. You remember getting one of these?

A. Yes.

* * * * *

10

Continued 12 April, 1946.

71 Q. I think you told us on your last examination that this Union, the Boilermakers' Union, had been amalgamated with some other Union?

A. Yes.

72 Q. And have the assets of this defendant Union been transferred to the other union, the new one?

A. Yes.

73 Q. And is this new union responsible for any judgment 20 which might be obtained against it by the plaintiff?

A. I presume so.

74 Q. Do you know?

A. As far as I know, yes.

* * * * *

81 Q. These minutes you have produced as Exhibit 12, Mr. White — I understand your practice is to have a morning and evening meeting, is that right?

A. That is right.

82 Q. The evening meeting is a continuation of the morn- 30 ing meeting?

A. That is right.

83 Q. And you go over the exact same business at the evening meeting, as you did in the morning meeting?

A. Yes.

* * * * *

98 Q. Are those minutes signed by the president of the union, or by the chairman of that meeting?

A. No, neither of these minutes is signed.

98 Q. Are they signed by the chairman of the next suc- 40 ceeding meeting?

A. They are not signed.

99 Q. They are not signed by anybody?

A. No, I don't know whether these are the originals or not.

* * * * *

101 Q. Will you tell me, Mr. White, if Exhibits 11, 12, 13

and 14 have been signed by the chairman, or secretary of the meeting of which these minutes purport to be a record, or signed by the chairman of the next succeeding meeting?

Mr. Burton: The ones we have produced are not signed. Whether we have any signed copies, we will let you know as soon as we are able to do so.

Mr. Hodgson: What are you producing?

10 Mr. Burton: The original notes taken at the meeting, plus a carbon copy of the minutes as typed from those notes, taken at the time.

Mr. Hodgson: And those typed records constitute your official minutes book?

Mr. Burton: There might be. The original are typed copies which might be signed. I don't know. But I am taking the view that the minutes taken at the meeting in pencil were the notes taken at the time and the ones you should have.

Mr. Hodgson: What we want is the permanent records of these minutes.

20 Mr. Burton: That is what you have.

Mr. Hodgson: These documents are the official minutes?

Mr. Burton: Yes. If they are not the official minutes, they are exact copies of them.

Mr. Hodgson: Are they exact in this respect, that the originals are not signed?

Mr. Burton: I don't know.

102 Q. Do you know, Mr. White?

A. No, I couldn't say.

30 Mr. Burton: We will find out and let you know. The pencilled notes taken at the time were not signed, but they were taken at the time of the meeting. The typewritten copies, the original of the typewritten copies may be signed. I don't know. We will let you know about it. We haven't produced them here. We have produced the notes taken at the time, and the carbon copy typed from the original minutes which you have.

40 Mr. Hodgson: Would you let me have the minutes of May 15th, 1944? Mr. Burton, you have not produced here the official book of this defendant Union.

Mr. Burton: I produced the original minutes taken at the time, and the carbon copies of the typewritten minutes taken from the original minutes.

Mr. Hodgson: Where are the original minutes?

Mr. Burton: If you insist on going into that, I can

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produce the originals, but I am making a statement as counsel that the copies are the carbon copies of the original. There is no difference in the wording. The only difference might be the signatures at the end, if there are such.

103 Mr. Hodgson: Q. Could you have somebody from your union, Mr. White, bring that book up now, and let us take a look?

A. I don't know.

Mr. Hodgson: I want the original. Surely I am entitled to the original. (Discussion.) 10

Mr. Burton: I make the statement as counsel that the minutes I am producing are first, the pencilled notations taken at the time of the meeting, secondly, the carbon copy of the typewritten minutes as we produced from the pencilled notations, and that Mr. Hodgson is at liberty at any time to compare the carbon copies with the original impression, and as counsel I am saying that the carbon copy is a complete carbon copy and there is no difference at all unless one of the letters on the typewriter didn't go through the carbon, unless the originals are signed, and if they are, I will so notify you and let you compare them. I suggest you proceed with the examination with the carbon copies. Otherwise we will have to adjourn again. 20

Mr. Hodgson: I am accepting your word, Mr. Burton, that these carbon copies are identical with the original pages of your original minute book which constitutes the official record of the defendant Union.

Mr. Burton: That is right. There is a possibility that the original minutes may be signed.

Mr. Hodgson: I would like to know now would it be possible to have the original minute book produced so we could put it in as a matter of record whether or not they are signed. 30

104 Mr. Burton: Q. Do you know?

A. I couldn't say. (Discussion.)

* * * * *

111 Mr. Hodgson: Q. Now the minutes of the meeting of August 7th, 1944: "Moved, seconded and carried that the regular order of business be suspended and that the meeting proceed to discuss the draft by-laws. Brother King on behalf of the by-laws Committee read from Articles 14 to 19 of the by-laws. After discussion it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting they should become 40

the rules of the Union, this to become effective on the recommendation of the executive.”

(TYPEWRITTEN COPY OF MINUTES MARKED
No. 25 FOR IDENTIFICATION)

Mr. Hodgson: Have you the pencilled notations?

Mr. Burton: What I have here is a copy of the morning minutes of the pencilled notations. You have got the one set of minutes and I will produce the pencilled notations of the evening meeting if it becomes necessary.

10 Mr. Hodgson: Mark that Exhibit 26.

(PENCILLED COPY OF MINUTES MARKED No. 26
FOR IDENTIFICATION)

112 Mr. Hodgson: Q. Mr. White, Exhibit 26 headed “Minutes of the morning meeting of the Boilermakers’ Union”, dated August 7th, 1944, have been produced and marked Exhibit 26. What is this on the other side? Is this a continuation of it?

Mr. Burton: That is all we have on that. There was more in the evening minutes. I produce typewritten copy of the morning minutes of August 7th.

(TYPEWRITTEN COPY OF MINUTES MARKED
No. 27 FOR IDENTIFICATION)

Mr. Hodgson: Have you got the evening minutes?

Mr. Burton: We have already marked as Exhibit 25 the section pertaining to the by-laws at the evening meeting. I haven’t yet been able to find the pencilled notations of the evening meeting.

Mr. Hodgson: Pencilled notations of the evening meeting not yet produced, is that correct?

30 Mr. Burton: Yes.

113 Mr. Hodgson: Q. Exhibit 26, Mr. White, the pencilled notations of the morning meeting of August 7th, 1944, and Exhibit 27, a typewritten copy thereof, are identical?

A. Yes.

114 Q. At the morning meeting, Mr. White, according to your minutes, this occurred: “Moved, seconded and carried that the regular order of business be suspended and that the meeting proceed to discuss the proposed by-laws. Moved, seconded and carried that the items of Article 8 dealing with the formation of political action committees be approved. Discussion ensued on Articles 10 to 13 and it was

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moved, seconded and carried that these articles up to and including 13 be approved."

Then there is a notation that the meeting adjourned at 1:10 p.m. I take it, Mr. White, that nothing further occurred with respect to the by-laws at the morning meeting of August 7th, 1944, other than as contained in these minutes?

A. I couldn't say. I don't recall the meeting.

115 Q. The minutes of these meetings are taken down by the secretary exactly as to what happened?

A. That is right. 10

116 Q. So you would say then if there are no further notations that nothing had actually happened other than is contained in the notations?

A. I would presume that would be the case.

117 Q. At the evening meeting of August 7th, 1944, the following minutes appeared: "Moved, seconded and carried that the regular order of business be suspended and that the meeting proceed to discuss the draft bylaws. Moved, seconded and carried that additions to Article 12 dealing with the formation of the political action committee and the Hall Committee be accepted. Brother King on behalf of the By-laws Committee read from Articles 14 to 20 of the By-laws. After discussion it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting they should become the rules of the Union, this to become effective on the recommendation of the executive." "Moved, seconded," etc. is not material. I have read the extracts correctly, have I not? 20

A. As near as I can recall you have read them correctly. 30

118 Q. Now the minutes of the meeting of the 21st August, 1944.

Mr. Burton: You don't want August 14th?

Mr. Hodgson: You have not furnished me with any extracts therefrom.

Mr. Burton: No, there is nothing in that, anyway.

Mr. Hodgson: Now, August 21st, 1944.

Mr. Burton: Here is the morning meeting. That is already marked.

Mr. Hodgson: Would you let me see the set for the morning meeting? We will mark as Exhibit 28 the minutes of the morning meeting generally and as Exhibit 29 the minutes of the evening meeting. 40

119 Q. On exhibit 28, Mr. White, I have marked in pencil

the portions dealing with the passing of the bylaws. Would you just read that so that it can go into the record?

“Moved, seconded and carried that the agenda be suspended and that the meeting proceed to discuss the draft by-laws. Brother King on behalf of the By-laws Committee presented amendments to the by-laws. Moved, seconded and carried that the by-laws as a whole with amendments be adopted. Moved, seconded and carried that the bylaws become the rules and regulations of this Union on and after September 1st, 1944.”

10

120 Q. Just glance through that Exhibit 28, if you will, please, Mr. White, and tell us if there is anything more contained in those minutes dealing with the by-laws?

A. That deal with the by-laws?

121 Q. Yes.

A. No, I don't think so.

122 Q. I don't either. I have gone over it fairly carefully. In Exhibit 29 I am marking in pencil the resolution, “Moved, seconded and carried that the dues increase specified in the by-laws become the rules and regulations of this Union from September 1st, 1944.” You notice that notation which I have marked in pencil?

20

A. Yes.

123 Q. In this set of minutes is there anything else which deals with the passing of the by-laws?

A. No, I don't see anything further.

124 Q. I don't either. Now I am showing you this typewritten document which we will mark Exhibit 30. What is this document, Exhibit 30? It is a consolidation of the morning and evening meetings, Mr. White?

30

A. I would presume that is what it is.

125 Q. Just so that we have your procedure at these regular meetings of your union clear, you hold a meeting in the morning and a meeting in the evening, the morning meeting being for those not working in the morning, and the evening meeting for those not working in the evening, and the resolution must be passed at the morning meeting and then re-passed at the evening meeting? Is that your procedure?

A. Yes.

40 126 Q. When a resolution is passed at both meetings, it then becomes binding on your Union?

A. That is right.

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127 Q. And if it is not passed at both meetings, then it is not binding on the Union, is that correct?

A. Yes. All the members are entitled to attend the meetings and vote on these things either morning or evening.

130 Mr. Hodgson: Q. I will ask you the question then. To the best of your knowledge, information and belief, Mr. White, Exhibit 28 is the original minutes of the morning meeting of August 21st, 1944, and Exhibit 30 is a consolidation of the two?

A. I would presume they are, yes.

10

DEFENCE

Mr. Burton: I will call Mr. King first.

EUGENE WILLIAM KING, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

EXAMINATION BY MR. BURTON:

- Q. Mr. King, your occupation?
 A. At present?
 10 Q. At present.
 A. Operating engineer.
 Q. And you live where?
 A. Britannia Beach.
 Q. And you work for the Britannia Mining & Smelting?
 A. Yes.
 Q. How long have you been working there?
 A. Since last December.
 Q. Were you at one time a member of the Boilermakers' Union?
 20 A. Yes.
 Q. Local 1, in Vancouver?
 A. That is right.
 Q. During what period were you a member?
 A. I believe from December, 1941 until the change over, and I am still a member in good standing of the successive body.
 Q. What date was the change over? Are you still a member?
 A. Yes.
 Q. But you have not worked in that particular industry in Vancouver for some time?
 30 A. Excepting in charge of plant maintenance. I may explain. The occupation of plant maintenance embraces several trades, welding, pipefitting, engineering, electrical work and so on.
 Q. So you have been a member of the Union since 1941 and still are, and you did follow welding also?
 A. Yes.
 Q. Now, did you attend the meetings of the Boilermakers' Union during the time that the by-laws, Exhibit 14 in this case, were considered and passed?
 A. Without fail.
 40 Q. And were you appointed a member of the by-laws committee?
 A. Elected, I believe.
 Q. Elected by the membership?
 A. Yes.
 Q. When was that, do you know?

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A. About February, 1944. It might have been March; most likely February.

Q. Were all the members of the Committee elected?

Mr. Johnson: Well now, don't lead him.

A. They were elected at the time.

Mr. Burton: Q. Who were they?

A. The then chairman, William Stewart.

Q. The chairman of what?

A. Of the membership meeting. In other words, the president.

Q. Who else? 10

A. Mr. Schwartz, Farrington, Caron and there is one more. Stewart and myself.

Q. Yes, you left yourself out. Now, witness, was the committee elected or appointed?

A. They were elected by ballot, I presume, a show of hands.

Mr. Johnson: The witness should not say this unless the minutes are produced.

Mr. Burton: Well, I guess we have them, but I didn't know that mattered. If we can have them, we will start at the very beginning and go through. The whole thing is here, anyway. He was on the By-laws Committee and that is all I am concerned with. 20

Mr. Johnson: But I am not prepared to admit that the By-laws Committee was properly constituted.

Mr. Burton: Oh. Well, my lord, this issue wasn't raised before. If the minutes dealing with the election of the By-laws Committee are not already in evidence, I will produce them over the lunch hour.

Q. In any event, Mr. King, you were on the By-laws Committee, whether properly constituted or not?

A. Quite.

Q. And who was the chairman of that Committee? 30

A. I became the chairman.

Q. Did you function as the chairman of the Committee throughout?

A. Quite.

Q. Were the meetings of the committee regularly held?

A. About fortnightly.

Q. And were they held fortnightly continuously during that period of time until the by-laws were passed?

A. Yes.

Mr. Johnson: Don't lead the witness, please. 40

Mr. Burton: I am just trying to shorten it.

Q. When were they passed?

A. The evening meeting passed the by-laws as amended as a whole on August 8th, 1944. The morning meeting's final stamp of approval was at a succeeding meeting about August 23rd, 1944.

- Q. When did you start your deliberations on the by-laws?
 A. What particularly do you wish?
 Q. When did you start your work as a member of the By-law Committee?
 A. It was shortly following the appointment to the committee, as I said, about February or March, 1944.
 Q. Were the by-laws as you had prepared them presented to the meetings of the membership of the Union?
 Mr. Johnson: Which by-laws? The draft by-laws? My learned
 10 friend should explain that.
 Mr. Burton: I was going to ask the general question. I am trying not to lead. I am trying to get down to the root of it.
 The Court: Your learned friend evidently thinks this is important.
 Mr. Burton: Perhaps, my lord, although it wasn't raised in issue before.
 Q. Would you describe the work of the By-laws Committee, witness, starting right from the beginning.
 A. Once it was evident that I should be the chairman of the
 20 Committee, I requested the office staff to prepare extracts from the previous minutes, compile an outline of the rules then in existence for the Sick and Benefit Funds, also working rooms and so on. Copies of similar by-laws were obtained from other organizations, it was roughed out, discussed by the By-laws Committee, and I was instructed to proceed and draft it more fully. As we approached Article 18 or 19, the chairman, Mr. Stewart, announced to the meeting that they were about ready to be considered by the meeting. The first draft was being mimeographed and disseminated to the membership—
 30 Q. Now we have come to that point, may I have the draft by-laws, the whole of them?
 Mr. Locke: Exhibit 8 is the first one.
 Mr. Burton: Q. Now, I am producing to you Exhibits 8, 9, 10, 11, 12, and 13, which are draft by-laws, mimeographed, put in by my learned friends, except for Exhibit 13.
 A. Exhibit 8 is not quite complete. Exhibit 8 is the first mimeographed copy of the draft by-laws as submitted to the members, I would judge about April, 1944. It might have been March. There is a motion to that effect on the minutes. Shall I continue?
 40 Q. Yes.
 A. Exhibit 9 is a successor to Exhibit 8. It incorporated all amendments from the date of issue of Exhibit 8 to the date of issue of Exhibit 9, which was evidently disseminated in May, 1944. The date is marked on it. One or two special membership meetings had been held from the date of issue of Exhibit 8 until Exhibit 9 was

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published, and during those two meetings, I believe, as well as several meetings of the By-laws Committee, together with some of the interested members, or shall I say members interested in the issue, it was evident that there was plenty of room for improvement and more time was taken to revise it more correctly. The result was Exhibit 9.

Amendments were continued from then on throughout until the final date of passage. There is one copy dated May, 1944, with a number of longhand notations and changes recorded in it.

The Court: Q. What date did you say?

A. A number of handwritten changes. I also notice there is 10 an appended slip—some are pasted, possibly.

Q. What date was that?

A. There is no date, my lord. It would be a later date than May, 1944.

Mr. Locke: Q. What exhibit is this?

A. Exhibit 10. Exhibit 11 is prepared and termed "master copy," the term throughout employed by the By-laws Committee and recognized by the Membership Committee.

Mr. Burton: Q. Go ahead.

A. It shows more specific amendments and two specific dates, 20 one dated April 6, 1944, crossed out to make it May 2nd, 1944. That means it is a more fully amended copy of the original Exhibit 8. It most likely would be the predecessor of Exhibit 8 to 9; that is, conversion of Exhibit 11 would likely be synonymous with the version of Exhibit 9. You will see portions of it pasted in and many long hand notations and so on.

Now we come to Exhibit 12. We have to compare that. I don't know how to place it. It possibly could be very similar to Exhibit 11, by all appearances. I would have to compare that very thoroughly. I may explain, gentlemen of the Court, that several master copies 30 were being prepared at a time, usually around ten, in order to provide each member of the By-laws Committee, as well as the recording secretary of the meeting and several interested members, with a copy of the last copy as it existed at the time, and then the master copies were being called in and being amended from—being issued and dates being changed, as I see here, my lord. Then once the amendments had been advanced to the later date, that date was crossed out and the last prevailing date placed on it.

Q. You are referring now to exhibit what?

A. The dates crossed out mean, in that particular case, that 40 this copy was brought up to May 2nd.

Q. Exhibit 11 was then brought up to May 2nd?

A. Yes, sir. I notice on Exhibit 12 there is a notation that would refer to the typists. It says, "No notations, typist continues

line." There are some references also to how the first paragraph had been done.

Now, referring to Exhibit 9, you will most likely see that it has been done that way.

Now, this is marked Exhibit 13, a printer's copy, and the first page is missing. It must be elsewhere. The copy entitled "printer's copy" is numbered throughout again and it would be more likely the copy as submitted to the printers. Several copies of it, too, should have been prepared and one may have been in possession of the
10 printers at the time, and still is.

The Court: Exhibit 13, you say, is likely the copy submitted to the printer?

A. Quite. It seems to be the same in form to the printed copy.

Mr. Burton: Q. I notice that the draft by-laws are mimeographed. Was that done under your supervision?

A. Yes.

Q. Under your instructions?

A. Yes.

Q. And how many copies were mimeographed of each suc-
20 ceeding draft?

A. I believe the first issue, about 1000 copies. The second issue, about 1500 copies, and there may have been a final issue of about 500.

Q. Were these copies distributed to the members?

A. Yes.

Q. In what manner?

A. One man was posted at the entrance to the meeting hall.

Q. Posted to do what?

A. To disseminate the copies to any members requesting them, and at different times, when it appeared certain that by-laws would be considered at that particular meeting, then additional copies would be left on some of the chairs, that anyone who may have omitted to pick up a copy would not be obliged to return to the entrance. I might say that even ushers would hand out copies before by-laws would be read at any time.
30

Q. So any instructions given for the mimeographed copies—were there instructions given for them that distribution should be left in the meeting?

Mr. Johnson: By whom?

Mr. Burton: Q. By you.

A. Never. In fact, we rather urged members to attend meetings of the By-laws Committee. I discovered two particular sets of amendments the other day, amendments submitted by the rank-and-file members.
40

Q. Would you produce those amendments?

A. I shall.

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The Court: Q. Were they incorporated?

A. Portions of them, sir.

Mr. Johnson: My lord, this is all new to us. This suit has been going on for some four years. It has already been through one action, and these now apparently are being brought in for the first time.

Mr. Burton: My lord, there are thousands of these around. One of my friend's witnesses this morning, Mr. Mole, said that he had a copy if he could lay his hands on it.

Q. You found another copy with notations as to amendments. 10
We will leave it that way.

A. What I have are some of the notations prepared by the office staff, some longhand notes, and amendment offered by one of the members in longhand, a typewritten amendment by one member comprising about three pages.

The Court: Q. A member of the committee?

A. No, a rank-and-file member, with notations as to which recommendations would be incorporated in the by-laws.

The Court: Does anything turn on this, Mr. Burton?

Mr. Burton: Mr. McPheator gave evidence that he could 20
not get a copy, and Mr. Mole came forward and said that he got them. I am just dealing with the point that they are freely available to everyone, my lord.

The Court: All right.

Mr. Burton: Q. Were amendments made from time to time from the floor of the meeting?

A. Yes. More in the nature of a committee meeting; not in the nature of a formal motion. There was no need for it. A suggestion would automatically be incorporated without the necessity of passing a motion. 30

Q. And they were referred both to the membership meetings and the By-laws Committee?

A. Quite.

Q. I produce to you Exhibit 46 in this case. Would you tell his lordship what particular draft by-law that would be in the series?

A. The second issue of the mimeographed copy, made in May, 1944, and no amendments shown whatever beyond that date. That means it should be synonymous with Exhibit 9 and Exhibit 11.

Mr. Burton: This Exhibit, my lord, was produced from the custody of the plaintiff Kuzych. 40

Q. Now, Mr. McPheator—you heard his evidence, did you not?

A. I did.

Q. And his testimony was to the effect that there was a man at the door who handed out copies and they were left on every second

seat, but that he was given to understand that he could not take them from the meeting hall. Is that correct?

A. I say it is preposterous.

Q. Mr. Mole said that he had a copy and still had it. Would he be at perfect liberty to take a copy with him?

A. Yes.

Q. Or any other member?

A. Yes.

The Court: Q. You say there were no changes made—you were
10 referring to Exhibit 46, and you say there were no changes made after that?

A. Oh no, sir. No changes contained in that copy. That exhibit is dated May, 1944. It really is a duplicate of Exhibit 9 and merely contains amendments up to May 2nd, 1944, not beyond.

Mr. Burton: I think what the witness said, my lord, was that it contained only amendments to that point in May.

The Court: Yes.

Mr. Burton: Q. Did you prepare an article and have it published in the "Main Deck"?

20 A. One entitled "First Report of the By-laws Committee." It was read at a meeting and at a later date published in the "Main Deck."

Mr. Burton: My friend has already seen this. I submitted it to Mr. McPheator and he didn't recognize it.

Mr. Johnson: My lord, if this is not shown in the affidavit of documents, it should not be referred to.

Mr. Burton: Mr. McPheator didn't recognize it. It is a copy of the "Main Deck" and was not of any importance in the earlier trial.

30 The Court: Is that the one that contains the first reports of the By-laws Committee?

Mr. Burton: Well, it may, my lord. It says, "Copy of by-laws now available."

The Court: That is the article you want to put in?

Mr. Burton: Yes, my lord. Mr. McPheator looked at it carefully and he said—

The Court: He said he could not remember having seen it.

Mr. Burton: That's right, my lord.

40 The Court: Well, I think it is relevant for the defendants to show that by-laws were published from time to time, Mr. Johnson.

Mr. Johnson: It was just a question of not having produced it, my lord. It is technical, I admit.

Mr. Burton: May I say that the issues in this case are developing—I can't imagine what may come out in cross-examination before—

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hand. Because I have not produced it in my affidavit of documents, I submit does not preclude it now. My friend can see it here and I can make an affidavit of documents and my friend can cross-examine this witness, or put in evidence he wants to about it.

The Court: I will admit it.

Mr. Burton: Q. I produce to you a copy of the "Main Deck," being April 7th, 1944, an article entitled "Copies of By-laws Now Available." Did you prepare that article and have it published?

A. I did. I might explain, sir, that this copy here is contained in a typewritten report which, in turn, was read at the membership meeting, and the Press Committee suggested it be published in the "Main Deck," and that appears to be the exact copy of it. 10

The Court: Q. What was the date of the issue?

A. It was dated April 7th, 1944.

Mr. Burton: Q. Now, witness, the "Main Deck" is what publication?

A. It is the official organ of the Shipyard General Workers' Federation, at the time.

Q. This article reads, my lord, as follows—

The Court: You are putting it in, are you? 20

Mr. Burton: I am putting it in, but I wish to read it, my lord. I would ask to have it marked first, my lord.

(NEWSPAPER ISSUE MARKED EXHIBIT No. 48)

Mr. Burton: This article reads as follows: (Reading Exhibit 48).

Q. You prepared that article and it was disseminated. Now, witness, in the deliberations of the meetings was this policy maintained?

A. Throughout.

Mr. Johnson: Q. Well now, what policy? 30

A. The policy outlined in the article.

The Court: That is a big policy.

Mr. Burton: Q. Was ample opportunity given to every member to make any suggestions?

A. Yes.

Q. Was every member made acquainted with the by-laws through your mimeograph copy?

A. Called special meetings and announced from the floor to attend special meetings and intermittent meetings.

Q. Were the by-laws at any time published in the "Main Deck"? 40

A. Not in the "Main Deck."

Q. Reference has been made to Roberts' "Rules of Order." Would you tell his lordship what that has to do with.

The Court: The article speaks for itself, Mr. Burton.

Mr. Burton: Well, it is already an exhibit in the first trial and I wish to put it in now.

The Court: I know what Roberts' "Rules of Order" are.

Mr. Burton: Yes, my lord, but I wish to put it in now as an exhibit, because it forms part of the constitution.

The Witness: The publication—it was represented to the membership that Roberts' "Rules of Order" are applied whenever any conflict—

10 The Court: Well, that is in the by-laws.

Mr. Burton: Yes, my lord.

The Court: Well, that settles it. Now, you want to put it in?

Mr. Burton: Yes, my lord. It was in the first trial. It is not in this one.

(THE BOOKLET "ROBERTS' RULES OF ORDER")

MARKED EXHIBIT No. 49)

Mr. Burton: Q. Now, I will show you various minutes, witness, of the meetings. Exhibit 15 in this case is a meeting of the Union members on January 20th, 1944.

20 A. January?

Q. Yes, January 20th, 1944. Now, on page 2 of the minutes it reads as follows:

"Moved, seconded and carried that a By-laws Committee be elected at the next regular meeting."

Is that the By-laws Committee of which you were a member and later the chairman?

A. May I see the nomination?

Q. Just read the minutes.

30 A. It says here: "Moved, seconded and carried that a By-laws Committee be elected at the next regular meeting."

Q. Is that the By-laws Committee of which you were a member?

A. I think so. The next minute should indicate.

Q. And as a result of that motion, were you elected a member of that By-laws Committee?

A. Yes, sir.

40 Q. Now, I will show you a report of the By-laws Committee, which was Exhibit 33 in the first trial. I show you a document called "Report of the By-laws Committee." Would you look at that and tell his lordship whether that was a report of the By-laws Committee?

A. It is, and I believe it is the same text as was published in the "Main Deck" that was read out awhile ago, my lord.

Q. And it is signed by yourself?

A. By myself.

(REPORT OF BY-LAWS COMMITTEE ABOVE MENTIONED MARKED EXHIBIT No. 50)

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Examination

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Q. Now, we will have the minute of August 7th. I show you Exhibit 19—I am sorry, my lord, I have not had an opportunity of going through these minutes and getting them in proper order.

I show you Exhibit 20, a meeting held on August 7th, 1944, in the evening, and I refer you to certain minutes relating to the By-laws. Would you read those minutes?

A. On page 2, the second page:

“Moved, seconded and carried that additions to Article 12 dealing with the functions of Political Action Committee and Hall Committee be accepted. 10

Brother King, on behalf of the By-laws Committee read from Article 14, to 20 of the By-laws. After discussion, it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this Union. This to become effective on recommendation of the Executive.

“Moved, seconded and carried that members of the By-laws Committee who have lost time from work while formulating or presenting the by-laws to the membership be reimbursed for time lost. 20

Moved, seconded and carried that a hearty vote of thanks be extended to the By-laws Committee for their efforts.”

Q. Yes. Now, did you hear those motions made?

A. I was present.

Q. And carried?

A. Yes.

Q. Are they correct?

A. Yes.

Q. Did the executive set the effective date of the by-laws pursuant to this resolution? 30

A. In co-operation with the By-laws Committee.

Q. And when was that done?

Mr. Johnson: How does he know? He was not a member of the Executive.

The Court: No, he cannot say what the Executive did.

Mr. Burton: Q. Did you recommend to the Executive as to the effective date of the by-laws?

A. The by-laws Committee met together with the Executive the day following.

The Court: Q. The day following what? 40

A. The day following the membership meeting alluded to.

Q. August 7th?

A. August 7th, and it was then decided that the By-laws

should become effective as represented, with the exception of the provision for reduced payments.

Mr. Burton: Q. That was August 8th, 1944, is that correct?

A. Yes.

Q. And were you present?

A. Yes.

Q. And did you hear a motion made to that effect?

A. To what effect?

10 Q. That the By-laws should be effective as of that date?

A. As a whole.

Mr. Johnson: As of August 8th?

Mr. Burton: Q. Well, subject to the qualifications that you have mentioned?

A. Yes. I might explain this, that it was understood all along that as any article has passed, it becomes effective until such time as it is amended or the by-laws as a whole are carried.

20 The Court: Q. I have not got yet what was done on August 8th. It was a joint meeting of the By-laws Committee and the Executive. Now, what was done then and by whom, about this effective date?

A. Mostly the question of the matters of dues payment, as well as about proceeding putting the by-laws as they then stood into printed form, also how many copies should be obtained from the printers and so on. It was a meeting where the by-laws Committee asked the advice and assistance of the Executive. The outcome was that the By-laws were considered effective from that day, with the one exception of dues payments.

Mr. Burton: Q. And when was that date?

30 A. They first became effective the 1st of September; the first of the month following.

The Court: Q. You say that is the outcome of that meeting?

A. The joint meeting.

Q. That is rather vague. How was that outcome brought about?

A. The passage of the by-laws as a whole the previous day.

Q. But we are dealing now with the joint meeting of the Committee and the Executive, and you say the outcome was what?

A. That August 8th was to be regarded as the effective date.

Q. But what brought that outcome about?

40 A. The fact that the by-laws as a whole were passed at that evening meeting.

Q. Was there a resolution that August 8th should be the effective date?

A. I am not too certain.

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Q. Was it just a matter of discussion?

A. I am not too certain. It may have been brought out but evidently it is not recorded in that set of minutes.

Q. There were minutes kept, were there, of that joint meeting?

A. Not of the joint meeting, unless the Secretary-Treasurer would keep those minutes, and that would have no bearing on myself.

Q. As far as you know, were no minutes kept and no regular motions made?

A. Well, it is more like a committee meeting, sir. It is by general consent. 10

Q. No motions?

A. No motions.

Mr. Burton: That, of course, my lord, was the joint meeting of the Executive and the By-laws Committee.

The Witness: There is a set of minutes there dealing with August 23rd.

Mr. Burton: Yes.

The Court: We will adjourn now until 2:30.

PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT. 20

Eugene William King, resumes stand:

The Clerk: You are still under oath, Mr. King.

EXAMINATION RESUMED BY MR. BURTON:

Q. Mr. King, the first minutes which I showed you were January 20th, in which a motion was passed that the—

A. By-laws Committee to be elected at the following meeting.

Q. That's it. Following that same meeting—on that same motion, I read you this motion:

"By-laws committee—5 to be elected. Brothers W. Stewart, W. Schwartz, W. McKendrick, T. G. Mackenzie, G. Farrington, 30
G. Home, C. Caron, G. King, Wilson, P. Wrigley, Woods."

Do you remember those nominations being made?

A. I remember quite a few nominations being entered.

Mr. Burton: I ask now to put in another minute dated February 3rd, at which the election took place. The matter, as I say, was not in issue and it is true that it is not in my affidavit of documents, because the By-laws Committee were appointed or elected by the Union and I did not consider it of any importance. Now, I have the minutes showing that the elections were held and who were elected.

Mr. Johnson: I would like to know whether my learned friend 40
intends to recall the recording secretary?

Mr. Burton: The secretary of the Union will be on the stand.

Mr. Johnson: No, I want the recording secretary, the man who is charged in the By-laws with keeping the minutes.

Mr. Burton: My lord, I am afraid he is not even available.

His name is McSween, and we have no knowledge of his whereabouts. The secretary of the Union, who took the responsibility for the course of the minutes and who is the actual secretary, will be called.

The Court: You are referring to the man who actually made the notes as the motions were made?

Mr. Johnson: My lord, the by-laws set out the duties of the different officers, and one of the duties of the recording secretary is to keep minutes of the various meetings. I am asking for the man who made those minutes.

10 The Court: You say he is not available, Mr. Burton.

Mr. Burton: No, my lord. The recording secretary writes them out and the secretary keeps them, so that they are the same thing. In most of the instances I have the little pencil notations that were taken at the time the meeting was held, followed by the type-written minutes, and my friend, Mr. Hodgson, in the examination for Discovery and in his trial cross-examination, examined at great length as to whether the carbon copy was an exact copy of the original of the minutes as taken at the time in longhand, or accurately transcribed into the final minutes, and it was not considered even necessary
20 at the first trial to cover that point with the recording secretary. I will endeavour to get him and I will put him on the stand, of course, if I can get him.

Mr. Johnson: Then I think my friend should leave that out in the meantime.

Mr. Burton: Well, it is the same as in this.

The Court: Have you any objection to these particular minutes going in?

Mr. Johnson: Yes, my lord. This particular minute purports to show the election of these various men to the By-laws Committee.
30 Now, I am not prepared to admit that. Apparently there were a number of other candidates nominated.

The Court: I suppose you could have found out on Discovery who the recording secretary was and called him yourself.

Mr. Johnson: Yes, I suppose I could.

The Court: I do not know what I can do about it. Mr. Burton says he is not available.

Mr. Burton: My friend has had an opportunity to have a further Discovery, and they come up now and ask this and I am meeting these matters as best I can. Here is a matter of who was
40 elected to the By-laws Committee, and this man has stated his evidence as to whom was elected.

Mr. Johnson: As I understand the matter, the case comes on for trial first and the Discovery and the charges are bound—

Mr. Burton: I wouldn't take that position. It is a new trial and my friend is going on further afield in evidence than the first

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trial. I would not have objected at all to a re-examination for Discovery.

The Court: At any rate, this witness cannot prove that these particular meetings are authentic.

Mr. Burton: Oh no, I will put the secretary in to prove them, my lord. Here is the result of the ballot which my friend questioned this morning, that's all.

The Court: Well, you will have to put them in properly.

Mr. Burton: I shall put them in through the Secretary.

Q. Now, on March 16th, Exhibit 16. A meeting of the Union 10
was held, Exhibit 16 being the minutes. I produce the minutes to you and I notice a minute there in reference to the by-laws. Would you read that to his lordship?

A. Under the heading: "Reports of Committees," the following:

"Brother Stewart reported that the By-laws Committee has completed its task and suggested that because of the many points to be considered in connection with these by-laws, that a special meeting be held on Sunday, March 26th."

That is all in this connotation. 20

Q. And was that motion passed?

A. It is under "Reports on Committees."

Q. It was dealt with as according to the minute, is that correct?

A. Quite.

Q. Now, that was March 16th. On June 5th, I see the matter again referred to and I show you Exhibit 17 in this case, being the minutes of meeting and a further reference to the by-laws.

Mr. Johnson: There was a special meeting called to consider the by-laws—March 26th.

Mr. Burton: All right, we will leave that out. 30

Mr. Johnson: I want to find whether there was a special meeting called.

Mr. Burton: Q. First, before you answer that question, it says in the minutes of March 16th that a special meeting be held on Sunday, March 26th, to consider the by-laws. Was that meeting held?

A. Yes.

Q. And were the by-laws considered?

A. Yes.

Q. And at that meeting, do you know whether there were 40
any motions passed or what discussion took place?

A. We advanced to about Article 4, I presume; not very far, I am quite certain.

The Court: Q. You say you only got as far as—

A. About Article 4, roughly. It might have been 5.

Mr. Burton: Q. Again referring to Exhibit 16, witness, the meeting of March 16th, 1944, I notice this motion:

"Moved, seconded and carried that a portion of the special meeting to discuss by-laws be allotted to the interpretation of what constitutes a 'lead hand'."

Was that motion passed?

A. Yes.

Q. And was that discussed at the meeting?

10 A. Before the by-laws, yes. It was regarded that the question of lead hand is less contentious or would not occupy as much time as by-laws.

Q. Now, June 5th. You have the minutes before you. Would you read the pertinent sections to his lordship as far as by-laws is concerned.

A. It appears to be the morning meeting. It is stated, "11:00 a.m., Monday, June 5th, 1944."

Under "Reports of Committees," there is the following:

20 "Moved, seconded and carried that the regular order of business be suspended and that we proceed with balloting to elect one member to the Hall Committee and also to discuss the by-laws. For the voting, Brothers Baine and McGilary acted as tellers. Moved, seconded and carried that Articles 1 to 9 which were discussed at a previous meeting be accepted and become part of the by-laws of this Union.

30 Moved, seconded and carried that for the purpose of discussing the remainder of the by-laws each speaker be limited to a maximum of five minutes on the floor on any given point. Articles 10 - 12 were discussed and it was moved, seconded and carried that with certain amendments, they be accepted."

The meeting adjourned at 1:00 p.m., so it was a morning meeting. That is Exhibit 17.

Q. Were you present at that meeting?

A. Yes, at all meetings at which by-laws were being discussed.

Q. And is that an accurate record of what transpired?

A. I presume so.

Q. What was the reason of limiting—the reason for the limitation of five minutes to any member on the floor?

40 A. To avoid the exclusion of other members. That means to limit the more vocal types to, shall we say, a more equitable period.

Q. What do you mean, a more—the more vocal types?

A. The few, I presume, would be prone to claim the floor to the exclusion of others.

Q. I refer you now to Exhibit 18, a meeting of July 3, 1944,

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and I show you a reference to the discussion of the by-laws. Would you read that to his lordship?

A. Under "New Business":

"At 9:20 during the evening meeting, the regular order of business was suspended and the meeting proceeded to discuss the proposed by-laws.

Moved, seconded and carried that Articles 1 - 9 which had been previously discussed be adopted.

Brother King, on behalf of the By-laws Committee, read from Article 9 - 13. After discussion, it was moved, seconded 10 and carried that these articles be adopted.

Meeting adjourned."

That is Exhibit 18.

Q. And were those minutes—

A. To the best of my knowledge.

Q. —a correct recording of what happened?

A. Yes.

Q. I refer you to the August 7th meeting, Exhibit 19, a morning meeting. Now, on the second page you will see a reference to the discussion of the by-laws. 20

A. "Moved, seconded and carried that the regular order of business be suspended and the meeting proceed to discuss the proposed by-laws.

"Moved, seconded and carried that the addition to Article 8 dealing with the function of Political Action Committees be approved.

Discussion ensued on Articles 11 to 13 and it was moved, seconded and carried that those articles up to and including 13 be approved."

The meeting adjourned at 1:10 p.m. That is Exhibit 19. 30

Q. Is that a proper recording of the business as it transpired on that date?

A. To the best of my knowledge and recollection.

Q. And you were present?

A. Yes.

Q. I show you minutes of the evening meeting of the same day, August 7, 1944, Exhibit 20, and would ask you to refer to the section dealing with the by-laws.

A. Shall I read it now?

Q. If you will. 40

A. It is still under the heading of "Executive Report" as I can see.

"Moved, seconded and carried that the regular order of business be suspended and that the meeting proceed to discuss the by-laws. Moved, seconded and carried that addi-

tions to Article 12 dealing with the functions of Political Action Committee and Hall Committee be accepted.

Brother King, on behalf of the By-laws Committee read from Article 14 to 20 of the by-laws. After discussion, it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this Union. This to become effective on recommendation of the executive.

10 Moved, seconded and carried that members of the By-laws Committee who have lost time from work while formulating or presenting the by-laws to the membership be reimbursed for time lost.

Moved, seconded and carried that a hearty vote of thanks be extended to the By-laws Committee for their efforts. Meeting adjourned at 11 p.m."

Q. And is that a true recording of what happened at that meeting?

A. It is. I might add, too, that the way I put the motion to the meeting was that the by-laws as a whole, as amended, be passed.

20 Possibly I am more particular than the average member, sir.

Q. And at that time, had they been presented as amended?

A. With all amendments to date.

Q. Now, I notice that the articles read from 14 to 20. Would you tell his lordship the reason, or the circumstances surrounding the fact that the articles read 14 - 20.

A. In other words article 20 became article 26 in the printed by-laws. Is that what you mean?

Mr. Johnson: Well, if it did?

A. Yes, evidently. It seemed to be accepted by mutual consent

30 that all amendments be incorporated by the one.

The Court: I do not see how he can say that Mr. Burton.

Mr. Burton: My lord, I am not asking that.

The Witness: In other words, the original text was broken down more fully for the purpose of clarification.

Mr. Burton: Q. How many articles were in the original text?

A. 20.

Q. Where does 26 come in there? Were there ever 26 articles?

A. There were—I would say they would have been created

40 on recommendation of the membership meeting without altering the text.

Q. Now witness, let us be clear. I will come back to that a little later, when I have more evidence in. Now, August 21st a meeting of the union was held. I give you first the morning minutes,

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Exhibit 21 in this case. Do you see a reference there to the question of the consideration of the by-laws?

A. Under the heading of "Executive Reports," (Reading) "Moved, seconded and carried that the agenda be suspended and the meeting proceed to discuss the draft by-laws.

Brother King, on behalf of the By-laws Committee presented amendments to the by-laws.

Moved, seconded and carried that the by-laws, with amendments, be adopted.

Moved, seconded and carried that the by-laws become the 10 rules and regulations of this union on and after Sept. 1, 1944."

Q. And was that a true report, a true record, of the proceedings of the meeting of that date?

A. Yes.

Q. Now, I refer you to the evening meeting of the same date, August 21st, 1944, Exhibit 22 in this case. Would you read from there in reference to the question of by-laws?

A. "Moved, seconded and carried that the dues increase specified in the by-laws, become the rules and regulations of this union 20 from September 1, 1944." Exhibit 21.

The Court: Q. Dues increase?

A. Dues increase. 25c my lord.

Mr. Burton: Q. Was that a record of the meeting as of that date?

A. Yes, it was a recommendation of the executive.

Q. Would you explain to his lordship how the question of the dues increase came about?

A. Shall I say why it became necessary?

Q. Yes?

30

A. The benefits under the Sick and Death Benefits Funds were increased, first of all. Secondly, the Union acquired a building on Pender Street and it became necessary to increase the dues in order to give sufficient service to the members.

Q. Well, that wasn't just what I meant exactly. Why was there a difference in the date that the dues were to be increased and the effective date of the by-laws?

A. Monthly dues are payable on or before the 1st of each month. On August 7th when the evening meeting passed the by-laws, together with the increase of dues, which were part of the by-laws, 40 dues for the month of August had already been paid by a large number of members. It would have been rather, shall we say, imposing on those members to request back payment or to pay the differential,

the 25c. The dues rate would not have become effective until the 1st of September.

The Court: Q. Is that not the effective date of the by-laws?

Mr. Burton: The evidence just before adjournment my lord, was that the by-laws became effective on August 8th except dues increase which would be effective as of September 1st. You will recall my lord, that the motion was made that by-laws be approved in toto and that the effective date be set in consultation with the executive, and a meeting was held on August 8th and it was on that
10 date that they became effective, except for the dues increase.

The Court: Referring again to Exhibit 21, I understood from that that the effective date was to be September 1st.

Mr. Burton: Q. Well if you will just read that, witness.

The Court: Just the morning meeting.

A. The morning meeting of the 21st. The evening meeting is the same, as a matter of fact, my lord.

"Moved, seconded and carried that the by-laws become the rules and regulations of this union on and after Sept. 1, 1944."

I only could explain that it was an oversight of the recording
20 secretary not to express it more clearly. That should mean the by-laws, including the increase of dues.

The Court: Q. That does not coincide with August 8th, does it, the way it reads there?

A. Not the way it reads. Of course, that was a morning meeting, and the evening meeting disposed of the issue.

Q. Well, the evening meeting deals only with the increase of dues, does it not?

A. No, they disposed of the by-laws as a whole on August 7th.

Q. I was thinking of the effective dates?

30 Mr. Burton: My lord, the minutes of August 7th, Exhibit 20, provide that they become effective on the recommendation of the executive, and then the witness gave evidence that on August 8th the executive says they will now be the rules, and this meeting of the 21st provided for the increase of dues and the by-laws had become effective. The witness has stated that the recording secretary should have said the by-laws with the increase of dues, become effective on September 1st.

The Court: Is there any evidence that the executive made that recommendation?

40 Mr. Burton: Well, this witness, my lord—

The Court: He has given evidence of a joint meeting of the executive and the By-laws Committee at which it was discussed, but

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we have no evidence yet that any recommendation was made by the executive.

Mr. Burton: Well, of course, we will bring that evidence, my lord. This man was not a member of the executive.

The Court: No.

Mr. Burton: Q. Now witness, after the minutes of August 21st—these are a consolidation of the 27th and I produce to you now Exhibit 23. Would you read the pertinent section there as regards by-laws?

A. "Moved, seconded and carried that the report of the executive committee be adopted. 10

At the morning meeting it was moved, seconded and carried that that the agenda be suspended and the meeting proceed to discuss the draft by-laws.

Brother King, on behalf of the By-laws Committee presented amendments to the by-laws.

Moved, seconded and carried that the by-laws as a whole, with amendments, be adopted.

Moved, seconded and carried that dues increase, specified in the by-laws, become the rules and regulations of this Union from 20 September 1, 1944."

The Court: Q. What was the date of that meeting?

A. August 21st. That is a consolidated minute of the two meetings, morning and evening meeting.

Mr. Burton: I think that, my lord, explains what was in your mind as to that question.

The Court: Q. The minutes of those two meetings, were consolidated by whom? By the secretary?

A. They were read separately and then the consolidated version re-read at the next meeting, at the two meetings. I may explain, 30 the minutes of the morning meeting, would be read, before the evening meeting, and a consolidation be prepared of the two minutes, of morning and evening and read before the two meetings next following.

Mr. Burton: Q. So that, if I may, the effect of your evidence is that the by-laws were accepted by the executive as being effective as of August 8th, with the dues increase as of September 1st.

Mr. Johnson: I object to that. I don't think my learned friend should put those words in the witness's mouth.

Mr. Burton: Well I think it is clear from what he said. 40

Q. Now was the membership invited to meetings of the By-laws Committee?

A. Yes, we rather solicited their attendance.

Q. And did the members attend?

- A. Yes, very much so. Some meetings lasted until after midnight.
- Q. Of the By-laws Committee?
- A. Yes.
- Q. The by-laws were under your jurisdiction as chairman of the By-laws Committee and considered by the By-laws Committee and the membership during the total period from February 1944 until final adoption in August, is that correct?
- A. The membership was in it until the first mimeographed copy was prepared.
- Q. And that was what month?
- A. March or April, 1944; most likely March.
- Q. Were the by-laws changed during that period of time according to the wishes of the membership?
- A. Constantly.
- Q. And were extensive amendments made or requested by the membership?
- Mr. Johnson: He is being led all the time.
- The Court: Yes.
- 20 Mr. Burton: I'm sorry.
- Q. Were any amendments suggested?
- A. At the membership meetings as well as the meetings of the By-laws Committee.
- Mr. Burton: My lord, the witness has produced here today amendments which were proposed, and prior to adjournment I asked that those be admitted and my friend objected on the basis that they were not disclosed in the affidavit of documents. I find however that the matter was quite extensively dealt with in the trial below and I notified my friend that we had all these drafts of the amendments
- 30 which he is producing, and Mr. Hodgson considered that it was not necessary, in order to clutter up the record—
- The Court: They were not put in the trial before?
- Mr. Burton: No, my lord, because my friend did not wish them to go in. He did not choose to avail himself of that privilege.
- The Court: Are you asking to put them in now?
- Mr. Burton: At least one, just to show the tenor of the amendments suggested from the floor by the general membership.
- The Court: You say this is an amendment that was adopted?
- Mr. Burton: Well, one that was at least proposed by the membership. My friend has brought up the question of the right of the
- 40 membership to freely and frankly discuss the by-laws. Whether in fact that amendment was later adopted I don't know, but it may have been.
- The Court: Well, that is hearsay, is it not? You are going to

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produce something which is over the hand of a member who is not called here as a witness.

Mr. Burton: Well as chairman of the By-laws Committee, my lord, I would submit that Mr. King can produce what amendments were suggested to him when he was chairman and when he invited the membership to make amendments. My friend cross-examined him on the first trial and he did not wish to put them in.

Mr. Johnson: My lord, I may be able to help. I willingly accept Mr. McPheator's evidence that certain amendments were proposed from the floor and incorporated into early drafts. I do not know that my learned friend wants to go further than that. 10

Mr. Burton: That is all I want my lord.

Q. Very well Mr. King. I might also point out my lord, that I produced galleys from the printer of the by-laws, reams of them, and my friend did not choose to put them in. I offered to put them in at page 211 of the Appeal Book. Now, I did not produce them again for the reason that they were not accepted in the first place, so it is just to show that even as they came from the printer, we even had them.

The Court: Yes. 20

Mr. Burton: Q. Now, in the minutes of—in the completed by-laws, witness, which is exhibit 14, I notice that there are 26 articles.

A. Yes.

Q. And in the draft by-laws there are only 20. Now, first, is the material covered in the 20 articles of the by-laws all contained in the 26 articles of the adopted by-laws?

A. Exactly alike.

Q. Now then, is there anything in the 26 articles that were completed, the adopted by-laws, which was not in the 20 sections of the final drafts? 30

The Court: Well, they are all in evidence. Will they not speak for themselves?

Mr. Burton: Yes, they will my lord, but it will take quite a little time to compare them all.

The Court: Well you can refer to that in argument.

Mr. Burton: Q. I ask, then, for this explanation; why are there 26 articles in the completed, adopted by-laws and only 20 in the draft.

A. For the purpose of clarity only.

Q. Just for that reason? 40

A. Easier reference, the amendments meant some of the articles would be unwieldy, I would say.

Q. Because of amendments it was necessary to add to the number of articles, is that correct?

A. To divide and sub-divide.

Q. I show you exhibit 14. Are these the completed by-laws of the union, as adopted?

A. That is, sir.

Q. These are the by-laws referred to in the meetings of August 7th and August 21st?

A. Quite.

Q. Now witness, one other matter; I notice that in connection with the by-laws, in dealing with them, that certain meetings, for instance on July 5th—

10 Mr. Johnson: There is no July 5th.

Mr. Burton: I am sorry. It is wrong in the Appeal Book.

Q. On June 5th the note is that by-laws 1 - 9 were carried. That is the morning meeting. I think that is correct. I want to make sure of this. On June 5th at a morning meeting it was moved, seconded and carried that articles 1 - 9 which were discussed at a previous meeting be accepted and become part of the by-laws of the union. It was moved, seconded and carried that articles 10 - 12 were discussed and that with certain amendments they be accepted. Now, on the night meeting of July 31st the same articles were considered?

20 A. At the evening meeting?

Q. Yes, that's right. Oh, it is the meeting of July 3rd, the evening meeting of July 3rd. In other words, on June 5th at a morning meeting, articles 1 - 9 were approved and then articles 10 - 12, and on July 3rd at the night meeting there is this notation, "Brother King, on behalf of the by-laws committee, read from articles 9 - 13. After discussion, it was moved, seconded and carried, that these articles be adopted".

30 Now, that evening meeting was held some time later than the morning meeting which had discussed the same articles. Would you give your explanation for that?

A. It was our endeavour to make it possible that any member, irrespective of what shift he happened to be working, would have his "Say" and a possibility of voting on each and every section, consequently we regarded the morning and evening meetings as separate entities. The morning meeting would have to pass all the articles and sections, as well as the evening meeting would have to pass them.

Q. I would presume that in some cases one meeting would lag behind the other?

40 A. That is correct.

Q. But do you say that the morning meeting considered all the by-laws and that the evening meeting considered all the by-laws?

A. Yes.

Q. Section by section?

A. Yes.

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Q. And in total at the end?

A. Yes.

Mr. Johnson: You mean these? (Holding up an Exhibit)

Mr. Burton: Yes, well, the by-laws as they are here.

Mr. Johnson: I see.

Mr. Burton: What was the average attendance in the morning meetings?

A. Depending on the season of the year, it would vary from about 25 to about 150.

Mr. Johnson: Well, this witness was not the secretary. He does not know. He did not take a count. 10

Mr. Burton: He is certainly entitled to give his estimates. My friend can cross-examine him.

Mr. Johnson: All right.

The Court: If he was there, I should think so.

Mr. Burton: Q. You said from what?

A. From about 25 to 150, at the morning meeting.

Q. And the evening meeting?

A. From about 300 to 1200. The average in each case we assume 50 for the morning meeting and 500 for the evening meeting. 20

Q. What would you say as to the question of a majority vote?

A. The evening meeting would automatically carry any decisions, because of the preponderance of attendance.

Q. That is, without reference to the morning meeting?

A. Without reference, yes.

Q. When the meetings were being held and amendments proposed, who would actually copy down any amendments or changes?

A. I would make my notations on the master copy that was being read to the meeting.

Q. And on the master copy which has been entered here as an exhibit, the notations are yours? 30

A. Yes, and most likely incorporated. It should be explained that no member on the floor could possibly give the improved version. The best you could do is make a suggestion and that, in turn, would be considered with the remaining context.

Q. In other words, make the suggestion and you would put it in proper English, is that correct?

A. Yes, providing it is acceptable.

Q. Were any meetings held, morning and evening, in which the same identical by-laws were considered on the same day? 40

A. They might have been. At times they were pretty close.

Q. And how about Sunday meetings?

A. There were only two Sunday meetings to my recollection.

Q. And would that be a joint meeting?

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A. Yes definitely.

Q. Now, did you ever see Kuzych present at any meetings, at which the by-laws were discussed?

A. Not while the by-laws were being discussed. He may have been present. I didn't see him.

Q. Were you ever at a meeting at which Kuzych was present?

A. At times, yes.

Q. Would you tell his lordship just what you have to say as to his deportment at the meetings at which you saw him?

10 A. I would say as a rule his opinions were not greatly relished by the majority.

The Court: That is hardly an answer to the question.

Mr. Burton: No, what did he do.

A. Well, he is of a boisterous nature.

Q. Just go on, Mr. King, so that his lordship will know what you mean? What did he do and say?

Mr. Johnson: And when?

20 A. Well, it would be difficult to pin it down to one particular occurrence, but as a rule the implication would be that the man demands the right to speak out of turn, which is to speak on a subject or matter not under consideration, monopolises the floor and such-like.

Mr. Burton: Q. You are referring to Kuzych?

A. Yes, and some of his friends.

The Court: Q. At how many meetings did you see him?

A. I would be quite satisfied that I attended about three meetings when he was present. One was at the Hastings Auditorium.

Q. And you say that was his deportment at all three meetings?

A. Well, shall we say the mean average.

30 Mr. Burton: Q. Now, we have already put in as an exhibit Roberts Rules of Order. During the discussion of the by-laws — I suppose I am leading now, but I didn't intend to—what were the rules of order adopted at meeting during the consideration of the by-laws?

A. Well, the article that is in the printed copy to the effect that Roberts Rules of Order be applied whenever consistent with the by-laws.

Q. But during the time before these by-laws were adopted?

A. That Roberts Rules of Order shall be the governing guide for the conduct of meetings.

40 The Court: Q. Is there a minute to that effect?

A. There should be. I believe I was the mover of that motion, if I am not mistaken.

Mr. Burton: Q. Did you make a statement to the membership in reference to Roberts Rules of Order?

A. While the by-laws were being discussed, it was evident

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that at times, a group wished to violate the issue and I prepared a brief article entitled "Quoting from Roberts" which was read at one of the meetings and it could possibly have been printed in the "Main Deck". Those provisions were followed at the meetings of the By-laws Committee and it sets out under which conditions certain points of procedure may be used, points of privilege, points of order, information and so forth, and I might say that that particular brief was prepared about the same time as the much disputed section 7, article 7 was being proposed as an amendment to the meeting.

Q. Coming to that article 7, sub-section 7, evidence has been 10 given here by two witnesses that they did not hear that particular section being discussed at a meeting. Was it discussed at a meeting?

A. It was, but some members would leave the meeting before the meeting adjourned, so that would be possible. It would be possible that they left before the adjournment.

Q. But was it presented to the meeting?

A. Quite definitely.

Q. And asked?

A. Yes, morning and evening, both.

Q. Do you know the date when that was presented? 20

A. I cannot give you the exact date, but there are certain connections which would indicate it was about the same time as the amendment regarding the establishment of a Hall Committee and Political Action Committee were passed. That, I measure, would be about six weeks before the final by-law was adopted. There should be reference in the minutes.

Q. I show you Exhibit 13 in this case, a draft of the by-laws. First, you have already covered this in evidence, but what is the chronological order of that draft being prepared?

A. That would be prepared immediately before the final 30 passing.

Q. Is that a master copy?

A. It would be the final master copy, most likely.

Q. I notice on page 3 an insert of article 7—sections 5, 6, and 7. Do you notice that insert?

A. Yes.

Q. And article 7, section 7, is the last of the sections of that same insert? Now, were those sections presented to a meeting?

A. Yes.

The Court: Are you referring to the whole of article 7, now? 40

Mr. Burton: I am referring particularly to article 7, sections 5, 6 and 7. That includes section 7, the one we are dealing with. They are all in one insert, my lord.

Q. I presume it was presented at the same time?

Mr. Johnson: Don't lead.

The Court: No, this is a contentious point.

Mr. Burton: Well, they appear together.

Q. Tell his lordship when article 7, sub-section 7 was first proposed, as nearly as you can remember?

A. As I pointed out, as far as I can recollect it was about the same time these amendments governing the function of the Hall Committee and Political Action Committee were passed.

Q. Do you know when they were passed?

A. About four to six weeks before the final adoption.

10 Q. So your answer is that that section was presented four to six weeks before the final adoption?

A. Yes. I might add we had good reason for it.

Q. Pardon?

A. We had good reason for it?

Q. Now Mr. King you are a single man?

A. Single.

Q. What was your rate of wages in the shipyard when you were working there?

A. The same as any other welder, \$1 per hour.

20 Q. How many hours a week?

A. 48.

Q. Have you made an accounting as to how much you would receive per month based on that wage, after deductions?

A. I have the original wage statements here.

Q. Well how much a month would you make as a single man, net?

A. \$120 to \$130 a month after deductions.

Q. Did you always work 48 hours a week at that period of time?

30 A. Yes.

The Court: Q. Were you doing the same job of work as the plaintiff?

A. Yes.

Mr. Burton: Q. When was that changed, or was it ever changed from 48 hours a week?

A. That was most likely the latter part of 1944 to a 44-hour week I believe.

Q. You have your documentary evidence to show that, your tax deductions?

40 A. I have the statements here for several years.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Now Mr. King, you are a welder?

A. Yes, I was then.

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Q. And you never held any executive position with this union at all?

A. I never had any yearning for it.

The Court: Q. Just answer the question.

A. No.

Mr. Johnson: Q. And during the whole of the early part of 1944 and up until August 21st you spent a lot of time preparing these by-laws for this union?

A. As one member of the committee.

Q. Well, you were chairman of the committee? 10

A. Yes.

Q. And as chairman, no doubt the majority of the work fell on your shoulders?

A. A good deal.

Q. And it was your job to pilot these by-laws through the union meetings?

A. Yes.

Q. And you covered a lot of factual information and by-laws from other unions to help you with this comprehensive survey?

A. Quite. 20

Q. And you had one or two of the executive on your committee?

A. Yes.

Q. You had Mr. Stewart, who was the president, was he not?

A. Yes.

Q. And Mr. Caron, the secretary-treasurer?

A. That's right.

Q. Mr. Farrington, who became the reporter in December, 1944, the December 1944 election. Wasn't he elected reporter?

A. He used to be on the committee, yes. 30

Q. But wasn't he elected reporter of this union?

A. That is possible.

Q. Well don't you know who the officers were in December, 1944?

A. They can change.

Q. But don't you know who were elected officers—

A. At that particular point?

Q. Well he was chairman of the investigating committee which tried Kuzych?

A. He may have been. 40

Q. You don't know?

A. No.

Q. And yet you were attending all these meetings?

A. Not of the trial committee.

- Q. You attended the meeting of March 19th when Kuzych was expelled?
 A. 1945?
 Q. Yes?
 A. No, I didn't work in the yard at that time.
 Q. When did you leave the union?
 A. I am still a member.
 Q. Where did you go to?
 A. Powell River.
 10 Q. I see.
 A. Pardon me, I had another job before then.
 Q. At any rate, you were out of Vancouver?
 A. I may have been at the time.
 Q. Well you were out of Vancouver when this trial first came up, were you not?
 A. That's right. I had just returned from Powell River.
 Q. And when you went to Powell River you took with you all these drafts?
 A. No.
 20 Q. You did not take them?
 A. No.
 Q. Where were they?
 A. They were bundled up somewhere.
 Q. You don't know where they were?
 A. In my possession.
 Q. They were not left in the possession of the Union?
 A. No. All the papers pertinent to the issue were left with the Union at the time as far as they had a bearing on the case.
 Q. We have about three or four or five exhibits here, two
 30 first and second drafts, a first amendment to the second draft, we have a master copy and we had copy for the printers and we had a final copy. Now, all those were in your possession?
 A. There were at least ten master copies at any one time. I had one. I could not account for the other nine.
 Q. We are not talking about ten master copies. We are talking about these various exhibits I have just repeated to you, and I say that all those were in your possession?
 A. Just a few.
 Q. All of them. They were not, you say?
 40 A. I don't know. I offered to the Council anything I then found in my possession.
 Q. When your work as chairman of this committee had finished, you took these, all these various drafts, and kept them?
 A. I wouldn't put it that way, sir. I turned over all pertinent papers to the union then. You understand much of the work at the

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time was done at my home. It was hard to tell just where I would be working, either at home or the union office.

Q. Can you explain how it came about that it was not until the morning of the first trial that the union found they did not have these papers?

A. I had only left a few days before.

Q. You came back from Powell River for the trial, didn't you?

A. No, just shortly before.

Q. And when you came back it was found that you had these various documents in your possession? 10

A. Right.

Q. So you had all these things; you kept them?

A. I was entitled to.

The Court: Q. Please just answer the question?

A. Yes.

Mr. Johnson: Yes, you had them.

A. Yes.

Q. Now you took great interest in the passage of these by-laws; you were living with them for months weren't you?

A. I had to. 20

Q. So you can tell us accurately just when these various changes came about, don't you think?

A. I suggest to you there are a great many amendments, and I hope you will not interrogate on the exact nature of each and every amendment.

Q. At any rate, your committee was set up in January 1944 or the beginning of February?

A. The beginning of February.

Q. All right. You had these committee meetings?

A. Yes. 30

Q. And the general membership did not know very much about your deliberations until you had a skeleton to present to them?

A. Right.

Q. And that would be about March 1944?

A. March or April.

Q. So that dates the first draft, doesn't it?

A. That's right.

Q. Exhibit 8. When would the second draft be?

A. It is dated May 1944.

Q. I know it is dated that, but do you recollect that it was 40 that?

A. I testified this morning that it most—that it must have been after May 2nd.

Q. Yes. Do you remember on May 15th that there was a general meeting of the union?

- A. There could have been.
- Q. Yes. Perhaps I could refresh your memory by a motion that was passed on May 15th, a motion of non-confidence in the committee?
- A. I remember that.
- Q. Yes. What was the basis of that motion of non-confidence in the by-laws committee?
- A. The basis that the same boisterous minority endeavoured to throw out those by-laws and draft their own. The motion implies
- 10 that very clearly and the discussion bore that out.
- Q. What part of the by-laws were they objecting to?
- A. The entire thing.
- Q. On what grounds?
- A. I imagine they would be pinned down to procedure.
- Q. Do you recollect that the votes in favour of your by-laws committee were 94-34?
- A. At that time?
- Q. Yes?
- A. If the minutes say so, I accept it.
- 20 Q. At any rate, there was quite a substantial minority and it was defeated?
- A. A small minority, especially for that occasion.
- Q. And then you continued with your work, isn't that right?
- A. Quite.
- Q. And then you came down to this meeting of June 5th and it was a morning meeting?
- A. Yes, what about it.
- Q. Well, we will just come to that. This was the first presentation to the general membership of the union of the completed articles
- 30 for passage?
- A. No, there were two special meetings called before then on Sunday.
- Q. Oh yes, I had forgotten that meeting. When you discussed articles 1 - 4, is that it?
- A. Yes, thereabouts.
- Q. Did you pass any articles then?
- A. Some were passed and a few were fully discussed. I might say the entire discussion was prefaced with a discussion of the by-laws as a whole, before we started in with Article 1.
- 40 Q. Now I have Exhibit 17. This has been read before, the motion, "Moved, seconded and carried that articles 1 - 9 which were discussed at the previous meeting be accepted and become part of the by-laws of this union."
- Now at what previous meeting were these articles discussed?
- A. I cannot give you the dates. They must have been discussed.

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Q. Well, that is what the minute says, but you don't recollect when they were discussed do you?

A. Well, I can give you an indirect answer. We had a few past articles to work on. At the next meeting, amendments of the past articles were presented, if any, and then we read a few articles, discussed them, re-read them, and passed them one by one.

Q. Well now, witness—

A. So consequently there would be a considerable overlapping wouldn't there?

Q. There would be a considerable overlapping, I agree, by the method you were adopting. You mentioned before that some articles were passed as early as March—

A. In some form. As you would find them in the copy of May 1944.

Q. Did you pass them all over again on June 5th?

A. The revised articles would be read to the meeting as they then stood.

Q. So when we come to June 5th, these are the revised articles?

A. Re-read, yes.

Q. In what form were articles 1 - 9 when they were passed by this meeting of June 5th?

A. They would be most likely—

Q. I don't want them 'most likely'. I want you to get down and get to the bottom of your memory, because you knew all about what was going on in 1944?

A. Then, yes, but this in 1949 now sir.

Q. You don't recollect what did happen?

A. Not on each and every article and section.

Q. Then we will have to do the best we can?

A. Quite. I will co-operate.

Q. Now, articles 1 - 9, in what form were they passed?

A. In the forms that they were amended at that time.

Q. Were they ever passed at the morning meetings again in any form?

A. Most likely there were amendments.

Q. If amendments were put before a morning meeting, they would appear in the minutes of a subsequent morning meeting?

A. I did not take the minutes, and I did not approve of the way the minutes were being taken. I objected very often.

Q. Are you saying that this motion put before the morning meeting of June 5th may not be the last word on articles 1 - 9 before a morning meeting?

A. Yes.

Q. So it really comes to this, that these minutes do not represent accurately what did transpire?

A. They certainly would have no control over what happened after.

Q. I don't think you are following me. By August 7th at any rate, all these various articles had been passed by both the morning and evening meetings?

A. The evening meeting?

Q. Both the morning and evening meetings, and certainly by August 21st, had passed all 20 articles?

A. That's right, as amended.

10 Q. And the last mention of Articles 1 - 9 before a morning meeting seems to appear from the minutes of June 5th, 1944?

A. That is possible.

Q. Well, is it a fact that they were mentioned to any other morning meeting subsequently to June 5th, 1944?

A. Article 1 - 9?

Q. Yes?

A. Not only from the amendments. In that case the whole article would not be read. Merely the amendment would be read.

Q. And if it was, it would be recorded in the minute?

20 A. It should be, but it may not be.

Q. You don't recollect whether it was or not?

A. I keep minutes differently sir, to the way they were kept then.

Q. Were you taking a personal record?

A. Yes.

Q. You had a diary did you?

A. No, I made the notations on the margin of the master copy.

Q. This master copy that you talked so much about, does that bring it right up to the date of the printer's copy?

30 A. No, to the date shown on the first page.

Q. So you got tired of keeping that after May 2nd, 1944?

A. No, there were many subsequent copies.

Q. Where is a copy that has been brought up to date?

A. Here, this one goes to May 6th, 1944. That is the last one I have here.

Q. Yes, and it was a month before you got around to presenting any of these articles to a morning meeting, on June 5th?

A. We presented by-laws whenever there was time to consider them.

40 Q. You kept passing these articles, first in one form and then in another?

A. If they were passed in another, it was pointed out as an amendment, and read.

Q. Read?

A. Read to the meeting as an amendment.

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Q. And if it is not marked as an amendment in the minute, then it has not been presented to the meeting?

A. You will find the amendments mentioned in the final minutes, passing the by-laws as a whole as amended.

Q. That's right, there is one here in the meeting of June 5th, in the morning, "articles 10 - 12 were discussed and it was moved, seconded and carried that with certain amendments they be accepted". Now that means that the morning meeting has dealt with the first twelve articles on June 5th?

A. As they stood at the time. 10

Q. And with amendments too?

A. To date.

Q. All right. Then we go on to August 7th, which I think is—

A. An evening meeting, passed them as a whole.

Q. Then we will deal with the meeting of July 3rd and that is Exhibit 18. Do you remember what day of the week July 3rd, 1944, happened to be?

A. I cannot say, but most meetings were held on a Monday.

Q. If it was a holiday, would it make any difference? 20

A. It would. The previous meeting so decides.

Q. Supposing it had been Dominion Day, would that mean that you would hold one meeting or two meetings?

A. If a meeting was held in the evening, it also follows that a meeting would be held the same day that morning.

Q. I don't think you understand the question. If July 3rd, 1944, happened to be Dominion Day, would there be one meeting or two meetings held?

A. If there was two there might have been one. If it is a regular business meeting, there must have been two. There were at the time. 30

Q. Now, reading Exhibit 18 which purports to be a minute of of the regular general business meeting — I think your lordship can take judicial notice of the fact that July 3rd, 1944, was Dominion Day, according to this diary that I have. I don't think it makes a great deal of difference except that apparently there are not any minutes of the morning meeting. Now Witness, do you happen to know—

Mr. Burton: I am rather amused at that my lord. I always thought July 1st was Dominion Day. If it was Saturday, it would be quite easy to have a holiday that day but if by order in council it could be put over—anyway, I thought that since 1867—I don't think you can take judicial notice of it anyway, my lord. 40

Mr. Johnson: I would like to ask this witness—

The Witness: I would never dispute the date of the minutes.

Mr. Johnson: Q. Well the minutes are for both morning and

evening meetings. We have some here which refer only to morning meetings, and some evening meetings, and some are consolidated. Now what is produced here is a minute of a regular general business meeting of July 3rd. I am asking you whether you remember a morning meeting?

A. May I see that exhibit? There should be reference to the minutes of the morning meeting if they were read. I would gather from the premise of these minutes that there were no minutes of the morning meeting read at the evening meeting.

10 Q. Very well. Now, the 21st of August. I want to deal first of all with the morning meetings. We have got up to Article 12, on June 5th, and let us follow that through.

The Court: Q. You would say, then, that there was no morning meeting on July 3rd?

A. That is possible.

Q. But you have no recollection, yourself?

A. No. If there had been a morning meeting, the minutes of the morning meeting should have been read at the evening meeting.

20 Mr. Johnson: Q. Now, Exhibit 19. There is a motion here, which comes from Exhibit 19, which are the minutes of the morning meeting of August 7th. The first motion is "Moved, seconded and carried that the regular order of business be suspended and the meeting proceed to discuss the proposed by-laws".

The next motion is "Moved, seconded and carried, that the addition to Article 8 dealing with the function of Political Action Committee be approved".

Before we pass from that, I think that was the amendment to article 8 that you told my learned friend about?

A. You mean article 7.

30 Q. No.

A. Oh yes, the Hall Committee and Political Action committee.

Q. Yes, and this is the amendment to which you were referring?

A. Yes.

Q. And that is dated August 7th?

A. Yes.

Q. And I think you said that you recollect that article 7, subsection 7,—

A. May have been passed about the same time.

40 Q. That is your recollection, that it was passed at the same time?

A. Approximately.

Q. Well, you tied it up with those other amendments, didn't you, with this other amendment?

A. Just a mental action, yes.

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Q. And you said you thought it was about six weeks before the final passing of the by-laws?

A. Yes.

Q. And here it is August 7th, so you see you are out somewhat in the time, aren't you?

A. When it was passed in the evening meeting—when was it passed?

Q. Well we are dealing now with the morning meeting, and so far as that meeting is concerned, the motion is "Moved, seconded and carried that the addition to Article 8 dealing with the function of Political Action Committee be approved." 10

Then the minute goes on "Discussion ensued on articles 11 to 13 and it was moved, seconded and carried, that these articles up to and including 13 be approved."

Now then, having regard to the fact that the minutes of June 5th, a morning meeting, states that articles 10 to 12 were discussed and that it was moved, seconded and carried that with certain amendments they be accepted, how does one account for the motion here, "moved, seconded and carried that articles"—that is 11 to 13,—"up to and including 13 be approved"? 20

A. That is overlapping. That only could be accounted for by extensive amendments.

Q. Even though it is not stated that these articles had been amended since they were passed with amendments of June 5th?

A. It is almost evident.

Q. So that when we have finished with articles 1-9, then it goes, to articles 11 to 13?

A. Yes.

Q. And with the minute of June 5th it is evident that it goes from there, and the morning meeting has cleaned up the first thirteen articles? 30

A. Yes.

Q. Now, where is there any record of any amendment to article 7, to bring in sub section 7?

A. I pointed out that amendments were read before we proceeded with new articles, at any time. It might have been an amendment to Article 2, for all I care.

Q. Well if you followed me—

A. I have.

Q. You can see that the minutes do not show that articles 1-9 were amended at all? Now we come, I think, to August 21st, and this is Exhibit 21, which are the minutes of the morning meeting of Monday, August 21st. 40

"Moved, seconded and carried, that the agenda be suspended and the meeting proceed to discuss the draft by-laws. Brother King

on behalf of the By-laws Committee presented amendments to the by-laws."

Now, what amendments did you present on the 21st August?

A. All amendments to that date.

Q. What did you say?

A. All amendments to that date, not counting the new articles to be read.

Q. What were those amendments and to what articles were they amendments?

10 A. That is impossible to tell you sir, but perusing them you will see there is a multitude of amendments and it is a rather healthy sign, isn't it?

Q. Well, I will not ask you about that, but I would like to know if you have any recollection of what amendment you presented at that morning meeting of August 21st?

A. I submit that no human being could answer that question. I did not keep minutes. I would wish to make a better job than that.

Q. On August 21st, the motion goes on, "moved, seconded and carried that the by-laws, with amendments, be adopted."

20 That means that the meeting has finished.

A. Yes.

Q. But in what form?

A. In the form in which you now see it printed.

Q. With all the articles, 1 to 26?

A. With the exception of the sub-division, as I explained.

Q. On August 21st were the 26 articles put to the morning meeting?

A. The text of the articles.

Q. I am asking you if the 26 articles were put as such?

30 A. As such, but I may explain that with all the amendments it would be virtually impossible to divide and subdivide all the articles. It only would have been voted on again at the following meeting, possibly.

Q. We have it clear that at the morning meeting of August 21st, the by-laws were not numbered from 1 - 26. They were numbered from 1 - 20?

A. That is right.

40 Q. Now, will you follow me, please, through the evening meetings. First of all, tell me about the differences between these meetings. I think you told my learned friend that you considered them separate entities?

A. As far as passing the by-laws are concerned.

Q. In what respect are they separate entities?

A. They each would pass every section in the by-laws.

Q. And what precautions were taken to prevent members who

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had attended a morning meeting from also attending at an evening meeting?

A. There were no precautions, but when the final questions were put, the Chairman would ask those who had been present at the morning meeting not to vote at the evening meeting. That is a question of honour I would say.

Q. So there were no precautions taken?

A. It would possibly affect only 1% of the members. Trade Unionism operates quite democratically and practically, though not necessarily 100% legally. 10

Q. Well, that is what we are endeavouring to find out. Now, the potential membership of the union was how much?

A. Approximately 17,000 at that time.

Q. In 1944?

A. Yes.

Q. And you said that you had these numbers out to attend different meetings and they would be very small numbers, comparatively speaking?

A. About 3% of the total membership, the same as in other unions or organizations. 20

Q. Quite, but the potential of the morning meeting was considerably above what you had stated the actual attendance to be?

A. I gave you plenty of latitude.

Q. Pardon?

A. I have given you plenty of latitude.

Q. If you had 17,000 men, were they working on 3 shifts?

A. Yes.

Q. So that presumably there were the same number of men who could have attended the morning meeting as the evening meeting?

A. No. 30

Q. Why not?

A. The men who worked day shift would not attend the morning meeting, and those who worked night shift would not want to attend unless they cared to miss their sleep.

Q. And I suppose there was a potential attendance at the morning meeting of several thousand?

A. Potential, yes.

Q. Potential?

A. Yes.

Q. All right. When was the first mention of the minutes of the evening meeting? Is it July 3rd? I think so at 9:20, an evening meeting, Exhibit 18, the regular order of business was suspended and the meeting proceeded to discuss proposed by-laws. 40

"Moved, seconded and carried that Articles 1 to 9 which had been previously discussed, be adopted."

Do you agree with that?

A. Yes, excepting that the minutes are again kept in that sort of lackadaisical manner.

Q. And between June 5th and July 3rd I suppose there had been a number of amendments made to these articles?

A. Quite possibly.

Q. And you cannot say which ones?

10 A. Only the notes I can refer to.

Q. Can you refer to any notes and tell me of any amendments made between June 5th and July 3rd?

A. No. Since May.

Q. So it is possible that articles 1 to 9, which had been passed by the morning meeting of June 5th, were not the same articles 1 to 9 as were passed at the evening meeting of July 3rd?

A. If they were—

Q. It doesn't say so in the minutes?

20 A. I did not keep the minutes, sir. I merely conducted the passage of the by-laws.

Q. Yes, I know what you did. Now then, this minute goes on to say, "Brother King, on behalf of the By-laws Committee, read from article 9 to 13. After discussion it was moved, seconded and carried that these articles be adopted."

Do you recollect on July 3rd putting articles 1 to 9 to the meeting?

A. I could not be sure of the date.

Q. Do you recollect putting those articles to the meeting?

30 A. Without the date I could not be sure. I can give you my assurance it was amended as to date.

Q. But we have a number of drafts Mr. King—

A. Those different drafts are always dated. This one has the final date of May 6th. Some of the copies you have bear different dates.

Q. What was the purpose of making a master copy?

A. To record all amendments on that date and to disseminate one to each member and to have one available for the members. In other words, I told you about ten copies were kept in circulation at all times.

40 Q. That is quite understandable but why wasn't the master copy kept up to date?

A. I kept patching it up and changing the date on it. This one is May 2nd and it is scratched out and the date May 6th put there.

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Q. Do you say there were no amendments made after May 6th which were put to a meeting?

A. Definitely.

Q. There were?

A. Yes.

Q. Why are they not incorporated in a master copy?

A. They were. I would say master copies would be numbered like that, with all dates shown.

Q. That was a more valuable document than the one you have there?

A. It would be, I presume.

Q. Why didn't you keep it?

A. I would say ask the union secretary.

Q. Did you keep some of these papers?

A. Just a few; most by accident. I did not discover this copy until last Wednesday, after searching for several hours, and this contains a good number of hand-written notes, and this is not my handwriting so I am not responsible for that.

Q. Did you keep a master copy which would show the articles in the form in which they were presented to either a morning or an evening meeting?

A. At any given date?

Q. Now, you heard me ask you that question. I said in the form in which they were put to either the morning or evening meetings. Did you keep a master copy?

A. Each member of the committee had one.

Q. Did you have one?

A. Oh, quite certainly.

Q. At the time you put these articles in their finished form, their final form, to the meetings, did you have in your possession, a master copy?

A. I certainly would have, yes.

Q. Well, where is it? What has happened to it?

A. I haven't got it. There were many notes. The whole thing appeared in printed form and there was no need to clutter up space with irrelevant matter.

Q. Then why did you keep those long hand notes around?

A. I didn't keep that. I shall cleanse it out as soon as I get back. It has been a sad memory.

Q. Now, we have come to July 3rd and articles 1 to 13 passed. Now then did the evening meeting consider articles 1 to 13 again, and did they do that in any form?

A. I suggest you refer to the minutes and tell me.

Q. Well let us see where the next minute is.

Mr. Burton: My lord, may I suggest that the master copy

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which has been referred to be marked as an exhibit. My friend has now cross examined on it.

The Court: That is the one dated May 6th?

Mr. Johnson: The witness had a number of copies there and I did not know about it. I don't know why it should be left there. I don't think it should go in.

The Witness: I might add, too, that it contains an appendix, notes for stencil cutting, giving definite instructions to the office staff how the next copy should be prepared.

10 Mr. Burton: Since my friend has cross examined on it, I think it should go in.

Mr. Johnson: I did not cross examine on it my lord, in the sense that I knew it was not an exhibit. I assumed that it was already an exhibit.

Mr. Burton: My lord, if you remember, I tried to get it in myself before the adjournment and my friend objected and now he has cross examined on it.

Mr. Johnson: Q. What is the date of it?

A. The latest date is May 6th.

20 Mr. Johnson: Well I will not object to it.

(DRAFT COPY OF BY-LAWS MARKED EXHIBIT No. 51.)

Mr. Johnson: Q. Now, on August 7th at the evening meeting you have already got articles 1 to 13 passed on July 3rd?

A. Yes.

Q. And then the motion is moved, seconded and carried, that the regular order of business be suspended and that the meeting proceed to discuss the draft by-laws. Then it was moved, seconded and carried that additions to article 12 dealing with the functions of Political Action Committee and Hall Committee be accepted.

30 Now, that is on August 7th. Now, that, you say, was tied up in your recollection with this amendment to article 7, sub section 7?

A. About the same time.

Q. "Brother King, on behalf of the By-laws Committee, read from article 14 to 20 of the by-laws. After discussion it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this Union. This to become effective on recommendation of the executive."

40 Now in what form were the by-laws, articles 14 to 20 put to the evening meeting?

A. Identically as you see them in the printer's copy.

Q. Well now, that could not be, could it? How could it be identical with the printed copy?

A. Printer's copy.

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Q. I beg your pardon; printer's copy. Where is the printer's copy then? That is Exhibit 12. Now, why is this called a printer's copy? Is this the form in which it went to the printer?

A. I gather that is so. The only way I could tell that for certain would be to compare it.

Q. With what?

A. With the printed copy.

Q. Have you made enquiries of the printer to see if the copy he obtained was in this form or some other form?

A. No, I would rely on my memory. 10

Q. Is it possible, as far as you know, that articles 1 to 20 were sent over to the printer and subsequently, after they were in the printer's hands, the articles were changed to 1 to 26?

A. Broken down further.

Q. So you must have got back from the printer the printer's copy?

A. Or the galleys.

Q. But you didn't keep a copy of it?

Mr. Burton: We had them all for the first trial. My friend did not want them then. 20

Mr. Johnson: Q. How long after this copy went to the printers were the changes made?

A. The changes were only a matter of form, not of revision.

Q. Now, this printer's copy, just take a look at that. You see these various pasted amendments. Just take a look at them.

A. Yes.

Q. Do you notice the change in article 7, sub 7? Do you notice the different way in which it has been put in? It is not pasted. It is clipped in.

A. Well, every master copy is different. 30

Q. I am pointing out to you the difference—

A. It was attached in the most convenient manner.

Q. Listen to this question please. Do you recollect clipping that typewritten green sheet on there?

A. Yes, writing my name on the back of this.

The Court: What exhibit is that, Mr. Johnson?

Mr. Johnson: This is exhibit 12, my lord.

Q. Do you remember clipping this on?

A. Not that in particular, but amendments as a rule, were clipped in and pasted on. 40

Q. You don't remember clipping this on at all?

A. It is quite possible.

The Court: Q. Witness, in the first place you said you remem-

bered clipping that particular slip on. Now, do you wish to qualify that?

A. Sir, amendments were entered in the most convenient manner at the time. Some of it was done in the evenings after the office staff had left, and other times during the lunch hour in whichever manner was convenient at the time.

Q. Do I understand you to say now that you do not remember clipping it on?

A. I clipped amendments in as that, so it would be very similar.
 10 It is quite likely I clipped it on, and I may suggest further that I used whatever notepaper happened to be at hand. I used anything at hand, that was used as a scratch pad.

Mr. Johnson: Q. In the first place, I want to draw your attention to this "(6)" in the margin of the green slip. Is that a "6", just take a look at that?

A. There is a typewritten numeral and there is a "6" and later on a "9" and vice versa.

Q. Where does the "7" come in? Where do we get sub section 7?

A. It was not passed at the time. This is not the printer's copy
 20 sir. That is Exhibit 12.

Q. Yes, the copy for printing?

A. No, the printer's copy is a different animal. It is marked "printer's copy" on each corner, the top of each page. This should be included, pardon me, in the mimeographed copy dated May 1944. There is an instruction to the typist here, you see.

Q. All right. You say that is not the latest copy?

A. No.

Q. What is the date of this?

A. That most likely would be the copy that is submitted to
 30 the typist to issue the second mimeograph copy dated May 1944.

Q. So we should find this "6"—

A. In the mimeograph copy dated May 1944. You should find it there.

Q. Well, we will find out whether it is in Exhibit 9 Now, this is Exhibit 9, May 1944.

A. Now, let me have that other one for comparison.

Q. Yes. It obviously must be later than Exhibit 9, must it not?

A. In other words, it was used as a duplicate of the mimeographed copy and that green slip entered afterwards.

40 Q. Yes. I want to find out when it was put on and under what circumstances. You know I want to know that, too?

A. When that short article "Quoting from Roberts" was written. I said, approximately the same time when the provisions for the establishment of the Hall Committee and Political Action Com-

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mittee were read to the meeting and passed. I told you that, at the same meeting or the meeting before; either one.

Q. Six weeks before the final passage?

A. Or some time before the final passage, but not three months before. Just a matter of weeks.

Q. At any rate, you had lots of time to paste this in instead of clipping it on?

A. There were successive copies after that, master copies bearing the date on the front page.

Q. At any rate, we have it that articles 1 to 20 were passed 10
on August 7th by the evening meeting?

A. Yes.

Q. They were finally finished and done with. The minutes said "After discussion, it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this union," even though at that time you knew the morning meeting had not had a chance to consider the later articles?

A. I submit sir, that up until that time all the articles had been passed by a unanimous vote. 20

Q. Mr. King, the minutes show that it was not until August 21st that the morning meeting had an opportunity of seeing articles 13 to 20.

A. They could see them—

Q. But the morning meeting had not adopted them?

A. That's right. The morning meeting could never outweigh the evening meeting.

Q. Mr. King, the evening meeting purports to make these by-laws become the rules of your union, after passing them on August 7th? 30

A. Quite.

Q. And I suggest to you that could not be done in view of the fact that the morning meeting had not seen those articles?

A. They had seen them in the animated form.

Q. Isn't it a fact that the By-laws Committee and yourself disregarded the morning meetings altogether in the passing of these by-laws?

A. No sir.

Q. Why was there such a rush to have these by-laws passed?

A. I submit, sir, there was no particular rush. We were very 40
lenient as to time and very co-operative.

Q. Why couldn't you have waited—

A. Possibly we just got weary of it.

Q. It was not important whether it was illegal or not? You wanted to get through with it?

A. I say that it was done democratically and legally.

Q. And then it went on, "Moved, seconded and carried, that members of the By-laws Committee who have lost time from work while formulating or presenting the by-laws to the membership be reimbursed for time lost."

Then you got a hearty vote of thanks and your By-laws Committee was finished and done with.

A. Yes and no. The index had to be prepared. It had to be seen through the print shop, and I submit that no one who was
10 not very familiar with that could have looked after the proof.

Q. After the evening meeting on these by-laws and August 21st, when the morning meeting dealt with Articles 13 to 20, were there any amendments made to Articles 13 to 20?

A. No.

Q. How do you know that?

A. Because they had all been passed by the evening meeting. As far as I was concerned, it was considered passed finally with reference to that joint meeting with the executive. In other words, it was effective.

20 Q. Now, I refer again to August 21st, the morning meeting: "Moved, seconded and carried that the by-laws, with amendments, be adopted."

What amendments were they?

A. All amendments that had been effective until August 7th.

Q. It doesn't say so.

A. I did not keep the minutes, sir. The date of entry was not kept tab of. The fact that there was an amendment offered to the membership, it was open to them to vote about it.

30 Q. Would you agree that there was a lot to be said about the keeping of those minutes?

A. Yes, I would have signed ~~them~~ for one, as well as other things.

Q. Then on the 21st, in the morning, it was moved, seconded and carried "that the by-laws become the rules and regulations of this Union on and after September 1st, 1944."

Now, how do you reconcile that date with what has already been said about the effective date of August 8th?

A. This motion is definitely alluding to the question of dues payment.

40 Q. Well, of course, it doesn't say anything about dues.

A. Well, I suggest to you that when that meeting was set on August 21st, the evening meeting had already passed it in its entirety. The two meetings were always kept posted on what the other meeting did.

Q. Would you agree that the evening meeting could not go faster than the morning?

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A. The evening meeting could sit later, until eleven or half-past eleven. The morning meeting very seldom sat until after one o'clock. The men wanted to get home to eat and change and get to work for three o'clock.

Q. Well, the evening meeting was a continuation of the morning meeting?

A. They were regarded as separate entities, at least in my opinion.

Q. Well, they had to be separate insofar as the members voting?

A. That's right.

Q. And that was the only respect in which they were separate entities?

A. And the fact that each meeting had to pass their own rules.

Q. I am suggesting that the evening meeting could not go faster than the morning meeting.

A. It may have been.

Q. You see what would happen if the evening meeting dealt with business that had not been dealt with in the morning?

A. The morning meeting would automatically follow the evening meeting, I can assure you.

Q. There were times when a lot of motions were introduced at the morning meeting that had not been put to the evening meeting, the other meeting?

A. That's possible. If the morning meeting wished to sit until two o'clock in the afternoon, well and good. If the boys are slow to move, you cannot keep them down.

Q. The way it appeared to you was that the morning meeting was a minor meeting and the evening meeting was a major meeting?

A. Quite.

Q. And what was passed in the evening was all right, it was valid?

A. It was practical.

Q. And it would be accepted whether or not it had been introduced or passed at your morning meeting. That was what was bound to be done?

A. It was presented for information to the morning meeting.

Q. The morning meeting was a preliminary meeting?

A. Not exactly. I may suggest many men could bring up a new issue in the evening that the morning people did not hear about, except through other avenues of report of the Executive.

Q. As a matter of fact, for the last while did you not say it was merely a matter of information and courtesy to present it to the morning meeting?

A. Yes. It had been passed finally at the evening meeting, as far as I was concerned.

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Q. Even though the potential of the morning meeting was sufficient to invalidate what was done at the other meeting?

A. In the summer months it was a small attendance, possibly only 40 or 50 members, which would be one-tenth of the evening meeting.

Q. There is one point that I noted. My learned friend was asking you about the minutes of the morning meeting being read before the evening meeting.

A. Yes.

10 Q. Do you say that was the practice?

A. Yes.

Q. That is to say, where there was an evening meeting held on the same day as the morning meeting, the minutes of the morning meeting would be read to the evening meeting?

A. Yes, should be.

Q. So that if there had been motions passed in the morning meeting, the evening meeting would get a lead from what had been done in the morning?

A. Yes.

20 Q. Do you think that is fair and democratic?

A. It is practical. They should know what business was presented.

Q. They should know what the result was too, should they, the evening meeting?

A. You mean the show of hands?

Q. No, I say if there had been a matter brought up before a morning meeting, it was in fact the practice to tell the evening meeting what the result of the vote had been?

A. Any decisions, yes.

30 Q. Don't you think that would be calculated to influence the votes at the evening meeting?

A. The evening meeting was large enough to override any decision of the morning meeting any time, possibly 1 to 10. I don't believe that 10% can bamboozle 90%.

Q. Is it possible that there may have been something else, something less than a unanimous vote on these by-laws?

A. Not to my recollection, sir.

Q. Do you recollect the times when these by-laws were submitted in their final form?

40 A. Yes.

Q. And do you recollect what the circumstances were, whether there were some dissident voters?

A. I do recollect, when standing on a platform, that a certain group, including Mr. Mole, left the meeting as the by-laws were being read. It was a hopeless cause for them to oppose it. They knew

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it was being passed by a unanimous vote, or so close to it that they would have been wasting their time. They had an axe to grind and they wanted to take any advantage of it.

Q. I am trying to find out whether it was a minority—

A. They were not involved in the final vote. They walked out in a group, ten or fifteen members.

Q. At the evening meetings?

A. Yes.

The Court: Q. You are speaking of August 7th?

A. Yes. Mr. Mole was one of them and I know him well, 10 because he was introduced to me years before he joined the Union. It was a group of about 10 or 15.

Mr. Johnson: Q. Now, dealing with Mr. Kuzych himself, you say that he was boisterous at three meetings that you saw him?

A. Pardon?

Q. You said that Kuzych and some of his friends were boisterous at—

A. They operated as a group, as far as I could tell.

Q. Well, there was quite a considerable group, wasn't there?

A. About 10 or 12; one in 1,000 or less of the total membership. 20

Q. Yes, but not 1 in 1,000 of those who attended the meetings?

A. Well, work out your own fractions. About 3% of any total would attend a meeting.

Q. And these people did not succeed in electing Mr. Henderson, because Mr. Henderson was one of the Kuzych group, wasn't he?

A. No, I think not. I think he belonged to the C.C.F.

Q. I am asking you just if he was one of the 12 men you referred to?

A. No, not one of the 12.

Q. What period were you referring to when you said that you 30 saw Mr. Kuzych at three meetings?

A. At the time, I was an active member and attended the meetings.

Q. What year would it be?

A. I became a member in 1941 and I am still a dues paying member today, sir.

Q. When was the first occasion you saw Mr. Kuzych in a meeting?

A. In the Hastings Auditorium.

Q. When was that? 40

A. Before the Pender Auditorium was hired by the Boilermakers' Union.

Q. I am trying to get the month or year or something by which we can fix the meeting.

A. I would not endeavour to say, sir.

Q. Was there not more than one meeting at the Hastings Auditorium?

A. Oh, certainly.

Q. So you don't know when this meeting was?

A. I know there was one meeting. It was definitely a morning meeting.

Q. But you cannot say what year?

A. It was before the Pender Auditorium was hired.

10 Q. Well, I am afraid I don't know when the Pender Auditorium was hired. Can you think of what year it was?

A. Most likely 1942 or 1943.

Q. When did you first know Kuzych?

A. When he came to the meeting, when it was pointed out, "There is that certain man who refused to pay dues." That was his infamous entry.

Q. That was your first introduction to him?

A. I say that was his infamous entry.

Q. That was the first time you got to know him?

20 A. To identify him, yes, and then he was pointed out at meetings to me.

Q. He was pointed out to you before he became boisterous?

A. Well, he was pointed out to me—

Q. You don't like to answer that. Were there other occasions besides the Hastings Auditorium one when you saw Mr. Kuzych speaking.

A. He attended a meeting at Pender Auditorium.

Q. What took place there? On what subject did he speak?

30 A. I don't think he spoke on very many subjects. The question was whether he should be allowed to remain, on the basis of his record.

Q. Then it must have been quite late. It must have been after the first attempted expulsion.

A. Possibly.

Q. Was it after the West Coast arbitration?

A. I would say so.

Q. When was the third occasion?

A. Possibly after his reinstatement. I wouldn't say for certain. He most likely attended several meetings.

Q. And that is the best you can do?

40 A. I do remember him in several meetings.

Q. You remember him being turned out of several meetings?

A. Just one.

Q. And do you remember him having an opportunity to speak freely at any meeting?

A. Most likely, but his case—

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Defendants' Evidence

No. 11

Eugene William King

Cross-Examination

(Continued)

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ation

(Continued)

Q. I just asked you whether you remembered Kuzych having an opportunity to speak freely at any meeting of the Union.

A. I don't think Kuzych remained in very many meetings.

Q. You don't remember, then?

A. Certainly, at the beginning.

Q. When?

A. Before he became too obnoxious.

Q. Can you not tie it down to a date?

A. I would say still in the Hastings Auditorium.

Q. What year is that? 10

A. Well, it could be 1942; most likely in 1943.

Mr. Burton: My lord, may Mr. King be excused? He is required back at his work. His firm have been after him.

The Court: Will you require him again, Mr. Johnson?

Mr. Johnson: I don't think so, my lord. I don't think I can keep him.

The Court: You will be excused then, Mr. King. We will adjourn until 10:30 tomorrow morning.

(Witness aside).

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT.) 20

(Proceedings Resumed Pursuant To Appointment)

Mr. Burton: I will call Mr. Bawn.

JAMES HENRY BAWN, a witness
called on behalf of the defendants,
being first duly sworn, testified as
follows:

EXAMINATION BY MR. BURTON:

Q. Mr. Bawn, what is your occupation?

A. I am advertising manager for the South Hill News. 30

Q. And how long have you been connected with the South Hill
News?

A. 8½ years.

Q. You may sit down if you wish Mr. Bawn. 6½ years?

A. 8½ years, June 1940.

Q. 8½ years. And that is a paper published where?

A. Published at South Hill; at the present time it is published
at 5518 Fraser Street.

Q. And do you know Mr. Kuzych?

A. Yes I do. 40

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James Henry
Bawn

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Q. I am producing a clipping from a newspaper. Would you look at that and identify it if you can?

A. Yes, I can remember this.

Q. Now this article—was that published in the South Hill News?

A. It was.

Q. Now this is expressed to be a letter to the editor and is the "Editor, South Hill News, Sir:" and at the bottom it says "Myron Kuzych, 3558 Fraser Ave." Now did Kuzych submit
10 that letter to you?

Mr. Johnson: Well now that is a leading question my lord.

The Court: Just ask him about it Mr. Burton.

Mr. Burton: Q. Well who submitted this letter to you?

A. Mr. Kuzych.

Q. His name appears on it my lord, Mr. Kuzych. And with what instructions—

Mr. Johnson: Well with what instructions—

Mr. Burton. I don't know how else to get at it. What did he say to you about it then?

20 A. It was brought to us and asked to be published in our paper.

Q. By whom?

A. By Myron, Mr. Kuzych.

Q. And did you publish it?

A. We did.

Q. Now Mr. Kuzych has given evidence that if this was published it was not on his authority. What have you to say as to that?

A. That is not true.

Mr. Burton: My lord I would ask to mark this as Exhibit—
The Registrar: 52.

30 (Newspaper Clipping Marked Exhibit No. 52)

Mr. Burton: Q. Now Mr. Bawn, did you have any other dealings with Mr. Kuzych in reference to your paper?

A. Yes, Mr. Kuzych contributed articles to our paper regularly for a time.

Q. On what subject?

A. Oh labour, labour subjects.

Q. Now Mr. Kuzych gave evidence to the effect that he did not make any arrangements with you or did not suggest or asked to make any arrangements with you in reference to running his ma-
40 terial in your paper. What have you to say as to that?

A. I say that Mr. Kuzych did ask us to run articles for him in our paper very often for a time.

Q. Mr. Kuzych denied that any suggestion was made by him as to taking an interest in your paper. What have you to say to that?

A. Mr. Kuzych—

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(Continued)

Mr. Johnson: My lord, I would suggest that Counsel ask the question, If Mr. Kuzych said this, what do you have to say about it.

The Court: Yes, that is the proper way to do it.

Mr. Burton: Q. If Mr. Kuzych said that he did not make any suggestion to you as to an interest in your paper, what have you to say?

A. I would say that Mr. Kuzych did suggest that he and some friends of his would like to take an active interest in our paper, and that Mr. Kuzych would get the money. At that time we found that we had to expand we couldn't go on like we were doing, and we didn't have money to buy equipment and Mr. Kuzych told us that he could find the money from some friends of his; that is at a later period after this letter was submitted. 10

Q. Was any arrangement made with him along that line?

A. No.

Mr. Burton: Q. Now my lord, I wish to read this letter. It is headed under "Correspondence," and the note in brackets at the top "The publishers do not necessarily endorse the views expressed under this heading."

"Editor, South Hill News, Sir": 20

"Times without number . . . before a Board of Arbitration." Now do you know the date that this was published?

A. I can't remember, except that it was about the time, I imagine, late in December or early in January; that would be 43 or 44, I can't remember the dates; I will volunteer the information that the letter was submitted on the Sunday.

Q. Now witness, I notice on the back—I will show it to you—a news item "Carpenters Convene." That is on the back of the clipping. Is that a news item taken as of that date that it shows?

A. No, I can remember this news item here was submitted by Mr. Lyons, this item here. 30

Q. On the back?

A. He was the only one that ever submitted anything about the Carpenters Local.

Q. Now there is a date mentioned; if you will look down further on that article there is a date mentioned?

A. In the six months ended October 29th, 1943.

Q. Yes?

A. Well this was material I got from the—I think it was from the United Kingdom Department of Information I believe. We had releases from them every week to use as fill in our paper, and that, to the best of my memory, that is where that would come from. That would indicate that this was printed some time after October 29th, 1943. 40

Q. And looking at the article would you say that it would be soon after or some time after?

A. Yes, it would be soon after because we wouldn't use this one, it would be too stale news, we wouldn't use it.

Q. That is "too long after"?

A. Yes.

CROSS EXAMINATION BY MR. JOHNSON:

Q. I suppose you would keep a file of all the old papers that you have published?

10 A. We do.

Q. And when you were asked to come here and give evidence, I suppose that you were shown this letter and asked if it had been published in your paper?

A. The first time I seen this letter was this morning.

Q. Well knowing the approximate date on which it might, or was published, did you not look in your old files?

A. I did.

Q. Then you must have found the issue in which it was published?

20 A. Well I didn't find it.

Q. Well you did make a search for—

A. I did. I am sure I have got it though.

Q. Well where is the original letter?

A. We don't keep those, we never did keep those except for just a few weeks afterwards.

Q. And I see that this is headed up in fairly large type "Correspondence."?

A. Yes.

Q. So you have other letters written to the editor?

30 A. Yes.

Q. And they are not paid for of course?

A. No.

Q. They are contributory, and if they appear to have a matter of interest to your readers you would publish them as correspondence?

A. Yes.

Q. The same as any other newspaper?

A. Whether it was our conviction or not, we published them because it was of public interest.

40 Q. But you would be careful not to include anything of a libelous or slanderous nature?

A. We try.

Q. And in your opinion, this didn't contain anything of a libelous or slanderous nature?

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A. No, in my opinion it didn't. But it would create mild controversy. It would create interest in our paper.

Q. You think it would create mild controversy?

A. To people taking our paper.

Q. And that was the purpose of the publishing—

A. The material published was submitted by Mr. Kuzych because we invited those things.

Q. How often is your paper published?

A. Once a week.

Q. Once a week?

A. Yes.

Q. Just circulates in a small district?

A. In Old South Vancouver, South Hill district.

Q. What is your circulation, or what was your circulation at the time of this publication?

A. I can't remember at that particular time.

Q. Approximately?

A. I would say probably 1500 or probably 2000 it was around there. We printed the paper ourselves at that time, and we didn't keep tab of how many we put out, and we gave our paper away free at that time; we charge now, so we know how many we have. 10

The Court: Q. Just a minute, to whom did Mr. Kuzych hand that letter?

A. To Albert Foot.

Q. Not to you?

A. Not to me, to Albert Foot.

Q. Are you telling today what Mr. Foot told you?

A. At that particular time my lord?

Q. I am just wondering how you happened to remember that Mr. Kuzych personally handed it in? 30

A. Well it was on Sunday and Mr. Foot phoned me at my house; we just live about three or four blocks apart, and Mr. Foot phoned me to come over to his house. When I got there Mr. Foot and Mr. Kuzych were sitting in the basement, and Mr. Foot showed me the letter in the presence of Mr. Kuzych and said "Here is a letter from Mr. Kuzych; we should publish it in our paper" and we did.

Q. You have a personal recollection of that?

A. I do my lord.

Q. And it was this particular letter was it? 40

A. It was that letter.

The Court: All right, thank you.

(Witness Aside)

Mr. Burton: Mr. Bawn may be excused?

Mr. Johnson: Yes, I don't think I will need—

Mr. Burton: My lord, I tender as an exhibit a certified copy

of the decision of the Umpire, Lucien Cannon, under the Unemployment Insurance Act, which I have already cross examined Mr. Kuzych on but it wasn't certified. I have now received from Ottawa a certified copy and I tender this as an exhibit. Now my lord, I dare say that—I anticipate my friend will object under Section 106 of the Unemployment Insurance Act, which reads—

The Court: 106 did you say?

Mr. Burton: Yes, Section 106 of the Unemployment Insurance Act. Now this Act my lord, is contained in the Statutes of
 10 Canada, 1946, Chapter 68, and it is Section 30 of that chapter. It is an amendment my lord and creates a new section.

The Court: Oh I see.

Mr. Burton: The original Act went only as far as 96 with it, and it created new sections. Section 30 reads as follows, of this amendment, "The said Act is further amended. . . further proof thereof." Now this my lord is certified under the hand of the Secretary of the Commission and with the seal—

The Court: And he is the commissioner?

Mr. Burton: The umpire my lord, under the Act.

20 The Court: Let me see the section?

Well this says, "Purporting to be signed or certified under the hand of any commissioner, or the secretary of the commission.

Mr. Burton: That's right, my lord. This is certified under the hand of the secretary of the commission and seal.

The Court: Oh I see.

Mr. Burton: The copy I had in cross examination my lord, wasn't sealed and I wired to Ottawa and this arrived.

The Court: Yes.

Mr. Johnson: My lord, no doubt the document is receivable,
 30 in the sense that it is admissible, but of course, that does not compel your lordship to allow it to be put in as an exhibit; it does not become an exhibit unless it is relevant to the case. Now apparently my learned friend is anxious to have it in, because if it is allowed in, it is in effect affecting the decision of the Chief Justice of this Court in the case of Kuzych vs Stewart where the Chief Justice came to the conclusion on the assessment of damages in connection with the first expulsion from this union of the plaintiff, that the plaintiff didn't have to seek employment as a non union man. If Mr. Justice Cannon came to another conclusion as a basis of finding—apparently that is the purpose of putting it in—then of course there would be conflict then
 40 between the decision of this court and the decision of the umpire.

The Court: Putting that in would only be evidence that such a decision was made.

Mr. Johnson: Was made, yes.

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The Court: Not the correctness of it or the truth of the matter stated therein.

Mr. Johnson: Yes.

Mr. Burton: Of course my friend hasn't gone quite as far as I want to go in the reason I want to admit this because Kuzych said that he didn't remember that he ever appealed the decision my lord.

The Court: He afterwards admitted it.

Mr. Burton: He afterwards, next day, found some documents which showed he admitted it. Well my lord, I shall read this. It is 10
"In the matter of the Unemployment Insurance Act . . . a great deal of irrelevant information." I pause there to remark that Kuzych at first couldn't even remember that he had appealed, he didn't remember anything of that kind, and according to this the Umpire says that he submitted a voluminous brief which was very well prepared. "The claimant has been involved . . . employment in an open shop. The appeal is not allowed, Lucien Cannon." That my lord is dated the 3rd day of October 1945 at Ottawa. I would ask then to mark this Exhibit 53.

(Decision of Umpire Marked Exhibit 53)

20

Mr. Burton: I will call Mr. Stewart.

WILLIAM ANGUS STEWART, a
witness called on behalf of the defend-
ants, being first duly sworn, testified
as follows:

EXAMINATION BY MR. BURTON:

Q. Mr. Stewart, your occupation?

A. At the moment, Trade Union Official.

The Court: Q. What?

A. At the moment, Trade Union Official.

30

Q. Were you a member of the Boilermakers' Union in 1942?

A. I was.

Q. And have you been a member ever since?

A. Continuously.

Q. And are you still a member?

A. Still a member.

Q. By the way, when did you join?

A. January, 1942.

Q. And were you at one time president of the Union?

A. I was.

40

Q. For what period of time?

A. From January 1st, 1943, to December 31st, 1944.

Q. Now. Mr. Stewart, were you the president of the Union

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during the time when there was some difficulty with the Canadian Congress of Labour?

A. I was.

Q. Now, would you tell his Lordship what that was—just briefly what it was about?

A. Well, the Constitution of the Canadian Congress of Labour under which we were operating in 1942 as a local chartered Union of that body, outlined that the election of officers, the annual election of officers, was to take place at a meeting and in the month of December each year.

The Court. Q. Will you wait a minute, Mr. - - - -

A. Yes.

Q. You say the Constitution of the Canadian Congress of Labour under which your union was operating as what—

A. At that time in 1942 as a local chartered union of the Canadian Congress of Labour.

Q. What did you say the Constitution provided?

A. That the annual election was to take place, or the Constitution called for the annual election to take place in the month of December and at a meeting.

Q. At a meeting?

A. A meeting, yes, in that month. It became obvious to the executive committee of the union and the joint membership of the union at that time—

Mr. Johnson: Q. At what time, please?

A. In 1942, around either—the nomination date, I believe, was in November, and it became obvious that to endeavour to hold the annual election at a meeting would be an impossibility, because the union had gone from a membership of some 200 in 1939 to a membership at that time of approximately eleven to twelve thousand, and there were no halls in Vancouver big enough at that time to hold such a meeting and an election, so the executive committee of the union placed the question before the union meeting, and it was unanimously adopted that we hold a referendum vote in all of the operations where the union had membership, the referendum vote to be taken in the plants where the union had membership. It was brought to the attention of the executive and the meeting the provision of the Constitution of the Canadian Congress of Labour, and a wire was despatched to the headquarters of the Canadian Congress of Labour outlining the position we were in. The Canadian Congress of Labour, under the signature of the Secretary-Treasurer, Pat Conroy, wired back stating that if no one in the meeting or the union had any objection to the elections being held by referendum vote, then the Canadian Congress of Labour also had no objection. When this wire

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was read out, the meeting again unanimously agreed that the election take place as outlined in the previous meeting, that is, the referendum vote in each plant where the Union had—that is, each big plant, mainly the four shipyards where the union had membership. This was subsequently done, and prior to the — the Constitution also calls that the new officers elected in the month of December do not take office until the 1st of January of the following year—prior —immediately preceding the election when it was obvious of the results, the then executive whom I believe was out of it for election —I don't believe there was any one of the executive of 1942 10 re-elected for the year 1943—then appealed to the Canadian Congress of Labour that they didn't feel the new officers were fit people, or whatever it was, to hold office, and the Canadian Congress of Labour then established an administration Board to operate the affairs of the Union for a period of one year. The Union membership, which was growing at that period—the peak year of the shipyards was 1943, the Union was growing by leaps and bounds from month to month, day to day—objected strenuously to being refused promises to even hold meetings and that their business would be conducted for them by a Board appointed by the then vice- 20 president, and also the present vice-president of the Canadian Congress of Labour, who was appointed administrator. The membership of the Union objected to this, and installed the officers of the Union who were elected in December, 1942, and the old executive immediately then obtained an injunction restraining them from holding office or carrying out any of the functions of their office pending the hearing of the trial on the injunction. This case went to trial before Mr. Justice Sidney Smith, and during that time there were numerous meetings of the Union held under the authority of the shop stewards in the shipyards. The shop stewards throughout 30 held meetings themselves, set up a working committee to handle the affairs of the committee pending the outcome of the Court case. I might say the case before Mr. Justice Sidney Smith, he ruled—that is what—

Mr. Burton: Q. I didn't anticipate any such detail, but shortly, Mr. Justice Sidney Smith gave a ruling, and that ruling was appealed to the Court of Appeal?

A. That is correct.

Q. And what was the finding of the Court of Appeal?

A. The finding of the Court of Appeal was that the membership in meeting was supreme and that the Constitution was not mandatory, that the election be held at a meeting and not mandatory that it be held in December, but was a directory that this—in essence this was the basis, that the membership should elect the committee as long as they kept the principle that an election be held. 40

Q. Now, as a result of that was an agreement entered into between the Canadian Congress of Labour and the Boilermakers?

A. Yes.

Mr. Johnson: Well now, I don't like that question, it is too leading.

Mr. Burton: You have the agreement, you have it in yourself.

Mr. Johnson: How did this exhibit come to be brought about?

Mr. Burton: Q. All right, my friend put in the agreement himself. I show you Exhibit 5 in this case. If you would look at
10 that document and tell what it is, if you will?

A. This is a document that—I might say in leading up to this, that a large meeting was held of the Union, where a new election took place, in the month of April, 1943, that established the executive pending the appeal. This executive that was elected then was recognized by the Federal Department of Labour and by the operators, and we decided at a meeting that we would send delegates down to the Convention of the Canadian Congress of Labour that was being held in the city of Montreal in October of that year, to appeal—

The Court: Is it necessary—

20 Mr. Burton: Well I was trying to come directly to it, but my friend objected, that was all. I was trying to come direct to the agreement but I was stopped from doing that.

The Court: Ask him to identify this document. What is it?

The Witness: This is the agreement that was arrived at between the Boilermakers' Local No. 1 and the Canadian Congress of Labour after a number of discussions with the officials of that body.

The Court: Q. Is the Boilermakers' Union No. 1 the defendant in this case?

A. That is correct.

30 Mr. Burton. Q. And what led up to that agreement being signed, other than what you have already stated; what led up to it, was it—was it the negotiations which you have already—

A. Oh yes, we had quite lengthy negotiations in the city of Montreal and then with the Regional Director of the Canadian Congress of Labour here in Vancouver, Daniel O'Brien, at that time.

Q. Now, witness, I notice the name, "William Stewart" on this agreement, W. Stewart; whose signature is that?

A. That is my signature.

And you were at that time—

40 A. President of the organization.

Q. And the signature, "Thomas G. McKenzie," what was his position?

A. He was secretary-treasurer.

Q. And the signature "D. O'Brien"—

A. Was Regional Director of the Canadian Congress of Labour.

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Q. Now the agreement expresses that there was a convention held in the city of Montreal?

A. That is correct.

Q. Now, was that the convention to which you have just referred?

A. That is the convention of which I spoke.

Q. And were you present at that convention?

A. I was present.

Q. And did that convention ratify this agreement?

A. No, no, it was the following convention of the Canadian Congress that ratified—I might say that the discussions between ourselves and the Executive Board of the Canadian Congress of Labour took place immediately after the Convention. 10

Q. Now did the membership of the Union, that is the Union in this action, the Boilermakers & Iron Shipbuilders' Union, ratify this agreement?

A. Oh yes, very definitely.

Mr. Johnson: Did you say the members?

Mr. Burton: The membership.

Q. I am showing you—I have already showed it to my learned friend— 20

The Court: That would be shown on the minutes somewhere.

Mr. Burton: Q. I have the minute, my lord. I show you a document; would you tell us what this is?

A. This is an excerpt from the minutes of November 4th.

Q. Of what year?

A. 1944—1943, rather, it is not marked on here but I notice two or three things in the minutes that bring it to my attention it is 1943.

Mr. Burton: Q. Were you present at the meeting? 30

A. I was present there, yes.

Q. And were you the president?

A. I was the president of the organization at that time.

Q. And you say that those are the minutes of what date?

A. November 4th, 1943.

Q. Now, would you read in the minute pertaining to this matter?

A. "Brother Stewart reported re negotiations . . . be endorsed."

Q. And was that a true copy transcribed of the minutes?

A. Yes. 40

Q. Of that motion that was made on that date?

A. I would say so, yes.

Mr. Burton: I would ask to mark this, my lord, as Exhibit 54. (Minutes of Meeting Marked Exhibit No. 54).

Q. Now you heard the evidence of Mr. McPheator and Mr.

Mole that they did not hear any discussion of such an agreement on the floor, or at any meeting of the Union at which they attended. What have you to say as to whether or not it was discussed?

A. Well either they weren't in attendance at the meeting where it was discussed—well, that is the only reason that I can give, that they couldn't have been there, but as far as them not knowing anything about it, I can't understand that because it was headline news in the three daily papers of Vancouver.

Q. And it was discussed in the meeting?

10 A. It was discussed in the meeting, yes. I might add in saying that, that the whole battle of the Boilermakers was given wide publicity, and the settlement was also given equally as wide publicity.

Q. I show you Exhibit 6 in this case, a document put in by my learned friend; what is that?

A. This arises out of the previous document you submitted to me, wherein the agreement with the Canadian Congress of Labour paves the way for the setting up of a Federation of Shipyard Workers in this Province with National Union status, and affiliated with the Canadian Congress of Labour. The Regional Director of the Canadian Congress, Daniel O'Brien, brought this document to our Union and stated that he was having all of the Unions who were then Local Chartered Unions of the Canadian Congress of Labour sign this agreement surrendering their local chartered—Union Charter of the Congress and surrendering them to him for his possession, and this is the copy of that agreement. Each Local Union received a copy of the agreement and also the Congress. This is what this document is.

Q. And is that in pursuance, you say, of Exhibit 5, that is the contract?

A. That is correct.

30 Q. And would you look at the signatures under that agreement?

A. All of them?

Q. Who signed on behalf of the Boilermakers?

A. W. Stewart and C. W. Caron.

Q. And W. Stewart is who?

A. W. Stewart is myself.

Q. Is that your signature?

A. That is my signature, yes.

Q. And Caron?

40 A. Caron was then the secretary of the organization.

Q. Now I show you Exhibit 7—oh, by the way, first, was this agreement endorsed by the membership?

Mr. Johnson: Now, where is the minute, please.

Mr. Burton: Q. Well—just answer my question.

A. Yes, it was.

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Mr. Johnson: I object to it.

The Witness: Oh, I am sorry.

The Court: You will have to go further than that, surely,
Mr. Burton.

Mr. Burton: Q. I have shown you the minutes already of
November 4th. Now, is that a minute in relation to this agreement?

A. Oh yes, the minute is the preliminary operation, or rather
the signing of the agreement, and the minute shows that the agree-
ment which was signed—or rather was placed before the membership
is the preliminary leading up to that one, starting the whole process. 10

Q. That is Exhibit 6.

A. This agreement—rather, that exhibit you showed me last—

Q. Exhibit 6.

A. —is merely the turning over of the charter to the Canadian
Congress of Labour, returning it.

Q. And pursuant to Exhibit 5, the contract.

A. That is correct, yes.

Q. Now, I show you Exhibit 7 in this case. What is that?

A. This is the constitution of the Shipyard General Workers'
Federation of British Columbia. 20

Q. And is this the constitution referred to in Exhibit 6 or
Exhibit 5?

The Court: Q. The constitution of what, Mr. Stewart?

A. The Shipyard General Workers' Federation of British
Columbia.

Mr. Burton: Q. The agreement, Exhibit 6, put in by my
friend, dated April 10, 1944, is expressed to be between the Canadian
Congress of Labour and the Shipyard General Workers' Federation
of British Columbia.

A. That agreement is with the Shipyard General Workers' 30
Federation.

Q. Yes, I see. And Exhibit 7, the constitution of that body,
is the Shipyard General Workers' Federation, mentioned as the party
of the second part in Exhibit 6?

A. That is correct.

Mr. Burton: My lord, I notice that the Shipyard General
Workers' Federation constitution that has been put in has some inter-
lineations. I have a clean copy. My friend and I have agreed that
perhaps I should put in an unsoiled copy.

The Court: All right, to be marked as Exhibit 7. 40

Mr. Burton: And in the new Exhibit 7, my lord, there are
one or two amendments which are included, which are not in the
original one. I don't think they have any effect in this case, but they
are there.

Q. Now, Mr. Stewart, do you—you heard the evidence of Mr. Kuzych?

A. Yes.

Q. And his witnesses. And you heard that there were elections; you heard him say there were elections in the Boilermakers' Union?

A. Yes.

Q. What have you to say as to that?

A. Well, the first I heard that there were actually elections, or any knowledge of it, was when Mr. Mole on the witness stand
10 stated that he had formed a group, or had caused a group to be formed, outside the regular attendance at the membership meeting.

The Court: Q. Did Mr. Mole state that in Court here in this case?

A. Yes, my lord, but there is no doubt about it that there was plenty—there was all the differences of opinion amongst the membership, that is, the entire membership certainly didn't see eye to eye or all of one mind, there was lots of differences of opinion, but I certainly wouldn't call it elections.

Q. You heard the evidence that at a meeting held in the
20 Athletic Park that you were elected president by acclamation.

A. Yes, sir.

Q. Is that correct?

A. Have I heard the evidence?

Q. Yes, you heard that evidence.

A. Well, only as to the attendance.

Q. But is that correct, were you elected president?

A. That is correct, yes.

Q. By acclamation?

A. By acclamation, yes.

Q. And at a meeting in the Athletic Park?
30

A. Athletic Park.

Q. And what was the date, do you remember?

A. The date, the exact date I don't recall, but it was in the month of April.

Q. Of what year?

A. Of 1943.

Q. And how many were present at the meeting?

A. Well, the owner of the park, Mr. Bob Brown, I believe his name was, stated that there must have been slightly over 6,000
40 at the meeting; that the park seated 5,500, and there was many more than 500 on the grounds that couldn't get any seats.

Q. Now, you heard the evidence of Mr. Kuzych that you and your executive took a strong hand in affairs or policies of the membership—I think that expresses it as well as I can. What have you to say as to that?

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A. Well, the Union held two meetings per month, the first and third Monday of every month, morning and evening, and Union policy was laid down at the membership meeting, and on any question of policy majority vote counted.

Q. And was there any attempt on your part to stifle opposition?

A. No, certainly not.

Q. You have heard evidence by Mr. Kuzych to the effect that the financial statements of the Union were questioned. Now, what have you to say as to that?

A. Well, the—I recall the meeting when Brother Kuzych raised this question; I believe it was the second meeting in January, 1943, or the first meeting in February, 1943, where I believe it was the first financial statement that was issued by the Shop Stewards Working Committee, and this statement was given by the then secretary of the Shop Stewards Working Committee, T. G. McKenzie, and Kuzych took exception to some part of the statement, and it was thoroughly explained to him, as far as I can understand, by the secretary. Personally, I had nothing to do with the finances of the Union at that period because I was under an injunction by the Supreme Court, restraining from taking any active part in the office of the affairs of the Union as far as the executive was concerned.

Q. So that any reference Kuzych might have made to yourself in regard to finances, really were improperly directed, if they were.

Mr. Johnson: Please don't lead the witness.

Mr. Burton: Well, that is the effect of it.

The Court: That is not a proper question, Mr. Burton.

Mr. Burton: Q. No. Well, if Kuzych did accuse you of having anything to do with the finances, was he—

The Court: "What have you to say about it?"

Mr. Burton: Q. —what have you to say about it?

A. Well, I would say entirely erroneous, or he may—I had a discussion with Kuzych about two weeks before that; he may have assumed from that that I didn't like him very much, and he was trying to get back at me, but it certainly wasn't—I had nothing to do with the finances in that period.

Q. Paragraph 53 of the Statement of Claim of the Plaintiff reads that "the Defendant Union . . . in the Style of Cause."

You are one of them in the Style of Cause, are you not?

A. I don't think so.

The Court: I do not see Mr. Stewart's name here.

Mr. Burton: No, they must have left him out.

Q. Were you not on the executive at the time when Kuzych was expelled?

A. From the Union?

Q. Yes.
A. The original one, the original trial, yes.
Q. You were on it?
A. Not the one prior to this one, the absolute original one.
Q. Yes, but not this one?
A. Not that one.
Q. I am sorry. Now then, in any event I will carry on. "The Defendant Union and various of its members . . . particularly," and so on, the defendants,—“wrongfully and maliciously . . . as afore-said.”

10

Now, first, were you present at the [REDACTED] Investigating Committee Report, the meeting at which the report was read?

A. Yes.

Q. And you were the counsel—or were you the counsel for the Union at the time?

A. No, I was the counsel for the plaintiff, the complainant.

Q. Now then, what have you then to say as to the allegations in paragraph 53?

A. I would say that the meeting was very well conducted. The chairman spoke prior to Kuzych, or the plaintiff, speaking, and made it very clear that the defendant in that instance should have all the attention necessary and have his say, and Mr. Kuzych there spoke for approximately half an hour. He made the speech similar to one he had made at the present Investigating Committee; I believe it was almost word for word; and there were calls and points of order raised but they were not passed on, as Kuzych has given in evidence here; they were called by the chairman on points of order, bringing to the attention of the chair that Kuzych had gone over his time allotted to him.

30 The Court: Q. What time was allotted?

A. Ten minutes, my lord.

Mr. Burton: Q. Now, did he in fact talk for ten minutes?

A. He talked, to the best of my recollection, approximately half an hour.

Q. You heard his evidence that he didn't take the full ten minutes.

A. Yes.

Q. What have you to say—

A. He did, yes.

40 Q. What have you to say to that?

A. I say it is untrue.

Q. Now, aside from the actual trial itself and the effect of the meeting, or the meetings at which the Trial Committee's report was considered, what have you to say as to the allegations in paragraph

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53 wherein it states that "a campaign was carried on against the plaintiff to create ill-will and ill-feeling."

A. Oh, that is not so, the reverse actually is true, the reverse is true, that Kuzych continually carried on a campaign against the Union and certain members of it, namely myself. One of these exhibits that is placed in evidence on the clipping from a newspaper, I believe it was the Daily Province, wherein I am accused of falsifying the financial statement—

Mr. Johnson: That is not in. Please don't refer to it.

The Witness: I am sorry, I thought it was.

10

Mr. Burton: Q. All right, don't refer to that.

A. It is marked.

Mr. Johnson: It was in the first trial.

Mr. Burton: Q. It is not in, witness, so don't refer to it.

A. That is fine.

Q. Yes, omitting reference to that, continue.

A. That the constant campaign—that clipping that is in now, the one that was put in this morning, is one of the examples of precedents that appeared from time to time, letters to the editor and so on, villifying the Union.

20

The Court: Q. You are referring to Exhibit 52?

A. Yes, my lord, the one that is placed in this morning, but that is only one of many that appeared in the press.

Mr. Burton: Q. I am showing you minutes of the meeting of the Union held on July 3rd, 1944, Exhibit 18 in this case, and do you see any reference to Kuzych in that minute—well first, were you chairman of that meeting?

A. I believe I was, yes. You have asked me if there was reference to Kuzych here?

Q. Yes.

30

The Court: Point it out to him, Mr. Burton.

Mr. Burton: No, I am afraid there isn't.

The Witness: No, there isn't.

Mr. Burton: It has reference to the by-law, that's all. I started in at the first, and I will take the next one and put them back in a minute. I am sorry, I know now.

Q. Witness, you were the chairman of that meeting on July 3rd?

A. That's right.

Q. And evidence has been given that at that meeting you requested Mr. Caron to have Mr. Kuzych requested to leave the meeting.

40

Mr. Johnson: Well, has that been—

Mr. Burton: Q. What have you to say to that?

Mr. Johnson: Yes, Kuzych gave that evidence.

Mr. Burton: Q. What have you to say as to that?

A. Well, there is nothing in the minutes here. I know that after Kuzych had testified before the Arbitration Board and—I want to make this very clear, my lord that there was no opposition to Kuzych testifying before a Board of Arbitration, that is every man's right—but it is the things that Kuzych said at that Board of Arbitration that created in the minds of our membership a great deal of resentment.

Mr. Johnson: Well now, I object to what was in the minds of the membership.

10 The Court: Yes, that is not permissible.

The Witness: Well, I would say this, that as president of the organization during that period, it was necessary for me to be in the shipyards daily; there were a number of grievances, and the operation of our Union agreement in there made it necessary to talk to men and so on, and I was continually expected—

Mr. Johnson: I object to that.

Mr. Burton: Before you answer, we will have a ruling.

Mr. Johnson: Well, I object to any statements that were made in the yard by any members of the Union workers.

20 The Court: Well, I do not think that what individuals said would be evidence.

Mr. Burton: My lord, I think that what—the witness is entitled, however, to answer as to general attitude. I feel that the plaintiff, without any question, gave that evidence, and was allowed to, that is, without telling the exact statements that were made, as to what generally was the attitude created as culled from the conversations.

30 The Court: I think this witness can say what his opinion was with regard to what Kuzych said before the Board of Arbitration, his own personal opinion, but I do not think he can give the opinion of individuals.

Mr. Burton: Well, of course, my lord, the fact is this, that Kuzych has made the statements that there was this ill-feeling and resentment against him, and in order to combat it I would have to bring all the members of the Union here to find out their opinion, and I submit I am entitled to show what this witness found to be the situation, culled from his observations.

The Court: I do not think it is permissible, Mr. Burton.

40 Mr. Burton: Very well. I don't wish to press it too strenuously. By the way, this hasn't been marked yet, Exhibit 54.

Mr. Johnson: No.

Mr. Burton: This is Exhibit 54.

(DOCUMENT MARKED EXHIBIT No. 54.)

Q. Now, were you at any meeting at which Kuzych was

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present, any meeting of the Union at which Kuzych was present?

A. Yes, I was.

Q. Now, can you tell me what was the first meeting?

A. The first meeting that Kuzych was present was on January 7th, 1943. I recall that date because that was the first meeting that the Union held after the Administration Board was established.

Q. Administration Board?

A. Yes, the Administration Board set up by the Canadian Congress of Labour.

Q. Oh yes, yes.

10

A. And Kuzych spoke at that meeting. He spoke for approximately five or ten minutes, and was given a hearing. It was a morning meeting, it was quite a large meeting, so also was the evening meeting of that day, because the whole Union was in a state of flux at that time because of the Administration Board.

Q. Yes, proceed, Mr. — what sort of hearing was he given?

A. Oh, very attentive.

Q. Were you at any meeting—what was the next occasion—I think we better follow it through chronologically.

A. The next occasion was when—and at a meeting—you are speaking of meetings only? 20

Q. Yes.

A. I believe it was either the following meeting or the one next following, after Kuzych had had a discussion with me in the office of the Union, and at that meeting is when he raised the question of the finances, and his question was answered, but he created quite a bit of ill-feeling at that time because the Union then had united all its forces around the question of fighting for local autonomy.

The next occasion when I saw Kuzych at a meeting, I believe was after—if I am not mistaken—was after the hearing of the Board of Arbitration—the Board of Conciliation on the west coast. He never—to my knowledge, from the meeting when he raised the question of the finances until after he appeared at the Board of Arbitration, I don't think I ever seen Kuzych between that period. 30

Q. Now, we will come to the Board of Arbitration. What was your position there?

A. Well, we had approximately eight Unions involved in those proceedings. There were affiliates from the American Federation of Labour, affiliates from the Canadian Congress of Labour, and affiliates from the Amalgamated Building Workers of Canada. 40

Q. One was appointed from each affiliated?

A. To handle the cases of their affiliates, and out of the three, one was appointed for the presenting of the cases, and I was appointed to present the case before the Board.

Q. What happened before the Board?

A. Well, the proceedings went for approximately—I believe it might have been over a week, it was quite a lengthy proceedings, and then the Board went into discussions on their own, and while we were awaiting a decision from the Board, I received a call from the Chairman of the Board that he was reopening the proceedings because another witness wanted to be heard, and the other witness was Kuzych. He got up before the Board, and I believe it was either morning or afternoon of a Monday, or the afternoon and following morning, I
10 am not quite sure, but it was a very lengthy period before the Board, giving evidence mainly against the closed shop and a tirade against the Boilermakers' Union. It was unworthy—

The Court: Is there any evidence in as to what he did say before that Board?

Mr. Burton: Oh yes, I read the transcript, my lord.

Mr. Johnson: My learned friend read a few lines from it.

Mr. Burton: Well, I read a page.

Mr. Johnson: Now this witness says the plaintiff spoke for most of the morning and the previous afternoon. I don't think that
20 my learned friend will say that the full transcript of what Kuzych said is in.

Mr. Burton: Oh, no, I read a page and a half of it, that's all, and Kuzych admitted that is what he did say. I just picked out the part, my lord.

Mr. Johnson: The purple passage, my lord.

Mr. Burton: Well, I will refer your lordship to it if you wish.

The Court: Can you refer me to it now?

Mr. Burton: Yes, I can, my lord, in the appeal book.

30 The Court: Which volume?

Mr. Burton: Volume 1, page 143, starting at the top of the page. I had the actual transcript, my lord.

The Court: All right.

Mr. Burton: Now, my lord, I might say that I had the actual transcript. I confronted him with it on the Examination for Discovery. It was read into that. I read it into the first trial and the second trial, and it is contained at page 143 and 144 down to line 19—about line 17 on page 144. That is the actual transcript from the Board of Arbitration proceedings.

40 The Court: Yes. Do you say the whole transcript was read in?

Mr. Burton: Oh no my lord, he went for hours, but this is the only part that I had.

The Court: Yes, all right.

Mr. Burton: Of course, the part that I took out was what I had particular reference to.

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Q. Now, will you continue, Mr. Stewart, and tell what you heard Kuzych say, insofar as you can?

A. Well, there was quite a—it was quite lengthy, but it was based mainly that they traded unions of Canada for a mess of potash, and that no honest worker would be a member of any of these Trade Unions unless he had to belong—unless he was compelled, and that this is the issue before this Board, and he pleads to the Board not to grant any such decision to the unions who were making a plea before that Board for all union shop conditions in the West Coast Shipyards. This is in essence. There was a terrific amount of material presented and verbiage that took up quite a length of time. I couldn't remember all of it, but I remember these parts because I questioned Kuzych on cross-examination when his own membership was in our union; asked him if he was a member of the Union, and did he want to remain a member of the Union and so on, and he answered no, that he didn't. 10

Q. Exactly what were these eight unions that you represented before this Board of Arbitration, seeking?

A. They were seeking similar conditions to that which were in effect in the three other shipyards in the Vancouver area and which, as a matter of fact, were in existence in all the shipyards in British Columbia, outside, I believe, of the Prince Rupert drydock, but the Victoria shipyards and the Vancouver shipyards held similar types of an agreement with the exception of the West Coast Shipyards, and we were asking there for union shop conditions and the recognition of the Shop Stewards' Movements and Grievances Committees in order to take up questions of "dirty money" and "confined space money" and so on, that were non-existent practically in the West Coast Shipyards, but were in existence, and meant quite a difference in working conditions in other shipyards. We were asking for similar— 20 30

Q. And when you say the three Vancouver shipyards—

A. I mean North Van. Ship Repairs, Burrard Drydock North Van., and Burrard Drydock South Van.

A. And the agreement which was referred to here and put in as an exhibit as the North Van. Ship Repairs and the Boilermakers, is the type of agreement which you wished, is that—

A. That's right.

Q. Just briefly, so we will have it for the record, in Kuzych's presentation to that Board, did he support or oppose what the unions were asking? 40

A. He opposed all down the line.

Q. And what was the ruling of the Arbitration Board?

A. The Arbitration Board compromised; they compromised between simple union recognition and the union shop.

Mr. Johnson: Now, will my learned friend put in the report,

the report of the Department of Labour; it is printed. If he wants to put it in, I am quite willing to have him put it in; it is better evidence.

The Court: Yes, I think so.

Mr. Burton: Well, my lord, I haven't seen it, but I don't mind putting it in, of course.

Mr. Johnson: Put it in later.

Mr. Burton: It is understood then, that I will have that marked after the adjournment. In the meantime, I hope my friend will let
10 me have his copy to read during the lunch hour.

Mr. Johnson: Surely.

Mr. Burton: Q. Now, witness, what have you to say—and don't answer this question until his lordship rules on it—what have you to say as to the attitude of the membership towards Kuzych after the Arbitration proceedings, and don't answer that if my friend—

The Court: I have already ruled on that type of question, I think, Mr. Burton.

Mr. Burton: Well, I submit again, my lord, that that evidence was given by Kuzych at some length as to the attitude towards him
20 that he found, and it was given by McPheator and—

The Court: Well—

Mr. Burton: And those witnesses, my lord, say there was resentment created against him and talked about the elements which were creating that. That was the evidence as I recall it. I don't wish to press it, but I am doing it only because I am sure evidence was led by Kuzych—

Mr. Johnson: The evidence was that the executive, as apart from the Union members, had fomented a feeling against the plaintiff; that was the evidence.

30 The Court: Yes, I think so.

Mr. Burton: Q. Well, what have you to say to that, witness?

A. That is totally untrue. Kuzych wasn't fighting the executive when he testified before that Board of Arbitration in the manner in which he did, because the executive had nothing to gain by the decision of the Board, but 6,000 men in the Westcoast Shipyards had had plenty to gain.

Q. Now, come back to the question of meetings again. Was Kuzych ever ejected from a meeting at which you were the chairman?

A. Yes—ejected, you mean asked to leave?

40 Q. Yes, asked to leave.

A. Yes, yes.

Q. I show you Exhibit 22 in this case, minutes of a meeting of August 21st, 1944, and I will show you a resolution there in reference to Kuzych. Were you the chairman at that meeting?

A. Yes, I was.

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The Court: Exhibit what?

Mr. Burton: Exhibit 22, my lord.

Q. Would you read to his lordship the resolution with refer-
ences to Kuzych?

A. "Moved, seconded and carried that because Brother Kuzych
... is finally concluded," and in brackets it says "August 21st, 1944."

Q. Is that motion made and seconded and carried?

A. Yes, I believe it was.

Q. And could you tell his lordship of any other instance of
the same nature? 10

A. Well, I believe there are other instances of where Kuzych
was in the meeting, and it was either Campbell—someone jumped up
with a motion from the floor that he be excluded, or if I seen him
there I usually asked the secretary to go and ask him if he would mind
himself leaving, because I knew what eventually did happen might
happen while I was chairman of the meeting, that is a row, a disturb-
ance at the meeting, and I done everything possible to prevent that.

Q. Now, I will come down to the investigation, or the trial
itself. We have this before us—my friend won't mind my reading—
were you appointed by the Investigation Committee, or by the mem- 20
bership, to act as counsel for the complainant?

A. By the complainant himself.

Q. By the complainant himself.

A. I wasn't representing the Union.

Q. Now then, that trial before the Trial Investigation Commit-
tee was held on what date?

A. Oh, gosh, I couldn't be sure now, it was January or Feb-
ruary, 1945, wasn't it, or must have been around that time.

Q. Well, you don't remember just the date?

A. I don't remember, no. 30

Q. You remember the case?

A. I remember the trial, but I couldn't tell you the date.

Q. I better produce the report of the Committee. Have you
got it there handy, Mr. Johnson, report and the by-laws?

Mr. Locke: The exhibit number, you mean, report of the Com-
mittee is in here as Exhibit 35.

Mr. Burton: Exhibit 35. There is no date on that. I think we
are agreed on the date.

Mr. Johnson: The trial was called for March 12th and ad-
journed to March 13th and held on March 13th. 40

Mr. Burton: Q. Now, my friend agrees that the trial was
set for March 12th and held on March 13th, 1945, and you were
present?

A. I was present at the trial, yes.

Q. Now, did Kuzych take an oath?

A. No, he was informed by the chairman, as all other witnesses

—that is, the chairman of the Committee—as all other witnesses were, that he was on his oath as a Trade-Unionist to tell the truth, the whole truth and nothing but the truth before the Committee.

Q. But he took no oath, that is by a Commissioner for the taking of oaths in this province?

A. No.

Q. And was that in accordance with the constitution?

A. I believe it was, yes.

Q. Now, what objections did Kuzych take at the trial?

10 A. Well, first of all he took objection to the trial being held at all, stated that this Trial Committee had no right to hear him, that the only people or persons that could hear him was a Court of competent jurisdiction, but he had come there and he was prepared to listen to what went on, but was not prepared to give any evidence or answer any questions.

Q. And did he, in fact, give evidence?

20 A. Well, the Committee asked him if he would take the stand as we had it there, and he did, and he was asked a number of questions by various members of the Committee, and he only answered in one way, "I don't remember" or—"I don't remember," that's all he said.

Q. And did he make a statement?

A. Oh yes, he made a lengthy statement at the end. He made the statement—he made a speech, the same speech as he made at the meeting when the Trial Committee reported its finding, almost word for word.

Q. And did he subscribe to the oath of the Trade Union man?

A. To be a member of the organization a person has to, yes.

Q. No, I mean on the trial?

30 A. On the trial?

Q. Yes.

A. Oh no—in what way?

Q. Well, is there any oath put to the witnesses?

A. No, it is just—they were told by the chairman that "You are on your honour to tell the truth."

40 Mr. Johnson: I would like to call attention to the Court that the evidence given at this trial is being given by counsel for the complainant. Now apparently there were seven members of this Committee, anyone of whom might be called, and I don't know if my friend intends to bring the evidence of what happened at the Trial Committee in this way, or whether he intends to call one of these members of the Committee.

Mr. Burton: Well, Mr. Stewart gave it on the first trial. I just wanted to deal with the matters that are in issue here by this witness; he was present and heard what was said.

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The Court: Perhaps Mr. Burton intends to call all seven.

Mr. Johnson: I want to know whether anybody is going to be called from the Trial Committee. I would like now—

Mr. Burton: I don't have to tell my friend, but I think the witness was there, and I should like him to tell us his side of it. I might have to call all the members, one after the other. I don't know them.

Mr. Johnson: I can't object to the evidence going in, this man was present.

The Court: Isn't this all I am concerned with, was he given an opportunity to make a defence? 10

Mr. Burton: Well, he made a certain number of objections, my lord, and I just wanted to deal with them one at a time. I won't be very long about them, as a matter of fact.

The Court: Yes, all right, Mr. Burton.

Mr. Burton: Q. How long did the hearing last?

A. I believe it was over four hours, yes, 7:30 to around midnight.

Q. Did Kuzych have counsel?

A. No, he stated that he didn't want anyone in the Union to help him unless he could have legal counsel, that is, he wanted a lawyer present. 20

Q. And did he request legal counsel?

A. He asked if he could bring his lawyer there; he didn't bring his lawyer, but I believe he asked if he could bring his lawyer.

Q. What happened to that request?

A. He was told it was not in accordance with Trade-Union practice, I believe also in our by-laws if it was in there at the time, for a person to bring anyone outside of the Union, that is, outside of a member of the Union, where a member of that organization is being charged, to bring anyone in from the outside to hear an inner trial. 30

Q. Did he cross-examine witnesses?

A. Yes, every witness that was presented by the plaintiff he cross-examined.

Q. Was the stenographer in attendance at the trial?

A. There was one of the stenographers from the office of the Union was in attendance, taking shorthand notes.

Q. At the conclusion of the evidence, was he asked as to his opinion of the conduct of the proceeding? 40

A. He was, he was asked by the chairman.

Q. And what was his answer?

A. He answered that he had been given a very courteous hearing, but that he still stood on his original stand that a court—only a court of competent jurisdiction could try him.

Q. And was he given a typewritten statement as to the proceedings?

A. Yes.

Q. As to how the proceeding went?

A. Yes, by the—both Kuzych and the plaintiff were given that at the beginning of the proceedings.

Q. Now, were you present at the meeting at which the report of the Trial Investigating Committee was read?

A. I was.

10 Q. And I think we already have evidence of that, as to what occurred?

A. Yes.

Q. Now, who was the chairman of that meeting?

A. John Nuttall.

Q. I produce to you a copy of the minutes of March 19, 1945, Exhibit 32 in this case. Do you identify those minutes?

A. Yes.

Q. Now, would you read out the sections pertaining to Mr. Kuzych?

20 A. "Moved, seconded and carried that the regular order of business was suspended . . . twelve against."

"It was then moved, and seconded that Brother Kuzych be expelled . . . and twelve against."

Q. And was that motion—were those motions correctly recorded?

A. Yes, they are, yes.

Mr. Johnson: Of course, that doesn't include the vote.

Mr. Burton: Q. Well, who counted the vote, do you know?

30 A. I believe the chairman appointed tellers. It is usual procedure in a meeting where there is a standing vote or a show hand vote for the chairman to appoint tellers to take the count.

Q. Was the question of closed shop—that is, the principle of closed shop discussed in Union meetings?

40 A. Yes, the question of closed shop very often came up at the Union meeting, because we had, ever since the West Coast Shipyard opened, had been one of the objectives of not only the Boilermakers but every other Union involved in shipyard work to obtain a closed shop agreement in that yard similar to what existed in the others. The closed shop is regarded by the Trade-Union movement as the pinnacle of organization of Trade-Union organization.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Where did you first meet the plaintiff?

A. I think I first met Kuzych before he joined the Boilermakers.

Q. Yes, may I suggest that is when you were both well known

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Communists in the Young Communists' League about 1935?

A. No.

Q. Did you know him as a member of that organization?

A. I knew he was.

Q. Wasn't he a contemporary of yours?

A. No.

Q. When did you first find out that he had been a member of the Young Communists League?

A. I believe it was when he gave evidence at the last trial.

Q. Did you know before then?

A. Not—

Q. Sure of that? A. Positive of that—just a second, now, it was when he gave evidence or when he—he stated it somewhere that he was. I believe now that you bring it home again, the first time I met Kuzych was—Block Councils that were organized by the unemployed in the '30's, I believe that is where I first seen Kuzych, Unemployment Councils.

Q. And did you know before either of you joined the Boilermakers that Kuzych had left the Communist party? A. Yes.

Q. Now you, yourself, I think, were a member of the Hotel Workers' and Restaurant Workers' Union, was it? 20

A. Hotel and Restaurant Employees' Union.

Q. Around 1940?

A. 1940, yes, up until 1940, that's right.

Q. And I think you were business agent of the members of the Union at the time of the Vancouver Hotel strike?

A. That's right.

Q. Is it correct, as my instructions are, that you were expelled from the American Federation of Labour?

A. No, that is absolutely wrong.

Q. That is not correct?

A. That is absolutely untrue.

Q. At any rate, you left this Union, the Restaurant Workers, and you went to the Boilermakers?

A. I resigned from the Hotel and Restaurant Employees and went to work in the shipyards, that is correct.

Q. And about that time, as you have explained to the Court, the Union was in a state of flux?

A. The Boilermakers?

Q. Yes.

A. Not in that period when I joined them, no.

Q. In 1941 you joined it?

A. January, 1942.

Q. Well, at the end of 1942 there was a little difficulty with the Canadian Congress of Labour.

A. As I have explained, yes.

10

30

40

- Q. And at that time the president was Mr. Matthew Mills?
 A. Mat Mills, yes.
 Q. And the vice-president was Lloyd Whalen?
 A. That is correct.
 Q. And after the election of officers, the elections of 1942, December, Mr. Whalen was still first vice-president?
 A. That is correct, yes.
 Q. And you became the president?
 A. The president, yes.
 10 Q. And there was also a member of the Executive, a man named Simpson?
 A. Simpson, yes.
 Q. He was both a member of the old Executive and of the new following the elections?
 A. He may have been a member of the old Executive, I am not sure now.
 Q. Well, according to the judgment of Mr. Justice Sidney Smith, it appears that he was.
 A. Yes.
 20 Q. And you remember that judgment of Mr. Justice Sidney Smith?
 A. Yes.
 Q. And I think that there had been a purported suspension of your Union as a local Union of the C.C.L.?
 A. Yes.
 Q. And that Mr. Justice Sidney Smith found that the suspension was illegal and void?
 A. That's right.
 Q. In other words, the Canadian Congress of Labour had pur-
 30 ported to suspend the defendant Union as a chartered local?
 A. Yes.
 Q. And that was done some time, I think, in January, 1943, was it not, the purported suspension?
 A. I think it was in December; I think it was immediately after the election; it could have been January, but I think it was December.
 Q. Well, shortly after the purported suspension there was an attempt by officers, of whom you were one, of the Union, to resign, to secede from the Canadian Congress of Labour?
 40 A. That was a few months afterwards, that would probably be March, probably March or April.
 Q. Not February?
 A. Might have been February, February, March or April, it was around that period, yes.
 Q. And that was also held to be illegal?
 A. I beg your pardon?

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Q. That was also held to be illegal?

A. Yes.

Q. And in other words, there was difficulty between certain factions in the union at the end of December, 1942, and during the early months of 1943, which resulted in this litigation?

A. Well, there were disagreements on the part of the persons who were defeated for office, and the new Executive.

Q. Well, there was difficulty with Mr. Stephens, who had been the secretary-treasurer?

A. That's right. 10

Q. He was the plaintiff in these proceedings?

A. That's right.

Q. And there was some difficulty about getting the books away from Mr. Stephens, wasn't there?

A. That is correct, yes.

Q. So this Union was in troublesome times?

A. In that period it certainly was, yes.

Q. And that was about when Mr. Kuzych, the plaintiff, joined the Union?

A. No, Kuzych didn't join the Union, I think, until April. 20

Q. Well, you haven't got his card?

A. I beg your pardon?

Q. You are not saying that as a statement, are you?

A. No, on the basis of the evidence he gave that he was approved with a card in the month of April.

Q. Well, he gave evidence he had paid donations as early as January, 1943, paid donations to—

A. I think he is wrong there. He may have paid a donation in late January or early February, but he certainly didn't join the Union, and that was explained to him, that we couldn't take anyone into the Union, because on the basis of legal advice in that period we were told not to take anyone in because we had no authority. 30

Q. But at any rate, you accepted his donation as early as January?

A. As a donation, yes.

Q. And presumably there were other people making the same sort of arrangement with you?

A. A great number of them, yes.

Q. And apart from the legal effect—from the practical viewpoint, they were members of the organization whether it was a Union or anything else? 40

A. Well, to explain that, no, because on the basis of legal advice we were told that any person paying the donation did not have the rights and privileges of a member, that he couldn't attend the Union meeting because he would have a vote on the case that

was then pending before the Court. Those persons paying donations were told this at that period.

Q. Well, they were admitted to meetings?

A. Prior to us receiving the instructions, they were admitted to the first meeting, I believe it was in January, and then until a certain period of the trial, on the basis of the legal advice we had at that time, they should not be admitted on the basis of the accused in their trial.

10 Q. Well, the trial was all over by March, 1943, was it not?

A. I believe it was.

Q. March 20th.

A. Because it was in April that we held the election at the Athletic Park, so it would be over by March.

Q. Well, at any rate there was a peace agreement, you came to an agreement with the Canadian Congress of Labour.

A. It was quite awhile later.

Q. In December?

A. Yes, in December.

20 Q. And that agreement, I think, has already been put in as Exhibit 3, and under this agreement—by the way, before you went down on that to Montreal, were you authorized by your membership to proceed to conduct these negotiations?

A. Yes.

Q. How was that done?

30 A. Done at the meetings in the period just prior to the convention itself. You see, we were in this position, that the Courts had ruled that the suspension was not legal, and the Canadian Congress of Labour, through its vice-president, stated that we still were suspended as far as they were concerned, and it was agreed that three delegates go down to the convention and try to iron the question out, because we realized as a local Trade-Union in Canada that we should be part of the recognized Trade-Union movement of the country, and we wanted our status clarified.

Q. According to the Courts, as you understood the decision, the Union had never been anything but a local chartered Union?

A. Yes, and according to the vice-president of the Congress, we still were suspended.

40 Q. I understand there was difficulty and difference between what the Court said and what the C.C.L. Executive said?

A. That is correct, yes.

Q. Then you went down to Montreal with the full agreement and knowledge of your membership.

A. That is correct.

Q. And you came back with this agreement and it was ratified?

A. No, not just like that; we came back with a number of pro-

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posals, a number of points that were open for discussion, and the membership prior to the drafting of that agreement that is in as an exhibit, we had to come back and report all the discussions we held with the president and secretary, the entire executive Committee of the Canadian Congress of Labour, and then we were informed by the Canadian Congress of Labour that further negotiations towards an agreement would be carried on with the then Regional Director of the Canadian Congress of Labour, for this province, Dan O'Brien. The agreement arose out of a number of meetings that we held with O'Brien.

10

Q. Now Exhibit 3—may I see Exhibit 3—I beg your pardon, Exhibit 5. Exhibit 5 deals, amongst other things, with the surrender of the charter. You remember the provision about surrendering the charter?

A. In what regard, I am not—

Q. I thought there was something in this, but I will have it looked up in the recess at lunch time, about delivering up your charter. But the evidence you gave to my learned friend this morning was that the charter wasn't delivered up, I think, until April, 1944, when the constitution of the—

20

A. This other agreement—

Q. —yes, the Shipyard Workers, was consummated. I will deal with that in a minute, I will come back to it. Well now, in the meantime, what was the status of the union, what was the status of your Union after this agreement was signed?

A. After this one was signed?

Q. Yes, this first agreement.

A. We were the status—had the status of a national organization, that is, we were an affiliate then of the Canadian Congress of Labour as different from a local chartered Union. A local chartered Union is bound by the constitution of the Canadian Congress of Labour dealing with the—specifically dealing with local charter Unions, and pays to the Congress a per capita tax; at that time I believe it was 25 cents. An affiliate organization then in that period paid three cents per capita tax, two cents organizational fund, three cents in all.

30

Q. But the Union itself, the organization, hadn't changed at all, it was just a matter of an affiliation with the Canadian Congress of Labour:

A. You mean, hadn't changed its form.

40

Q. Yes.

A. It was still the Boilermakers as far as—

Q. You were still carrying on as the same association as you did as a local chartered Union of the C.C.L., were you not?

A. I don't just get what you mean.

Q. What I am getting at is this, did this agreement here change the constitution, that is to say, the make-up of your association?

A. Well, it changed it in this sense, that the constitution of the Canadian Congress of Labour no longer applied to us.

Q. But the body itself, the entity known as the defendant Union, has that changed at all?

A. It hadn't changed its functions or where its jurisdiction lay, or its membership in any other sense.

Q. Any contracts or agreements entered into by the old Union, 10 you felt free to invoke?

A. Well, those contracts were held by the Union, yes, and remained held by the same Union. What we had altered was our status with the Canadian Congress of Labour.

Q. The closed shop agreement of 1940, for instance, you felt free to invoke after this agreement was consummated?

A. Oh yes, that agreement had nothing to do with any other business that the Union had outside of with the Canadian Congress of Labour.

Q. And it was invoked on two occasions separately, against the 20 plaintiff?

A. I believe so, yes.

Q. And if you didn't have the same Union—the same organization—you couldn't have invoked that, could you?

A. That's right, yes.

Q. So you must have been the same association?

A. I agree we are the same association; the only difference is our status with the Canadian Congress of Labour.

Q. Now, what about the status of the Union today, is it the 30 same Union as it was?

A. No, not a bit.

Q. How is it changed?

A. We had—19—I believe it was 1945 or 1946, I am not sure of the date—the Boilermakers then amalgamated with another affiliate—two other affiliates, rather, to the Shipyard General Workers' Federation, and formed what is known today as the Marine Workers' and Boilermakers' Industrial Union, chartered by the Shipyard General Affiliation and affiliated to the Canadian Congress of Labour.

The Court: Q. With whom did you say the Boilermakers amalgamated?

A. The Dock and Shipyard Workers' Union and the Ship- 40 wrights, Joiners' and Caulkers' Industrial Union.

Mr. Johnson: Q. Have you held office in this Union since December, 1944; have you held any office, executive office, in this Union since December, 1944?

A. December, 1944, you mean up until the present date?

Q. Yes.

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A. Well, to date—yes, in the elections of December, 1945, I was elected vice-president.

Q. First vice-president?

A. No, second vice-president and I hold that position today in the Union.

The Court: Q. What do you call the Union now?

A. Marine Workers' and Boilermakers' Industrial Union.

Mr. Johnson: Q. And you say that was done by agreement between three separate Unions?

A. That is correct. 10

Q. Now, I want to pass to the time you appeared before the West Coast arbitration.

A. Yes.

Q. There were five, I think, shipyards in Vancouver at that time.

A. Five—four, rather.

Q. Well, when you say four, the West Coast is divided into two, because there was a subsidiary, the Hamilton Bridge was a subsidiary.

A. Well that was a separate company entirely, the Hamilton Bridge, but I believe the Hamilton Bridge were involved in that arbitration. The Hamilton Bridge and the West Coast, I was going to say it is two separate companies, but the Hamilton Bridge actually at that time was the steel fabricating plant for the West Coast Shipyard. 20

Q. Yes, situated side by side.

A. Side by side and the same entrance.

Q. And you prepared a brief and submitted it to the Board?

A. That is correct.

Q. Mr. Justice Wilson was chairman of the Board?

A. Chairman of the Board.

Q. Now, first of all I want to ask you whether you agree that a good Union man is necessarily in favour with the closed shop principles? 30

A. Oh yes—you are asking me to agree that a good Union man is in favour of—

Q. Is necessarily—must be in favour of the closed shop principle?

A. Must be and necessarily a good Union man, in my opinion, if that is what you are asking, is in favour of the closed shop.

Q. You don't leave any room for honest difference of opinion on that point? 40

A. Pardon?

Q. Is there any room for honest difference of opinion on that point?

A. I don't think so.

Q. You are aware that Mr. Justice Wilson found against the principle of the closed shop?

A. He found against the principle of the closed shop, but as I stated previously, the finding of the Board was a compromise. You were asking about the membership in Unions. Mr. Justice Wilson is not a member of a particular Union.

Q. Now, let me read to you—this report will be put in after lunch as an exhibit. I want you to tell me whether you agree—

The Court: What is that you are reading from?

Mr. Johnson: This is the report of Mr. Justice Wilson. Department of Labour. It is entitled, "Copy of Report of Board of Conciliation and Investigation Established under The Industrial Disputes Investigation Act," and it is, in fact, the report of this Conciliation Board in the West Coast arbitration, and that took place, I believe, in October, 1943, about that time; the hearing was conducted, generally speaking, around the month of October, 1943.

The Witness: Around that year.

Mr. Johnson: Q. I will read to you from portions of this report. Have you read it, by the way?

A. Oh, yes.

Q. The report, "The gentlemen who very ably presented the Union's case, were quite frank, when questioned by the Board, in expressing the view that closed shop conditions should prevail not only in the industries involved in this dispute but in all Canadian industry." You were one of the gentlemen involved in that?

A. That is correct.

Q. "This means that they contemplate with equanimity the prospect of a condition where no workman can secure employment unless he belongs to a Union." That was in the report, and you read that, did you not?

A. I read that.

Q. And you contemplate with that, in that state of mind—

A. No.

Q. —the same conditions.

A. No, these are Mr. Justice Wilson's words, not mine.

Q. You don't agree with that?

A. I know very well that the words "closed shop" were continually referred to in the arbitration, until it was brought out that what we were asking for was "Union shop" separate from the "closed shop".

Q. Well, you would not be alarmed over the prospect of a condition where no workman could secure employment unless he belonged to a union?

A. Wouldn't be alarmed?

Q. Yes.

A. I think it would be a splendid thing for the working people in Canada; their wages and working conditions would certainly soar.

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Q. You read this in the report—this follows what I just read—
“The condition thus brought about would be directly analagous to that which existed in the darkest ages of the labour repression, when Unions were outlawed and persecuted, and no union man could secure employment; except that the shoe would be on the other foot, and no non-union man could get a job.” Do you agree with that?

A. Well, those conditions that Mr. Justice Wilson spoke of are precisely the reasons why unions realize that for their own protection, to stop going back to those dark days, that it is necessary to have the utmost protection. Any union man will tell you that closed shop is his greatest protection, where he is not going to be faced by a threat of discrimination every day by being a member of the union. That is an established fact, he has that right. 10

Q. What we are trying to get at is whether there is room for honest difference of opinion in closed shop?

A. Between union and those people outside?

Q. Between those men who accept, well, any Union's name and who are members of Trade-Unions?

A. Who are members of Trade-Unions.

Q. That's it. And then the report goes on, “If such a discipline is to be imposed on the workers, it will inevitably result in the unions becoming subject to state control and, eventually, possibly instruments of the state.” Now, that is in the report, isn't it; you read it. 20

A. It is also in the law now; we have the Industrial Conciliation and Arbitration Act.

Q. I am coming to that in a minute. Was that one of the arguments used by the plaintiff before the Board?

A. The plaintiff here?

Q. Yes. 30

A. This argument presented to Mr. Justice Wilson?

Q. Yes.

A. I don't think so.

Q. You never heard that suggested?

A. I beg your pardon?

Q. You never heard the plaintiff suggest that to the Board, that sentence I have just read out?

A. Read it again.

Q. “If such a discipline is to be imposed on the workers, it will inevitably result in the unions becoming subject to state control—” 40

A. No.

Q. —“and, eventually, possibly instruments of the state.”

A. No, I don't recall it, he might have, he was on the stand for quite a lengthy period.

Q. And then, after referring to the Industrial Conciliation and

Arbitration Act and the part which makes collective bargaining compulsory, the chairman goes on to state as follows: "With the closed shop agreement in operation, this law would have the effect of perpetuating the rule of any union which first gained a majority of the employees as members."

A. That isn't so, the operations of the Act disprove that statement.

10 Q. Well, he goes on to say this, and I want to see whether you agree with it: "Thereafter, since all employees would be compelled, as a term of their employment, to be members of the union, and since any union commanding the allegiance of a majority of the members must be the sole collective bargaining agent, there would be no possible way in which the employees could avail themselves of the procedure set out in subsection 11 of Section 4 of the said Act for establishing another union as a collective bargaining agent."

A. That is being done every day.

Q. How could it be done?

A. The Unions come and go. The regulations of the Industrial Conciliation and Arbitration Act disprove that.

20 Q. So you don't agree with that, because you say the regulations allow another union to come in, even though there is a union shop as a collective bargainer.

A. There is nothing to prevent a member of a Trade-Union, or group of Trade-Unions, without or with legislation, changing their affiliation or changing their view, nothing to prevent it.

30 Q. Now he said again, and this is coming to the end of the report, I won't bother you with it very much more, but he says this, "Looking at the matter from a purely practical as opposed to a theoretical standpoint, it cannot be said that the case of the closed shop advocates, in the light of experience on this continent, is clearly proved." You remember that in the report, don't you?

A. Yes.

Q. "There are doubtless many instances in which it works very well. There indubitably are many instances in which the power given to union leaders by closed shop conditions has been notoriously and flagrantly abused and has led to almost open 'racketerring'." Would you agree with that statement?

A. I would have to have instances of that shown. Is there any quoted there?

40 Q. He goes on to say, "The unions which have been guilty of the abuses have not been outlaw unions but members of the great national labour federations." You don't know of any—there are no specific instances, just the general statement.

A. I see.

Q. You don't know of any yourself?

A. I couldn't say offhand. I know that in any organization

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throughout the length and breadth of the country, that whether it is laws, or whatever it is, that there is abuses, but no specific instance of the closed shop, and where those abuses exist, I would have to have instances stated to me. There probably might be some.

Q. Well, evidently Mr. Justice Wilson, sitting as chairman on this Arbitration Board, heard a lot of evidence. Were you there when a lot of evidence was presented?

A. I was there when all the evidence was presented.

Q. You didn't hear anything which would—

A. The company—the two companies who were involved in 10 the arbitration presented no evidence to show racketeering.

Q. Well now, having regard to the expressions of opinion in this report, don't you agree that there could be an honest difference of opinion between the people who were in favour of the closed shop principle and the people who were not and who were still members of a union?

A. Well, not when you add the last part. I agree fully that there is not only differences of opinion on the question of the closed shop and the open shop. There is people who sell their unionism as such, but a member of a Union who claims to be a union man, I 20 have yet to find an instance of where a person has abused the closed shop because he realizes it is his greatest protection.

Q. And you don't admit that there could be any honest difference of opinion on that point?

A. Not with a member of a trade union.

Q. So that, when the plaintiff gave evidence before the Board, there was no possible excuse for him having taken the position which he did against the closed shop principle?

A. No excuse.

Q. Yes, in your mind you condemn him because he had 30 appeared and spoken.

A. As opposed to the closed shop.

Q. As opposed to the closed shop.

A. But not only to the closed shop, he opposed trade-unionism as such.

Q. Well, that wasn't relative to the inquiry, was it?

A. It certainly wasn't, but he gave lots of evidence about trade union employment in Canada and the United States and Great Britain, that it was no good.

Q. The only thing that was asked for was the question of the 40 closed shop, and that is all I am dealing with, because I don't want to get into a discussion with you on anything else, we would be here for a long time.

A. But he certainly opposed the closed shop. Well, I don't want to be placed in the position of saying things that you don't want

me to say, but it would be wrong for me to say he only opposed closed shop, because it would be giving a wrong impression to the Court; he opposed Trade-Unionism.

Q. It was actually acute in your Union, and charges were laid against him of speaking against the closed shop principle?

A. That is correct.

Q. And he was expelled for that reason?

A. I don't think it was placed in that way, charged with opposing the closed shop principle; I think he was specifically charged
 10 with—yes, the closed shop principle and the policy of the Union, I mean the policy of the Union in the principle of the closed shop.

Q. Well, the policy of the Union as expressed in this closed shop agreement which you had with the North Vancouver Ship Repairs.

A. That was the policy of the organization, and he opposed the policy of the organization. I don't know if the closed shop principle was mentioned in any charge.

Q. You talk about the policy of the organization, it wasn't a declared policy of the C.C.L.?

20 A. It wasn't?

Q. Well, it is to be found in the constitution of the Canadian Congress of Labour?

A. I don't know whether it is found in the constitution, I don't think—I don't think it is, but I am quite emphatic in stating that it is the policy of all Unions.

Q. Let's leave out all unions.

A. Yes, I am just—you are asking me specifically; I don't know whether it is stated in there. It is a policy of all unions just the same as the Legislative Assembly of this province, I don't think they
 30 are in favour of democracy in law setting either, but everyone thinks they are.

Q. You would like to write in into the constitution of the Canadian Congress of Labour some provision relating to this object which may not appear in it.

A. I mean, it is obvious to all unions that when they can gain a closed shop, they have gained the highest form of organization so far as trade unions are concerned in that specific plant.

Q. At any rate, when it came to pass the by-laws, you say it was definitely and specifically provided as one of the objects of your
 40 particular union.

A. Yes.

Q. Is that right?

A. Yes.

Q. But in October, 1943, the by-laws, of course, hadn't been passed, not upon them all, had you?

A. Those, no.

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Q. You were operating as a chartered local union of the Canadian Congress of Labour?

A. In 1943?

Q. Yes.

A. We were—that is the period when we were in the state of flux.

Q. Well, you were in this state of flux; we have already dealt with that.

A. I beg your pardon?

Q. We have already dealt with that.

A. Well, we were not then a local chartered union.

Q. Why not?

A. Well, the Congress said we were not. The Court said we were, and we didn't get our status clarified in this agreement, so finally we met with the Canadian Congress of Labour.

Q. All right, whatever status the union may have been—

A. But we did use—if you will pardon me a second—we did use the by-laws of the Congress as a guide to certain of our actions.

Q. And I think there were statements made in the main part to the effect that you still considered yourself bound by the Canadian Congress of Labour constitution?

A. I don't know that you would say bound by; we were using the formula—by-laws formed there as a guide until our status was clarified, and by-laws were drawn up because it was obvious that the by-laws contained in the constitution of the Canadian Congress of Labour were not suitable to an organization the size we were at that time.

Q. And in fact, the procedure for the trial of the plaintiff when you first charged him in December, 1943, was under the Canadian Congress of Labour.

A. That is the procedure we used, yes.

Q. And then we come into — by the way, regarding those charges, something was found to be wrong with the procedure and the charges were not implemented for expulsion, were they?

A. The charge you speak of in 1943?

Q. Yes.

A. Well, Kuzych had left his address and didn't give any forwarding address, the one that we received, that we obtained from the North Van. Ship Repairs, and the letter he received a day late, which I think—seven days, it was—and he received it in eight days or something, or six days, something to that effect, and on this technical point the Court ruled—or rather, our counsel said that we were in the wrong.

Q. Well, you found that out very soon after the trial date had passed, did you not?

A. I beg your pardon?

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Q. You soon found that out after the trial date had passed in December, 1943?

A. Which trial day, Kuzych's trial?

Q. Yes.

A. The union trial, the inner trial?

Q. The inner trial.

A. Yes. I don't remember exactly just what happened. There was quite a bit of a mix-up. We had sent the letter by mail, or tried to get it delivered some way or other. I don't know when we found
10 out about it, it may have been a little later.

Q. Why wasn't he charged again with the same offence?

A. I beg your pardon?

Q. Why wasn't he properly charged and the—

A. The charges withdrawn and then re-drawn?

Q. Yes, why didn't you proceed on the case when this was just a technicality?

A. We didn't feel there would be any—there would be anything wrong in the way a person received charges, amended, so he said; we didn't figure it would make any difference.

20 Q. But when you did find out, it did make a difference?

A. We didn't find out until we were handed a summons to appear in Court to start a trial.

Q. There was a Writ issued in the beginning of 1944.

A. That is right, the Writ issued—

Q. In the beginning of 1944, when the Writ was issued.

A. Yes.

Q. Shortly after this inner trial was to take place.

A. I don't know just exactly when it was, whether it was shortly after or a long time after, but a Writ was issued.

30 Q. But the union did voluntary re-instate the plaintiff?

A. After the trial?

Q. No, before the trial; you re-instated him in June, 1944, didn't you; on June 21st, you re-instated the plaintiff as a member of your union?

A. Was that before or after the trial? I am not quite sure.

Q. You knew the trial took place at the end of October before Chief Justice Farris.

A. In 1944?

Q. In 1944.

40 A. We re-instated him in June?

Q. Well, didn't you?

A. I can't recall that, we might have. Didn't we re-instate him after the trial, and so he only owed dues from June, something like that; I am not clear on it. I am not trying to evade your question or anything, but I am not clear on it.

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Q. Well, my instructions are that the plaintiff was re-instated as from the 21st June, 1944.

A. Yes, but not on June—I believe he was re-instated as of June, but I believe it was after the trial before he received any letter to that effect.

Q. Let me see—

Mr. Burton: I think it is already in evidence.

Mr. Johnson: Do you want to make a statement? It would save a lot of time.

Mr. Burton: Well, I think it is in; I think there is a letter in 10 about it, I am sure.

Mr. Johnson: Oh yes, 44.

Mr. Burton: 44.

Mr. Johnson: Q. It is a letter, it is under your signature too.

A. Yes, June 21st, the date of the letter.

Q. Well now, that is so, isn't it? You wrote the letter.

The Court: What is the exhibit number?

A. Yes.

Mr. Johnson: Exhibit 44, my lord.

The Witness: Yes, in fact—during the—the Writ had been 20 issued and the trial started, and anything that we done during that period regarding Kuzych was done on advice of counsel.

Mr. Johnson: Q. Well, the fact is that you wrote on the 21st June, 1944, the following letter to Mr. Kuzych.

“Dear Sir: Please be advised that you have been re-instated in this Union as a member in good standing.

Your dues were paid to the end of November, 1943, and under the Union's constitution, the next payment is due not later than June 30th, 1944, covering dues for December, 1943, and June, 1944. 30

You do not have to pay dues for the period of January, 1944, to May, 1944, inclusive.”

That is the letter that you wrote?

A. That is the letter, yes.

Q. Now, what was the constitution that you refer to?

A. I beg your pardon?

Q. What was the constitution that you refer to in this letter, “under the Union's constitution the next payment is due”—

A. '44, June of '44. That would probably be the Shipyard General Workers' Federation. 40

Q. Well, was it in fact the—

A. Well, that period in June, '44, I believe the Shipyard General Workers' Federation I believe was our constitution.

Q. I see. Well, we will check that. What I was asking you

about was the voluntary reinstatement, and this took place before the actual trial of the issue between the plaintiff and yourself.

A. Yes; that letter was sent on advice of counsel.

Q. The trial hadn't taken place, it took place at the end of October.

A. Yes, must have taken place then.

Q. When you wrote this letter and re-instated the plaintiff, you washed out—you waived all the right to try Kuzych on the charges that had been preferred in December, 1943, isn't that what you were
10 doing when you wrote this letter?

A. That he was reinstated into the Union?

Q. Yes.

A. Yes.

Q. Isn't the intention you had when you wrote that letter you wiped out anything that had gone before?

A. Possibly, yes, that is the decision of that trial was washed out.

Q. Well yes, and the right to try?

A. I don't know about the right to try, I don't know whether
20 it is ruled out or not; he certainly was not found,—or was found not guilty of the charges; he was guilty of the charges, but it was a technical procedure that was ruled out, but as far as the charges are concerned, I don't know whether that would be in or not; I mean, I am not prepared to say, I am not sure.

Q. But you do remember, don't you, as president in 1944, receiving a nomination of the plaintiff for the presidency of your union, you remember that nomination coming in?

A. Yes, I believe so, yes.

Q. And it was accepted, was it?

A. He was a member in good standing, it would be accepted,
30 yes, it was accepted.

Q. In fact, he would have to be a member in good standing for a whole year of membership—

A. Yes.

Q. For nomination?

A. That's right, yes.

Q. According to the by-law?

A. Yes.

Q. And which were the by-laws you were proceeding with at
40 that time?

A. Yes, these by-laws.

Q. Yes, Exhibit 14, in 1944. Article 18(a) of Exhibit 14, subsection 2, small (a):

"To validate his candidature, the nominee must (a) be a member in good standing with an uninterrupted membership of not less than one year prior to the nomination."

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- The Court: You say that nomination was February, 1944?
Mr. Johnson: Q. No, November, 1944.
A. It would be November, 1944.
Q. Because the elections must take place in December?
A. Yes.
Q. And the nomination of the plaintiff was accepted?
A. Yes, it must have been, because it appeared on the by-law.
Q. With the full knowledge of this provision in the by-law?
A. Yes.
Q. And that would take you back to November, 1943, wouldn't it? 10
A. Approximately.
Q. One year?
A. One year.
Q. Uninterrupted membership?
The Court: We will adjourn now to 2:30.

(PROCEEDINGS RESUMED AT 2:30 P.M.)

WILLIAM STEWART, resumes the stand:

CROSS-EXAMINATION by MR. JOHNSON CONTINUED:

- Q. You are already sworn. 20
A. Yes.
Q. You are still on oath. Witness, the defendant Union, was it ever registered under the Dominion Trades-Union Act?
A. The Dominion Trades-Union Act?
Q. Yes.
A. No, I don't believe so, I don't believe there was any legitimate trade union registered under that Act.
Q. I am not talking about any other union.
A. This one.
Q. This particular union, was this union registered? 30
A. I don't believe so; not at the time that I have any knowledge of the union was it registered under the Trade-Union Act.
Q. Well, while you were president, it was never registered under the Dominion Act relating to Trade-Unions?
A. That is, you are speaking of the Act of the early 1900's?
Q. I am talking about the Dominion of Canada Trades-Union Act.
A. No, I don't think so.
Q. It provides for registration of Trade-Unions, doesn't it?
A. I don't think the Act provides exactly that. 40

Q. Are you familiar with the Act itself?

A. I believe in one of my experiences with the Department of Labour that question came up, some years before I was a member of the Boilermakers, but I have some knowledge of it, and I don't believe the Boilermakers was ever registered under that Act.

Mr. Johnson: I can take that as a fair admission?

Mr. Burton: Yes, I will admit this union never was, as far as I know, but certainly within the confines of this action.

Mr. Johnson: Q. Now the first occasion on which you had to
10 notice the plaintiff was, I think you said, at a meeting in January, 1943.

A. Yes.

Q. And I understand that at that meeting the plaintiff objected because the item relating to salaries of officers of the union was not read to the meeting at the time the financial statement was reported to the meeting.

A. Not at that meeting, no; well, a subsequent meeting.

Q. Well, it was early in January—

A. I thought you said the first time I had occasion to notice
20 him.

Q. That is what I was referring to.

A. No, the first time I did notice him was the meeting of the 1st January—the 7th January, when Kuzych spoke from the platform.

Q. But there was no objection to what he said at that time, was there?

A. No.

Q. Well then, the first time there was objection to what he said was where he brought attention to the fact that the item relating
30 to officers' salaries hadn't been reported to the meeting.

A. I don't know if that was the item or not; there was an item in the financial statement anyway.

Q. And wasn't it the fact that the item relating to salaries was not read when the financial statement was presented to the meeting?

A. No, that is not true; the secretary at that time of the Shop Stewards read the financial statement in its entirety.

Q. You were there both the morning and the evening meeting. Was it read at both meetings?

A. I believe so.

Q. But you are not quite sure?
40

A. Well, there was a morning meeting and an evening meeting in that period; it would be read to both meetings.

Q. You are saying it would be as a matter of practice and custom. What I am trying to find out is whether it was actually in fact read in its entirety, the financial statement with all the items contained in it.

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A. Well, the financial statements are always read in their entirety, and I think I can say that they were read that period, at that time, in their entirety.

Q. Then what was the cause of Mr. Kuzych's observations?

A. I don't recall exactly what it was, his objection.

Q. Well then, leaving that, from then on until the West Coast Arbitration Board met, you had no occasion to notice Mr. Kuzych being objectionable at any meetings of the Union?

A. I don't think Mr. Kuzych attended any meetings until the West Coast arbitration. 10

Q. Do you know as a fact that he didn't attend?

A. I couldn't say he didn't attend, but I say he was never noticed there, and I am almost positive he never attended any meetings.

Q. At any rate, his conduct never came to the attention of the Executive as being objectionable to the Executive?

A. In the meeting?

Q. Yes.

A. I don't believe he was at the meeting.

Q. That is not the question. I say you never had occasion as a member of the Executive to point a finger at Kuzych and say about him that anything he had said at any meeting was objectionable. 20

A. Anything he had said at any meeting; no, I am saying that I don't believe he was at any meeting, so consequently he couldn't—no conduct of his at a meeting he wasn't at would be expressed, would express itself.

Q. Put it this way, that the Executive had no reason to complain of any conduct of Kuzych's until the West Coast Arbitration Board.

A. No, no they hadn't. When Kuzych refused to join the union in April, that was brought to the attention of the Executive. 30

Q. And were charges laid against Kuzych on that account?

A. No, just simply that he was informed—we informed the Shop Stewards at that period to inform Kuzych that there was a union shop agreement in existence in the plant, and that one of the provisions of the agreement was that all persons employed there must become members of the union.

Q. And he became a member of the union?

A. Well, not just in that manner, he appealed to the—

Q. Well now, he became a member of the union? 40

A. Oh, eventually.

Q. He became a member in April, did he not, 1943?

A. Yes, April, yes, I believe it was April, 1943.

Q. And his standing in the union was good as of that date?

A. Yes, yes.

- Q. No different from any other member?
 A. His membership in the union?
 Q. Yes.
 A. Yes, that is correct.
 Q. He had a right to take part in the meetings?
 A. That is so.
 Q. So then, it was only after the proceedings before the West Coast Arbitration Board that Kuzych's conduct became definitely objectionable so far as the Executive was concerned?
 10 A. Well, with the other incidents, of course, that I mentioned of the trouble to get him to join the union.
 Q. It was accumulative, then?
 A. Pardon?
 Q. It was accumulative, then?
 A. It would be accumulative, yes.
 Q. So that as soon as he gave his evidence before the Board, he was a marked man?
 A. Very definitely. We had approximately 15,000 members at that time, and Kuzych's evidence before—
 20 Q. Well now, I just want you to answer the question, was he or was he not a marked man?
 A. Well, I want to explain why.
 Q. I think we can come to that later.
 A. Yes, he definitely was as far as the membership was concerned.
 Q. As far as the Executive was concerned?
 A. Oh, the Executive didn't pay much attention to him, but the membership certainly did.
 Q. Well, did you join in laying a charge in December, 1943?
 30 A. Did I join?
 Q. Were you one of the joiners in the charge that was laid?
 A. No, I don't think so.
 Q. You know who they were?
 A. Yes, well, I have to pay them in witness fees the last two or three days.
 Q. And you have been president of the Union, and were in full accord with the charges that were laid?
 A. Not necessarily as president of the union; the charge would have to go through the regular channels, the same as anyone else, but
 40 I say as a person, yes, I was in agreement with the charges.
 Q. And I put it to you that as from the date that Kuzych gave this evidence about the closed shop, that it was determined as a matter of Executive policy to get rid of him from the union.
 A. No, not necessarily. You see, Kuzych's evidence at the Arbitration Board did not only refer to the closed shop, it referred

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to the entire Union as spurious and a fraud, and this was read by the 15,000 because it was getting wide publicity in the press.

Q. Let's not go into a long speech about it. Whatever the evidence was, it was determined as a result of what he said to get rid of him from the union.

A. That was the intent of those people laying the charge.

Q. It was the intent of the Executive?

A. No, the Executive didn't lay the charge.

Q. It was your intention?

A. I beg your pardon?

10

Q. It was your intention?

A. I was in agreement with the charges laid, they were factual.

Q. Now we come to the year 1944, and you had been re-elected president?

A. That is correct.

Q. And you had this suit pending?

A. Yes.

Q. And Kuzych was re-instated as of June 21st as we discussed this morning?

A. That is correct.

20

Q. Well now, you were chairman of that meeting of July 3rd, 1944?

A. I believe so. I might say that there were two or three meetings that I missed, but the minutes will show if I was in the chair, and I believe I—

Q. Well, I will refer to them before we go any further. Exhibit 18, if I may, please.

Mr. Locke: Exhibit 18 appears to be missing.

Mr. Johnson: What is the date of it?

Mr. Locke: July 3rd, I think. Yes, it is missing from the file. 30

Mr. Johnson: Q. Well, I can proceed, I think, while the exhibit is being found. Now, this was the first meeting after the reinstatement, of course, that had been held as a general business meeting of the union, wasn't it?

A. July 3rd?

Q. Yes.

A. I presume it was, the first Monday in July would be a regular business meeting.

Q. The meetings actually were held every two weeks.

A. The first and third Monday.

40

Q. The first and third Mondays.

A. That's right.

Q. And I show you now Exhibit 18.

A: Yes.

Q. That shows you as being in the chair, and this is a meeting

at 8:00 p.m. on July 3rd. Was there a morning meeting on that day?

A. There usually were morning meetings and—well, practically always were morning meetings and evening meetings. I heard on the evidence—is it permissible for me to say this—as I heard on the evidence here already—

Q. Well, what does it relate to?

A. Well, I was going to say that I heard yourself say the other day that Dominion Day was celebrated on that day.

Q. I suggested that that was what my calendar said.

10 A. Yes, well, I do recall one of the holidays, I don't know what it was, it may have been that one being held ^{that} a day, you know, when it wasn't actually the holiday itself, the actual calendar date of the holiday, and there may have been no morning meeting that day if the shipyards were operating, but an evening meeting might have been held.

Q. Well, at any rate the meeting was held in the evening, and Kuzych endeavoured to attend?

A. Yes.

20 Q. And I understood you told my friend that you gave instructions that he was not to be allowed to remain, is that right?

A. I asked the secretary to ask Kuzych to leave.

Q. Well now, let me get clearly why you gave those instructions; tell me again why you gave those instructions.

A. You are asking me that now?

Q. Yes.

30 A. For the reason that sentiment in the yards was running strongly against Kuzych for what he had said at the Arbitration Board; then later, of course, the suit itself against the Union, and I was afraid as chairman of the meeting that the decorum of the meeting would be disturbed by Kuzych's presence. I asked the secretary to ask Kuzych if he would leave, if he would voluntarily leave, in order to prevent any disturbance.

Q. Well now, you didn't use those words to the secretary, did you, "voluntarily leave"? Didn't you say to the secretary, "Tell Kuzych he must get out," he can't be allowed at the meeting, or something of that kind?

A. I don't think so, I don't think I ever said that.

Q. What were the words of the instructions you gave the secretary?

40 A. I asked the secretary to go and ask Kuzych to leave.

Q. Well, you were determined to see that he didn't remain?

A. I beg your pardon?

Q. You were determined to see that he didn't remain?

A. Determined?

Q. Yes.

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A. Only on the basis of the decorum of the meeting.

Q. Well now, the meeting—

The Court: Q. You were nevertheless determined to see that he left?

A. Well, if he hadn't left, I would have brought it to the attention of the meeting that he was present, in order for the meeting itself to make a decision, because there was a sentiment, as I say, running high, and I wouldn't like to have seen any disturbance at the meeting.

Mr. Johnson: Q. Well now, the meeting, it was perfectly 10
quiet and tranquil, was it not, when you gave these instructions?

A. At the moment, when Kuzych's presence in the hall was unknown, yes.

Q. Anyway, you say you would have had to bring it to the attention of the meeting?

A. Yes, I would have brought it to the attention, because if I had left it, Kuzych would have brought it to their attention and then anything might have happened, so I wanted to forestall anything to change—

Q. In spite of reinstating this man, you refused to let him have 20
the benefits of his union membership?

A. No, not quite like that. I refused to allow the meeting to become the battleground for Kuzych versus the Union, or rather, if anyone in the Union took exception to Kuzych and took action that was not in accordance with good behaviour at a union meeting—

Q. And this was before any whisper had been made in the hall that there would have been anything likely to upset it.

A. No, I had known of this for quite some time by being accosted daily by members in the yard.

Q. I am talking about the meeting. The meeting was perfectly 30
tranquil at the time you gave those instructions?

A. At that period the meeting hadn't started.

Q. You didn't give Kuzych an opportunity to be boisterous?

A. Pardon.

Q. You didn't give Kuzych an opportunity to upset the meet-
ing?

A. That is correct.

Q. That is all I wanted to establish. And by what authority
did you take that action?

A. The request to Kuzych to leave, if he didn't agree to go, it 40
was always left up to the meeting.

Q. You did that as Chairman of the meeting?

A. That's right.

- Q. And you took the same action subsequently on August 7th, I think?
- A. I believe—if the Minutes say so, then that is the meeting.
- Q. And on August 21st it went somewhat further, I think there was a motion made to expel?
- A. It is quite possible that Kuzych was in the meeting and I didn't know, and was rapidly brought to my attention.
- Mr. Johnson: Well now, may I have 22, please.
- The Registrar: That seems to be missing too.
- 10 Mr. Johnson: Q. By the way, witness, these Minutes were never signed by you at any time, were they?
- A. I don't think so—excuse me—I don't think so.
- Q. And at least after these by-laws became effective, it was one of your duties as President to sign the Minutes, was it not?
- A. Yes.
- Q. You know that don't you?
- A. Yes.
- Q. Now this was the motion, preceded by this statement, "At this point brother Kuzych rose to speak. Numerous speakers . . .
- 20 finally concluded." You remember that motion being—
- A. I believe that was made.
- Q. Who put the motion?
- A. I couldn't say just now.
- Q. By what authority was it moved?
- A. Pardon?
- Q. By what authority was it moved?
- A. By what authority?
- Q. Yes.
- A. I believe that it was contained in "Roberts Rules on Order",
- 30 that a member can be expelled from a meeting if there is danger of that member upsetting the decorum of the meeting.
- Q. Well, the minute doesn't say anything about the Plaintiff upsetting the decorum of the meeting, it says, "Numerous speakers objected . . . at the meeting."
- A. Yes.
- Q. By what authority was that motion moved?
- A. I don't know.
- A. And carried. You don't know?
- A. No.
- 40 Q. You know it was—
- A. But I know—rather I feel that if persons—a person is going to upset the decorum of the meeting, it is quite proper that the person be asked to leave, be excluded.
- Q. Of course, you put that in your by-laws in Article 7, Sub 7?
- A. Yes.

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Q. But you weren't operating under the by-laws on August 21st, were you?

A. In 1944?

Q. Yes.

A. Yes, I think so; August 8th, I believe, was the effective—

Q. I want to get at that, and I think this is a good time to do it. There was evidence given here yesterday by Mr. King, who was Chairman of the By-laws Committee, and it wasn't very clear as to when the—or if the Executive at any time approved the recommendation of the By-laws Committee as to the effective date. Now what do you say about that? 10

A. I say it was on August 8th. The Executive Committee met with the By-laws Committee; they discussed the question of the printing of the by-laws; the printing of the form that would be sent to the printers was very important, and the Executive then decided that that be the date the by-laws would become effective, and that the increase in dues become effective as of September 1st for the reasons given by King in his evidence, members had already paid dues for the month of August at the old rate.

Q. So that the minute that refers to the by-laws becoming effective as of September 1st is wrong? 20

A. Yes it is, it was the dues that would become effective September 1st.

Q. And had you read the minutes and signed them, you would have caught that, wouldn't you?

A. That is correct.

Q. Well then you say that on August 21st these by-laws were in effect?

A. I would say so.

Q. Now by what authority under the by-laws did you have the right to pass a motion of this kind to expel the Plaintiff from all meetings until his action against the Union had been finished and done with? 30

A. I don't—I believe the motion is, isn't it, that he be excluded from that meeting; does it say all meetings?

Q. Let me read it to you again. "Moved, seconded and carried . . . until the damage suit is finally concluded."

A. Yes.

Q. Now where do you find authority for that in these by-laws?

A. I don't know if it is in the by-laws. There is that Section 7 dealing with excluding there, but I believe it says one meeting, or the meeting in question. 40

Q. Now that is exactly what it does say, and you know how far this sub-section goes, don't you?

A. Very well.

Q. You know it goes far enough for the majority to exclude the minority and prevent the minority from speaking at all?

A. No I don't think so. No, there is no intent there; that is reading into it.

Q. Well let's read and see just how far it goes, because it is an important Section. "Any meeting of the Union may by majority vote . . . from such meeting." And then it goes on to say, "but such . . . any future meeting."

A. Yes.

10 Q. Now I suggest to you that sub-section goes the length of allowing the majority at any meeting to rule out any discussion of a man, which was in variation to the majority of the members.

A. I wouldn't read that into it at all. The fact of the matter is that a Section like that is to deal with any person or persons creating a disturbance at a meeting. There is nothing to stifle discussion at a Trade-Union meeting. I have been a member of more than one Union, and I don't know of it. I have never seen it in the Boilermakers' Union as long as I have been a member. The Union wouldn't last two months in any attempt for to stifle a minority who wanted to

20 discuss any question on the floor, your Union would break up.

Q. However, the Sub-section will speak for itself.

A. I think so, and that is why I say I wouldn't read into it the impression that you say the Sub-section gives.

Q. It is not what I feel it gives, it is what the wording states it gives. Now let's go on. The trial took place in October, and Kuzych, of course, had been expelled from meetings until the trial had finished?

A. That was the suit for damages?

Q. Yes.

30 A. Yes.

Q. And then by the judgment of the Chief Justice of this Court the Plaintiff was given damages and the reinstatement was confirmed?

A. Confirmed, yes.

Q. And then that judgment I think was handed out right at the beginning of November, 1944, November the 4th, is that right?

A. It would be around that time.

Q. Well now, was the Plaintiff allowed back in accordance with the judgment?

A. Was he allowed back?

40 Q. Yes, was he allowed back?

A. To the meeting?

Q. Was he allowed to take the benefits of his Union membership?

A. Oh he was allowed to take the benefits of his Union mem-

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bership, but I believe he was excluded or asked to leave meetings from then on.

Q. Well now, for what reason?

A. For the reasons I have given you, that previously, all the sentiment against him plus the fact that Kuzych took advantage of the technicality by moving away or refusing to accept letters at his last known address, and using that for to sue the Union. The sentiment was really running high against him.

Q. The fact is, the Plaintiff had succeeded against the Union in becoming reinstated, had he not? 10

A. He had.

Q. And the Executive refused to allow him to take the benefits of his Union membership?

A. The Executive never at any time disallowed him any benefits.

Q. Well now, we pass on to the Minutes of the meeting of November the 20th. Exhibit 24, if I may, Mr. Registrar. Now this purports to be the consolidated Minutes, showing Brother Schwartz in the chair at the morning meeting and Brother Stewart presided at the evening meeting. And the first thing in this Minute is this: "At the morning meeting . . . excluded from the meeting." Now was it on the instructions of the Executive that brother Kuzych was excluded from this meeting? 20

A. Is that the morning session?

Q. This is apparently the morning meeting, yes.

A. Brother Schwartz was in the chair?

Q. Brother Schwartz was in the chair.

A. I presume I wasn't in attendance at that meeting.

Q. I am just asking if the Executive gave instructions?

A. The Executive never gave instructions at any time that Kuzych be excluded. I personally take the responsibility where Caron has testified that he went and tapped Kuzych on the shoulder, that I asked him—that is when I seen Kuzych in the hall, but the Executive never at any time gave instructions that Kuzych wasn't to be allowed in. 30

Q. Well now, this meeting of November the 20th was the first meeting presumably of the Union following the judgment of the Chief Justice of this Court, was it?

A. It would be the third Monday—it would be pretty hard to say unless it was looked up on the calendar. It would be the first or the second. 40

Q. Now may I have Exhibit 25. By the way, when were nominations sent in for the December elections, sometime in November?

A. Yes; the nominations are in November.

Q. Now on Monday, December the 4th, Brother Stewart presided at the evening meeting. Do you recollect that?

A. Yes.

Q. At the night meeting it was moved, seconded and carried that brother Kuzych be excluded from the meeting, the first item of business. Do you remember that?

A. I believe so.

The Court: What was that Exhibit number?

Mr. Johnson: Exhibit 25, my lord.

10 Q. At that time was the Plaintiff — had the Plaintiff been nominated to run on the presidency ballot?

A. Yes.

Q. And his nomination had been accepted?

A. Yes.

Q. And approved?

A. Proved, in what way?

Q. Well, there is a period of four days, isn't there, in which the nomination can be withdrawn?

A. Yes.

20 Q. And there is some period of time during which the Executive has the right to refuse a nomination, is there not? A. If the nomination is not nominated by a person in good standing.

Q. But no objection was taken to this nomination?

A. Oh no, no objection.

Q. And between December the 4th and the next regular business meeting of the Union on December the 18th, there was an election held?

A. December the—

Q. —12th or 13th, some time around there?

30 A. Yes, an election was held in December, the exact date I am not sure.

Q. And you were running on the ticket with Kuzych, were you not?

A. I was running for presidency; so also was Kuzych.

Q. Yes, and Henderson was the third member?

A. Third, yes.

Q. And Henderson was a moderate—

A. Was a which?

Q. —moderate political?

40 A. I don't know what Henderson was.

Q. Well you yourself—

A. I don't know what he was, but I assume he was similar to Kuzych. He put out a lovely—or at least gave a press statement to that effect, that their programs coincided.

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Q. At that time was not a Dominion election proceeding?

A. A Dominion election?

Q. Yes, in December, 1944?

A. I don't believe so.

Q. Had you not been nominated as an L.P.P. Candidate in North Vancouver?

A. Well there was no Dominion election then. The Dominion election, I think, took place about the late Spring of 1944.

Q. Well at any rate, this election was held?

A. The Union election, yes. 10

Q. The Union election was held. And one of the reasons that you objected to Kuzych in one of the charges was based on a meeting that was held prior to this election, was it not?

A. When I objected to Kuzych?

Q. Yes, weren't you Counsel for the layer of the charge at the trial?

A. The layer of the charge asked me to be his Counsel some six weeks after the beginning of the year, or more, I am not sure which.

Q. I am just confirming the charges that were laid against 20 Kuzych, and one of the charges was the fact that he had been—or had been alleged to have held a meeting during the time that this election was pending?

A. I believe that was one of the charges, yes.

Q. And the charges were apparently founded on what he, Kuzych, had said, or one of the other people had said at this meeting, in connection with yourself?

A. I don't think so, no; the charge—no, the charge—I believe one of the charges was being in attendance or holding an unauthorized meeting. The other one was based on radio broadcasts that had been 30 held from Radio Station CKNW.

Q. Well, there were three charges?

A. Three, yes.

Q. And one was the appearance before the West Coast Arbitration, that was the first one; and the second one was holding of this meeting, wasn't it?

A. I believe so.

Q. And the third one was in connection with statements that were alleged to have been made against you?

A. Yes. 40

Q. Derrogatory to you?

A. Yes.

Q. Now the second of those charges, that is the meeting I am referring to.

A. Yes.

Q. And you heard evidence being given by the defence witnesses for the Plaintiff?

A. Yes.

Q. And that is the meeting held in connection with this election?

A. Yes.

Q. Now did you object that anybody should make any speech in connection with the balloting for the presidency of this Union?

10 A. No, I never made any objections at any time, to what Kuzych said or done, never at any time. Even when Kuzych accused me of falsifying the financial statement I didn't lay any charges against him because I didn't think it worthy of doing, but other members did.

Q. In other words, in your personal opinion there was nothing to these charges in connection with this meeting held on Seymour Street?

20 A. Oh yes, very very bad Trade Union practice to hold meetings outside of the regular—your regular Trade Union meeting to discuss internal affairs of your Union. It is a thing that we bring a charge against you in any union to do that.

Q. In other words, there was objection in your opinion, valid objection, to a meeting being held in connection with the issues at stake in this election of the Union?

A. Very definitely, yes.

Q. So in other words, in your opinion only the officers of the Union could hold meetings in connection with electioneering?

A. Only the membership of the Union, a regular business meeting, together with their officers.

30 Q. Was there ever a motion put on the books in regard to electioneering?

A. I don't think so.

Q. Was there any prohibition contained in the by-laws against holding meetings in connection with electioneering?

A. I couldn't say in connection with electioneering, no; I was speaking of Trade Union practice usage.

Q. Was it ever made known to the candidates that they mustn't hold meetings?

40 A. I am not quite sure, I believe there was some decision made at some time, but I am not quite sure, I couldn't answer truthfully there.

Q. You yourself put out a bulletin, didn't you, just before this election?

A. Yes, yes.

Mr. Johnson: May I have 45.

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Q. I show you Exhibit 45, purporting to be signed by William Stewart, President. Is that yourself?

A. Yes, I recall this one, this was issued in answer to a bulletin that was put out by Henderson, wherein it accused the then present Executive of—well, it didn't accuse, it indirectly accused them of being dishonest, and for this reason I felt it necessary to put that bulletin out in conjunction with a press statement—rather that had been made by Kuzych and Henderson to show there was a link-up between those two people.

Q. Quite so, and it was done in furtherance of your ticket? 10

A. It could be construed as that, but it was put out to the membership of the Union as it was then, as President of the Union, to let them know what the issues were insofar as their Union was concerned, and if there was, and there undoubtedly was, as came out in evidence in this trial, that there was a link-up between Kuzych and Henderson, then it meant that the Union possibly faced a grave danger of running into—or rather having an Executive elected that were advocating open shops, advocating a Trade Union policy that was at variance with the established Trade Union practice here in Canada and the Trade Union Congress. 20

Q. It was an issue that was surely entitled to be presented to the membership for their consideration, wasn't it?

A. What is that?

Q. As to whether you should have a closed shop or open shop?

A. No, that issue was never put—it was put to them in the sense that is what might happen. The membership had already decided on the issue of closed shop and open shop long before I ever became a member of that Union; they signed a closed shop agreement, or Union Shop Agreement, two years before I became a member of the Union. 30

Q. And had the matter of closed shop and open shop ever been discussed in any regular business meeting of the Union since you became a member?

A. Yes, numerous times, because of the fact that we were agitating for the Union Shop in the West Coast Shipyards. We had a sound truck hired, talking to the men in the West Coast Shipyards on the question of Union shop and closed shop. The eight Unions jointly had rented a fishing boat, rigged up with a public address system, to address the men in the plant, explaining the issues; it was discussed periodically. 40

Q. I understand that you are talking about attempts made by the Union to get a closed shop in the West Coast?

A. Yes.

Q. I am not talking about that at all. Let's talk about the same

ADDENDUM

Page 411, line 9, add:

Q. Can you show me any resolution where the defendant Union favours a closed shop to the exclusion of the open shop?

A. We would have to go away back to find a resolution such as that, probably 1928, and we have not got the records. We have not had the records of the Union. Prior to the trouble we had with the Canadian Congress of Labour, a number of records were destroyed but the Union held a closed shop agreement ever since 1928 with a number of yards in the city, and that has been the policy of the Boilermakers' Union ever since its inception.

thing. I am talking about discussion of the principle of open shop and closed shop in the meeting of the Union.

A. Well, the principle was never discussed because it was established practice that that was Union policy.

Q. You remember, don't you, being asked at the first trial, "Can you show me any resolution . . . to the open shop.?"

Mr. Burton: What page?

Mr. Johnson: Page 250.

10 Q. "Can you show me any resolution . . . ever since its inception." That was the answer you gave, was it not, to that question?

A. Oh yes, yes.

Q. So that I take it from that answer that this question of closed shop and open shop had never been adopted in the Union?

A. That is the principle had never been adopted, but the question of the closed shop had certainly been adopted.

The Court: How far down did you read?

Mr. Johnson: I read to the end of the first paragraph on Page 251, my lord.

20 The Witness: I was going to say that the principle of the closed shop versus the open shop wasn't discussed. Is that the point you were getting at?

Mr. Johnson: Q. That was the point, yes, and that was the point that the Plaintiff was endeavouring to get across too, wasn't it?

A. What is that, the principle as one against the other?

Q. Exactly.

A. I mean, if one is never raised and everyone is agitating for one of those points, that's it.

30 Q. But that is what you were afraid of from this ticket of Henderson and Kuzych, that is what you feared, that the closed shop agreement might go by the board?

A. That is correct; in other words, the Union goes by the boards.

Q. Well that is a matter of opinion, but it was a matter for the membership I submit to you.

A. No, you weaken the Union, you weaken the Union if you let that happen.

Q. You objected then to any discussion at election time on this issue of closed shop, didn't you?

40 A. No, no, I merely pointed out to the membership that the people who advocate in favor of an open shop certainly can't be in favor of trade unionism, and this was expressed very clearly by Kuzych at the West Coast Arbitration where he said he was opposed to, all Unions in Canada as presently constituted.

Q. We are getting away from the question, but let me put it this way, you had no objection to pamphlets such as these, advocating the opposite to your policy at election time?

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A. Such as that, advocating opposite—

Q. Yes.

A. No, as long as they were based on fact and were truthful.

Q. Well, you had no objection to the other side issuing such pamphlets themselves before the election took place?

A. I didn't object at all when they issued the pamphlet, except the slanders contained in them.

Q. But you drew a line at the holding of a meeting to discuss this kind of an issue?

A. Yes.

10

Q. Well why did you draw a line at the meeting and not at the pamphlet?

A. From the information I have received, the meeting didn't discuss issues such as is contained in that leaflet, they went quite a bit further, and the general principle—

The Court: What was the Exhibit number you were just referring to?

Mr. Johnson: 45.

The Witness: The general principle of holding meetings outside—

20

Mr. Johnson: Q. Just a minute, I was going to ask you, you weren't at the meeting, you don't know what they discussed?

A. No, I wasn't at the meeting, no; from what I heard.

Q. It was only hearsay as far as you were concerned?

A. Yes.

Q. It wasn't a public meeting?

A. No, I don't suppose it was public.

Q. And in actual fact Mr. Henderson did succeed in winning the election?

A. That is true.

30

Q. And Mr. — who was the vice-president who was elected, Hunter?

A. Hunter, yes.

Q. Now Henderson didn't last very long?

A. Pardon?

Q. Henderson didn't last very long?

A. About six weeks I think, six weeks or two months, somewhere around there.

Q. And would it be fair to say that he was run out of the Union?

40

A. It would be very unfair to say that.

Q. Unfair to whom, to Henderson?

A. Unfair to Henderson and unfair to the Union.

Q. Well now, actually what Mr. Henderson did, as I understand it, or perhaps you don't know—tell me if you don't know—

what Mr. Henderson did was to make inquiry and suggest that there should be some investigation into the financial affairs of the Union, did he not?

A. That is true.

Q. And he didn't succeed?

A. I beg your pardon?

Q. He didn't succeed in that endeavor?

A. He didn't personally, but the investigation was held.

Q. He didn't succeed in that endeavour?

10 A. Well I wouldn't say he did succeed, in this sense, that he immediately resigned when the Union meeting didn't go along with him, but the effect of his resignation was to cause the investigation that he asked for.

Q. Well now, when he resigned he took several others in the Executive in resignation with him, did he not?

A. Yes he did, yes.

Q. Five to be exact?

A. I don't know to be exact.

Q. Hunter resigned?

20 A. Yes, Hunter resigned.

Q. And one of your trustees resigned, namely Allister Mc-Leod?

A. Allister McLeod, I believe he did too.

Q. And that, I think, took place about February, 1945?

A. Around February, yes.

Q. Now let me go back a little bit. Do you know anything of the Marine Workers' Holding Limited?

A. Yes.

30 I understand—

A. Yes.

Q. —to hold certain property of the Union, was it not?

A. That's right.

Mr. Burton: Well, my lord, I think I must object to this. Surely we are getting very far afield now, going into the question of a company which is not involved in this lawsuit.

The Court: It is cross-examination. I do not know what Mr. Johnson has in mind, Mr. Burton.

40 Mr. Johnson: I won't be long with it, my lord, I won't take up any more time than I feel is necessary.

Q. I just want to ask you a few questions on it, but it was incorporated in 1943?

A. About 1943, yes.

Q. Before you had the by-laws?

A. Yes.

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Q. Long before you had the by-laws?

A. Yes.

The Court: It held—

Mr. Johnson: Certain Union properties.

The Court: Property.

Mr. Johnson: Yes.

Q. And it was a private company incorporated, was it not?

A. That's right.

Q. Well now, the Marine Workers' Holding Limited remained
in existence until at least the Spring of 1945? 10

A. Yes, still in existence.

Q. Still in existence?

A. Yes.

Q. Why wasn't it mentioned in these by-laws?

A. I don't know why it wasn't mentioned in the by-laws; I mean, I couldn't give you that answer, but the legal advisor—our legal advisor, or the counsel for the Union drafted everything, all the documents in connection with Marine Workers' Holding Limited, and I believe they are on file in the Registrar of Companies, in Victoria. 20

Q. But you were a member of the By-laws Committee, weren't you?

A. Yes, I was.

Q. You had something to do with these by-laws?

A. Yes.

Q. You were president at the time?

A. Yes.

Q. And you knew all about Marine Workers' Holding Limited? 30

A. Yes.

Q. And what I want to get from you if I can, is an explanation of why these by-laws were passed in this form, and the form particularly that I refer to has to do with the duties of trustees, Article 15(c)—Article 15(c) on page 27—this small (b) clause—"Trustees shall have supervision . . . general business meetings."

A. Yes.

Q. Do you remember that clause going in the by-laws?

A. Yes.

Q. And the trustees were two men, were they not?

A. I believe it is three. 40

Q. Three men elected?

A. Yes.

Q. Well now, how do you reconcile that provision in the by-laws with the existence of the Marine Workers' Holding Limited?

Mr. Burton: Well my lord, I object to that question. Surely

the property of a limited company, which is an entirely separate entity, has nothing to do with this union, which is another entity.

The Court: The by-law says it was formed to hold certain property of the union. It seems to me there is a tie-up there.

Mr. Burton: It may be, but the shareholders of that Company aren't shareholders of it, and they have their shares according to the by-laws of that company.

The Court: The company was a trustee for the Union.

10 Mr. Burton: Well, we don't know that, my lord. That is surely a legal question.

The Court: The witness has said that it was formed for the purpose of holding certain property of the Union.

Mr. Burton: Well, I don't know that this witness is competent to answer that question. Surely that is—

The Court: He may not be, but he has said it.

The Witness: May I answer your question now?

Mr. Johnson: Q. Yes, if you will.

A. As you know, the Union had gone through a long process of litigation. We had in the year—in 1942, in December, the Union
20 had a sizeable amount of money and property that, on the basis of our suspension was seized by the Administration Board and held in Court. And when we went to our legal advisor on what we could do about the property the Union had purchased, that is the building, we found out that the Union as an unincorporated organization couldn't hold property, but the company would have to be set up. We wanted to make sure that the building at all times, in the final analysis, would rest with the membership before anything could be done with it, and our instructions to the solicitor are, that if any time the Union are suspended by any higher body of the Trade Union movement, that
30 he is instructed to call a meeting of the shop stewards, who in turn are instructed to take a referendum of the membership as to the disposition or otherwise of the property. It is quite a lengthy consideration to the trustee, who is a solicitor—a trustee of the company, who is the solicitor in this instance, Mr. Nemetz, barrister-at-law, and that may be the reason that it doesn't appear there. That would be an unfortunate experience, all of our funds, property and assets being held up in court for a period of some eight or nine months, but we don't want that to happen to the Union property and we wanted to cover it as much as we could so that in the final analysis
40 the membership would have the say as to the disposal or otherwise of that property.

Q. I can understand all that explanation, but I can't understand it in relation to the dates, because your Marine Workers' Holding Limited was apparently incorporated in the Summer of 1943?

A. Yes.

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Q. And then you go to press with these by-laws effective, you say, in August 1944, and in those by-laws you never mention a word about Marine Workers' Holding Limited?

A. We may have discussed it at the time, and it may have been on the basis that if the Marine Workers' Holding Company appeared in the By-laws that it would immediately become liable to seizure or freezing of funds, such as happened in the instance in December, 1942. We wanted at all times—the memberships' dues money had bought the building—we wanted to make sure that the rights of that building would at all times rest in the hands of the membership. 10

Q. What do you have a trustee for in the Union, what is the purpose of the trustees in the Union?

A. The purpose of the trustees is to look after the funds of the Union and the financial statement and so on, but in this instance, as I am pointing out, that we had trustees also in December, but it didn't stop our funds from being frozen and held away from the membership for a period of eight or nine months. We didn't want that to happen with the property of the Union. Their dues had paid for it, their money had paid for it; we wanted to protect them in every way, shape and form. 20

Q. Were the Marine Workers' purposes ever presented to the general membership?

A. Yes, not only that, but the solicitor of the Marine Workers' Holding Limited, the legal advisor, was brought to Union meetings and gave a full and complete explanation on three occasions to my knowledge, of the Marine Workers' Holding Limited.

Q. I suggest to you that the great advantage of the trustees is that they are under the general direction of the general business meeting?

A. I don't see that at all. 30

Q. There is nothing in law to prevent a trustee from holding real estate, is there?

A. I believe a Union—you mean as trustees of the building?

Q. Yes, as trustees.

Mr. Burton: Surely we can't go into this question. I don't know whether my friend is trying to fish for something. I submit he is not entitled to; we are not trying this issue.

Mr. Johnson: I am practically through with it, my lord. I will leave it now.

Q. Now let me go on to the part you played in the trial of 40
March 13th, 1945. I understand you were counsel for the layer of the charge, Mr. McKendrick?

A. That's right.

Q. And under your by-laws the Union was entitled to be represented in certain circumstances, but had no counsel; you were not acting as counsel for the Union?

- A. No, no, I wasn't an official of the Union at that period.
- Q. You were not counsel for the Union?
- A. No.
- Q. The Union had no counsel, isn't that right?
- A. I don't remember now whether they did or not.
- Q. Well, are you familiar with Article—
- A. Oh, I know the by-laws provide for it, but I don't remember—recall if the Union had counsel or—
- 10 Q. Let me read it to you. This is Article 26, 26 (b) (8), my lord, at Page 56. "The complainant and the accused shall each be permitted . . . on behalf of the Union."
- A. The President may appoint.
- Q. That is what it says, "The President may appoint counsel to act on behalf of the Union." There was no counsel appointed?
- A. I am not sure, I couldn't swear to that.
- Q. Well you were there?
- A. I was there, yes, but I couldn't swear to that.
- Q. Well I thought you had already said there was no counsel appointed for the Union?
- 20 A. I don't think so, I am not sure.
- Q. You mean you don't think there was a counsel appointed for the Union?
- A. That's right.
- Q. And as counsel, did you give evidence at all, did you give evidence?
- A. Well I—directly myself you mean?
- Q. Yes.
- A. I don't recall if I gave evidence on that.
- Q. What did you do as counsel, what duties—
- 30 A. All witnesses that the Plaintiff had, examined them to bring out—
- Q. Go ahead.
- A. Examined them to bring out whatever the evidence was to come out before the Committee.
- Mr. Burton: I presume, my lord, we better make an explanation referring to Plaintiff there. It was the Plaintiff in that trial, not the Plaintiff in this trial.
- The Witness: Oh yes.
- The Court: Yes, the complainant.
- 40 The Witness: The complainant.
- Mr. Johnson: Yes, it really should be complainant.
- Q. And you didn't make a statement to the Committee at all?
- A. Myself?
- Q. Yes, at the end?
- A. At the conclusion, summing up, summing up the evidence, what had been stated by the witnesses?

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Q. Did you give any evidence?

A. I don't think I gave any evidence at all.

Q. Against the Plaintiff in this action?

A. I don't think so.

Q. Now in relation to the charges, the first charge was that "on or about the 10th day of December, 1944, he, the said Myron Kuzych, called, held, or assisted in holding an unauthorized public meeting to discuss internal business of the said Union." Now this wasn't a public meeting, was it in fact, that was held, about which there was this complaint? 10

A. An outside meeting; outside would be a better word.

Q. It wasn't a public meeting at all?

A. I don't believe it was a public meeting. I wasn't there, I can only go from the evidence that was presented to the Committee, I wasn't at the meeting myself.

Q. Now as to the second charge, "that between the month of October . . . Article 26," etc., was that evidence confined entirely to the statements made by Kuzych before the Arbitration Board?

A. No, press statements also, press interviews, letters to the editor. 20

Q. Such as what?

A. One that has been introduced here; not the one necessarily there, but others that appeared in the Sun and Province and News-Herald, dealing with the whole question of closed shop.

Q. Entirely dealing with the question of closed shop, was it not?

The Court: Q. You mean evidence that was given at the trial in the Union?

A. That is correct, my lord.

Q. About press interviews and statements outside of the evidence he gave before the Board? 30

A. Yes.

Mr. Johnson: Q. But was it relating to the closed shop principle and discussed there?

A. Not necessarily; oh, relating to a tirade against the Boilermakers Union, that the Union wasn't a fit organization to exist as far as Mr. Kuzych was concerned.

The Court: Q. Was that in the charges?

A. It was conduct unbecoming a member.

Mr. Johnson: ". . . conduct unbecoming a member of the said Union . . . principle of dues check-off." 40

Q. Now as to the third charge, that "Between the 22nd day of November . . . to Article 26", etc. Now that is the third charge. You recollect that?

A. That's right.

- Q. So these statements were not made directly by the Plaintiff?
 A. They were made by the announcer of the radio station when the script was handed to him, he read them off.
 The Court: Q. Who read them out?
 A. The radio station announcer, that is the employee of the radio station read the script off.
 Mr. Johnson: Q. And you say it was slanderous on yourself?
 A. I don't say that, the person laying the charge—
 Q. That is what the charge is. You agreed with that?
 10 A. Definitely. If you seen the script you would also.
 Q. Do you mean slanderous as being libelous, defamatory?
 A. Well I was told by legal counsel that they were and I could take action, but I didn't see any necessity for that.
 Q. Why not?
 A. Well I have known of Kuzych for a long time and know that is just what he wants, in the public eye with a charge of any description as long as it will keep him in the public eye. I certainly wasn't going to give him that opportunity.
 Q. In spite of the fact that you felt you had been defamed
 20 you didn't take any action?
 A. Yes, but the membership of the Union, generally speaking, knew Kuzych.
 Q. These were statements about you, were they not?
 A. Yes.
 Q. Now you know McPheator who gave evidence here?
 A. Yes.
 Q. A shop steward?
 A. Yes.
 Q. And while he was a shop steward and you were President,
 30 he did a good job, didn't he?
 A. As shop steward?
 Q. Yes, as shop steward?
 A. As good probably as anyone else in the Union. I didn't know him personally.
 Q. Did you congratulate him on some occasions for the job he was doing?
 A. No, I don't remember or recall that.
 Q. Of course you know what a shop steward has to do?
 A. That's right.
 40 Q. He has an important function to keep the men under him satisfied?
 A. Yes.
 Q. And take up with the management the grievances that they have to decide?
 A. No, take up—he wouldn't take up any grievances with the

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management; he would take them up directly with the top shop steward of his division.

Q. And he did anything to keep the men satisfied during the time he was there as shop steward?

A. I don't know, you can't blame him for anything, but I know there were two illegal sit-down strikes amongst the welders in the year 1944. I don't say he was the cause of it, but when you say he done a good job, I don't know whether he was the shop steward there at that time—he says he was—that wasn't very good.

Q. That would be blamed on all the shop stewards? 10

A. Pardon—no, he was shop steward of the welders, and this was a welders' sit-down.

Q. How many shop stewards were there in the welders?

A. I couldn't say offhand.

Q. About 24?

A. I don't think there would be that many, maybe 10.

Q. Just one further question I think I have to ask you, and that is in connection with the voting. Now when the voting took place, I assume before the by-laws were passed you accepted the majority vote on all motions? 20

A. Yes.

Q. And any change in the legal status of the Union was brought about by a majority vote, if there was such a vote?

A. Yes.

Q. It was brought about by a majority vote?

A. Majority.

Q. Not by a unanimous vote?

A. No, majority vote usually—

Mr. Johnson: That is all, thank you.

RE-EXAMINATION BY MR. BURTON: 30

Q. Mr. Stewart, arising out of your cross-examination, I should like to show you—I am just showing it to my friend, my lord—Exhibit 42 in this first trial of this case. Would you look at that document and tell the Court if you have seen that before and what it is?

A. Yes, I have seen this before.

Q. And what is it?

Mr. Johnson: Well now, my lord, I think that my learned friend must only—it is a newspaper clipping obviously, and I think that all that my learned friend can do under the circumstances is ask him whether the statement is true, but to put it in as an Exhibit I think is not admissible. 40

The Court: You do not suggest this witness wrote it or was responsible for it?

Mr. Burton: No, my lord, no. He received it, that was all. I

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cross-examined Kuzych on it, and he—I couldn't get it in at that time because he wouldn't identify it sufficiently.

Q. Before we deal with the contents, how did it come into your possession, Mr. Stewart?

A. It was handed to me—the newspaper rather was handed to me. This was from—may I see that, who it was from.

The Court: Q. Well, how do you know who it is from, is it on there?

A. No, it is not on here.

10 Mr. Burton: He said he was handed a newspaper.

The Court: Q. Did you say you were handed a newspaper?

A. A newspaper.

Q. You clipped that out of the newspaper?

A. Yes, from the Daily Province; I believe it was around December, it would be around December, I think it is—was December, 1943, and this newspaper clipping appeared, and may I proceed to say what I had been about to say?

The Court: Is it over the Plaintiff's signature?

Mr. Burton: No, it is a newspaper.

20 The Court: But over his name?

Mr. Burton: Well his name is mentioned in it as having been the author of statements. It sets in there different quotes to Kuzych as having said so and so.

The Court: It is a news item.

The Witness: It is a news item.

The Court: I do not see how you can get that in.

Mr. Burton: May I, my lord, read it and ask him if it is true, the contents, and if the charges were made—

Mr. Johnson: If my learned friend reads it, the whole—

30 The Court: Better you let me see it, will you? You want to ask him something. What is it you want to ask him?

Mr. Burton: I want to ask him if the statements contained in that press reference were true, and what steps he took about it.

The Court: What statements? There are a number of statements here.

Mr. Burton: I mean the charge that was made in that article against him. You see, my lord, my friend has cross-examined at some length about the charges against Kuzych, one of the charges laid before the Trial Investigating Committee of the Union, and this, of
40 course, relates immediately to these charges. My friend cross-examined him on it, and I just wish to show that as the source.

The Court: I suppose what you want to ask him is, did he falsify the Union accounts?

Mr. Johnson: If he does open up that question it will open up

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quite a wide field, and perhaps this Court wouldn't want to go into that field.

Mr. Burton: You have already gone into it, cross-examined at some length.

The Court: Has there been any evidence given that this witness falsified the Union accounts?

Mr. Burton: It has been given in evidence that Kuzych charged or slandered this witness, and the basis of the slander has been already brought out in evidence that it was having to do with accounts.

The Court: But has there been any evidence that he falsified the Union accounts? 10

Mr. Burton: No, there is no direct evidence.

The Court: I cannot remember it.

Mr. Burton: No, there is no direct evidence, there are just statements that he had—Kuzych has made those statements.

The Court: Where, here you mean?

Mr. Burton: Yes, my lord. I submit the evidence was given that Kuzych talked about accounts, I think in the second meeting that he attended—third or fourth meeting.

The Court: Talked about accounts. 20

Mr. Burton: Yes, and then my understanding was—I may be wrong on this—that he linked Stewart's name with them, and said Stewart hadn't put the proper financial picture before the meeting.

The Court: Well, that is a very different thing from saying that he falsified the Union accounts.

Mr. Burton: Well, my lord, that is what it says there.

The Court: But this is not before me.

Mr. Burton: Well very well, my lord, I don't wish to go further with it; it did arise on the cross-examination of my friend.

Mr. Johnson: Just to clear it up for the sake of the record, I put to this witness exactly what the issue was between the Plaintiff and this witness in regard to that meeting in January, 1943, the fact that he merely was alleged to have left out of reading the financial statements certain items, and that was as far as it went. 30

The Witness: But—may I—

The Court: Well the question is, what evidence did the Plaintiff give here on this trial, did he give any evidence that this witness had falsified?

Mr. Johnson: I did not understand him to, my lord, and I had no instructions in that regard. 40

The Court: I do not think so.

Mr. Burton: I cross-examined him, I know, on that point, on this particular article, and asked him if he made those statements.

The Court: He denied it; he could not identify the article at all.

Mr. Burton: He couldn't identify the article, that is true. Very well, my lord, I will leave it alone.

(Witness aside)

Mr. Burton: My lord, during the Examination of Mr. Stewart the question came up as to the evidence which was given before the West Coast Arbitration. I referred your lordship to Pages 143 and 144 of the Appeal Book; at that time I looked for the actual transcript, I had it in my Brief, and I have it here, and I would ask to have it marked, although it was read into the record by Kuzych, but this was
10 the actual transcript taken at the time.

Mr. Johnson: What my learned friend apparently has extracted from the transcript.

Mr. Burton: It is an extract.

The Court: Not the full—

Mr. Burton: It is an extract.

The Court: An extract coinciding with what you read?

Mr. Burton: Yes, I read it into the record, my lord, and it is in there.

The Court: There does not seem to be any object in—

20 Mr. Burton: No, I just wanted it for clarity because your lordship asked if we had a record of it. I will call Mr. Caron.

Mr. Johnson: Just before my learned friend proceeds with that, I did mention this report of the Board. We have a copy, which is practically a clean copy, my lord, if my learned friend doesn't object to putting it in with the slight mark on it.

Mr. Burton: I don't wish to put it in at all, my lord.

Mr. Johnson: Then I think we should produce a clear copy and produce that.

Mr. Burton: I am not objecting to the interlineations. I don't
30 wish to put the document in.

The Court: What is it?

Mr. Burton: It is the report of the Arbitration Board. It has been referred to, but the report of the Arbitration Board, I submit, has nothing to do with this case. It has been referred to in this case; my friend referred to it more than I did; he read from it actually. I am not asking to put it in. I suppose my friend may be entitled to, I don't know, but I am not asking to have it in. I submit that the decision of an Arbitration Board has nothing to do with this case.

40 The Court: We are dealing with your case now. You say you do not wish to put it in?

Mr. Burton: No, I don't wish to put it in.

Mr. Johnson: Very well.

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CHARLES WILFRED CARON, a witness called on behalf of the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BURTON:

Q. Mr. Caron, were you Secretary of the Boilermakers at one time?

A. Yes.

Q. In what period?

A. I was elected in the month of January, '44—well in the 10 month of December, but I took office the 1st of January.

Q. And how long were you Secretary?

A. Well I was Secretary to the early part of 1945.

Q. And you were something on November the 20th, 1944?

A. Yes.

Q. Was it your—what were your duties as Secretary in reference to minutes?

Mr. Johnson: Well the duties are set out in the by-laws.

Mr. Burton: I thought my friend would object if I started giving him minutes, but I will give him the minutes—

20

Mr. Johnson: I am going to object.

Mr. Burton: Well, now we have it. And what were your duties as Secretary?

A. Keeping all the records of the Union.

Q. Were you in charge of the minutes of the Union?

A. Yes.

Q. I show you first Exhibit 24 in this case, dated—referring to the minutes of the meeting held on November the 20th, 1944. Are those the minutes as produced from your custody, of the meeting of that date?

30

A. Yes, they are.

Mr. Johnson: Well, my lord, I don't know quite that those can be put in this way. The by-laws set out the duties of the different officers, and the duties of the Secretary-Treasurer are set out in 23 and 24 of this printed booklet, my lord, if your lordship would like to follow me on this.

The Court: Who put Exhibit 24 in?

Mr. Burton: My friend put it in; it is already in as an Exhibit.

Mr. Johnson: The duties, as I say, are set out here, and the duties of the Secretary-Treasurer are all set out in a number of items; they are not the same as the duties of the recording secretary, which are to keep minutes of all general business meetings. Now if we are going to have any evidence relating to the contents of the minutes, it should come from the recording secretary, that is the position I take.

The Court: This is rather second-hand evidence, is it not Mr. Burton?

Mr. Burton: Well I submit, my lord, that the man who is in charge of the records of the Union—

Q. Yes, but there is only one man who can say that the minute was taken down correctly?

Mr. Burton: My lord, I can just ask his opinion then, that is as far as I wish to go. We can't produce the recording secretary, and the minutes have been put in by my friend.

The Court: You say he is bound by them because he put them in?

Mr. Burton: I would say so, my lord; he didn't have to put them in.

10 Mr. Johnson: Well now, if my learned friend will go this far, that the minutes record all that was done from the first minute that has been put in until the last minute that has been put in, record accurately everything and completely all the business transacted at the meetings, then I might be prepared to have this witness give this evidence, my lord.

Mr. Burton: No, I can't do that, my lord.

Mr. Johnson: Then we will have the recording secretary.

20 Mr. Burton: I can't say that; I say that these recorded minutes are records of what happened at these meetings, but there are numerous things that occurred during the progress of this case that there are no minutes—there are meetings which were held that there are no minutes of at all, that I haven't produced. The counsel at the trial of this when it first came to trial went through the minutes and picked out what pertained to the situation, and those minutes have been produced and they are in, and my friend has put them in. All I wish to do is to establish that these came from the custody of the secretary and that they are the minutes as he has them.

The Court: Not that they are necessarily correct?

30 Mr. Burton: Not that they are necessarily correct, no, my lord; they are the minutes as the Union has them.

The Court: What have you to say to that, Mr. Johnson?

Mr. Johnson: My lord, I presume that the minutes are correct, and I presume my learned friend will admit that according to the best of his knowledge and belief the minutes are correct.

The Court: But there is one matter in which he says they are not correct.

Mr. Johnson: Well I didn't get that, my lord.

Mr. Burton: Through one of the other witnesses.

40 The Court: The effective date of the by-laws. One minute says that the by-law was to take effect on the 1st of September.

Mr. Johnson: Yes.

The Court: One of the witnesses—at least some witness said that is not correct.

Mr. Burton: He said it didn't express the true situation; the

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minute was effective but the dues portion wasn't effective as of September 1st.

The Court: The minute was wrong.

Mr. Burton: Yes, the minute was wrong; the section relating to dues wouldn't be effective until September 1st.

Mr. Johnson: I am as anxious as my learned friend to find some right hand testimony in connection with these minutes, but I can't see the objection to producing the recording secretary.

Mr. Burton: It is not an objection.

Mr. Johnson: He is available according to my information. 10-

Mr. Burton: Well I will try to find him if he is available; I didn't know he was available.

The Court: I understood yesterday he could be found.

Mr. Burton: Shaw is the man apparently.

Mr. Johnson: Shaw is the man who came in after the end of 1944.

Mr. Burton: Well there may be more than one recording secretary, my lord; all he would say anyway, these are the minutes, the same as this man is going to say, I don't know.

The Court: You put this particular minute in, Mr. Johnson? 20

Mr. Johnson: Yes.

The Court: I am not suggesting you are bound by it, but you put it in, I suppose, as the minute?

Mr. Johnson: That is all we had to go on, yes.

Mr. Burton: That's all we have to go on, my lord. I produced them for him; if we had any others I would have produced them too.

The Court: Well it was put in by Mr. Johnson. What is your question?

Mr. Burton: Q. My question was, you see a motion there—or this is my question—"At the morning meeting brother Jensen informed the membership that brother Kuzych was in attendance." Do you see that Mr. Caron? 30

A. Yes, I see that.

Q. Would you read that to his lordship?

A. "At the morning meeting brother Jensen informed the membership that brother Kuzych was in attendance at the meeting . . . be excluded from the meeting."

Q. Was that motion made?

A. Yes it was.

Mr. Johnson: I will accept that. 40

Mr. Burton: Q. Now I show you the minutes of December the 4th, 1944.

Mr. Locke: Exhibit 25.

Mr. Burton: Q. Were those the minutes of a meeting held on that date?

A. Yes.

Q. I would ask you to read the motion reading "At the night meeting it was moved, seconded that brother Kuzych be excluded." Do you see that motion?

A. Yes.

Q. Would you read that to his lordship?

Mr. Johnson: I will accept it.

10 A. "At the night meeting it was moved, seconded and carried that brother Kuzych be excluded from the meeting."

The Court: Q. You say that motion was made and carried?

A. Yes.

Q. You were there?

A. Yes, I attended all the meetings.

Mr. Burton: Q. Now I show you minutes of a meeting of December the 18th, 1944. Have you got the number of that?

Mr. Locke: 26.

Mr. Burton: Q. Are these the minutes of the meeting held
20 by the Union on that date?

A. Yes, they are.

Q. And I would ask you to read the motion. "Charges were then read against Myron Kuzych." Would you read that to his lordship.

Mr. Locke: That is not in there.

Mr. Burton: Q. I am sorry, I have the wrong one. "At this point it was brought to the attention of the meeting"—start there.

30 A. "At this point it was brought to the attention of the meeting that brother Kuzych was in the hall . . . be excluded from the meeting." And there is a further motion too, further on this, "Brother Kuzych rose to speak and brother Schwartz . . . be sustained, Motion carried." "The previous motion covering the exclusion of Kuzych . . . to 46."

Q. Was that motion made?

A. Yes.

Q. And carried in that manner?

A. Yes.

Q. Now I would refer you to January the 10th, 1945.

Mr. Johnson: The 5th.

40 Mr. Locke: It should be the 5th.

Mr. Burton: Yes, that is correct. That is Exhibit No. 27.

Mr. Locke: That's right.

Mr. Burton: Q. I show you minutes of the meeting of January the 5th, 1945, Exhibit 27 in this case, and I would ask you to look at

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a resolution which starts, "Charges were then read against Myron Kuzych." Would you read that?

A. "Moved, seconded and carried that the regular order of business be suspended . . . against two members." "It was moved, seconded and carried that the charges be accepted. The charges were then read against one Myron Kuzych. It was moved . . . as disposed of."

Q. Was that motion made?

A. Yes.

Q. And carried in the manner set out?

A. Yes.

Q. Now I show you Exhibit 31 in this case, the meeting of February 19th, 1945.

A. "Charges were read against brother Kuzych, and it was moved, seconded and carried that brother Kuzych be barred from all meetings till his case is disposed of. The vote carried unanimously."

Q. Was that motion made?

A. Yes.

Q. Now I show you minutes of the meeting of March 19th, 20 1945, Exhibit 32 in this case.

A. Do you wish me to read from the minutes?

Q. Yes.

A. "It was moved, seconded and carried that the regular order of business was suspended in order to hear the report of the Press and Investigating Committee . . . 454 for 12 against." "It was then moved and seconded that brother Kuzych be expelled from the Boilermakers Union . . . and 12 against."

Q. Was that motion made and carried in the manner set out in the minutes?

A. Yes it was.

Q. Now what duties have you in reference to correspondence of the Union?

A. It was my responsibility to deal with all the correspondence of the Union.

Q. And did you as Secretary-Treasurer, perform that duty in reference to a notification to Mr. Kuzych as to the charges?

A. Yes I did.

Q. Now I refer you to Article 26 (b), Section 4 of the By-laws, Exhibit 14 in this case, at Page 52, which sets out the procedure in reference to the charges of offences against members of the Union. Did a member of the Union lay a charge against Kuzych?

A. Yes.

Q. Who?

A. McKendrick, Charles McKendrick.

10

30

40

- Q. Was he a member of the Union at the time?
 A. Yes.
 Q. Did he lay a charge in writing?
 A. Yes.
 Q. Was it signed by McKendrick?
 A. Yes.
 Q. Did it name Kuzych in the charge?
 A. Yes.
 Q. Did it specify the offence or offences of which he was
 10 charged?
 A. Yes, specified the offences.
 Q. Did it specify the section of the by-laws of the Union
 under which—
 A. Yes it did.
 Q. —he was charged. Was it filed with you as Secretary?
 A. Yes.
 Mr. Johnson: Well, filed with the recording secretary doesn't
 it say?
 The Court: What does it say there?
 20 Mr. Burton: Yes, the recording secretary, I see that my lord.
 Q. Was it filed with the recording secretary?
 Mr. Johnson: How does this witness know?
 Mr. Burton: Well he could ask him; the recording secretary
 could give it to him I presume.
 The Witness: Yes, filed with the recording secretary.
 Mr. Burton: Q. And did it come to your hands?
 A. Yes.
 The Court: From whom?
 A. From the recording secretary.
 30 Q. His name?
 A. Mr. Shaw.
 Mr. Burton: Q. Was it read to a meeting of the Union by the
 recording secretary under the order of business for notice of motion?
 A. Yes, I believe it was.
 Q. On what date?
 A. I believe it was read February 19th, somewhere's around
 that date.
 Mr. Burton: We have already had that read in.
 The Court: Q. Did you read it or did Mr. Shaw read it?
 40 A. No, Mr. Shaw read it.
 Q. What was the date did you say?
 A. I believe it was somewhere's around February 19th, I think
 that is the date.
 Mr. Burton: My lord, I have already had Mr. Kuzych—or
 Mr. Caron read that. It is found in Exhibit 31, February 19th, 1945,

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"Charges were read against brother Kuzych, and it was moved, seconded and carried that brother Kuzych be barred from all meetings till his case is disposed of."

Q. Was that the motion?

A. Yes.

Q. Now I read you Sub-section (f), "Any member other than the President of the Union . . . at the time of filing." Did McKendrick pay \$10.00?

A. Yes he did.

Q. I continue reading, "And if the charge is proved . . . to the 10
Union." What happened to the \$10.00?

A. It was returned to McKendrick.

Q. When was it returned?

A. After the expulsion.

Q. Sub-section 5, "After a charge is read out . . . debarring
only." Was action taken on that section?

A. Yes.

Q. And was he debarred?

A. Yes he was.

Q. Accordingly. Now was the charge handed to the Chair- 20
man or secretary of the standing Press and Investigating Committee?

A. I can't recall to which it was handed but I think it was the secretary of the committee.

Q. And was the trial held?

A. Yes.

Q. Before the Press and Investigating Committee?

A. Yes.

Q. And was it more than ten days after the charge was read
to the meeting?

A. Yes it was. 30

Q. And was it within thirty days from having been read at
the meeting?

A. Yes.

Q. Were all parties entitled to participate at the trial, including
Kuzych, notified of the date and place of trial, and the text of the
charges?

A. Yes. He was also mailed a copy of the by-laws at that
time.

Q. Was it sent by registered mail or delivered in person?

A. I can't recall what the by-laws says in that particular— 40

Q. Well, do you know what was done—

Mr. Johnson: It was sent by registered mail.

Mr. Burton: I know it was registered mail—You will admit
that, will you?

Mr. Johnson: Yes.

Mr. Burton: My friend admits it was sent by registered mail, my lord.

Q. Was it sent within—or more than six clear days before the date of the trial?

A. Yes.

The Court: Are any of these things you are proving, disputed?

Mr. Johnson: No.

Mr. Burton: Well I am just a little afraid after the last trial, my lord, that I am going to prove it strictly, but if my learned friend
10 will admit there was no error in the proceedings—

Mr. Johnson: No, I won't admit there was no error in the proceeding, but these formal things you are reading now—

Mr. Burton: You are admitting those, is that right?

Mr. Johnson: You are all finished with them?

Mr. Burton: I am pretty well finished, yes.

The Court: Well, better be sure.

Mr. Burton: My lord, Mr. Kuzych got a thousand dollars for the failure to do it once before.

Q. Was Kuzych notified that he was entitled to obtain counsel
20 within the Union?

A. Yes. As I said previously, a copy of the by-laws was mailed to him so that he could know that he was entitled to a hearing.

Q. Were you present at the trial of the Investigating Committee?

A. No.

Q. Did you receive from the trial Investigating Committee a report?

A. Yes.

Q. And was that report filed?
30

A. Yes.

Q. And was the report submitted to a meeting of the Union?

A. Yes it was.

Q. And we already have in evidence the minutes on that, that the action was that he was expelled, is that correct?

A. Yes.

Q. Was the report of the trial Investigating Committee unanimous, or was there a minority report?

A. Unanimous.

Q. And you were present at the meeting at which the report
40 was adopted?

A. Yes.

Q. Did Mr. Kuzych launch an appeal?

Mr. Johnson: Now this witness doesn't know that.

Mr. Burton: Why wouldn't he know?

Mr. Johnson: The appeal goes to the Federation.

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Mr. Burton: Oh yes, I am sorry. Well he has already admitted it in anyway.

Q. By the way, did you appear as a witness at the Press and Investigating trial?

A. Yes I did.

Q. And were you cross-examined by Kuzych?

A. Yes.

Q. Now what have you to say as to the decorum at the meeting at which Kuzych was expelled?

A. Well I believe that during the allotted time that Mr. Kuzych 10 received to present his case, that is the ten minute period, that there was no disturbance whatsoever, but after Mr. Kuzych insists on going over the allotted time, as provided in the by-laws, there is several members of the Union that objected because they felt that the provision of the by-law should be adhered—

Mr. Johnson: Well now—

Mr. Burton: Q. You can't say what they felt. But you say after that there were objections?

A. Yes.

Q. Now you heard Kuzych give evidence in this Court that 20 you tapped him on the shoulder and asked him to withdraw from the meeting. Do you remember the incident?

A. I don't remember the specific incident, but I remember doing it though.

Q. Now just what did you do, and on whose instructions, if any?

A. Well I went because Mr. Stewart felt — brought to my attention that it would be much better if Mr. Kuzych was advised to remain out of the meeting, and that I should contact him in this respect, and I done so; I approached Mr. Kuzych and I advised him 30 to stay out of the meeting.

Q. And what manner did you do it?

A. Well, I explained to Mr. Kuzych that the membership, of course, was resentful.

Mr. Johnson: No.

Mr. Burton: Well he is giving a conversation with Kuzych, surely he can give that.

Q. You explained that to him?

A. Because of the Court case and so on, and I felt it would be better if he remained outside of the meeting. 40

Q. And did you order him out?

A. No, I had no authority to do any such thing.

Mr. Burton: Now I wonder if my learned friend will admit that the minutes pertaining to the by-laws are the minutes of the Union insofar as this witness has already testified in relation to Kuzych; that is, I don't wish to produce every by-law to Mr. Caron,

and every minute where the by-laws were discussed. If my friend will treat them in the same position as the minutes in reference to Kuzych, then I think we can shorten it to that extent; I mean, without admitting or being—

Mr. Johnson: I won't go so far as to say that. I don't quite know whether you want this in this form, but that the by-laws were presented to the meetings as they appear in the minutes.

Mr. Burton: Well that is satisfactory, that will save me going through it.

10 The Court: What are you admitting?

Mr. Johnson: That the by-laws were presented to the meeting in the form in which they appear in the minutes.

The Court: Oh I see, you are admitting that?

Mr. Johnson: Yes.

The Court: Well the by-laws do not appear in the minute—

Mr. Burton: Reference to the by-laws being presented.

The Court: Reference in the minutes to the by-laws being presented to the meeting.

Mr. Johnson: Yes.

20 The Court: Are correct?

Mr. Johnson: No, only insofar as they purport to be shown in the minutes, to those presented on those dates.

The Court: I see, all right.

Mr. Burton: My friend might take some objection to their presentation, but they were presented as appears in the minute—that is the case, is it not?

Mr. Johnson: That is what you want to show?

Mr. Burton: Well that is what you are admitting.

CROSS-EXAMINATION BY MR. JOHNSON:

30 Q. This Article 14 which appears as the printed by-laws, did that printed booklet remain the last word so far as the Union was concerned, are they the last word of the Constitution of the Union?

The Court: Excuse me just a minute, you said Article 14; you mean Exhibit—

Mr. Johnson: Exhibit 14, I beg your pardon.

A. Yes, they are.

Q. Has there been any amendment to these by-laws up to and including March 19th, 1945?

40 A. March 19th, 1945, I can't remember whether there has been amendments to it.

Q. Well now, you are Secretary-Treasurer and you have custody apparently of all the papers of the Union?

A. Yes.

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Q. Surely you can tell me whether there has been any amendment to the printed by-laws?

A. No, I can't say whether there has been or not.

Q. If there was, would it appear on the minutes?

A. Possibly—yes, it would.

Q. What do you mean by possibly? Do you object to the form in which the minutes were taken down by the recording secretary?

A. No, I believe that that would appear in the minutes, notice of motion, as provided in the by-laws to amend the by-laws, and I would maintain—and I think it would be in the minutes. 10

Q. And if it is not in the minutes, then there has not been any amendment?

A. I don't think so, no.

Q. Well—

A. I don't think there has been if it doesn't show in the minutes.

Q. And so far as you know there has not been any amendment?

A. No, I don't think there is, if it doesn't show in the minutes, at least I can't recall.

Q. All right, you were Secretary-Treasurer for two years?

A. Yes—no, not quite two years really.

Q. And you had occasion to see that Mr. Kuzych was kept out of meetings? 20

A. Yes.

Q. And in fact the situation was that Mr. Kuzych didn't take any part in the meetings, and wasn't allowed to take any part in the meetings from December, 1943 until his expulsion on March 19th, 1945?

A. No, I believe that he did attend some meetings.

Q. Well now, he attended meetings but he was immediately turned out of them, wasn't he?

A. No, not all the time. 30

Q. Well now, can you tell me any meeting in which Mr. Kuzych was allowed to speak?

A. He was allowed to speak not at the general meeting of the Union but at the divisional meeting of the Union, that is the welders and burners on one occasion that I remember of.

Q. On one occasion of the divisional meeting, but so far as regular business meetings are concerned isn't it a fact that Mr. Kuzych was prevented from taking any part in the meeting between the dates I have specified?

A. Yes, on some occasion the membership refused to—

Q. Just answer the question, isn't it a fact that he was prevented? 40

A. No, I do not agree, I do not agree. On some occasion he was advised to remain out of the meeting, and he took the advice that was submitted to him.

- Q. Well now, the advice that he obtained—
 A. Yes.
 Q. —was from you, was it not?
 A. Yes, and other members of the Union.
 Q. Well now, on several occasions you as Secretary-Treasurer,
 advised him?
 A. Yes, that's right.
 Q. In your official capacity as Secretary-Treasurer?
 A. Yes.
 10 Q. Acting on instructions from the President?
 A. No, not at all times.
 Q. Well, on the first occasion?
 A. On the first occasion.
 Q. On July the 3rd?
 A. Yes, that's right.
 Q. And you definitely were instructed, weren't you? You were
 instructed by Mr. Stewart?
 A. Well no, Mr. Stewart never instructed me, he suggested I
 would do that—I should do that.
 20 Q. And I suggest to you that it was up to Mr. Kuzych that he
 must leave the meeting on July 3rd, 1944?
 A. No, that is not correct.
 Q. Well didn't you tap him on the shoulder and take him out
 of the meeting before you spoke a word to him?
 A. Well to draw his attention that I wished to talk to him.
 Q. And conduct him from the meeting?
 A. No—well, I would just bring his attention—tried to get his
 attention that I wanted to talk to the man, that's all.
 30 Q. And you tapped him on the shoulder and asked him to
 accompany you outside the meeting?
 A. Yes, that's right.
 Q. So that the first conversation you had with Kuzych on that
 occasion was outside the meeting altogether?
 A. Yes, the first occasion, yes.
 Q. And having got him out of the meeting you told him it was
 advisable for him not to go back into the meeting?
 A. Well I don't think this is placing it correctly; I might wish
 to talk to any members of the Union and ask him to come out for a
 40 moment, but that doesn't prevent him from coming back if he wishes
 to.
 Q. But you advised him it wouldn't be advisable for him to
 come back into the meeting?
 A. Yes, that's right.
 Q. And that happened on several occasions?
 A. Yes.

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Q. So either Kuzych was so advised, if you like to put it that way, or else a motion was passed?

A. Yes, that's right.

Q. Excluding him?

A. Yes.

Q. And if a motion was passed it was always the first order of business in those meetings?

A. Yes.

Q. Someone would spot Kuzych in the meeting and a motion would be moved? 10

A. Yes, that's right.

Q. And that is what took place all the time?

A. Yes.

Q. Now did you conduct the elections of December 1944, were you the returning officer?

A. No, the recording secretary is.

Q. And who was that?

A. 1944, I believe it was Mr. Shaw.

Q. Well I suggest it was Mr. McSween?

A. I may be wrong, I can't remember. 20

Q. And Mr. Shaw was elected recording secretary as from the 1st of January, 1945, wasn't he?

A. Yes, that is possibly correct, I can't remember the—

Q. Now this trial procedure that my learned friend has taken you through, that was trial procedure in accordance with the by-laws?

A. Yes, that is right.

Q. That wasn't following the procedure set out in the Constitution of the Canadian Congress of Labor?

A. No. 30

Q. Clause 3.

A. No it was not.

Q. That is admitted?

A. Yes.

Q. It didn't follow it in a number of respects?

A. Yes, that's right.

Q. Now my learned friend read out a minute from January the 5th in which certain charges are referred to against Mr. Kuzych. What was the nature of those charges?

A. I can't recall the contents of the charge. 40

Q. Now why were they not pursued?

A. Because the Press and Investigating Committee was not properly constituted.

Q. Just explain that please.

A. Mr. Handy, a member of the trial committee, had left the industry and we couldn't find out actually where he had gone to.

- Q. Well now, was that the only reason?
 A. Yes, it was the only reason, yes.
- Q. Now this Press and Investigating Committee was a standing committee, wasn't it?
 A. Yes.
- Q. And they functioned, I think, from February 1st to February 1st, did they not?
 A. Well I can't—I don't remember the exact—the actual—
- 10 Q. Well the by-laws would show it, wouldn't they? May I read to you from Page 36 of the by-laws, Article 18, Elections, the top of Page 36, and the first sub-section says, "Nomination of Delegates and standing committees shall take place . . . Group A of this Article." And then Sub-section 2, "Election shall be held at the second . . . eligible to vote." And then Sub-section 3 (b), "Except in the case of the . . . shall be the Secretary." You recollect those provisions of the by-laws, don't you?
 A. Well you are reading that to me, I recall now.
- Q. Weren't you a member of the by-laws committee?
 A. Yes.
- 20 Q. And you are familiar with these by-laws?
 A. Yes.
- Q. You took part in drafting these, did you not?
 A. Well, that is quite a long time ago.
- Q. And who was the secretary of this committee?
 A. Of the—
- Q. Of the Press and Investigating Committee, the man to whom you handed the charge against Kuzych the second time?
 A. I don't recall who was the Secretary.
- Q. You don't recall the name of the man to whom you handed
 30 the charges?
 A. No.
- Q. Well, who was the Chairman of the committee?
 A. I believe Mr. Farrington was the Chairman of the committee.
- Q. And he was Chairman by virtue of having been elected reporter to the Union in accordance with the Constitution?
 A. Yes, possibly.
- Q. Possible, well it is right—
 A. Well, if it is the by-law.
- 40 Q. You don't recall the by-laws?
 A. Well it is a long time since I had anything to do with the by-laws; I am not a member of the Union now.
- Q. You are not a member?
 A. No, I haven't been for quite a long time.
- Q. Section 4, while we are on the topic, "The Chairman and

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Secretaries of standing committees . . . next following." That would mean that the standing committee would start functioning on February 1st?

A. Yes.

Q. After having been elected at the second regular business meeting in January, right?

A. Yes.

Q. Well now, there was a standing committee therefore in existence, and had been in existence since February 1st, 1944, when these charges were laid? 10

A. I believe that in the minutes which were presented here that it would show there when the Press and Investigating Committee was elected. There may have been some reason for delay, I am not quite certain, but I believe that it would be worthwhile to go back to the minutes and find out when it was actually elected.

Q. We will come to the minutes, but in the meantime there was this standing Press and Investigating Committee when these charges were preferred against Kuzych on January the 5th, as you read from the minutes? 20

A. Yes, yes there was, but as I said previously one member couldn't be found.

Q. Well now, how many members constituted the standing committee in January, 1945?

A. I believe there was seven members.

Q. Well now you believe that—

A. Well I am not certain actually how many there was, but as far as I can recall there was seven.

Q. I would like to get that accurately. Article 14 on Page 18 states—Sub-section 1,—“There shall be six standing committees, namely” and then it sets out the different standing committees, one of which is Press and Investigating Committee, “shall be composed of not less than seven members . . . of such standing committee.” Now it says not less than but it doesn't say the limit. 30

A. No.

Q. Now I want to know in the year 1944, commencing on the 1st of February how many members constituted a standing committee of Press and Investigating?

A. As far as I can recall, seven.

Q. And you say one of those men—by the way, were they all duly elected? 40

A. Yes.

Q. And one of them had gone away?

A. Yes.

Q. So that there wasn't any standing committee because if there

were less than seven members there couldn't possibly be any standing committee, could there?

A. Well he may have left the industry, and I believe that he left the industry after the period of the election.

Q. Well now, the election to be held at the second meeting in January—

A. Yes.

Q. —was to take effect as from the following 1st of February?

A. Yes.

10 Q. But it didn't affect the standing committee in existence at the date of the taking of the election—of the holding of the election, did it?

A. I don't get the point.

Q. Well now, this standing committee had been functioning since the 1st of February, 1944?

A. It had been elected, yes.

Q. And you say that there were seven men elected?

A. I don't know whether it was elected at that time, I don't think so.

20 Q. Well then, there couldn't have been any Press and Investigating Committee?

A. I believe it was elected in the period of 1945.

Q. For the first time?

A. May have been for the first time, yes.

Q. So that was the reason that the Press and Investigating Committee wasn't properly constituted, that there wasn't one in existence until the 1st of February?

A. No, no, it had been elected, the committee had been elected and it was only the matter of one of the members couldn't be found.

Q. Well now, the by-laws weren't passed until August, 1944?

30 A. Yes sir.

Q. Well now, the by-laws provide for a standing committee?

A. Yes.

Q. Press and Investigating. Was there an election held between the time of the passing of the by-laws in August and the time of the election held in January, 1945?

A. Yes, I believe there was.

Q. Well that would show in the minutes, wouldn't it?

A. Yes, I think it would.

Q. When was the election held?

40 A. I don't remember the date.

Q. Was it held?

A. I believe there was an election, yes for a Press and Investigating Committee.

Q. But you can't tell me what month or anything about it?

A. There was an election in '45, I can't remember the date.

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Q. In 1944 we are talking about.

A. In '44?

Q. Yes.

Mr. Burton: I can give you a set of minutes on that.

Mr. Johnson: There is nothing here.

Mr. Burton: I am talking about standing Press and Investigating Committee.

Mr. Johnson: Oh yes, that's right.

Q. Well then, may we take it that if the minutes of the defendant Union do not show that there was an election of the Press and Investigating Committee between August '44 and January '45 that there was no such election? 10

A. Yes, the minutes will show, yes, that there was a committee elected, Press and Investigating Committee.

Q. Well now, can you tell me whether there was any other meeting in the Fall of '44 except these meetings of which we have these minutes? Have you got one for November the 20th, December the 4th, December the 18th, or what other meetings could have taken place where this election would be shown?

A. No, not that I can remember. 20

Mr. Johnson: My lord, I will be some time with this witness.

The Court: Yes, we will adjourn until 10:30 tomorrow morning.

(PROCEEDINGS RESUMED PURSUANT TO
 ADJOURNMENT)

Mr. Johnson: Before continuing with the cross-examination of this witness I would like to move a motion to amend the Statement of Claim. I have given, a few minutes ago, my friend a copy of the amendment I propose to move and shortly I might explain what I have in mind. You will remember at the conclusion of yesterday evening's evidence the witness was going on as to the jurisdiction of the Investigation Committee to hear the first charge made in January 1945 and I have not gone on with the jurisdiction of the two committees and the charge on which the plaintiff apparently was expelled. This has to do with the second charge. I am referring to the trial committee which tried the plaintiff on the charge. The charge has been put in as an exhibit and the report of the committee made to the union on which the union subsequently expelled the plaintiff, on the basis of the trial committee's report. The amended statement of claim is set out in paragraph 29. 30 40

The Court: You are not speaking of this amendment?

Mr. Johnson: I am coming to that. I would like to refer to the present pleadings, page 8 of the first Appeal Book, Volume 1,

page 8, at paragraph 29, "The said defendant Union did not have the jurisdiction to refer the said charges to the said Press and Investigating Committee which it purported to do and the said committee did not have the proper or any authority to hear the said charges against the plaintiff." Now that form appears wide enough to support any jurisdiction of the committee with respect to personnel, but it would appear also it is cut down by paragraph 34 where the particulars of the lack of jurisdiction are set up.

- 10 "A. The said committee did not take the evidence submitted on the said hearing on Oath;
- B. The plaintiff was prevented from being represented by Counsel although he requested the said committee to allow him to be so represented;
- C. The said Committee did not allow the Plaintiff ample opportunity to adduce evidence contrary to the said charges;
- D. The said Committee prepared its report on insufficient evidence and contrary to the evidence submitted."

I wish to add this amendment as A(1) after the word "because":

- 20 "a(1). The said Committee was not duly constituted in that certain persons purporting to sit thereon in trial of the Plaintiff on the said charges and signing the report of the said Committee relating thereto, namely S. C. Belt, K. Garrison and D. Pearson, or one or more of them, were not duly elected to the said Committee in accordance with the by-laws of the Defendant Union or at all or otherwise entitled to try the Plaintiff on the said charges, or at all."

And then following that to amend paragraph 35 which deals with the jurisdiction of the union itself to act on the report of the trial committee. Paragraph 35 at present reads, "The said Defendant Union lacked jurisdiction at its meeting when it purported to expel the Plaintiff by reason of the fact that the said Defendant Union did not allow the Plaintiff sufficient time or opportunity to present his defense adequately or at all nor was he given sufficient time to speak to the charges and the various accusations made by the members of the said Defendant Union at the said meeting."

I wish to add there at the end of the paragraph the following words: "and by reason of the fact that the plaintiff had not prior thereto been tried by a duly constituted tribunal or committee of the Defendant Union."

In support of the motion may I refer to two exhibits already put in, and first of all to the minute of January 5, Exhibit 27 in this case. These minutes have not been referred to in great detail yet, but attached to the minutes there are a number of names, which appear to be nominations for the standing committee, and presumably in connection with the by-laws. The nominations were taken for the

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committee at the first meeting of the Union in January and the by-law provides that they be elected at the second regular business meeting. The only minute put in was the minute of January 5, of the nominations and not until the morning of the trial was I made aware of the minutes of the subsequent meeting including the meeting of January 22nd at which the election of the present committee among other committees should have taken place.

It was apparent when I came to investigate the matter there were certain names which did not appear in the nominations for the standing committee and further investigation of the matter 10 seemed necessary, and it was not until this witness came into the box that I felt that I had the witness I needed—in fact, this witness is really not the witness, but the recording secretary is the man who can tell how these men came to be elected. This goes to the very root of the matter, because if the standing committee is not properly constituted in that it contains certain members who were never elected under the by-laws, obviously, the subsequent expulsion does not stand up at all.

The application is made under marginal rule 305, that is, order 28, rule 1, marginal rule 305. (reads). and then my lord, there is 20 the Laws Declaratory Act, section 2, sub section 7, which is chapter 148 of the Revised Statutes of British Columbia, 1936 (reads) "The Court is bound . . . appointed."

This section of the act and the rules have been the subject of some interpretation and one of the late cases, if not the latest, is Willett vs. Fallows, 58 BCR, page 490. I will read from Mr. Justice O'Halloran's Judgment at page 497. "On the first point, . . . amendment ought to be granted." Another case, MacKnight vs Mitchell, 1945, 3 WWR, 552, at 554, where Mr. Justice O'Halloran 30 gives the judgment of the Court (reading). That is the situation. I have explained the feeling we have that we should have this amendment because it goes to the root of the case, and we say that my learned friend is not prejudiced because all that we are asking for is an amendment to conform with the evidence already in. The two documents are in and require some explanation, and the explanation I seek to attain from this witness.

The Court: The minutes of the second business meeting, are they disclosed in the affidavit of documents?

Mr. Burton: Yes, my lord.

Mr. Johnson: I would like to refer to that. 40

Mr. Burton: In the affidavit of documents, the minutes are listed in 1944 and 1945. January 5th, February 2nd, February 15th and so forth.

Mr. Johnson: The one I have comes from Mr. Hodgson who was counsel for the plaintiff in the first action, and on that January 22nd is crossed out. I do not know how it came to be there.

Mr. Burton: The original affidavit of documents was filed. My friend later wrote me a letter and told me that it was not and asked me to produce the minutes of January 22nd.

Mr. Johnson: I asked my friend to produce all minutes of meetings, and my friend produced the minutes of the second meeting on January 22nd. That was the first opportunity I had.

The Court: Are you opposing this?

- Mr. Burton: Yes. In any event my friend wrote to me and I sent a copy of the affidavit of documents in which it was written in.
- 10 My file has gone. It happens that these minutes of January 22nd, or part of them were filed in another action and I had to get them out of the other action, which I did, after my friend wrote to me. I searched the file on the morning of the trial and got them out. I abandoned the motion on the grounds that this was a new trial ordered by the Court of Appeal. At first it was not clear whether it should evolve around the new issue raised in the Court of Appeal. I submit that my friend is not entitled to any greater latitude than he had at that time. It presumably had not occurred to the solicitor for the plaintiff in the first instance.
- 20 He drew a voluminous statement of Claim, consisting of about 60 paragraphs that were claimed and 3 pages of remedies. There were 61 paragraphs and then his remedies after that, totalling some 22 pages in the Appeal Book, in the Statement of Claim. He does not suggest in that any ground for the claim which has been urged here. He had been supplied with the minutes and took those that he wished and discarded the rest and those were the minutes of January 22nd, or a portion of them. The trial was held 3 years ago and went to Appeal. The files in the meantime and some of the minutes have been lost. I do not know where they are. I've searched
- 30 everywhere and they are not here. They may be in the offices of the Boilermakers' Union. We will have to go into that. The matter was not raised at any time. Counsel on the first trial had every opportunity to consider these points, and every opportunity on the first trial to cross examine. He had all the minutes before him and all the evidence. We go to the Court of Appeal and a new trial is ordered, based on one issue and we come now to the sixth day of the second trial and for the first time this is raised as an issue. It happens that my friend has stumbled on something which he thinks is important. I say by reason of the position we are placed in, of having to raise
- 40 an issue, we are put in a position where we would be prejudiced.

The Court: Are you suggesting that the minutes showing that the trial committee was properly elected have been lost.

Mr. Burton: Yes. It may be, that on going to the Boilermakers' office they may be found. I don't know. I am here this morning and I have been served with a notice 25 minutes after ten, five minutes before Court starts, and I've not had time to get instructions. We go

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along with the trial and this occurs to him, he finds something by reason of what one witness says and now he is asking to amend. This trial will be interminable. There is no new remedy. It is something that my friend should have found out before, and counsel on the first trial should have. I do not think the Court of Appeal contemplated any amendment at this time. A new trial was ordered a year and a half ago, almost two years ago and my friend has not brought it on until this date.

The Court: Is the Court of Appeal order here?

Mr. Burton: It is Exhibit 1 my lord. My friend has just pointed out to me also that Mr. Malcolm McLeod, the Custodian of the Minutes, since the last 2 years passed away a month ago and we may be prejudiced by reason of that, that he was the one in charge of the minutes. Had the minutes been asked for at the proper time the necessary minutes might have been available. If my friend is now relying on the minutes he should not be allowed to amend and prejudice our position, which after five years we may not be able to survive. The onus is on my friend and I put the witness in the stand and he digs something out. It is up to my friend to prove it and not us. I urge that. The Court of Appeal judgment is there. The judgment was handed down on April 19th.

The Court: June 1947?

Mr. Burton: Yes. It will be 2 years in June next since they obtained the order for a new trial. I thought they had abandoned a new trial. The order was not entered until a year later. From the whole conduct of the case throughout I submit that my friend is not entitled at this late stage to this amendment.

Mr. Locke: So far as the delay in entering the order there was a delay of a year before the Reasons for Judgment came down.

Mr. Burton: They never came down. There are no Reasons whatsoever. The only thing is an entry in the Cause Book, and the only notation is when the Court of Appeal announced its decision, it simply said there will be a new trial and a written memo was handed down by Chief Justice Sloan which said that because the new trial was granted by reason of matters raised in this court for the first time by the defendant, the defendants will have costs of the second trial, to abide by the result of the first trial. Some months later it was brought to the Chief Justice's attention that that was a peculiar order, that costs were against plaintiff. The Chief Justice handed down a new memo in which he gave costs to the plaintiff on the appeal and the costs of this trial to abide by the result of this trial. That is all the Court of Appeal did.

Mr. Johnson: To clear up the matter I received instructions in this matter exactly 3 weeks ago and I have asked my learned friend if he could supply copies of the minutes mentioned in the affidavit. My friend replied that he had not these copies available, and that

there were certain exhibits in court and I undertook to look at them. There were some exhibits produced the morning of the trial, and they are important in this and they are related to the constitution and set up of the standing committee. All I seek to do is to lay the foundations to enable me to examine this witness and any others that may be put in with regard to the election of the standing committee.

The Court: Let me see the minutes of January 22nd. That is the meeting at which the trial committee were elected?

10 Mr. Burton: I have pointed out that they are only partial minutes. The others were filed in another case. I think your lordship will see on the back of the minutes that they were filed in the case of Guelph vs. White, another case like this. They were filed in that case before Mr. Justice Coady, and I have to bring the minutes out of the court with the consent of Mr. Branca. The portion of the minutes filed relate only to that case. They were taken out by Mr. Branca and filed. He did not raise this issue, although I suspect and I say with great respect they are the same.

Mr. Johnson: We have not the final production mentioned in the affidavit on production.

20 Mr. Burton: That is true and I explained that. This trial was over and had gone to the Court of Appeal. The learned counsel discarded the rest of the minutes. He examined all the minutes that he cared to and prepared his case and went to trial and argued in the Court of Appeal, and now, five years later, I am asked to produce the minutes that are mentioned in the affidavit on production. I haven't got them and I think they have been lost. Whether there are any of them in the Boilermarkers' office I do not know. A lot of files were taken and by an error of the clean up people in the building in which I am they were thrown out, thinking they were garbage.

30 The Court: The only minutes that are relevant are those of January 22nd.

Mr. Burton: Yes, it may be that the January 22nd meeting might have been adjourned to come on again. Some of these meetings go on until 12 o'clock at night and people go and there is no quorum.

The Court: If you can find the minutes of January 22nd then we will know.

Mr. Burton: Yes.

40 Mr. Johnson: There is another minute in January, Exhibit 30, where it was moved, seconded and carried that the recommendation of the new Press Committee be confirmed. That looks like another election and I would like to enquire into it.

Mr. Burton: We should get the facts in if the amendment is allowed.

The Court: According to the order of the Court of Appeal this appears to be a completely new trial. I would allow the amend-

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ment. I think you are entitled, Mr. Burton, to an adjournment to consider your position.

Mr. Burton: Yes, I certainly ask that, and not only that I think that I should be entitled to further examination for discovery of the plaintiff. I would be entitled to that, and my friend perhaps, and I submit the matter being discretionary and the rules provide for such terms as your lordship sees fit I submit, as to costs. The costs of the amendment should be borne by the plaintiff and should be paid to the defendant before the trial comes on.

The Court: With regard to further examination for discovery 10
of the plaintiff, what evidence could the plaintiff give.

Mr. Burton: I do not know. He perhaps was not at the meeting but he may have some information that was given to him. I do not know that that will avail him anything, but if my friend wishes to examine the defendant, perhaps he will use that opportunity.

The Court: He is not asking for that.

Mr. Johnson: No, I am anxious to proceed.

Mr. Burton: I will have to ask for an adjournment and will have to conduct a search for the document and I will have to be advised as to the position. If it was a collateral matter it may be simple, 20
and it may be very important, just as important as the rest of the evidence, and I am faced with it after this length of time.

The Court: I would think the defendant will be entitled to costs of the application for the amendment, and costs of the day.

Mr. Johnson: Yes, not payable forthwith?

The Court: No, but in any event. I will make the order under those terms. You do not wish to go on now?

Mr. Burton: No, my lord.

The Court: Perhaps I had better stand it to a date to be fixed.

Mr. Burton: Yes. 30

The Court: We will adjourn now.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT.)

Mr. Johnson: My lord, before we proceed with the evidence— with the cross-examination of the witness who was in the box at the time of the adjournment, I want to clear up any misapprehension which may be left from the statement of my learned friend at the conclusion of the last hearing when he said there was considerable delay between the time of the first trial and the time of the second trial. 40

Now, at the time, I was not in a position to make any statement to the Court, but unless my learned friend will agree that the delay was not due to any fault of the plaintiff, I think it is a matter of importance—because I think it important to the plaintiff if he has been guilty of bringing on the trial at a delayed period, it would affect the question of damages.

The Court: When was the first trial?

Mr. Johnson: Some time in April, 1945, and the judgment was not delivered until some nine months after—at least not until December, 1945.

The Court: Then there was an appeal?

Mr. Johnson: Then there was an appeal came on and the judgment was not rendered until the 16th of December, 1946, my lord.

The Court: Yes.

Mr. Johnson: And I think the trial must have been held in '46 and not '45. The expulsion did not take place until March, 1945, and then the Writ was issued and the matter brought on for trial and the judgment was not handed down until December, 1946, and then this appeal was heard in 1947 and a new trial directed.

20 Now there would appear to be a delay between June, 1947, and this date, and some explanation should be given of that delay. I have an explanation to make, but I don't think it is necessary to make that and take up the time of the Court unless my friend wishes to take the view that it is the plaintiff's fault that this delay has occurred.

The Court: What do you say, Mr. Burton?

Mr. Burton: I am not suggesting it was the plaintiff's fault entirely. I might say, in a few words, the reason for the delay—and I am sure Mr. Braidwood and I were both in the same position—we were waiting for the judgment of the Court of Appeal which did not come down until some time later and then there were two or three applications made by myself to vary the judgment—and in the line of costs, and that sort of thing, and then from the time of the Court of Appeal's judgment—I just forget the time it was entered—

Mr. Johnson: May, 1948.

Mr. Burton: Well it wasn't brought on immediately. It could have been brought on last fall—that is the earliest time, but I am not suggesting there was any undue delay. The counsel were busy and Mr. Guild was scheduled to take this case and he was engaged in other matters that took up his time, and I am not suggesting there was any undue delay. I think the matter could have been heard a little faster—but the reason I made the statement was in the interval certain things have happened in regard to minutes and that sort of thing, which is unfortunate.

Mr. Johnson: There is one thing I would like to have clear which I was not able to state definitely before, owing to the absence

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of Mr. Braidwood—I am informed the case was originally scheduled for trial in September, 1948, and a new writ was taken out in December, 1948, and Mr. Burton agreed that they were not able to go on with the trial in December, and then the matter was brought on quite recently.

The Court: That is clear enough.

Mr. Burton: The only point I am making is that certain things have happened to certain documents, which we have not any control over, and when this application was made I think I frankly told the Court these minutes could not be found to clear up the point he was making, and that happens to be the case, but I think the matter is now quite clear. 10

The Court: All right, thank you.

Mr. Burton: Mr. Caron was in the stand for cross-examination.

CHARLES WILFRED CARON, resumed the stand, testified further as follows:

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Now, when we adjourned before, I had asked you certain questions relating to the constitution of the standing committee—the Press and Investigating Committee: that is to say, its constitution in the month of January, 1944, and '45, and you told me that the committee was not properly constituted. Do you remember giving me that answer? 20

A. Yes, yes.

Q. And what I put to you at that time was that the Committee to which you were referring was the committee which was in existence prior to the elections which took place in January, 1945, because those members would not take office until the 1st of February, 1945, under the by-law. Do you follow me on that?

A. You are asking me if there was a committee in the year 1944—a Press and Investigating Committee? 30

Q. Yes, that is right; that is what I am asking you.

A. Not that I can recall.

Q. Now there were certain other committees. There was a Hall Committee, wasn't there?

A. Yes, I think there was.

Q. You had a number of standing committees, hadn't you? There were a number of standing committees of this union?

A. Yes, there were.

Q. Elected by the membership? 40

A. Yes.

Q. And one of the committees was the Press and Investigating Committee, is that right?

A. I don't recall whether there was in 1944.

Q. Well if you did not have a Press and Investigating Committee, how could you possibly have a trial of any member who had been working contrary to the objects of the Union?

A. Well, possibly one would be elected then—a pro tem committee. I don't know what procedure would be followed.

Q. Well now, since we have adjourned you have had two weeks to refresh your memory on all that happened in those two crucial years, haven't' you?

A. Yes.

10 Q. And you have been thinking a good deal about this?

A. Yes.

Q. And, as a matter of fact, you were secretary-treasurer from the 1st of January, 1944—

A. Yes.

Q. —right through until the end of 1945, wasn't it?

A. No, no. I left the union in 1945 some time. I don't remember the exact month.

Q. Well, at least during the time you were secretary-treasurer you were not engaged in any other occupation?

20 A. No, while I was acting as secretary-treasurer, I was not.

Q. Well, what I am saying is, this was a full time job?

A. Yes.

Q. And you were paid a salary for it?

A. Yes.

Q. As a matter fact, you got around \$2800.00 a year?

A. I don't recall the amount.

Q. At any rate, you were doing nothing else but looking after the affairs of the Union during the time you were secretary-treasurer of it?

30 A. Yes, that is right.

Q. And one of your duties was to know who were the standing committees and who the members of the standing committee were?

A. Yes, it was.

Q. Now, I want to know whether there was a standing committee to deal with charges such as were preferred in 1945 against the plaintiff?

A. If there was in '45?

Q. No, if there was in '44, was there such a committee?

A. I don't recall whether there was one or not.

40 Q. All right, now come to December 1944—certain men were elected to the executive?

A. Yes.

Q. And you were re-elected to be secretary-treasurer?

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A. Yes.

Q. And the names of the executive—oh, by the way, tell me before I ask you that question, who were the executive in 1944?

A. I don't know whether I can recall them all.

Q. Well, let me try and help you. Mr. Stewart was the president?

A. Yes.

Q. Mr. Schwartz was the first vice-president?

A. Yes, I think he was.

Q. And who was the second vice-president? 10

A. I don't remember.

Q. You don't remember, although you must have had numerous committee meetings—executive meetings during that year?

A. Yes, that is true.

Q. And you must have met at least every month?

A. No, every week, but that is five years ago.

Q. And although you were secretary and working closely with these men, you cannot tell me the name of the second vice-president?

Mr. Burton: May I suggest this, my lord? During part of 1944 until the by-laws were adopted and effective in March, 1948, they were working under the Constitution of the Congress of Labour. There may not have been a second vice-president—I don't know and the ones who would be elected under the new Constitution, which was adopted in August, 1944—they would be different—a different set-up. 20

Mr. Johnson: Well, as my learned friend has brought up the topic, were you working under the C. C. of L. constitution in 1944?

A. We were following it as a guide.

Q. Were you an unorganized group of men?

A. We were in the process of drafting our own by-laws. 30

Q. Well, you know that there was litigation having to do with the officers of this Union?

A. Yes.

Q. Litigation which went to the Court of Appeal of this Province?

A. Yes.

Q. And had to do with the validity of the elections of the officers of the Union, you know that, don't you?

A. Yes.

Q. You know that? 40

A. Yes.

Q. Now, who were the officers who were validated by the decision of the Court of Appeal?

A. Well, I can remember some of them. There was Stewart;

McLeod — Malcolm McLeod; Tommy McKenzie — Thomas McKenzie, and that is all that I can recall at present.

Q. All right. During the summer of 1944, when you were passing these by-laws, you were on the executive committee, weren't you?

A. Yes.

Q. Who were the other members of the executive committee? How many were there? There was Stewart—

A. I believe there was five.

10 Q. Yes, there were five. There weren't very many. There was yourself as Secretary-Treasurer?

A. Yes.

Q. And Mr. Stewart?

A. Yes.

Q. And Mr. Schwartz?

A. Yes.

Q. And then there were two members—other members, weren't there?

A. Yes.

20 Q. Well, who were they?

Q. Well, I cannot say who they were.

Q. And McSween was the recording secretary?

A. Yes, I think that is right.

The Court: McSween?

A. Yes.

Mr. Johnson: Q. And McSween was to take the records of the minutes of executive meetings as well as the general meetings?

A. Yes.

Q. And it was not your duty to keep the minutes?

30 A. That is right.

Q. Now you were also a member of the By-law Committee, were you not?

A. Yes.

Q. And who were the other members of the By-law Committee?

A. I can remember only two offhand—and Gene King.

Q. And Gene King was the chairman?

A. Yes.

Q. And Mr. Stewart was your president, and then there was yourself and Schwartz who was also on that committee—first vice-
40 president?

A. I don't know whether he was or not.

Q. Wasn't Gordon Farrington on the committee?

A. Yes, I think he was on the committee.

Q. And there were about five members of the By-laws Committee, weren't there?

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- A. Yes, five members.
- Q. And they were all very closely associated with the executive of the Union at that time? They were all members of the executive?
- A. No, I don't think so.
- Q. Except Mr. King, then?
- A. And Mr. Farrington.
- Q. Mr. Farrington later became the reporter?
- A. Yes, but he wasn't on the executive.
- Q. He wasn't on the executive board even. He didn't even hold any office in 1944. Are you sure of that? 10
- A. Oh, he may have, but I know he wasn't on the executive.
- Q. Well, at any rate, in 1945, and in the elections of 1944, Gordon Farrington was elected the reporter?
- A. Yes.
- Q. And, as such, he became chairman of the Press and Investigating Committee?
- A. Yes.
- Q. Now tell me what you remember of the passing of the by-laws—how much you remember of the passing of the by-laws?
- A. Very little, actually. I remember the by-laws being discussed 20 from time to time in Union meetings, and I remember a motion for the final adoption of the by-laws, and that is all that I can recall.
- Q. That is all you can recall?
- A. Yes.
- Q. Although you were secretary-treasurer and a member of the executive, and also a member of the By-laws Committee?
- A. Yes, that is right.
- Q. Now, let me ask you a few more questions on that. Can you tell me whether you remember at the morning meeting of June 5th the first articles, 1 to 9, being put to the meeting? 30
- A. I cannot recall the actual discussion or what sections of the by-laws were discussed at that particular meeting.
- Q. Well, let me get the minutes, and we will go into this—Exhibit 17, if I may—the minutes of June 5th. Now, while that is being found—while that exhibit is being found, tell me one or two more answers to the questions that I will put to you. First of all, can you tell me whether or not you kept a master copy of the by-laws?
- A. Personally?
- Q. Yes?
- A. Oh, I haven't kept one. I might have had one in my possession at some time. 40
- Q. You remember Mr. King, who was chairman of the By-laws Committee—
- A. Yes.
- Q. —giving evidence that every member of this committee had

a master copy on which changes and amendments were noted. You remember that evidence being given, don't you?

A. I don't particularly recall that. I may have been out when he said it.

Q. Is it a fact every member of the committee, including yourself, had a copy of the draft by-laws?

A. Yes, I believe we did have copies.

Q. And did you change the copy in accordance with the amendments that went through from time to time?

10 A. Oh, yes, they were changed.

Q. Now, were the changes all effective by June 5th, 1944, in Articles 1 to 9?

A. Oh, I cannot say as to that whether it was or not.

Q. Now, look at this Exhibit 17, and tell me whether this motion is a correct statement of what transpired at the morning meeting of June 5th:

"Moved, seconded and carried that Articles 1 to 9 which were discussed at a previous meeting be accepted and become part of the By-laws of this Union."

20 Is that correct?

A. Well, the minutes say that, and I am not in a position to dispute it, because I cannot recall it.

Q. All right, as far as you know it is a correct minute?

A. As far as I know, yes.

Q. And Articles 1 to 9 would be in their final form at the time they were submitted to the meeting for approval?

A. Not necessarily. Not necessarily. I think it is quite possible a motion would have been passed on this and at other dates amendments could have been made in these articles.

30 Q. If that was done, do you think it was a correct procedure?

A. Well, if the by-laws were adopted as a whole, I think it was the prerogative of the members as a whole to bring in any amendment they wished.

Q. Well, if the morning meeting passed Articles 1 to 9 and subsequently any change was made by the executive, or in the evening meeting, do you think that the morning meeting should not have had a further opportunity of passing on those amendments?

40 A. Oh, I believe they had. I think in the final motion that was made for the by-laws, they had the benefit of expressing their opinion on it.

Q. Well, if that wasn't done, it would not be a correct procedure, would it?

A. If it wasn't done?

Q. Yes, any amendments to Articles 1 to 9—taking only any amendments to Articles 1 to 9, after this morning meeting of June 5th, would they not have to be submitted again to the morning meeting?

A. It would have to be submitted to the meeting of the Union.

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Q. You were running this Union by having separate morning and evening meetings, weren't you?

A. Yes.

Q. And you were trying to keep those morning and evening meetings separate and distinct, weren't you?

A. No.

Q. Do you mean you would allow a member who had been in the morning meeting to re-appear in the evening meeting?

A. Yes, if he wished to.

Q. And vote?

A. Well, not vote. It was left to the members to use their own judgment on that, and not vote twice on the same question.

Q. It could have been done?

A. It could have been done, but I believe that Union members have a little degree of principle.

Q. Was it ever pointed out to them if they turned out at the morning meeting, they could not turn out at the evening meeting?

A. Yes.

Q. Was there a motion to that effect?

A. No, but I think the chair pointed it out.

Q. You never pointed it out yourself?

A. No, but I think the chair pointed it out.

Q. You never pointed it out yourself?

A. No, I was never in the chair of a meeting.

Q. Now, let me refer you to—may I have the minute of August 7th—that is Exhibit 19. Now, on August 7th—it is in Exhibit 20—

The Court: Exhibit 20?

Mr. Johnson: Exhibit 19, I beg your pardon?

Q. There is a minute here:

"Moved, seconded and carried that the addition to Article 8 dealing with the function of Political Action Committees be approved."

Now, that was an amendment to the minute that was passed finally at the morning meeting of June 5th?

A. Yes.

Q. And that indicates if there was any amendment to a passed article it would be brought to the subsequent meeting?

A. No, not necessarily. No, not necessarily. It could be brought to the attention of the Chairman of the By-laws Committee that a certain amendment could be approved at the meeting and be included in the draft by-laws.

Q. Now, Articles 1 to 9 had been finally passed by the morning meeting of June 5th?

A. Yes.

Q. And here you come along and make an amendment to Article 8?

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- A. Yes.
- Q. And quite properly?
- A. Yes.
- Q. And a motion is made that Article 8 be amended?
- A. Yes.
- Q. Now, what I am saying is if there had been any other amendments they would appear in the minutes in the same form?
- A. Not necessarily. There may be some motion—it might be in the form of an amendment that is given to the chairman of the
- 10 By-laws Committee, and he includes it in his draft by-laws.
- Q. So you cannot tell me whether the morning meeting members ever saw these by-laws in their final form, or ever had them read to them in their final form?
- A. Oh, I think that all the members of the Union had an opportunity to see the by-laws in their final form and vote on them.
- Q. Even though the minutes don't bear you out in that?
- A. That is probably true.
- Q. And who was the man who kept those minutes?
- A. Mr. McSween.
- 20 Q. And do you know that Mr. McSween is not available to give evidence here?
- A. I am not in a position to say anything about it. I don't know where he is.
- Q. You don't know his whereabouts at all?
- A. No.
- Q. Now, where in Article 8 can you tell me would the amendment to the Political Action Committee appear which is noted in this meeting of August 7th?
- A. What is the question again?
- 30 Q. Where would the change brought about by this motion, which I have just read to you, dealing with the Political Action Committee appear in Article 8? I wonder if you could just take a look at this exhibit and the by-laws. Now this is the latest copy—the printer's copy, and I think it is Exhibit 34 on this trial. This is Exhibit 13. Now, where in Article 8 has there been any change?
- The Court: Exhibit 13, did you say?
- Mr. Johnson: Exhibit 13, my lord.
- The Witness: I don't seem to see any.
- Q. I don't think you will find it there, witness, because it
- 40 isn't in Article 8. Actually the articles were renumbered.
- A. Yes.
- Q. And I want to ask you a question about the re-numbering and when that occurred. Actually it is in Article 14, isn't it? Just take a look at this.
- A. Yes, I see it is in Article 14.

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Q. Now, I will show you Exhibit 14—and the function of the Political Action Committee is dealt with in Article 14?

A. Yes.

Q. Now, when did Article 8 become Article 14?

A. I don't recall how it was annexed, actually. It was a matter of facilitating the survey of the by-laws on the part of the membership and finding out what they wanted to find out in the final draft—that is the printed copy.

Q. Now, here is Article 14 in the final copy, Exhibit 13. Now, do you notice that Article 14, Sub-sections 7 and 8 have been pasted 10 on to the mimeographed sheet?

A. Yes.

Q. And Sub-section 9 has been pasted on again?

A. Yes.

Q. At another time, apparently?

A. Yes.

Q. Now, when was this pasting done?

A. I cannot tell you that; I don't know when it was done.

Q. Well it would obviously be done not earlier than August 7th when the motion was made. Wouldn't you agree with that? Would you 20 agree with that?

A. Yes, it seems so.

Q. And this change relating to Article 8 which is mentioned in this minute of August 7th is the same change that I am referring you to now in this Article 14 in this copy, isn't it?

A. Yes, as far as I can gather. I cannot recall whether it is or not.

Q. All right. Well now, there was another change made to these earlier articles—Article 7—Sub-section 7 was changed, wasn't it? Do you remember that? By the way, who did all this pasting on 30 this final copy?

A. I believe it must have been Mr. King.

Q. You don't remember?

A. No.

Q. It wasn't done by you?

A. No.

Q. Did Mr. King have the main burden of passing these by-laws through the meetings?

A. Yes, he would, except the amendments submitted by the membership.

Q. Who dealt with the contents of them and prepared them?

A. We discussed it in committees.

Q. Now, would you say—have you seen these before—these Exhibits 12 and 13? Have you ever seen Exhibit 13 before? Just take a good look at it.

A. Well, it looks like one of the draft copies of the by-laws. That is all I can say.

Q. Have you ever seen it before?

A. This particular copy?

Q. Yes.

A. I don't remember whether I have or not. I may have in the previous case but I cannot tell by looking at it.

Q. Now can you tell me when Articles 1 to 20 were expanded into 26?

10 A. No, I cannot tell you when that was done.

Q. You don't know how it was done, or when it was done?

A. I believe it was done after the by-laws were all adopted and then it was re-arranged to facilitate a survey on behalf of the membership.

Q. And were certain sections put in that had not been passed by the membership?

A. No, not to my knowledge, never.

Q. And particularly Article 7, Sub-section 7?

20 A. I believe all the by-laws as they stand in draft form there have all been passed at the Union meeting.

Q. Can you tell me definitely whether Article 7 ever has been put to the meeting—or was put to the meeting on June 5th, in that morning session, in that form?

A. I cannot tell you when it was put.

Q. Well, I have already discussed with you Articles 1 to 9 were passed in their final form, with the exception of the function of the Political Action Committee on June 5th. Now, it would have been necessary for Article 7, Sub-section 7, to have been put to the meeting in that form?

30 A. There may have been some amendments at a later date, and there is indication that there was and possibly these amendments were adopted in the final draft of the by-laws when they were presented.

Q. I see. And if the minute does not show that the morning meeting ever passed Articles 1 to 9, again, either by themselves or amended, or in addition to other articles, you would say the minute was valid in that respect?

40 A. Oh no, I wouldn't say that. I would say that the minutes possibly represent a true picture of what did take place, but these minutes were put in when they were finally adopted.

Q. Well, you can give me no assurance that Article 7, Sub-section 7, was put to the morning meeting on June 5th in the form it appeared later in the printed by-laws?

A. No, not at that particular meeting I cannot say.

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Q. So you cannot say when Article 7, Sub-section 7, came into the by-laws?

A. I cannot tell you when it actually did come in.

Q. Now, you heard Mr. Stewart give evidence in the witness box to the effect—at least I think Mr. Stewart said the Executive Committee had made those by-laws effective pursuant to a motion. Did you not hear Mr. Stewart say that?

A. Well yes, there was something of that nature mentioned here.

Q. It is the evening meeting of August 7th. Have you got Exhibit 20? Now, this is Exhibit 20. It purports to be the minutes of the evening meeting of August 7th, and in this exhibit there is a motion:

“Moved, seconded and carried that additions to Article 12 dealing with the functions of Political Action Committee and Hall Committee be accepted.”

A. Yes.

Q. Now, so far as the Political Action Committee amendment is concerned, is that the same minute that appears in the morning meeting of August 7th?

A. Probably it is.

Q. So that Article 12 is referred to in the evening minutes, and Article 8 in the morning minutes?

A. I cannot recall how the actual—how the articles were arranged in their final form. That is for the index—the by-law.

Q. Well, there seems to be a change between the morning and the evening, because in the morning this is referred to as Article 8, and in the evening as Article 12.

A. Well, perhaps Mr. King, when he re-arranged the by-laws, placed it somewhere else—in the draft copy, because the printed one was not completed.

Q. So we have 8, 12 and 14—

A. Yes.

Q. Now, there is another minute in the same meeting.

“Brother King, on behalf of the By-laws Committee, read from Article 14 to 20 of the by-laws. After discussion it was regularly moved, seconded and carried that since the by-laws had now been fully considered by the evening meeting, they should become the rules of this Union. This to become effective on recommendation of the executive.”

Now, that is what I want to ask you—“recommendation of the executive”—when did the executive pass on these by-laws?

A. The following day. The members of the executive did discuss the question of the dues. I believe it was explained to the Court that some of the members had already paid their dues for the

following month, and therefore it would be incorrect to try to collect the additional increase in dues, and this was the only portion that was dealing with the recommendation of the Executive Committee. As far as the by-laws were concerned, they were adopted. There was only one matter left—the increase in dues—when they would become effective.

Q. Well, I understand you to say on August 8th, the executive made a recommendation, and brought the by-laws into effect?

A. They were in effect from the time they were passed.

10 Q. Well, the motion says: "to become effective on the recommendation of the executive."

A. Well, that is not a proper indication of what took place at the evening meeting. It was only the matter of the increase in dues that was left.

Q. Well, anyway, on August 8th, the executive of the Union purported to make these by-laws effective for the Union?

A. No, I don't think so. I think the by-laws were already effective. It was only the matter of dues.

20 Q. Well, on or before August 8th, 1944, these by-laws became effective, is that what you say?

A. I say the moment the members passed a motion on it, they were effective.

Q. Well, here is the evening meeting.

"After discussion it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this Union."

30 A. Yes. And there is a motion there and they should have said the increase in dues should be left—the effective date of the increase in dues should be left to the recommendation of the Executive Committee.

Q. I won't argue with you on that. But with respect to everything else, the Executive Committee decided that the by-laws were to become effective on August 8th.

The Court: Where are you reading from?

Mr. Johnson: I am reading from the evening meeting of August 7th, my lord. Now, may I have the minutes of August 21st—Exhibits 21, 22, and 23.

40 Q. Now, here is Exhibit 21, which purports to be the morning meeting of August 21st, and I want you to try and explain to me this motion that was made:

"Moved, seconded and carried that the agenda be suspended and the meeting proceed to discuss the draft by-laws. Brother King, on behalf of the By-laws Committee presented amendments to the by-laws."

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Now, I want an explanation, if you can give it to me, why amendments were necessary to the by-laws when they had already become the rules of the Union on August 8th?

A. I believe by that time all of the by-laws had been adopted. I think that this motion referred solely to the question of increase in dues.

Q. Well then, the motion does not state the matter correctly?

A. Well, you see it is included in one here:

"It was moved, seconded and carried that the by-laws become the rules and regulations of this Union on and after 10
 September 1st, 1944."

This was dealing specifically with the question of dues, and the by-laws had already been adopted.

Q. Well, we cleared that up when one other witness was in the box. There was a difference as to when the dues became effective, and when the by-laws became effective, but that has all been cleared up already?

A. Yes, I see.

Q. That is not what I am referring to. What I am referring to is this motion here which I have already read to you. And there were 20
 two motions. The second motion is, "Moved, seconded and carried that the by-laws with amendments be adopted."

A. Well, I see this—this motion—or not this motion—the draft by-laws may have been presented as a matter of courtesy to the morning meeting. That was for the information of some of the members who had not had an opportunity to attend previously, but the fact still remains a vast number of the members attended the evening meeting and they had decided on it, and it was the rule of the Union at that time.

Q. Well, it does not matter what the meeting decided. 30

A. Yes, their opinion was always considered, but the fact remains that the majority of the members attended the evening meeting.

Q. Nevertheless there was a potential membership which might have attended the morning meeting and swamped the evening meeting?

A. Oh, yes.

Q. As a matter of fact, you had how many thousand members in this Union in 1944?

A. There may have been around ten thousand then. 40

Q. And the average attendance at the morning meetings was how many?

A. Very low actually, in many instances—I would like to explain—it is necessary to have a quorum at the morning meeting.

Q. And what was the quorum?

A. The quorum, I believe, was thirty members, and in many

instances we had to wait quite awhile to have a quorum. And this was the general rule.

Q. And in the evening, what was your quorum?

A. Fifty.

Q. And how many attended the evening meeting?

A. There was always over three hundred members.

Q. Well that is very little out of ten thousand?

A. That is true.

10 Q. So the potential membership, if they had become interested in any issue in the morning meeting, could have swamped the evening meeting?

A. There was very little possibility.

Q. Well, whatever was done was disregarded and it was a matter of courtesy?

A. Well, I think the membership had expressed their opinion at the morning meeting, and I don't think there was any possibility of any great dissention as far as the by-laws were concerned. They were accepted with hardly any opposition whatever as far as I can recall. I believe it was unanimous, as far as I can recall.

20 Q. You know it wasn't unanimous?

A. I wouldn't say I don't know that. I am supposing this was the case.

Q. Well you know there was a motion of non-confidence brought in?

A. Well, this was previous, and this was primarily referring to the length of the by-laws and not so much to the contents.

Q. And you still say that the minutes were passed unanimously?

A. I said I suppose—I never said that—

30 Q. But it is possible that there may have been some who didn't agree?

A. Yes, it is quite possible.

Q. And some, in fact, walked out of the meeting, didn't they, because they were not in favour of what was going on?

A. Not that I can recall.

Q. You heard one of the witnesses say that at this trial—one of your witnesses for the defence said that Mr. Mole and others walked out of the meeting. You know that?

A. No.

Q. You never saw that?

40 A. No, I never did see anyone walk out on the question of the by-laws.

Q. Now, I take it that is all you know about the by-laws. (You cannot help me any further with the by-laws.) Now, I will move on to another subject, and I want you to tell me what policy you adopted,

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if you did adopt a policy, with regard to excluding the plaintiff from the meetings of this Union?

A. You are speaking to myself personally?

Q. Well, first of all, tell me personally, and then as a policy. What about you personally? What was your relationship to the plaintiff?

A. Well, my relationship to the plaintiff was the same as the rest of the membership: That I had the interest of the Union at heart. Of course, I felt in certain instances Mr. Kuzych's presence at the Union meeting would create dissention, and I believe I said that previously here, and I advised Mr. Kuzych it would be better if he did not attend the meeting. 10

Q. Now, let us go back to the first time you met Mr. Kuzych. There was some difference between you at the time Kuzych was being brought into the Union, wasn't there?

A. No.

Q. Didn't you approach him with regard to signing an application form?

A. Yes, I did.

Q. And there was some difficulty between you on that? 20

A. Well, there was difficulty—he was not prepared to join the Union.

Q. And as a result of that difficulty I am suggesting you later took a dislike to the plaintiff?

A. Oh, I wouldn't say that.

Q. Now did anything else of any consequence happen in the year of 1943, until this arbitration board held its meetings in October?

A. Not that I recall.

Q. The plaintiff did not cause any nuisance to the Union as far as you know? 30

A. There was only one occasion that I remember—I believe it might have been before the arbitration board, there was some inference that there was something wrong with the financial report of the shop stewards—the committee that was then taking the matter up, and it was in dispute with the Canadian Congress of Labour.

Q. Well, do you mean the plaintiff got up at a meeting and complained about it?

A. Yes, he stated there was no report as to certain disbursements on the part of the shop steward committee.

Q. And this was at a meeting? 40

A. Yes, a membership meeting.

Q. This was very courageous of him no doubt. Did you take exception to that?

A. I didn't personally.

Q. Was there an explanation given?

- A. Yes, there was an explanation given by the secretary at the time.
- Q. Well, you wouldn't object to someone asking a question, would you?
- A. No, of course not.
- Q. And the explanation satisfied the plaintiff, did it?
- A. Yes, but an inquiry can be made in such a manner as to create an inference that there was something wrong too.
- Q. And as a matter of fact there was nothing wrong?
- 10 A. No.
- A. And there was never anything wrong with the Union?
- A. No.
- Q. Now later we will come to further dealing about the financial statement, but just at the present time I want you to tell me about your relationship with the plaintiff, and following this through, and after the Arbitration Board sittings there were certain attempts made to expel the plaintiff which resulted in litigation—an action?
- A. Yes.
- Q. Well, we don't need to go through all that, except one
- 20 thing. Tell me who the chairman of the trial committee was?
- A. I don't know who it was.
- Q. May I have Exhibit 15, please?
- The Court: You mean on the first occasion?
- Mr. Johnson: Yes, my lord.
- Q. Now this is Exhibit 15 in this trial and purports to be the minutes of a meeting held at 8 p.m. on January 20th, 1944, and the passage which I wish to refer you to is this:
- “Brother McKendrick reported as chairman of the Kuzych Trial Committee.”
- 30 Now does that refresh your memory. Is that a true minute?
- A. Yes, I believe it is a true minute, but I still cannot recall it.
- Q. And that is the same man, McKendrick who later laid the charge on which the plaintiff was tried—the same man—the second time?
- A. Yes, the same man.
- Q. Now this trial committee proved abortive because it was not properly formed or something of that kind?
- A. Well, I wouldn't say that.
- Q. Well, anyway the plaintiff was reinstated as of the 21st of
- 40 June, 1944?
- A. Yes.
- Q. And litigation was still proceeding with the Union at that time, do you remember? The plaintiff's lawsuit against the Union had not yet been tried?
- A. Well, you are telling me. I don't recall.

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Q. Well it is a matter of record. It wasn't tried until the end of October, but on the 21st of June, 1944, I think you, as secretary-treasurer, wrote a letter to the plaintiff reinstating him, did you not?

A. Probably I did on instructions of the Union. I cannot recall it though. I know the letter must have been sent to him, but I cannot recall when it was.

Q. Well, I won't waste time with that, because in fact you did send him the letter reinstating him, but there was a meeting of the Union on the 3rd of July, wasn't there? Do you remember that. Do you remember the meeting? I think I have already discussed with you in your evidence when you tapped the plaintiff on the shoulder and invited him to go outside the meeting? 10

A. Yes, I have done that on a few occasions.

Q. Well, I want to know on whose instructions you did that on that meeting of the 3rd of July—on whose instructions did you take that action?

A. I don't think I ever took any steps like that on the instructions of anyone.

Q. Well now, reading from the Statement of Claim, this is the allegation. I want you to tell me how much you accept of it— 20 paragraph 55.

"The Plaintiff was wrongfully and illegally ejected from meetings of the Defendant Union under the following circumstances and on the dates hereinafter mentioned (inter alia) as follows:

(a) The Plaintiff came to the regular business meeting of the defendant Union on Monday, the 3rd day of July A.D. 1944 at the defendant Union regular meeting place and took his seat therein;"

That is right, isn't it? The plaintiff was there and took his seat? 30

A. Probably.

Q. "—whereupon the said C. W. Caron arose from the elevation where the executive were accustomed to sit and came to the chair of the plaintiff and tapped the plaintiff on the shoulder."

Is that correct?

A. Possibly it is.

Q. "—And he motioned for the plaintiff to follow him, taking him to the entrance to the hall and advising him that he must leave." 40

Is that correct?

A. Yes, I did advise him that it would be better if he left.

Q. "—giving various reasons for such action, whereupon the plaintiff left the said meeting."

A. Yes.

Q. On whose instructions did you do that?

A. On no ones.

Q. As secretary-treasurer of the Union?

A. Yes.

Q. In the best interest of the Union as you thought?

A. Yes.

Q. Now were there any other occasions when you took a similar action to keep the plaintiff away from meetings?

A. Yes, I think there was.

10 Q. And on the 17th of July, —the allegation is contained in sub-paragraph C of paragraph 55.

“The plaintiff came to the regular business meeting of the defendant Union held on the 17th day of July, A.D. 1944, and was stopped at the door by Mr. White, the business agent, who stated that he could not allow the plaintiff into the said meeting on instructions from the secretary-treasurer of the said defendant Union.”

Did you give him those instructions?

A. No, but I expressed my feeling as far as Mr. Kuzych was
20 concerned, and I advised Mr. White that he should advise Mr. Kuzych that he should not attend the meeting. It would be better.

Q. Well, do you say you gave Mr. White instructions on that particularly or generally?

A. On that particular occasion.

Q. So the plaintiff had taken his seat in the meeting again, had he?

A. I don't recall that he had.

Q. Well, wouldn't this be the case: as secretary-treasurer, you instructed all these gentlemen who held these offices, like Mr. White,
30 or the warden—whoever it was, to not have this person at these meetings and you let that be known that they should keep the plaintiff away from the meetings?

A. No, I advised them if Mr. Kuzych appeared at the meeting he should be advised not to attend, in the welfare of the Union.

Q. Well, that is what I am getting at—whether you call it instructions or advice?

A. I call it advice.

Q. You gave that advice to persons coming to the meeting?

A. Yes.

40 Q. And they had authority to turn him away?

A. No.

Q. The warden had authority at the meeting—

A. The warden had no authority to turn anyone away from the meeting if his dues were paid up, or unless a member was already suspended from the Union—yes, suspended from the Union.

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Q. Now as a matter of fact you provided for that in the by-laws by Article 7, Sub-section 5, didn't you?

"Any member of this Union in good standing and in possession of his Union card shall be admitted to all general business meetings."

A. Yes.

Q. Now in view of that provision why wasn't the plaintiff allowed in?

A. He was allowed in.

Q. Well he got in on one occasion and you saw fit to go and 10
turn him out?

A. I didn't turn him out, I advised him to go out.

Q. And had he not taken your advice you say he could have stayed?

A. Yes, most definitely.

Q. And what you say on one occasion, for one occasion, applies to all occasions, does it—on all occasions, in spite of the advice given Mr. Kuzych could have stayed?

A. He could have stayed unless the general membership ruled otherwise. 20

Q. And they did pass resolutions from time to time?

A. Yes.

Q. And I suggest that you would have seen to it, and the executive, if Mr. Kuzych had not taken your advice, motions would have been passed at every meeting?

A. I don't think that is right.

Q. You don't agree with that?

A. No.

Q. In spite of the fact every time Mr. Kuzych was there the first item of business on the minutes was to expel him from the 30
meeting?

A. Yes, but you will also notice by the minutes that neither the chairman or the secretary did decide whether he should remain or not but the membership did decide it in the vote.

Q. I understand that. But I say a motion was put—and if Mr. Kuzych had not taken your advice a motion would have been put on every occasion to expel him?

A. Depending on the membership.

Q. I suggest it was the policy of the Union to exclude Mr. Kuzych from the meetings? 40

A. No, there was no policy.

Q. Now wasn't there a motion passed—I think you will remember—that until the litigation between Mr. Kuzych and the Union was finished, that Mr. Kuzych should be excluded from all meetings of the Union?

A. Well, there may have been a motion to that effect, but I don't recall it.

Q. There was a motion to that effect and I will refer to it if necessary. Do you agree with it?

A. Well, if you will display it. I don't recall the exact contents of the motion.

Q. This is Exhibit 22, the consolidated minutes of Monday, August 21st and the minute was:

10 "That because Brother Kuzych is suing this Union for damages that (he) Kuzych, be excluded from meetings of this Union until the damage suit is finally concluded."

Do you remember that motion being passed on August 21st?

A. Yes, it possibly was passed.

Q. And that was the policy of the Union manifested through its executive?

A. No, manifested through the membership.

Q. Didn't you in fact pass that motion on August 21st?

A. I said probably it was passed.

Q. Didn't you move the motion on August 21st?

20 A. No, I don't think so.

Q. You read Mr. Justice Macfarlane's judgement, did you not?

A. No, I don't think I have.

Q. You don't remember reading it?

Mr. Burton: Will my learned friend refer to it.

Mr. Johnson: Yes, it was on page 401 of the Appeal Book. "He returned on August 21st, when he was allowed in, went to the front of the hall, took his place, and a discussion arising on or just after the reading of the minutes, he rose to speak and the discussion
30 was closed. Mr. Caron, the secretary, then moved that he be expelled from the meeting."

Now I do not know whether that is a finding of fact, it may be just what the witness said, and I am just putting it to the witness if he remembers that motion being made by him?

A. Oh, I may have made the motion, I don't recall whether I did or not.

Q. Now later on a similar motion was moved, wasn't it—well at any rate on November 20th. By the way, I should bring you up to November 20th from August 21st showing that Mr. Kuzych as a
40 result of that motion did not attend meetings until the litigation was finished.

A. Well, I don't know.

Q. Well as far as you know, he didn't.

A. Well, it is such a long time ago, I cannot recall all these details pertaining to it.

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Q. All right. As far as you know Mr. Kuzych did not appear again at a meeting?

A. As far as I know at present.

Q. And the litigation was finished and done with at the beginning of November, 1944, wasn't it?

A. Well, if the record shows that, it must be.

Q. It was successful to the extent that the plaintiff was confirmed in his reinstatement and was given damages for \$1,000.00.

A. Yes, based on recognition of the Union that an error was made. 10

Q. I understand that, but nevertheless you knew at the beginning of November that this judgment stood against the Union, didn't you?

A. Yes.

Q. And when Mr. Kuzych tried to get into the meetings again he was excluded?

A. Was he?

Q. Well, isn't that the case? Isn't that the case that he was excluded?

A. I cannot recall. If the record shows that, probably he was. 20

Q. Well now, the minutes of November 20th, 1944—let me just deal with that—I will deal with that in a minute and I will just deal with the 7th of November to keep it chronologically correct. I just want to question you about the 7th November, and the allegation that appears in the Statement of Claim, paragraph 55, sub paragraph F.

"The plaintiff attended the regular business meeting of the defendant Union at a place aforesaid."

That is apparently, the Union Hall—

"on the 7th day of November, A.D. 1944. and took his seat 30 whereupon Mr. Caron approached the plaintiff and asked him to leave the meeting, and upon refusal by the plaintiff the said Mr. Caron requested the acting warden of the said defendant Union to remove the plaintiff from the meeting, whereupon the said warden seized the plaintiff by the lapel of his coat and led him out of the said meeting."

Now what is your recollection of that?

A. I don't think that is right.

Q. What part is not right?

A. I don't think I suggested that the warden should eject 40 anyone from the meeting.

Q. Well do you remember approaching the plaintiff on that occasion?

A. I don't remember approaching him, although it is quite possible I may have.

- Q. And do you remember the actual circumstances of the plaintiff leaving the meeting of November 7th?
- A. No, I don't.
- Q. Now then, on November 20th, 1944—the minute is shown on Exhibit 24, if I may have that. Were you present at this meeting?
- A. I believe I was present at all the meetings.
- Q. Yes, you were present at all the meetings. That was one of your duties, wasn't it?
- A. Yes.
- 10 Q. "At the morning meeting Brother Janzen informed the membership that Brother Kuzych was in attendance at the meeting. As a result it was moved, seconded and carried that Brother Kuzych be excluded from the meeting."
- Do you remember that?
- A. Yes.
- Q. Now why was the plaintiff excluded from that meeting?
- A. Because of the same reason, that the charges were laid against him in the first place.
- Q. Now in spite of this judgment which fully reinstated the plaintiff and gave him damages for the wrongful expulsion, the Union took on itself to exclude him from the meeting?
- 20 A. The judgment did not rule on Union principle. It ruled on the question whether he was expelled properly or not.
- Q. Was there any additional reason—that is, additional to any matters that were brought out at the trial—for the exclusion of the plaintiff from the meeting of November 12th?
- A. No, except the Union principle—
- Mr. Burton: I think my learned friend should read further on. There is another section there and he should clear that up.
- 30 Mr. Johnson: I should be glad to read that.
- "Brother Stewart reported re the Kuzych case. Moved, seconded and carried that the case be appealed and that the executive stand instructed to obtain necessary legal assistance."
- Is that a correct minute of what happened?
- A. As far as I can recall.
- Q. So the Union was not prepared to accept this judgment without appealing it—the judgment of the Chief Justice Farris, of this court as against the Union?
- 40 A. Well, considering the amount of damages involved, it was under consideration probably of the Union.
- Q. And it was the intention of the Union to appeal?
- A. I don't know. I don't think the minutes say that. I think it says to give it some consideration, does it not?
- Q. It says, "Moved, seconded and carried that the case be

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appealed and that the executive stand instructed to obtain necessary legal assistance."

A. That is to obtain legal assistance on it.

Q. Well the minute does not say that.

A. Well, perhaps the minute does not say it in those words, but as far as I can recall, that is what it means.

Q. Well at any rate while counsel was making up his mind whether the Union should appeal, the plaintiff was excluded from the meetings, wasn't he?

A. Yes, as far as I know, from meeting to meeting. I don't know as to the actual procedure. As I say at some meetings I advised Mr. Kuzych to leave and at other meetings he persisted in remaining and other procedure followed. 10

Q. Although at this time Mr. Kuzych had been nominated to the highest office in the Union?

A. Quite true.

Q. And he was still not allowed to attend the meeting and was unable to present his views to the meeting?

A. Unable?

Q. Yes. Through not being present at the Union meetings? 20

A. Oh, I don't think that. I think his views were well known as far as the members were concerned. In fact he took them up before the Arbitration Board and on the radio.

Q. Well, do you blame him for taking his views to the radio or to the Arbitration Board when he was unable to express them at the Union?

A. Yes, I do.

Q. Why?

A. Because it was a problem of the Union and not a public problem. 30

Q. Well the Union had prevented the plaintiff from coming to the regular business meetings and presenting his views?

A. Well, if the majority decided such it was up to Mr. Kuzych to accept the decision of the Union in that respect.

Q. Notwithstanding his nomination for president was accepted?

A. Yes.

Q. Now tell me about the elections. The elections took place shortly after November 20th. They took place in December?

A. Yes. 40

Q. And there was a slate of officers, wasn't there. Were you on the slate?

A. Yes.

Q. And all the executive of 1944 went to the general membership for re-election on that slate?

- A. Not possibly all of them.
- Q. Well, there were one or two changes. But at least you and Mr. Stewart were on the same slate, weren't you?
- A. Yes.
- Q. And the slate was not elected fully, was it? It was not fully elected—your slate?
- A. Well, I don't get what you mean by slate.
- Q. Well, you know what a slate is?
- A. A number of people that were nominated in other words,
10 is that what you are talking of?
- Q. No, when you have a certain group, you have a slate of officers recommended by that particular group?
- A. Oh, I don't think so. I think everyone would run there—as far as Mr. Stewart and I were concerned we ran independently.
- Q. You had no one to back you?
- A. Well, the membership if they wished to back us, that was their prerogative.
- Q. But you were the duly elected executive?
- A. Yes.
- 20 Q. You were sitting as the executive?
- A. Yes.
- Q. And you asked for re-election?
- A. Yes.
- Q. And how many members were there on the executive—five or seven, seven I think.
- A. There may have been seven at that time.
- Q. Well let me put it to you again. President, vice-president, first vice-president, recording treasurer, recording secretary and two members at large.
- 30 A. Yes, I think that is right.
- Q. Now of the seven members elected to the executive on this election in December 1944, isn't it true that within six weeks of the election, three of them had resigned?
- A. Three had resigned?
- Q. Yes, after being elected?
- A. You mean in 1945.
- Q. I am talking of the end of the year 1944 and the beginning of 1945?
- A. Yes, in 1945 there were three resigned.
- 40 Q. Having been elected shortly before?
- A. Yes.
- Q. And those three men were Henderson, the president, Hunter the vice-president and one of the members at large?
- A. Yes.
- Q. Downie, I think his name is?

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A. Yes.

Q. And that left four of the executive to carry on?

A. Yes, until such time as the position was filled.

Q. And at the trial—at the purported trial of the plaintiff which took place on March 13th, Henderson had already resigned and so had the first vice-president?

A. Yes, on March 13th I think he had.

Q. When did they resign, those men?

A. Sometime in February—in the latter part.

Q. And they resigned in a body?

A. Yes, they did.

Q. They resigned under protest?

A. No, I don't think so.

Q. They resigned over the same issue?

A. They resigned over the same issue.

Mr. Burton: I think my learned friend, my lord, should bring out what that issue was, whether it was the Kuzych case or not, and not any innuendo. We should have the definite information.

Mr. Johnson: I haven't made any innuendo.

Mr. Burton: You said, "the same issue" and his lordship is 20 in the dark. I think you should have an opportunity to explain that.

The Court: I don't know whether it is important or not.

Mr. Johnson: I think my learned friend can clear it up in re-examination if he wishes to.

Mr. Burton: I certainly will.

Mr. Johnson: Q. The fact is that these men did resign?

A. Yes.

Q. And you looked on Henderson, the president and the plaintiff Kuzych as being together in a body working against the best interests of the Union, didn't you?

A. Yes, I did.

Q. And you wrote an article about it?

A. I beg your pardon?

Q. You wrote an article about it, didn't you?

A. I wrote an article—I may have written several articles in the "Main Deck," but I don't recall it.

Q. You wrote an article about the Henderson, Kuzych disrupters. Wasn't that what you called them. May I have Exhibit 41, please. Do you remember calling them disrupters?

A. If I did I will stand by it, and I think anyways when I 40 wrote this article there is ample evidence to prove that.

Q. Well now, I am going to show you this Exhibit 41. Is it Exhibit 41?

A. Yes, I wrote that.

10

30

- Q. And this is an article which appeared in the "Main Deck," did it not?
- A. Yes, it appeared in the "Main Deck."
- Q. And it purports to have been published on February 2nd, 1945. Would that be the correct date?
- A. Yes, it must be.
- Q. And purports to be written by you?
- A. Yes.
- Q. C. W. Caron? Is that right?
- 10 A. Yes, that is right.
- Q. And this article generally is definitely the derogatory to the plaintiff, isn't it?
- A. No, I don't think so.
- Q. Well, let me read some of it. It is rather a large article. Of course, you were secretary-treasurer of the Union on February 2nd, 1945, were you not?
- The Court: Do you say were or were not?
- Mr. Johnson: He was.
- Q. And on February 2nd, 1945, there were certain charges
- 20 pending against Kuzych, were there?
- A. Were?
- Q. Yes, certain charges had been made against the plaintiff, had they not?
- A. On February 2nd?
- Q. They were pending.
- A. Oh, they may have been pending, I don't recall.
- Q. Well actually there were charges laid on January 5th, weren't there?
- A. All right, there was.
- 30 Q. And when you wrote this article you had in mind certain charges had been laid against the plaintiff?
- A. No.
- Q. When did you write this article?
- A. I wrote this article as it states there prior to February 2nd.
- Q. Well, how long prior?
- A. Oh, I don't recall how long it was.
- Q. Well how often did the "Main Deck" come out?
- A. I believe at that time it was once every two weeks.
- Q. Well between the last issue prior to February and Febru-
- 40 ary 2nd, this article was written?
- A. Yes.
- Q. And at that time these charges were pending against the plaintiff?
- A. Probably they were.
- Q. And did you in this article say—

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Mr. Burton: Well, my lord, they are not the charges he was—

Mr. Johnson: No, there were charges laid.

Q. Now this says here:

“At the last general meeting of the Boilermakers' Union, Local No. 1, executive reported that the Court Order for damages to Myron Kuzych were paid on demand. This Court Order cost our Union \$1624.00. The membership should be clear as to the reasons why we did not appeal this case, namely because T. G. Mackenzie, then secretary of this union, failed to serve a copy of the charges to the accused in the required time provided for by the constitution.” 10

Now what was the constitution to which you referred to there?

A. The Canadian Congress of Labour.

Q. “The trial committee at that time, in view of this technical error, did not have jurisdiction to act. After the expulsion of Myron Kuzych our Union recognizing this error, reinstated him in the Union and informed the management where he was previously employed, to that effect.

“We are of the opinion that as a responsible body we are prepared to live up to our responsibilities and follow the regulations of our Union. This being the case, we find it impossible to proceed with the appeal which would infer that we are trying to justify the fact that the provisions of our constitution were not adhered to, but still could expel a member.” 20

Now that was all written by you?

A. Yes.

Q. Now without reading through the whole of it—I don't want to take up the time of the court—I shall just read one or two more paragraphs having particular reference to the plaintiff. 30

“This is the key to the whole question in regard to this particular case. We, the trade unions, will retain the right to determine who is a trade unionist, and we are of the opinion with justification that Myron Kuzych certainly is not a trade unionist.”

And then you go on to quote questions and answers from the Arbitration Board, presumably taken from the transcript given on that occasion. Do you remember?

A. Yes. 40

Q. And then you go on to say in the last two paragraphs:

“We therefore say that the expulsion of Myron Kuzych was correct in principle. New charges are now pending against Myron Kuzych and our union will determine whether his past and present actions are a violation of the provisions of

our by-laws, after the Press and Investigating Committee has brought its report and recommendation to the union meeting. "If Myron Kuzych intends to take us to court again he will be placing the entire trade union movement on trial, as to whether a trade union has the right to discipline its members for a violation of union policies and individual members' obligations."

Now that is all yours, isn't it?

A. Yes.

10 Q. You wrote it?

A. Yes.

Q. Now what I suggest to you is, that the time this was written, it was written with a view of publishing to the general membership the situation with respect to the plaintiff?

A. Yes.

Q. And your personal views with regard to the plaintiff?

A. Yes.

Q. And this was distributed presumably to the whole of the Union membership?

20 A. Yes.

Q. And I suggest to you it was calculated to deprive the plaintiff of a fair trial?

A. No.

Q. You don't think it was calculated to deprive the plaintiff of a fair trial?

A. No.

Q. Well, what was the purpose of writing an article of that kind at that time?

A. To explain to the membership the real facts of the case.

30 Q. In spite of the fact that you had yourself handed to the secretary of the present investigating committee the charges on which this man was to be charged?

A. Yes.

Q. You were not prepared to leave the trial to the present investigating committee?

A. I think the membership were entitled to know the facts of the case and rule on them on the evidence submitted.

Q. You were not prepared to leave the evidence until the trial was duly called?

40 A. I think the membership would look at the case without prejudice and I don't think there is any basis for prejudice there. It is all facts.

Q. And you don't think anything in here prejudices the plaintiff at all?

A. No, I don't think so, as far as the actual facts are concerned.

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Q. What about the headline. "Kuzych Drains \$1,600.00 of Workers' Money." And this Court order cost our Union \$1,624.00?

A. I didn't write the caption, but I agree with it.

Q. And that is what your article does. It sums up and epitomizes what you had to say?

A. Yes.

Q. You thought Kuzych was taking these damages—

A. Yes.

Q. And I suggest that that was your view all the way through—right from the time the litigation was successfully completed by the plaintiff? 10

A. Yes, it is my views. Certainly the Union may have made errors in procedure, but basically on the question of principle they were still correct.

Q. And as a matter of fact you were one of the committee in 1943 who preferred charges against the plaintiff?

A. It was quite possible. I don't recall whether I was or not.

Q. Well, you preferred charges?

A. I preferred charges, yes.

Q. So you had an animosity against the plaintiff? 20

A. No, I had no animosity. It was a question of trade union principle that should be adhered to or not.

Q. At any rate you did not think the plaintiff was a desirable member of the union?

A. Most definitely not.

Q. You didn't think so?

A. No, I didn't.

Q. And you haven't thought so since December 1943, when you preferred charges against him, is that not right?

A. Yes, I came to that conclusion after the Arbitration Board hearing. 30

Q. And you hadn't any occasion to change your mind—

A. No.

Q. —until the purported expulsion took place?

A. No.

Q. Well now, coming back to the general policy of the Union—do you say that there was not a policy—at least on your part—to exclude the plaintiff from all the meetings of the Union?

A. I had no objection to Myron Kuzych attending the meeting as long as he did not disrupt the meeting. 40

Q. In any event you did not allow the plaintiff to stay at any meeting?

A. I never prevented him.

Q. Well, all right. You advised him to leave?

A. Yes.

Q. Now let me come to these charges. There were charges preferred I think, by Mr. McKendrick on the 5th January, 1945?

A. Yes.

Q. And those charges were not proceeded with?

A. That is right.

Q. Now what was the reason that they were not proceeded with?

A. As a member of the Press and Investigating Committee, the had left the industry, and therefore he was no longer a member of
10 the union.

Q. Now may I have Exhibit 26, I think it is, or 27, maybe. Now under the by-laws which were then in force it was necessary to elect a standing committee, a press and investigating committee, wasn't it?

A. Yes.

Q. And article 14 provided for the constitution of the standing committee?

A. Yes.

Q. And Article 14 said this:
20

"There shall be six standing committees," and then it details the different committees and we don't need to bother with any except the Press and Investigating Committee.

"Each committee shall be composed of not less than three members, one of whom shall be chairman and another shall be secretary of such standing committee."

You remember that, don't you?

A. Yes.

Q. Now how many people were elected to the standing committee?
30

A. Six.

The Court: To this one, he means.

Mr. Johnson: Yes, to this first committee?

A. Six. I mean the reporter, of course, acts as the seventh member.

Q. Yes, the reporter became automatically the chairman by virtue of his office?

A. Yes.

The Court: The reporter you say?

Mr. Johnson: Yes, that is one of the officers, and his duties
40 are set out in the by-laws, and one of his duties is to act as Chairman of the Press and Investigating Committee. And you say there were six other members thus constituting a body of seven?

A. Yes.

Q. Now what I want to find out is why it was fixed at seven?

A. How it was fixed at seven?

Q. Yes?

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A. I don't recall any particular reason for it.

Q. Well, who fixed it at seven?

A. I believe there must have been a recommendation when the by-laws were adopted, that is in the draft by-laws.

Q. You don't understand me, the by-law says, "Each committee shall be composed of not less than seven members."

A. Well, I believe the membership meeting decided that.

Q. Well that would appear surely in a minute, wouldn't it?

A. No, not necessarily. I think probably it would be discussed on the floor and they would suggest that seven would be the maximum. 10

Q. Was seven the maximum of all these standing committees?

A. No, I don't know whether it is or not. I don't remember.

Q. Well now, there are a number of committees here, the Sick and Death Benefit Committee, Arts Education Committee, Sports Committee, Press & Investigating Committee, Hall Committee, and Political Action Committee. And sub-section 1 says, "Each committee shall be composed of not less than the three members." I want to find out how many members there were on each committee.

A. Probably there were seven.

Q. How was that fixed? 20

A. It was fixed by the meeting. More than seven would be very cumbersome and very difficult to get them to attend.

Q. I want to know if the membership ever had an opportunity to pass on the number of people—

A. Oh, I think probably they did possibly, without having it in a specific motion. Being suggested by the chair that seven would be sufficient—and it was agreed by the meeting.

Q. Now is that what actually happened or is it taken out of your head as to what might have happened?

A. I think that is what did happen. 30

Q. And did that happen for all these committees?

A. Probably it did.

Q. It is all quite foggy to you?

A. Well it is foggy, because it was sometime ago, and I don't remember the action that was taken and the procedure that might have followed on it.

Q. As a matter of fact there were a number of nominations for the Press and Investigating Committee?

A. Yes.

Q. Now I take it you didn't have anything to do with the preparation of this minute I am showing you, Exhibit 27,—the minute of the meeting of January 5th, 1945? 40

A. I believe the recording secretary must have taken out the nomination.

Q. You didn't prepare this minute, did you?

A. Well, I probably had it typed in the office from the original.

Q. And the recording secretary took a note of the names nominated, did he?

A. Yes, he would do that.

Q. And the recording secretary, is he also the returning officer for these elections?

A. Yes.

Q. So he is the man we want to have to examine on this, isn't he? What is his name,—William Shaw?

A. He is the man you would like to have.

10 Q. Isn't he the man we would need to have?

A. Yes.

Q. Can you tell me anything about this?

A. Well, all I would have to do with regard to the minutes, a longhand copy would be given me and I would instruct the stenographer to type it out, and for all I know these actually represent what took place at the meeting.

Q. Was William Shaw a recording secretary?

A. Yes, he was.

Q. Do you know if William Shaw is in Vancouver?

20 Mr. Burton: Well may I save a little time by saying Mr. Shaw is available and will be called.

Mr. Johnson: I am glad to hear that and I hope Mr. Shaw knows more about it than the present witness.

Mr. Burton: I don't know how any of us would remember what happened five years ago from memory. My friend has made a remark about it and I think I am entitled to make that observation.

30 Mr. Johnson: Q. What I want to know is what you do know about, and if you can tell me if these men were nominated in accordance with these nominations which seem to be correct, which appear to be 24 in number—and the Press and Investigating—now there are twenty-four names there?

A. If you will let me have a look at it possibly I can tell you.

Q. You cannot tell me who were elected. Only the recording secretary can do that, but you can tell me who were declared elected?

A. Yes, would you like me to name them.

Q. Yes, please?

A. I believe Clark—Bain.

The Court: What was that name?

A. Bain—Braaten—I am not certain of the others.

40 Mr. Johnson: Q. All right. Well, that isn't a great deal of help to us, is it?

A. No.

Q. Well, would there be a minute showing the election. Should there be a minute showing the election—the people elected?

A. There would be a ballot showing the election.

Q. When would that ballot take place?

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A. It would take place at the following meeting.

Q. Well would the minute of the following meeting then show the elected representatives?

A. It might not show in the minutes themselves. It might show in the ballot and the report would be read right at the next meeting—at the union meeting.

Q. And at that same union meeting—the second meeting in January?

A. Yes.

Q. Well would the ballot boxes not be opened until the end of the meeting? 10

A. At the following meeting.

Q. Yes.

A. The balloting would take place in the second meeting in January.

Q. And the minutes of that same meeting would show the results then, would they?

A. Well, the ballot itself might just be read and accepted as such and filed as such.

Q. Surely the records of the Union would show the elected representatives to these different standing committees? 20

A. Yes, it would show in the form of ballots the actual results.

Q. And the recording secretary would make a permanent record of that in the minutes, wouldn't he?

A. Well, it all depends. If the membership is satisfied it would not be entered in the minutes.

Q. Which is more important, the nominations or the elections?

A. Well, the question of verification as to who is elected, or proper record of that might be made, or it might have been made on a separate piece of paper and then read off to the membership, and they would be satisfied, and they would be included in the ballot and they would be nominated. 30

Q. I am more interested in who were elected, and you say that would appear in the minute of January 5th?

A. It might appear in the form of a minute or in the form of a ballot.

Q. And in the ordinary course you would copy them off?

A. I would type them off.

Q. How many copies of the ballots were kept in the ordinary way? 40

A. I believe one copy.

Q. One copy and the original?

A. Yes.

Q. Who had custody of the original minutes?

A. The original would be filed separately or alongside—actually there would be two copies. There would be a copy that would

go in the minute book and another one that would be attached with the original and filed.

Q. Well, did you have two minute books then?

A. No, only one.

Q. And that was a looseleaf affair, was it not?

A. Yes.

Q. Now where would the original minutes have been kept?

A. On file.

Q. And who had custody of those?

10 A. The secretary.

Q. The recording secretary?

A. No, the secretary of the Union.

Q. You would have custody?

A. Yes.

Q. Did you ever have custody of any minutes recording the election of the representatives of the Press and Investigating Committee?

A. Will you repeat the question?

Q. The reporter will repeat it.

20 (Question read by reporter.)

A. I don't recall whether I did or not.

Q. You don't know whether the names of the people elected—of the nominees elected to the Press and Investigating Committee were ever recorded with you?

A. Oh yes, the ballots would be placed in the hands of the secretary to keep.

Q. And yet you cannot tell me who these elected persons were?

A. No, I cannot recall.

30 Mr. Burton: I think I should make an explanation. This matter was never raised before until the last hearing date and there had already been one trial and all the minutes were furnished to counsel at that time—to Mr. Hodgson, and he did not raise this issue and the result is the minutes cannot now be found—that is a complete record—even the ballots and a most thorough search has been made since the adjournment of the trial for them and they are not there and I think the explanation is they were given to me and in some way the file has been lost. The file has gone and the matter is closed, but I can state this, we will do just the best we can to produce them and I am bringing all the evidence to bear that I can
40 on this point.

Mr. Johnson: Q. Now you say this committee consisted of seven?

A. Yes.

Q. Would you tell me why then that this committee in your opinion had no jurisdiction?

A. Well, it wasn't solely my opinion it was the legal opinion

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that we received at the time—but there was one member that had been elected and had left the industry.

Q. Well I want you to tell me who that was?

A. It was a person by the name of Hendry or Handy, I don't know which is right.

Q. Well, tell me now the circumstances under which he left?

A. Well I think he found some other employment.

Q. Now when did he leave?

A. When?

Q. When did he leave? When did he leave?

10

A. Oh, I don't know when he did leave.

Q. Was he a member in good standing when he was nominated on January 5th?

A. Well, there was some confusion in regard to the person who was actually nominated.

Q. Well, just answer the question?

Mr. Burton: I think you should let him finish his answer.

The Court: He is not answering the question. The question was, was he a member in good standing when he was elected?

A. The person who was actually nominated at the meeting 20 was in good standing.

Q. You are referring to the man that left?

A. No, the man who actually was nominated actually was in good standing, but he was already a member of another committee and therefore could not stand for that committee.

Mr. Johnson: Q. Well, just explain that more fully? The man you are referring to is Hendry. H-e-n-d-r-y.

A. I am a little confused as to the person who was referred to—Hendry and Handy. Handy I think it was who left the Industry, and this is what the recording secretary got down as the nomination and this person Hendry was elected, but he was no longer 30 a member of the Union and after we found out the person who had made the nomination, he meant a person, Handy, who was already a member of the committee; and according to the by-laws, he could only be a member of one committee and therefore he couldn't stand.

Q. Did you have the ballots printed?

A. Yes, they would be made up at the office—mimeographed ballots.

Q. Can you produce one of those?

A. Produce one of the ballots?

40

Q. Yes, showing the names of the candidates?

A. No, I believe Mr. White, the President of the Union, informed me they searched all through the Union office and couldn't find any record of them.

Q. Well in any event this man Hendry, whose name appears

in the minutes of June 5th as one of the nominees, he was on the ballots and under that name?

A. Yes.

Q. And he evidently was a member in good standing at the time of his nomination?

A. Well, the recording secretary never got the name properly.

Q. Well, the name is Hendry and these people voted for him and put him in?

10 A. Yes, but the membership may not have been aware of the fact he was no longer in the Industry.

Q. Well, why would they vote for one who was no longer in the Industry when they had twenty other persons to vote for?

A. Well, they may not have known that he worked in one of the other shops.

Q. Well, was he a member in good standing?

A. Not to my knowledge.

Q. You would have the books?

A. Yes, we looked to see if the person was in good standing after the election and saw that he wasn't.

20 Q. Well, I want to know about that now. I want the books produced. Where are your books showing the members in good standing on January 25th, 1945?

A. You would like me to produce the records of the Union?

Q. I would like you to produce the records so far as they relate to this case. I want to know whether Hendry was a member in good standing at that time.

Mr. Burton: I want to say we have looked for them and we cannot find them, and whether the man which moved from the Industry or not,—I cannot say.

30 The Court: Well, perhaps the witness has some recollection of it.

Mr. Burton: But he keeps on about the books.

The Court: As I understand it the witness says Hendry was not a member in good standing at the time he was nominated?

The Witness: Yes.

The Court: That settles it.

40 Mr. Johnson: Well it doesn't settle it from my point of view and I am asking for the production of reports to confirm this. It does not seem right that a member should be nominated if a member was not in good standing at the time.

Mr. Burton: Well, the witness' explanation is that the recording secretary got the name down wrong, and they voted for this man and found out later he was not a member of the Industry and the recording secretary should have written another man's name down. That is the explanation.

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Mr. Johnson: It is not a sufficient explanation to me. I want further particulars of it and I am not prepared to accept the statement this man was not in good standing unless you can give me particulars?

A. As I already explained he had left the Industry.

Q. When did he leave?

A. I cannot tell you, but shortly before the election or perhaps just after the nomination, I cannot say the time.

Q. Well did the nominees not have to accept the nomination?

A. Oh yes. 10

Q. Well, did Mr. Hendry accept the nomination?

A. I believe Mr. Handy accepted the nomination.

Q. Well, whoever it was got up at the meeting and said, "All right, I accept."

A. Yes.

Q. And he was the man for whom the members were voting, wasn't he?

A. Yes.

Q. And he was the man who was elected to this committee? 20

A. Yes.

Q. And he actually had been misnamed?

A. Yes.

Q. But nevertheless he was the man who was put on the committee by the vote of the members?

A. Yes, and if this had been left at that it would have been all right. Perhaps the correction would have been made, but Mr. Handy was already a member of another standing committee and could not stand on two.

Q. All right, what other committee was he a member of?

A. I cannot say offhand which one it was. 30

Q. Was it one of these committees that was being elected at the time?

A. It might have been another one, I cannot say which.

Q. Well no. These committees were elected at the same time, were they?

A. Yes, I think most of them were.

Q. Well, weren't they. Aren't these all the nominations for the different committees?

A. Well, there might be a special committee of the Union too. 40

Q. Sick & Death Benefit Committee, Arts Education Committee, Sports Committee, Press & Investigation Committee, Hall Committee and Political Action Committee. Now weren't all those committees constituted by the election of their representatives at the same time?

A. Yes, those committees were all elected at the same time.

Q. So it could not have been one of these other committees when you state Hendry was a member of another committee?

A. No, I said Handy was already a member of some other committee that I cannot recall.

Mr. Burton: Just to clear that up. One man is Handy and the other is Hendry.

The Court: The witness has explained that.

Mr. Johnson: I want to find out on what committee Mr. Handy was?

10 A. I am not in a position to tell you. There may have been some special committee of the Union at the time set up.

A. A special committee to deal with what?

A. I don't know, but this is what the investigation brought out, that he was already a member of some committee of the Union.

Q. I know you are saying that, but I want further particulars?

A. Well, that is all that I can do—to tell you that according to what we found out.

Q. And by what rule of the Union would his being a member of a special committee prevent him being a member of a standing
20 committee—what rule of the by-laws?

A. I don't know just now.

Q. Well, I wish you would take a look at the noon recess and find out.

The Court: We shall adjourn now until 2.30.

(PROCEEDINGS RESUMED AT 2.30 P.M.)

CHARLES WILFRED CARON, resumes stand.

CROSS EXAMINATION CONTINUED BY MR. JOHNSON:

Q. Now when we adjourned I invited you to look at the by-
30 laws, Exhibit 14, to see whether you could explain this statement you made to me that this gentleman who apparently was only on a special committee at the time could not also hold office on a standing committee. Now I asked you to refer to the by-laws and give me the authority for that statement. Have you been able to look at the by-laws in the meantime?

A. Yes.

Q. And what is the reference in the by-laws?

A. It is under Article 18. I believe it is part 2, Section E, or something like that.

40 Q. Now Article 18 has to do with elections. Now what part of Article 18 has reference to it?

A. Well, first of all you will find—

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Q. Pardon me, I was just wondering if I might shorten that if I can at all. It is in the by-laws and they speak for themselves and it might be quicker.

The Court: Well see what the witness says first.

The Witness: Well, it is under C, delegation of standing committees.

Mr. Johnson: Q. And this has to do with the election of standing committees?

A. Yes.

Q. 18-C?

A. Yes, it says, "Nomination of delegates and members of standing committees shall take place at the first regular business meeting in January of every year and be governed wherever applicable by the rules of Group A of this article." (2) "Election shall be held at the second regular business meeting in January and may be by show of hands or secret ballot and shall be governed wherever applicable by the rules prescribed in Group A of this article." And in Group A—

The Court: Group A of 18?

A. Yes, you will find that in Section 2-E—be nominated only 20 for one office.

Mr. Johnson: Yes.

A. That is it.

Q. Now what office was this man holding at the time of his nomination?

A. Well, as I said previously, I don't recall it, but as far as I can recollect he was already on one committee and had some office in the Union.

Q. Well you did say a special committee before?

A. Well, it might have been a special committee, I am not quite sure.

Q. Well, it makes quite a difference, doesn't it, because I suggest to you a man who is a member of a special committee would not be in an office.

A. Well, it would be an office in the Union.

Q. Well you know very well the Union sets out who the officers are—Article 18-A lists the Union officers and says those officers of the Union shall be members of the executive committee—that is the seven men who we spoke of this morning?

A. Yes.

Q. The trustees reporter and warden—those were the officers of the union, weren't they?

A. Well there are still other sub-committees provided for.

Q. Well, was this man Handy or Hendry, one of those men?

A. Well, all I can recall is this. Some inquiry was made of Mr. Stanton, the solicitor of the Union at that time, and we found

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that Mr. Hendry was a member of some other committee. However, Mr. Handy had been elected and we had no authority to put anyone else on the committee.

Q. Well, you are very vague about the special committee of which he was a member.

A. Well, I cannot recollect, and that is the only reason.

Q. Now I understand you to say there were two men. One was named Hendry and the other was named Handy?

A. Yes.

10 Q. And the nomination that you got as appears from the minute of January 5th, is in the name of Hendry, isn't that right?

A. Yes.

Q. Now was the man Hendry a member in good standing at the time of his nomination?

A. No.

Q. Had he ever been a member?

A. Yes.

Q. Well, when did he leave?

20 A. I don't recall the time he did leave, but I recall that he was working in the South Yard—South Burrard.

Q. Well at the time of his nomination, all these gentlemen, in accordance with your by-law would have to signify their acceptance of the nomination?

A. Yes.

Q. Because your by-law, Section 18, Section 2, states "to validate his candidature, the nominee must, (c) if nomination is made verbally be present at the nomination meeting, declare his willingness to stand and show his membership card to the recording secretary."

30 Q. You remember that?

A. Yes.

Q. And these men were nominated verbally at the meeting of January 5th?

A. Yes.

Q. And they were all present?

A. Yes.

Q. And expressed their willingness to act?

A. Yes.

Q. And when Hendry got up, what happened then?

40 A. Well, I remember the President told us at the time when we made some inquiry about Mr. Hendry, he told us Mr. Handy was present at the meeting, and there may have been some misunderstanding, but he stood up and indicated his willingness to stand.

Q. Well this man Hendry's name appears as sixth on the list, Foster, Power, Lucas—in that order. Now all these men must have stood up and signified their willingness to stand?

A. Yes.

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Q. And when Hendry's name was read out, what do you think happened?

A. Mr. Handy stood up.

Q. And his nomination was accepted?

A. Well, it may not have been accepted, but it was incorrectly recorded and a ballot was taken on the nomination.

Q. And in what name was the ballot taken?

A. Hendry.

Q. With an "r" or without it?

A. Hendry.

Q. You don't know?

A. I don't recall.

Q. It might have been with an "r" in or with an "r" out. It might have been either one?

A. No, I don't think so. I don't think so, because whenever we proceeded to find out who was elected, Hendry was the name we were confronted with.

Q. And when you were confronted with this name this man Hendry had sufficient votes to elect him?

A. Yes.

Q. But you say he was not a member in good standing at the time?

A. No.

Q. Well, why didn't you take the man with the next number of votes and elect him?

A. Well, as I explained previously we were in consultation with Mr. Stanton and we proceeded with the advice he gave us.

Q. And you did not get that advice until two or three weeks after the election was over?

A. Oh, I wouldn't say that.

Q. Well, I might be wrong, it might have been a little earlier.

Mr. Burton: In February.

The Witness: February—well, it was fairly close.

Mr. Johnson: Q. All right, you took counsel's advice on it?

A. Yes.

Q. And what did you do?

A. Well, I believe Mr.—the Chairman of the By-laws Committee, Mr. Farrington—

Q. You mean the Press and Investigating Committee?

A. Yes. Asked the members—or explained the situation to the members of the Press and Investigating Committee and asked them to send in their resignation and have another election.

Q. Of course, if they had not been elected they didn't need to resign, did they?

A. Well, it was a matter that was left to the discretion of the Union. It would be safer to do it that way and make certain of it.

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Q. Well, of course, if the committee had been properly elected, the mere fact that one of the members were inactive, would not prevent the committee from functioning, would it?

A. Well, this is what we were inquiring about and we were advised in the opinion of the attorney, he was not elected.

Q. Well, you had in your mind when you made your inquiry, Section 14, Subsection 2, which reads as follows:

10 "The Standing Committees shall meet monthly or more frequently as required, at such regular time and place as shall be announced from time to time in the official organ. Not less than one-half of the active committee members shall form a quorum."

A. Yes.

Q. So if you had a committee elected, the mere fact that one or two were inactive, would not prevent the committee functioning—why did you have a quorum?

A. Well, an argument might be raised that we had no committee at all.

Q. But if they did not need to have that number?

20 A. Well, we don't know all of these legal aspects.

Q. Now what did you do when you got your advice?

A. Well, the nomination was held on the following meeting, which I believe was February 5th.

Q. Now I show you what purports to be the original minutes of Monday, February 5th, and the original typing too, isn't it? Now where are the nominations?

The Court: What is that exhibit number?

Mr. Johnson: Number 30.

30 A. Well there is a motion here moved, seconded and carried that recommendation re new election of Press & Investigation Committee be endorsed.

Q. Yes, you are reading from this. The motion you are reading is, "Moved, seconded and carried that recommendation re new election of Press and Investigation Committee be endorsed." Now what was that recommendation?

A. According to the advice we received from our Attorney.

Q. What was the recommendation?

A. Of a new election.

Q. It says here, "recommendation re new election."

40 A. Yes.

Q. Well, what was the recommendation that was put up to the meeting?

A. The recommendation put to the meeting was in view of the fact we did not have a full Press and Investigating Committee that we have another election. The nomination at this meeting and the election at the following meeting.

Q. So you put nominations?

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A. Yes.

Q. Where does that appear here?

A. Well, I would like to explain the regular recording secretary of the Union was not present. I think you will find something in the minutes to that effect.

Q. Well, not in these minutes. It says here, "Brother Shaw, recording secretary." And you took the nominations on January 5th?

A. Yes.

Q. Can you say why he did not take the nominations on Feb- 10
ruary 5th?

A. Well, he might have taken it on another piece of paper and I don't know where it has gone to.

The Court: Well, you say he was not present?

A. Well, there was one of the meetings he was not present but I think it was the following meeting.

Mr. Johnson: Q. You have changed your opinion about this meeting?

A. I haven't changed my opinion. I know he was absent at 20
one of the meetings.

Q. Well you say the fact that "Brother Shaw, recording secretary," as being present, is not correct, as stated here?

A. Oh yes, he was there all right.

Q. So you don't know who these men were who were nominated?

A. Well, I think I could name several of them.

Q. Well, I am not interested in your naming several of them unless you could name them all. Can you name them all?

A. Well, I think I can.

Q. How many men were there that were nominated? 30

A. There were eight that were nominated: There was Victor Forester, Alistair McLeod, Braaten, Duncan, Belt.

The Court: How do you spell that?

A. B-E-L-T.

The Court: Q. What was the name before that, after Braaten?

Mr. Johnson: Duncan.

The Witness: And Garrison and Pearson. I think that was the full nomination as far as I can recollect.

Q. So there were seven nominees?

A. No, I think there were eight. 40

Q. Well, Farrington would be the reporter and automatically the chairman of the Press & Investigating Committee?

A. Yes.

Q. And there were seven to be elected to this committee?

A. Well, there might be one I may have forgotten. As far as I can recollect there were eight.

The Court: Q. Why wouldn't that appear in the minutes if Mr. Shaw was there?

A. Well, Mr. Shaw might have recorded this as the general procedure and he may have recorded it on a separate piece of paper and it might have been attached to the minutes at one time and lost in the files, but there is no doubt about it that the nomination was accepted at the meeting and we also have an executive recommendation to that effect.

10 Mr. Johnson: Q. Well, the executive recommendation was to the effect that there should be a number of people nominated at this meeting?

A. The nomination should be open for the Press & Investigation Committee.

Q. And tell me again, at the second meeting—at this meeting of February 5th, was there any motion as to the number of members that were to constitute the Press & Investigating Committee?

A. No, I think this was tentatively agreed among the membership to try to keep it down to a minimum and closer to a minimum than the by-laws provided for.

20 Q. Well, I don't know what you mean by tentatively agreed, by the members?

A. It means this: The members realize the difficulty of members attending special meetings of the executive of the Union and they try to get it down to a minimum and still be within the provisions of the by-laws.

Q. I am not talking of the same thing that you have in your mind. But I am asking you is if at this meeting of February 5th, there was any specific motion limiting the motion of this committee?

A. No.

30 Q. There was nothing like that?

A. No.

Q. Well then, why weren't all the nominees automatically elected to the committee?

A. Well, first of all, I think some of them declined.

Q. They didn't decline at the meeting, did they?

A. No, not at the meeting, but they declined previous to the election. There may have been a motion at one time or another, but I know this was the general opinion to try to get the committee down to as few as possible.

40 Q. Well, you knew perfectly well because you had kept the committee down in that way—your first committee according to you had failed?

A. Well, the committee had not failed. It was only the fact that there was some misunderstanding.

Q. There has been quite a lot of misunderstanding, but what

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you say is that one of these men that was nominated was not in good standing?

A. Yes.

Q. And because you had fixed the number as seven as the committee then that threw out the whole election. That is what you say?

A. Yes.

Q. Now when you came to hold the second election, why didn't you determine the number of men to sit on it?

A. Well, we couldn't have less than seven. 10

Q. But you could have any number above seven?

A. Yes, but it makes it all very cumbersome and the membership agreed on the principle of having seven.

Q. How did the membership agree? Was there any specific motion? I asked you that before.

A. I said no.

Q. I accept that. There was no motion.

A. Not that I know of.

Q. And then you went ahead and held an election, did you? 20

A. Yes.

Q. When?

A. It was held at the following meeting.

Q. And that was on, I think, February 19th?

A. Yes.

Q. May I have Exhibit 31? I wonder if you could help me by finding out from there whether the results of the election are shown?

A. I don't think you will find it in here.

Q. On the other hand you will find in here the results of ballot for business agent for small shops? 30

A. Yes.

Q. Can you suggest why there was not an election held on the 17th of February? These two and a half pages of minutes don't explain it.

A. Well, I believe at that time there were two elections: One for business agent for small shops and also a general election for Press and Investigating Committee, and we generally appointed tellers, someone to count the ballots and it was impossible to complete all this counting during the union meeting, and the only record that we had of this election at one time was in the form of the ballot itself. 40

Q. Well if I gather your explanation correctly it was not possible to incorporate in the minutes of this meeting the results of that election, is that what you mean?

A. Probably not.

Q. Then why weren't they incorporated in the minutes of the meeting following that?

A. Well, the ballots may have been ready at the following meeting and the membership were satisfied with it and never expected any trouble over it and it was left at that.

Q. Well you knew it was very important to constitute this Press & Investigation Committee correctly?

A. Yes.

Q. And the reason you knew that was because you had charges preferred against two members—the plaintiff and someone else at the time?

10 A. Yes.

Q. And you knew that?

A. Yes.

Q. Then why didn't you take exceedingly careful precaution to have your minutes in order?

A. Well, we had the ballots and I think that would be sufficient.

Q. But you haven't got the ballots now?

A. No, that is true. A lot of these things have been disposed of and thrown away and so on.

Q. Now who got the most votes in this election that you held?

20 A. I don't know.

Q. You know the reason I am asking you that, don't you—the reason I ask you that was because the man who got the most votes was automatically the secretary under the by-law.

Mr. Burton: No, my learned friend is not correct.

Mr. Johnson: If my learned friend will read further, this is what it says:

30 "If elected, the candidate receiving the most votes shall be the Chairman of the Special Committee, and the candidate receiving the next largest number of votes shall be secretary."

and then in "B",

"Except in the case of the Press and Investigating Committee the most successful candidate shall be secretary."

Mr. Burton: The reporter being chairman by Article 15, Section 9.

Mr. Johnson: Yes, unless you transpose the word "except" at the beginning of Clause B to that, it means you have already provided that the Secretary shall be the one who receives the second largest number of votes, and yet they have gone on and contradicted themselves and have gone on and said the secretary had received the most votes.

40 Mr. Burton: Becomes the Chairman.

Mr. Johnson: Well, that is what I said. The person who received the largest number of votes would be the chairman of the Press and Investigating Committee. Now who was that man who received the largest number of votes?

A. I don't recall.

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Q. So you don't know who the secretary was of this committee?

A. I am not certain, I cannot say for sure, but I believe Mr. Pearson was the secretary, but I am not certain though.

Q. Now you told me, I think before when you were in the box two weeks ago that you were handed a copy of the charges to the secretary of the Press and Investigating Committee. Do you remember telling me that?

A. Oh, I believe I said I handed it to the Chairman or the Secretary.

Q. No, you said you handed it to the secretary. 10

A. Well, that is right if I did.

Q. Well who did you hand it to?

A. Well, as I said, I don't recall exactly who it was, but I believe it was Mr. Pearson.

Q. And that was done when and where?

A. It was done at the Union office. The actual date I am not sure.

Q. Now on February 19th, that was the date when these charges were read out at the meeting, wasn't it?

A. Yes, I think it was. 20

Q. So at that time you had not elected a Press & Investigating Committee, according to what you say?

A. Well, an election was in process. The members had already passed their ballots.

Q. It was in the process of being formed, but had not yet been formed, according to what you are telling me.

A. Well, the members voted that night.

Q. And then this committee functioned in the way we have described here before?

A. Yes. 30

Q. I am not going into this except to this extent: You did appear at that trial, didn't you?

A. As a witness, yes.

Q. And you gave evidence against the plaintiff?

A. I don't recall if I gave evidence. I believe what I did—I presented before the Press & Investigating Committee the fact that the procedure as provided in the by-laws had been followed and I may have submitted some evidence too. I am not certain.

Q. Now if you gave evidence was it evidence to the effect that the plaintiff had spoken against the objects of the Union? 40

A. I cannot tell you at all what I did say.

Q. You knew that the Union had not got any policy of closed shop which had been discussed at business meetings of the Union, didn't you?

A. Oh, I don't think—oh, the question of closed shop has been discussed several times at Union meetings.

- Q. Has it ever been made a subject of open discussion?
 A. Yes.
 Q. When?
 A. When we were discussing agreements—I remember when we were trying to get agreements with small shops in Vancouver, we discussed closed shop on several occasions.
 Q. But you cannot tell me when it was ever discussed or when it was ever made in the way of a motion?
 A. Well, it was not passed in the way of a motion. It was a
10 question of getting these closed shop agreements.
 The Court: Was the principle of the closed shop discussed?
 A. Oh, yes, the principle of trying to obtain closed shop agreements in the shops, also in the West Coast and the Shipyards.
 Mr. Johnson: That was away back in 1943.
 A. Well as long as we never had these closed shop agreements it was always a matter of discussion.
 Q. Yes, but I want to know whether the principle of closed shop was ever thrown open to the meeting and the members allowed to express their views on it?
20 A. Well, I believe the members already had had an opportunity to express their views on a closed shop.
 Q. When?
 A. Whenever we were discussing the question of agreements.
 Q. And that was before October, 1943?
 A. No, no, after that.
 Q. Now on what occasion after October, 1943?
 A. Every time we discussed agreements.
 Q. Was there ever any occasion to discuss an agreement with the North Van. Shipyard?
30 A. No.
 Q. Because you had it in existence?
 A. Yes.
 Q. What others were there?
 A. The Dominion Bridge and all the small shops. I think there were somewhere around ten of them.
 Q. And those were the occasions you say?
 A. Yes, any member had the opportunity to express his opinion.
 Q. Any member except the plaintiff who was forbidden to attend meetings?
40 A. Well,—
 Q. Well now, just let me ask you for the sake of the record whether the procedure in regard to the expulsion of the plaintiff purported to follow these by-laws, Article 14? Is that what you were endeavoring to do?
 A. Yes.
 Q. To keep within these by-laws?

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A. Yes.

Q. You were not endeavoring to keep within the constitution of the Canadian Congress of Labour?

A. No.

Q. Which is Exhibit 3?

A. No, we weren't.

Q. And you realized in several respects you were going against this procedure in the opinion you expressed?

A. Yes.

Q. Just not to go into too much detail, but just to mention a few points in that direction: It has to be under the C.C.L. constitution that a trial committee is avoided?

A. Yes.

Q. Not a standing committee but a special trial committee?

A. Yes.

Q. And a written copy of the charges has to be forwarded under the seal of the Union and the recommendations have to be put before the committee?

A. Well that is the same as in the by-laws.

Q. Well your union never recommended any penalty, did it? 20

Q. Now before we leave the trial—do you remember who were on the first trial committee away back in December 1943?

A. No.

Q. Were you a member of that committee?

A. No, I was one of the persons that laid charges.

Q. All right. Now just one or two other questions and then I have finished. I want to know when this agreement between the C.C.L. and your union was made on the 3rd December, 1943? That I think is Exhibit 5, is it not? May I have Exhibit 5, please? Thanks. You will remember that—or perhaps you don't remember 30 because you were not secretary at that time but you were the secretary a little later on, and perhaps you will remember from the funds that were handed to you there were certain funds over and above the \$10,000 which by this agreement reverted to the Canadian Congress of Labor. The Union had certain funds in excess of the \$10,000 that it handed over to the C. C. of L. on this agreement?

A. Yes.

Q. Now were you secretary of this Union when the Marine Workers Union was formed?

A. Yes. 40

Q. When was that?

A. I don't remember the date.

Q. Well, it was sometime in '45 was it? Was it before the first trial of this action?

A. The first trial?

Q. Yes.

A. No, I think it was after.

- Q. And were you secretary at the time?
 A. Yes.
 Q. Well now, you were not secretary after the 1st of January, 1945, were you?
 A. Yes, I was.
 Q. And in '46?
 A. No.
 Q. So it must have been sometime in '45?
 A. Yes.
 10 Q. And that was before the action came to trial, wasn't it?
 A. Yes.
 Q. Now what did the Marine Workers Union do so far as the Boilermakers' and Shipworkers were concerned? Was it an amalgamation?
 A. Yes, it was an amalgamation.
 Q. Well, what?
 A. In what sense?
 Q. Well, was the defendant union here merged in another union, is that what happened?
 20 A. Well, the old membership—and all of the assets and all of the agreements—well all of the assets of the union were all pooled into one—the Marine Workers.
 Q. And all the members of the Shipbuilding Union, this defendant, became automatically, by virtue of the amalgamation, members of the Marine Workers Union?
 A. Yes, all those that were in good standing.
 Q. And was the agreement in writing?
 Mr. Burton: I object to this. Surely this had nothing to do with this action. What happened subsequent to the action I submit
 30 has nothing to do with this.
 The Court: How is it relevant?
 Mr. Johnson: Well, I am just trying to find out—we are after a straw man to show whether there is any identity with this union. The whole point I want to bring out—is to see that the plaintiff is reinstated in a body having some identity. If he is going to be reinstated in the defendant union and the defendant union is no more, then there is no point in this action. We are wasting our time.
 The Court: Yes, I think so.
 Mr. Burton: I think that is up to the plaintiff. We did not
 40 ask him to pursue this action.
 The Court: No, he is asking to be reinstated and he is trying to find out what happened to the defendant in this action, of course.
 Mr. Burton: Well, I submit my friend is really fishing for information for what may be of importance to him afterwards.
 Mr. Johnson: It certainly may be of importance to me afterwards. I just want to find out what identity the defendant union has in the Marine Workers' Union.

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*In the Supreme
 Court of British
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Proceedings
 at Trial

Defendants'
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No. 14

Charles Wilfred
 Caron

Cross-Examination

(Continued)

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Cross-Examin-
ation

(Continued)

The Court: I will allow the question.

Mr. Burton: Well, I think it is a legal question and the witness cannot say. He is not even a member of this union. He is not in the Industry at all, and hasn't been.

Mr. Johnson: I am only asking him what the effect of the amalgamation was and whether it is in writing or if there is any document.

The Court: Well, he was a member of the union and as an officer I think he could say what happened to the Boilermakers' Union.

10

Mr. Burton: As far as he knows.

The Court: As far as his personal knowledge is concerned.

Mr. Burton: And it might be quite erroneous.

Mr. Johnson: Did you sign any papers in connection with it?

A. I don't recall the actual procedure that was followed.

Q. Although you were the secretary and one of the important officers of this union you don't recall what happened?

A. Well, I know all the contracts and assets were all pooled.

The Court: What?

A. Pooled.

20

Mr. Johnson: Q. And the new Union then took over all rights, as well as all obligations of the old Union, is that your understanding?

A. Yes, it is my understanding.

Q. And you don't know whether that was done in the form of a contract?

A. I don't recall.

Q. And with what other unions was there an amalgamation?

A. Shipwrights & Joiners and Dock & Shipyard Workers'.

Q. Yes.

30

A. And Blacksmiths.

Q. Yes.

A. I think that is all. That is all I can remember anyway.

Q. Did you hold office in the new Union? Did you hold office in that—the Marine Workers' Union?

A. I don't remember whether I did or not.

Q. You don't remember?

A. No.

Q. You surely must remember.

A. Well I left very shortly after that, and I think I must have 40 functioned for a very short period.

Q. As what?

A. As secretary.

The Court: When did this amalgamation take place, do you remember?

A. I believe it was in '45.

Q. In what part of the year?

A. The early part.

Mr. Johnson: Q. Now there are two letters here, Exhibit 38 first of all dated March 31, 1945, written by you apparently to Myron Kuzych. Is that your signature, or did you write that letter?

A. Yes, it is my signature. I wrote that letter.

Q. And this is a notification—Exhibit 38 is a notice to the plaintiff of his expulsion from the Union?

A. Yes.

10 Q. Now I show you Exhibit 39. Is that a copy of a letter that you wrote to Mr. J. W. Thompson, Manager of the North Van. Ship Repairs, on March 31st, 1945?

A. Yes, it is a letter that I wrote them.

Q. And this is a letter, my lord, written to the employer North Van. Ship Repairs, Limited, and I might read it:

“It is my duty to inform you that one Myron Kuzych, employed in your yard as a welder, has been expelled as a member of the Boilermakers’ & Iron Shipbuilders Union, Local No. 1.

20 “In this connection we wish to draw to your attention Clause 28 of our Collective Agreement which reads as follows:

“‘Only members of this organization will be employed and, in the event of the Union being unable to supply men, no man who is unfair to this organization will be employed.’

“Therefore, since Myron Kuzych has been declared unfair by our Union, we trust that the provisions of the above-mentioned clause will be adhered to.”

You wrote that letter?

A. Yes.

30 Q. And in doing that you were acting on the instructions of whom?

A. The Union.

Q. As expressed by the general meeting?

A. Yes.

Q. On March 19th, was it?

A. Whenever the vote of expulsion was carried out.

Q. And you were invoking the collective agreement of 1940?

A. Yes.

RE-EXAMINATION BY MR. BURTON:

40 Q. You mentioned to my learned friend on cross-examination that you had taken legal advice as to the position in which the Union was placed after it was found that one member of the Press & Investigating Committee was ejected, and was not a member in good standing in the Union. Is that correct?

A. Yes.

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Q. Now I produce to you a letter—

Mr. Johnson: I object.

Mr. Burton: I show my friend a letter and I don't know on what grounds he is objecting.

Mr. Johnson: My learned friend produces a letter which purports to be a letter from Mr. John Stanton, giving certain legal advice to the Union, and it was produced this morning for the first time, and I have never seen it before and I submit it is not admissible on any principle at all.

Mr. Burton: We did not know at the beginning of this trial 10
this letter was necessary, but as a result of the amendment being granted—we were granted an adjournment, and in meeting that amendment we got all the data we could, and I received from Mr. Stanton his file and got a copy of the letter he sent, and on subsequent search found the original, and I gave it to my friend this morning, and he has had the other adjournment, and he is the one who brought up this question and has gone into it very thoroughly, and knows what documents we had in the matter—and knowing we had this letter and did not produce it and I submit it is proof of the fact of what transpired, according to this witness, as evidence by the stand 20
that was taken at the time—

The Court: Surely I am not concerned about what advice was given. I am only concerned with what was done.

Mr. Burton: You are concerned with this, my lord. Supposing my learned friend argues, as undoubtedly he will, that the Union at this stage cannot produce the proper minutes to show the election of the Press & Investigating Committee, we produce secondary evidence—what we have on hand, which is a letter from Mr. Stanton in which he says, "Your election is invalid by reason of the fact that one of the men you have elected is apparently not in the industry and my advice to you is to hold a new election." And I wish to put this in—not that the legal advice is of any importance to your lordship, but by reason of the fact that my friend is asking us to exhaust our documents on the subject, and not being able to produce the minutes, because of what has happened in the interim—whatever evidence there was available then is not now available, and I simply want to put this in as corroborative evidence. 30

The Court: I do not see how a letter written by a solicitor to the Union can possibly be corroborative evidence.

Mr. Burton: Well, only for this reason. It is addressed to the Union. My friend is asking for all the documents, and I say, here they are. 40

The Court: If it is not proof of the facts contained therein, it cannot be corroborative.

Mr. Burton: Well, simply to prove that such an election took place or that the Union thought it was under a certain position at

that time which necessitated a new election being held which is under attack in this present amendment.

The Court: I do not see under what principle you can get it in, Mr. Burton.

Mr. Burton: Well, I wish to tender it of course, subject to the objection, but I will abide by your lordship's ruling. But in any event I submit this evidence to show we have such documents.

The Court: What is the date of that letter?

10 Mr. Burton: February 3rd, 1945. I submit my learned friend having had full knowledge of the letter, and having cross-examined this witness at the greatest possible length as to how he knew and obtained the information my friend should consent to its going in because he brought it out. Now I am going to produce other letters and perhaps my learned friend is going to object to these.

Mr. Johnson: Yes, I certainly am going to object to them—what purports to be refusals to accept or to run to this second election, I do not think they are admissible either.

20 Mr. Burton: Now my lord, I submit these letters are admissible for these reasons: My friend has cross-examined very carefully this witness as to who were nominated on this second election—to the Press & Investigating Committee, and what their names were and Mr. Caron said there were some withdrawals, and I produce two letters of withdrawals, and they are from members addressed to the secretary of the Union and by my friend's amendment I think he has made these letters admissible.

The Court: The best evidence of course, is by witnesses who were there and I do not see how you can produce letters written by somebody—

30 Mr. Burton: These men are not here.

The Court: They may be self-serving letters—I do not know, but it is not the best evidence.

Mr. Burton: I am put in this position. I have not got the best evidence, and my friend is trying to exhaust the evidence that I do have.

The Court: You are trying to show an election took place and surely you can call someone else.

Mr. Burton: Oh yes, I can do that by viva-voce evidence.

The Court: Well, that is the best evidence.

40 Mr. Burton: Well, I ask that these letters go in, because there were two withdrawals from that election and this is the only person who knows about them.

The Court: Well, these withdrawals,—they are not evidence by people who are not there.

Mr. Burton: It is just as good evidence as the letters Mr. Caron received from the North Van. Ship Repairs.

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The Court: I am not dealing with those at the moment.
Mr. Burton: Well, they are concerning the matters raised in this trial.

The Court: Well, some letters may have gone in and were not objected to at the time, but this is what I have to rule on now, and it seems to me you must call these people to testify—

Mr. Burton: Yes, but I produce these letters to prove there were people who were nominated who withdrew, and my friend cross-examined this witness on them.

The Court: I think they are inadmissible, Mr. Burton. 10

Mr. Burton: Very well, my lord. That is all, thank you.
(Witness aside).

Mr. Burton: I will call Mr. White.

WILLIAM LLOYD WHITE, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

EXAMINATION BY MR. BURTON:

Q. Mr. White, you were the President of the Defendant Union, the Boilermakers' and Industrial Union of Canada Local 1, 20 is that correct?

A. That is right.

Q. When were you first elected president?

A. April 1945.

Q. And how long were you president?

A. Until the unions amalgamated and became the Marine Workers'.

Q. And are you president of the new union?

A. That is correct.

Q. So that since April 1945, up to the present time, you 30 have been president of this union and its successor?

A. That is right.

Q. When was the union amalgamated?

A. In 1945—early in the spring, I believe.

Q. And briefly what was that amalgamation?

A. All three unions—the Boilermakers' & Iron Shipbuilders, Local No. 1, the Dock & Shipyard Union and the Shipwright, Caulkers & Joiners Industrial Union.

The Court: Just a minute. There were three. One was the defendant and what were the other two? 40

A. The Dock and Shipyard Workers' Union.

Q. Yes. A. And the Shipwrights, Caulkers & Joiners' Industrial Union?

Q. Yes, all right.

Mr. Burton: Q. When did you first join the defendant union?

A. In 1941, early in the spring of 1941.

Q. And have you been a member steadily since that time in the defendant union and successor union?

A. I am not quite sure whether it was 1941 or 1940. It was either 1940 or 1941 that I became a member and I have been a member ever since.

Q. And when you first joined, what was your occupation?

10 A. I was a burner in the plant.

Q. In what plant?

A. The North Van. Ship Repairs as it was known at that time, but it is now the Pacific Drydock.

Q. And when did you first take an active part in union affairs?

A. From the time I joined.

Q. And did you know of your own knowledge all the matters which took place in reference to the C.C. of L.—the Canadian Congress of Labor and the disputes in 1942?

20 A. Yes, I did.

Q. And you are aware of the agreement which was signed, which is an exhibit in this case—Exhibit 5, I believe on the 3rd day of December, 1943?

A. Yes.

Q. And as a result of that agreement—by the way were you signing officer?

A. No, not at that time.

Q. And as a result of that agreement the defendant union entered into another agreement with the shipyard—the Shipyard
30 General Workers' Federation, is that right?

A. Yes.

Q. And the document in connection with that is Exhibit 6 in this case. Now when did you first meet Mr. Kuzych?

A. Well, I don't know exactly when I first met him. I have never been officially introduced to him to this day, but I first remember seeing Mr. Kuzych in the Hastings Auditorium, early in the spring of 1943 at a morning meeting.

Q. And could you tell his lordship what occurred, if anything, at that time?

40 A. At that particular meeting, Mr. Kuzych took the platform and spoke for a considerable period of time on the trouble that existed between the Union and the Canadian Congress of Labor, and I believe at that time, as near as I can recall, he was advising extreme caution or something, but I know . . . as far as

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I can recollect there was nothing Mr. Kuzych said at that particular time — at least that I can recall, — that any offence was taken to, but that was the first time I had seen Mr. Kuzych.

Q. Now can you tell his lordship about the next time you saw him?

A. No. Well, that is, I never heard anything more about it until after the West Coast Arbitration. I never seen him at meetings that I can recall.

Q. And during the prior period of time, you of course, would not be an officer? 10

A. No.

Q. Were you at the West Coast Arbitration?

A. No, I wasn't.

Q. After that arbitration proceeding did anything occur as far as the relationship of Mr. Kuzych in the Union was concerned?

A. I know there was a lot of comment on the role that he played in the arbitration.

Q. Now, were you at any meetings, either in an official capacity or otherwise, at which Kuzych was heard or spoke after that arbitration? 20

A. I don't recall Mr. Kuzych speaking at any meeting after the arbitration or before, outside of the one I have mentioned; and I might add that in the summer of 1943 I was elected to a job as business representative at that time for Division 3 of the Welders and Burners, which was a full-time job, and I attended to the best of my recollection all meetings that I had to go to there and make a report on the activities, and in the interval period between the two meetings—I don't recollect Mr. Kuzych ever speaking at these meetings.

Q. Do you recollect him being at any of them? 30

A. Until what period? Not before the West Coast arbitration.

Q. Well, after that—coming down to the point here: you have heard evidence here of trouble with Mr. Kuzych in the Union. Will you tell his lordship just what you know of that?

A. Well, I know of my own knowledge I have listened to Mr. Kuzych on the radio and have seen many statements in the press purportedly made by Mr. Kuzych.

Mr. Johnson: I object to that.

The Court: Just a minute. 40

Mr. Johnson: Purportedly made by Mr. Kuzych—I object to that.

Mr. Burton: Q. Well, I will show you a document. Exhibit 42 on the first trial. While that is being looked up you say

you heard Mr. Kuzyeh over the radio. Did you recognize his voice?

A. Yes, and also I myself conducted a broadcast on behalf of the Union for a period of six or eight months, in which Mr. Kuzyeh was on the air directly preceding me over CKWX, and while in the station I could also see him broadcasting, as well as listening to him, so there was no mistake about it. It was Mr. Kuzyeh.

Q. And that was in the same station?

10 A. In the same station.

Q. Now would you tell his lordship the nature of the broadcast by Mr. Kuzyeh?

A. It was extremely derogatory to the trade union movement.

Mr. Johnson: I understand the witness to say he was in an enjoining room doing some broadcasting of his own and I would like to know how he could hear Mr. Kuzyeh at the same time that he was broadcasting.

A. Well, that is quite easy. They have a P.A. system, when
20 broadcasting, so in the other studio when you are going on you know the time the other person is going off, and you get the broadcast in there and as soon as they are finished you go on the air. It is a closed partition.

The Court: You were not speaking at the same time as he was?

A. No, I followed him. I believe he went on at 7:00 and I went on at 7:15.

Mr. Burton: Q. I was wondering how the two programmes could go out at once through the same station.

30 Q. Will you proceed, Mr. White?

A. Well, on the close of the broadcast, Mr. Kuzyeh was continually attacking the trade union movement, and I at no time, in the series of broadcasts I conducted, referred to him or acknowledged any of the arguments that he was presenting.

Q. In what period of time was that?

A. That would be in 1946, I believe. I am not sure of the date. I believe it was in 1946.

Mr. Johnson: My lord, I must object to anything that happened after the plaintiff was expelled from the Union or purport-
40 edly expelled from the Union.

Mr. Burton: Oh, yes.

Q. Was the radio broadcast prior to the expulsion?

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A. I heard many broadcasts before Mr. Kuzych was expelled. In fact our Union went up and got transcripts from the station, and we have them on file today.

Q. Prior to the expulsion?

A. Yes, prior to the expulsion.

Q. Now, as a result of that, or subsequently to it, you have heard evidence to the effect that Mr. Kuzych was not permitted to attend meetings. Did you at any time refuse him permission yourself to attend meetings?

A. No, I never did. 10

Q. I think Mr. Kuzych gave evidence in this case to the effect that Mr. Caron was asked by you to request Mr. Kuzych to leave the meetings. Is that correct?

A. No, I don't think at that particular time I was president. I was acting as business agent of the Union, and I advised Mr. Kuzych in his own interest that it would be advisable for him to leave the meeting.

I might explain that further. After Mr. Kuzych appeared at the West Coast arbitration, a transcription of the evidence that he gave before the Board, where he painted the Union as spurious and a fake and made a number of other very derogatory statements, was read to the membership of our Union; and naturally they did not take very kindly to Mr. Kuzych's continued actions against the Union, and it was with this in mind that I advised Mr. Kuzych for his personal safety to leave the meeting. 20

Q. Now, were you present at a meeting at which Mr. Kuzych was forcibly ejected?

A. Yes, I was.

Q. Will you tell his lordship about that?

A. It was a morning meeting of February 27th, 1945, and I came up into the upper auditorium where the meeting was held in the large hall, and there was a newspaper photographer and a reporter standing in the hall, and I knew both of the gentlemen. They were from the Vancouver Sun and I asked them to explain their presence there. 30

Mr. Johnson: I object.

Mr. Burton: You cannot give any of these conversations, just say what happened.

A. Well, as a result of their explanation, which was not accepted, I informed them . . . 40

The Court: You cannot say what you did.

Mr. Burton: You cannot say what you did.

Q. Did they attempt to enter the meeting?

A. Oh yes, oh yes. They were right at the door of the meeting hall, and I told the Union members . . .

Q. Don't give conversations, Mr. White. They came to the door of the meeting hall?

A. That is right.

Q. You had a conversation with them and as a result of that conversation, what happened?

A. They left the hall and went down to the foot of the stairs, and while I might explain—not necessarily the foot—the stairs leading from the auditorium are in an L shape—they come down twenty steps and there is a landing and they turn at right angles and they go into the foyer of the hall and go out on the street, and they went down those steps and stood on the first landing and subsequently Mr. Kuzyeh appeared at the meeting and went in and took his seat.

Prior to this meeting, I believe he had been charged—well, I know that a motion had been passed excluding Mr. Kuzyeh from all meetings. And he took his seat and the meeting came to order, and the chairman informed him of the motion of the previous meeting and asked him to leave, and he refused to leave the meeting; and subsequently another motion was made and put to the meeting, and it carried—I would not say unanimously, but as far as I know there were no dissenters—but it was by an overwhelming majority—that he leave the meeting.

He still refused to leave the meeting, and the chairman who was Mr. Nuttall asked the warden on the door, who was a man by the name of Coronado, and a man by the name of Mr. McSween, to escort Mr. Kuzyeh from the meeting; and Mr. Coronado went over and took him by the coat and Mr. McSween followed behind and Mr. Kuzyeh went without any resistance whatever, and walked quite peaceably until he came in sight of the photographer and reporter at the head of the stairs, where he turned and struck the guard, Mr. Coronado, and as a result Mr. Coronado gave him quite a sharp cut in the eye, and he then arranged to pose for the newspaper photographer. And another member of the Union was coming upstairs . . .

The Court: You are telling what you saw yourself?

A. Yes, I saw all this myself. There was another member coming up and he had a folder of some papers with him and he just put it over in front of the camera and as a result the photographer got no picture and the photographer was escorted out of the hall, and when he went out Mr. Kuzyeh went out on the street and I followed Mr. Kuzyeh down the stairs and there was quite a number of people at the head of the stairs when this took place, I would say maybe eight or ten, and I was standing approximately ten feet from where this took place and I followed Mr.

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Kuzych down the stairs and out onto the street, because knowing the temper of the fellows and the feeling they had towards Mr. Kuzych I was afraid someone else might attack him, but he was not touched after he reached the top of the stairs, and he went out on the street and went away.

Q. Had you on behalf of yourself, or on behalf of the Union, requested the photographers to be present?

A. No, in fact they are not allowed in the meeting. Only Union members are allowed in the meeting, and they were made aware of that ruling. 10

Q. Now, as a result of that altercation, Mr. Kuzych sued the various members of the Union?

A. He sued McSween, Coronado, and Simpson and myself.

Q. And he was awarded damages?

A. Yes.

Q. Now, I have a transcript of the judgment in that case. It is not a reported decision but I have it from the official stenographer, of the decision of Mr. Justice Coady and I would like to put it in as I intend to refer to it in argument and it will save you from taking it out of the file in that particular case, if my friend has no objection. 20

Mr. Johnson: Well, I do not see how it is relevant. This is a different case altogether. It deals with assault.

The Court: Was it a police court case?

Mr. Burton: No, it was before Mr. Justice Coady, an action for damages.

Mr. Johnson: Well, if it goes in, it goes in as evidence that Mr. White did assault the plaintiff and I do not see any other purpose for which it can be put in. 30

The Court: He has not said here he assaulted him.

Mr. Burton: I am just putting it in to assist your lordship, because I intend to refer to it later in argument. It is a decision of the court, and I can read the whole thing to you in my argument, but I am just referring to it now so that it will be before you. That is the only reason—I wish to put it in now.

The Court: Yes, if Mr. Johnson does not object. You can mark it as an exhibit.

(DOCUMENT MARKED EXHIBIT No. 55.)

Mr. Burton: Now, my lord, I would like to read this: The number of the case is K 486/45, and "These actions were consolidated for trial. The plaintiff sues for damages for assault. The evidence clearly establishes in my opinion that the plaintiff had no right to attend the meeting of the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, on February 27th, 40

and this he well knew at the time. His statement to the contrary I refuse to accept. By his attendance there and by his refusal to leave the meeting at the request of the chairman before and again after the motion was made and passed that he should leave, he was inviting trouble. His attitude was intended to be and was in fact highly provocative and defiant."

Mr. Locke: Well, read it all.

Mr. Burton: I can read it all if my friend wishes.

10 "Organizations such as this are entitled to expect from their members an acceptance of and an adherence to constitutional procedure. Other remedies are open to a member if his legal rights are infringed, but open defiance of constituted authority is not one of them."

Do you want me to read some more?

Mr. Locke: Yes, read the next sentence.

20 Mr. Burton: "It is admitted that the defendant Coronado struck the plaintiff himself, and this defendant under the circumstances was justified in what he did in repelling force by force, and I cannot find that he used more force than was reasonably necessary under the circumstances. The action against this defendant, therefore, must be dismissed with costs.

"The plaintiff's action against the defendant Simpson, must, it seems to me, on the preponderance of evidence, be dismissed likewise with costs.

30 "As regards the claim against the defendants White and McSween, I think the preponderance of evidence clearly shows that these two defendants did assault the plaintiff without provocation. The evidence is contradictory, but under all the circumstances, that is not surprising, in fact, can reasonably be expected, when excitement runs high and when passions are somewhat aroused. It is difficult for bystanders to see all that occurs in a melee such as took place here. The doctor's evidence as to the marks and bruises on the plaintiff's body is consistent with the evidence that he was kicked by these two defendants, and the suggestion that such bruises could have been occasioned otherwise is not worthy of any serious consideration. There is, moreover, no evidence to show that any other person was responsible for this condition.

40 On the contrary, some of the witnesses went so far as to say that no one kicked him. That evidence, of course, if given in good faith, can only mean that this particular incident was not observed by them. The case against these two defendants

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therefore must succeed.

"Special damages will be allowed at the sum of \$38.00. General damages under the special circumstances here disclosed should not be large. I fix the amount at \$50.00. The plaintiff is entitled to his costs against these two defendants.

"June 18th, 1945. Signed: J. M. Coady. J."

Now that will be Exhibit 55, my lord.

The Court: Yes.

Mr. Burton: Q. Now, after the meeting, did Kuzych again attend the meetings of the Union? 10

A. No, I don't recollect that he did. I have seen him leave many meetings, but the exact dates I don't recall. However, I do recall that particular date very clearly—February 27th.

Q. Now, did you call a meeting, as president of the Union, in Pine Hall on—I don't seem to have the date—it has been in evidence here, but you heard the evidence of Mr. Kuzych to the effect that he attended a meeting in Pine Hall, is that correct?

A. Yes, I heard that evidence.

Q. Now, did you call that meeting?

A. No, I did not call that meeting. 20

Q. Were you president at the time?

A. No, I don't think I was at that time. I believe that was in the fall of '43—yes, '43.

Q. Do you know whether or not the meeting was called on behalf of the Union?

A. No, it wasn't.

Mr. Johnson: What year?

A. '43, I think it was.

Mr. Burton: I have forgotten the date. You introduced the subject. 30

Mr. Johnson: I understood this witness not to have been president until the 27th of April, 1945, after this expulsion took place?

A. I have already stated that.

Mr. Burton: Q. Now, Mr. White, you heard the evidence this morning of Mr. Caron in cross-examination in which it was explained that Mr. Henderson and two other officers resigned shortly after taking office. Is that correct?

A. That is correct.

Q. Will you tell his lordship the circumstances surrounding that resignation or those resignations? 40

A. Well, it was a result of a campaign that was started early in December, and had its culmination in February and March of the following year—that is, of '45.

At this particular time there were numerous statements made in the general meeting and also outside the general meeting that the funds were being fraudulently diverted; that there was something wrong with the funds. The money was unaccounted for for the Union and numerous statements to that effect.

Mr. Johnson: Not by the plaintiff, my lord.

A. By people closely identified with the plaintiff. Mr. McPheator and Mr. Mole and Mr. Thompson were among these people associated with those statements and others.

10 Q. And Mr. Mole and Mr. McPheator gave evidence in that case?

A. That is right, and it resulted in a number of newspaper articles and headlines that caused a great deal of worry and concern amongst the membership of our Union, which was very large at that particular time.

As a result of the meetings that were held—and possibly before that—I should state that as a result of this campaign which was put on, Mr. Henderson was elected to the presidency of the Union and Mr. Hunter vice-president, and I believe Mr. Downie
20 was elected on the executive. I don't know whether there were more or not, but they were elected on the basis when they got in they were going to clean up the financial situation that existed in the Union, and on that basis they were elected; and Mr. Henderson, I might say, when he was elected had only attended exactly two union meetings in his life, when he took over the chairing of the meeting.

Mr. Johnson: I object to that statement.

Mr. Burton: I am only introducing this because my friend went into it. He cross-examined and stopped there when he got
30 the information all the officers were elected back at this time, and when they were elected Henderson was one of them and a short time after that he resigned, and that is what I want to bring out now. The inference was unmistakable: they resigned because of the Kuzyeh matter and I suggest that was not the case.

The Court: Well, his capacity to conduct a meeting would hardly be relevant, would it?

Mr. Burton: No, he said that before I had a chance to stop him.

Q. Shortly, Mr. White, would you then show what happened
40 to cause the resignation?

A. Well, I was endeavoring to show that. I believe it has a bearing as to why he resigned. That is the only reason why I was stating that, my lord: that his resignation was accepted on the grounds of incompetency. That was the motion that was put

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through and accepted by the meeting, and I believe he only shared . . .

The Court: Do you mean he gave that as a reason when he resigned?

A. No, he resigned because the general meeting refused to accept his statements as to the financial condition that existed in the Union. Mr. Henderson was demanding another audit of another auditing firm at the time, and his demand was rejected by the membership, and those were the grounds he gave for resigning because he said it was a lack of confidence in him. The membership would not follow his recommendation. However, the motion was that they accept his resignation on the grounds of incompetency. 10

During the entire period the general meetings were in a turmoil is an understatement. Some of the meetings—there were twelve to 1400 members attending the meetings—and there was no suggestion of order. No speaker could get the floor, and if he did get on the floor he was continually interrupted and shouted down and called names and various other abuse, and the Union was rapidly disintegrating through this condition of chaos which existed at that particular time and a large number of the members felt there was something wrong with the finances of the Union. 20

However, when it was put to a vote in the general meeting a new audit was rejected and subsequently Mr. Henderson and two or three others resigned. That was briefly the history at that particular time. And I might add, in view of the evidence that was given earlier by one of the witnesses, Mr. McPheator, Mr. McPheator was one of the main disrupters of the Union meetings at that time. 30

Mr. Burton: Q. Now, evidence has been given as to the election of the Press and Investigating Committee. First, Mr. White, were you president at the time?

A. No.

Q. Were you in attendance at the meetings?

A. Yes, I was in attendance at the meetings.

Q. And were elected president, of course, shortly afterwards?

A. I believe it was in April. I believe Mr. Henderson resigned in February and there were nominations and elections for president of the Union in April. I don't recall the date. 40

Q. Now, what have you to say as to the election for the Press and Investigating Committee in January, 1945?

A. Well, in accordance with the by-laws, the standing committees were nominated and elected. Nominated at the first

meeting, which was the 5th of January, and elected at the second meeting, which was the 19th of January. However, it was found that there was one member of the . . .

Q. Well, just a moment, first were nominations held on January 5th?

A. That is right, yes.

Q. And the minutes of which have been produced here so there is no point in referring to them again, and they show a number of nominations—24 in all. Would that be correct?

10 A. I believe so.

Q. Now may I see those minutes from January 5th on? Mr. White, I show you Exhibit 27, the minutes of the regular meeting on January 5th, 1948, and on the back page is a list of nominations, is that right?

A. That is right.

Mr. Johnson: '45, not '48.

Mr. Burton: Yes, '45.

The Court: Is it '45?

Mr. Burton: Yes, January 5th, 1945.

20 Q. Now, I notice on the back page, which is nominations for standing committee—the nominations for Sports Committee, Arts Education Committee, Sick and Death Committee, Political Action Committee, Hall Committee, Labour Council, Press and Investigation Committee, Social Organizer—this to be left open for written nomination. Were all those nominations at that time?

A. I believe so, as near as I can recollect, that was the procedure.

Q. Now, in January—the election would take place on January 19th, is that correct?

30 A. That would be the date, I believe, two weeks later.

Q. On January 22nd?

A. It should be January 19th—two weeks later.

The Court: January 19th was the date mentioned before?

Mr. Johnson: Exhibit 28—wait a minute, we have a minute of January 22nd, but I have no note of any meeting of January 19th.

Mr. Burton: I thought it was January 19th that my friend referred to.

Mr. Johnson: No, February 19th.

40 Mr. Burton: That is right, it should be January 22nd, and that is Exhibit 28.

Q. Now, I show you Exhibit 28 in this case—regular meeting held on January 22nd, 1945. Is that the full report of the meeting?

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A. No, it isn't the full report of the meeting. I believe that is just one page.

Mr. Burton: My lord, I might explain that this was the first page only that was filed as an exhibit in another trial, Guelph vs. this Union, and I got this exhibit out while this trial was in progress two weeks ago, and it happens to be the only page we have of those particular minutes.

Q. Now, Mr. White, would the elections of all the standing committees be held on that date?

A. Yes, they would be held on that date, the 19th, was it? 10

Q. The 22nd?

A. Yes, they would be held at the next meeting.

Q. And have you been able to find any minutes since this trial adjourned, or any further meetings showing the minutes of the Press and Investigating Committee or any other standing committee of that date?

A. No, I haven't. There is a report of Mr. McLeod, the secretary of the Union, who died recently, and he changed the entire filing system in the Union. However, I do think in the Press and Investigating Committee it is a question of bulletining. Now, in 20 the majority of cases where there is a heavy ballot the results of the election are not announced at that night's meeting. For instance, if there is balloting and nominations at one meeting and nominations and elections at the following meeting, then after the members have completed their balloting they generally leave the box open until nine o'clock so that any late member can have an opportunity to ballot, and then a teller is appointed and they leave to go and check the ballots and the result. The meeting is adjourned before the ballots are tallied, so at the earliest they could be entered into the minutes would be the following meet- 30 ing again after that.

Q. Could you tell whether or not the results of all these elections were actually entered in the minutes, or do you know?

A. I am not sure. If they are not entered into the minutes then they certainly should be. I agree they should be entered into the minutes. However, in the case of the Press and Investigating Committee the members of that committee, if I recall correctly, resigned . . .

Mr. Johnson: Just half a minute.

Mr. Burton: Wait until you hear the question. 40

Q. Were you present at the meeting when the first election took place on January 22nd?

A. Yes.

Q. Now, we will come to that. Do you know of your own knowledge that an election took place?

A. Oh yes, certainly.

Q. Now, do you know who were elected?

Mr. Johnson: How can he say? There was only one returning officer, and he can only say who was reported elected.

Mr. Burton: Q. Do you know who was reported elected?

A. On what committee?

Q. The Press and Investigating Committee.

A. Yes, however, I don't believe there was anyone elected on the Press and Investigating Committee. That may be a matter of law, but I know it was under very careful consideration by the Union at that particular time, and due to the status of one of the members who was elected on that committee, and subsequently before the next meeting the ones that were elected on the committee, or were declared elected on the committee, they resigned and stood for re-election at the next general meeting.

Q. And were nominations held?

A. Yes, nominations were held, yes.

Q. Now, you heard Mr. Caron's evidence and the reason he gave that the election was not in order was because someone was not a member of the industry and there was a confusion of names, is that correct?

A. Yes, that is correct. At that particular time during the nominations—I don't know whether any of the people present here ever heard nominations in a union meeting—how they are called, but there might be a dozen names shouted out at one time and the recording secretary writes them down as fast as possible, and then he writes out the list of nominations to see if there had been any nominees' names left off the list and if there are he adds them; and during the taking down of the names, there was a man by the name of Hendry nominated, at least that is the way the recording secretary took it down.

Mr. Johnson: I hope this witness is saying something he knows of his own knowledge. You must keep him to that. He was not an officer of the Union at that time.

The Witness: I was business agent of the Union and I was present.

Mr. Johnson: But you were not on the executive at that time?

A. No, but I was present and I know what took place there.

Mr. Burton: Q. Well, I was trying to shorten it up, because I thought my learned friend was going into it. Just state what you know of your own knowledge, Mr. White.

A. Well, that is correct—there were these two names, Hendry and Handy, and the result was Hendry was elected, and

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there was confusion in the minds of the meeting as to whether . . .

The Court: No, you cannot say that.

Mr. Burton: Q. Whether there was confusion in their minds or not, was it expressed? Did someone say so?

A. Yes, I know definitely—I know the president at that particular time and the executive—I heard them say so.

Q. At the meeting?

A. No, it was after the meeting. You see, the ballots were not tallied until after the meeting was adjourned, because there was a large number of votes to count, and the ballot boxes as I said are closed at nine o'clock as a general rule; and the people attending the meeting, they come in—and they leave the ballot open until nine o'clock so as to give everyone an opportunity to ballot, and at nine o'clock the ballot boxes are closed and taken away and there is a considerable number of ballots to be tabulated, with the result after the meeting has completed its business—it is adjourned long before it is tabulated, so the earliest it could be recorded in the minutes would be at the following meeting. 10

The Court: I understood this confusion took place on the 20 day of the nominations, on the 5th?

A. No, I don't think so. It was after that, because the recording secretary had no reason to believe he did not have the names down correctly.

Mr. Burton: Q. But he read the names out afterwards to the meeting?

A. Yes, they were read to the meeting, but the names Hendry and Handy sound alike, and I don't know what happened, but I presume Handy got up and accepted the nomination when the name Hendry was called out, and that is the only explanation, but Hendry had left the industry at the time. He was a shop steward in one of the yards and he had left the industry at that time. 30

Q. And whose name appeared on the ballot?

A. Hendry's name appeared on the ballot, and after he was elected they found he was not available and there was a general confusion in the executive whether it was Handy or Hendry that had been nominated in the first place, so in order to clear up the confusion the remaining five on the committee resigned and new elections were held. 40

Mr. Johnson: I do not see how the witness can say they resigned.

The Witness: I do know they resigned.

The Court: Mr. Johnson's point is, you say there was confusion among the executive and he makes the point that you

were not a member of the executive.

The Witness: I was a business representative.

Q. Well, did you sit in with them?

A. Yes.

Mr. Johnson: But only on certain occasions?

The Witness: No, that is the policy of the Union. The business representatives are seated with the executive. They have no power to vote, but they are there to express their opinion when the executive requests them for information they can give
10 on certain particulars. They have no vote, but they have a voice.

Mr. Burton: Well, just to proceed further with that, what are the duties of a business agent?

A. To see that agreements are lived up to and see that the members live up to the agreements and to take up any grievances that arise and to organize unorganized shops and quite a number of other things. A business agent's work is never done in the trade union movement.

Q. And in that capacity you say you sit in on executive meetings?

20 A. Yes.

Q. And did you sit in on executive meetings at which this matter was discussed?

A. Yes, yes.

Q. And was legal advice obtained?

A. Yes.

Q. And as a result of that advice were any nominations called for?

A. Yes, there were eight nominees. There was Belt, Garrison, Clark, Braaten, Pearson, Forester, McLeod — did I say
30 Braaten? There were eight I know.

The Court: Is that Braaten?

A. Braaten.

Q. When did these nominations take place?

A. On February 3rd.

Mr. Burton: Q. Well, what meeting would it be held at, would it be special or regular, or what meeting?

A. That was the regular general business meeting, I presume. I am not positive on that, but I think it was.

Q. Now, I show you the minutes. Let me see Exhibit 30.
40 I show you Exhibit 30 in this case, which is supposed to be the regular general business meeting held on January 5th, 1945. Is that the meeting you refer to?

Mr. Johnson: Which date?

A. February 5th. Yes, that would be the meeting. That

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is the first meeting in February.

Mr. Burton: Q. I think you said February 3rd?

A. Well, February 5th. I am not positive on the dates. The meetings are held on the first and third Mondays of the month.

Q. And was that the meeting at which nominations were held?

A. That is correct.

Q. Now I notice there is no mention in the minutes of the actual nominations, but this motion appears: "Moved, seconded and carried that recommendation re new election of Press and Investigation Committee be endorsed." Now, was that motion moved, seconded and carried as it appears? 10

A. That is right.

Mr. Burton: Now, my lord, I should make this explanation also. These particular minutes were likewise filed in another action of Guelph vs. White, and it was only by accident I got them from the other case while this trial was in progress, and if it had not been for that circumstance they would not have been here. And whether or not they are complete I am not aware and no one else is, but they were filed because they had reference to Guelph in that lawsuit, and only that portion having reference to Guelph was of importance at that time, and other portions may have been discarded. 20

Q. Now, Mr. White, what explanation have you as to the fact that there was no further mention of nominations at those meetings?

A. Well, I cannot explain that. They certainly should have been recorded. I know they took place at that meeting. However, I might say in regard to the recording secretary, the recording secretaries are not elected on their ability for the job. 30

Mr. Locke: My lord, I don't know how this witness can say that.

Mr. Burton: Well, you mean recording secretaries are elected?

A. That is true, and they are not elected to perform their duties. Any man can fill the position, and while he may be the most popular member of the Union he may be the worst recording secretary there ever was, and if he gets a number of ballots he goes in there as recording secretary, and he does the best he can, to the best of his ability, and once the minutes are recorded no one can change the minutes on the record except at the next general meeting; and that is the only way the minutes can be changed, but if they are accepted by the membership that is the way they are. And I should point out, a trade union—they are not 40

legal minds recording these minutes. The recording secretary writes them down as he thinks they should appear, and if the membership accepts them at the next meeting, then that is that. It might be perfectly clear to the membership what those minutes refer to, but to bring them up several years later, that is a different matter.

Mr. Locke: Well, what it means to the members, how can this man say that?

Mr. Burton: I am not concerned with that.

10 Q. Witness, do you know that nominations were held of your own knowledge?

A. Yes, I know they were held.

Q. And you have named a number of nominators. Were elections held?

A. No, the elections were not held.

Q. What happened?

A. Well, there were six—or eight, rather—nominated to the Press and Investigating Committee on the 5th of February, and prior to, or before the next meeting came up, which I believe would
20 be the 19th—yes, the 19th of February, Forester and McLeod sent in their written notice, declining to serve on this committee.

Mr. Locke: Does this witness know all this of his own personal knowledge?

A. Yes, I do know this.

Mr. Locke: I would like to know the circumstances.

The Court: In what capacity do you know this?

A. As business representative of the Union, I was perfectly familiar with all the business that took place and transpired.

30 Q. Were you at the meeting when those resignations came in?

A. Yes, the resignations are there from these two individuals, with the dates and everything on them, but I have no idea where these people are today, but I submit the resignations speak for themselves. They could not resign if there was not going to be another election.

Mr. Locke: I am objecting to that.

The Court: He is explaining why an election was not held, Mr. Locke.

40 Mr. Locke: Yes, all right.

The Witness: And subsequently when these two declined it required that number to make up the committee, and they were elected by acclamation and there was no reason to call an election.

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The Court: Who was that? Who resigned?

A. Forester and McLeod. I believe Mr. Burton has the letters there.

Mr. Burton: I have tried to get them in already.

The Court: I do not think the letters can go in.

Mr. Burton: Well, may I ask this question, my lord, and I will ask my witness not to answer it until there is a ruling, but I will ask the direct question on it.

Q. Did McLeod and Forester refuse nomination in writing?

A. Yes. 10

The Court: You are asking if they refused nomination?

Mr. Burton: Yes.

The Court: Well, they were nominated, you say, on February 5th?

A. Yes.

Q. And you were at that meeting?

A. Yes.

Q. Did they accept or refuse nomination—I mean of your own personal knowledge?

A. No, they didn't either accept or refuse at that meeting. 20

Q. They did not get up?

A. I beg your pardon?

Q. They did not rise and accept?

A. No, you see the nominations at that meeting were held and the nominations and elections at the following meeting.

Q. Well, the nominations were at the 5th of February meeting?

A. That is correct.

Q. And the election took place two weeks later?

A. Yes, that is right, but it is trade union procedure in our Union the nominations are at one meeting and the elections at the next meeting, and in the event there is some brother who is not present at the meeting, and he would want to stand at the meeting for election, he can come to the next meeting and be nominated and still be eligible. 30

Q. There would be additional nominations?

A. Yes.

Q. But Forester and McLeod were nominated on the 5th and that does not mean that they could not be nominated again?

A. No. 40

Q. Well, when they were nominated on the 5th, did they accept?

A. Well, I don't recall them accepting, but they could not have declined, because there are letters there—the written declarations.

Mr. Johnson: Would your lordship ask if either of them accepted at that time?

The Court: Could you say that?

A. I could not be sure on that point.

Q. You do not remember any of them accepting?

A. I don't think so. I think what took place was they were nominated and there would be nominations and elections at the following meeting. However, there were no further nominations for them—they would have to accept at one meeting or the
10 other—which meeting it was, I don't know.

Mr. Burton: Q. Can a person be nominated who is not present at the meeting?

A. Not without written permission from the person who is nominated.

The Court: Q. And you say when these two withdrew their names from nomination—do I understand you to say that did away with the necessity for election?

A. Yes, that would leave six—the required amount. There would be no good having a ballot to elect six nominees, and they
20 are declared elected by acclamation.

Mr. Burton: Q. Now in the meeting of February 19th, were you present at that meeting?

A. February 19th, yes.

Q. By the way, may I have the minutes? I show you Exhibit 31 in this case, being minutes of the meeting held on February 19th, 1945. Now, were those the minutes as far as you know?

A. As far as I know they appear to be the minutes, yes.

Q. Were you present at that meeting?

A. Yes.
30

Q. Now I notice as far as I can see that there is no reference to the election or otherwise of the Press and Investigating Committee. Now what do you say as to that?

A. Well, there would be no election if they went in by acclamation; however, there should certainly be a record of it, or a notation of it in the record, but as I explained before if the secretary did not put it down, then it isn't there; but I know they were actually elected to that position, because at that time . . .

The Court: How do you know that?
40

A. At that particular time, my lord, every move the Union was making in this connection was done under legal instruction.

Q. Yes, but whatever took place could only have taken place at the meeting of February 19th?

A. I beg your pardon?

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Q. Whatever took place could only have taken place at the meeting of February 19th—that is the date?

A. That is correct.

Q. And you say you were at that meeting?

A. Yes.

Q. What actually took place at the meeting?

A. Well, I don't recall everything that took place, but I remember one outstanding thing, there was an election for a business agent at that particular meeting.

Q. I have particular reference to the Press and Investigating Committee?

A. Well, there are no minutes to that effect, whether the chairman declared this committee elected by acclamation or not. I am not sure—the actual procedure it took, I am not sure on it.

Q. You do not remember?

A. I don't remember, but also at this particular time, my lord—this was during a period of time when the Union was in a constant turmoil and the state of disruption and our meetings resembled three-ringed circuses at that time, and it was very hard to transact any coherent business at all.

The Court: We will adjourn now until 10:30 tomorrow morning.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT.)

WILLIAM LLOYD WHITE resumes
the stand.

The Clerk: You are still under oath, Mr. White.

EXAMINATION BY MR. BURTON RESUMED:

Q. Mr. White, you heard the evidence given in this case 30 up to now?

A. I have.

Q. You heard the evidence of Mr. McPheator?

A. That is right.

Q. What was his position in the Union?

A. Mr. McPheator was a shop steward in North Van. Ship Repairs.

Q. What would be his duties as shop steward?

A. To handle grievances of the group of men who elected him as a shop steward. In the Pacific Drydock I believe there was over one hundred shop stewards—or North Van. Ship Repairs. It is under the name of Pacific Drydock today. They had approximately one hundred shop stewards looking after the various departments in the yard. A shop steward represents approximately 20 to 25 employees.

Q. And would it be part of the shop steward's duties to deal with grievances?

10 A. Yes, the grievance procedure, that goes to a shop steward, when a grievance is reported to him by an employee, to take the grievance up with his charge hand, and if there is no settlement there, the top shop steward—I should explain there are three divisions in the Union. Division No. 1 takes in all employees, the fitters, boilermakers and loftsmen, platers, laid-outs. Division No. 2 takes in all the pneumatic toolmen, like riveters and so on, and Division No. 3 takes in the welders and burners.

20 In each division in the yard they get together and they elect from one of their own numbers a top shop steward. That is the steward who is over all the stewards in that particular department.

When a grievance comes up the shop steward goes to the charge hand that is concerned, and if there is no settlement he takes it up with the top shop steward, who in turn goes to the foreman and tries to effect a settlement.

30 If there is no settlement arrived at, one of the bargaining agents of the Union, generally the business agent, comes in and takes it up with the management, and that is done in conjunction with the top shop steward and the man concerned. At no time does the shop steward deal with the management. The company does not need to recognize them unless they are a bargaining agent of the Union.

Q. You heard Mr. McPheator give evidence to the effect that he took up grievances with the management?

Mr. Johnson: Well, I don't think he said anything of the kind.

Mr. Burton: Well, we will not have any difficulties, Mr. Johnson, because I have the transcript.

Mr. Johnson: Well, I haven't it.

40 Mr. Burton: You can look over my shoulder if you wish. It is at page 262 of the transcript of this trial, my lord. I might explain that it was not typewritten in sequence. The number is given by a numbering machine and some of the numbering of

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the pages at the bottom is in typewriting, but at the front of the book it gives the page, and then you look at the numbering by the numbering machine.

The Court: Yes. Well, supposing he did say that, how does that affect this case?

Mr. Burton: Well, there may be a question of credibility and who has the right information, my lord. This matter has been gone into thoroughly and we might as well make it completely thorough.

The Court: Yes, it might affect credibility. 10

Mr. Burton: Yes, and I think it is very important in this matter, my lord.

The Court: Yes.

Mr. Burton: This particular one is probably not as important as the others, maybe.

Q. Now, at the top of page 263 Mr. McPheator said: "When I was told about it as a shop steward I would go and consult the management about the grievance."

A. No. A shop steward never deals with the management, unless in conjunction with a bargaining agent. 20

Mr. Johnson: It says, "Told about it."

Mr. Burton: Well, we have been discussing the question of grievances. The whole answer is as follows, at the foot of page 262:

"Q. Is a shop steward a union officer?

"A. Well, he is considered a grievance man in the yard. If something should arise in the yard regarding any employee, in my case it would apply in particular to the welders, they would see their shop steward. When I was told about it as a shop steward I would go and consult the management about the grievance." 30

Mr. Johnson: I see.

Mr. Burton: And this witness says that is not the correct procedure. He said unless in conjunction with the bargaining agent.

Q. Would the shop steward consult the management in conjunction with the bargaining agent?

A. Generally, when the business representative takes up the grievance, he has the employee affected and generally the top shop steward of that division in order that whatever settlement 40

is effected the representative on the job can go back and tell the man about the settlement, so there is no guesswork about it.

Q. Now, Mr. White, at page 281 of the transcript—I am sorry, 284. At the top of 285 is the answer. It is unnecessary to read the question, but this is the answer:

10 “A. Mr. White came and asked me if I would be kind enough to withdraw my name and not run against Mr. Caron. I told him I would not, the men had asked me to run, I was going to run. He said if I withdrew my name they would be quite willing to take Mr. Schwartz’s name out and put my name in as first vice-president, but I refused to withdraw my name for secretary-treasurer of the Union.”

Now, that was in connection with an election. Do you recall the evidence?

A. I recall Mr. McPheator giving that evidence.

Q. Can you recall the election in question?

A. Yes.

Q. Did you ask Mr. McPheator to withdraw his name?

A. Absolutely not.

20 Q. Did you go to Mr. McPheator and make any suggestion to him in reference to the election?

A. None whatever. At that time Mr. McPheator was closely identified with Mr. Kuzych.

Mr. Johnson: At what time? At the time he did not make the statement?

A. I believe Mr. McPheator said in December.

Mr. Burton: Q. Now, this is in connection with the election. What time was the election?

30 A. I think it was on the 12th of December, as near as I can recollect.

Q. Of what year?

A. 1944. I would have absolutely no authority whatever to make any switch or change whatsoever. I could not substitute, as suggested, Mr. Schwartz drop his name. I was a business agent of the Union. I was not on the executive and I most emphatically deny any part of that statement.

Q. Did you, with reference to any other election, have a conversation to that effect with him?

A. No.

40 Q. Mr. McPheator gave evidence at page 308. The page is not numbered, my lord. This is about three-quarters of the way down:

“Q. Now, witness, you gave evidence of a conversation which you had with Mr. White in which Mr. White said,

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'Lay off Kuzyeh or the same action will be taken against you' or words to that effect?

"A. That's right.

"Q. What was the date of that conversation?

"A. I couldn't tell you the exact date but it was prior to the election.

"Q. When was the election?

"A. I think the election was around some time in December.

"Q. Of which year?

"A. That was '44. 10

"Q. Where was the conversation?

"A. It was on the top of the ship when I was welding a butt near the aft deckhouse."

Now, you heard that evidence?

A. I did.

Q. Did you on that occasion tell Mr. McPheator that he must lay off Kuzyeh or the same action would be taken against him?

A. No, I absolutely made no statement whatsoever. I believe 20 that was approximately the same time. It must at least be in the same month that Mr. McPheator stated I approached him and asked him to decline as secretary. I most emphatically did not have any conversation regarding Mr. Kuzyeh with Mr. McPheator.

Q. Did you at any time make such a statement?

A. At no time.

Q. Now Mr. McPheator went on and told the condition of the weather, and he said it was not raining and you could not weld in the rain. What have you to say as to that? 30

A. Throughout the war, welders welded continuously rain or shine. In fact, a record launching on the ways was held, because it was forty-five days from the time the keel was laid until the boat was in the water, and if they could not weld when it was raining they could not have completed that launching, and any welder in the shipyards knows that they weld rain or shine. They erected a cover.

Q. Would you say there would be continuous welding there for that 45-day period?

A. It would be continuous welding from the time the keel 40 was laid until it was launched.

Q. Mr. McPheator further explained that the sun was not shining because he would have to have some protection from the sun. What have you to say as to that?

A. I have never heard of them having to have shelter in December, or possibly in the hot months of the year they might put up a shade for the comfort of the welder, but I have never heard of the sun affecting the welding as Mr. McPheator stated; it does affect the welding expansion and what-not, but that shelter would not make any difference.

Q. And does welding continue in the sunshine?

A. That's right, it does.

10 Q. Mr. McPheator further explains in reference to this conversation about Kuzych that he answered you that he would speak to whoever he pleased. Did he make such an answer to you?

A. Not to my knowledge.

Mr. Burton: I haven't too much of it, my lord. I want to cover it so there will be no question about the evidence which was given.

20 Q. Now, Mr. McPheator gave evidence that on the election there were hundreds of ballots thrown on the floor. This occurs, my lord, at page 292. He was asked the question near the top of the page, the fifth line of 292. Do you recall that election?

A. I do.

Q. And you recall the evidence of Mr. McPheator?

A. I do.

Q. Mr. McPheator was asked this question:

"Q. Did you see the ballot being counted?"

"A. I was outside. I did see hundreds of ballots thrown on the floor.

"Q. You are making that statement sincerely and honestly?"

30 "A. I am definitely sincere.

"Q. Do you know who threw them on the floor?"

"A. I don't know who threw them on the floor."

Were ballots thrown on the floor? Were you present?

40 A. I was present at the time the ballots were counted, and I might explain, my lord, that there was quite a number of ballot boxes; I would say at least a dozen, from the various operations where the Union held agreements. There was on each ballot box, scrutineers, and at the completion of the balloting the ballot boxes were sealed and brought to the hall. Every candidate had the right to appoint a scrutineer, and I believe in most cases there were scrutineers of both candidates as far as I can recall. The ballots were counted at the hall in each box by the scrutineers or the returning officer in charge of that box, and I remember myself seeing ballots counted and the ballot was approxi-

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mately that long (indicating). There was, I believe, around 25 names on the ballot, possibly more. I know it was quite a long ballot.

They were laid in piles as they were counted, the scrutineer checked them and when they became so high they laid them on the floor, but that was after they had been counted. When the count was completed, the ballot was put back into the box again. At all times there was scrutineers watching the counting of the ballot.

Q. At the bottom of the page, you were asked this question: 10

"Q. By the way, did you have a scrutineer?

"A. I had Mr. Frank Mole.

"Q. Did he object to the proceedings?

"A. He certainly did.

"Q. What happened?

"Q. Mr. White, when both Mr. Mole and I approached him why this took place, he just laughed and said 'What are you going to do about it.' We said we would like a recount. He said, 'You will have to put up the money to have a recount.' " 20
Do you recall that conversation?

A. No, I recall part of it. There was no objection made to me, outside the fact that I had nothing to do with the election. I was not an officer in charge of the election and any complaints that were made to me would be made to an improper source. However, when the final results were tabulated, as I say, the totals from the various operations was put into the adding machine and was added up. No one knew what the total was going to be until it came out.

Q. Would there be more officers elected to that particular office on the same ballot? 30

A. Oh yes. There is a copy of the ballots in here. I would say there was twenty or possibly more names on the one ballot.

Q. But for different officers, that is what I mean?

A. For different officers, yes.

Q. There is a president, a vice-president and all the different officers on the same ballot?

A. That is right.

Q. Were any complaints made by anyone, except the evidence which you have heard here of Mr. McPheator about the conduct of that election? 40

A. I never heard any complaints about the conduct of the election, but Mr. McPheator, when the tabulation came out

of the adding machine, stated that he wanted a recount. I believe there was slightly over one hundred votes below Mr. Caron, while Mr. Henderson was approximately one hundred votes more than Mr. Stewart. I told Mr. McPheator that I have no authority to order a recount. That is a question of the general meeting.

Mr. Johnson: I object to this witness giving evidence about the number of votes unless he knows it of his own knowledge. He was not a returning officer. How does he know that? He may have got the knowledge from counting them afterwards, but . . .

10 Mr. Burton: Well, my lord, nothing turns on that.

The Witness: The result of the ballots are read to the general meeting anyway.

Mr. Johnson: Q. But surely not the number of votes for the different . . .

A. That is correct. I believe we have the ballot right there with the final tabulation.

The Court: Q. You were present when they were read out?

A. That's right, my lord.

Mr. Burton: Q. Was any recount asked for?

20 A. Not in a general meeting.

Q. Mr. McPheator went on, and at page 295 he made this statement with reference to calling a meeting:

"Q. You said Mr. Mole called the meeting because what he wanted was to have a set of officers which would—I have forgotten the words—a set of officers who . . .

"A. No, he wanted a slate of officers that would run the Union in honest upright fashion and give every man the right to free speech and thinking, a privilege we were certainly denied in this Union."

30 Now, what have you to say as to that, Mr. White?

A. At no time have I ever seen any member denied the floor, when they were in order. A lot of members, possibly not realizing that they are out of order, have been requested to take their seat and bring the matter up under the proper order of business, but I do know at this particular time in the meetings there would sometimes be ten or a dozen on the floor at one time and a member would get the floor, be recognized by the chair and start to speak and there would be shouts to sit down and name-calling was carried on, and the points of order, points of
40 privilege and all this sort of thing, and the chairman was forced to rule those people out of order.

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I might say that Mr. McPheator was one of the men that was continually getting up and creating this disruption, claiming the floor when he had no right to the floor. The procedure in the Union is the same, I presume, as anywhere else, that a man must be recognized by the chair and he has the floor without interruption.

Q. What would be the maximum number attending a meeting of the Union?

A. At that particular time there is meetings that would run well over 1000. 10

Q. Now I come to the evidence of Mr. McPheator in reference to the assault of Kuzych which has been dealt with in this case, and I read from page 281. This is on direct examination, about line 10, my lord. This is Mr. McPheator, in chief:

"Q. Now, I neglected—you have given evidence previously about some occasion in which Mr. Kuzych was ejected from a meeting. Do you recall a meeting of February 19th, 1945?

"The Court: Is that the meeting at which the report of the Trial Committee was made?

"Mr. Locke: Q. The meeting at which the charges were 20 preferred?

"A. Yes.

"Q. You recall that meeting?

"A. I do.

"Q. Tell the court of any incident that occurred at that meeting.

"A. Well, that was the evening that Mr. Kuzych was man-handled.

"Q. Yes, what happened then?

"Mr. Burton: I am sorry, what did he say? 30

"Mr. Locke: Q. Did you say man-handled?

"A. Yes.

"Q. Who took part in it?

"A. Mr. William White and a fellow by the name of Mc-Sween.

"Q. What happened?

"A. They practically threw him down the stairs.

"Mr. Burton: What was the date?

"Mr. Locke: February 19th, 1945.

"Q. Do you know the date? 40

"A. That was the meeting of February, 1945.

"Q. How many meetings were there in February, do you know?

"A. The usual two meetings per month unless we were notified otherwise.

“Q. Were there any other special meetings in that month of February that you recall?”

“A. I can’t recall.”

Do you recall that evidence?

A. Yes, I do.

Q. And you gave evidence yesterday yourself with respect to the altercation which resulted in an action before Mr. Justice Coady. What was the date of that meeting?

A. February 27th.

10 Mr. Burton: The record itself shows that, I think, my lord.

Mr. Johnson: He has agreed that it was the 27th.

Mr. Burton: Q. On two or three occasions McPheator said it was the 19th. Was it a morning meeting or evening meeting?

A. The morning meeting of February 27th. At the meeting of February 19th, Mr. Kuzyeh was asked to leave the hall and he left the hall without any interference.

Q. Was he man-handled on February 19th?

A. No.

20 Q. And the answer of Mr. McPheator is, “Well, that was the evening that Kuzyeh was man-handled,” and you say that is not correct?

A. That is not correct.

Q. Did you take part in the Kuzyeh trial?

A. No, I took no part. I sat in on the trial as a counsel for the Union at the request of the president of the Union. However, I don’t think I said one word during the trial. I took absolutely no part in it.

Q. At page 216, Mr. McPheator says this—no, Mr. Kuzyeh. I am sorry. That is in the other volume at page 216, my lord:

30 “Q. Do you not think a union member’s oath—of his obligation as a union member—do you not think that is binding?”

“A. Well, you see, I was not dealing with the ordinary union member; I was dealing with Mr. White and his associates, and on them it was not binding, at least, it gives that appearance.”

Had you ever given Mr. Kuzyeh any occasion to make such a statement in reference to yourself?

40 A. Not to my knowledge. I don’t think in all the time I have known Mr. Kuzyeh that I have spoken more than a dozen words to him. I cannot recollect ever holding a conversation with Mr. Kuzyeh, and at that time, as I say, I was still the business agent of the Union.

Q. Mr. Kuzyeh says that the oath of obligation is not binding on you. What have you to say about that?

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A. I don't know how he arrives at that conclusion.

Q. What do you say as to his allegation about Mr. White and his associates? Did you have associates?

A. Well, I certainly was associating with all the members of the Union.

Q. Did you have any faction or anything of that kind which took any political action in the Union?

A. Absolutely not.

Q. Did Mr. Kuzych have a withdrawal card when he applied for membership in the Boilermakers' Union, a withdrawal card from a previous union? 10

A. Not to my knowledge. It was not present, if he had one.

Q. Did you make investigations to ascertain that?

A. Yes.

The Court: Q. Has it been presented to you?

A. I beg your pardon?

Q. Was a withdrawal card—would a withdrawal card be presented to you?

A. It would be presented at the time he made application to join the Union. 20

Q. But to you, as business agent?

A. He did not make application to me, my lord, but at this particular time there was quite a discussion. Mr. Kuzych did not wish to join the Union, and he eventually did, but to my knowledge he had no withdrawal card.

The Court: You had better lay a foundation.

Mr. Burton: Q. Would the withdrawal card be retained by the Union, if he had any?

A. Yes.

Mr. Johnson: My lord, the examination is leading, to start with, and my learned friend has not yet qualified this witness as being either the business agent in 1943, when the plaintiff applied apparently for admission, or later in 1942, and he certainly has not laid any foundation for the business agent knowing anything about this matter. 30

The Court: Yes, lay the foundation first.

Mr. Burton: I ask this question again, and don't answer until we have a ruling.

Q. Would a withdrawal card from a previous union be retained by the Boilermakers' Union if it was presented? 40

The Court: Lay the foundation of this witness's knowledge first, Mr. Burton.

Mr. Burton: Q. As president, do you know the internal arrangement of the Union in reference to the acceptance of mem-

bers?

Mr. Johnson: My lord, if I may intervene, it is obvious from what has gone before, I think, that the by-laws of the Union have changed considerably from time to time. At one stage this Union was a chartered local union with the Canadian Congress. Later on they purported to pass by-laws and during the past war periods there was a change all through. This is a general question, my lord . . .

10 Mr. Burton: Well, there is nothing in any of the by-laws, my lord.

The Court: I think he can ask this witness if he is aware of the practice as to whether withdrawal cards are presented and retained.

Mr. Burton: Q. Do you know whether or not it is the practice of the Union to retain withdrawal cards from other unions when a member applies for membership?

A. That is correct. They are accepted in lieu of initiation fees, and upon deposit of a withdrawal card they are issued a card in the Union in payment of one month's dues of the current
20 month.

Q. Have you searched the record of Mr. Kuzych?

A. Yes.

Q. Was there any withdrawal card?

Mr. Johnson: My lord, I don't know what this leads to. Is he trying to shake the foundation of the membership?

Mr. Burton: Well, if my friend would allow me to decide—I have a purpose in mind in which I do not wish to disclose.

Mr. Johnson: Well, what proof is that, that he searched the record?

30 The Court: No evidence has been given so far that he had a withdrawal card from another union.

Mr. Burton: That is true, my lord. I think my learned friend will admit it.

Mr. Johnson: I think it goes to the question of membership. I thought that was something that had been agreed upon long ago.

The Court: Yes, it is admitted that he became a member.

Mr. Burton: Will my friend admit that he did not have a withdrawal card?

40 Mr. Johnson: I do not think it is relevant.

Mr. Burton: Well, I must insist on this, my lord, if I can get it in.

The Court: You are trying to show that the man was not a non-union man?

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Mr. Burton: His evidence was, my lord, that in his present condition he is unable to join another union because he does not have a withdrawal card from this one. I did not wish to disclose that until I had the evidence, but I have it now. He was not refused admission to this one and he can join another one and there is no necessity of his being out of work.

The Court: I think you can ask that.

Mr. Burton: Q. You searched the record of Mr. Kuzych, did you?

A. Yes. 10

Q. Did he present a withdrawal card?

A. Not to my knowledge.

Q. Now, as you are a union man, the president of this one, what have you to say as to the question of the delay—the ability of a union member to take a job in an open shop?

Mr. Johnson: What is meant by that?

Mr. Burton: Q. Are union members entitled as union members to take jobs in open shops?

A. Certainly.

The Court: Will you wait a moment, please? Yes. 20

Mr. Johnson: My lord, I was going to object to the form of that question, because the position of the plaintiff after he was purportedly expelled from this Union is not that of a union man seeking employment in a shop. It was an expelled member of the Union seeking employment. I submit that my learned friend cannot put a hypothetical question unless it is relevant to this issue.

The Court: Repeat your question, Mr. Burton.

Mr. Burton: Q. Let us take the next occasion. Is it possible for a union man to work in the West Coast Shipyards? 30

A. Yes.

Q. And your Union has no bargaining arrangement in the West Coast Yard?

A. Oh yes. At the present time we are a certified bargaining agent for practically all the operations there, in fact.

Q. Well, I mean at the time Kuzych was expelled. Was that the same position?

A. We had the bargaining agent for a number of the operations, but not the welders.

Q. As far as the welders are concerned, would that be classed as an open shop? 40

A. That was under the certification of the United Welders and Cutters at that particular time, an organization that is defunct at the present time.

Q. Would it be necessary at that time for a member to be a member of that union in order to work in that yard?

A. No. It was an open shop, or rather, a maintenance of membership agreement that was held there, and there was no compulsion on anyone to join a union. They could join if they felt like it, or refrain from joining.

Q. Mr. Kuzych gave some evidence as to working a continuous seven day week. Was that possible?

A. No. At that time they had a seven day continuous production plan, whereby the employees took the seventh day off on a staggered arrangement. Possibly their day off might be Monday for a certain group, Tuesday for another group, and particularly for the welders it would be more impossible for them than anyone else to work seven days a week, on account of the number of the machines available. There was one man to a machine, and if a man came in on his day off there would be no machine for him. By the way, that went out in 1945, the seven-day plan.

Q. What is the rule in the Union as to the question of a majority vote?

A. Majority rules at all times.

Mr. Johnson: The by-laws surely speak for themselves.

Mr. Burton: All right.

Q. What are the functions of the guard and warden?

Mr. Johnson: That is set out in the by-laws, too.

Mr. Burton: Q. Kuzych gave evidence that he was taken by the lapel of the coat by Clarke. Whose function would it be to escort him out, if it were necessary?

A. The guard or warden, or both.

Q. With reference to the by-laws here, a lot of evidence has been given as to their presentation to the meeting. Were you present at meetings to which the by-laws were presented?

A. I was.

Q. And were you present at the meeting, for instance, of August 7th, 1945, when they were presented?

A. That is correct.

Q. What have you to say as to the question of the draft by-laws being made available to the members of the Union?

A. Draft by-laws were available to every member of the Union. They were advertised in the "Main Deck," that is there were statements in the "Main Deck" advising the membership that they were obtainable, and I personally took a carload in my own car over to the North Shore yards and placed them on the table underneath the clocks for the membership to obtain when

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they were punching out. I done that myself.

Q. And would there be any necessity for the Union members picking up one of those drafts to return them to the Union?

A. None, whatever.

Q. You heard McPheator's evidence to the effect that he would not be allowed to obtain a copy of the draft by-laws?

Mr. Johnson: Well, I don't know that he said that.

Mr. Burton: Well, I have to ask that later on.

The Court: He says they could keep their copy.

Mr. Burton: Q. At meetings of the Union at which the 10
 by-laws were presented, were copies available?

A. Yes, they were placed on the chairs in the hall, and also a man at the door was distributing them. I remember that. Any member that did not have one could go to the man at the door and get a copy.

Q. Was any reference made to the question of whether or not they should leave them in the hall?

A. No.

Q. The members were not requested to leave them in the 20
 hall?

A. No. There would be no use requesting them to do that when they had already been distributed on the jobs.

Q. Now, you had an agreement with the North Van. Ship Repairs in 1940, which is an exhibit here. As a union—has the Union subsequent agreements of a similar nature? Have they entered into similar agreements.

A. That is correct.

Q. What is the policy of the Union in dealing with proposed agreements, as far as the membership is concerned?

Mr. Johnson: What is the policy? Are you talking about 30
 what happened before 1945?

Mr. Burton: Q. What is the policy since you were a member of the Union?

A. The policy was, and still is, in any contemplated agreement there is a meeting called among the employees affected and they make their proposals as to working conditions, union security, wages and various other things that come up, to make up the agreements. A standard agreement is not feasible. It stands to reason that they must have the opportunity to take up their own particular job problems. 40

For instance, a steel yard agreement would certainly not be applicable at a steel and wire company, for instance, where a railway plant is certainly different to a steel plant. The operators are not familiar with all these working conditions and the only way they can draw up a satisfactory agreement is to have

the employees tell them what they want in the agreement, and all these things are under discussion; they are all subject to discussion.

Q. One further question and I think I am through. Were the by-laws approved in final form by a meeting of the Union?

A. They were.

Q. And can you tell which meeting?

A. On August 7th.

Q. And you have seen the minutes or heard the minutes referred to of a meeting of August 21st, a morning meeting?

A. Yes. That would refer to the question of the dues becoming effective on September 1st.

Q. And do you say that the morning meeting had adopted the by-laws in final form and also the night meeting?

A. That is correct.

Mr. Johnson: When?

The Court: Q. On August 7th?

A. Yes.

The Court: Q. There were two meetings held on that day were there?

A. Yes, my lord.

Mr. Burton: Q. Reference has been made to the time when article 7, sub-section 7, was presented to the meeting. What have you to say as to that?

A. In article 7, sub-section 7, that was an amendment from the floor and it was discussed at the meeting. As I recall, there was not a great deal of discussion on it. It was included in the draft copies and I know it definitely was included in the discussion before the by-laws were ever adopted, and article 7, sub-section 7, is almost the same as in Roberts' Rules of Order, I believe, in article 13, whereby the meeting has the right to exclude or expel anyone from the meeting, and I think that was the basis of it being included in the by-laws, because practically the same article was in Roberts' Rules of Order, revised.

Q. As president of the Union, was it your duty to adopt Roberts' Rules of Order when necessary?

A. That was in accordance with the by-laws. Wherever it is not inconsistent with the procedure, Roberts' Rules of Order shall apply.

Mr. Johnson: I object to that question. This witness was never president during the relevant time. That should be made quite clear. He was only a Union member . . .

Mr. Burton: Q. Was it the policy of the president . . . ?

The Court: Well, how can he say that? He cannot say what was in the president's mind.

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Mr. Burton: Well, was it done?

The Court: That is another thing.

Mr. Burton: Q. Was Roberts' Rules of Order used by the Union and particularly by the president in conducting the affairs of the Union during the time, for instance, that the negotiations were in progress when by-laws were prepared?

A. That is correct. It was constantly referred to before the by-laws were adopted, and in fact, there is a reference to Roberts' Rules of Order in the final draft of the by-laws stating that it shall apply wherever it does not conflict with the by-laws of the Union. 10

Q. Were you at a meeting in Athletic Park which has been referred to here?

A. Yes.

Q. And the evidence was that Mr. Stewart was elected?

A. That is right.

Q. How many would you say were present?

A. I believe there was maybe at that time over six thousand members. At that particular time I was working on the second shift in Pacific Drydock and the entire membership of the Marine Workers left the job and went out to the meeting en masse. 20

Q. Now, Mr. Kuzych and Mr. McPheator both, I think, gave evidence to the effect that Dave Clarke ejected Kuzych from the meeting. Did you ever see Dave Clarke eject him?

A. No. Dave Clarke never was a warden or a guard of the Union, and on one occasion I did see Mr. Kuzych escorted out of the meeting, but that was by Dave Jansen, who was the elected guard of the Union, and at no time did Clarke ever escort Kuzych from a meeting.

CROSS-EXAMINATION BY MR. JOHNSON:

30

Q. Mr. White, you were a member of this Union in 1941?

A. That is right.

Q. And you were then, I think, a welder?

A. A burner.

Q. You were never a welder?

A. Yes, I was a welder. I held a government certificate for pressure welding on high pressure vessels.

Q. Well, we don't need to go into that.

A. I just wanted to establish the fact of my ability as a welder; at least, that I am also a welder. 40

Q. All right, but you were also shop steward?

A. That is right.

Q. And during 1943 what were you, a shop steward or a business agent?

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- A. Both; shop steward at the beginning of 1943 and business agent—I think I was elected business agent in April or May.
- Q. And a business agent is a salaried official?
- A. That is right.
- Q. The business agent and the secretary-treasurer are the two salaried officials of the Union?
- A. That is right.
- Q. And which is the more lucrative position?
- A. The secretary-treasurer draws the higher salary.
- 10 Q. Are they both full-time positions?
- A. That is right.
- Q. And you would say, then, that the secretary-treasurer's position is more important, as it carries a higher salary?
- A. Well, that is a question of relativity: They are both important jobs, but I believe a secretary has to have the greater ability in handling finances and books, etc., of the Union.
- Q. And I suppose a business agent has to be a better talker?
- A. Well, he has to do considerable arguing.
- 20 Q. You were elected in 1943 as business agent and you were again elected in 1944, or were you?
- A. I am not sure whether I was elected. I believe in accordance with the by-laws that a business agent, when elected, serves continuously until he is challenged or the membership wishes to dispose of his services.
- Q. There were not any by-laws in 1943, were there? You did not know necessarily whether or not you were working under Roberts' Rules of Order or something else?
- A. That is right.
- 30 Q. And it was not until August, 1944, that the by-laws in the present form were put through and passed?
- A. That is right.
- Mr. Burton: There is one question there that we perhaps should go into. You were operating under rules from the C.C.L.
- Mr. Johnson: Well, we will find out.
- The Witness: We were operating under the Canadian Congress of Labor Constitution and Roberts' Rules of Order. They were in a state of flux in 1943.
- Q. And 1942?
- A. No.
- 40 Q. Well now, in 1942 there had been some break-up of the C.C.L., had there not?
- A. No, not to my knowledge. In 1942 Matt Mills was president of the Union, and in December, 1942, when Mr. Stewart was elected, then that was the time that the trouble began; but

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the new officers would not take office until the first of the year, January, 1943, so actually there was no dispute with the Canadian Congress of Labour until, at the very least, the latter part of the year.

Q. During the latter part of 1943 you were business agent?

A. That is right.

Q. During 1944 what position did you occupy?

A. Business representative; business agent.

Q. During the whole of the calendar year in 1944?

A. That is right. 10

Q. I understand that you had an entre to the executive?

A. That is right.

Q. You sat in with the executive at all meetings?

A. Yes.

Q. All meetings?

A. Yes.

Q. Every week?

A. No, I don't think that the executive met every week.

Q. Well, whenever they did meet, you were there?

A. Yes, I had to go in and give a report on the activities, 20
and there was generally a number of points . . .

Q. We don't need to go into that. I just want to find out whether you were present at all meetings.

A. Yes, as far as I recollect, I was.

Q. And you would stay throughout all meetings?

A. I am not going to say categorically that I would come in at the start of every meeting and stay the entire length of the meeting, but I know the procedure was and still is, that the business agent attend the executive meetings.

Q. If they attend the meetings, presumably it is under 30
instructions of the executive, then?

A. Well, it is just taken for granted, as far as I know. When we still have our executive meetings, the business agent is not instructed to attend. He goes there as an executive member.

Q. And he either goes to make a report or he goes there because he is expected to remain there until the end of the meetings. Now, which is it?

A. I would say possibly both.

Q. If he comes to listen, then, he could stay for the whole 40
meeting?

A. They generally do.

Q. And did you?

A. As far as I can recollect, I did. I cannot say, I cannot swear, that I stayed at every meeting.

- Q. Did you attend all regular business meetings of the Union?
- A. Yes.
- Q. At morning and evening?
- A. Yes, because I had to make reports at morning and evening meetings.
- Q. You stayed during those meetings?
- A. Yes.
- Q. And you were never sick on any occasion?
- 10 A. Not to my recollection.
- Q. And attended all special meetings?
- A. Yes.
- Q. And attended meetings of committees?
- A. I would not say I attended all committee meetings. Unless I was on that particular committee, I would not attend it.
- Q. Were you on any committees in 1944?
- A. I cannot recollect.
- Q. Were you on the By-laws Committee?
- A. No.
- 20 Q. Did you attend any meetings of the By-laws Committee?
- A. No, not that I can recollect.
- Q. So your knowledge of the passings of the by-laws is confined entirely to what went on at the general meetings, is that right?
- A. That is right.
- Q. And in that connection you say that draft by-laws were taken by you on one occasion and put under the clock in . . .
- A. That is true.
- 30 Q. And presumably that was very early, when the first draft was made?
- A. I believe it was. I cannot state the date.
- Q. Well, you could not even state it within months, could you?
- A. Yes, I could.
- Q. Then state it.
- A. The by-laws were discussed between March and August. It was certainly some time during that period.
- Q. Between March and August?
- 40 A. Yes.
- Q. And that is as close as you can get to it?
- A. Well, I wouldn't care to state any particular month, but I do recollect taking the by-laws. There was two large bundles, and I took them over and distributed them in both the North Shore yards.

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Q. And I suggest to you that that was one of the early drafts, if not the earliest?

A. I wouldn't say it was.

Q. Had there been any changes?

A. I wouldn't say whether they were revised editions or not.

Q. If I suggest that they were made available to the members, that they were the preliminary-draft by-laws before they had been discussed, would you . . .

A. Well, I couldn't answer that question. I presume likely 10
—I believe maybe you are right.

Q. That would be the thing to expect wouldn't it?

A. I believe it would, but as far as stating that they were the first drafts, I don't recollect, although I would presume that they were.

Q. And that was just the one occasion when you took the by-laws over?

A. That is right.

Q. And you did not have to do it on any other occasion?

A. No. 20

Q. Or make the members acquainted with any changes in the by-laws from time to time?

A. The members came to the meetings.

Q. So if they did not go to the meetings, they did not know what was going on?

A. That is true.

Q. And at the meetings, did they have a chance to see copies of the by-laws from time to time?

A. I presume so. They were read out.

Q. These copies that were laid on the chairs in meetings, 30
were they brought up to date or not?

A. Well, there were revised copies.

Q. Did you keep any copies?

A. No.

Q. Are you able to show what amendments were made to these articles as they passed through and when those amendments were made?

A. No, not all of them, but I did know the controversial . . .

Q. You know that article 7, sub-section 7, was controversial?

A. That's right, I do. 40

Q. And you know it was fought—was it fought through vigorously?

A. No, there was very little opposition to it.

Q. When did it first come before a meeting?

- A. I cannot state the date.
- Q. You could not state it within months, could you?
- A. Well, it was some time during the summer, that is as near as I can tell you.
- Q. During the late summer or early summer?
- A. I could not say. I don't know what meeting that that came up at. I do know that it came up, but as far as recollecting the date I couldn't state what date it came up.
- Q. Did it come up at a morning meeting or evening meeting?
- 10 A. It would be discussed at both meetings, but it was the evening meeting that I recollect it came up at.
- Q. You say there was an amendment moved from the floor?
- A. That's right.
- Q. Who moved the amendment?
- A. I have no idea.
- Q. Was it one of the Executive Board? You have no idea?
- A. No, I have no idea.
- Q. And you cannot tell me when it was?
- 20 A. Not the date.
- Q. Or the month?
- A. Or the month.
- Q. All you can say is it was some time in the summer, and it might have been the early summer and it might have been late summer?
- A. Well, it was sometime during that period. That was approximately five years ago, and to the best of my recollection it was in the summer.
- Q. Can you tell me what relation it bore chronologically to the other amendments? Was it one of the early amendments or not?
- 30 A. How do you mean?
- Q. I mean, was it one of the early amendments that were made to these by-laws as they went through the meeting, or was it an amendment made at the last meeting?
- A. Oh no.
- Q. What do you mean by that?
- A. I know it was not made at the last meeting.
- Q. Well, was it made very shortly before August 7th when you say these by-laws were passed?
- 40 A. It could have been.
- Q. Do you honestly record what passes—is this a record of the passing of these articles through the various meetings as stated in these minutes that have been read from time to time at this trial?

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A. As near as I can recollect, that is a record of the minutes.

Q. Well, yes, but is it a record of what happened at the meetings?

A. Yes.

Q. A true record, as far as you know?

A. Yes, as far as I know.

Q. And where, in this record, there is a statement that on June 5th, 1944, articles 1 to 9 were read to the morning meeting and approved by the morning meeting, that must mean articles 1 to 9 in the final form. You agree with that, would you, except where they were changed by a later amendment? Would you agree with that?

A. Pardon?

Q. Would you agree with that?

A. Well, yes, I certainly would agree with it, but they— if the minutes stated they would be read, I have no reason to disagree with the minutes.

Q. I say, the articles in the final form.

A. I couldn't say whether they would be in their final form or not. For instance, if they were read at the morning meeting and adopted, and then went to the night meeting and were revised, they would have to go back to the morning meeting again.

Q. Well, of course they should. And if that had happened, then there would be a record in the following morning meeting, wouldn't there?

A. Not necessarily.

Q. Why not?

A. As I say, the Union membership, they are not legal minds, and I think the best they can do is to have the facts read out at the previous meeting, and they are asked if there are any errors or omissions, and, if there are not, it will be adopted, and I would say there are many, many oversights.

Q. They might not be legal minds, but they are honest minds?

A. That's right. Every member had an opportunity to discuss the by-laws. They were strictly above board.

Q. And they record that on August 7th, for instance, there was an amendment to bring in the change in the function of the Political Action Committee. You heard that read yesterday?

A. I don't recall it, but if it is there I guess it was read.

Q. Now, that was an important change, wasn't it? That was an important committee?

A. It is an important committee, yes.

Q. And there must have been some reason to change that article at that time?

- A. I presume so.
- Q. You don't remember?
- A. I don't recall the discussion on the Political Action Committee.
- Q. And you do not know when it occurred?
- A. The minutes say . . .
- Q. I know, but you do not recall?
- A. If you ask me what date, I could not tell you August 7th.
- Q. And you do not remember any record of this change
10 made, that the change was made in Article 7, sub-section 7?
- A. No.
- Q. You cannot tell me whether it was made before or afterwards, can you?
- A. No. I would say it would be before, because the by-laws were adopted on the 7th, but I think I have already stated, I cannot give you the date.
- Q. You say it must have been before?
- A. That is right.
- Q. Before what?
- 20 A. Before August 7th.
- Q. You mean before the change was made in the Political Action Committee article?
- A. Yes.
- Q. Yes, it must have been, because you are reasoning back, are you not?
- A. That is true. The by-laws were adopted on August 7th, so any amendments to article 7, sub. 7, must have been made prior to August 7th.
- Q. Of course. But you cannot tell me exactly . . .
- 30 A. I have already said I cannot give you any dates.
- Q. And you cannot tell me, then, when the morning meeting finally passed these by-laws, can you?
- A. I believe August 7th.
- Q. Well now, the minutes state August 21st, don't they,
- A. Yes, I know.
- Q. And you say the minute is wrong in that connection, do you?
- A. No, I don't say the minutes are wrong. There was a question of the dues to become effective at that particular time
40 and a large number of the members had already paid their dues into the Union. I think the dues were increased 25 cents and we could not ask them that had already paid for that August to pay another 25 cents, so therefore it was decided that the first of September the dues increase would be . . .

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Q. Well, that is all settled in Exhibit 21, which you have probably seen, the minutes of the morning meeting of August 21st, and you will notice there are three separate motions, and the last one, that you have just been referring to, I think is the motion regarding the by-laws becoming the rules and regulations of the Union. I presume you agree that only had to deal with the date that the increased dues became effective, is that right?

A. As far as I can recollect, that was the only reason.

Q. So that this minute is not quite correct in that regard?

A. Well, that is the one—no, that was pertaining to the 10 dues alone.

Q. What about these other motions? You can see here what they said.

A. Yes, I can see what they said. I believe that the by-laws were read at the morning meeting of August 7th and adopted and at the night meeting also.

Q. Well, the morning minutes of August 7th, Exhibit 19, state (reading). "Moved, seconded and carried that the regular order of business be suspended . . . and moved, seconded and carried that article 8 . . . be approved." 20

A. Yes.

Q. Now, in spite of that, the minute which you—do you still say that the morning meeting of August 7th passed all the articles, all the by-laws?

A. As near as I can recollect, that is the way it appeared to me.

Q. Well, that is the way you think it should have happened, because the executive on the following day passed the by-laws and made them effective, didn't they? 30

A. I presume they did.

Q. Were you not there?

A. No, I don't think I was at that meeting. That would be an executive meeting. That was a special meeting of the By-laws Committee and the Executive Committee.

Q. Yes, and the executive, and you did not attend it?

A. That's right, but it was not a regular executive meeting to prepare recommendations for a meeting or anything of that nature.

Q. Well, I take it that your recollection—you would not set up your recollection as to the passing of these by-laws against 40 the actual minute, would you?

A. No, my recollection is—as I say, it is four or five years ago, and I do know that everything was open and above board. There was no attempt made to put something across.

Q. Well, the point is, whether the matter has been dealt with legally, and what I am suggesting to you is that the minutes show that the morning meeting went quite independently of the evening meeting in passing these by-laws?

A. Possibly.

Q. Well, isn't that what happened?

A. Well, that is the only way they could have been dealt with.

10 Q. Now, I don't think we need to go into the minutes any more than this, if you will agree with me that what perhaps should have happened is that the morning meeting should have discussed a number of articles, say articles one to nine, and dealt with them and passed them, and the evening meeting of the same date should have dealt with the same articles and stopped there, do you see?

A. No, that is impossible.

Q. Why?

20 A. For the simple reason that a discussion, we will say, on a certain article, in the morning meeting there would be possibly very little discussion and you could proceed and adopt quite a number of articles. At the evening meeting they may be debated, and until—maybe only half the number of articles could be discussed and adopted that was discussed at the morning meeting.

30 At this particular time I believe our Union was the only union that held morning meetings. The rest of them had just the one meeting in the evening. The morning meeting was in order to give the members a chance to have a voice in their Union and if there was not a quorum there could be no meeting, and if the night meeting went ahead and discussed certain articles and passed them and there was no quorum at the morning meeting, they would be lagging far behind, and I believe that is what happened on one occasion—the first of July, was it?

Q. Well, the point is, that this was all one meeting but it was held in two sections?

A. That is right.

Q. And it was the intent of the executive that no members who attended and voted at the morning meeting should attend and vote at the evening meeting?

40 A. That is right. The intention was to have the by-laws available and discussed by any member of the Union. As I say, this was not done with legal points in view. The main thing was that every member of the Union had an opportunity to discuss these

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by-laws and take part in them, and they were never challenged by any member of the Union.

Q. Well, they are being challenged now.

A. That is true.

Q. And what I am suggesting to you is that the records in the minutes are substantially correct.

A. Possibly they are.

Q. It is more than that, isn't it? It is probably correct, isn't it?

A. I would not say.

Q. You would not accept Mr. McSween's record?

A. He left much to be desired as a recording secretary, in my opinion.

Q. Yes, and when you came to consider that in the following election, you elected Mr. Shaw, did you not?

A. We elected Shaw, yes, that is correct.

The Court: We will adjourn for five minutes.

(PROCEEDINGS RESUMED AT 12:00 NOON.)

The Clerk: You are still under oath, Mr. White.

CROSS-EXAMINATION RESUMED BY MR. JOHNSON: 20

Q. Now, Mr. White, you are of course familiar with these by-laws?

A. Yes.

Q. Now, I am going to ask you about the ability of an expelled member of your Union to obtain other work as a union member, and I suggest to you that Kuzych, in the position as an expelled member of your Union, would find it extremely difficult to find another position. What have you to say about that?

A. Do you mean his ability as a welder?

Q. No, I don't mean anything of the kind. I mean whether he would be able to obtain membership in another union? 30

A. That would be entirely up to the union that he applied to.

Q. Supposing a man who had been a member of a union that has membership in the Boilermakers' Union in the same circumstances, would he be admitted?

A. Mr. Kuzych was.

Q. No, Mr. Kuzych came to you in 1942, not as an expelled member of a union.

A. My information was that he was expelled from the Hod Carriers' Union, A.F. of L. 40

Q. You don't know whether that was known to the officers of your union?

A. No.

Q. And had any such hypothesis been created and known, I suggest he would not have been admitted as a member of your Union?

A. I don't think that is correct. I know a number of members who were admitted to our Union with an anti-union record from the longshoremen's strike, and they were admitted.

10 Q. We are talking about an expelled member of the union.

A. Yes,

Q. And I suggest to you that if a man applied for membership in the Boilermakers' Union at the relevant time of this action he would not have been admitted?

A. I didn't say that. It would be on his record as to why he had been expelled.

20 Q. Let me refer you to article 6 (3). I will read it to you: "No person shall be admitted to membership who is under suspension by any other bona fide Labor Union or has an unpaid fine or suspension charged against him, or has been expelled for misconduct, unless he first obtains an honorable withdrawal card from such other Labor Union."

A. Those by-laws were not in effect when Mr. Kuzych joined our Union.

Q. I know that, but they were in effect after the 7th of August, according to your testimony?

A. That is true.

Q. And they were in effect when he was expelled?

A. Yes.

30 Q. And I suggest to you that under your by-laws an expelled member of any bona fide union could not be admitted?

A. That would depend on what he was expelled for. To give you an instance, and a fairly recent instance, where a member was expelled from a union for simply voting against the president of the union.

Q. I do not think you need make a speech on the point.

A. That is all I am trying to point out, that it would depend on the reason for his expulsion.

40 Q. You expelled Kuzych for very serious reasons, didn't you?

A. The Union did.

Q. The Union of which you were president?

A. Yes.

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Q. And under those circumstances would you have expelled—tell me, would you have expected any member union to have taken you into membership?

A. That would be entirely up to that particular union. They would have to decide that. They would have to decide that question for themselves.

Q. You will not answer the question, will you?

A. I could not answer for all trade unions, but I will say that with the record of Mr. Kuzych I think it is extremely doubtful.

10

The Court: Q. If he had been expelled from another union for the reasons for which you expelled him, would you accept him?

A. No. Our Union most definitely would not.

Mr. Burton: Q. Of course, that must be only Mr. White's opinion. He may not bind the Union. It is up to the members to accept him.

A. Yes, it would depend on the members.

Mr. Johnson: I am prepared to rest on article 6 (3) of the by-laws.

20

Q. Now how did you happen to be at the door of this meeting when you had Mr. Kuzych removed, or when Mr. Kuzych left at your insistence?

A. What meeting?

Q. There was a meeting at which you were at the door, was there not, when you refused Mr. Kuzych admittance?

A. No, I never refused Mr. Kuzych admittance.

Q. The allegation is contained in paragraph 55-C of the amended statement of claim. (Reading.)

Mr. Burton: Is this evidence you are reading?

30

Mr. Johnson: No, it is the amended Statement of Claim.

Q. Were you at the door and did you stop the plaintiff from entering the regular business meeting on the 17th of July, 1944?

A. No, I advised Mr. Kuzych on one occasion—I don't recall the date, but I certainly never stopped him from going into the meeting.

Mr. Burton: I don't think Kuzych gave any evidence to support that allegation.

Mr. Johnson: Q. Now, I am not able to say exactly what each witness said on what occasion, but I presume the question was asked and the evidence given to support the Statement of Claim?

40

The Court: I cannot recollect it.

- Mr. Johnson: Q. You say there was no such occasion?
 A. That is right.
 Q. There was, you say, an occasion when you had something to do with the plaintiff's attendance at a meeting. When was that?
 A. I don't recall it.
 Q. You do not recall any time?
 A. I don't recall that I had anything to do with the plaintiff's attendance.
 10 Q. Neither stopping him at the door nor conducting him from the meeting if he had already entered?
 A. That's correct. I have never once laid hands on Mr. Kuzych.
 Q. We are not talking about laying hands on him.
 A. Well, you said escorting him from a meeting. I have never escorted Mr. Kuzych from a meeting, then.
 Q. Then we come to the meeting of the 27th of February, and before we deal with what happened then I want to put to you certain questions in regard to the state of this Union at the
 20 time. Now, I think you told my learned friend that there had been a good deal of attempts to disrupt the Union, is that right?
 A. That is right.
 Q. And I think you joined Mr. McPheator and Mr. Henderson and Mr. Kuzych all together in that attempt to disrupt the meeting?
 A. Well, Mr. Kuzych's disruption of the meeting would be outside. There was certainly disruption at the meeting of the morning of February 27th.
 Q. It is—this disruption that you talk about and this confused
 30 turmoil that was going on in the early part of 1945 was not due to Kuzych, the plaintiff, then?
 A. No, it was not.
 Q. It was due, I suggest to you, to another group who did not care particularly for the policies of the group with which you were associated?
 A. No, it was a group that was closely identified with Mr. Kuzych and the only charges that were made at that time was regarding finances, that the funds were not properly accounted for, and it resulted in headlines in the newspaper and various
 40 other things, and these allegations were continuously made. At one meeting, when the secretary of the Shipyard General Workers' Federation, after conducting an investigation into the finances . . .

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RECORD

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Q. You do not need to go into this, do you?

A. I would like to explain this.

Q. Well, I am going to ask you fully, but I do not want a speech from you.

A. Well, I think I should be entitled to qualify that question. You asked if there was disruption and I said yes, and I was telling his lordship what was the cause of that disruption.

The Court: Q. All right, go ahead.

A. At this particular meeting, after those allegations had been made, the Shipyard General Workers' Federation, who 10
charters this local, conducted an investigation into the books and appeared at the meeting to give their findings to the meeting, and at that meeting they were not allowed to give their findings, being simply howled down, and the meeting was adjourned.

Subsequent to this, there was an audit conducted by a firm of chartered accountants and I believe it cost the Union \$1600.00 and the books were found to be correct to a penny. After this, the people who had made these allegations from the floor of the meeting were thoroughly discredited, and the rest of the membership decided there was no cause for these financial ques- 20
tions, and these people were discredited before the eyes of the membership.

Mr. Johnson: Q. Now I want to take you back a bit. Before the elections of 1944, the executive, I put it to you, was dominated by the Communists, the Labor-Progressive Party?

A. No.

Q. You are not a Communist yourself, are you?

A. I do not think I am called on to answer that question.

Mr. Johnson: Well, my lord, may I have an answer to that question? 30

Mr. Burton: I object, my lord, not that I know anything about it myself, but I do not think it is material to this case.

The Court: What way do you suggest it is admissible?

Mr. Johnson: I put it to the witness that the Union in 1944 before the election was dominated by the Communist Party, and I propose to back that up and show that the election was fought on the basis of whether the L.P.P. should continue to operate . . .

The Court: I do not think you can ask this witness as to his affiliation. 40

The Witness: I can reply to that question that that was not the issue. The issue was funds.

Mr. Johnson: Q. Well, we will deal with the issue right now. You probably saw some election material which was put out by the other side at the time, didn't you?

A. Yes.

Q. Now, I want to know whether you still adhere to your answer after looking at that. (Producing a document.)

A. Is this an exhibit?

Q. No, you just look at it.

Mr. Burton: I think my friend should prove the article first.
10 It certainly cannot be proven at this stage.

Mr. Johnson: I am not proving anything. I have a right to do it.

The Court: Yes, I think so.

The Witness: What is your question?

Mr. Johnson: Q. Do you still adhere to the answer you have given me that this election was fought on the matter of funds?

A. Yes.

Q. In spite of what I have shown you?

20 A. In spite of this here.

Mr. Burton: May I see that?

Mr. Johnson: No, you may not.

Q. You told my friend that Mr. Henderson and Mr. Hunter were elected on the basis that when they got in there they were going to clean up the financial situation?

A. That is correct.

Mr. Burton: My lord, may I ask that Mr. Johnson show me the article first before he shows it to the witness? He refused to let me see the other one.

30 The Court: Yes, I think so.

Mr. Johnson: Well, my lord, may I speak to that? I anticipated that there would be a little difficulty to this.

Mr. Burton: Well, if my friend does not put it on the basis of courtesy, I will not ask to see it.

Mr. Johnson: I would like to refer to the authorities, my lord, and it is in Phipson, and I have here the sixth edition, at page 477, where it says (reading): "If the cross-examiner, after putting a paper in the witness's hands, merely questions him, as to its general nature or identity . . . to put it in evidence."

40 Then at page 481 . . .

The Court: If his adversary sees it, he may be required to put it in evidence.

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Mr. Johnson: Yes, my lord, so my learned friend is taking a risk there.

Mr. Burton: On that basis, there are a lot of documents that I could not get in, if I showed my friend some letters. I showed him then and he read them over and took objection. On that basis, they should not go in.

The Court: I do not understand that basis.

Mr. Johnson: Well, there is authority given, my lord, but I have not seen the authority. I was looking at this this morning to see just how far I could go with this matter, my lord. 10

At page 481, I find this (reading): "Nor can a witness be contradicted . . . to your answer." And that is what I attempted to do here.

The Court: Yes, I think you could do that.

Mr. Johnson: That is as far as I went.

The Court: The only question is whether you should show it to Mr. Burton and he says, "I am not insisting."

Mr. Burton: I have never had this happen before, my lord. I put it on the basis of privacy, and if my friend takes that view, then all right. 20

The Court: I think it would be a matter of courtesy.

Mr. Johnson: Well, if it is the practice of the court, my lord, and you feel that I should show it to him, I shall, but I do not feel that I would like to unless I am compelled by some rule of practice.

The Court: I will not insist, if he does not.

Mr. Johnson: Very well, my lord.

Q. We were talking about funds.

A. That's right.

Q. Now, I want you to look at this (producing another 30 document). Tell me . . .

Mr. Burton: For the sake of the record I think it should be said that my friend is showing mimeographed or printed sheets of paper, as far as I can see.

Mr. Johnson: I don't think we need go that far.

Mr. Burton: I think it should be pointed out that what he is showing is a printed or mimeographed sheet.

The Court: I do not think it matters very much what he shows him, if he puts the question in that way.

Mr. Burton: Your lordship might have thought it was a 40 petition or something.

Mr. Johnson: Q. Do you still adhere to your answer?

A. That is true. This is just propaganda. For instance, it refers to a Sick and Death Benefit Fund, and the Union had a very efficient fund at that time; if I recall, I think we disbursed around \$30,000.00 or \$40,000.00 in sick dues that particular year.

Q. The question was, whether you still adhered to the answer that the election was fought on the diversion of funds?

A. That is the key issue, the funds. That was the one that made the three-inch headlines in the paper.

10 Mr. Burton: My lord, are we discussing an election? I thought it was a question of the disruption in a meeting.

The Court: It was the election of 1944.

Mr. Johnson: Q. Yes, 1944, and my learned friend went into it quite fully in chief. Now, at that election, the president, Mr. Stewart, was defeated by Mr. Henderson?

A. That is right.

Q. Who was one of the later disrupters, you would class him?

A. I would not say that as far as disrupting the meeting.
20 I never heard Mr. Henderson speak from the floor of a meeting.

Q. Are you classing him as a disrupter of the Union, not of a meeting?

A. Yes, definitely.

Q. And he was the president, the elected president?

A. That is right.

Q. But elected on this issue?

A. Yes.

Q. But nevertheless there was a Union here of how many people?

30 A. I would say around fifteen thousand.

Q. And that Union had swollen up from 1940, when you joined it?

A. Oh, a great deal.

Q. How many men were in the Union when you joined it?

A. Less than one thousand.

Q. And this was towards the middle of the war, towards the end of the European war?

A. That is right.

Q. And ship building was going on at a terrific rate?

40 A. That is right.

Q. You were working seven days a week?

A. Yes, with one day off.

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Q. I understand that, but my point is that you got a lot of men into that Union, and a lot of these men who came into the Union were not particularly interested in the Union as such?

A. Possibly so, their union experience was limited.

Q. And they did not attend meetings?

A. A great many of them did not. It would be impossible to get a hall in the city that would hold the entire membership.

Q. And I suggest to you that there was a group which ran this Union in the year 1944 which was dislodged in the election which was held in December of that year?

10

A. No, I would not say any group. As far as I knew, the executive and the officers of the Union, they take their instructions from the membership in the usual meetings. It is the membership that conducts the business of the Union.

Q. But there was a slate definitely running against the executive, and Mr. Henderson was one of them?

A. That is true.

Q. And the slate partly succeeded?

A. Yes, on the basis of misrepresentation.

Q. But they got in, no matter what basis it was on, and there was an executive consisting of seven men?

20

A. That is true.

Q. And as soon as they got in—and you were at the meetings all the time?

A. Yes.

Q. You know what happened?

A. I know.

Q. And you know that Mr. Henderson tried to find out from the secretary-treasurer, the state of the financial affairs of the Union?

30

A. Tried to find out?

Q. Yes?

A. Well, he had access to the books himself.

Q. And he was not satisfied with what he saw there?

A. Evidently not.

Q. And as a result of that, Mr. Henderson tried to get something done which the meeting did not approve of?

A. That is right.

Q. He tried to get an audit made?

A. Yes.

40

Q. And after he had resigned, an audit was made?

A. That is right.

Q. And you say you found nothing wrong?

A. Yes, the audit was uncalled for.

Q. It was over the issue of the audit that the resignations took place?

A. Allegedly, yes. Mr. Henderson stated that he took them as a lack of confidence in himself but the general membership meeting rejected his proposition, and Mr. Henderson was in the position after having been elected, that he had to make good at least some of his election promises, and while he could not
 10 point to anything about the funds, all his remarks were of a general nature that he was not quite satisfied, very vague remarks to that effect, which was rejected by the membership and subsequently Mr. Henderson resigned.

Q. And he took with him the first vice-president and the member . . .

A. That's right, the resignations were accepted on the ground of incompetence.

Q. I have that minute of February 27th, and I will read it to you. When did Henderson and Hunter and Downie resign?

20 A. I believe at a meeting of February 22nd.

Q. No, the minutes we have are February 19th. Would it be February 19th?

A. No, I don't think so. I think it was at a special meeting of February 22nd, if my memory serves me right.

Q. And the minutes of that meeting, of course, are not available?

A. I don't know whether they are in court or not.

Q. Well, they are not available, because they have not been produced here. You, as president of this Union, don't know where
 30 they are?

A. Whether they are in the book or whether they are produced in court?

Q. Have they ever been used at any other time?

A. It could possibly be. I think this is the fifth or sixth action that we have been called on to produce minutes.

Q. Well, you haven't any of those . . .

A. No, I have not been in all those actions.

Q. Well, this is a meeting of February 27th, that was a special meeting too?

40 A. Yes.

Q. And you produced the minutes of that?

A. Yes.

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Q. And those minutes stated, in one motion here (reading), "The resignations were read by the chairman to the meeting." Were those the resignations of Henderson?

A. Yes, I presume it would be.

Q. This is Exhibit 33.

A. Well, that is all the minutes said, "Resignations were read by the chairman to the meeting." They could be any resignations and therefore the minutes are not near as explicit or full as they should be. If my memory serves me right, I think Mr. Henderson and the others resigned at a night meeting on February 22nd. His resignation was not made at the morning meeting, and therefore it would be quite in order to read his resignation to the following general meeting in the morning. I presume that is what took place. 10

Q. This was a morning meeting of February 27th and it goes on to say, "During the course of the discussion on this motion, Brother Culhane, secretary of the Shipyard General Workers' Federation, read the transcript of inquiry conducted by the Federation Executive Committee into allegations of the resigning members of the Boilermakers' Union." 20

Those are the three members who resigned?

A. Three of the executive, yes.

Q. And others as well?

A. I believe there was the Warden or something of that nature. I am not sure.

Q. "Following, a brother rose to state that he was in full agreement with the acceptance of the resignation before the meeting, but not on the terms upon which they were handed and therefore proposed the following amendment. Moved and seconded that we accept the resignation on the grounds that those who have resigned are incompetent and irresponsible." 30

That was the motion made?

A. Yes.

Q. And it was carried by 88 to 70?

A. Yes.

Q. So there was a very large minority on that, at that meeting, who still favored Henderson and Hunter?

A. That is true.

Mr. Burton: No, who still favored the amendment. 40

Mr. Johnson: Well, in voting for the amendment, they were voting presumably for a motion which declared these people to resign on the ground of incompetence, and 70 people thought, apparently, that they were not incompetent.

A. That is true. At the time that Mr. Henderson resigned, Mr. Stewart took the floor and spoke to the meeting for about five minutes, asking Mr. Henderson to reconsider his resignation. Mr. Stewart opposed Mr. Henderson's resignation.

Q. And later, charges were brought against those members who had already resigned? They were not allowed to resign, were they not?

A. Pardon?

Q. Were not charges brought against those men?

10 A. Not that I know of.

Q. They were not proceeded with, but they were brought, were they not?

A. Not that I know of. Mr. Henderson left the meeting immediately.

Q. Yes, he was not available and he has not been back to Vancouver since?

A. As far as I know, he has not. I have an idea where he is.

Q. Well, he is in Eastern Canada as far as you know, is he not?

20 A. Well, I could give you my answer if you wish.

Q. Well, if he was available, I would bring him to the trial, Mr. White.

Mr. Burton: Well, if my friend wants an answer as to why he was not available, perhaps we could bring it. I suggest my friend ask for an answer.

The Court: Well, he is not here, anyway.

Mr. Johnson: Q. Let me bring you now to the election of the P. and I. Committee, if there was such an election in January, 1945, and I want to ask you whether you were at the meeting at
30 which these 24 men were nominated?

A. Yes.

Q. January 5th?

A. Yes.

Q. Was that morning or evening?

A. Both.

Q. Who were nominated in the morning and who in the evening?

A. I couldn't say. I have no idea at all.

40 Q. And they were all presumably lumped together, some in the morning and some in the evening?

A. I presume so.

Q. When was Mr. Hendry nominated?

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A. I don't know.

Q. When these nominations were called out, did these nominees get up and signify their intention to run?

A. That is the procedure, although at that particular time there was a very close check kept on the cards. Every member in there had a paid-up card.

Q. Were you at both the morning and evening meeting of January 5th?

A. Yes.

Q. How many were nominated at the morning meeting? 10

A. I could not say.

Q. Was Hendry nominated at a morning or evening meeting?

A. I could not say at all.

Q. These elections were to take place at the second meeting in January, January 19th, is that right?

A. Yes.

Q. And it is the procedure to nominate them again?

A. I believe so.

Q. At the morning or evening meeting? You see what I am getting at? The men who have been nominated at the morning meeting of January 5th, were they re-nominated at the evening meeting? 20

A. No.

Q. I asked you if it was the custom to re-nominate them?

A. If they were nominated at a meeting of the morning of January 5th, then they were re-nominated at the evening meeting, then the recording secretary would state that they were already nominated.

Q. You know that the nominee has to signify his willingness to run? 30

A. That is right. His nomination would not be accepted unless there was a note from him stating that he would accept.

Q. Or he may turn up at the meeting of January 19th and signify his willingness to run?

A. Yes, he should.

Q. And did any do that?

A. I don't recall.

Q. At any rate, there was an election held, presumably?

A. Yes.

Q. By ballot? 40

A. That's right.

Q. Taken at the morning and evening meeting?

- A. Yes.
- The Court: On the 19th?
- Mr. Johnson: Yes, on the 19th, my lord.
- Q. And presumably a declaration of the successful candidates was made at the evening meeting of January 19th?
- A. No.
- Q. It was not?
- A. No.
- Q. When was it made?
- 10 A. It would be made at the meeting of . . . the first meeting in February. You are talking of all the standing committees, are you?
- Q. Now, I am asking you was there a slate of these to be declared?
- A. I don't know.
- Q. Just look at this (producing a document).
- A. I don't recollect.
- Q. At any rate there was an election. Who was the man who received the most number of votes in that election?
- 20 A. Well now, there was a number of committees. Are you referring to any specific committee?
- Q. I am talking about the Press and Investigating Committee?
- A. In the Press and Investigating Committee, I don't recall who received the highest number of votes.
- Q. Whoever it was, he would be declared the secretary under the bylaw?
- A. Not in this particular instance.
- Q. Why not?
- 30 A. According to the legal advice that we received, if there was no elected, they are contributing to the irregularity and confusion that existed between Hendry and Handy.
- Q. You know that the elections were held and the results were published in the "Main Deck", in the issue of February 2nd, 1945?
- A. Yes.
- Q. Yes, the results of these elections were published and the names given. You know that, don't you?
- A. I don't recall it.
- 40 Q. Let me show you this (producing a document).
- A. Yes, that is certainly a statement in the "Main Deck".

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Q. Yes, and do you remember the name now of the man who received the most votes for the Press and Investigating Committee?

A. No.

Mr. Burton: May I ask that this now be marked as an exhibit, my lord?

Mr. Johnson: I have not cross-examined on it.

Mr. Burton: You have asked him to identify it.

The Court: You did identify it when you handed it to him?

Mr. Johnson: Well, I don't mind putting it in, my lord. 10

The Court: It is the Union organ.

Mr. Burton: It is the organ of the Shipyard General Workers' Federation of B.C., which is used as the official organ by this Union.

The Witness: I think there is some confusion here. I think that paper was coming out every two weeks, but between the time of the election of January 19th, between that time — the results would not be announced at that meeting because the vote would not be tabulated before the meeting adjourned, and between that time and the February meeting, which I believe was the 20 5th, they found some irregularity and the committee all resigned, and this here was evidently written prior to their resignations.

Mr. Johnson: Q. It was Gordon Farrington who presumably got this article?

A. He was the reporter.

(FEBRUARY 2, 1945, ISSUE OF "MAIN DECK" MARKED EXHIBIT No. 56)

Mr. Johnson: Q. I propose to read, my lord, just this part: "Elections of the standing committees for the year took up the major part of the morning and evening sessions of the 30 Boilermakers' and Iron Shipbuilders' Union, Local No. 1, at their regular meeting, January 22, in the Boilermakers' Hall."

Then it gives the people who were elected for the different committees, and with respect to the Press and Investigating Committee it says this:

"The Press and Investigating Committee will be responsible for the publication of news, advertising and announcements. The committee comprise Brothers D. Clark, F. Duncan, B. Lewis, O. Braaten, W. Hendry, Gordon Farrington and Tom 40 Bain, the last two being chairman and secretary respectively."

Now, I ask you whether Tom Bain was not the candidate who received the most number of ballots in that election?

A. I could not say that. Evidently that article has been changed before the Union got legal advice.

Q. Now, following this, on the advice of counsel, you say there was an attempt to elect another committee, is that what happened?

A. That is right.

Q. And when were nominations for that called for?

A. On February 3rd or 5th; the first regular business meeting in February.

10 Q. And nominations presumably were called for in the same way?

A. That is right.

Q. And I think you told my learned friend yesterday exactly who was nominated?

A. Yes.

Q. Except for one man that you could not remember, is that right.

A. If you would read the list of names, I would get them. Is Duncan there?

20 Q. No, he was not there before.

A. Well, that is an oversight of mine. I thought I had named eight.

Q. What happened?

A. These were nominated at the first meeting in February.

Q. Did they all accept nominations?

A. I presume they did. I cannot be sure of that.

Q. Some would be nominated at the morning meeting and some at the evening meeting?

A. Yes.

30 Q. And would they stand up then and accept the nominations?

A. That was the general procedure, but actually I don't remember the individuals getting up and accepting or declining.

Q. Tell me how you remember that these particular men were nominated?

A. Subsequent to these nominations there was two more than the required strength of the committee, and the two brothers that were nominated, Forster and McLeod, declined.

40 Q. I think there was some evidence of that, that your counsel attempted to bring in yesterday, but how did you remember, or did you remember out of your recollection the actual names of the other six?

A. Yes.

Q. You remembered those without reference to the people who signed the Trial Committee's report?

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A. That is correct, because there had been considerable interest created in the Press and Investigating Committee, due to the fact that there had to be another election held and there was a number of, I would say, Mr. Kuzych's supporters that was nominated to that committee, who declined nomination.

Q. At the morning and evening meeting of February 5th?

A. Yes, each.

Q. I see. I think you told my learned friend yesterday that there was no election held?

A. That is right.

10

Q. If there was no election held, how could it be valid under your bylaws?

A. Well, I see nothing in the bylaws that says it would be invalid, and I am fairly conversant with those bylaws.

Q. Let me read it to you again, Article 18 (c) 3.:

"Successful candidates for Standing Committees polling the largest number of votes shall be chairmen of such committees and candidates receiving the next largest number of votes shall be secretaries."

Now, how could you elect a secretary to this committee unless you had an election? 20

A. That is very simple.

Q. How?

A. Trade union procedure is, and I can give you many examples of it, that where a committee is elected by acclamation, and where the highest number of votes on that committee would ordinarily be chairman, if no votes or ballot is taken, they elect their own chairman, and just recently I can give you an instance in the Vancouver Labour Council a month or so ago, where the highest man, the man getting the highest number of votes is chairman automatically and goes on the executive board of the Vancouver Labour Council. There was no election. There was only the five members stood and the committee adjourned and elected their own chairman and that man is serving as an executive board member. 30

Q. That is very interesting, but that has nothing to do with this case, because you are under the bylaws and where it does not suit you to follow the bylaws, you adopt some other principle, is that right?

A. Well, I cannot get your inference.

40

Q. I say you cannot have an election unless you take the votes, because you cannot determine who is going to have the highest number of votes.

A. That is not from the . . .

Q. At any rate, that is what happened, these men were elected, you say, by acclamation?

A. That is correct.

Q. Without holding any ballot?

A. There is no need to hold a ballot when there is six positions to be filled and only six nominees for the positions. It would be senseless to take a ballot.

Q. No secretary, but they appoint a secretary?

A. I presume they would.

10 Q. Who was the secretary elected?

A. I think it was Mr. Pearson.

Q. How do you come to that belief?

A. Well, I was not present, if that is the answer you want. I was subsequently when Mr. Pearson was secretary.

Q. Told by whom?

A. The members of the committee, and I also seen Mr. Pearson acting in the capacity of a secretary.

Q. Yes, as a matter of fact, you attended the trial of the plaintiff, didn't you?

20 A. That is right.

Q. And you say now, this morning, that you attended as counsel for the Union?

A. That is right.

Q. And at that time Mr. Stewart had been President, had he not, who gave evidence here, President up until the end of December, 1944?

A. That is right.

Q. And you heard Mr. Stewart saying that there was not any counsel for the Union present didn't you?

30 A. No, I did not hear him say that.

Q. Well, this is the note I have on his evidence:

"The Union was entitled to be represented in certain circumstances but had no counsel.

"No counsel for the Union?

"No."

A. That I presume is legal counsel.

Q. No, we are talking about somebody who represented your Union, because he says that in certain circumstances the bylaw says that the Union may appoint a counsel?

40 A. That is right.

Q. And you say that you were that counsel?

A. Yes.

Q. Were you appointed by a member of the executive?

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A. I was appointed by the President and the acting President. I took no part in the trial. I sat there merely as an observer.

Q. At that time there was not any president?

A. Oh yes, there was.

Q. Mr. Henderson had resigned?

A. Yes, and Mr. Nuttall automatically succeeded him as acting president.

Q. Mr. Nuttall being the second vice-president?

A. That is right. 10

Q. And that is the way you were carrying on, with this executive? There were four members out of seven carrying on?

A. Yes, until there was a subsequent election.

Q. Did you attend throughout this trial?

A. Yes, as near as I can recollect, I sat in on the proceedings. As far as I can recollect I was there during the trial. I am not positive of that, because I took no part in the proceedings, but just sat there merely as an observer.

Q. You were examined for discovery a long time ago, on April 2nd, 1946, actually, and I wonder if you remember being 20 asked this question on discovery, question number 16.

Mr. Burton: Is it in the Appeal Book?

Mr. Locke: Yes. Page 315 of the Appeal Book, question 16.

Mr. Johnson: Question 16.

“Q. Were you at the trial?

“A. Some of the time, I believe I was.”

Was that a question asked you and the answer given?

A. I presume so.

Q. Were you there some of the time or all of the time?

A. As near as I can recollect, I stated most of the time, but 30 that is some number of years ago.

Q. If you were there as counsel for the Union in an official capacity, you would be there all the time, wouldn't you?

A. Not necessarily, no.

Q. Why not?

A. Well, if I did not deem it was necessary, I might have gone out for some various things. I have nothing to hide on this. I took no part in the trial at all and I am giving the answers as near as I can recollect it and that is the way they appear to me now.

Q. The trial took place, of course, after this fracas that had 40 occurred on February 27th, didn't it?

A. Yes.

Q. Shortly afterwards, and at that time I suggest that you manhandled the plaintiff, on February 27th, what do you say to that?

- A. I say that is incorrect.
- Q. I suggest, to give particulars of what you did, that you kicked the plaintiff?
- A. That is incorrect.
- Q. And was seen by one of the witnesses, Mr. McPheator, who was present at the time, to do so?
- A. That is incorrect. Mr. McPheator's statement says it was February 19th, at the night meeting, and this took place in the morning meeting.
- 10 Q. Well, whenever it was, there was only the one meeting at which there was this fracas?
- A. That is right.
- Q. And it was a special meeting?
- A. That is right.
- Q. And the meeting of February 19th was a business meeting?
- A. Yes, so obviously, Mr. McPheator did not see what he stated. He had the wrong date and the wrong meeting.
- Q. Yes, but not the wrong man, Mr. White?
- 20 A. He had the wrong man also.
- Q. Then there was somebody who kicked Mr. Kuzyeh?
- A. Possibly, but I certainly never touched Mr. Kuzyeh, in any way, shape or form, and when you strike a man you know you have struck him, and regardless of the evidence that does not convince you you are wrong.
- Q. In any event there was subsequently an action, which went to trial, and you were found liable, were you not?
- A. That is true, yes.
- Q. Now I pass from that. Now, just tell me about these
- 30 broadcasts that you say you heard Mr. Kuzyeh making. I want to suggest to you, first of all, that you did not hear Mr. Kuzyeh broadcast at all, before he was expelled, purportedly by the Union.
- A. I know there was a series of broadcasts, sponsored —
- The Court: Did you hear him, Mr. White? The question was, did you hear any before the plaintiff was expelled?
- A. As near as I can recollect, my lord, there was a number of broadcasts: I cannot swear that I heard Mr. Kuzyeh on those broadcasts, but I know they were people who were closely identified with Mr. Kuzyeh. I know that is right, but whether I heard
- 40 Mr. Kuzyeh giving the broadcasts at that time in November or December, I could not swear to that.
- Mr. Johnson: Q. You remember being asked about that yesterday, and the point was raised that these broadcasts that you were talking about took place after the expulsion?

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A. I know I have heard him broadcast since that time.
Q. And you volunteered the information that you had heard
Kuzych before the expulsion?

A. Well, I don't think so. I wouldn't be sure. I am not
clear on whether or not Kuzych actually took part in the broad-
casts or whether it was others that were identified with him.

Q. That is one of the things you are not sure about, isn't it?

A. That is true.

Q. And there are quite a few things that you are not sure
about in this matter? 10

A. I imagine that applies to anyone.

Mr. Johnson: My lord, I have not quite finished with the
witness, but I think it might take me a few minutes to gather
up a few remnants.

The Court: Well, we will adjourn until 2.30.

(PROCEEDINGS RESUMED AT 2.30 P.M.)

WILLIAM LLOYD WHITE, resumes the stand.

The Clerk: You are still under oath, Mr. White.

CROSS-EXAMINATION BY MR. JOHNSON RESUMED:

Q. Now, Mr. White, it is possible, isn't it, that Mr. Mc- 20
Pheator may have gone to see the Superintendent with the head
steward without your knowledge?

A. Oh, it could have been done, but they were not supposed
to do that.

Q. The top shop steward, as I understand it, was a man
named Art Leneu?

A. Yes.

Q. And it is possible that Mr. McPheator may have asked
Leneu to go with him?

A. It is possible. 30

Q. And it was within the province of Mr. Leneu to see the
superintendent and discuss a grievance?

A. Yes, I think he is a bargaining agent.

Q. And it was open to Mr. Leneu to get any assistance from
any other shop stewards he thought he might require?

A. That is true.

Q. And that would not necessarily come to your knowledge?

A. No. The statement I said was that the shop steward
did not deal with the management.

Q. But this might be an explanation of how McPheator 40
saw the management, that he accompanied Leneu?

A. That is quite possible, but not on his own.

Q. I understand. You continued to my learned friend that you had asked McPheator to withdraw as secretary-treasurer and you denied there was a suggestion of a deal whereby you would remove Schwartz' name from the list of candidates for vice-president?

A. That is correct.

Q. I suggest to you that Mr. Schwartz was one of the group that was on the same slate as the party you were interested in?

10 A. That is true. Mr. Schwartz was, I think, vice-president of the Union at that time.

Q. The question I am asking you is, that I suggest Mr. Schwartz was one of the group in which you yourself was interested?

A. Well, I don't know how you would refer to a group. I was interested in the entire membership of the Union.

Q. But within the Union membership I think we have had some evidence that there was turmoil?

A. That is right.

20 Q. And that turmoil was brought about, at one period, by the election of Mr. Henderson and his friends?

A. No, the turmoil was brought about by the number of allegations that were made by Mr. Henderson and his friends.

Q. Before Mr. Henderson was elected, there was a slate of candidates for the officers of the Union in the December elections of 1944?

A. Well, if there were elections, there would naturally be two opposing sides, otherwise it would be acclamation.

Q. Quite. And the side on which you were was the side who had the control of the Union in 1944?

30 A. Yes, I would say so. I was opposed to Mr. Henderson.

Q. You were opposed to any change?

A. That is true.

Q. And Mr. Schwartz, I suggest, was of the same mind as you were, generally speaking, in the sense that he was one of the slate?

A. Well, I don't know whether I can speak for Mr. Schwartz, or what he had in mind.

Q. No, of course not. You cannot do that, but you can tell me whether he was one of the recognized slate of your group?

40 A. He was already on the executive and stood for re-election.

Q. I suggest that the group was a slate which was presented as a slate?

A. There was no group, as far as I know.

Q. Let me bring it down to this, and I will put this question and my learned friend can object if he wants to. There was an

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L.P.P. group which was interested in retaining office in the Union?

A. I don't mind answering it, if it is admissible.

Mr. Burton: Well, I think we have already got the answer. My friend Mr. Johnson asked that this morning.

Mr. Johnson: Well, I don't think I got a direct answer to it. I want to establish them as being the group — that there was an L.P.P. group that was in control in 1944.

The Court: Would it be any more relevant than that it was a group of some other political party? 10

Mr. Johnson: No.

The Court: I do not think it is relevant, Mr. Johnson.

Mr. Johnson: I am trying to ascertain that there was a slate and that Mr. Schwartz was one of the slate, and it goes to credibility.

The Court: You can ask him about a slate.

Mr. Johnson: Yes.

Q. Now I have suggested, and I suggest again, that Mr. Schwartz was one of the slate.

A. You mean one of the nominees that stood for re-election or one of the contestants in the election? 20

Q. No, I know that he was that, but he was a man who was one of a group of candidates who looked to support, looked for support, to a certain group within the Union?

A. No, I don't think he looked to any certain group. The Union was not divided into two factions, as has been suggested, at all.

Q. Well, at any rate, you say that no deal was made?

A. That is quite true. There was no deal ever made or no suggestion of a deal ever made. 30

Q. Well now, did you on any occasion tell Mr. McPheator to lay off Kuzych or some action would be taken against him, McPheator?

A. Absolutely not. I believe that according to Mr. McPheator's evidence, both those conversations were in September, and it is hardly likely that I would ask him to decline nomination and then at the same time threaten him.

Q. I do not think the explanations is of any use to me, but what I am asking you is the facts: did you on any occasion at all, no matter when it was— 40

A. No.

Q. You never did?

A. Never did.

Q. Now, so far as the welding was concerned, I suggest to

you that welding was not done in the rain usually, because if you welded in the rain the plates were liable to crack?

A. That's right, but they never stopped welding on account of the rain.

Q. But they always erected a cover?

A. That's true, yes.

Q. And I think Mr. McPheator said that if there was not a cover he would not continue to weld?

A. Yes, they would put up a cover. In fact, the outside
10 of the ship was usually covered during that period of the year, because it rained almost continuously and they would have these covers erected. They did not take them down when it stopped raining.

Q. And you don't remember Mr. McPheator ever saying to you that he was going to speak to whoever he wanted to speak to?

A. No.

Q. In fact, you never discussed the plaintiff with McPheator on any occasion?

A. No.

20 Q. You never did?

A. Never did. As I say, Mr. McPheator was closely identified with Mr. Kuzyeh at that particular time.

Q. Well, that has nothing to do with your answer, has it?

A. I believe it has a bearing on it, seeing that the two of them were closely identified and I would not in all possibility go and ask Mr. McPheator to go and do certain things regarding Mr. Kuzyeh.

Q. Can't you tell me yes or no, without giving a full explanation, Mr. White?

30 A. The answer is no.

Q. What is the answer to the suggestion that one ballot box was overturned and the contents were strewn around the hall? You were there?

A. Yes.

Q. And you say that was not done?

A. That was not done. This is the first intimation I have heard of it. It was never raised in the meeting and that would be the proper place.

Q. Didn't McPheator tell you on that occasion that he wanted a recount?

40 A. Yes, he did.

Q. And wasn't it on that evening when the ballots were being counted?

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A. It was the same evening, after the count was over and the results tabulated.

Q. And were you not in the hallway on that evening when McPheator and Mole were there?

A. I was in the hall.

Q. And were not McPheator and Mole there at the same time?

A. Yes, I seen them both there.

Q. And was not Mole acting as scrutineer?

A. Yes. 10

Q. And was not a complaint made to you about a ballot box?

A. No.

Q. And didn't you say at the time, "What are you going to do about it?"

A. No.

Q. And didn't you say it would cost a few hundred dollars for a recount?

A. It was after the result of the ballots had been tabulated, and he said he wanted a recount. Well, I had no authority to grant a recount. Any complaint should have been made to the returning officer, and not to myself, and if he could not get remedy there, then to raise the question in the Union meeting was the proper thing. That was the proper procedure, but this was never done. 20

Q. Why didn't you stand for election as business agent in 1945 again? You didn't, did you? What was the reason for that?

A. I don't recall whether I stood for election in 1945 or not. I know that I was elected once or twice. I can't recall.

Q. Well now, on Monday, February 19th, there was an election of a business agent. Do you remember that? That is for small shops, is it? 30

A. That's right.

Q. That is not the same thing?

A. No, there was a number of business agents and there was a vacancy for the business agent of the small shops.

Q. Were you still, in fact, business agent at the time of the expulsion of the plaintiff from this Union?

A. Yes.

Q. And that is the only office you held in the Union at that time? 40

- A. That is the only office I held in the Union at that time.
- Q. I want you to tell me what happened on the amalgamation of this Union with the other Unions, if you will.
- A. Well, the three unions amalgamated —
- Q. When was that?
- A. In 1946.
- Q. Was it carried out by any agreement in writing?
- A. How do you mean, an agreement with who?
- Q. When you affiliated or federated, you brought out a
10 constitution and had a formal agreement signed in 1944?
- A. Yes, with the Shipyard General Workers' Federation.
- Q. Did you go through the same procedure when you amalgamated with these other unions?
- A. Yes.
- Q. What were the terms of the amalgamation?
- A. I can't recall now. The three unions affected agreed mutually to merge themselves into the Marine Workers' and Boilermakers' Industrial Union, Local No. 1.
- Q. Well now, in your Examination for Discovery on the
20 12th April, 1946 — presumably the Marine Workers' Union had been incorporated, or whatever it is, before that time?
- A. Yes.
- Q. The Marine Workers' Union was in existence at the time of your Discovery?
- A. I believe it was, yes.
- Q. And you were asked questions 73 and 74:
- "73 Q. And is this new union responsible for any judgment which might be obtained against it by the plaintiff?"
- "A. I presume so.
- 30 "74 Q. Do you know? A. As far as I know, yes." Were you asked those questions and did you make those answers?
- A. I presume so, if they are in there.
- Q. And is that the fact today?
- A. Well, I couldn't say that. I believe that is a matter
of law.
- Q. Well, I want to find out the basis on which you gave that opinion.
- A. That possibly was my own opinion at the time.
- 40 Q. On what was it based? Which document?
- A. No, I had no documents in mind.
- Q. Were there no formally executed documents?
- A. I believe there were. I am not so sure. I would have to go through the files and see just how the whole business was transacted.

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Mr. Burton: My lord, I would object to this evidence. My friend now wants to find out whether the Union would be responsible for damages. I submit that is not open to him now. The question that arose before was what kind of a union Kuzych would be reinstated in were he reinstated. I imagine that is admissible, but I submit he is not entitled to go into an examination in aid of execution.

Mr. Johnson: Order 16, Rule 11, is quite a long rule, my lord, but it deals with misjoinder and joinder of the parties, and it states inter alia (reading). "... be struck out . . . be added." 10

Now, unless I am forced to, I do not want to join the Marine Workers' Union because I can see we will have to have them represented here, but at the same time I don't want to go and get a judgment against a straw union, with no assets. If I am successful in getting a judgment for damages, I don't want to be faced with the fact, perhaps after appeal, that the judgment is of no effect because the assets have been swallowed up with some amalgamation with another union. Unless this witness can assure me that the union of which he is now president is responsible in the event of a judgment, then I may have to ask the Marine Workers' Union to be joined and added as a party. 20

The Court: For the purpose of this rule, I think it is relevant.

Mr. Burton: Examination for Discovery of Mr. White was held April 12, 1946, almost three years ago, and at that time the evidence was given that there was this amalgamation, naming the three unions, on what basis it was, and if my friend wished to amend his pleadings at that time, that is when it should have been done. We have gone through one trial, and the Court of Appeal, and now we are almost, I hope, through the thing, 30 through the third, and I submit it is not now time to consider a question he should have considered in April, 1946.

The Court: Did not Mr. White, in his evidence-in-chief, refer to this amalgamation?

Mr. Burton: Oh yes, and in the first trial also. This has been common knowledge ever since April 12, 1946.

The Court: I think you brought it out in chief.

Mr. Burton: Yes, and also in cross-examination of Caron by my friend. It was in the Appeal Book in issue at all times.

The Court: Well, if it is relevant in chief, surely it is relevant in cross-examination. 40

Mr. Burton: Well, my lord, only on that feature of it. I brought out only the amalgamation. I did not say anything about a question of money. My friend, in cross-examining Caron, referred to the question of what union Kuzych might be reinstated

in, and you allowed him to proceed on that basis; but I submit the financial responsibility question is not in issue at all.

Mr. Johnson: The identity of the defendant and whether the defendant is alive or dead is a very important matter.

The Court: I think Mr. Johnson can pursue the matter. He cannot ask for legal opinion, of course.

Mr. Burton: I certainly suggest he go no further, because he might involve other unions that are not before the Court. I don't know how far he can go, but I think there would be a limit
10 to it.

The Court: Well, we will see how far he goes.

Mr. Johnson: Q. On the 13th of March, 1948, you were president of the Union, the defendant Union?

A. I was president of the Marine Workers' and Boilermakers' in March, 1948, yes.

Q. And did you instruct your present counsel, Mr. Burton, to make an affidavit in connection with the proceeding in this matter in the Court of Appeal, in the following terms, paragraph
14 (reading):

20 "That the defendant Union herein is possessed of sufficient assets to pay any costs which may be awarded against it in the action herein."

Did you so instruct?

A. Well, we have always paid all our costs up to date in Court and there is no judgments outstanding against our Union, I don't think.

Q. What I am getting at is that here, in March, 1948, long after the amalgamation had taken place, you state that the defendant Union is possessed of sufficient assets to pay any costs
30 which may be awarded against it in the action herein.

A. I presume that the Union has the necessary funds, if they are liable, to meet their costs, but as to the question of their identity, I don't think I am in a position to rule on their legal identity.

Q. Will you then produce for me here as soon as possible any papers that have to do with the amalgamation?

A. I can endeavor to try. I imagine the Shipyard General Workers' Federation would have those documents.

Mr. Johnson: My lord, I am afraid I will have to leave it
40 like that, with the possibility that I may have to ask for the addition of the Marine Workers' Union on the basis of the information I have received from this witness.

Mr. Burton: My lord, I certainly oppose any such application, particularly at this stage, and I suppose the two unions who have now lost their identity in that union will take the same

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stand. At this stage of the proceedings, my learned friend surely cannot amend at the time any idea strikes him.

The Court: Well, he has not made any application to amend yet.

Mr. Burton: Very well, my lord.

Mr. Johnson: I have finished, my lord, thank you.

The Court: Do you want time to consider this?

Mr. Johnson: Well, I would like to see the papers.

Mr. Burton: I will put Mr. White back in the stand at another time. I don't think he has the papers with him, if he has them at all, my lord. I am taking the stand that if the papers are produced and we find an agreement, and it refers to another agreement, and we have not got that, and it is in the hands of a third party, I would take the most violent exception to prolonging this trial until my friend finds his position. 10

The Court: This is a new trial, and to the best of my recollection the amalgamation was not mentioned until you brought it out in chief.

Mr. Burton: No, my lord. My learned friend cross-examined Mr. Caron at great length. 20

The Court: I see.

Mr. Burton: And besides that, the full information on this subject was available at an examination for discovery on April 12, 1946, and my learned friend had this information from this same witness then.

Mr. Johnson: I don't know whether my learned friend is representing the Marine Workers' Union and if he can speak for them, but I don't see why he should take any exception to bringing in another party, unless he is acting for them.

Mr. Burton: I am not doing this at all with the thought that we will be called upon to pay any judgment, but this is a case where, for the second time in the trial, by reason of certain information my friend found out on cross-examination which never appeared in the issue before, never raised at any time in the pleadings, until cross-examination of the witnesses for the Defence, and now for the second time, after the facts were fully known to him before the action went to trial, he finds something that had not perhaps occurred to him before. 30

In any event, it should have occurred to counsel in the first trial. My friend had the appeal book. This matter was in the Court of Appeal, and the evidence my friend has brought out today was before that Court and never raised and now, at the end of cross-examination of almost my last witness, from whom this information could be obtained, and the previous witnesses, my friend brings up this matter. 40

I don't know what I can bring, but if I bring a document which may refer to something else my friend may want a balance sheet, and all that sort of thing.

I don't think he is entitled to have me stand this witness down. There was no demand for this before and, as I say, it arises after all the evidence is through on the main issues in this case.

The Court: Well, you have other witnesses to come, have you?

10 Mr. Burton: Yes, my lord.

The Court: Then we will go ahead with that, and Mr. Johnson can consider his position.

Mr. Johnson: I take it, in the meantime, that the witness will produce any documents he has?

Mr. Burton: Well, I will endeavor to see what I can find out, my lord. There may be documents that my friend will want that may not be found, and documents which will involve other parties to which he is not entitled, limited companies and so on.

20 Mr. Johnson: All I want, my lord, is a statement on which I can rely showing the circumstances under which the amalgamation took place and the status of the Union after amalgamation.

The Court: Perhaps you may be able to get together on that and cover it by documents, by admissions.

Mr. Burton: I will do that, but if my learned friend thinks that Mr. White will undertake to be responsible for damages, I may as well decide the issue now, because I can tell him now that that will not be done, and I don't think he is entitled to that.

The Court: Thank you, Mr. White.

(Witness aside.)

30 FRANK WALTER SHAW, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

EXAMINATION BY MR. BURTON:

Q. Mr. Shaw, what is your occupation?

A. At the present time, do you mean?

Q. Yes, sir.

A. Employer Relations Officer of the National Employment Service.

Q. That is for the Dominion Government?

40 A. Yes.

Q. How long have you been there in that position?

A. Since June, 1945.

Q. And were you at one time a member of the Boilermakers' Industrial Union?

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A. I was.

Q. Local No. 1?

A. Yes.

Q. When did you first join?

A. In January, 1942.

Q. How long were you a member?

A. Until leaving the industry in June, 1945.

Q. Were you elected at any time to any office?

A. Yes, I was elected by acclamation in elections held in December, I believe it was, of 1944. I was elected recording secretary of the Boilermakers' Union. 10

Q. Did you carry on the duties of that office?

A. Yes.

Q. For how long a time?

A. Until I left the industry in June of the same year.

Q. What were your duties in reference to minutes?

A. Wherever possible and whenever, I attended the meetings and I recorded the minutes of such general meetings and executive meetings.

Q. And were you — was that a full-time job? 20

A. Oh, no. I was working in the shipyards the majority of the time and just attended these meetings as an official, that was all.

Q. Were you paid?

A. The Union paid my wages for the day I was not in the shipyard, that was all.

Q. And precisely in reference to the minutes, what did you do?

A. These minutes, not being particularly clerical minded, I transcribed these minutes in longhand on ordinary paper and they were turned over after the meeting to the office staff of the Union to type in the minute books, or whatever books they went into. Personally, I just took them in longhand. 30

Q. As the meeting went along?

A. Yes.

Q. Did you attempt to make a complete record of all that happened in a meeting?

A. Well, no, just the general points, the motions and so forth were probably taken down.

Q. At an average, how long would the meetings last? 40

A. They varied. Some of them would last until well after 11 o'clock at night.

Q. I understand that quite a large number were in attendance?

A. Oh yes, yes.

Q. And after you took the minutes in longhand, would you see your longhand notes again?

A. Not always, no. In the majority of cases, I signed my longhand notes, showing that they were mine, for the sake of the typist, and if she saw my signature on it, that was sufficient for her.

Q. And after the minutes were transcribed, would you then see the finished product?

A. Yes, I would see them, because they were always read out to the meeting following.

Q. Now, I show you Exhibits 31, 33, 32, 30, 29, 28 and 27. I started the wrong way. Now, would you look at those minutes?

A. Yes, these are very similar, at least, to the ones that were typed up.

Q. I notice in each of the minutes it is reported, "Brother Shaw, Secretary." Would that mean you were in attendance at those meetings?

A. I was there when the meeting was called. I wouldn't be there necessarily during the whole meeting. I might be in another part of the building, preparing for an election or some such similar event, in which case someone else would be put in the chair that I had vacated, and they generally would call the chap who was there previously. I think his name was—

Q. I showed to you in error the meeting of February 7th, 1945, and it does not show who was recording secretary. Do you know who it would be?

A. I am not sure of the date, but I do know that in February I attended labour sittings in Victoria. I know I missed one or two meetings at that time. I don't know the dates exactly.

The Court: Mr. Burton, would you repeat the exhibit numbers, please.

Mr. Burton: Yes, my lord. I will start the other way. Exhibits 27, 28, 29, 30, 31, and 32.

The Court: Yes.

Mr. Burton: Q. Now, the first one, Exhibit 27, on the back page I show you a list of nominations. There is the regular minutes for two pages and then a list of nominations. Would those all be taken down by you?

A. Yes.

Q. I notice there is no reference to the nominations, despite the fact that the bottom of the page just says, "Adjourned 1:15" in the morning meeting and the evening meeting adjourned at 11:10. The nominations is on a separate sheet. Was that normal procedure?

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A. Yes, at a meeting at which there is nominations, the secretary is a frantic individual and he is trying to get all the names. They would be probably on a separate sheet.

Q. There is one Hendry nominated to the Press Committee. Do you remember that nomination? The Press and Investigating Committee?

A. I remember the name quite well, because there was a mistake made on that name. If I remember correctly, there were two names very similar, two members with very similar names at that time. There was some error with that name. 10.

Q. Do you know what the error was?

A. Well, whatever name I took down, whichever I took down in the first instance was the wrong name. I don't know if it was Handy or Hendry but I know there was a mistake made on the first.

Q. When nominations were taken, what procedure was followed to find out whether or not the nominees would accept nominations for the office?

A. They were asked by the chairman if they would accept nominations and, if so, they were required to come up to the recording secretary and present their membership card, proving that they were in good standing. 20.

Q. And was that practice followed?

A. Yes.

Q. Was it followed on January 5, 1945?

A. To the best of my knowledge it was. I don't remember any time when it wasn't.

Q. Now, if Handy's name was on here, would that signify to you, or Hendry, would it signify to you that he had accepted nomination? 30

A. Yes, definitely.

Q. And all the others similarly?

A. Yes.

Q. Now, the minutes of January 22nd do not show any election — I must state, my lord, that these minutes are not complete. Do you know whether you made minutes in the election of January 22nd?

A. I could not state definitely, because I may not have been in the recording secretary's position when that took place, in the chair. 40

Q. Now, Mr. Shaw, who were elected? Can you recall them?

A. Oh, not by names, no. I would make no attempt to try and definitely state who were elected.

Q. Do you know whether this man Handy, or Hendry, was elected?

Mr. Johnson: Well now, he said —

The Court: Ask him if he remembers the names of any who were elected and how he remembers.

Mr. Burton: Q. Do you know the names of any who were elected?

A. At this particular date —

The Court: Just a minute. He said, did he not, that he could not remember whether there was an election or not.

The Witness: I cannot state anything definite by dates,
10 my lord.

Mr. Burton: Q. Well, would you know about an election about that time.

A. Yes, an election of some description, or something dealing with that at a meeting, because there was turmoil.

The Court: You are dealing with the election of the members of the Press and Investigating Committee only.

Mr. Burton: Yes, my lord.

Q. The by-laws provide that there will be an election and that election is held in January. Now, do you know that as a
20 result of the nominations, an election was held, without reference to dates?

A. No, I just mentioned that this Press and Investigating Committee — the difficulties with someone's name there. There was a different set-up there entirely in that there were further nominations. The first nominations were not valid, and there were further nominations for that particular committee.

Q. But you don't recall just how that occurred?

A. No, only that I possibly was in the wrong in recording the individual's name, whoever it was.

30 Q. Were there subsequent nominations?

A. Yes, definitely.

Q. I refer you to the minutes of February 5, 1945, Exhibit
30. I show you this motion, "Moved, seconded and carried that the recommendation re West Coast members be endorsed." No, the one I want is this: "Moved, seconded and carried that recommendation re new election of Press and Investigating Committee be endorsed." Do you recall that motion?

A. I remember there was a motion required, because of the error on the first nomination.

40 Q. And were nominations held subsequently, do you recall?

A. Yes, they were.

Q. And do you recall, do you know who were nominated?

A. I couldn't say offhand, no. I remember the outcome of that, but not the details.

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Q. What procedure was adopted as to the acceptance of nominations by the nominees, that is the further nominations?

A. They followed the same procedure. They were required to stand and either accept or reject, and if they accepted they brought their membership card up to me to assure that they were in good standing.

The Court: Q. That was the practice, but do you remember that in this particular case?

A. Well, it was in all cases, my lord. There were no exceptions allowed. 10

Mr. Burton: Q. After nominations, do you remember if a subsequent election was held, or what happened?

A. Yes, nominations were called again to replace the first one that was wrong, and if I remember rightly it was a six-man committee to be elected, eight nominations were tendered and two declined, which left it a straight acclamation. There was no ballot necessary.

Q. And at the time of the acclamation, do you remember the occasion, whether it was declared or otherwise?

A. I don't particularly remember it, no. It was just an ordinary course of events. There is nothing particular that brings it to my mind. I do know we were very particular at that time in going on the advice of lawyers and so forth on procedure. Several of us were new at the game. 20

Q. Before your election as secretary, did you attend Union meetings?

A. Yes.

Q. And did you attend meetings during the time the by-laws were discussed?

A. Yes. 30

Q. Do you recall the presentation at any time of by-laws to the meeting for approval?

A. Yes, if I remember correctly, that came up under Notice of Motion, which extends it every three meetings at least, and the by-laws and details were discussed at each meeting. They definitely took up a lot of time discussing by-laws before they were incorporated.

Q. Did you take any part in that yourself?

A. Not in the drafting of the by-laws, no.

Q. Were they given to you or any other member? 40

A. Oh yes, if there was anything I wanted to understand, I was at liberty to do so.

Q. Did the same situation exist for other members?

A. Oh yes, I was an ordinary member at that time. I was a Shop Steward at that time, that's all.

Q. Were you present at a meeting at which the by-laws were ratified?

A. I wouldn't say definitely I was at that particular meeting.

Q. During the time the by-laws were being discussed by the meeting, were copies available to the members?

A. Yes.

Q. Did you obtain a copy?

A. Yes, I did.

10 Q. And was it your property, or did you have to return it?

A. I believe I still have it at home somewhere.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. Well, I wish you had brought that copy along with you, Mr. Shaw.

A. Well, it is only a guess that it is there. I know I had it a long time.

Q. When did you first receive that copy?

A. I have no idea of the date.

Q. And was it one of the original drafts?

20 A. I couldn't say whether it was an original draft, or what it was. In fact, it came by degrees, if I remember rightly.

Q. So that from time to time there were drafts brought up to date and distributed?

A. Not as amendments. They were compiling the by-laws, and as they compiled a portion of them, it was given to the membership for study, if I remember correctly.

30 Q. I want you to remember correctly, because it is rather an important point. The by-laws presumably were amended from time to time, were they not, as they passed through the meetings?

A. I would not state on the amendment, no. I would not pass any opinion whether they were amendments or the original drafting of the by-laws.

Q. Well, originally there was a draft presented, mimeographed, was there not, and distributed?

A. Whether it was a draft, I don't know. It seems to me it was in portions and there was discussion at the meetings as they went along. I am not positive on this. It is just the way it strikes my memory.

40 Q. At how many meetings were the by-laws discussed.

A. That, I couldn't say.

Q. Over what period of time?

A. It would take four or five meetings, anyway, that it would be brought up.

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Cross-Examination

(Continued)

Q. Would it be correct that there was a special meeting to deal with the by-laws in March, 1944?

A. I wouldn't say. I wouldn't know.

Q. Were there Sunday meetings?

A. I couldn't tell you.

Q. Did you attend the morning meetings or evening meetings?

A. When I was recording secretary I attended both.

Q. Well, you were not recording secretary in 1944?

A. No, I was not.

Q. Well, I am asking you about that.

A. I couldn't attend the evening meetings, because I was on afternoon shift, so I imagine the majority I attended was in the morning.

Q. On June 5, 1944, do you remember going to a meeting?

A. I don't remember at all by that date.

Q. Do you remember at any time, when you were present at a meeting, being asked to approve Articles 1 to 9 in their final form?

A. Not by those dates, I can't say that I particularly recall 20 the articles, or those numbers.

Q. Do you remember in how many sections these articles were presented to the meeting?

A. No, I do not.

Q. Do you remember how many articles there were altogether-

A. No, I do not.

Q. Do you remember the meeting being asked to stretch the number of articles from 20 to 26?

A. No.

Q. Do you remember an amendment to any article of the by-laws dealing with the function of the Political Action Committee?

A. Not particularly that. I can vaguely remember amendments and notices of motion after I had been elected. I remember reading out notices of motion at several meetings.

Q. When you were recording secretary, of course you had occasion to study the by-laws?

A. That's right.

Q. But that was not until January 1st, 1945?

A. That's right.

Q. But during 1944, when these by-laws were being presented to the meetings —

A. I was not particularly concerned with them, so I can't remember.

Q. I take it your recollection with respect to the passing of the by-laws is —

10

30

40

A. Very vague in 1944. The only time I came to any interest in the by-laws particularly and personally was after I was elected to office.

Q. When you came to office and you wrote out these minutes in longhand, when you were present, presumably you compared a typewritten paper which you received back from the office with your longhand?

A. I would not say that I always compared that.

10 Q. Were the minutes submitted to the president for signature, as required by the by-laws?

A. I wouldn't say that they were at all times. In fact, I don't know of any occasion when Mr. Henderson signed the minutes. No, I cannot definitely state that any of them signed the minutes.

Q. At any rate, what you wrote down you think is correctly and accurately recorded in the typewritten minutes?

A. They were very similar to what was taken in the meetings, what was dealt with in the meetings. I could not verify them word by word at all.

20 Q. I suppose January 5, 1945, was the first time you attended and acted as secretary?

A. I believe that might be the date.

Q. And the minutes were fairly complete and there were the names of all the nominees for the standing committees?

A. Possibly I was quite diligent at that meeting.

Q. And you were present at both meetings?

A. Yes.

Q. And presumably some of these nominations came at each meeting, and they were lumped together?

30 A. Yes.

Q. When did Mr. Hendry's nomination come?

A. I have not the vaguest idea.

Q. At any rate, all the nominees signified at that meeting their intention and willingness to run?

A. That's right.

Q. And then Mr. Hendry was nominated and he, in accordance with the practice, came up to the elevation where you were and presented his card to you?

A. I presume he did.

40 Q. Well, was that the practice?

A. Yes.

Q. And the purpose of that was to assure yourself that he was a member in good standing?

A. That's right.

Q. And to check the name on the card with the nomination?

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ation

(Continued)

A. That's right.

Q. And that was done in the case of Hendry?

A. Yes.

Q. So Hendry must have been present at the meeting?

A. I wouldn't say he was present. It was either Hendry or Handy.

Q. Well, who was it presented a card?

A. Somebody presented a card.

Q. And the name on the card checked with the nomination?

A. Well, I wouldn't say that. When a nomination is made, 10
it is possible, from the back of a crowded hall, that I had written
"Hendry" and the individual could come and present me with a
card showing "Handy", and I let it go, probably, thinking — never
thinking that there would be two individuals with names that close.

Q. Once he had his card, that was all you needed?

A. The name on the card would be the one that I put down
on the nomination.

Q. You did not have any official record of the Union with
which you checked the nomination?

A. No. 20

The Court: Q. You say the name that was on the card
was the name you put down?

A. If it was very close to the one I had written, my lord,
I would let it go at that. The names were written down and if
I called "Hendry" and he was right there, there would be no fur-
ther check to it. It might be that I never even compared the two
names, not knowing they were so very close, and when I called
his name and the man answered, I would not state definitely that
I checked the name.

Mr. Johnson: Q. There was an election held? 30

A. Yes.

Q. And the 24 nominees' names went on the ballot?

A. Yes.

Q. And you reported the result of the election, didn't you?

A. I don't know that I reported it. Well, I imagine I would.
I wouldn't state definitely that I reported them.

Q. Well, you were returning officer and you must have
counted the ballots.

A. We had scrutineers for that purpose.

Q. When was that done? 40

A. I have no idea.

Q. When was the ballot —

A. I have no idea.

Q. In accordance with the by-laws, it would be January
22nd, wouldn't it?

A. If it is in the by-laws, that must be it, because it was done according to the by-laws, but as to dates I cannot say.

Q. I show you Exhibit 56, and this purports to be the report to the "Main Deck" on February 2, 1945, by Gordon Farrington, showing the personnel elected to the standing committees. I wonder if you would look at that and tell me if your memory on this matter is refreshed by that exhibit?

A. It might well be, but I am in no position to say yes or no definitely. I had nothing to do with the drawing up of that article. I had no reason to dispute it at the time. I don't know whether I would dispute it now. It is absolutely out of my possibilities to say whether it is right or wrong.

Q. What I am suggesting to you is that your duty as recording secretary required you to make a return of this election and that return should have been entered into either the minutes of January 22nd or the following meeting.

A. If I was in the chair, the minutes were reported in long-hand and given to the secretary.

Q. Well now, both exhibits 28 and 29, which purport to be the minutes of meetings held on January 22nd and 29th, 1945, respectively, contain a note of "Brother Shaw, recording secretary."

A. Yes.

Q. That presumably means that you were there when the meeting began?

A. Yes.

Q. Tell me, if you can, by your recollection, taking Exhibit 28, when you left that meeting, if you did leave that meeting, and which part of that meeting you did not record?

A. Well, the second motion would be — "Moved, seconded and carried that regular order of business be suspended in order to carry out balloting." That is when I would leave the chair.

Q. So from then on you would know nothing of what occurred at that meeting?

A. I wouldn't definitely state —

Q. In whose favor did you relinquish your seat?

A. There was generally someone elected from the floor and if my predecessor was in the hall, he was usually given that position.

Q. Now, this purports to be the consolidated minutes of the morning and evening meetings. Did you leave the chair also in the morning meeting?

A. I imagine the same procedure was carried out in both cases.

Q. It is a matter of imagination with you, isn't it?

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A. It is definitely. I am just going by general procedure.

Q. What about January 29th? Were you present at the meeting of January 29th?

A. Well, this is an entirely different type of meeting. This was an executive meeting. This is not a general meeting.

Q. I see.

A. There would be no reason, as I remember, for me to leave the meeting to conduct an election, because those things did not go on during the executive meeting.

Q. May I take it that it was only in the event of an election that you left the chair? 10

A. Not necessarily. I may have been instructed by the president to perform some duty, obtain something from the files, etc.

Q. What have you to say as to the meeting of February 5, at which you are shown as being present as recording secretary?

A. There doesn't appear to have been any reason why I should have left that meeting.

Q. And at that meeting, February 5, presumably nominations were received for the Press and Investigation Committee which, according to the advice that you had received, it was necessary to re-elect. 20

A. I couldn't say whether it was that meeting or not. If it states so in that minute, that is possibly the time.

Q. At any rate, there was one meeting shortly after this alleged abortive election taking place where nominations were called for the Press and Investigating Committee?

A. Which was the abortive one?

Q. The one that was reported in the "Main Deck" of February 2nd. Do you remember that? 30

A. There was an election at that time, yes.

Q. But you don't remember reporting the results of that election?

A. If they were reported in the minutes, possibly I am responsible, otherwise I wouldn't say.

Q. The point is that we cannot find them in the minutes, Mr. Shaw.

A. Yes, and I have stated that I cannot take responsibility for someone else, what they did or did not do. 40

Q. You cannot take the responsibility for carrying out the duties required to be carried out by the recording secretary?

A. Not when I am possibly not present, but doing some other duty.

Q. And if you had been engaged in some other duty, what was there to prevent you from including motions to this effect,

with respect to these committees, in your minutes of February 5th?

A. I cannot see anything that would prevent it. No, there is nothing to prevent it being included in that. I imagine the announcement was made from the floor.

Q. You imagine it?

A. Yes. I can't say.

Q. Well, didn't you take it down?

A. Yes, that was certainly done somewhere.

10 Q. You took down the names of those elected to the different committees?

A. Yes.

Q. What did you do with them?

A. They were turned over to the Union office.

Q. And you never saw them again?

A. That I couldn't say. I didn't know they were missing.

Q. You say there were eight nominations on the second election?

A. Yes.

20 Q. You remember that there were eight?

A. Yes, because I remember particularly the two individuals who declined, on my insistence, on getting their letters.

Q. I want to get further particulars from you about that. Who were these men?

A. One was Mr. Forster and the other was MacLeod.

Q. When were they nominated, in the morning or evening?

A. At the same time as the others. I could not remember which it was. It was open to both meetings for nominations.

30 Q. And some were nominated at the morning meeting and some at the evening?

A. Yes.

Q. And you cannot tell me which?

A. No, I couldn't begin to tell you.

Q. You remember, of course, that these nominees all agreed at that time of nomination to act?

A. Yes.

Q. And at that time, did Mr. MacLeod and Mr. Forster agree to run?

40 A. To the best of my knowledge, they did. They may have declined at that meeting. We asked them for it in writing.

Q. If they declined at that meeting, why would that be necessary?

A. That was just a little precaution on my own part. Having heard the nominations, I would like some things in writing.

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ation

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Q. You were being very particular at that time to see that the elections were being carried out in accordance with the by-laws?

A. Yes.

Q. And that was because you were particularly anxious in view of the pending charges?

A. No, but I was there in a new position and I did not want to go out on the proverbial limb.

Q. But you knew there were charges, as a matter of fact, didn't you? 10

A. I don't remember at that particular date. I don't know when the charges were laid.

Q. Were you at the meeting when charges were read out?

A. I was at one meeting when charges were read out.

Q. Did you make a record of it?

A. I believe I did.

Q. Do you remember this, in Exhibit 31, "Brother Kuzych be barred from all meetings till his case be disposed of"?

A. Yes.

Q. So you do remember . . . 20

A. Yes, but I can't tell you at what date. I can't tell you right now what date it is.

Q. On January 5, you had occasion, because that was your first meeting—you recall particularly, I suggest, what occurred?

A. I know several of us were very nervous at our first meeting and I don't doubt but what we did take particular pains at that time.

Q. And on January 5, certain charges were read out against Kuzych, were they not?

A. Possibly. 30

Q. Well, look at this minute. "Moved, seconded and carried that the regular order of business be suspended in order to deal with charges against two members . . . Charges were then read against one Myron Kuzych. Moved, seconded and carried that charges be accepted."

Now, that is January 5. You knew at the time of this election—

A. That might well be.

Q. —that charges were pending against Kuzych.

A. I might have known it at that time, but I certainly 40 couldn't tell you what dates they were now.

Q. Did you know that the charges were withdrawn?

A. No, I don't remember. I was not involved and I cannot keep track of the dates.

Q. In fact, you know very little about them, that is so, isn't it?

A. Actually, I know practically nothing about it, because I was not at the meeting where that happened.

Mr. Burton: May Mr. Shaw be excused, my lord?
 Mr. Johnson: I do not need him any more, my lord.
 The Court: You are excused, Mr. Shaw.

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(Witness aside).
 ORVILLE BRAATEN, a witness called
 on behalf of the defendants, being
 first duly sworn, testified as follows:

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EXAMINATION BY MR. BURTON:

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10 Q. Mr. Braaten, what is your occupation?
 A. I am a business agent in an A.F. of L. Union at the
 present time.

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Q. Which one?
 A. The International Brotherhood of Pulp Sulphite and
 Paper Workers.

Orville Braaten

Q. And when you say, "A.F. of L." that Union is an
 International Union?

Examination

(Continued)

A. That is right.

Q. And it is a Union—

Mr. Johnson: Don't lead.

20 Mr. Burton: Q. I just wondered why you said an A.F. of
 L. Union, witness?

A. Well, I thought that would cover it without going any
 further, but that is what we are affiliated to, the American
 Federation of Labor.

Q. Did you belong to the Boilermakers' & Iron Shipbuilders'
 Union, Local No. 1, at one time?

A. Yes.

Q. What International Union is that affiliated to?

30 A. That has no International Affiliation to my knowledge.

Q. Well, was it?

A. No, I don't think so.

Q. What is its affiliation?

A. Well, it is the Canadian Congress of Labour.

Q. When did you join the Boilermakers'?

A. I think it was sometime in 1942, but I am not going
 to say for sure, but I think it was.

Q. In what capacity? What was your occupation?

A. At that time I was a steel worker.

Q. Where? What yard?

40 A. The Hamilton Bridge.

Q. How long were you a member of the Boilermakers'
 Union?

A. Up until about June, I think, June of 1945.

Q. And at that time did you—what happened that you
 ceased to be a member?

A. The work that I was on there completed and I was
 laid off.

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Orville Braaten

Examination

(Continued)

Q. And have you been a member since that time of the Boilermakers' Union?

A. No, I haven't.

Q. Now, Mr. Braaten, were you a member of the Press & Investigating Committee of the Union?

Mr. Johnson: I object to that, my lord.

Mr. Burton: Q. Did you hold any office in the Union?

A. Yes, I did.

Q. What?

A. I was a member of the Press & Investigating Committee. 10

Q. When?

A. That would be the first part of 1945.

Q. By the way, was that the first office or the only office you held?

A. Well, I had been a shop steward.

Q. Were you nominated and, if so, when?

A. I was nominated at the first business meeting in 1945.

Q. Now, the minutes would appear to be—maybe I am leading if I say that—in any event it was the first business meeting in January, 1945? 20

A. Yes.

Q. Do you remember the occasion on which you were nominated?

A. Yes, I believe I do.

Q. Would you tell his lordship just what occurred. Do you know who nominated you?

A. No, I don't, but I was nominated under the proper procedure and I accepted nomination.

Q. Did you convey to the meeting that you accepted nomination? 30

A. Yes, I did. I accepted nomination.

Q. And what other steps did you take, if any?

A. Well, I don't think I took any other steps.

Q. What I am getting at, to qualify for your office?

A. Well, I think the only steps that I took was what I had to do in connection with the procedure. I had to show that I was a member in good standing with the Union.

Q. And you did that?

A. Yes.

Q. Who did you do that to? 40

A. We always had to show that to the recording secretary.

The Court: Q. The question was, who did you do that to?

A. Well, the recording secretary at the time, I believe it was Frank Shaw.

Mr. Burton: Q. Did you show him your card?

A. Yes.

Q. And as a result of that nomination, was there an election held?

A. Yes there was an election held. I think it was two weeks later. That was the second regular business meeting that the election was held.

Q. And were you declared elected?

A. I was one of the candidates that was elected, yes.

Q. Did you serve as a member of the committee pursuant to your election?

10 A. Pardon?

Q. Did you serve as a member of the committee pursuant to your election? Did you serve on the committee after your election?

A. Not at that time, because there was some mistake that had been made in recording the names of the nominees at the previous meeting, and upon legal advice we all resigned.

Mr. Johnson: Well, did he resign?

Mr. Burton: Q. Well, of course, I cannot tell him what to say. Did you resign?

20 A. Yes.

Q. And what happened as a result of that?

A. Well, at the next following business meeting, a regular meeting, which was in the first part of February, new nominations were called for.

Q. And do you know who were nominated, of your own knowledge?

A. Well, I know that I was nominated again.

Q. And did you accept nomination?

A. Yes, I accepted nomination.

30 Q. And did you take any other steps at that time?

A. Well, I had to produce my book and show that I was in good standing, but it was just a matter of procedure.

Q. Just to test your memory, could you give me the names of anybody else that you heard nominated, if you heard any others?

A. Well, there was Dave Clarke, Pearson and another chap named Belt — it is quite a long time ago.

Q. Were you nominated at the morning or evening meeting?

40 A. I feel quite certain that I was nominated in the morning meeting, although I would not swear to that.

Q. As a result of that nomination, what happened?

A. Well, as near as I can recall, the second business meeting in February, on the date which the elections of this committee would take place, it appears to me that there were only six of us left in the running, that the rest of the candidates had all declined and therefore we went in by acclamation.

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Q. Now, do you know Mr. Belt, yourself?

A. Yes.

Q. Do you know where he is at the present time?

A. No, I don't know where he is, no.

Q. Do you know Pearson?

A. Yes, I know Pearson.

Q. Do you know where he is?

A. I think he is in the States.

Q. Do you know where Mr. Duncan—by the way, do you know him? 10

A. Yes, I know Mr. Duncan. I don't know where he is.

Q. And Mr. Garrison?

A. I know him but I don't know where he lives.

Q. Now, you stated that you were then declared elected.

Did you function in your duties?

A. Yes.

Q. Who was secretary of the Press & Investigating Committee?

A. Well, as we had all gone in by acclamation, and no vote was necessary, we had to follow the next procedure, and that was we elected our own secretary from among that committee and I think we elected Dave Pearson. 20

Q. And as a member of the committee, did you hear complaints?

A. What do you mean?

Q. Did the Press & Investigating Committee, while you were a member, hear any complaints against members?

A. Yes, against those members who had been charged according to the constitution and bylaws.

Q. You know Mr. Kuzych? 30

A. Yes.

Q. Did you attend at any hearing of a complaint against Mr. Kuzych?

A. Yes, I did.

Q. Evidence has been given here as to the holding of a trial. Did you concur in the result?

A. After all the case had been presented from both sides and we reviewed the whole matter, I concurred in it, yes.

Q. How long did the trial take, approximately?

A. I think we started sometime around seven o'clock at night and I don't think we were through until a little after twelve. 40

Q. Did Kuzych cross examine witnesses?

A. Yes, he had a chance to cross examine them, and every leeway was given to voice your opinion, whether it was good, bad or indifferent.

The Court: Q. The question was did he cross-examine witnesses?

A. Yes, yes, he did.

Mr. Burton: Q. And did he give evidence?

A. Yes, he gave evidence.

Q. And was he given an opportunity to make any reply he wished to the charges?

A. Oh yes. Yes.

10 Q. Were you present at a meeting of the Union at which the Press & Investigating Committee's report was considered?

A. In reference to Mr. Kuzych?

Q. Yes.

A. Yes, I was.

Q. And was the committee's report presented?

A. Yes, it was presented.

Q. Did Mr. Kuzych make any statement to the meeting?

A. Yes, he was given time. I just forget the length of time, but he was given pretty good time to put his side of the story to the membership.

20 Q. Did you attend meetings of the Union in 1944?

A. Oh, yes.

Q. And did you attend meetings while the bylaws were being discussed?

A. Yes.

Q. Did you have an opportunity to consider the bylaws yourself?

A. Yes, I had plenty of opportunities to consider the bylaws.

30 Q. And were you present at meetings while any amendments were made?

A. Well, I think that all during the time that the bylaws were being prepared that certain amendments have come up, but I can't just recall which amendments come up.

Q. Were you at any meeting when the bylaws were adopted in final form?

A. It seems to me I was, yes.

Q. Did you receive any draft bylaws?

A. Yes, I received the draft bylaws and there was plenty of them available, so you couldn't help but get one.

40 Q. Were draft copies of the bylaws available in the plant in which you worked?

A. Oh, definitely. There were hundreds of them brought in there. I know there was several big bundles brought in of mimeographed copies of the by-laws for the members to study and give them a chance to know what they were all about, before they had to go to the meetings.

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CROSS EXAMINATION BY MR. JOHNSON:

Q. That was, of course, on one single occasion?

A. I couldn't say if it was on just one single occasion or if it was on more than one occasion.

Q. Could you say what month of the year 1944 it was?

A. I could not, no.

Q. It might have been early spring or it might have been late summer?

A. That's right. We were considering the bylaws for a long time. 10

Q. I suggest to you that it was the first draft of the bylaws that you saw mimeographed.

A. I couldn't swear if it was the first draft or later drafts.

Q. Well, were you particularly interested in the bylaws?

A. Well, I know that I read them over to see what it was all about, and if there was anything there that I disagreed with I had ample opportunity to state my position.

Q. And did you state your position?

A. Well, I did not particularly disagree with the bylaws.

Q. You agreed wholeheartedly with every section of the bylaws? 20

A. I wouldn't say wholeheartedly.

Q. At least not enough to protest them?

A. That's right.

Q. And it was the morning meetings that you attended, was it?

A. Mostly, yes.

Q. Do you remember being present at a meeting of June 5th?

A. Of what year? 30

Q. 1944. Isn't that — can you remember the year when the bylaws went through?

A. Well, I think it was the year 1944 that the bylaws went through, yes.

Q. You think so, but you cannot remember exactly, you cannot remember the year in which you joined this union, can you?

Mr. Burton: My lord, that is hardly fair. My friend asked him if he attended a meeting of June 5th, and the witness said quite properly, "What year?" 40

Mr. Johnson: Q. Can you remember the year in which you joined the Union?

A. I am pretty sure it was in the year 1942.

Q. I see. And you are quite sure that the bylaws went through in 1944?

A. Yes.

Q. Can you tell me the month in which they were finally adopted?

A. From memory of the by-laws, I think it was in August.

Q. Tell me if you remember distinctly the day of it, or the meeting, on which these bylaws were finally passed by the morning meeting?

A. Well, offhand I could not definitely say what day it was, but I think it was in August, one of the two meetings in August. I am pretty sure of that.

10 Q. I want to know whether the bylaws were put through at one meeting or several meetings?

A. It is a considerable length of time, since that took place, but I know that we discussed bylaws at several meetings and we could only deal with so many sections at a time because the length of the meeting would be too long.

Q. And presumably you took them in order, starting with Article 1, and you went through with a certain number of Articles?

A. Yes.

20 Q. Do you remember on June 5th Articles 1 to 9 being discussed and finally approved?

A. They were discussed, but I don't think they were finally approved. I think there was still some opportunity there for amending them before they were finally accepted by the Union as the complete bylaws.

Q. Were you present in court when the minutes of June 5th were read out? They were read out on several occasions?

A. I don't just remember if I was in here when you read them out or not.

30 Q. I wonder if I might have Exhibit 17; also Exhibit 19, if you please? Now, this minute says, "Moved, seconded and carried that Articles 1 to 9 which were discussed at a previous meeting be accepted and become part of the bylaws of this union."

That is from the minutes of the morning meeting of June 5th, Exhibit 17.

Now, is that a correct statement? Were these Articles discussed at a previous meeting?

A. Oh, yes, I am pretty sure they were.

40 Q. And you see what the motion says, "Moved, seconded and carried that Articles one to nine which were discussed at a previous meeting be accepted and become part of the bylaws of this union."

Now, I want to know whether you remember that?

A. I think I remember that it was something to that effect, yes. I am quite sure that that was what was done.

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Q. And Articles one to nine became bylaws of the Union as far as that motion was concerned. Did you hear that motion made at that meeting?

A. Yes, but I still think it was previous—I think there was provisions by which those could be amended if necessary.

Q. Yes, and in fact they were amended in one particular, with reference to the Political Action Committee?

A. Well, it is quite hard to remember that.

Q. Well, were you present at a meeting of August 7, 1944?

A. I think perhaps I was. I am not sure, but I tried to attend most of the meetings. There was some meetings that I missed. 10

Q. Do you remember this motion being made:

“Moved, seconded and carried that the addition to Article 8 dealing with the function of Political Action Committees be approved.”

A. No, I can't say that I remember.

Q. Now, on August 21st, were you present at that meeting?

A. Of what year?

Q. 1944? 20

A. I don't know if I was present at that meeting or not. I don't think I could say that definitely.

Q. Were you present at any meeting where the bylaws were finally approved by the meeting?

A. Well, I do recall that they were approved at one time and there was something to do with the dues that we had to hold up. I just forget how that went. It is quite a long time ago and I don't remember all that.

Q. You don't remember being at any meeting where the bylaws were finally passed? 30

A. I think that they were finally passed sometime in August, but it was some—I remember, as a shop steward, having to collect dues—

Q. I am asking you if you were in attendance at a meeting where you heard the motion made to that effect?

A. Well, perhaps I was.

Q. But you cannot remember it?

A. Not to be quite definite, no.

Q. Now, with regard to these nominations you were nominated to the Press & Investigating Committee on January 5, 1945? 40

A. That's right.

Q. And that was at a morning meeting?

A. Yes, I believe so.

Q. And there were several other nominations?

A. Oh, yes.

Q. And they all accepted?

A. Well, I think they did; I don't know.

- Q. Do you know this man Hendry?
 A. No, I don't.
- Q. Was he nominated at the morning meeting of January 5th?
 A. I couldn't say. He could have been or he could not have been; I don't know.
- Q. You never met him before, or never met him, I should say?
 A. No, I never met him.
- 10 Q. And you say you resigned after this election?
 A. That is right.
 Q. The election was held and the results of the election were announced and published in the "Main Deck" and you read the "Main Deck"?
 A. Well, I think it was announced at the meetings too.
 Q. Yes, and you were one of the successful candidates out of the twenty-four?
 A. Yes.
- 20 Q. Do you remember who the secretary was, the man who got the most votes?
 A. No, I can't tell you.
 Q. Do you remember Tom Bain?
 A. Yes, now you mention it.
 Q. Does that bring it back to you that he was elected to be secretary of this committee?
 A. Well, he might have been, but I could not say for sure because that committee never sat.
 Q. How did you resign from it?
 A. I wrote a letter to the Union and signed it, stating that
- 30 I was handing in my resignation after finding out that there was some mix-up in the name, either Handy or Hendry.
 Q. You were asked to send in a resignation and you sent it in.
 A. On legal advice.
 Q. But the advice came to you from the officials of the Union, didn't it?
 A. That was their legal advice that they were working on.
 Q. So in accordance with the request of the executive of your union, you resigned from the committee?
 A. That is right.
- 40 Q. And then you were nominated again?
 A. Yes.
 Q. And that was a morning meeting too?
 A. I think it was.
 Q. And you say there was no election?
 A. Well, not at that meeting, no. That was in the first meeting of January that they held the nominations.

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Q. Now, at this trial—I don't intend to ask you very much about it—was Mr. White present?

A. I think he sat in there, yes.

Q. Was it announced to the committee there on whose behalf they were acting?

A. Oh, yes, I think that—it is sometime ago now. I am not quite certain of it, but Mr. White was either an observer for the Union or he was a counsel. I don't remember which. That is some time ago.

Q. Who was the complainant, the man who laid the charges? 10

A. I think it was Kendrick or McKendrick or something like that.

Q. Did he appear at the trial?

A. Yes.

Q. Did he have a counsel?

A. Yes, I believe so.

Q. Who was it?

A. I think it was Mr. Stewart.

Q. And did Mr. Stewart say to the members of the committee that he was acting on behalf of Mr. McKendrick? 20

A. I think Mr. McKendrick, if my memory serves me correct, I think he said that he had asked Mr. Stewart for his services as counsel.

Q. Was it announced that the Union had counsel?

A. Well, I am not quite clear on that, if it was announced that he was the counsel or an observer, but I know that he stated why he was in there.

Q. Did you allow observers in to the trial committee's deliberations?

A. I think only insofar as the Union itself was concerned. 30 I think that was all. I am not quite certain. It is a considerable length of time ago now.

Q. So that although your Press & Investigating Committee was charged with a solemn duty of passing on the charges, nevertheless you would allow an official of the Union to sit in as an observer?

A. Yes, and I think that was correct, if that was what he done.

Q. You think that was proper?

A. I think so. 40

Q. And did Mr. White take part in the trial?

A. I don't think he did; I don't think he had a word to say in there.

Q. Was it improper for the accused to have observers at the trial?

A. I don't think that the accused nor the plaintiff could have had observers.

Q. You don't think it was proper for him to have observers?

A. No.

Q. Why not?

A. It was a business of the Union.

Q. It was weighted? In other words, the dice were loaded?

A. No, I wouldn't say so.

Mr. Burton: He should not say that.

The Court: He is making a suggestion, to see what the witness says.

10 The Witness: The plaintiff did not have any observers there. I don't see where it might serve any purpose.

Mr. Johnson: Q. Well, the only purpose that those observers might serve would be to observe what went on?

A. Well, I think the Union had placed its trust in the Press Committee by electing them.

Q. But in spite of that, you say Mr. White may have been present as an observer on behalf of the Union?

A. Yes, and I believe that is proper for the Union.

Mr. Johnson: Alright, thank you very much.

20 (Witness aside).

Mr. Burton: I wonder if Mr. Braaten can be excused.

Mr. Johnson: I will not need him, my lord.

The Court: You will be excused.

DAVID BURNS CLARK, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

EXAMINATION BY MR. BURTON:

Q. What is your occupation, Mr. Clark?

A. I am a foreman in the sub-station for the B.C. Electric.

30 Q. And did you at one time belong to the Boilermakers' Union?

A. I did.

Q. When did you join?

A. October 1942, or November. I am not just sure. It was either October or November 1942.

Q. How long were you a Union member?

A. Until June, 1947.

Q. At that time what was your reason for leaving the Union? I am sorry, were you occasioned to leave the Union?

40 A. Not otherwise than health. That was the only reason.

Q. Do you belong to a Union now?

A. I belong to the Electrical Workers', A.F. of L., the I.D.E.W.

Q. In 1942 when you joined the Union, what was your occupation?

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A. I joined the Union as a platers helper or a fitters helper. That is what I joined at that time, and at that time I think all the helpers were at the same rate.

Q. Did you at any time hold office in the Union?

A. No, I never held any office in the Union.

Q. That is, you were never an officer?

A. No, I was never an officer of the Union.

Q. Did you hold any position?

A. Yes, I held numerous minor positions, but never really any official category. I was never on the payroll of the Union 10 at any time.

Q. Were you—I am afraid I will have to inquire into the minor positions you did hold—were you elected to any office?

A. Yes, I was elected as a shop steward first, and then I was a delegate to the Joint Unions Committee, and I must explain this, because that was all the Unions together held a joint meeting once a month in the yard and they were given time by the management. I believe it was one day a month for a full afternoon. I just forget the specific time, but I was a delegate representing our Union, from our shop stewards, in that case it was, 20 and later I was a delegate two or three years to that joint unions, and later I became the secretary of them.

Q. How many meetings a month would the shop stewards hold?

A. We always held our meetings every Friday at noon in the yards and then we had a regular monthly meeting at the union hall.

Q. Now in 1945 were you elected to an office in the Union, or a committee?

A. Yes, I was elected to the Press & Investigating Com- 30 mittee in 1945.

Mr. Burton: That is what I have been trying to come to, my lord, without leading.

Q. Were you nominated for that office?

A. Yes.

Q. And when?

A. I believe the nominations were the first meeting in January and I was nominated and accepted, and we had an election.

Q. Well, let us come to that a little more slowly. When you were nominated at the first meeting, did you accept nomination? 40

A. I most assuredly did; at any time I was selected, I accepted right then or else I resigned.

Q. On this occasion, the first meeting, were you nominated at the morning or evening meeting?

A. In the evening meeting.

Q. And did you accept nomination at that meeting?

A. Yes, I am quite sure I did.

Q. Did you do anything else towards perfecting your nomination?

A. No, I didn't, other than that I did not decline.

Q. Well, were you required to show any proof as to your eligibility?

A. At that time it was the procedure—

The Court: Q. We are not interested in what the usual procedure was, Mr. Clark, but just what you did.

10 A. Well, I was asked to produce my union card so as to show that I was a paid-up member in order to accept the nomination.

Mr. Burton: Q. Did you do that?

A. Yes, I did.

Q. Was an election held?

A. Yes.

Q. Do you know when that was?

A. It was the second meeting in January, I believe.

Q. And were you elected?

A. Yes, I was elected.

20 Q. And did you—could you tell me—tell his lordship if you remember who else were elected at that time. Can you give any names?

A. No, I can't actually say who was elected at that time, and the reason I can't is that we were elected—we were nominated, and then the election took place, and it was after we had gone home before the balloting was over, and that is why those who were elected never convened, because it was found out that the election was improper and therefore I did not know any of the fellows that were on that committee. I knew of them but

30 I could not specifically say that they were there or not.

Q. As a result of this difficulty, were you nominated again?

A. Yes, I was nominated again.

Q. Do you remember when that was?

A. That was the first meeting in February, I believe.

Q. And did you accept?

A. I accepted again.

Q. In the same manner as before?

A. In the same manner, by producing my union card showing it was a paid up card.

40 Q. What happened after that?

A. After that I think we went to another meeting and the nominations were opened again for more nominations, and there was none, and in the period of that two weeks there was two of the brothers declined, I believe, which left just the six men, and we were told that we were elected by acclamation at that time.

Q. After that, did you function as a member of the committee?

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- A. I functioned then as a member of the committee.
 Q. And who else were on the committee?
 A. There was Dave Pearson, Ken Garrison, Colin Belt, Orville Braaten, myself and Fred Duncan.
 Q. What officers were there on the committee?
 A. There was the chairman and the secretary.
 Q. Who was the chairman?
 A. It was the reporter of the Union at that time, and that was Gordon Farrington.
 Q. Who was the secretary? 10
 A. Dave Pearson.
 Q. In what manner did he become secretary?
 A. Well, the secretary was supposed to be taken by the one getting the most votes, and none of us had any votes because of the acclamation, and we had a meeting of our own and declared our own secretary among ourselves.
 Q. Do you know where Mr. Belt is at the present time?
 A. Yes, he is back in Saskatchewan, farming some place there.
 Q. And Mr. Pearson? 20
 A. United States.
 Q. And Mr. Duncan?
 A. I don't know where he is.
 Q. Garrison?
 A. I don't know anything about Kenny either.
 Q. Now, you attended the trial of Kuzych, is that true?
 A. I did.
 Q. Do you remember the occasion?
 A. Yes, I remember the occasion.
 Q. Do you remember the date? 30.
 A. Well, personally, I don't remember dates, the exact dates, but I remember the occasion.
 Q. And was Kuzych present in person?
 A. Yes, he was.
 Q. Was he represented?
 A. You mean by counsel?
 Q. Yes.
 A. No, he didn't have any counsel.
 Q. Who was the complainant?
 A. McKendrick. 40
 Q. Was evidence presented?
 A. Evidence was presented by both sides.
 Q. Did Kuzych cross examine witnesses?
 A. Yes, he did.
 Q. And did he give evidence?
 A. Yes, he give evidence.

Q. Now I show you Exhibit 42 in this case, and I would ask you what that is?

A. This here is the procedure—I have not read the whole thing—this is the procedure that was given of both the complainant and the defendant as to the procedure to be followed during the trial. I believe that is it. I have not read the whole thing, though.

Q. And was this procedure followed?

A. That procedure was definitely followed.

10 Q. Did you concur in the decision?

A. Would you state that again?

Q. Did you agree with the decision?

A. Yes, I definitely agreed with the decision.

Q. Did you attend meetings of the Union in 1944?

A. Yes, I did.

Q. And do you recall, at any meeting, any discussion of bylaws?

A. Several.

20 Q. Was the membership invited, or did they take part in the discussion of the bylaws?

A. There was a big placard put up at every meeting in the yards, because I was a shop steward and I went around and tacked them up and we put them all through the gantries and in the change house, specifically naming the time and date where these meetings would be held, so everybody would have a chance to be there.

Q. Did you ever receive draft copies of the bylaws?

30 A. I saw the final form in the book, and I had saw two or three different ones. When they were coming out, we had bylaws coming in a big, long leaflet form and they were put on the clocks so that every member could get one and, in case he wanted to change it, he could go to the meeting.

Q. Were you present at the meeting when the bylaws were finally approved?

A. Honestly, I could not say if I was there for the final approving or not.

40 Mr. Burton: My lord, I am afraid I cannot finish—I have just a few remarks, a few matters to bring to the attention of Mr. Clark, arising out of the evidence given by the plaintiff. It will take perhaps ten minutes, but if you prefer I think Mr. Clark will be back tomorrow.

The Court: Then there will be cross-examination?

Mr. Burton: Yes, my lord.

The Court: Will Monday suit counsel?

Mr. Johnson: Yes, my lord.

The Court: I am in New Westminster tomorrow.

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Mr. Burton: I happen to have one or two matters Monday in the Supreme Court, but I suppose I could get other counsel.

The Court: Well, I do not like to ask you to do that.

Mr. Johnson: I think my learned friend and I would like to ask for a slight adjournment, at least in order to prepare for argument and perhaps, with your lordship's permission, we might put in written argument.

The Court: I would prefer written argument. The evidence has been long, and the issue is fairly complicated.

Mr. Burton: I would myself, my lord, not because I want that extra amount of work, but I think it is advisable in that case. 10

The Court: I would appreciate it if you would.

(FURTHER DISCUSSION CONTINUED RE ADJOURNMENT).

The Court: Then we will adjourn until Monday at two o'clock.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT)

DAVID BURNS CLARK resumed stand
and testified further as follows: 20

EXAMINATION CONTINUED BY MR. BURTON:

Q. I think the last day that we had gone over the evidence as to your participation in the meetings at which the bylaws were discussed.

A. Yes.

Q. There are one or two matters left. Do you know Mr. McPheator?

A. Yes, I did.

Q. Did you hear him give evidence in this case?

A. No, I didn't hear John give evidence in this case. 30

Q. I will refer to some of the evidence which was given at page 312, my lord.

The Court: Yes.

Mr. Burton: Q. Mr. McPheator gave evidence—page 313, my lord. There is a part I want to read, the conversation there about the middle of the page.

“The current of my machine was stopped and I had been working on the ship and naturally, when your machine has stopped, you can't weld. When I came down there to see why my machine had been stopped, Mr. Clark, Mr. Lenneau 40

and Mr. Tony Back all asked me to come with them to this little hut at the end of the Gantry. That's when Mr. Clark told me the Trial Committee would crucify Kuzyeh."

Now, do you recall that conversation about Mr. Kuzyeh?

A. Never. Never did I have a conversation with McPheator of that sort at no time.

Q. Do you remember a conversation with Mr. McPheator in reference to any matter connected with the Kuzyeh trial?

A. I personally never remember of any time having a conversation with McPheator, otherwise than negotiations at a Shop Stewards' meeting. I never once carried on conversation with that man at any time.

Q. And at page 315, the second last question on the page, Mr. McPheator was asked this question:

"You had another conversation with Clark, as I understand, or heard a conversation with Clark where Clark said to Kuzyeh—I've only got this down—'Make sure you won't walk out, because we will throw you out.' Tell me again when that was?"

20 "A. That was in the meeting in the hall.

"Q. What day, what time?"

"A. That was, I believe, in the December meeting.

"Q. December of what year?"

"A. Of '44.

"Q. Was that before or after the conversation with Clark you just described about being crucified by the Trial Committee?"

"A. That was after."

30 Now, do you recall the conversation or was there a conversation that you had with Mr. McPheator in which you said that to him—I am sorry, it was with Mr. Kuzyeh?

A. No. I am quite positive, my lord. I have yet to speak to Kuzyeh either.

Q. Did you ever talk to Kuzyeh and tell him if he did not walk out, you would throw him out?

A. I am quite sure I have yet to speak to Kuzyeh at any time.

Q. Kuzyeh gave evidence in this case that you, at one meeting—I have forgotten the exact meeting—took him by the lapel of the coat and escorted him from the hall. What do you say to that?

40 A. I was never a warden or a guard for the Union, and nobody that was not a warden or a guard had any authority to ask anybody to get up and leave the meeting, or escort them out, and I was never a warden or a guard and, therefore, never escorted anyone out.

Q. Did you at any time escort Kuzyeh from the hall at a meeting which was being held?

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A. No, I didn't.

Q. And at page 319, I wish to read this one question at the top of the page:

"The Court: Q. What did you say Clark said would happen if they sustained Kuzych?

"A. They would get the works. They would get the same thing, they would really look after them. That was—the essence I got, my lord, was that they would be the next to get the same as Kuzych was going to get that night.

"Q. And that was Mr. Clark who said that? 10

"A. That's right."

This is McPheator's evidence. Did you ever make that statement to McPheator?

A. No, I didn't.

Q. At page 340, about the middle, about three-quarters of the way down in the page, the question was:

"Q. I want you to tell the Court what Mr. Clark said to you.

"A. Dave Clark told me that if I didn't back away from following and backing up Kuzych, I would get the business, that I would have to get out of the yard. He used the term 'out of the yard.' 20

"Q. Now, can you remember the approximate date of that?

"A. No, I cannot.

"Q. Now, you attended Union meetings, did you?

"A. Some of them."

Now, did you have that conversation?

A. No, I never had that conversation. I know McPheator stayed in the yard until he quit on his own. 30

Q. Witness, I must put it this way: Mr. Mole gave this evidence—did you have any conversation with Mole to that effect? Do you know Mr. Mole?

A. Yes, I know him.

Q. Did you have any conversation with Mr. Mole in which you said if he did not back away from following up and backing up Kuzych, he would get the works?

A. No, I certainly never said that to anyone.

Q. Now, at page 362, at the beginning of the cross-examination of Mr. Mole: 40

"Q. Mr. Mole, I think when we adjourned I was asking you about the time that Dave Clark was alleged to have grasped Kuzych by the tail of his coat. You remember that occasion, do you?

"A. I remember the incident, yes.

"Q. And was it at a regular meeting of the Union?

"A. Yes, a general meeting?

- “Q. Was it morning or evening?
 “A. Evening, I think; evening.
 “Q. Did you attend the evening meetings or the morning meetings, as a rule?
 “A. Most of the time it was evening meetings for me.
 “Q. That you attended?
 “A. Yes.
 “Q. And would you say that this was an evening meeting?
 10 “A. To the best of my recollection, yes.
 “Q. What date was it?
 “A. That is something I can't say for certain.”
 A. No, I never put a hand on anyone at any time.
 Q. What shift were you working during the time in question, do you know?
 A. I know at that time I was working steady day work in the yard.
 Q. What time would that be?
 A. That would be approximately—I punched in around
 20 7:00 or 7:05 in the morning and punched out again 3:59 or 4:05 in the afternoon. I have a check on my time sheets as to when I changed in the change-out during that period of time, and that is what they point out.
 Q. Now, Mr. Kuzych further stated that you took him—at page 20,—by the lapel of the coat. This is Mr. Kuzych's examination, at the top of the page, the second question, my lord.
 “Q. What happened then?
 “A. Then Mr. Stewart ordered me out of the meeting and inasmuch as I endeavoured to point out that there was
 30 no discussion on the motion, a man by the name of Mr. Dave Clark and some other man who I do not recall came up to me, Mr. Dave Clark took me by the lapel of my coat and began to drag me out of the meeting and the other man assisted him, and they did not relinquish their hold on me until I was out of the door.
 “Q. When was that?
 “A. I do not exactly remember the date, but I think it was some time in July or the early part of August.
 “Q. Of 1945?
 40 “A. 1944.”
 What have you to say as to that?
 A. No, sir, that is very untruthful insofar as I am concerned. I have yet even to speak to or lay a hand on Kuzych.
 Q. Do you remember on any occasion when Kuzych was taken by the lapel of the coat?

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A. No, I have never been at a meeting when anything of that sort took place.

Mr. Burton: Your witness.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. When were you elected a Shop Steward?

A. The first time I was elected a Shop Steward was, I believe, in April or May of 1943.

Q. Was Mr. McPheator a Shop Steward then?

A. Not that I recall.

Q. When did Mr. McPheator join the select band of Shop 10
Stewards?

A. I cannot recall when he became a Shop Steward.

Q. At least, you know he was a Shop Steward?

A. Yes, I remember him being one.

Q. And I suggest to you at the beginning of 1944, Mr. Mc-
Pheator was a Shop Steward and you also were a Shop Steward.

A. Yes, I was a Shop Steward in 1944.

Q. I suggest that Mr. McPheator was also a Shop Steward
during the whole of 1944.

A. I know he was in the fall of '44, although I would not 20
have said he was for the full year.

Q. How many meetings of Shop Stewards were held during
'44?

A. I would say 52 for the Yard. We had them once a week.

Q. Every Friday?

A. Every Friday in that Yard.

Q. How many Shop Stewards were there altogether?

A. I would say between 80 and 100 on the three shifts.

Q. And did all those Shop Stewards meet when you were
present? Did they all meet? 30

A. Between 40 and 50, I would say, met on the day shift.

Q. And Mr. McPheator was there on many occasions when
you were there on those Friday meetings?

A. I remember him specifically—well, in the latter part
of '44 and the first part of '45.

Q. What made you have a recollection of that period of time?

A. He made himself very prominent by running for every
office that was supposed to come open there.

Q. For what?

A. For Shop Steward, he made himself available for every 40
position from start to finish. That is how I remember him speci-
fically.

Q. And McPheator came into prominence in the shop as—
came into prominence in the shop meetings?

A. That is when he was noticed.

- Q. And it was not very favourable notice, as far as you were concerned?
- A. I never had anything against McPheator.
- Q. Now, Mr. Lanneau was a Shop Steward—is that how you spell it?
- Q. Lanneau—L-a-n-n-e-a-u.
- Q. Mr. Lanneau. Anyway, that is the man who was Shop Steward?
- A. Yes.
- 10 Q. During this whole year 1944?
- A. Yes.
- Q. And he presided at those Shop Steward meetings?
- A. As chairman.
- Q. As chairman?
- A. He was elected as chairman.
- Q. Did you hear him say on one occasion that Mr. McPheator was the best Shop Steward the Boilermakers' Union had ever had, or was ever likely to have?
- A. I certainly never did.
- 20 Q. You never heard that?
- A. No.
- Q. Did you on some occasions have conversations with Mr. McPheator outside those meetings?
- A. No, I don't recall holding a conversation with Mr. McPheator at any time.
- Q. You say you came off shift at 3:55.
- A. Approximately 3:59 to 4:03. The final whistle blew at 3:55, and you stay in line to punch out the clock.
- Q. Do you remember the No. 3 Gantry?
- 30 A. Yes, I remember the No. 3 Gantry.
- Q. And do you remember meeting Mr. McPheator at about 4:00 p.m. on or at No. 3 Gantry, one afternoon meeting in 1944?
- A. No, I do not.
- Q. Do you remember if Mr. Kuzych had been the subject of some discussion in the Union meetings at that time?
- A. Yes. I think it was later on that we had the discussion about him. I think it was the latter part of 1944, although I don't remember much about Kuzych, because I didn't know the person at that time.
- 40 Q. Now, Mr. Clark, you have been a regular attendant of those meetings, have you not?
- A. Yes, I have.
- Q. All during 1943 and 1944?
- A. That is right.
- Q. And you used to go to the morning meetings, didn't you?
- A. No, in '43 I went to the morning meetings until the end of December, '43, and I came on the day shift and from then on

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I never worked the afternoon shift; I always worked the day shift and went to the evening meetings. I didn't attend them all, and I went to as many as my health would stand, allow me to go to.

Q. You say you went to the evening meetings exclusively in '44.

A. From January, 1944, until I left the Yard.

Q. What proportion of those twice a month meetings did you attend?

A. Pardon me, you mean the regular meetings? 10

Q. The regular business meetings held twice a month.

A. I attended them very regularly, but not every one.

Q. You attended 75%?

A. Yes, I would say I attended 75%.

Q. You must have heard motions made to exclude Kuzyeh from meetings in 1944.

A. I have heard them motions, yes, where he has been asked to leave the meeting. I never took any specific notice as to the time or date of them.

Q. I am not asking you that, but Mr. Kuzyeh was a subject of discussion in the Union during 1944? 20

A. Your Honour, I cannot say that he was a subject of discussion at all times. There was a motion passed asking him to leave the meeting, but after that he was not subject to discussion. In the general meetings we discussed—there was the main business.

Q. You know that Mr. Kuzyeh succeeded in getting a judgment against the Union?

A. Yes, sir, I do.

Q. In November, 1944. 30

A. Yes, it was about that time.

Q. Do you know that Mr. Kuzyeh attempted to gain entrance to the meetings after his judgment was successful—after he succeeded in getting judgment against the Union, he attempted to go to business meetings of the Union?

A. I know that he attempted to go to meetings in 1945, after that.

Q. That was November?

A. That was in 1945. I remember him attempting to come to a meeting then, when there was already a motion passed that he was not to attend the meetings until this was cleared up. 40

Q. Let us confine ourselves to 1944 and we will get around to 1945 all in good time. I take it as a Shop Steward you knew that Mr. Kuzyeh was successful in getting judgment for a thousand dollars.

- A. Yes, that is right.
- Q. And I suggest to you in November, 1944, Mr. Kuzych attempted to attend business meetings of the Union.
- A. In November?
- Q. Yes.
- A. I would not say he did in November.
- Q. Were you attending meetings in November?
- A. I attended every Shop Steward meeting in this Yard, but I did not always attend my meetings in the Union Hall.
- 10 Q. You remember that Mr. Kuzych was a candidate for Union office in 1944?
- A. Yes.
- Q. And you know he ran for election?
- A. Yes.
- Q. Against Mr. Henderson and Mr. Stewart?
- A. Yes, that is right.
- Q. And after those elections were held, Mr. Henderson became the president?
- A. Yes.
- 20 Q. And after the new Executive came in, there were certain elections held for the standing committees?
- A. That is right.
- Q. On January 5, 1945. You were amongst those nominated?
- A. Right.
- Q. Was that at an evening meeting or a morning meeting?
- A. I was nominated at an evening meeting.
- Q. At an evening meeting?
- A. That is right.
- 30 Q. And did you go up on that occasion to the place where the Recording Secretary was sitting and present your Union card?
- A. Yes, I did.
- Q. And did he check your Union card with the nomination?
- A. Well, he took out the Union card and he held it in front of him. I don't remember him specifically looking at my name on the card, but I remember him looking at my card.
- Q. What did your card say? What initials did you have on it?
- A. My full name.
- 40 Q. Did it have Dave Clark, David Clark or D.B.?
- A. David B. Clark.
- Q. Yes. Subsequently there was an election?
- A. Yes.
- Q. You saw the ballots that came out. did you not?
- A. I beg pardon?
- Q. The ballots?

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A. Yes, for everybody but—

Q. And you went home before the announcement of the election, didn't you?

A. Yes, in fact, I believe the meeting was adjourned at the time when they were still in the back room counting the ballots.

Q. When did you first hear about your being elected to the Press & Investigating Committee?

A. I don't recall. It would be about a Monday or Tuesday, shortly, within two or three days.

Q. And at the first meeting in February—I want to find out whether you were again nominated in the same fashion as you were on January 5th. 10

A. By the time the first one—it did not convene due to an irregularity of the election, and so we each resigned and held a new election for the Press & Investigating Committee and, in this way, held our nominations, and I was nominated as one of that group and stood for nomination and also showed my card to show the standing I was in with the Union at that time.

Q. You went up and did exactly the same thing as you describe? 20

A. I showed my card to the Recorder.

Q. And what happened then? Did he check your name with his paper?

A. Well, I don't remember him specifically taking a pencil and putting it through my name and checking the card. I don't remember him doing anything like that. He asked me for my card and I showed it to him.

Q. Was there ever a ballot issued for this second election?

A. No, because most of them elections were to be—with the nominations at night and the election the following evening meeting, but in a case of this kind it was open for nominations at the following meeting and the elections to follow. In this case we were declared elected at the following meeting on account of no more were elected to the Committee and the two extra that were on there declined, and it left us unanimously elected to the Committee. 30

Q. On February 19th, when the second business meeting of the Union was held, were you present at the evening meeting?

A. I was present at the evening meeting then.

Q. Were there further nominations called for this Committee? 40

A. Yes, there were.

Q. And you say there were no nominations?

A. There were no more nominations to that Committee, and we were declared elected by acclamation then.

- Q. And your names were then read out?
 A. Our names were then read out.
 Q. Were you ever notified of your election?
 A. We don't have to be. I didn't have to be, because I was at the meeting the night I was declared elected.
 Q. Why did you tell my learned friend you were nominated at the morning meeting on the first occasion?
 A. If I said that, that I was elected at a morning meeting—
 Q. You said you were nominated at the morning meeting,
 10 according to my notes.
 A. It is an error. I am very sorry if I said that, because I was not. I was elected at an evening meeting.
 Q. May I have Exhibit 27, please? I show you Exhibit 27, which purports to be the copy of the minutes, of January 5th. The names of those nominated at the meeting of January 5th; one was the Press Committee, and I ask you, if you will, to pick out your name on that list.
 A. That is my name right there.
 Q. Well, you point to the name D. Clark.
 20 A. I understand that my name has not got an "e". That has got an "e" on it, but I presume—
 Q. You are Dave Clarke?
 A. Dave Clark.
 B. It does not matter whether your name is spelled with an "e" or not?
 A. There was, then, a typographical error. I think it has been often made in the books of the company I worked for, and in the company I worked for previous. They often ask you, looking at it, whether there is an "e" at the end.
 30 Q. I show you Exhibit 56. Did you happen to read "The Main Deck" of 1945, containing a list of the successful candidates in the contest for the Union?
 A. I don't remember reading this.
 Q. Do you read the names as a matter of practice?
 A. The same as I read the daily papers, certain portions of it.
 Q. This is an article purporting to be by Gordon Farrington? Who is Gordon Farrington?
 A. That was the Recorder of the Union at that time.
 40 Q. Automatically, chairman of the Standing Committee.
 A. That is right.
 Q. Do you see this paragraph:
 "The Press & Investigating Committee will be responsible for the publication of news, advertising and announce-

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ments. The Committee comprises D. Clarke" — the first name on there?

A. That is right.

Q. With an "e"?

A. Yes.

Q. You still say that is you?

A. Yes, I get letters through the mail with "e" right on them.

Q. In spite of the fact that the Recording Secretary had an opportunity to check your nomination with your card? And does your Union card describe you as Clark with an "e" or without it? 10

A. I will have to look at one of my own cards to authentically tell you truthfully. May, 1945, David Clark—no "e".

Q. Now, did you know a man named Hendry?

A. No, I didn't.

Q. You never knew Hendry?

A. No.

Q. I am going to suggest to you, witness, that you are one of a group of men and that there was a slate put out by this group for election to the different committees. What do you say to that? 20

A. I never saw no slate for any committee.

Q. And I suggest that you were one of the group who were seeking election on the slate?

A. No, I was not one of the group.

Q. Just look at that paper and tell me if you still adhere to that statement?

A. That is right. My name is there, at least, this alleged name of mine now, but as far as being one of any group, I was not. 30

Q. Did you know a man named Bain, who was elected to the first committee?

A. Yes, I knew Tom Bain.

Q. He was not a member of the same group, was he?

Mr. Burton: First, the witness said he does not know of any group, so how can he answer that question, I don't know.

The Court: It is proper cross-examination, Mr. Burton.

Mr. Johnson: Q. But in any case I suggest there was a slate. But so far as Bain was concerned, did he belong to any group in the Union that you knew of? 40

A. He belonged to the Boilermakers' Union. That is all I know about Tom Bain.

Q. He succeeded in getting the most votes on that first election?

A. That is right.

Q. Do you know any reason why Bain was nominated the second time, when he succeeded in getting the most votes?

A. I remember Tom Bain as a person in—I know Tom fairly well. At that time he was having trouble with sickness of his wife, and Tom is very hard of hearing and he was more or less not hearing properly, and then he said he was not going to be on any committee and not hear what was going on. It was Tom's hearing that stopped him from taking a more active part in the
10 Union; in almost any conversation.

Q. On January 5th at this meeting, were you there when Bain's name was put in nomination?

A. I don't specifically remember Tom being nominated, no, I don't.

Q. Do you remember his election being announced as secretary?

A. No, because that committee never convened, so I don't remember Tom getting the most votes from the election, but I don't remember if it was Tom or who got the most votes at that
20 time.

Q. You did not see Bain nominated and walk up to the platform and hand his nomination—his Union card over to the Secretary, did you?

A. Not specifically at that time.

Q. And at which meeting was this, the morning or evening meeting?

A. That was in the evening meeting.

Q. When you resigned from this committee, did you resign in writing or did you resign in some other way?

A. You sent in a written slip of paper, "I hereby decline from this committee," and sign your name. That was all that
30 was signed.

Q. Was there a similar resignation of the other Shop Stewards on the Press & Investigating Committee, as it was finally constituted?

A. The Shop Stewards?

Q. Yes.

A. I don't know that there was then. Garrison was a shop steward.

Q. Farrington was a Shop Steward?
40

A. I don't now.

Q. You would know very well if you had been attending meetings.

A. I don't think Farrington was in our yard at that time.

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If he was, he left shortly after, got laid off, and Fred Duncan and—I don't remember those two fellows until after I met them on the committee.

Q. The day Shop Stewards in the Yard—they met on a Friday, or the Shop Stewards of all the Yards?

A. The Shop Stewards of all the different branches.

Q. Of the Union?

A. Yes.

Q. So that if Farrington had been a Shop Steward, you would have seen him at the Friday meeting? 10

A. I remember Farrington was working at the Yard, but it seems he was out of the Yard at that time.

Q. If he was in the Yard or not, he would still be attending shop meetings?

A. No, because this was the Shop Stewards of the section of the Union which held their meetings in that specific yard.

Q. Are you an advocate of the closed shop?

A. Oh, I believe in the closed shop.

Q. Yes?

A. I sure do. 20

Q. You knew, of course, that there had been an Arbitration Board hearing at the West Coast?

A. Yes.

Q. And no doubt you were informed that Mr. Kuzyeh had made certain representations with regard to the closed shop?

A. The Sun and Province did that for us.

Q. At any rate, it came to your attention that Kuzyeh had spoken at the meeting against the principle of the closed shop?

A. Yes.

Q. And I suggest to you that you formed a very definite 30 opinion about Mr. Kuzyeh as a result of that.

A. No, at that time I was quite a new person in the Trades Union movement, myself, very new, and at that time I did not have any personal information on any of those actions at all and, as far as that goes, our actions are done as a group through the Union, or as the whole Union. That was the policy of the Union.

Q. You joined in October, 1942?

A. That is right.

Q. And the Board meetings did not take place until 1943?

A. That is right. 40

Q. So you had been there a year?

A. I had been there a year.

Q. And you were not entirely new.

A. Well, I was not an old person in the Trade-Union movement. I was a comparatively new man.

Q. I am suggesting to you that you formed a definite animosity against Kuzych?

A. I believe he—

Q. And I suggest to you that you were one of a number of men in that Yard who took it upon themselves to persecute Kuzych.

A. No, that is definitely wrong.

Q. And I suggest to you that you warned both McPheator and Mole that if they did not lay off supporting and sustaining
10 Kuzych, that you would see that they got the same treatment.

A. I never did say that to them two men.

Q. I suggest to you that you told McPheator that there was going to be a Trial Committee and you would see that Kuzych was crucified by the Trial Committee?

A. No, I did not say that.

Q. Now this Trial Committee—you were there. Was counsel for the Union at the Trial Committee?

A. The fellow that laid the complaint and his counsel were there, yes.

20 Q. I am talking about the Union itself. Was there a counsel for the Union?

A. There was a representative there from the Union.

Q. Was there counsel for the Union appointed? Were the Trial Committee made aware of the appointment of Union counsel?

A. Well, according to the by-laws—

Q. Just tell me if the Trial Committee were told that a counsel had been appointed to represent the Union.

A. The Union by-laws point out that counsel can be there.
30 We didn't have to be told that.

Q. Was there such counsel?

A. Yes.

Q. And who was it?

A. He was appointed by the chairman.

Q. What was his name?

A. Bill White.

Q. Was he present throughout the hearing?

A. Oh, I don't think so. I don't remember specifically him being there the whole hearing.

40 Q. What part did he play?

A. He didn't play anything. He sat back to one side, and I don't remember him just specifically, when he came in and when he left. I don't remember him being there right from the start to the finish.

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Q. Are you sure he was there as counsel for the Union and not as an observer?

A. Well, not being secretary or chairman, I didn't make any note of it. I don't remember that specifically.

Q. Were you present at the meeting on March 19th, where the plaintiff was formally expelled by the meeting?

A. March 19th?

Q. Yes.

A. Yes, I was there.

Q. And you heard the statements made, did you not? You 10 heard the statements made before the plaintiff was expelled from the Union?

A. I heard him give his side of the story, which he was allowed to and which he did.

Q. Did Mr. White make a statement at that meeting?

A. No, he didn't.

Q. Well now, you are familiar, or were you familiar with the by-laws at the time?

A. Fairly.

Q. You knew that you had to be familiar with the by-laws 20 insofar as the Trial Committee was concerned, didn't you?

A. Yes.

Q. And I am going to read to you now Article 26, (10):

"After the report is read out at a General membership meeting, the motion shall be put to accept or reject the Committee's report, and there shall be no debate or review of the case by the meeting; but the meeting shall first hear the views of the minorities of the trial committee, if any, and shall permit one of each of the complainants and accused witnesses to plead for or state their side, and shall permit 30 statements to be made by the complainant and the defendant, or by their counsels, and by the union's counsel, if one has been appointed; and all the said persons shall be given the right to the floor for any further and predetermined period."

Was there a statement made by the Union's counsel?

A. I don't remember it.

Q. Can you say definitely whether the union had appointed counsel?

A. I don't remember having anything wrote down specific- 40 ally to that effect, or not.

Q. But it is just possible if Mr. White was present at the trial committee deliberations, it was as an observer, rather than as a counsel for the Union?

A. I am positive he must have been sitting in there with full authority or being appointed by the Chairman or he would not have been there.

Q. His presence was not commented on by you?

A. I was never the Chairman or the Secretary.

Q. You were a member?

A. Yes.

Q. You take full responsibility for this report you signed?

A. On the basis of what we found.

10 Q. Do you not take full responsibility?

A. Yes.

Q. And if any person had been present who was not authorised you would have questioned their presence there?

A. That is why I say, Mr. Johnson, that I don't as a person remember having any signed paper, but I feel quite sure this was done properly, that he was not sitting in there as an observer.

Q. You might like to think so but I want to find out whether you were advised through the proper channels in what capacity Mr. White was present at that trial committee meeting?

20 A. I am quite sure that he was appointed there by the presiding president of the Union at that time.

The Court: Q. The question is were you advised that he had been appointed?

A. My lord, I really cannot positively say. I don't remember having any slip to that effect, I don't remember just that part of it.

Q. You don't remember?

A. No, I don't remember that.

Mr. Johnson: Q. Who was the secretary of your trial
30 committee?

A. David Pearson.

Q. How was he in the secretary's seat?

A. At our first meeting he was elected amongst ourselves.

Q. You say at your first meeting?

A. We had a gathering of ourselves you see. We convened right—once we were elected, we were called together by our recorder, and he called us together and at that time I remember him stating that we did not have a secretary and that Dave Pearson, at that time, was picked amongst a bunch of us there to be
40 the secretary?

Q. How was he picked?

A. Well it was more or less two or three of us—we each looked at one another and said, "Well it will be your job" and Dave more or less automatically took it with the full recognition

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of the rest of us. We didn't have an election amongst the six of us. It was more or less a word agreement.

Q. No nomination, no seconder, no election, no ballot for secretary. It was just an understood thing.

A. There were six of us elected, and there was no ballot for secretary at that time.

Q. But you are quite sure that you were a properly authorised member of this committee in spite of your nomination being in another name?

A. That is my name. 10

Q. That is your name, whether it is with an "e" or without an "c"; it is your name?

A. That is right.

Q. I show you exhibit 35 and ask you to identify that signature as being your signature.

A. It is my signature.

Q. And who wrote this out. In whose hand is that?

A. I only glanced through it or looked at the back of it. I would not say whose handwriting that is to be positive of anybody's handwriting. 20

Q. Did you see it written?

A. I think I—I have not read it. Can I go ahead and read it?

Q. Certainly you can read it. I want to know when this trial committee made this report and how it came to make this report. Is this the first time you have seen this paper?

A. No, I remember this being wrote all right. David Pearson, I am quite sure was the writer of this. He was secretary at that time, and I remember when that was concluded.

Q. You said you have read it before? 30

A. The whole statement at that time was read out, among—well I just forget how we read that out, but I do remember at the time when it was fully completed, it was read out portion to portion and we each had to state whether we were in concurrence with it or not, and two reports were made up then and they were presented to both meetings, and I forget who presented it to our meeting.

Q. What do you mean by both meetings?

A. Both morning and afternoon meetings.

Q. But what I want to know is in the preparation of this 40 report, was this done on the evening of March 13th?

A. I don't remember when that—I cannot remember the whole thing about it.

Q. You cannot remember anything about it?

A. I can remember them minutes—part of them. I only read the first page. I can remember them as I am reading, but it is four or five years since I was on that committee.

Q. Yes.

A. I remember the drafting, and finally when we all completed and signed it. That is my own signature.

Q. When did you sign it, on March 13th?

A. I would not authentically say when.

Q. Was in on the evening of the trial?

10 A. I don't remember that either.

Q. Who wrote it out. Did the secretary read it out or what?

A. The reporter—. The secretary is the person that does the reading out and went over the whole thing, the evidence.

Q. Did he read it paragraph by paragraph or did he read it verbatim to the end?

A. He read it paragraph by paragraph, I feel sure, but personally I just don't remember that there altogether—to be honest I just don't remember.

Q. How long did it take to prepare it?

20 A. I don't remember that part of it either?

Q. The fact is that your memory of those months has faded very considerably?

A. No, I remember times back, but it was something that was—what took place at the time, but I don't remember any special meeting and putting it in by book or anything.

Q. But this was the most important function that you had held in the union to sit on this trial?

A. No, I would not say that either. My most important function took place right in our yard.

30 Q. Now Mr. Clark, you knew at the time you were nominated that charges had been preferred against Kuzych and others?

A. I knew that I was going to sit on a committee, and charges would probably be brought up.

Q. You knew more than that. You knew definitely that charges had been preferred against the plaintiff at the time you were nominated?

A. No, I would not say that I knew them charges were definitely laid at that time. I cannot honestly say that.

40 Q. You were not present at the meeting when you were nominated?

A. Yes, I was. They might have been meeting that same evening, but I would not definitely say they were, because I don't remember the specific times.

Q. Here is a minute of the meeting on January 5th. Charges

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were laid against one Myron Kuzyeh; moved, seconded and carried that charges be accepted.

A. That could be so.

Q. And that was the very meeting at which you were nominated for this Press and Investigating Committee?

A. That could be right.

Q. So I suggest at the time of your nomination—

A. There was nothing to prevent me leaving the meeting at 9 or 9.30 that night after the nomination either.

Q. I don't suggest that there was.

10

A. I could have been away from the meeting when it was read out. I don't specifically remember the date.

Q. The only suggestion I make in that connection is that the motion I just read appears right at the beginning of the list. You remember any of those motions. Do you remember a motion—

A. I remember this here.

Q. You remember that. When did the nominations come in that meeting?

A. I don't know, it is in the minutes there. I don't remember specifically when they come.

20

Q. On page 2 they come after a point of order raised by Brother A. McLeod.

A. Yes.

Q. I suggest to you during this period of time, the Union was in a disturbed state?

A. Well there were quite a number of elections on at that time. That is quite sure.

Q. If it was not in a disturbed state on January 5th it certainly was in a disturbed state a month later—the Union?

A. That is on January 5th. No. I would not say it was a month; maybe two months or longer than that.

30

Q. Then I suggest within two months of January 5th Mr. Henderson had resigned.

A. Yes, I think he resigned in February some time.

Q. And you knew before he resigned that the Union was in a very disturbed state? Didn't you? Or do you remember anything of the events of that date?

A. I know I remember quite specifically when the election was held in the full—it was held on the basis that there was a discrepancy in the funds and I know that about 3 or 4 meetings after the election that Mr. Henderson was asked—well now, he has been in the presidency of this Union six to eight weeks and he has the books in front of him every day and he got to be president by pointing out there was a discrepancy in the funds and

40

they asked him for particulars. Now he has been in the leadership of the Union for this long and has had the books at his disposal at all times and if that is so the membership wants to know why and at that time he could not tell them. He had no alternative but to do what he did. He was absolutely lost when it come to that.

Q. I gather you were not a supporter of Mr. Henderson?

A. I know at that time, the night that he resigned, that Brother Bill Stewart took the floor that night and asked him not
10 to resign for the sake of the Union.

Q. You won't answer my question? I asked you a very simple question. I asked you whether you were a supporter of Mr. Henderson. It is all right if you don't want to answer me.

A. I am not trying to avoid your question. I am trying to remember if you—

Q. Because I am going to suggest your memory has failed?

A. It could be.

Q. I suggest that your memory has failed on a number of points, one of which is whether you did or did not lead Mr. Kuzyeh
20 away from the meeting?

A. I never did lay a hand on that man, yet, and I have never led that person no place. I have yet to speak to Kuzyeh.

Q. You could lead him out of the meeting without speaking to him?

A. I never led that man out of a meeting.

Q. Did you ever see him at a meeting when he was led out?

A. No, I don't think I have ever been to a meeting—I have been there when he was asked to leave the meeting and he got up and left.

Q. And at the trial of Kuzyeh did you have any conversation
30 with him then?

A. No. I didn't. I was one of the committee but I feel quite sure—I don't remember reviewing the evidence of each question but I don't think I even spoke to him there. I listened to the full trial and I know I never did talk to Kuzyeh in the yard.

Q. But you know very well that the explanation you gave me as to the issue on which the election was fought, is not the full story. You know that the election was not fought on the question of the diversion of funds?

A. That was the main issue. They had side issues but that
40 was the real main issue.

Q. Look at this paper and tell me if you are still of the same opinion?

Mr. Burton: Am I to take it that my learned friend does not

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wish to show me the memorandum he is submitting?

Mr. Johnson: No.

The Witness: I still say that it was the funds. This here, if I may say—

Q. You don't need to disclose what it is if you don't want to, but I am suggesting to you that was not the main issue. There were other issues?

A. There were minor issues but the main issue was the discrepancy in the funds. Can I explain that, why I feel that.

Q. No, I don't want your explanation, but I want to have 10 this from you and then I have finished. As a result of this turmoil within the yard there was a very considerable resignation on the executive Board?

A. Yes, there were three resigned.

Q. From an executive of 7?

A. Yes.

Q. And others resigned from the Executive Board?

A. Not actually—I don't think—there was an executive board—there were 7 all told.

Q. The by-laws set out what forms the executive? And 20 your trustees are not members of the executive?

A. That is right.

Q. And one of the trustees resigned?

A. Yes, that is right.

RE-EXAMINATION BY MR. BURTON:

Q. May I ask one question. My learned friend brought out the question that you knew that charges were laid against Kuzych at the time when you were elected to the Press and Investigating Committee. Were there other charges dealt with during the time you were a member of the Press and Investigating Com- 30 mittee?

A. I beg pardon.

Q. Other than against Kuzych, were there other members of the Union—

Mr. Johnson: I don't think it is relevant.

Mr. Burton: My learned friend has said he knew there were charges.

Q. There may have been other charges?

A. Yes, there were other charges at the time.

Q. Do you know about them? 40

A. But I don't remember. I cannot authentically state what date the charges were preferred or laid. I can remember the time—

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- Q. Do you know Boivin?
 A. Yes.
 Q. Were charges laid against him, do you remember?
 A. Yes, I think there was.
 Q. A man named Welsh?
 A. Yes.
 Q. Were charges laid against him?
 Mr. Johnson: If my learned friend—
 Mr. Burton: I will let it go at that.
- 10 Mr. Johnson: I don't think that I would like to leave it at that, because my learned friend has said those charges were pending at the time. I am making the definite suggestion on January 5th there were charges but what subsequent charges were dealt with by the standing committee is another thing altogether.
- Mr. Burton: My learned friend is making an issue as I take it that this Trial and Investigating Committee was appointed, while knowing the Kuzych charges were coming up, to handle those particular charges. I want to bring out there were other charges against other people.
- 20 The Court: You are suggesting that other charges had been laid at that time?
 Mr. Burton: Well—
 The Court: I do not think it matters.
 Mr. Burton: I do not think it matters.
 The Court: Is there something else?
 Mr. Johnson: Only on that point, whether the witness remembers at the time there were other charges, I would like to have it; that the plaintiff was the first trial of the committee—the plaintiff's trial was the first business of this committee.
- 30 The Court: It was the first trial was it, that you had?
 A. I know the question my lord, but I don't remember if it was the first or not. I remember, there were a few trials, and I don't remember if that was the first or not. Honestly I don't.
 Q. Mr. Johnson means the first held by the committee while you were a member of it?
 A. It could have been but I would not honestly say so.
 Q. You are not sure?
 A. No, I am not.
 Mr. Burton: One other question.
- 40 Q. When the secretary of the Press and Investigating Committee was elected amongst the members, that is, the seven composing it, was there any dissention or was it unanimous?
 Mr. Johnson: The election?
 Mr. Burton: Whichever way he was appointed. My learn-

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ed friend went into the question of whether there were ballots or moving and seconding. Was it by contest or was it unanimous?

A. I think at the time of the election there was an election—

Q. No, the secretary of the Press and Investigating Committee after it was constituted?

A. No, it was unanimous that Dave be the secretary amongst the five of us there, or the six.

(Witness aside)

GORDON FARRINGTON, one of the defendants herein, being first duly sworn, testified in his own behalf as follows:

EXAMINATION BY MR. BURTON:

Q. Mr. Farrington, what is your occupation?

A. I am a manufacturer's agent.

Q. Were you ever a member of the Boilermakers' Union?

A. Yes, sir.

Q. Local No. 1?

A. Yes, sir.

Q. When did you join first?

A. September 1941.

Q. In what capacity?

A. I joined as a helper in the plate shop, in the South Yard.

Q. How long were you a member?

A. About four years.

Q. And you resigned then. About what time do you recall?

A. In August or September of 1945.

Q. What was the reason?

A. Well, the war was over and they were laying off men, and I had an opportunity to go into business for myself.

Q. And you have followed that business since?

A. Yes.

Q. But you are not now a member of the union?

A. No.

Q. Do you belong to any union?

A. No sir.

Q. Did you ever hold office in the Boilermakers' Union?

A. Yes, I was on the executive board at different times in the union.

Q. Do you recall the first office you held?

A. Yes, I was chairman of the sub-local in south yard, for 1942.

Q. Were you elected an officer in 1943 or 1944?

- A. Yes sir, 1944.
- Q. To what office?
- A. As reporter of the union.
- Q. What month would that be?
- A. Well, the elections were held in early November or December of 1943 and I took office in January of 1944.
- Q. That is one of the executive officers of the union?
- A. Yes, it is on the executive board.
- Q. What other duties does the position entail?
- 10 A. Well, it generally calls for the writing of all the news for the Main Deck and looking after advertising in the paper and the chairmanship of the Press and Investigating Committee.
- Q. And as such you were chairman of the Press and Investigating Committee?
- A. Yes, after the by-laws of 1944 were adopted, after being appointed.
- Q. And you assumed that duty in January 1944-1945?
- Mr. Johnson: He said '44, he said '43.
- The Witness: I held office for two terms.
- 20 Mr. Burton: You were chairman of the Press and Investigating Committee for two years.
- A. Yes, although there was no Press and Investigating Committee until after the by-laws of '44 were accepted.
- Q. We will come down to 1944. Were you again elected reporter?
- A. Yes.
- Q. What month were you elected?
- A. I believe the elections were in the early part of December, 1944.
- 30 Q. When did you assume office?
- A. The first meeting of January 1945.
- Q. Did you function as chairman of the Press and Investigating Committee in January 1945?
- A. Well, I functioned as reporter. The Press and Investigating Committee would not take office until actually in February of 1945. The elections were to be in January, and they were to take office in February 1945.
- The Court: Is that office reporter or recorder?
- Mr. Burton: It is reporter, my lord.
- 40 Q. What happened in the January elections to the Press and Investigating Committee, of January '45.
- A. In the first meeting in December — the first meeting in January, nominations were called for. There were a number of nominations. At the second meeting in January the election

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took place, but subsequently we found there was a chap by the name of Hendry who had been elected to the committee, and when I got in touch with the chairman of the committee in regards to Mr. Hendry, we could not locate the fellow. We made some fairly extensive enquiries amongst the membership and it seemed Mr. Hendry had left the industry.

Q. Of course we have covered it thoroughly but my learned friend is objecting. Was it announced at a meeting to that effect or what do you know of your own knowledge?

A. What do you mean? 10

Q. Was there any announcement made as to the result in the election, or what had happened?

A. Yes, there was at the February meeting. There was an announcement made subject to some activities I had to undertake with regard to the elections.

Q. As a result in any event was there a new election or new nominations held?

A. Yes.

Q. When was that?

A. The first meeting in February. 20

Q. Do you know what happened on those nominations. Who were nominated?

A. There were about 8 or 9 people nominated, and subsequently Foster and McLeod sent in letters declining to run for the committee, and in the second meeting in February there were six there standing and as those were the minimum required by the by-laws they were declared elected.

Q. Were you at the first meeting on January 5th? When the nominations were called for?

A. I was at the morning meeting, sir. 30

Q. Were there any nominations at that meeting?

A. There were, yes.

Q. Did those nominees consent to stand?

A. Well, I remember Tom Bain was nominated and he agreed to stand at that particular meeting, yes. Who else was nominated, I could not say.

Q. At the first meeting in February, were you present at the nominations?

A. Yes sir.

Q. Which meeting? 40

A. In the morning meeting.

Q. Were any nominated at that meeting?

A. Yes, I believe that Vic Foster — it seems to me that Vic Foster was nominated at that meeting.

- Q. And did he accept nomination?
 A. He accepted nomination at that time.
 Q. He subsequently withdrew.
 A. And subsequently withdrew.
 Q. Do you know who then were declared elected?
 A. Oh yes.
 Q. Who was it?
 A. There was Colin Belt, there was Kenny Garrison, there
 was Dave Pearson, Dave Clark, Orville Braaten, and Fred
 10 Duncan.
 Q. Mr. Farrington, we are hearing from you now about
 Mr. Braaten and Mr. Clark. Do you know where Mr. Belt is?
 A. No, I understand that Colin went to Saskatchewan.
 Q. Do you know where Pearson is?
 A. Well, Dave I know of. Dave told me he was going to
 Milwaukee.
 Q. Do you know where Duncan is?
 A. No, I have not seen Fred for a long time.
 Q. And Garrison?
 20 A. I have not seen Kenny.
 Q. Now after you then constituted as a committee, did you
 hold a meeting?
 A. Yes, we held a number of meetings.
 Q. What was done with regard to the office of secretary of
 the committee?
 A. Well, I pointed out to the members of the committee,
 actually there was no secretary, and that they should amongst
 themselves elect a secretary, and Dave Pearson was nominated,
 and nobody else bothered to run for the office, and Dave was
 30 elected as secretary.
 Q. Was the election opposed?
 A. No, there was just Dave nominated.
 Q. Now after the committee was constituted were there
 any charges brought which had to be determined by that com-
 mittee?
 A. Oh yes, there were charges against Mr. Kuzych.
 Q. And were those charges heard?
 A. Yes sir.
 Q. Do you remember the date?
 40 A. It was some time in March, the exact date I could not
 say.
 Q. I show you exhibit 35 in this case. That is — tell his
 lordship what that is.
 A. This I believe is the final report of the committee before
 it was typewritten.

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Q. Do you see the name G. Farrington?

A. Yes sir.

Q. Is that your signature?

A. Yes sir.

Q. And you signed this?

A. Yes.

Q. And do you know who drew this up?

A. Dave Pearson did the writing.

Q. And were you in support of this finding?

A. Yes.

Q. The findings?

A. Oh yes.

Q. At the time of the trial was Kuzych present?

A. Oh yes sir.

Q. And did he cross-examine witnesses?

A. To the best of my knowledge, he did, sir.

Q. And did he give evidence?

A. Well, he did and he didn't. This sounds contradictory. He made certain statements, and if we asked him if this was evidence he was giving, if I recollect right, he said something to that effect. He was somewhat evasive in his statements. 20

Q. In any event did he avail himself of the privilege of giving evidence?

A. Oh yes.

Q. How long did the hearing last?

A. Two nights.

Q. Before the Press and Investigating Committee?

A. Yes.

Q. Was that evidence given on two nights?

A. Well, yes there was. He made a -- if I recollect now 30 the charges were read out, and we asked Mr. Kuzych what he had to say in this regard, and if my memory serves me right he had either a typewritten speech with him -- in any event he went into a long speech about the thing, and finally we got down to taking evidence. There was evidence taken for some time the first night and then it was resumed on the second night.

Q. Was the report presented to a meeting of the union?

A. The report of the committee?

Q. Yes?

A. Yes sir.

Q. And were you present when it was presented?

A. Yes sir.

Q. Who presented it?

10

40

A. Dave Pearson presented it at one meeting and I presented it at the other.

Q. Was there a debate on the report?

A. At the Union meeting, do you mean?

Q. Yes?

A. No, the report was up for acceptance or rejection, and I think that the way it went then was that—the counsel for the plaintiff in that particular instance and Mr. Kuzych who acted as his own counsel spoke for themselves at the union meeting
10 and then it was put to a vote and the vote carried to expel Mr. Kuzych from the union.

Q. Coming back to the trial and the investigating committee, I show you exhibit 42. What is that?

A. Well this was the procedure, based on the by-laws, that we gave to the defendant and to Mr. Stewart as counsel for the plaintiff, so that they would have a set of rules to go by. There was a sort of procedure of how they would conduct themselves.

Q. It is headed the procedure of the Press and Investigating Committee (reading). Was that the procedure adopted?

20 A. Yes sir.

Q. Who do you say represented McKendrick?

A. Mr. Stewart.

Q. And Kuzych you say was not represented?

A. No sir.

Q. Was the union represented?

A. Yes.

Q. Whom by?

A. Mr. Bill White.

30 Q. And I think you said that the meeting was held that night. How long did it last?

A. It was a little late getting started, if I remember, and we kept going till about 9.30 and then there was a recess of about 15 minutes or so and then it went on I would say till 10.30 or a quarter to eleven. Mind you, I am just speaking from memory, and I may be wrong in what I am saying, but I am pretty sure that is how it went.

Q. Was the evidence completed that night?

A. The evidence I am pretty sure, Mr. Burton, was all in that night. I think that Kuzych wanted to make some further
40 statements and I am not sure whether Mr. Stewart did so but I know it went into a second night.

Q. And was Kuzych given every opportunity to present his evidence as well as he wished?

A. Oh yes, he was given unlimited opportunity.

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Q. Were you present at any of the meetings of the union when the by-laws were being discussed?

A. Yes sir.

Q. Did you have access to the copies of the draft bill?

A. Everybody in the union had access to them?

Q. And was that access given to members of the union to consider the by-laws and make amendments?

Mr. Johnson: Well, don't prompt him.

Mr. Burton: I am trying to shorten this because we have covered this. 10

The Witness: Yes, actually the by-laws committee was in existence for three months, I would say.

Q. Do you recall any particular amendments being presented?

A. I remember that Gene King was chairman of the by-laws committee and he read out various drafts of the by-laws and from time to time the members made amendments to them, yes.

Q. And do you recall the by-laws being put to the meeting in final form?

A. Yes. 20

Q. What happened?

A. Well, I was at the morning meeting and they debated then, and that was sometime in the summer of '44, and I understood that subsequently the night meeting accepted the by-laws.

Mr. Burton: Your witness.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. You say that subsequently the evening meeting accepted the by-laws?

A. Yes, that is what I said.

Q. That would mean then that the morning meeting had done and finished with the by-laws before the evening meeting? 30

A. The explanation of that, sir, is quite simple. The morning meeting discusses them and passes on them. But the vast majority of the membership came to the evening meeting, because they worked the day shift, and they also had a vote on the by-laws.

Q. As an actual matter of record in the minutes, the minute showed that the morning meeting did not pass the last articles of these by-laws until August 21?

A. That was understandable too.

Q. Well — 40

A. Because what happened was this, the matters and reports that were passed upon at the previous meeting were brought up again, but from what I understand the question of the dues was

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the one thing that seemed to stick the complete consolidation of the by-laws. The morning meeting had agreed to the acceptance of the by-laws as they were read out. The evening meeting had made an amendment in regards to the payment of dues, and on the 21st, which would be the meeting subsequent to the 7th, the morning meeting adopted the by-laws in the same way that the day shift had at the night meeting.

10 Q. The night meeting of August 7th had finally passed the by-laws and the by-laws committee completed their work and it was not until August 21st the morning meeting dealt with the last articles of the by-laws?

A. It was not the last articles. It was the question as I understand it, of the dues.

Q. I am afraid I will have to read that again. Exhibits 19 to 23.

The Court: We will adjourn for five minutes. Have you any witnesses after this?

Mr. Burton: No.

The Court: Do you expect to have any rebuttal?

20 Mr. Johnson: I don't expect to have any rebuttal.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

Mr. Johnson: Q. Mr. Farrington, I take it that you were at the morning meetings all the time?

A. No, just depending what shift I was.

Q. You were at the morning meeting on August 7th, were you?

A. Yes, I was.

30 Q. Do you remember this motion being put, moved, seconded and carried that the addition to article 8 dealing with the function of the Political Action Committee be approved. Do you remember that motion?

A. I am not too sure of it, no.

Q. Tell me, were you a member of the By-laws Committee?

A. I was, yes.

Q. So you were following the passage of the by-laws through the meetings with some concern, were you not?

A. Yes sir.

Q. Did you see the master copy of the by-laws?

A. Yes.

40 Q. Every member of the committee had one?

A. Yes.

Q. And any changes and amendments were followed by you on the master copy?

A. Yes.

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Q. So you knew exactly when any important amendments went through?

A. I would have at the time. I don't know as I would now.

Q. Who moved all those motions regarding amendments?

A. Oh, I don't know.

Q. Did you move any yourself at the morning meeting?

A. No.

Q. Do you recollect who moved this particular motion regarding the political action committee?

A. No, I don't.

Q. Well now, do you see what it says there, following what I have just read?

A. Well —

Q. Discussion ensued on articles 11 to 13 and it was moved, seconded and carried that those articles up to and including 13 be approved. Do you have any knowledge of that?

A. Well, all I can say is there were so many meetings of the by-laws committee, I cannot remember just exactly what did happen to them all.

Q. That is not a meeting of the by-laws committee? 20

A. I know, but the meetings discussing by-laws, there were so many, I cannot remember all.

Q. Mr. Farrington, I take it, as a member of this by-law committee you were interested in how far both the morning and evening meeting had progressed in dealing with those articles?

A. I took as much interest in it as I could.

Q. And on August 7th you knew the evening meeting had completely passed the by-law?

A. Not actually. I was not at the meeting, no, but I know from the minutes afterwards that they had. 30

Q. Yes, and you knew, didn't you, shortly after August 7th, that a motion had been made and passed at the evening meeting on August 7th that members of the by-laws committee who lost time from their work while formulating them should present bills to the membership, and be reimbursed for the time lost?

A. Yes sir.

Q. Were you so reimbursed?

A. I did not lose any time.

Q. At any rate you got a hearty vote of thanks for your work? 40

A. I presumably did.

Q. It was passed and presumably conveyed to you around August 7th, and what I am suggesting to you is that you knew,

either on August 7th or very shortly afterwards, that the evening meeting had finally passed the by-laws in their entirety.

A. I believe there was one part that was not quite accepted, and that was on the question of the dues.

Q. Then on August the 21st in the morning meeting. I want to show you an exhibit which reads as follows: "Moved, seconded and carried that the agenda be suspended and the meeting proceed to discuss the draft by-law. Brother King, on behalf of the by-laws committee, presented amendments to the by-laws.
10 Moved, seconded and carried that the by-laws, without amendments, be adopted." What amendments were made on August 21st or what amendments were presented to the meeting?

A. The only thing I can say is that Brother King probably presented a by-law dealing with the dues. He might have brought other things up but I cannot recall them at this time.

Q. I suggest to you not until August 21st 1944, the morning meeting had an opportunity of passing the articles after Number 13.

A. As I understand it and I think I have said this before,
20 the morning meeting adopted the by-laws. The night, and mind you I was not at the meeting, so I am only going on what I understand — the night meeting adopted the by-laws with the proviso regarding the dues; then later in the month the by-laws as accepted by the night meeting were up to the membership for their approval and that the amendments that are discussed in here relate as far as I know to the question of dues. There was to be an increase in the dues rate.

Q. Is what you are saying that the evening meeting passed the by-laws finally?

30 A. Yes.

Q. On August 7th, 1944?

A. Yes.

Q. Subsequently there was an amendment or more than one amendment with particular reference to the dues. Is that right?

A. Will you say that over again?

Q. I have already put to you that the evening meeting passed the by-laws finally on August 7th, 1944, is that right?

A. To the best of my knowledge, that was the case. I was not at the night meeting.

40 Q. Subsequently there were some amendments to the by-laws in connection with the dues?

A. Yes.

Q. And the morning meeting was asked to deal with that amendment on August 21st?

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A. That is right, as far as I know.

Q. Also the morning meetings had never seen before August 21st, the articles after No. 13?

A. No, I don't think that that was the case.

Q. Who was responsible at the morning meeting for writing the minutes?

A. I think it was Norman McSween.

Q. And was he present at the meetings on August 7th and August 21st in the morning?

A. I think Norman would be, yes. 10

Q. I suggest to you that when you told my learned friend that the morning meeting dealt with the by-laws and subsequently the evening meeting dealt with them, that was an error on your part, and that what actually happened was quite the reverse of it?

A. I don't follow you.

Q. I suggest what actually happened as shown by the minutes is that the evening meeting finally disposed of the by-laws, before the morning meeting had completed its deliberation?

A. I don't think that was the case. It may have been, but I am reasonably certain that was not the case. 20

Q. Then what you are saying is according to your best recollection the morning meeting passed the by-laws in their entirety?

A. That is right.

Q. And you cannot tell me on what date they did that in its final form — in the final form?

A. As far as I understand on the morning of August 7th, the second shift meeting passed the by-laws in their entirety.

Q. In the evening meetings?

A. At the morning meetings. I was not at the evening meeting — August 7th — 30

Q. So you say on August 7th the morning meeting passed the by-laws in their entirety in the form in which they are printed here? The articles — No. 14.

A. That is my understanding of it, yes.

Q. And if the minutes do not bear that out you say that the minutes are wrong?

A. No, I would not say so.

Q. Then your recollection may be wrong?

A. It is possible.

Q. Your recollection is somewhat vague about all those 40 matters, is it not?

A. It is going on for five years since I had them now. I would say I never had any reason to think about them since that time.

Q. All I am suggesting is that your memory has failed in regard to the details?

A. In some instances, yes.

Q. Let me deal with some instance. I think you told my learned friend that Mr. Dave Pearson had presented the report of the trial committee to the morning meeting, this report exhibit 35. You said to my learned friend that Dave Pearson had presented that to the morning meeting. Now is that right or is it not?

A. Dave presented one report at one meeting, and I presented the report at the other. It may have been vice versa. I'm not too clear on that point.

Q. I ask you to look at exhibit 32, the minutes of the meeting of March 19th. At the morning meeting this report was presented by Brother Orville Braaten and at the evening meeting by Brother Gordon Farrington.

A. That is possible, I may have been mistaken.

Q. I suggest you are also in error in saying that the trial lasted two evenings. What about that. I think you told my learned friend some evidence was taken and then you adjourned and came back the following evening, is that right?

A. Yes, I think I said that.

Q. Well, is that right, is that what happened?

A. I am not any too clear. I know there was an adjournment in the meeting. We had been going for some time and we had this adjournment.

Q. Is it not a fact though that what happened was, when Kuzych turned up at the meeting on March 12th you asked him whether he would consent to a 24-hour adjournment?

A. Yes, that is right.

Q. So no evidence was taken on March 12th at all?

A. Yes, that is right.

Q. And the whole trial took place —

A. On the 13th, yes, that is right.

Q. And I suggest to you that the union did not have any counsel present at this trial?

A. There was a counsel for McKendrick. There was none for Mr. Kuzych, but Bill White was introduced I believe by Charlie Caron as counsel for the union.

Q. Now you were familiar of course with the by-laws, having been a member of the by-laws committee?

A. Yes.

Q. And you were fully familiar with the procedure relating to discipline?

A. Fairly well, yes.

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Q. And you were aware of the presence of Article 26, clause B, which stated this, the complainant and the accused are to be permitted to appoint a counsel who must be a member of the union and if the union's interests are vitally affected, the president may appoint counsel to appear on behalf of the union?

A. Yes.

Q. Who was the president at that time?

A. Mr. Henderson.

Q. I suggest to you that Mr. Henderson had resigned and you did not have a president or a first vice-president at the time of the trial? 10

A. I don't think that is the case, but it may be. I think he resigned later on, than that.

Q. If Mr. Henderson was president how did he appoint counsel, by writing?

A. I just forget how the thing came about, but I know at the time that Mr. White was the counsel for the union.

Q. You were charged as chairman of this committee with seeing that Mr. Kuzych had a fair and proper trial under the by-laws? 20

A. Yes.

Q. And it would be very important to know just in what capacity the different persons were present at the trial?

A. Yes.

Q. Whether it was as onlookers, or in an official capacity?

A. Yes.

Q. And I put it to you Mr. White was there merely as an observer?

A. No sir.

Q. All right. In what respect were you as chairman of this committee informed that Mr. White had been appointed counsel for the union? 30

A. By the secretary-treasurer of the union.

Q. Was that a verbal declaration or not?

A. Mr. Caron came in with Mr. White and Mr. Stewart came in with Mr. McKendrick and Mr. Kuzych came by himself, and I asked Kuzych if he had a counsel and he said no. McKendrick said Mr. Stewart was acting for him and Charlie Caron got up and said Bill White would be here as counsel for the union.

Q. And you took the secretary's word for it? 40

A. Oh yes, he was the senior officer of the union at the time.

Q. Was there not a second vice-president? Was not Mr. Nuttall senior to the secretary-treasurer?

A. I think at that particular time Johnny was at a meeting. There were other committee meetings of the union and Johnny may have gone to the meeting. I am not sure.

Q. I am suggesting that this trial took place when you did not have any president or vice-president. Can you recollect definitely on that?

A. I am not sure of that, as to when Henderson resigned I am not quite sure. I know that there was a time when Henderson was a president of the union, and during the beginning of the
10 year when he was I had dealings with him with regard to the Kuzych trial, but whether he was the president of the union when the actual trial took place I am not sure.

Q. You remember March 19th when the evening meeting expelled Kuzych?

A. Yes.

Q. You were present at that meeting?

A. Yes sir.

Q. Who were in the chair?

A. I think John Nuttall was.

20 Q. And you know that at the time Mr. Nuttall was second vice-president he was in charge of the union.

A. He probably was, I am not sure.

Q. He was the man who should have appointed counsel for the union, and not the secretary-treasurer on March 13th?

A. He probably did.

Q. That is what I want to find out, and if he did it, how he did it. You told me the secretary-treasurer did it?

Mr. Burton: No, he did not say it. He said in his opinion that Mr. White was there for the union, but he did not say —

30 Mr. Johnson: He said he had brought Mr. White into the meeting, and Mr. White was acting for the union.

Mr. Burton: But he did not say appointed.

Mr. Johnson: I didn't say that.

Mr. Burton: I thought you did.

Mr. Johnson: Q. I want to find out how your committee was made aware of this appointment of Mr. White?

A. From the statement of Mr. Caron who was the secretary-treasurer of the union.

40 Q. And the statement was a bare announcement that Mr. White would act for the union?

A. As counsel.

Q. And without stating the authority?

A. I would take the word of the secretary-treasurer. I

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would have no reason to believe he was telling me something that was not true.

Q. Did not Mr. White stay throughout the trial?

A. As far as I remember, he did.

Q. And did Mr. White make a statement at the meeting on March 19th?

A. I don't think he did, no.

Q. Now who prepared exhibit 42, the procedure to be adopted by your committee?

A. Well, I did some work on the thing and I think that some 10 of the committee did some work on the whole procedure.

Q. When was that done, that work. I mean was it done before March 13th or at the meeting, or when was it prepared?

A. It was done before the trial because we were ready for them when they came in.

Q. I take it that the trial was over by about 10.30 in the evening?

A. I know it lasted a long time, and it may have been 10.30 or it might have been 11 o'clock or it might have been up to midnight. I know it was very late, it dragged on and on. 20

Q. At any rate you signed the report?

A. Yes sir.

Q. Was the report made that night?

A. No.

Q. When was it made?

A. Oh, it was made two or three nights later.

Q. There was a subsequent meeting to that?

A. Yes.

Q. And the different people were in attendance?

A. Yes. 30

Q. The different members of the committee were in attendance?

A. All the different members were there.

Q. Signed at one and the same time?

A. Yes, they all — after the report was made up they all put it together and signed it.

Q. Was there anybody else present except the members of the committee?

A. Not that I recall.

Q. Well, do you know whether any of the others were? Was 40 Mr. Caron secretary-treasurer at the time you prepared the report?

A. I don't think so.

Q. Was Mr. White there?

- A. No, I don't think so.
- Q. Was Mr. Stewart there?
- A. No, I think the only people that were there were the committee members.
- Q. I just want to ask you a few questions about the nomination for this committee. At the meeting on January 5th, 1945, at the morning meeting you were present and heard some nominations?
- A. Yes.
- 10 Q. I think you told my learned friend that Mr. Forster was nominated at that meeting?
- A. No, I think I said I heard Tom Bain being nominated, and Vic Foster secondly.
- Q. At the first meeting there were several nominations?
- A. Yes, I kind of think there was.
- Q. And there was the election was there not?
- A. On the 19th, yes, there was.
- Q. And the result of that election was given to you presumably by the recording secretary?
- 20 A. No, I went down to the union offices two or three days after the elections and Frank was working on the job and I saw Henderson and I asked him what the results of the elections were, and he gave them to me and I wrote an article on it.
- Q. And this is the article which you wrote which appeared in the Main Deck on February 2nd, exhibit 56?
- A. Yes.
- Q. And these names were the names of your committee?
- A. Yes.
- 30 Q. D. Clark, F. Duncan, B. Lewis, O. Braaten, W. Hendry, Farrington and Tom Bain, the last two being chairman and secretary respectively?
- A. Yes.
- Q. And Mr. Tom Bain having been elected secretary that would mean he got the most number of votes. Can you give me any reason why Mr. Bain was not nominated a second time?
- A. Yes, as you know this committee was figured out — It was not a legal committee when the elections were held but in the meantime we asked them to send in their resignations in writing and Tom sent his in and at the first February meeting Tom got up and he made a statement because of his deafness he figured he did not want to be nominated again, because half the time he could not hear what was going on and that some of the brothers had ribbed him now and again about taking up statements that were not said at all. Tom would not get the full gist of them
- 40

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and at the same time he said he was trying to get a different shift so that he might be home with his wife because she was sick.

Q. That was an answer I have not had before. You see there were 8 or 9 who were nominated?

A. When?

Q. Were not 8 or 9 nominated at the meeting of February 5th?

A. Yes, I would not say 8 or 9. There may have been over 8 I am taking a rough guess.

Q. So that at the morning or evening meeting — 10

A. As I say, the only one I remember being nominated at that meeting was Vic Forster.

Q. Were you present at the evening meeting as well at February 5th?

A. No, I don't think so.

Q. So you don't know who was nominated?

A. Other than what I got from the executive officers of the union.

Q. When did you get these nominations?

A. Some days later, when I went down to find out who the 20 committee was.

Q. And there was some lapse of time I wanted to clear up and you are the man who can do it, because you are the chairman. There was a lapse of time between February 5th and the 19th. Now on February 5th there were certain nominations made?

A. Yes.

Q. And I understand that Forster was nominated in the morning of February 5th?

A. He may have been. As far as I remember, Vic Foster was nominated that morning, but he may not have been. I cannot 30 remember as I told you all the details of the thing.

Q. And you were not present at the evening meeting of February 5th?

A. No sir.

Q. And you heard that there had been some nominations made to your committee?

A. Yes sir.

Q. From the executive officers?

A. Yes.

Q. And then on February 19th it was anticipated presump- 40 ably by you there would be an election?

A. Yes.

Q. And you were present at the evening meeting, February 19th?

A. I believe I was. I am not too sure, but I believe I sat out that meeting.

Q. Was it announced by some member of the executive that there would not have to be an election?

A. In the morning meeting — I am pretty sure I was at the morning meeting, two letters, one from Alastair McLeod and one from Vic Forster were read out, declining, and the rest of those who were nominated — their names were read out and the membership voted to elect them, as the committee, subject of course
10 to what the night meeting did.

Q. You say they voted?

A. I mean to say they voted by accepting a motion that these brothers be elected.

Q. And did you say on February 19th there was a motion put to the meeting?

A. There was something to that effect. I don't say there was an exact motion but there was —

Q. If there was a motion it would be in the minutes?

A. Yes, I suppose it would. I am not saying that there
20 was a motion, I am just saying the way I recollect it.

Q. But you think there was a motion?

A. There may have been and there may not have been. I am not too sure.

Q. Well I don't think there is a motion there, but you can look through it and see. However that may be, were there any further nominations in the meeting of February 19th?

A. I don't remember.

Q. And then was there a declaration that these nominees were elected?

A. I believe they were declared elected.
30

Q. Who declared them elected?

A. The chairman of the meeting.

Q. Who was the chairman of the meeting?

A. I imagine it was Johnny Nuttall. Here it says Henderson. So I guess it was Henderson.

Q. You say you "imagine" and "presume". I take it you don't have a distinct recollection of what did happen?

A. Not as to every detail, no.

Q. Not as to the details which I have just asked you?

A. No.
40

Q. The details to which you have given the replies, "I presume" and "I imagine". I take it as far as those answers are concerned they are not accurate at all; they cannot be relied on.

A. They are as honest as I know them to be.

Mr. Johnson: Thank you.

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Mr. Johnson: I have no rebuttal evidence, but I would like to clear up a point which I raised the other day in connection with the Marine Workers' Union. Now my learned friend did produce something here which I have not had an opportunity fully to examine. I think it consists of certain minutes. My learned friend can perhaps explain it better than I can, because I have not had an opportunity to look through it, and I take it what my learned friend says will be on the record.

Mr. Burton: My learned friend, — in answer to my learned friend's request about an agreement which may have existed 10 between three separate unions which amalgamated to form the present Marine Workers' Industrial Union I find that on November 14th, 1945, a resolution was passed by this union, that is the Boilermakers' Union, the defendant in this action, unanimously resolving that the Boilermakers' union do henceforth merge its identity, functional and organizational authority with the Dock and Shipyard Workers Local Number 2, and the Shipwright, Caulkers and Joiners Industrial Union, Local No. 1.

The Court: Would you repeat that please, the names.

Mr. Burton: The first one, the Dock and Shipyard Workers, 20 Local Number 2.

The Court: Yes.

Mr. Burton: The Shipwrights, Caulkers and Joiners Industrial Union, Local Number 1. and the new body to be known as the Marine Workers' and Boilermakers' Industrial Union.

The Court: Marine . . . ?

Mr. Johnson: Marine Workers' and Boilermakers' Industrial Union.

The Court: Marine Workers' and Boilermakers' Industrial 30 Union.

Mr. Johnson: Yes, my lord.

Mr. Burton: Further, that the assets of all three unions be transferred over forming the assets of one union.

The Court: Is there anything about liabilities?

Mr. Burton: No, my lord, not on that. The facts, as I have it from the president, Mr. White, are that the three unions — there were no liabilities of the three unions existing at that time, other than the current liabilities, of course, which would be regularly met. That, my lord, is as far as I can go.

Mr. Johnson: I take it there were no formal executed docu- 40 ments to bring about that?

Mr. Burton: We have not been able to find any, and if there were we have no knowledge. They might be with the other two unions, but I don't think they were. I think it was all done by

this resolution and I presume resolutions of the other two unions to that effect, although I cannot say to that because I was not acting for them, but their assets and functions were then merged.

Mr. Johnson: There is one question I would like my learned friend to answer. Was this motion passed unanimously or by a majority vote?

Mr. Burton: It was unanimous.

Mr. Johnson: That is by the persons present at the meeting?

Mr. Burton: I guess nobody else would speak for it.

10 The Court: Are you putting that in?

Mr. Burton: Not unless my learned friend wishes, but if my learned friend wishes — there are other matters which may be of importance to the union which —

Mr. Johnson: I would like to get all the relevant parts.

Mr. Burton: May I make extracts and put them in?

The Court: Yes, you might consult with Mr. Johnson and make copies of whatever portions he wants in.

Mr. Burton: I will make copies of all relevant portions and submit them to Mr. Johnson with the originals and have him
20 approve them.

Mr. Johnson: There are one or two matters, my lord. If your lordship will remember there were one or two amendments to the pleadings, one by my learned friend and one by myself. I would like to know whether it is necessary to have formally executed Orders.

The Court: The applications were made to me at the beginning.

Mr. Johnson: One at the beginning and one by myself somewhat later in the trial.

30 The Court: The one at the beginning was Mr. Burton's amendment setting out the illegality.

Mr. Burton: Yes, my lord, in accordance with a decision of the Court of Appeal, just carrying out the Court of Appeal's instructions. The Court of Appeal ordered a new trial on the question of the illegality of the new issue raised, and to proceed back, and of course proceedings back on the question of illegality. The reason why it was sent back — I thought I'd better amend to accommodate that issue, but otherwise it was the same.

The Court: You're not asking that —

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Mr. Burton: No, that was granted. There were no costs involved there. In my learned friend's motion there were costs involved, and perhaps an order should be taken out.

Mr. Johnson: Do I understand that my learned friend is not relying on the defence of illegality.

Mr. Burton: Oh of course, but I say it is a question of no costs. My learned friend consented to the amendment. I would say there was no necessity to take out an order, but on the second one, on my learned friend's application, perhaps an order should be taken out, because costs are involved. 10

Mr. Johnson: I have drawn the Order.

Mr. Burton: I don't think there should be any necessity with mine because my learned friend agreed when the Order was made.

Mr. Johnson: The only other point that remains is in regard to the written argument, and that is entirely at the Court's pleasure.

The Court: I would appreciate written argument. I suppose it will take some little time but I would not like it to be delayed too long. How long do you require, Mr. Burton? 20

Mr. Burton: I would like two weeks if I may.

The Court: And the reply?

Mr. Johnson: My lord, I could have mine ready pretty well by that time.

The Court: Say one week following.

Mr. Johnson: One week following.

The Court: After the receipt of his.

Mr. Johnson: Yes.

The Court: And then Mr. Burton will reply to that within three days after. 30

(CONCLUDED)

REASONS FOR JUDGMENT

A. W. Johnson and C. C. Locke—for Plaintiff
 J. S. Burton—for Defendants

RECORD

*In the Supreme
 Court of British
 Columbia*

No. 21

Reasons for
 Judgment
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 Sept. 22, 1949

This is an action against various parties representing the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, and the executive and Press and Investigating Committees of said Union and the trustees thereof.

The plaintiff was and claims still to be, a member of the defendant Union. On or about February 1st, 1945, certain charges 10 were preferred against the plaintiff by another member. The Press and Investigating Committee of the Union subsequently purported to investigate said charges, and as the result of a report from said Committee unfavourable to the plaintiff, the Union, by resolution passed at a meeting held on March 19th, 1945, purported to expel the plaintiff from the Union.

In brief, the plaintiff claims that he was wrongly expelled, and claims re-instatement as a member in good standing of the defendant Union and damages for wrongful expulsion.

The action was originally tried by Mr. Justice Macfarlane 20 who dismissed the action (1947 1 W.W.R. - 322). The plaintiff appealed. On the hearing of the appeal, defendant's counsel contended for the first time that the defendant Union was an illegal association having objects in restraint of trade and therefore the contract of membership could not be enforced. The Court of Appeal ordered a new trial in order that the issue of illegality might be tried. The new trial was not confined to this issue but was a hearing de novo. Both the plaintiff and defendants amended their pleadings before and during the second trial, and some evidence was introduced not given at the trial before Mr. Justice 30 Macfarlane.

At the commencement of the second trial the defendants were given leave to amend the statement of defence as follows:

“The defendants further say that the plaintiff has no cause of action herein against the defendants on the grounds that the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, is or was an illegal association and having in its objects and its Constitution and By-laws objectives which are in restraint of trade and it maintains or maintained a policy of pursuing objects 40 which are illegal in restraint of trade, as a consequence

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of which its contracts of membership are null and void, and this Honourable Court has no jurisdiction to grant the relief claimed in the action herein or any relief to the plaintiff."

I must give consideration to this defence before proceeding to the merits of the plaintiff's claim.

In my opinion the above amendment does not sufficiently raise the defence of illegality. "If a man in his pleading . . . intends to charge illegality, he must state facts for the purpose of showing what the illegality is." (Per Lord Davey in Bullivant vs. Attorney-General of Victoria, 1901 A.C. 196 at 204.) 10

It is not, and indeed can not, be contended that all the objects and by-laws of the defendant Union are in unreasonable restraint of trade. The plaintiff is entitled to know the objects and by-laws upon which the defendant Union relies in support of its contention. The plaintiff would then be prepared to call evidence, if necessary, to show that the rules relied upon by the defendant, however they may have been regarded in the earlier stages of the trade union movement, are no longer, in the light of changed conditions and in view of recent statutory enactments, regarded as oppressive or unreasonable. I do not say that the plaintiff would succeed in showing this, but he is at least entitled to the opportunity of attempting to do so. It is too much to expect him to be prepared to lead evidence touching every object and rule which the defendant Union might argue bears the taint of illegality. He is entitled to know the case he has to meet. Neither the plaintiff nor the defendants gave evidence bearing on the defence raised by the amendment. The constitution and by-laws of the defendant Union were put in evidence, but the plaintiff had no intimation as to the particular provisions relied upon by the defendants until defendant's counsel had filed his written argument. 20 30

Illegality cannot be presumed or inferred: Osborne vs. Amalgamated Society of Railway Servants (1911) 1 Ch. 540, Cozens-Hardy M. R. at 553.

In Northwestern Salt Company Limited vs. Electrolytic Alkali Company, Limited, 1914, A.C. 461, Viscount Haldane, L. C. said at p. 469:

"If the point has not been raised on the pleadings so as to warn the plaintiff to produce evidence which may be able to bring forward rebutting any presumption of illegality which might be based on some isolated fact, then the Court ought not to take a course which may easily lead to a miscarriage of justice." 40

In his argument, Counsel for the defendants points to two provisions in the constitution and by-laws (Ex. 14) which he contends are unreasonably in restraint of trade. One of the objects (Article 2 (c)) is stated to be: "to consummate closed shop agreements in order to establish an equitable and lasting relationship with employers" and it is provided by Article 26B (1) and (2) (u) that any member who "reports for work where there is a strike or lockout affecting this, or any union affiliated with the Shipyard General Workers' Federation" shall, if found guilty, 10 be fined and suspended, or fined and expelled.

In North Western Salt Company, Limited, vs. Electrolytic Alkali Company, Limited, supra, the question was whether an agreement the purpose of which was obviously to regulate supply and keep up prices, was one which on the face of it ought not to be enforced: Viscount Haldane L. C. said at p. 469:

20 "Unquestionably the combination in question was one the purpose of which was to regulate supply and keep prices up. But an ill-regulated supply and unremunerative prices may in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business, or lower wages, and so cause unemployment and labor disturbances. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view. . . . In material questions of fact such as these the Court of Appeal had not the proper evidence before it, and the pleadings of the respondents had thrown on the appellants no duty to bring forward such evidence."

30 Similarly, the plaintiff in this case, had he been warned by the pleadings of the provisions in the objects and by-laws upon which the defendants intended to rely, might conceivably have been able to produce evidence to the effect that, in our modern state of society, the right to strike is in the public interest, and that for a strike to be effective there must be concerted action, and that to ensure concerted action the individual must conform to the will of the majority. There was no evidence to assist the Court in coming to a conclusion upon these important matters, and in my view, upon the pleadings there was no duty cast upon 40 the plaintiff to adduce such evidence.

In Starr vs. Chase, 1924, S.C.R. 495, Duff J., said, p. 501:

"Illegality was not pleaded, and on the view most favourable to the appellant the Court cannot reject the claim on the ground of illegality unless, being sure that it has before it all the facts germane to the question, it can see

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that some of the purposes of the society are illegal in the sense that the law will not aid them, and that these are so interwoven with the other purposes as to make it impossible to separate the legal from the illegal parts of the constitution."

In Osborne vs. Amalgamated Society of Railway Servants, supra, one of the questions for the decision of the Court was whether the rules of the defendant Society were ex facie in unreasonable restraint of trade, the defendant claiming that they were, and that it was not necessary to plead illegality. No evidence was given and the Court looked at the rules as a whole. But that was done pursuant to a consent order made in Chambers, and Cozens-Hardy M. R. regretted "that the facts have not been ascertained in the usual way, for it is not satisfactory to deal with a purely hypothetical state of facts." 10

I hold that the defence of illegality is not sufficiently raised by the amendment in question.

Even if I am wrong in so holding and it can be said that the defence of illegality is properly in issue, I am unable, unassisted by evidence other than the rules themselves, to hold that the two provisions in the objects and rules above referred to, are contrary to public policy as being unreasonably restrictive of trade. 20

The entering into of a closed shop agreement is by Sec. 7 (2) of the Industrial Conciliation and Arbitration Act, being Ch. 31 of S.B.C., 1937, declared not to be an offence under Subsection (1) of the said Sec. 7. There is a similar provision in Sec. 20 (1) of P.C. 1003, being the Wartime Labour Relations Regulations, which were in force in British Columbia at the time the cause of action herein arose. Sec. 10 (5) of P.C. 1003 reads as follows: 30

"Every party to a collective agreement and every employee upon whom a collective agreement is made binding by these regulations shall do everything he is, by the collective agreement, required to do, and shall abstain from doing anything he is, by the collective agreement required not to do."

The provision of P.C. 1003 will be found in the Schedule to the Wartime Labour Regulations Act, being Ch. 18 of S.B.C. 1944. No evidence was given before me as to the effect of a closed shop agreement as to whether it is beneficial or otherwise to employees as a whole, or to society in general. 40

As to the other rule upon which the defendants rely, that providing for disciplinary action against a member who reports for work where there is a strike or lockout, I think I need only refer to the decision of the Supreme Court of Canada in the case

of Starr vs. Chase, supra. There the Court had under consideration a rule similar to the one in question here. Duff, J., as he then was, said, p. 503:

10 “In the earlier years of their organization, when disputes with railway companies were probably not infrequent, and pursued a outrance, it may well have been considered that the safety of the organization demanded the strict observance of this rule; actual experience, one can readily conceive, may have dictated that policy. The relations between the companies and the brotherhood, are, it may be presumed, on a different footing now but new sources of danger may demand the maintenance of the old safeguards. I am not satisfied that I can pronounce this rule to be oppressive or unreasonable without hearing such explanations as might have been offered had illegality been pleaded. . . .”

The Judgment of Mainault J. is to the like effect. Malouin J. concurred in dismissing the appeal for the reasons stated by the Chief Justice of Manitoba (1923) 3 W.W.R. at 502-514.

20 Even if it could be held that some of the rules are in restraint of trade, I do not think that would be a bar to this action. All the objects of the defendant Union cannot be considered unlawful. The plaintiff is not seeking to enforce those rules which the defendants claim offend against public policy, nor was the plaintiff expelled because of a breach of such rules.

30 In Osborne vs. Amalgamated Society of Railway Servants, supra, the plaintiff claimed relief similar to that claimed by the plaintiff in this action. He was held entitled to maintain the action although one of the objects of the defendant Society was an agreement the enforcement of which was prohibited by S. 4 of the Trade Union Act of 1871. Cozens-Hardy M.R. said, p. 553:

“. . . the mere introduction of some objectionable rules will not necessarily taint the whole of the rules.”

And Buckley, L. J., said p 568:

“An order to restore to membership with unenforceable rights is no order to enforce those rights.”

Further, Duff J. in Starr vs. Chase, supra, speaking of a rule providing for the expulsion of a member found guilty of taking the place of anyone engaged in a strike, said p. 503:

40 “At all events, I can see no reason for holding that it affects with illegality the whole constitution.”

The defendants rely upon the following cases:

Russell vs. Amalgamated Society of Carpenters and Joiners, 1912, A.C. 421. This was an action by the personal representative

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of a deceased member against the Union for payment of superannuation dues. The subscription of members were applicable to all the purposes of the Society, including purposes which the Court held were in unreasonable restraint of trade. It was decided that those purposes were not severable from the rules relating to the Society's provident purposes. The Society's main purposes, it was held, were in unreasonable restraint of trade. Moreover, the Court was prohibited by S. 4 of the Trade Union Act of 1871 from entertaining the action. It was an action to enforce rights which the Court held were unenforceable, not, as here, merely an action to restore to membership. See Buckley L.J. in the Osborne case supra, p. 56S, quoted above. 10

Hornby vs. Close (1867) L.R. 2 Q.B. 153. Farrar vs. Close (1869) L.R. 4 Q.B. 602. Polakoff vs. Winters Garment Co. 62 O.L.R. 40. Miller vs. Amalgamated Engineering Union, 1938, Ch. 669. The two last named cases are distinguishable on the same ground, that they were actions to enforce rights which the Courts held were unenforceable. They were not actions to restore to membership and therefore do not come within the decision in the Osborne case. Since the decisions in Hornby vs. Close and Farrar vs. Close the English legislation relating to trade unions was passed. Sec. 3 of the Act of 1871 was enacted in Canada by what is now S. 29 of Ch. 202, R.S.C. 1927. Whether or not said S. 29 is ultra vires of the powers of the Dominion Parliament, and whether or not said section applies to unregistered trade unions (as to which see Perdue C.J.M. in Chase vs. Starr supra at p. 511) it is, nevertheless, important as a declaration indicating a change in public policy since the two decisions last above mentioned. The question of public policy in relation to trade unions, must be considered in the light of this and other Dominion and Provincial Labour legislation. In this connection, the remarks of Duff J. in Starr vs. Chase, supra, at pp. 507-8 are in point. 20 30

On the pleadings and on the evidence, or rather the lack of evidence, and because of the nature of the relief claimed, the plaintiff is, in my view, entitled to maintain the action.

I find, as did Mr. Justice Macfarlane on the first trial, that at the time the cause of action herein arose, the defendant Union had ceased to be a chartered local union of the Canadian Congress of Labour and had assumed affiliate status through the Shipyard General Workers' Federation of the Province of British Columbia. 40

I further find that the constitution and by-laws (Ex. 14) were the constitution and by-laws under which the defendant

Union was operating when the cause of action arose, and that said constitution and by-laws had been properly adopted.

As to the jurisdiction of the Court to interfere at the instance of a member of society to prevent his being improperly expelled therefrom, Jessel M.R. said in Rigby vs. Connel, 14 Ch. D. 482 at 487:

10 “I have no doubt whatever that foundation of the jurisdiction is the right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion.”

In that case the plaintiff specifically claimed a declaration that he was entitled to participate in the enjoyment of the property and effects of the trade union, and Jessel M.R. held that he was prevented by S. 4 of the Trade Union Act of 1871 from entertaining such a claim. The decision in Rigby vs. Connel has been explained in Braithwaite vs. Amalgamated Society of Carpenters (1922) 91 L.J. Ch. 55, by Sterndale M.R. at 59-60, who quotes with approval the statement of Buckley L. J. in Osborne vs. Amalgamated Society of Railway Servants, supra, a portion
20 of which I have already quoted.

Under the by-laws of the defendant Union the plaintiff was entitled to sick and death benefits. He had the right to vote. He had a right in all the advantages of membership. In particular, in view of the closed shop agreement with North Van. Shipyards, he was in a preferred position in the matter of employment. Those are rights which are rights of property. Buckley L.J. in Osborne case, supra, at p. 567.

I hold that the plaintiff had vested in him rights of property sufficient to give the Court jurisdiction to entertain the
30 action.

During the trial the plaintiff was given leave to amend the statement of claim by adding an allegation to the effect that the committee which tried the plaintiff was not constituted in accordance with the by-laws. If that contention is sound, it follows that the plaintiff was improperly expelled.

The committee in question was the Press and Investigating Committee, one of the standing committees of the defendant Union. By Article 14 (1) it is provided that each standing committee “shall be composed of not less than seven members, one
40 of whom shall be chairman and another of whom shall be secretary of such standing committee.”

Article 18 C (3) provides that “Successful candidates for standing committees polling the largest number of votes shall be chairman of such committees, and candidates receiving the

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next largest number of votes shall be secretaries." There is an exception to this in the case of the Press and Investigating Committee. In the case of that committee the most successful candidate is to be secretary and (by Art. 15 (9) the reporter is to be chairman.

By Art. 18 C (1) and (2) nomination of delegates and members of standing committees shall take place at the first regular general business meeting in January and the election shall be held at the second such meeting in January.

By Art. 18 A (2) each nominee must be a member in good standing and be nominated for only one office. 10

By Art. 18 (1) any office or position declared vacant shall be filled as soon as possible, and in the filling of such vacancy the same procedure shall be followed as in the case of a general election.

The first regular general business meeting in the year 1945 was held on January 5th. At that meeting twenty-four members were nominated for the Press and Investigating Committee (hereinafter referred to as the Trial Committee). The election of members of standing committees took place at a general meeting on January 22nd. The results were not made known that night but were published in the "Main Deck," the Union periodical, in the issue of February 2nd, 1945. The name "W. Hendry" appears among those elected to the Trial Committee. The total number elected to this committee was six. These, with the reporter, who was ex officio chairman, made up the minimum number required by the by-laws. It was discovered, either before or after January 22nd, that Hendry was not a member in good standing and although he had been nominated on January 5th, his nomination had been improperly received, and he was not eligible for election to the Trial Committee. Therefore, the Trial Committee as elected on January 22nd was improperly constituted in two respects: first, it included a member not entitled to sit, and second, without that member there were only six on the committee instead of the minimum seven required by the by-laws. 20 30

Because of this difficulty, the members elected to the Trial Committee on January 22nd resigned at the request of the executive, and it was decided to hold a new election. At a meeting held on or about February 5th, nominations were again called for, and the names of eight members were received in nomination. Two of these withdrew their names and the remaining six were, at the second general meeting held in February declared elected by acclamation. They, with the ex officio chairman comprised the tribunal which purported to try the plaintiff on March 13th, 1945. 40

The plaintiff appeared before that tribunal on March 13th, and contended that it had no jurisdiction to try him. Whether he did or did not cross-examine witnesses or answer questions, is, I think, immaterial.

The committee was clearly without jurisdiction. The twenty-three members properly nominated on January 5th had never withdrawn their names from nomination. If the election held on January 22nd was abortive, as it admittedly was, any further election would necessarily be confined to those members whose
 10 names were already properly in nomination in accordance with the by-laws. The resignation of those elected on January 22nd, had no effect. They could not resign from a body which did not exist. The subsequent nomination of other members over the heads of those already nominated, had no sanction in the by-laws. The election by acclamation of those members and the purported exercise by them of the powers of a Trial Committee, had equally no validity.

Even assuming that the members of the committee which tried the plaintiff had been properly nominated for election, such
 20 committee was still in my opinion, not constituted in accordance with the by-laws. A secretary, chosen in accordance with the by-laws, is a necessary officer of each standing committee. In the case of the Press and Investigating Committee the most successful candidate assumes the office of secretary. In other words, the secretary is chosen by the Union membership as a whole. Balloting is therefore necessary. No balloting took place and the so-called committee chose their own secretary. There was, therefore, no secretary chosen in accordance with the by-laws and consequently no validly constituted Trial Committee.

30 A power of expulsion must be exercised in strict conformity with the rules by which it is given: Murphy vs. Synnott (1925) W.E. 14; Rogers vs. The Council of the College of Physicians and Surgeons of British Columbia, 58 B.C.R. 287.

I hold that the plaintiff was not expelled in conformity with the by-laws of the defendant Union in that the tribunal which purported to try him had no authority to act under the by-laws. This disposes of the defence that the plaintiff was obliged to exercise his right of appeal within the Union before taking
 40 civil actions. It follows also, that the plaintiff is entitled to succeed in this action.

I think the plaintiff is entitled to succeed on the merits as well. Evidence was given by witnesses who were not called at the trial before Mr. Justice Macfarlane, and some additional evidence was given by witnesses who testified at that trial. In the light of this additional evidence, it cannot by any stretch of the

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imagination be said that the trial within the Union was one that was free from prejudice and bias.

The plaintiff came to Canada in the year 1928 from the Polish Ukraine. Since then he has learned to speak English and to express himself clearly and well. Politics are taken seriously in the plaintiff's native country, so it is natural that after coming to Canada he should, in his own way, make a study of the policies of various political parties and of the aims and objects of organized labour. He formed his own conclusions and was not backward in stating them. As a result his career has been somewhat stormy. He was opposed in principle to the closed shop. 10

In November, 1942, the plaintiff applied for work as a welder at the North Van. Shipyards with which firm the defendant Union had a closed shop agreement. Plaintiff was told that he would have to join the Union. Plaintiff objected to this, and let his objections be known. However, he did join, as he says in order to obtain work.

Mr. W. A. Stewart, the president of the defendant Union, said that when the plaintiff objected to join he was a marked man.

In October, 1943, the plaintiff spoke against the closed shop before a Board of Arbitrators appointed to enquire into the advisability of having closed shop agreements in certain plants. Mr. Stewart said that from that time it was the intent of those who eventually laid the charges, to get rid of the plaintiff. 20

In or about December, 1943, charges were laid against the plaintiff arising out of the testimony he had given before the Board of Arbitration and he was expelled from the Union. He brought action against the Union, for wrongful expulsion. During the course of the proceedings the Union executive admitted that the expulsion procedure had been faulty and plaintiff was reinstated on June 21st, 1944. Notwithstanding the re-instatement plaintiff was not allowed to attend meetings of the membership. No sooner would he take his seat than one of a certain group would move that he be excluded, or he would be privately "advised," ostensibly for his own safety, not to attend the meeting. 30

One of those most prominent in so "advising" the plaintiff and in making said motions, was Caron, the Union secretary, who afterwards testified against plaintiff before the Trial Committee. Another was White, who afterwards acted as counsel for the Union before the Trial Committee. 40

Stewart, who according to one of the charges was alleged to have been slandered by the plaintiff, acted on the plaintiff's trial before the committee, as counsel for McKendrick, the man who laid the charges.

McPheator, a witness for plaintiff whose evidence I accept, stated that White, before the trial of plaintiff by the committee, told him (McPheator) that he had better "lay off" talking to plaintiff, or what they were going to do to plaintiff would happen to him.

McPheator also stated that Clark (who was actually a member of the alleged Trial Committee) told him that the plaintiff would be crucified by the Trial Committee.

10 Mole, another of the plaintiff's witnesses whose evidence I also accept, says that Clark told him that if he did not quit backing up the plaintiff he would "get the business."

On February 2nd, 1945, at which time charges had already been laid against the plaintiff but not heard (they were heard on March 13th following), an article under large headlines appeared in the "Main Deck," the official organ of the defendant Union, written by C. W. Caron, secretary of the Union. It was headed "Kuzych drains \$1600.00 of Workers' Money." This had reference to the amount recovered by plaintiff against the Union for damages and costs as a result of the first expulsion. The article quotes what were alleged to be extracts from evidence given
20 by plaintiff before the above mentioned Board of Arbitration, and contended that the first expulsion was correct in principle. It referred to the new charges then pending against plaintiff. It concludes "If Myron Kuzych intends to take us to court again he will be placing the entire trade union movement on trial as to whether a trade union has the right to discipline its members for violation of union policies and individual members obligations."

The "Main Deck," according to one of the defendant's witnesses, was read by 90 per cent of the then membership of approximately 15,000. The members in general meeting would be called on to accept or reject any report of the Trial Committee submitted after the plaintiff's trial by the committee. The members as a whole were to be the plaintiff's final judges. It is almost inconceivable that so determined an effort should have been made to influence the members against the plaintiff while the charges were pending and before the plaintiff had been tried.
30

Thompson, a witness for plaintiff, stated that at the meeting of March 19th, 1945, when the vote for or against the plaintiff's
40 expulsion was being taken, someone called out the names of those who voted against the expulsion, but the names of those who voted for it were not taken.

In the light of the facts detailed above, I am of the opinion that the purported expulsion of the plaintiff was contrary to natural justice.

It is unnecessary, in view of the foregoing, to enquire as to

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whether the charges against the plaintiff were with respect to matters which could be construed as violations of the constitution and by-laws. It may be pointed out, however, that the first charge, that of holding an unauthorized public meeting to discuss internal business of the Union, could not stand, since it was conceded at the trial that the meeting in question was not a public meeting. Moreover, it was not called by the plaintiff, but by Mr. Mole. As to the second charge, alleging that the plaintiff was guilty of conduct unbecoming a member in that he publicly opposed established policies of the Union by campaigning against the closed shop principle and the principle of dues check-off, if this has reference to the evidence given by the plaintiff before the said Board of Arbitration in October, 1943, then I think the defendants are stopped from relying on that because the plaintiff's conduct on that occasion had been made the subject of charges laid against him in December of 1943 and the plaintiff was subsequently not only re-instated but in December, 1944, his nomination as a candidate for president had been accepted and he actually contested the election for that office following his nomination. As to the third charge, that plaintiff failed to repudiate certain radio broadcasts made on his behalf or in his name by persons not members of the Union, such broadcasts having contained statements wilfully slanderous of a member of the Union, it is by no means clear from the evidence when those broadcasts took place or what was said in the course of them. Mr. White said he heard the plaintiff broadcasting in the year 1946. That, of course, was after the plaintiff had been expelled. There may have been other occasions. The evidence given before the Union Trial Committee was not before me. There is some conflict of authority as to how far the Court may go in enquiring into the grounds upon which a quasi-judicial body set up within an organization such as the defendant Union, reached its decision. MacLean vs. the Workers' Union (1929) 1 Ch. D. 602; Allinson vs. General Council of Medical Education and Registration (1894) 12 S.D. 750; Braithwaite vs. Amalgamated Society of Carpenters (1912) 91 L.J. Ch. 55, Younger L.J. at 68. The point of interest is only, since I do not rest my decision on the sufficiency or otherwise of the charges or of the evidence taken before the Trial Committee.

This case points very clearly to the question—Ought a trade union which has a closed shop agreement with an employer under any circumstances (other than for non-payment of dues) have the right to expel a member? Even where there is no closed shop agreement, expulsion, in the words of Younger L. J. in the Braithwaite case, *supra*, means “little less than a sentence of industrial

death." These words have added force where the workman is in danger, not only of being ostracized by his fellow workmen, but of necessity by the employer as well.

Unions have other less drastic methods of disciplining their members, e.g., by fines or by suspension for a short period of time.

10 The closed shop is a powerful weapon in the hands of organized labour. Assuming it to be lawful, it confers privileges and powers which logically must imply corresponding duties and obligations; e.g., the duty and obligation not to deprive a member of that membership which may have been acquired solely because employment could not be otherwise obtained. It is alarming to think that the happiness and well being of the subject may rest in the hands of a tribunal which exercises powers not conferred upon it by Parliament. Particularly is this so when the normal safeguards provided in a court of law are absent, when well recognized rules of evidence are not observed, and the party on trial is denied the assistance of experienced counsel.

20 The British Columbia Legislature may have attempted a remedy when it enacted S. 3 (1) of the Industrial Conciliation and Arbitration Act, S.B.C. 1947 Ch. 44. That section reads:

"Every employee shall have the right to be a member of a trade union or employees' organization in which he is eligible for membership and to participate in the lawful activities thereof."

Section 4 (1) of P.C. 1003, in force when the cause of action herein arose, is to the same effect without the words "in which he is eligible for membership."

30 It may be argued that the above sections were intended simply as a declaration of the rights of an employee against an employer seeking to discriminate against an employee because he belongs to a labour organization. If that was the intention the sections were unnecessary because ample penalties are provided elsewhere against such discrimination. It could be argued with equal or greater force that in view of the tacit, if somewhat negative, recognition of closed shop agreements contained in both P.C. 1003 and the above Ch. 44 to which I have already referred, the sections in question were enacted to protect the employee from expulsion from his Union. Admittedly this intention is not
40 clearly apparent. The matter would appear to be deserving of further serious consideration.

The plaintiff is entitled to a declaration that the resolution of March 19th, 1945, purporting to expel him from the defendant Union is illegal and void and that he is a member in good stand-

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RECORD

*In the Supreme
Court of British
Columbia*

No. 21

Reasons for
Judgment
Whittaker, J.
Sept. 22, 1949

(Continued)

ing of said Union; and injunction restraining the defendants from giving effect to the said resolution of March 19th, 1945, and damages.

As to damages. The plaintiff was dismissed from his employment on March 23rd, 1945, as a result of a letter from the defendant Union to the employer invoking the provisions of the closed shop agreement. Plaintiff has not worked from that day to this. He says that he applied to various firms for employment on 30 or 40 occasions but always on the condition that he be employed as a Union man. No one, of course, could employ him on those terms. 10

The learned Chief Justice of this Court held in Kuzych vs. Stewart et al 61 B.C.R. 27 that a union member illegally expelled, during the period in which the legality of his expulsion was being determined, was not bound, in order to mitigate the damages, to seek similar employment other than as a union man. I would, with respect, follow that decision.

Plaintiff states that prior to March, 1945, he was earning \$160.00 per month after deductions. Making due allowance for Unemployment Insurance Benefits received by plaintiff and 20 possible loss of earnings due to sickness or otherwise, I would allow the sum of \$5,000.00 as damages.

The plaintiff is entitled to his cost of this and of the first trial.

“N. W. Whittaker” J.

Vancouver, B.C.,
September 22, 1949.

JUDGMENT

BEFORE THE
HONOURABLE MR. JUSTICE WHITTAKER

Thursday, the 22nd day of
September, A.D. 1949

RECORD

*In the Supreme
Court of British
Columbia*

No. 22
Judgment
Sept. 22, 1949

THIS ACTION having come on for trial de novo on the 26th, 27th, 28th and 31st days of January, 1949, and the 1st, 2nd, 16th, 17th and 21st days of February, 1949, before the Honourable Mr. Justice Whittaker, without a jury, by way of new trial pursuant
10 to the Judgment of the Court of Appeal dated the 17th day of June, 1947, allowing the appeal of the above-named plaintiff from the Judgment of the Honourable Mr. Justice Macfarlane dated the 16th day of December, 1946, in the presence of Mr. A. W. Johnson and Mr. C. C. Locke of counsel for the plaintiff and Mr. J. S. Burton of counsel for the defendants, and having been on the 21st day of February, 1949, adjourned for written argument, and upon reading the pleadings and proceedings had and taken herein and upon hearing the evidence adduced on behalf of the plaintiff and of the defendants and what was alleged by
20 counsel aforesaid, and judgment being reserved to this day;

THIS COURT DOTH DECLARE that the resolution of the defendant Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, allegedly passed on the 19th day of March, 1945, which purported to expel the plaintiff from the defendant Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, is, and has been since its alleged passing, illegal and void;

AND THIS COURT DOTH FURTHER DECLARE that the plaintiff since the alleged expulsion of the 19th day of March, 1945, was and remains a member in good standing of the defendant Boilermakers' and Iron Shipbuilders' Union of Canada,
30 Local No. 1.

AND THIS COURT DOTH ORDER, ADJUDGE AND DECREE that the defendants, their and each of their servants and agents be and they are hereby enjoined and restrained from giving effect to the said resolution allegedly passed by the defendant Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, on the 19th day of March, 1945;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiff do recover against the defendants and
40 each of them, damages in the sum of \$5,000.00.

RECORD

*In the Supreme
Court of British
Columbia*

No. 22

Judgment
Sept. 22, 1949

(Continued)

AND THIS COURT DOTH FURTHER ORDER AND AD-
JUDGE that the defendants and each of them do pay to the
plaintiff forthwith after taxation thereof, his costs of this action
including the costs of the first trial.

BY THE COURT.

“E. W. Wells”
Deputy District Registrar

“N.W.W.” J
by “W.B.F.”
CJ

10

Approved as to
form
“J.S.B.”
Checked
“G.B.”
“E.W.W.”
D.D.R.

NOTICE OF APPEAL

TAKE NOTICE that the above-named defendants intend to appeal and DO HEREBY APPEAL to the Court of Appeal from the Judgment of the Honourable Mr. Justice Whittaker pronounced herein the 22nd day of September, A.D. 1949, and entered on the 6th day of October, 1949.

AND TAKE NOTICE that the Court of Appeal will be moved at its sittings to be held at the Court House, in the City of Victoria, Province of British Columbia, on Tuesday, the 10th day of 10 January, A.D. 1950, at 11 o'clock in the forenoon or so soon thereafter as counsel may be heard, by counsel on behalf of the said defendants, for an order reversing, setting aside or varying the said Judgment upon the following among other grounds:

1. That the said Judgment is against the evidence and the weight of evidence.
2. That the Learned Trial Judge erred in finding that the Statement of Defence as amended does not sufficiently raise the defence of illegality.
- 20 3. That the Learned Trial Judge erred in failing to find that the provisions in the objects and rules of the defendants' Society are contrary to public policy.
4. That the Learned Trial Judge erred in failing to hold that the rules of the defendant Society are in restraint of trade and are barred in this action.
5. That the Learned Trial Judge erred in holding that the plaintiff was entitled to maintain the action.
6. That the Learned Trial Judge erred in holding that the Court had jurisdiction to interfere at the instance of the plaintiff to prevent him being expelled.
- 30 7. That the Learned Trial Judge erred in holding that the plaintiff was not expelled in conformity with the by-laws of the defendant Union, and he further erred in holding that the tribunal which tried him had no authority to act under the by-laws.
8. That the Learned Trial Judge erred in failing to hold that the plaintiff was obliged to exercise his right of appeal within the Union before taking civil action.
9. That the Learned Trial Judge erred in failing to hold that the trial within the Union was one not free from 40 prejudice and bias.
10. That the Learned Trial Judge erred in holding that the purported expulsion of the plaintiff was contrary to natural justice.

RECORD

*In the Supreme
Court of British
Columbia*

No. 23

Notice of Appeal
Nov. 15, 1949

RECORD

*In the Supreme
Court of British
Columbia*

No. 23

Notice of Appeal
Nov. 15, 1949

(Continued)

11. That the Learned Trial Judge erred in holding that the plaintiff was entitled to a declaration that the Resolution of March 19th, 1945, purporting to expel him from the Union, was illegal and void, and that he is a member in good standing of the said Union.
12. That the Learned Trial Judge erred in holding that the plaintiff was entitled to an injunction restraining the defendants from giving effect to the said Resolution.
13. That the Learned Trial Judge erred in holding that the plaintiff was entitled to damages, and alternatively, the 10 damages awarded are excessive.
- 14 And such other grounds as counsel may advise.

DATED at Vancouver, B.C., this 15th day of November,
A.D. 1949.

“N. T. NEMETZ”
Solicitor for the defendants

TO: D. T. Braidwood, Esq., of the firm of
Messrs. Sutton, Braidwood & Morris,
solicitors for the plaintiff

THIS NOTICE OF APPEAL is filed by N. T. Nemetz, Esq., 20
solicitor, whose place of business and address for service is 678
Howe Street, Vancouver, B.C.

COURT OF APPEAL

KUZYCH) JUDGMENT OF
 v.) THE HONOURABLE
 WHITE et al.) THE CHIEF JUSTICE.

I would allow the appeal and agree with the reasons of my
 Brother Bird.

"Gordon McG. Sloan"
 C.J.B.C.

VICTORIA, B.C.,
 10 3rd May, 1950.

RECORD

Court of Appeal

No. 24

Reasons for
 Judgment
 The Hon. the
 Chief Justice
 May 3, 1950

(Continued)

RECORD

Court of Appeal

No. 25

Reasons for
JudgmentO'Halloran, J. A.
May 3, 1950

COURT OF APPEAL

KUZYCH)	JUDGMENT OF
v.)	THE HONOURABLE
WHITE et al.)	MR. JUSTICE O'HALLORAN

The representative officers of the Boilermakers' and Iron Shipbuilders' Union in Vancouver appeal from a judgment for inter alia \$5000.00 damages obtained by the respondent for his illegal expulsion from the Union in March, 1945. Under the Union's closed shop agreement (Ex. 4) with North Vancouver Ship Repair Yards Ltd., where the respondent was working as a welder, the Union saw to it (Ex. 39) that he was discharged from his employment very shortly after his expulsion. 10

The litigation between the parties has received considerable publicity in Vancouver. It has been before the Courts in one form or another for more than five years. The respondent's support of the "open shop" principle brought him into collision with dominant figures in the Union who were seeking with almost religious zeal to enforce the "closed shop" principle. Charges were laid against him by the Union, he was subjected to a form of trial before the Union "trial tribunal" and summarily expelled from the Union. 20

The true cause of his expulsion undoubtedly was the respondent's persistent advocacy of the open shop principle within and without the Union. This led leaders of the Union unjustifiably to the conclusion that he was an enemy of organized labour; they even described him as "anti-working class" (see Ex. 45). Through it all the respondent asserted his firm support of the labour movement, and also relied on his constitutional right of legitimate freedom of speech and action to which I think insufficient prominence has been given in this appeal. 30

In my judgment the Union Trial Committee was inexorably biased against the respondent (and see Shaw vs. Lewis 1948 - 1 W.W.R. 627 at 634-5 (B.C.C.A.)). The learned trial judge has so found as a fact (p. 1152). Study of the evidence leaves no room for doubt that at least one member of that Trial Committee had shown himself, if not violently antagonistic, certainly actively opposed to the respondent.

But more than that, the vigorous campaign of the influential men who formulated the Union's policy and guided its conduct, had persuaded the majority of the Union membership to accept the doctrine that any member who openly questioned the closed shop policy was so anti-Union that he should not be allowed to re- 40

main a member of the Union. In such circumstances it was obviously impossible for the respondent to receive a fair trial on the merits. Once it was proven he was against the closed shop policy and in favour of the open shop policy (as he readily conceded he was), it was obvious the verdict would be for his expulsion from the Union.

There could be in that trial committee as constituted no opportunity for judicial consideration of the question on its merits. The verdict for expulsion was inevitably prejudiced and virtually
 10 decided before the trial was held. In essence there was no trial at all. The Trial Committee was simply carrying out the declared policy of the Union as announced by its leaders at the time.

Then it was said that the respondent did not appeal to the Executive of the Shipyard General Workers' Federation, the appellate tribunal named in article 26C of the Union's by-laws (Ex. 14). But the so-called "trial" being no trial at all and hence a nullity, there was nothing to appeal against. Furthermore the appellate tribunal itself was in no sense a judicial or even an impartial body removed from the dust of the arena where-
 20 in the policy struggle "open shop versus closed shop" was then being fought by the respondent. The respondent had no occasion whatever to believe that the appellate tribunal either could or would interfere with the declared policy of the powerful Union that expelled him. Its verdict would be a foregone conclusion.

How true this is may be gathered from Article 4 (5) of the constitution (Ex. 7) of the Shipyard General Workers' Federation which reads:

30 "Local unions shall have complete autonomy over their members when working under local contracts or agreements or otherwise; provided however there is no violation of trade union principles."

This must be read with Article 2 (c) of the Boilermaker Union's By-Laws (Ex. 14, and see Ex. 45), which declares it to be one of the purposes of its existence:

"To consummate closed shop agreements in order to establish an equitable and lasting relationship with employers."

40 The evidence in this case forces me to the conclusion firstly that instead of conducting a trial of the respondent, the Union Trial Committee as constituted was in fact carrying out the declared policy of the Union to get rid of the respondent as anti-labour. The verdict was decided in advance; the trial was a mere matter of form. Secondly I must conclude also that an appeal to the Shipyard appellate tribunal would have been futile, not only because there was no trial as such, but also because it had no

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 Reasons for
 Judgment
 O'Halloran, J. A.
 May 3, 1950
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RECORD

Court of Appeal

No. 25

Reasons for
JudgmentO'Halloran, J. A.
May 3, 1950

(Continued)

power to interfere with the Boilermakers' Union's closed-shop policy over which it acknowledged the Boilermakers' Union itself had "complete autonomy".

Moreover expulsion from a powerful union cannot be compared with expulsions from a club, social, fraternal or other organization. This expulsion denied respondent the right to obtain work from any employer who had a closed shop agreement. It made it difficult for him to obtain work from any employer having relations with organized labour. An employer does not lightly engage a workman who has drawn upon himself the active and publicly announced dislike of a large and powerful union. Moreover it denied him the right to describe himself as a Union man, a privilege which his convictions led him to prize highly. 10

That is why the Union's sentence of expulsion was described as one of "industrial death". In such circumstances, the expulsion exposes itself not only as an interference with the individual's right to earn his living at his chosen trade, but also as a denial of his common law right to freedom of legitimate speech and action. Such restrictions upon the rights of the individual must be regarded as entirely beyond the power of any Union, or of any business organization to inflict. Business and labour organizations who may properly claim certain inherent rights, can exercise these rights only subject to inseparable duties, one of which is not to trample upon the inherent rights of others. 20

A man has a right to work at his trade. If membership in a Union is a condition attached to working at his trade, then he has an indefeasible right to belong to that Union. It must be so, or else the Union can have no right to agitate for a closed shop. For a Union to set itself up as the sole arbiter of who shall join the Union and remain a member, and at the same time decree that no one shall be employed who does not belong to the Union, is an attempt to exercise totalitarian powers which no constitutional democratic country claims to have, or has the right to confer upon any Union. Such interference with individual liberty and coercion of workers may be done under a totalitarian system, but not under any system which takes its inspiration from the Common Law. 30

The development of the Labour Union has been one of the outstanding beneficial advances of the past seventy-five years. Organized labour has made for a finer citizenship and is one of the giant roots of a free society. But its value must not be lost, by allowing it to impose upon its members and upon non-member workers as well, a tyranny and coercion comparable with that from which it was the original object of the Labour Union to rescue workers from employers who were taking advantage of 40

their employees, because the latter were weak and unorganized. A Union may easily come under the control of men whose possession of power for the time being blinds them to the real interests of the labour movement. Such men may forget that a strong labour Union is not a State within a State.

This appeal raises directly issues of supreme importance to every citizen. It is not to be forgotten that labour Unions are not looked on with favour by governments of totalitarian countries. Labour Unions which themselves seek to exercise what are in
 10 effect totalitarian powers within and without the Union, thereby give encouragement to those who would support restrictive legislation to curb increased powers that some Union leaders are ill-advised enough to claim.

Moreover the civil liberties of the subject cannot be decided by a Trial Committee set up by a labour Union. That is the prerogative of the constituted Courts of the country. In my judgment the question the Union Trial Committee sought to deal with in the circumstances here was beyond the competence of any Union to decide. And that is another reason why the respondent
 20 was justified in not going through the form of appealing to a Union constituted appellate tribunal.

There is a line of reported decisions to the general effect that members of clubs and of charitable, provident, recreational, fraternal, social and such-like associations should not be allowed to litigate their real or fancied grievances in the Courts, unless they have first exhausted all means of redress within the associations. But this must not be interpreted to enable each association to set up a private law of its own; otherwise there would be a multitude of Codes in private law in the land to the exclusion of the
 30 Common Law. The Common Law is a living thing; it protects individual rights, and does not permit a course of conduct within an association which is mala fide or otherwise contrary to what is rightly called natural justice. The Common Law does not sanction violation of the essentials of justice.

Naturally an association is itself the proper forum for decision of member complaints which are strictly private in character, and do not, for example, deprive a member of opportunities for gaining a livelihood in his trade in the community in which he lives, or otherwise trench upon civil liberties of the subject to
 40 the exclusion of the constituted Courts. In Cavin v. C.P.R.—1926—95 L.J.P.C. 24, it was found there was no bias or violation of an essential of justice. In Shaw v. Lewis—1948—1 W.W.R. at 634-5, this Court found there was bias in the Trial Committee, and held accordingly no duty arose to proceed to the association's appellate tribunal.

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 Court of Appeal
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 Reasons for
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 O'Halloran, J. A.
 May 3, 1950
 (Continued)

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Court of Appeal

No. 25

Reasons for
Judgment
O'Halloran, J. A.
May 3, 1950

(Continued)

In Shaw v. Lewis, the association was not a party to the action, but here the Union is a party by its representative officers. Hence in this case the Court is in a much stronger position to adjudicate upon interference with civil liberties and legal rights arising through the failure of the Union to recognize the ordinary requirements of natural justice. Counsel for the appellant Union submitted that where expulsion from a Union is involved there was almost certain to be bias and prejudice. To my mind that is a true statement in this case, and it is another reason why the Union Trial Committee as formed and constituted here was inherently incapable of giving the respondent a fair trial. 10

In the special circumstances here I would not interfere with the damages awarded. This is a case, in my judgment, where punitive damages should be awarded, and I so regard the damages here. Therefore I am not concerned with the question of mitigation of damages as argued. The real point in issue between the respondent and the Union has been, whether he had the right to remain a member of the Union and advocate an open shop policy. The Union expelled him on that ground. It is for that highly irregular expulsion I would award punitive damages, even if he had been unable to show actual financial loss as the result, and see Shaw v. Lewis—1948—1 W.W.R. at 629. 20

I would dismiss the appeal.

“C. H. O'Halloran”
J.A.

Victoria, B.C.
3 May, 1950.

COURT OF APPEAL

KUZYCH) JUDGMENT OF
 v.) THE HONOURABLE
 WHITE et al.) MR. JUSTICE ROBERTSON.

RECORD

Court of Appeal

No. 26

Reasons for
Judgment
Robertson, J.A.
May 3, 1950

This is an appeal by the defendant from the judgment of Whittaker, J., whereby, inter alia, it was declared that a resolution of the defendant Boilermakers' and Iron Shipbuilders' Union of Canada No. 1 (hereafter called the Union) passed on the 19th March, 1945, expelling the plaintiff, was illegal and void; that the
 10 plaintiff was, since his alleged expulsion, a member in good standing of the Union; and damages were awarded against all the defendants. The respondent joined the Union in 1942. Its by-laws, which became effective on 8th August, 1944, provided for the election, yearly, of inter alia, a Press and Investigating Committee (to be composed of not less than seven members) whose duties included dealing with charges preferred against any member. On the 5th January, 1945, 24 members were nominated for this committee, and at a meeting held on the 22nd January, 1945,
 20 six of those were declared to be elected. These, with the "Reporter" who under the by-laws was chairman of the committee, made the necessary seven members. Then it was discovered one of the persons elected was not duly qualified and thereupon the other members of the committee resigned.

At subsequent meetings of the Union new nominations for the committee were made and a committee elected. It is submitted by the respondent that following the discovery of the disqualification of the elected member of the committee, the nominee who had received the next highest number of votes at the election on the 22nd January, 1945, was duly elected; and,
 30 alternatively, that after the resignation of the other elected members of the committee, the other persons nominated on the 5th January, 1945, should have been considered as candidates for election to the committee, and as this was not done, the second election of the committee was void.

As to the first point, I think the proper procedure was to proceed to an election to fill the place of the disqualified person. The person receiving the next highest number of votes would not be elected. See The King v. The Mayor and Council of Bedford (1721) 8 Mod. 35; and vol. 1, Municipal Corporations, by Dillon,
 40 5th ed. p. 640. As to the alternative submission, I am of the opinion that upon the declaration of the election of the committee, on the 22nd January, 1945, the election was at an end and the nominations of the 5th January, 1945, no longer of any validity.

RECORD

Court of Appeal

No. 26

Reasons for
Judgment
Robertson, J.A.
May 3, 1950

(Continued)

I shall assume that the second committee was duly elected. On the 14th February, 1945, charges were preferred by one McKendrick against the respondent. Shortly, they were that (a) he assisted in holding an unauthorized public meeting to discuss internal business of the union; (b) that he publicly opposed established policies of the union by campaigning against the closed shop principle; and (c) that he had been guilty of broadcasting wilfully slanderous statements of a member of the union, William Stewart; all these things being contrary to the union's by-laws. At a meeting of the union on the 19th February, 1945, those charges were referred to the committee. Notice of the charges was given to the respondent. A hearing was held on the 13th March, 1945, at which the respondent was present. The committee found him guilty as charged. Pursuant to the by-laws their report was read out at a general meeting of the union, held on the 19th March, 1945. The by-laws provided that it was for this meeting to accept or reject the committee's report; and if the charges were sustained by a majority of the members present the member might be expelled. The respondent was expelled at this meeting. 10

If the proper procedure provided by the by-laws was not followed, the expulsion was null and void. Murphy v. Synnott (1925) L. R. Northern Ireland, 14; Rogers v. The Council of the College of Physicians and Surgeons of B.C. (1942) 58 B.C. 287. The learned Judge held the purported expulsion of the respondent was contrary to natural justice. I think the facts mentioned by him fully support his conclusion. In addition, I think the committee was not competent to hear the charges against the respondent for the reason taken by the respondent, viz., that Dave Clark, a member of the committee, was so biased against the respondent as to render him unfit to act. Clark, although not an officer of the Union, had taken an active part in the Union such as acting as shop steward and Union delegate. The power to expel is one of a quasi-judicial nature — Burn v. National Amalgamated Labourers' Union (1920) 89 L. J. Ch. 370 at p. 375; Leason v. General Council of Medical Education and Registration (1889) 43 C. D. 366 at pp. 379, 383 and 386. Undoubtedly Clark was biased. He had told McPhcator, a member of the Union, before the hearing, that the respondent "would be crucified by the trial committee"; and had told Mole, likewise a member, and before the hearing, that if he did not quit backing up the respondent he would "get the business." 30 40

The learned Judge accepted the evidence of these two men who were witnesses for the respondent. The result of Clark being disqualified to sit is to render the proceedings of the committee void. R. v. Allan (1864) 4 B. & S. 915. In that case one

of the three convicting magistrates was disqualified to act and the conviction was held bad. . In Leeson's case, supra, the question was whether two members of the General Medical Council (consisting of twenty-nine members) which had found the plaintiff guilty, were disqualified to sit; and if so, did such disqualification make the decision of the Council invalid? It is clear that if the majority (Cotton and Bowen, L. JJ.) of the Court had so held, the decision would have been set aside. Cotton L. J. said at p. 379:

10 "Of course, the rule is very plain that no man can be plaintiff, or prosecutor, in any action, and at the same time sit in judgment to decide in that particular case — either in his own case, or in any case, where he brings forward the accusation or complaint on which the order is made."

and Bowen L. J. said at p. 384:

20 "As the Lord Justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial judge. If he is an accuser he must not be a judge (my 'italics')."

Fry L. J. dissented. He said (p. 391) if the matter had rested with him, he should have held the Council's decision invalid, and that the Council as constituted was not competent to decide on the question before it. He thought R. v. Allan, supra, should be applied (p. 390); and continued: "I think it is a matter of public policy that, so far as is possible, judicial proceedings shall not only be free from actual bias or prejudice of the judges, but
30 that they shall be free from the suspicion of bias or prejudice."

In Allison v. General Medical Council (1894) 1 Q.B. 750, the facts were the Council had struck off the register a medical practitioner who appealed, inter alia, on the ground that one member of the Council who took part in the decision was in a position which made his participation illegal, as being against public policy. Lord Esher, M. R., said at p. 758:

40 "In the administration of justice, whether by a recognized legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased."

Lord Wright said in his speech in General Council of Medical Education v. Spackman (1943) 59 T. L. R. 412 at p. 416:

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 Reasons for
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 Robertson, J.A.
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May 3, 1950(Continued)

"If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

Lord Esher said in Allinson's case, supra, at p. 757, that if the member was in a position which made his participation illegal, this would certainly render the decision of the Council wholly void.

Then it is submitted by the appellant that under the Union's by-laws an appeal lay from the decision to expel the respondent, and that he should have exhausted all his remedies before the Court would entertain an action for wrongful expulsion. This rule has no application when the Union has failed to hold the conventional investigation, as it did through failure of a proper committee to hear a complaint against the respondent. See Caven v. C.P.R. (1925) 3 W.W.R. 32 at p. 41, where Lord Shaw said:

"In the opinion of the Board the doctrines thus cited from Scott v. Avery are not only sound, but they are clearly applicable, not only to the plaintiffs, but to the defendants in a suit. The present case is an apt instance of how the principle applies as it ought to apply to both sides. The appellant, in fact, pleads that the agreement bound both parties, but that the respondents failed to obey its conditions by having a proper enquiry, and, in his own language, that the condition precedent to the right of dismissal had, therefore, not arisen. This is quite a correct statement of how the position stands, and had the conventional investigation been successfully attacked, then a judicial investigation on the issue of wrongful dismissal might naturally follow" (my ~~read~~ "italics").

In Andrews v. Salmon (1888) Weekly Notes, 102, Kay J. said at p. 103:

"It was quite true that the Court did not interfere with the internal matters of a society like a club; but there was a broad exception to that rule, namely, that when those matters were so conducted as to be contrary to every man's notion of what was just, then the Court would interfere, especially in the case of the expulsion of a member."

As to damages, I agree with the learned trial Judge. The respondent was not bound to take any work he could find. He was entitled to work as a union man and he was debarred by the action of the appellants.

I would dismiss the appeal.

Victoria, B.C.
3rd May, 1950.

"Harold B. Robertson"
J. A.

COURT OF APPEAL

KUZYCH) JUDGMENT OF
 v.) THE HONOURABLE
 WHITE et al.) MR. JUSTICE SIDNEY SMITH.

RECORD

Court of Appeal

No. 27

Reasons for
 Judgment:
 Sidney Smith,
 J.A.
 May 3, 1950

On this action, which is before us for the second time, the plaintiff has obtained a declaration that the defendant union expelled him illegally and that he is still legally a member. He has also a judgment for damages.

One of the points argued for the appellant was that the
 10 respondent could not have recourse to the Courts because he did
 not first take an appeal from the general meeting to the Shipyard
 General Workers' Federation, as is authorized by the Union's
 By-Laws. The argument is that until the respondent had ex-
 hausted his domestic remedies, he had no right to go to the
 Courts. This defence, if well raised, would undoubtedly bring up
 some difficult points. The principle relied on has been applied
 to fraternal orders and their members and on occasion to unions
 too. Whether it would apply to a union that is a statutory bar-
 gaining agent and is, moreover, maintaining the closed shop prin-
 20 ciple, is another matter. There is also a serious question whether
 the principle would apply where the plaintiff establishes griev-
 ances such as are shown here. I am far from satisfied that this
 would be so; there are quite a few dicta to the contrary, and there
 is no clear line of cases supporting the view. I am unable to
 give effect to it now.

On the last trial Whittaker J. held the expulsion bad, partly
 because of the method used to elect the Press and Investigating
 Committee (hereafter called "The Committee") who originally
 made the decision for expulsion. He particularly thought the
 30 Secretary's appointment improper; but this was based on a mis-
 reading of the defendant's by-laws, which specifically except the
 Secretary of this particular committee from the regulation that
 the learned Judge thought was infringed. I am by no means
 satisfied that there was anything irregular in the election of the
 other committee-men (See Stephen et al v. Stewart et al (1943)
 59 B.C. 410.)

This brings me to the objections to the actual expulsion,
 which the Judge thought contrary to natural justice. I must say
 that I do not care for this phrase which seems to me to have little
 40 meaning, and that little misleading. Lord Wright has recently
 made use of it, but Lord Sumner (then Hamilton L. J.) in R. v.
Local Government Board (1914) 1 K.B. 160, at p. 199, and Lord
Maugham (then Maugham J.) in Maclean v. The Workers' Union

RECORD

Court of Appeal

No. 27

Reasons for
Judgment
Sidney Smith,
J.A.
May 3, 1950

(Continued)

(1929) 1 Ch. 602, at p. 624, have pointed out some of its weaknesses. The only intelligible meaning that can be assigned to the word "natural" in this phrase is that it denotes something inherent, some principle implied even without express enactment. That is, when a tribunal disregards "natural justice" it disregards some principle that it is the tribunal's inherent duty to observe. That really means that it disregards some common law principle that governs adjudication where no statute is in point. The miscarriages usually termed "breaches of natural justice" are failure to hear both sides and a tribunal's adjudicating in a matter in which it is not disinterested. But the common law had a remedy for both these miscarriages without involving any special brand of justice. 10

The learned Judge held the committee's decision invalid, partly because of their bias. The union's counsel has relied strongly on the views of bias ~~as~~ expressed in Macleay v. The Workers' Union, supra, where Maughan J. pointed out that conduct of a person charged might well be such that every other member of the union might have a strong animus against him. Counsel gave point to this by reading evidence showing that the plaintiff has not only proved a turbulent and unruly member, but had indulged in acrimonious criticism and even abuse of the union and its policies generally, so that personal bias and strong dislike from the committee was nothing more than he could expect. 20

I appreciate this to the full, and agree that if the result of this had simply been that the committee and general executive had simply detested him and ^{had} dealt with his actions officially with straightforward indignation, we could not and should not interfere. But the plaintiff's actions by no means justified the conduct that some of the committee and some of the main executive had been guilty of. No resentment, however just, can excuse it. I deal with the committee first, since they were the tribunal of first instance to try charges subject to review by the whole membership. If all that happened was that the committee, in actually trying the plaintiff, had expressed their dislike or even detestation of the plaintiff and his ways, we could hardly interfere. But a man named Clark, who was a member of the committee that first tried the plaintiff, told a member beforehand that the plaintiff would be "crucified" by the committee. He also told another member that if he did not quit backing up the plaintiff he would "get the business". There is more here than a mere display of bias. In the first instance Clark was showing that he had pre-judged the charges against the plaintiff; so that the hearing itself would be a mere farce, so far as Clark was concerned. In the second instance Clark was talking to one of the plaintiff's 30 40

supporters whom Clark would naturally expect to appear for the plaintiff as a witness, and this threat might well be considered as intimidation of a probable witness to deter him from testifying. It is not clear whether Clark at the time of uttering this threat was a member of the committee. But that seems to be immaterial. If, having uttered this threat, he proceeded to sit on a trial that he had tried to intimidate a witness from attending, then I think the sequence of events made no real difference.

10 Under the union's by-laws, Art. 26 (b) (10), appeal lies from the committee's findings to a general meeting. The plaintiff did not know till the meeting opened that was to sit on his case that the committee had found against him, and he was then given ten minutes to make his defence. That seems to me making a mockery of the audi alteram partem rule, especially when the plaintiff had not previously known that he would need any defence. The meeting had other even worse features. A witness tells of the actions of Clark, who had already sat on the committee:

20 “(A.B. p. 379) I will tell you what transpired at that meeting. I heard with my own ears from the same witness, David Clark, that if they found anybody voting to sustain Kuzych in the meeting they would deal with them accordingly.
 “The Court: Q: What did you say Mr. Clark said would happen if they sustained Kuzych?
 “A. They would get the works, they would get the same thing, they would really look after them, that was — the essence I got, my lord, was that they would be the next to get the same as Kuzych was going to get that night.”

And this from an official who was there to submit his decision for review to the members present!

30 The chairman at the meeting, whose name was Nuttall and who was then acting-president of the union, addressed the meeting before the plaintiff's expulsion was voted on. The plaintiff whom the trial Judge apparently believed testified:

“Mr. Nuttall delivered a five-minute address against myself, calling me various names, the chief of which was that I was a ‘fink’ and that I was generally no good.”

(The term “fink” appears to mean a renegade or traitor.)

The plaintiff also testified of Mr. Nuttall's speech:

40 “I specifically remember him using the word that I was a ‘fink’ — A ‘fink’, and that I was a tool of the capitalist class and that generally I should be expelled anyway . . .”

According to another witness' account of this speech Nuttall said:

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(Continued)

“That Kuzych was endeavoring to break up the Boilermakers’ Union, and that he was a friend of the capitalist class, and there was no place for him in the union at any time.”

If this speech had been made by a mere private member, I should not make too much of it. But here we have a meeting specially called to exercise quasi-judicial functions, and the chief officer of the union does his best to prevent its functioning. If he had addressed himself to the matters on which the plaintiff was being tried, then even harsh and biased criticism of the conduct charged might have been justifiable; but Nuttall calls upon the meeting to expel the plaintiff upon new charges which had never been before the committee, which the plaintiff had had no chance to answer, and which were not even grounds for expulsion under the by-laws. 10

Then again there seems to have been an attempt to intimidate members who might have been inclined to vote for the plaintiff and against his expulsion. Apart from Clark’s threats a man named Jenkins stood by when votes for the plaintiff were being counted and ostentatiously called out the names of the voters to another man, apparently to suggest to voters that their names were being recorded. The names of those who voted for expulsion were not called. 20

I shall not dwell fully on the article published in the “Main Deck”, because it seems to me overshadowed by the conduct I have described. But the article seems clearly designed to prevent an unbiased consideration of the charges against the plaintiff. The real issue between Kuzych and the union was the closed shop principle. But no one reading this article will find anything to disclose that.

Counsel for the union argued that this article said nothing but the truth. The evidence does not bear him out. A number of defamatory charges are made which there has been no attempt to justify. Kuzych is insinuated to have been responsible for a “cabal of disruption” who tried to thwart the union meetings by “hooliganism”. Then there can be no doubt that the following paragraph is aimed at Kuzych: 30

“The campaign of Hitler-like rumour mongering, the spreading of lies and vicious slander in the yard, combined with gangster disruption of union meetings smacks of a Fascist-inspired plot to destroy the trade union movement from within.” 40

A little later it is implied that Kuzych is playing a “rotten game of treachery and betrayal”. No evidence has been produced to

justify any part of this. Nor can it be called comment; because the essential fact, viz., that the real issue is the closed shop, is carefully suppressed.

The conduct of the committee-man Clark and the proceedings at the meeting for review seem to me, however, to go far beyond what can be excused as mere expressions of honest and justifiable resentment. They disclose attempts to prevent anything like a fair trial by either the committee or the general meeting.

10 The case of Maclean v. The Workers' Union goes farther than any other case in countenancing misconduct in these domestic tribunals; but it does not go far enough for what was done here; and I decline to hold that the abuses practised here are without remedy. I think the expulsion resolution was invalid and bad in law.

20 The learned Judge below has raised an interesting question whether recent labour legislation has not given a union member a statutory right to membership. One might also speculate whether the statutory privilege of a union to contract with employers on behalf of its members has not added a fiduciary aspect to their relationship. But it is unnecessary to decide this. If there has been no change, then it seems to me the legislature should seriously consider whether membership on which men's livelihood depends, should be left entirely at the mercy of committees and similar domestic tribunals. Things seemed to have advanced past the stage when principles that originally only governed membership for social amusements should be allowed to prevail where men's livelihood is at stake.

30 The remaining point in the judgment below still to be considered is the question of damages. I do not know that I am prepared to subscribe to the view that a union man wrongfully expelled is entitled to sit back indefinitely without taking such work as he can get. Expulsion in England may mean "economic death"; but I do not think matters have gone that far here. On the whole, however, I do not feel inclined to interfere with the damages awarded. Vindictive damages can be given in actions for tort, and in view of the threats of violence and other intimidation resorted to by the defendant, I feel justified in letting the award stand on that basis.

40 I would dismiss the appeal.

"SIDNEY SMITH"
J.A.

VICTORIA, B.C.,
3rd May, 1950.

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COURT OF APPEAL

KUZYCH)	JUDGMENT OF
v.)	THE HONOURABLE
WHITE et al.)	MR. JUSTICE BIRD

The defendants appellants, all of whom were officers or members of the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, when the plaintiff respondent was expelled from the Union, appeal from the judgment of Whittaker J. dated September 22nd, 1949, whereby the expulsion proceedings were declared illegal and void, the defendants were restrained from giving effect to the resolution directing the expulsion, and Kuzych was awarded \$5000.00 damages for loss sustained in consequence of his expulsion. 10

Counsel founds the appeal upon grounds of alleged error in conclusions reached by the learned trial judge, which may conveniently be summarized as follows:

(1) That the Press and Investigating Committee which tried the charges against Kuzych and recommended his expulsion was not properly constituted under the by-laws of the Union. Consequently the resolution of the Union passed on March 19th, 1945, affirming that recommendation and purporting to expel Kuzych was illegal and void; 20

(2) That since Kuzych was not expelled in conformity with the by-laws, the Trial Committee being without jurisdiction, he was not obliged to pursue the right of appeal given under the by-laws before entering suit;

(3) That the purported expulsion and the proceedings relating thereto were contrary to natural justice.

In November, 1942, Kuzych entered the employ of North Vancouver Ship Repairs Limited as a welder. That Company and the Union then were parties to a subsisting agreement which provided, inter alia, for a closed shop, i.e., each employee of the Company was required to become and remain a member of the Union, failing which the Company was bound to dismiss him. Kuzych, although strongly opposed to the principle of the closed shop, nevertheless became a member of the Union, subscribed to and agreed to observe its by-laws, and paid dues thereto from time to time until his subsequent expulsion. 30

Relevant parts of the constitution and by-laws of the Union, Exhibit 14, read as follows, viz.: 40

Article 2. The objects and purposes of this Union are . . .
(c) To consummate closed shop agreements in order to establish an equitable and lasting relationship with employers.

Article 22 (3) Any person who in the future is admitted to membership in this Union and any person who, after the effective date of these by-laws, remains a member of this Union, shall be deemed to have entered into a contract with this Union, and with every other member therein whereby, in consideration of the benefits bestowed by such membership, such person undertakes to accept, endorse and at all times abide by the terms of the oath of obligation set forth in the next following clause.

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(6) The oath of obligation required to be taken by all persons who become members of this Union is as follows:

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"I,, do solemnly promise that I will, in accordance with the constitution and by-laws . . . remain a member until . . . will not violate any of the provisions of the said constitution, by-laws or working rules of this Union. . . .

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"I further promise in the event of a claimed grievance by me against the Shipyard General Workers' Federation of British Columbia (hereinafter called the Federation) or against this Union, that I will faithfully observe the procedure of and fully accept the findings of the trial board and appellate tribunal set up within this Union and the said Federation. And I further promise that I will not become a party to any suit at law or in equity against this Union or the Federation until I have exhausted all remedies allowed to me by said constitution and by-laws, etc., etc."

Article 26 (b) prescribes:

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(1) certain duties of a Union member, the breach of which may be the subject of a charge required to be heard by a Union tribunal;

(2) the procedure for laying such a charge, and the conduct of the trial;

(3) that a general membership meeting shall pass upon the report of the trial tribunal, enter the conviction if the charges are sustained, and assess the punishment to be imposed upon conviction;

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(4) that "if a member has been found guilty by a general business meeting of any offence under Group B of this Article, and feels that the decision is unfair . . . he may . . . file an appeal with the executive of the Shipyard General Workers' Federation, etc."

The learned trial judge found that the constitution and by-laws under which the Union was operating when the cause of action arose, are as set out in Exhibit 14, and counsel for the respondent rests his case thereon. 10

In October, 1943, Kuzych campaigned against the closed shop principle and publicly criticized the Union and its officers principally on the basis of the Union's support of the closed shop principle.

Charges were laid against him in December, 1943, arising out of these activities, as a result of which he was expelled from the Union. Subsequently, in June, 1944, errors having been discovered in the expulsion proceedings, he was re-instated, and appears to have remained a member in good standing between June, 1944, and February, 1945. Then further charges were laid against him by a member of the Union relating to incidents which had occurred between October, 1942, and December, 1944, viz.: 20

(1) That he assisted in holding an unauthorized public meeting to discuss internal business of the Union;

(2) That between October, 1942, and December, 1944, he was guilty of conduct unbecoming a member, in publicly opposing established policies of the Union in campaigning against the closed shop principle;

(3) That he violated the obligation oath of a member in failing to repudiate certain radio broadcasts made on his behalf which contained slanderous statements of a member and then president of the Union, William Stewart. 30

The charges were investigated before a standing committee of the Union known as the Press and Investigating Committee. Kuzych appeared before this committee, and challenged its jurisdiction (though he did not declare the grounds of his challenge), but actively participated in the proceedings before the committee as well as the subsequent general meeting. The committee found him guilty of the charges and recommended expulsion. This recommendation was approved at a general meeting of the Union, held March 19th, 1945, and a resolution was then passed directing that he be expelled from the Union. 40

Kuzych did not undertake an appeal under the provisions of Article 26 of the by-laws of the Union and instead commenced

action in the Supreme Court of British Columbia and recovered the judgment from which this appeal is taken.

The findings of the learned trial judge relating to the constitution of the Press and Investigating Committee is based upon the proceedings taken for the annual election of that committee for the year 1945.

Article 18 (c) of the by-laws provides for the election annually of standing committees, of which the Press and Investigating Committee is one, in these terms:

- 10 18 (c) (1) Nomination of . . . members of standing committees shall take place at the first regular general business meeting in January in every year, and be governed wherever applicable by the rules of Group A of this Article.
- (2) Election shall be held on the second regular business meeting in January . . . and shall be governed wherever applicable by the rules prescribed in Group A of this Article. . . . Successful candidates for standing committees polling the largest number of votes shall be chairman of such committees; and candidates receiving the next largest number of votes shall be secretaries; except . . .
- 20 (3) (b) Except in the case of the Press and Investigating Committee, the most successful candidate shall be secretary; the reporter being chairman by Article 15, sec. 9. . . .

Article 18 (a) (i.e., Group A) inter alia, defines the required qualification of candidates, and directs that "Except in cases of acclamation such elections shall be by secret ballot."

- 30 Article 18 (d) provides for the prompt filling of vacancies in any office or position as nearly as may be in accordance with the provisions of Articles 18 (a), (b) and (c).

- 40 Nominations for this committee for the year 1945 took place on January 5th, 1945, in accordance with the provisions of the by-law, when the names of some 24 members were placed in nomination. The balloting which took place on January 22nd, resulted in the election of six persons. Subsequent to the meeting one of the persons elected was found not to be a member of the Union in good standing, and therefore ineligible for election under the provisions of Article A (2) of the by-laws. To remedy this situation the Union executive requested the remaining members so elected to resign, which was done prior to the next general meeting of the Union held on February 5th, 1945. At that meeting nominations for the Press Committee were again called for, when the names of eight members were put in nomination.

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Two nominees withdrew, when the reporter, the ex-officio chairman of this committee, pursuant to Art. 18 (c) 3 (b) of the by-laws (Ex. 14) and the remaining six persons so nominated and elected by acclamation, were declared to constitute the Press Committee. Under Art. 14 (1) it is provided that the Press and Investigating Committee shall be composed of not less than seven members.

It is to be observed that the committee thus elected was not constituted for the sole purpose of a trial committee to hear the pending charges against Kuzych. It was elected as a standing committee to hold office for the year 1945. 10

The learned judge has held that the committee so elected was improperly constituted under the by-laws, since the subsequent nomination of other members over the heads of those already nominated on January 5th, 1945, had no sanction in the by-laws. Further, that the election by acclamation of those members and the purported exercise by them of the powers of a trial committee had equally no validity. That the secretary was not chosen in accordance with the by-laws which prescribe that the secretary shall be the most successful nominee at an election— 20
Ex. 14, Article 18 (c) 3 (b).

There can be no doubt I think that the election procedure adopted at the February meeting did not conform to the letter of the provisions of Article 18 (c) of the by-laws, but it was in accord with what I conceive to be the spirit of that Article, which was to require the election annually of all standing committees including the Press and Investigating Committee by the members of the Union in general meeting, after due nomination of candidates. Moreover, provision is made in Article 18 D for the filling of any office or position declared vacant. 30

In my opinion the terms of the Article are to be regarded as directory and not mandatory; and cf. Stephen et al vs. Stewart et al (1943) 59 B.C.R. 410 at p. 429, et seq.

In my opinion the 24 members whose names were placed in nomination on January 5th, 1945, ceased to be nominees for that committee when the result of the balloting was declared subsequent to January 22nd, 1945.

Election by acclamation is recognized under Article 18 (a) (6) of the by-laws. Since only six members were nominated for the committee, the taking of a ballot became unnecessary. In these circumstances I think the solution found by the committee, namely, election from its members of the secretary, constituted a reasonable and practical compliance with the spirit of the by-laws. 40

I find nothing in the evidence to support a conclusion that the procedure adopted for the purpose of the election of this committee (by the Union executive and tacitly approved by the general meeting) was other than a bona fide attempt to resolve the difficulty consequent upon the discovery of the disqualification of one member elected at the January meeting.

10 In these circumstances, with deference, I think that the committee as elected on February 5th was properly constituted, notwithstanding the fact that the procedure adopted was not strictly in accord with the provisions of the by-laws to which reference has been made by the learned trial judge as noted above.

The learned judge below has said in his reasons for judgment that the question of Kuzych's obligation under the by-laws to appeal to the domestic tribunal before taking civil action, was disposed of by the fact that in his opinion the trial tribunal had no authority to act under the by-laws. However, since I consider, for the reasons expressed, that the trial tribunal had jurisdiction, it becomes necessary to examine the relevant provisions of the by-laws relating to such an appeal.

20 Article 26 C of the by-laws, quoted in part above, provides for an appeal to the executive of the Shipyard General Workers' Federation—the parent body of the Union—by a member found guilty of offences such as those of which Kuzych was convicted.

Article 22 ss. 5 and 6 of which the relative provisions are quoted above, prescribes that a member of the Union shall exhaust all remedies available under the constitution and by-laws before entering suit against the Union. Kuzych has said that he was familiar with those and other provisions of the by-laws.

30 By the terms of Article 22 (5) any person who remains a member of the Union after the effective date of the by-laws "shall be deemed to have entered into a contract with this Union and with every other member therein, whereby . . . such person undertakes . . . to abide by the terms of the oath of obligation," whereby each member promises that "I will not become a party to any suit . . . against this Union . . . until I have exhausted all remedies allowed to me by the said constitution and by-laws."

40 Kuzych did not appeal to the domestic tribunal from the decision of the Press and Investigating Committee or the resolution of the Union passed March 19th, 1945, but instead, on May 14th, 1945, brought the action in which this appeal is taken.

The action, I think, must be regarded as "a suit against the Union," within the meaning of Article 22 of the by-laws, notwithstanding the fact that the Union is not named as a party defendant. The Union is referred to in the endorsement on the writ, throughout the amended statement of claim, as well as in para-

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graphs 56 and 64 of the amended statement of defence as "the defendant Union," and is so described by the learned judge in his reasons for judgment. Moreover, the trend of the trial shows that the Union was so regarded by the parties as well as by the presiding judge.

I think the law is well settled that in circumstances such as are found here the Courts will not entertain such an action until the party complaining has exhausted the obligatory remedies available to him under the constitution and by-laws of the Union.

In Essery vs. Court Pride of the Dominion (1883) 2 O.R. 596, Chancellor Boyd, at p. 608, said:

"All that is required in these cases is, to see that the party complaining is a member of the society, and the matter in dispute is one relating to the internal economy of the organization, and provided for by its rules and regulations. In such a case the jurisdiction of the Courts is practically ousted until all expedients furnished by the conventional code of laws have been resorted to. The object of the Legislature in incorporating these bodies, and of the constituents in combining to form such societies, is to control their own schemes for mutual benefit, and to ventilate their own difficulties and quarrels by a system of original and appellate tribunals, affording a cheap and speedy mode of trial, with which the Courts never interfere unless the action complained of is contrary to natural justice, or in violation of the rules of the society, or done mala fide, and then only after the party complaining has gone as far as he can go, and done as much as he can do, to obtain what he seeks in the domestic forum. Hawkins vs. Antrobus, L.R. 17 Ch. D. 615; and other cases cited." (My "italics.")

and see Caven vs. C.P.R. (1925) 3 W.W.R. 32 (P.C.); Zilliax vs. I.O.O.F. (1906) 13 O.L.R. 155; Kemdrer vs. Standard Stock Exchange (1927) 32 O.W.N. 296; Bertrand vs. C.N. Telegraph Co. (1948) 1 W.W.R. 49.

Counsel for the respondent before this Court relied upon Shaw vs. Lewis (1928) 2 D.L.R. 189 in support of his submission that Kuzyeh was not bound to pursue the remedy by way of appeal to the domestic tribunal before invoking the Court's jurisdiction. In my opinion that decision has no application to the circumstances found here. That was an action for civil conspiracy. There O'Halloran, J. A., said at p. 196, in distinguishing the Caven case, supra: "Moreover in Caven vs. C.P.R. the action

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was one for wrongful dismissal, a subject-matter of the Union agreement. It was not as here, an action for conspiracy. . . . In my judgment the issue of conspiracy to invade a civil right could not have been tried by a tribunal set up by the Rosierucian Order.”

Here, as in the Caven case, the action is one for wrongful dismissal, and not for conspiracy. Here, in my opinion, the Union must be deemed to be a party to the action. The Order was not a party in the Shaw case. Here there is an agreement by Kuzych to exhaust his remedies, whereas in the Shaw case there
 10 was a right of appeal and no more.

The language of Chancellor Boyd applies with equal force in my opinion to the case at bar, and is decisive in present circumstances. The facts and incidents upon which the learned trial Judge reached the conclusion that the conduct of the proceedings for expulsion was contrary to natural justice in my opinion are all matters for consideration on an appeal to the domestic tribunal under Article 26 of the by-laws, which the Court will not investigate until resort is had to that forum.

Furthermore, I find nothing on the record to suggest that
 20 on appeal to the domestic appeal tribunal, it would not give a fair hearing or would act mala fide.

I would therefore allow the appeal and dismiss the action, but, in the words of Riddel J. A. (then J.) in the Zilliax case, supra, “without prejudice to any other action being brought after the remedies provided by the constitution” and by-laws of the Union have been exhausted.

“H. I. BIRD”

VICTORIA, B.C.,
 3rd May, 1950.

J.A.

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No. 29.

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May 3, 1950

COURT OF APPEAL

BETWEEN:

MYRON KUZYCH

Plaintiff
(RESPONDENT)

AND:

W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE, C. W. CARON AND S. JENKINS SUED ON BEHALF OF AND AS REPRESENTING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 (OTHERWISE KNOWN AS BOILERMAKERS' AND IRON SHIPBUILDERS' UNION LOCAL No. 1) AND IRON & SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, AND THE EXECUTIVE COMMITTEE TO WHICH THEY RESPECTIVELY BELONG, AND W. RENWICK, W. McGAW, AND ROY AQUINO SUED AS TRUSTEES OF THE SAID BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and G. FARRINGTON, DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE BRAATEN, SIDNEY BELT AND DAVID PEARSON SUED ON BEHALF OF AND AS REPRESENTING THE PRESS & INVESTIGATING COMMITTEE OF THE SAID BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1

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Defendants
(APPELLANTS)

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA
THE HONOURABLE MR. JUSTICE O'HALLORAN
THE HONOURABLE MR. JUSTICE ROBERTSON
THE HONOURABLE MR. JUSTICE SIDNEY SMITH
THE HONOURABLE MR. JUSTICE BIRD

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VICTORIA, B.C., the 3rd day of May, A.D. 1950.

THE APPEAL from the Judgment of the Honourable Mr. Justice Whittaker pronounced on the 22nd day of September, A.D. 1949, and entered on the 6th day of October, A.D. 1949, com-

ing on for hearing at Victoria, B.C., on the 15th, 16th, 17th, 20th and 21st days of February, A.D. 1950; AND UPON HEARING Mr. J. L. Farris and Mr. N. T. Nemetz of Counsel for the Appellants and Mr. A. W. Johnson of Counsel for the Respondent; AND UPON READING the Appeal Book and Judgment being reserved until this day,

THIS COURT DOTH ORDER AND ADJUDGE that the said Appeal be and the same is hereby dismissed with costs to be paid by the Appellants forthwith after taxation thereof.

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BY THE COURT

Appd.
 "J.L.F."
 "N.T.N."
 "G.McG.S."
 C.J.B.C.
 Checked by "W.F.B."

"J. S. Gill"
 Deputy Registrar.

SEAL

RECORD

Court of Appeal

No. 30

Registrar's Certificate as to Security.
Aug. 4, 1950

COURT OF APPEAL

BETWEEN:

MYRON KUZYCH

Plaintiff
(RESPONDENT)

AND:

W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE, C. W. CARON AND S. JENKINS SUED ON BEHALF OF AND AS REPRESENTING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 (OTHERWISE KNOWN AS BOILERMAKERS' AND IRON SHIPBUILDERS' UNION LOCAL No. 1) AND IRON & SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, AND THE EXECUTIVE COMMITTEE TO WHICH THEY RESPECTIVELY BELONG, AND W. RENWICK, W. MCGAW, AND ROY AQUINO SUED AS TRUSTEES OF THE SAID BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and G. FARRINGTON, DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE BRAATEN, SIDNEY BELT AND DAVID PEARSON SUED ON BEHALF OF AND AS REPRESENTING THE PRESS & INVESTIGATING COMMITTEE OF THE SAID BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1

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Defendants
(APPELLANTS)

CERTIFICATE

I HEREBY CERTIFY that the above-named Defendants 30 (Appellants) having deposited with me the sum of Three Thousand Three Hundred and Twenty-three and 05/100 Dollars (\$3,323.05) of lawful money of Canada as security that they, the said above-named Defendants (Appellants) will effectually prosecute their appeal to the Privy Council from the Judgment of this Honourable Court pronounced on the 3rd day of May, 1950, and will pay such costs and damages as may be awarded against the said above-named Defendants (Appellants) by the Privy Council.

DATED at Victoria, British Columbia, this 4th day of Aug- 40
ust, 1950.

"Cleeve White"
Registrar.

IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:

MYRON KUZYCH

Plaintiff

*In the Supreme
Court of British
Columbia*

No. 31

AND:

10 W. L. WHITE, W. SCHWARTZ, N. NUTTALL, W.
GEE, C. W. CARON AND S. JENKINS SUED ON BE-
HALF OF AND AS REPRESENTING BOILER-
MAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL NO. 1 (OTHERWISE KNOWN AS
BOILERMAKERS' AND IRON SHIPBUILDERS'
UNION LOCAL NO. 1) AND IRON & SHIPBUILD-
ERS' UNION OF CANADA, LOCAL NO. 1 AND THE
EXECUTIVE COMMITTEE TO WHICH THEY RE-
SPECTIVELY BELONG, AND W. RENWICK, W.
McGAW, AND ROY AQUINO SUED AS TRUSTEES
OF THE SAID BOILERMAKERS' & IRON SHIP-
BUILDERS' UNION OF CANADA, LOCAL NO. 1 AND
20 G. FARRINGTON, DAVE CLARK, FRED DUNCAN,
K. GARRISON, ORVILLE BRAATEN, SIDNEY
BELT AND DAVID PEARSON SUED ON BEHALF
OF AND AS REPRESENTING THE PRESS & IN-
VESTIGATING COMMITTEE OF THE SAID BOIL-
ERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL NO. 1.

Defendants

I hereby certify that the above named Defendants did deposit
with me the sum of \$8018.50 on December 8th, 1949, of lawful
30 money of Canada as security that the said Defendants would pro-
secute their appeal to the Court of Appeal, British Columbia.

I hereby further certify that the said sum of money still re-
mains in my custody, and pursuant to the order of the Court of
Appeal of date May 26th, 1950, this sum of money will remain
in Court to await the pleasure of His Majesty in his Privy Council
in the present appeal, or until further order.

DATED at Vancouver, B.C., this 17th day of October, A.D.
1950.

"L. A. Menendez"

District Registrar

B.C. L.S.

\$1.00

Vancouver

Oct. 18, 1950

Registry

Seal

Registrar's Cer-
tificate as to
Security.

Oct. 17, 1950

RECORD

Court of AppealNo. 32Order granting
Final Leave
to Appeal.
Oct. 19, 1950

COURT OF APPEAL

BETWEEN:

MYRON KUZYCH

Plaintiff
(Respondent)

AND:

W. L. WHITE ET AL

Defendants
(Appellants)

CORAM:

THE HONOURABLE MR. JUSTICE O'HALLORAN
THE HONOURABLE MR. JUSTICE ROBERTSON
THE HONOURABLE MR. JUSTICE BIRD

VICTORIA, B.C., the 19th day of October, A.D. 1950.

UPON MOTION made to the Court this day for final leave to appeal; UPON READING the Order of this Court dated the 26th day of May, A.D. 1950, the Certificate of Cleeve G. White, Esq., Registrar of this Court at Victoria, dated the 4th day of August, A.D. 1950, and the Certificate of L. A. Menendez, Esq., District Registrar of the Supreme Court of British Columbia in Vancouver. AND UPON HEARING Mr. John L. Farris, K.C., of counsel for the said Defendants (Appellants) and A. W. Johnson, Esq., of counsel for the Plaintiff (Respondent) consenting.

THIS COURT DOTH ORDER that final leave to appeal to His Majesty in His Privy Council from the Judgment of this Court pronounced herein on the 3rd day of May, 1950, be and is hereby granted to the said Defendants (Appellants).

BY THE COURT.

"J. S. Gill"
Deputy Registrar.

"C.H.O'H."

J.A.

Approved

"A. W. Johnson"

Checked

by "W.G.B."

B.C. L.S.

\$2.00

Victoria

Oct. 2, 1950

Registry

Entered Vol. 8 Fol. 470

Date 21 Oct., '50

By "W.G.B."

Court of Appeal

British Columbia

Seal

CERTIFICATE OF REGISTRAR

I. THE UNDERSIGNED REGISTRAR at Victoria, B.C., of the Court of Appeal. DO HEREBY CERTIFY that the foregoing is a transcript of the Record of proceedings in this action for the purpose of appeal to His Majesty in His Privy Council herein as prepared and settled by this Court.

10 I FURTHER CERTIFY that the said Record of proceedings contains the Reasons for Judgment of the Honourable Mr. Justice Whittaker (Trial Judge), and the Honourable the Chief Justice of the Court of Appeal, the Honourable Mr. Justice C. H. O'Halloran, the Honourable Mr. Justice Robertson, the Honourable Mr. Justice Sidney Smith and the Honourable Mr. Justice Bird, being all the Judges before whom the trial and appeal herein were heard who have delivered Reasons for Judgment herein.

AND I FURTHER CERTIFY that the said Record of proceedings contains a Record of all the proceedings and Exhibits in the case.

DATED at Victoria, B.C., this day of November, 1950.

RECORD

Court of Appeal

No. 33

Registrar's Certificate as to
case.
Nov. 1950

"Cleeve G. White"
Registrar

RECORD

Court of Appeal

No. 26

Reasons for
JudgmentRobertson, J.A.
May 3, 1950

(Continued)

"If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

Lord Esher said in Allinson's case, supra, at p. 757, that if the member was in a position which made his participation illegal, this would certainly render the decision of the Council wholly void.

Then it is submitted by the appellant that under the Union by-laws an appeal lay from the decision to expel the respondent, and that he should have exhausted all his remedies before the Court would entertain an action for wrongful expulsion. This rule has no application when the Union has failed to hold the conventional investigation, as it did through failure of a proper committee to hear a complaint against the respondent. See Caven v. C.P.R. (1925) 3 W.W.R. 32 at p. 41, where Lord Shaw said:

"In the opinion of the Board the doctrines thus cited from Scott v. Avery are not only sound, but they are clearly applicable, not only to the plaintiffs, but to the defendants in a suit. The present case is an apt instance of how the principle applies as it ought to apply to both sides. The appellant, in fact, pleads that the agreement bound both parties, but that the respondents failed to obey its conditions by having a proper enquiry, and, in his own language, that the condition precedent to the right of dismissal had, therefore, not arisen. This is quite a correct statement of how the position stands, and had the conventional investigation been successfully attacked, then a judicial investigation on the issue of wrongful dismissal might naturally follow" (my r. "italics").

In Andrews v. Salmon (1888) Weekly Notes, 102, Kay J. said at p. 103:

"It was quite true that the Court did not interfere with the internal matters of a society like a club; but there was a broad exception to that rule, namely, that when those matters were so conducted as to be contrary to every man's notion of what was just, then the Court would interfere, especially in the case of the expulsion of a member."

As to damages, I agree with the learned trial Judge. The respondent was not bound to take any work he could find. He was entitled to work as a union man and he was debarred by the action of the appellants.

I would dismiss the appeal.

Victoria, B.C.
3rd May, 1950.

"Harold B. Robertson"
J. A.

EXHIBIT No. 1

JUDGMENT OF THE COURT OF APPEAL

dated June 17, 1947, on appeal from the Judgment of the Honourable Mr. Justice Macfarlane dated December 16, A.D. 1946.

BEFORE:

The Honourable the Chief Justice

The Honourable Mr. Justice O'Halloran

The Honourable Mr. Justice Smith

Tuesday, the 17th day of June, 1947.

10 THIS APPEAL having come on for hearing before this Honourable Court on the 5th day of June, A.D. 1947, and on the 6th day of June, A.D. 1947, in the presence of Mr. Charles Kelly Guild and Mr. Darrell Thomas Braidwood of Counsel for the Appellant, and Mr. John S. Burton of Counsel for the Respondents, UPON READING the Appeal Book herein and UPON HEARING Counsel for the Appellant and Respondents and upon this Court ordering that the said Appeal should stand over for judgment, and the same coming on this day for judgment in the presence of Counsel for both sides.

20 THIS COURT DOTH ORDER AND ADJUDGE that this appeal be and the same is hereby allowed.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the judgment of the Honourable Mr. Justice Macfarlane dated the 16th day of December, A.D. 1946, be and the same is hereby rescinded and wholly set aside and a new trial be had between the Plaintiff and Defendants.

30 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff (Appellant) do recover from the Defendants his costs of this appeal such costs to be taxed and paid by the Defendants (Respondents) to the Plaintiff (Appellant) forthwith after taxation thereof.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the said action in the Supreme Court of British Columbia between the Plaintiff (Appellant) and Defendants (Respondents) do abide the event of such new trial of

RECORD

In the Supreme
Court of British
Columbia

Exhibit No. 1

Court of Appeal
Order of new
Trial
June 17, 1947

RECORD

*In the Supreme
Court of British
Columbia*

this action in the Supreme Court of British Columbia ordered
hereby.

By the Court
"A. F. MATHER"
Registrar.

Exhibit No. 1

Court of Appeal
Order of new
Trial
June 17, 1947
(Continued)

Seal
SCBC
"J.S.B."
Checked
"R.W."
"G.McG.S."
CJBC

ENTERED
Apr. 8, 1948
Order Book, Vol. 15, Fol. 17 10
Per "E.W.W."

SUPREME COURT OF B.C.
Vancouver Registry

PUT IN BY Plt. DATE: 26/1/49

751/45

"T.C."
Registrar

EXHIBIT No. 55
 IN THE SUPREME COURT OF BRITISH COLUMBIA
 REASONS FOR JUDGMENT
 OF THE HONOURABLE MR. JUSTICE COADY

RECORD
 ———
*In the Supreme
 Court of British
 Columbia*
 ———
 Exhibit No. 55

BETWEEN:

MYRON KUZYCH

K 486/45

Plaintiff

—and—

10

WILLIAM L. WHITE

Defendant

AND:

K 485/45

MYRON KUZYCH

Plaintiff

—and—

RICHARD CORONADO

Defendant

AND:

K 487/45

MYRON KUZYCH

20

Plaintiff

—and—

NORMAN McSWEEN

Defendant

AND:

K 488/45

MYRON KUZYCH

Plaintiff

—and—

EDWARD S. SIMPSON

Defendant

30 These actions were consolidated for trial. The plaintiff sues for damages for assault. The evidence clearly establishes in my opinion that the plaintiff had no right to attend the meeting of the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, on February 27, and this he well knew at the time. His statement to the contrary I refuse to accept. By his attendance there, and by his refusal to leave the meeting at the request of the chairman before, and again after, the motion was made and

RECORD

In the Supreme
Court of British
Columbia

Exhibit No. 55

Reasons for
Judgment
Coady, J.
June 18, 1945

(Continued)

passed that he should leave he was inviting trouble. His attitude was intended to be and was in fact highly provocative and defiant.

Organizations such as this are entitled to expect from their members an acceptance of and an adherence to constitutional procedure. Other remedies are open to a member if his legal rights are infringed, but open defiance of constituted authority is not one of them.

It is admitted that the defendant Coronado struck the plaintiff himself, and this defendant under the circumstances was justified in what he did, in repelling force by force, and I cannot find that he used more force than was reasonably necessary under the circumstances. The action against this defendant therefore must be dismissed with costs. 10

The plaintiff's action against the defendant Simpson must, it seems to me, on the preponderance of evidence, be dismissed likewise with costs.

As regards the claim against the defendants White and McSween, I think the preponderance of evidence clearly shows that these two defendants did assault the plaintiff without provocation. The evidence is contradictory, but under all the circumstances that is not surprising, in fact, can reasonably be expected, when excitement runs high and when passions are somewhat aroused. It is difficult for bystanders to see all that occurs in a melee such as took place here. The doctor's evidence as to the marks and bruises on the plaintiff's body is consistent with the evidence that he was kicked by these two defendants, and the suggestion that such bruises could have been occasioned otherwise is not worthy of any serious consideration. There is, moreover, no evidence to show that any other person was responsible for this condition. On the contrary, some of the witnesses went so far as to say that no one kicked him. That evidence, of course, if given in good faith, can only mean that this particular incident was not observed by them. The case against these two defendants therefore must succeed. 20 30

Special damages will be allowed at the sum of \$38.00. General damages under the special circumstances here disclosed should not be large. I fix the amount at \$50.00. The plaintiff is entitled to his costs against these two defendants.

June 18, 1945.

"J. M. Coady." J.

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Dft.

DATE. 16/2/49

751/45

"T.C."

Registrar

EXHIBIT No. 53

DECISION OF THE UMPIRE,
UNEMPLOYMENT INSURANCE COMMISSION

CUB-54

IN THE MATTER OF the Unemployment Insurance Act, 1940

and

IN THE MATTER OF a claim for benefit by Myron Kuzyeh

and

10 IN THE MATTER OF an appeal by the claimant from a decision of a Court of Referees given at Vancouver, British Columbia, on the 11th day of July, 1945.

The claimant is a single man, 33 years of age and his registered occupation is that of a welder. His last employment was with the North Vancouver Ship Repairs, Limited, as a welder, at \$1.00 per hour. He was employed by that firm from November 17th, 1944, to April 3rd, 1945, when he was laid off as a result of his expulsion from the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, with which the employer has entered into a collective labour agreement which includes a closed shop clause.

20 The claimant filed his claim for benefit on April 11th, 1945. His claim was allowed and he received benefit for 33 days, i.e., until May 29th, 1945. On June 5th the claimant was notified of a position as a welder with the Lawrence Manufacturing Company, Vancouver, British Columbia, at a rate of remuneration of \$1.00 per hour for an eight-hour day. The work offered being at the union rate of pay under favourable conditions in the claimant's usual occupation, but the employer operated an "open shop." The claimant was ready to accept the position offered but insisted upon being employed as a union welder (specifically of
30 the Boilermakers' and Iron Shipbuilders' Union, Local No. 1), and upon refusal of the employer to employ him under such conditions, he did not accept the position offered.

On June 6th, the claimant was notified of a similar position with the Dominion Bridge Company, Limited, Vancouver, under the same conditions as the employment previously offered. The claimant refused this second offer of employment for the same reasons.

40 In both instances, the insurance officer was of the opinion that the employment offered in each case was suitable employment for the claimant, and that he had not shown good cause for his failure in refusing to accept the situations offered, and disqualified him under the provisions of Section 43 (b) (i) for a period of six weeks, commencing on the day of each refusal.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 53

Decision of the
Umpire in the
matter of a claim
for benefit by the
Plaintiff to the
Unemployment
Insurance Com-
mission
Oct. 3, 1945

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 53

Decision of the
Umpire in the
matter of a claim
for benefit by the
Plaintiff to the
Unemployment
Insurance Com-
mission
Oct. 3, 1945

(Continued)

The claimant appealed to the Court of Referees from the decisions of the Insurance Officer and he was granted an oral hearing and the Court unanimously disallowed his appeals and confirmed the disqualifications imposed upon him. The Chairman of the Court of Referees granted the claimant leave to appeal to me.

In support of his appeal the claimant submitted to me a voluminous brief which was very well prepared, but which contains a great deal of irrelevant information. The claimant has been involved in protracted legal proceedings against the Union in connection with the attempts of the Union to expel him as a member, but I do not find that those proceedings, interesting though they may be, have any direct bearing on the question before me for decision. There is no doubt whatsoever that the employment offered to the claimant is suitable employment within the meaning of the Act. Throughout his brief the claimant refers to suitable and similar employment, but, of course, the term "similar" is one not taken from the Unemployment Insurance Act and I must confine my findings to the term "suitable employment," which is the term used throughout the Unemployment Insurance Act. 10 20

The essence of the appeal is the contention of the claimant that if he were to accept the employment in either of the plants which operate as open shops, he would lose his right to continue to be a member of the Union, and that Section 32 of the Act provides that a claimant shall not be disqualified for refusal to accept employment if the acceptance of that employment would cause him to lose the right to be a member of the Union.

Notwithstanding the volume of the material submitted to me for consideration on this appeal, I do not find any proof whatsoever that the claimant would lose the right to continue to be a member of the Union if he were to accept the employment offered in an open shop. I would expect that if there were any such Union rule, it would be found in the by-laws of the Union, but I have examined the by-laws with great care and find no indication of any such rule. 30

The proceedings between the claimant and the Union, which I have already mentioned, concerned the effectiveness of the Union's expulsion of the claimant and the question whether the claimant is or is not a member of the Union. I do not think the ultimate disposition of that question affects my decision in any way. If the claimant is not a member of the Union, then Section 32 of the Act, already mentioned, has no bearing on the case. If he is a member of the Union, then, as already indicated, there 40

is no proof that his membership would be affected by acceptance of employment in an open shop.

The appeal is not allowed.

(signed) LUCIEN CANNON
Umpire

DATED at Ottawa, this 3rd of October, 1945.

I hereby certify under my hand that the above is a true copy of the Decision signed by the Umpire, Lucien Cannon, on October 3, 1945, in the claim for benefit by Myron Kuzych.

10 Dated at Ottawa, this 28th day of January, 1949.

“E. C. Desormeaux”

E. C. DESORMEAUX,

Secretary of the Unemployment Insurance Commission

(Seal of Unemployment Insurance Commission)

RECORD

In the Supreme Court of British Columbia

Exhibit No. 53

Decision of the Umpire in the matter of a claim for benefit by the Plaintiff to the Unemployment Insurance Commission
Oct. 3, 1945

(Continued)

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Dft.

DATE. 1/2/49

751/45

“T.C.”
Registrar

RECORD

EXHIBIT No. 2

*In the Supreme
Court of British
Columbia*

REPRESENTATIVE ORDER OF THE HONOURABLE MR.
JUSTICE MACFARLANE, DATED NOVEMBER 14, 1945

Not Printed

Exhibit No. 2

Representative
Order of
Macfarlane, J.
Nov. 14, 1945

Reprinted in full at page 825.

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

EXHIBIT No. 43

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1Room 904 — 16 East Hastings Street
Vancouver, B.C.

December 7th, 1943.

Mr. Myron Kuzych,
3558 Fraser Avenue,
Vancouver, B.C.

10 Dear Sir and Brother:

You are hereby informed that on Monday, December 13th, at 8 p.m., the committee elected to hear charges preferred by Brothers Austin Delany, Chas. Caron, W. H. Renwick and Wm. Shearer, against yourself, will convene at 904 Holden Building.

I am enclosing herewith a copy of the charges preferred against you.

Fraternally yours,

BOILERMAKERS' & IRON SHIP-
BUILDERS' UNION OF CANADA
LOCAL No. 1Per: "Thos. G. Mackenzie"
Thos. G. Mackenzie,
Secretary-Treasurer.

20

TGM:v
Encl.
Register.

Attached to EXHIBIT No. 43

Vancouver, B.C.,
November 15th, 1943.30 Mr. T. G. Mackenzie, Secretary,
Boilermakers' & Iron Shipbuilders'
Union of Canada, Local No. 1,
904 Holden Bldg.,
Vancouver, B.C.

Dear Brother:

Take notice that we, the undersigned, being shop stewards and members in good standing of the Boilermakers' and Iron

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 43

Letter, Boiler-
makers' Union to
Myron Kuzych,
Dec. 7, 1943,
and Charges by
four Union mem-
bers against
Plaintiff
Nov. 14, 1943

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 43

Letter, Boiler-
makers' Union to
Myron Kuzych,
Dec. 7, 1943,
and Charges by
four Union mem-
bers against
Plaintiff
Nov. 14, 1943

(Continued)

Shipbuilders' Union of Canada, Local No. 1, do hereby pursuant to the by-laws of the said Union, charge Myron Kuzych with conduct unbecoming a member of the said Union and contrary to its policy, particulars whereof are as follows:

(1) That he did, on or about the 12th or 13th day of October, 1943, testify before an arbitration board in a dispute between the said Union and certain employers concerning the question of a closed shop, to the effect that he was opposed to the closed shop and to the Union's policy favoring the same.

(2) That he obtained a canvass sign, the property of the Union and retained it in his possession and still so retains it. 10

(3) That when requested to join the said Union he refused to do so, but when, owing to the contract between the said Union and the aforementioned company he was required to join the said Union, he appealed to the said employer to help him remain outside the said Union.

DATED at Vancouver, British Columbia, this 15th day of November, A.D. 1943.

"A. Delany"

"C. W. Caron"

"Wm. H. Renwick"

"Wm. Shearer"

20

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."

Registrar

707

EXHIBIT No. 44

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1
339 West Pender Street
VANCOUVER, B.C.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 44

June 21, 1944.

Letter, Boiler-
makers' Union to
Plaintiff,
June 21, 1944

Mr. Myron Kuzych,
3558 Fraser St.,
Vancouver, B.C.

10 Dear Sir:

Please be advised that you have been reinstated in this Union as a member in good standing.

Your dues were paid to the end of November, 1943, and under the Union's constitution the next payment is due not later than June 30th, 1944, covering dues for December 1943 and June 1944.

You do not have to pay dues for the period of January 1944 to May 1944 inclusive.

Yours truly,

20

BOILERMAKERS' & IRON SHIP-
BUILDERS' UNION OF CANADA
LOCAL No. 1

Per: "W. Stewart"
W. Stewart,
President.

WS/ke

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 34

Letter, Boiler-
makers' Union to
Plaintiff,
Nov. 24, 1944.

November 24, 1944.

Mr. Myron Kuzych,
3558 Fraser St.,
Vancouver, B.C.

Dear Sir:

In view of the fact that you were not permitted to attend the last general business meeting, we feel it necessary to inform you of a motion that was passed at that meeting, since you were a candidate in the coming election:

10

“Moved, seconded and carried that nominees for election at the forthcoming election of officers stand instructed not to allow their names to appear in the press in connection with the election.”

Yours truly,

BOILERMAKERS' & IRON SHIP-
BUILDERS' UNION OF CANADA
LOCAL No. 1

Per: C. W. Caron,
Secty-Treas.

20

CWC/ke

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

“T.C.”
Registrar

EXHIBIT No. 36

February 26, 1945.

Mr. Myron Kuzych,
3558 Fraser St.,
Vancouver, B.C.

Dear Sir and Brother:

10 Charges were preferred against you at the General Meeting of February 19th and said charges have been turned over to the Press & Investigating Committee. The Committee has set Monday, March 12th, 7:30 p.m., as the date of the trial and will meet in rooms A. B. and C. at 339 West Pender Street.

Enclosed, find copy of charges and By-laws. Provision is made in the By-laws for you to have a counsel, who must be a member of this Union, to represent you. If you wish to appoint a counsel please inform Union Headquarters to this effect prior to the date of the trial.

Any witnesses you may wish to have appear on your behalf must be contacted by you and notified of the time and place of the meeting.

20

Fraternally yours,

**BOILERMAKERS' & IRON SHIP-
BUILDERS' UNION OF CANADA
LOCAL No. 1**

Per:

G. Farrington, Chairman,
Press & Investigating Cttee.
C. W. Caron,
Secretary-Treasurer.

gf:sf
30 enc.
Registered Mail.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 36

Letter, Boiler-
makers' Union to
Plaintiff,
Feb. 26, 1945

Charges by
McKendrick
against Plaintiff,
Feb. 14, 1945

RECORD

Attached to EXHIBIT No. 36

In the Supreme Court of British Columbia

Vancouver, B.C.,
February 14, 1945.

Exhibit No. 36

Letter, Boilermakers' Union to Plaintiff, Feb. 26, 1945

Charges by McKendrick against Plaintiff, Feb. 14, 1945

(Continued)

I, C. J. McKendrick, being a member in good standing of the Boilermakers' & Iron Shipbuilders' Union of Canada, Local No. 1, Card No. 8589, do hereby charge MYRON KUZYCH under Part B of Article 26 of the By-laws of the said Union with the following offences:

(1) That on or about the 10th day of December, 1944, he, the said Myron Kuzych, called, held or assisted in holding an 10 unauthorized public meeting to discuss internal business of the said Union, such meeting being in fact held at 856 Seymour St., Vancouver, B.C., contrary to Article 26, Part B, Section (2) (i) of the said by-laws.

(2) That between the month of October, 1942, and the month of December, 1944, he, the said Myron Kuzych, was on diverse occasions guilty of conduct unbecoming a member of the said Union and committed acts discreditable to it in that he, the said Myron Kuzych, did publicly oppose established policies of the said Union by campaigning against the closed shop principle 20 and the principle of dues check-off contrary to Article 26, Part B, Section (2) (e) and (f) of the said By-laws.

(3) That between the 22nd day of November, 1944, and the 3rd day of December, 1944, the said Myron Kuzych violated a part of the obligation oath (to wit: "I will never wrong a member of this Union . . . or see him wronged if it is in my power to prevent it.") by failing to repudiate certain radio broadcasts which were made over station CKNW on his behalf or in his name by person or persons not members of the Union, such broadcasts having contained statements which were wilfully slanderous 30 of a member of the Union, to wit, William Stewart, contrary to Article 26, Part B, Section 2 (e) and Article 22, Section 6 of the said by-laws.

DATED at Vancouver, British Columbia, this 14th day of February, A.D. 1945.

C. J. McKendrick

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

711

EXHIBIT No. 37

BOILERMAKERS' & IRON SHIPBUILDERS' UNION
LOCAL No. 1
339 West Pender Street
VANCOUVER, B.C.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 37

Letter, Boiler-
makers' Union to
Plaintiff,
Mar. 14, 1945

(Continued)

Registered Mail

March 14, 1945.

Mr. Myron Kuzych,
3558 Fraser St.,
10 Vancouver, B.C.

Dear Sir:

Please be advised that your attendance at the next general business meeting of this Union, on Monday, March 19th, is herewith permitted.

As you will also be permitted to issue your statement to the general membership at that time, with reference to the Trial held on Tuesday, March 13th, we would request that you file a copy of your statement with the office, to be included in the records of the case.

20 Thanking you for your attention to this matter, we remain,

Yours truly,

"C. W. Caron"

C. W. Caron,
Secty-Treas.

CWC/ke

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 38

Letter, Boiler-
makers' Union to
Plaintiff,
Mar. 21, 1945

BOILERMAKERS' & IRON SHIPBUILDERS' UNION
LOCAL No. 1
339 West Pender Street
VANCOUVER, B.C.

Registered Mail

March 21, 1945.

Mr. Myron Kuzych,
3558 Fraser St.,
Vancouver, B.C.

10

Dear Sir:

You are herewith informed that you have been expelled as a member of the Boilermakers' & Iron Shipbuilders' Union, Local No. 1, at the last general business meeting, held Monday, March 19th, 1945.

This is in accordance with the provisions of our By-laws.

Yours truly,

"C. W. Caron"

C. W. Caron,
Secretary-Treasurer. 20

CWC/ke
(Union Seal)

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

EXHIBIT No. 39

March 23, 1945.

Mr. J. W. Thompson, Mgr.,
North Van. Ship Repairs Ltd.,
North Vancouver, B.C.

Dear Sir:

It is my duty to inform you that one Myron Kuzych, employed in your yard as a welder, has been expelled as a member of the BOILERMAKERS' & IRON SHIPBUILDERS' UNION,
10 LOCAL No. 1.

In this connection we wish to draw to your attention Clause 28 of our Collective Agreement, which reads as follows:

"Only members of this organization will be employed and, in the event of the Union being unable to supply men, no man who is unfair to this organization will be employed."

Therefore, since Myron Kuzych has been declared unfair by our Union, we trust that the provisions of the above-mentioned clause will be adhered to.

20

Yours very truly,

C. W. Caron,
Secty-Treas.

CWC/ke

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 39

Letter, Boiler-
makers' Union to
North Van Ship
Repairs,
Mar. 23, 1945

SUPREME COURT OF B.C. — VANCOUVER REGISTRY

Put in by Plt.

Date: 26/1/49

"T.C." Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 40

Letter, North
Van Ship Repairs
to Plaintiff,
Mar. 29, 1945

N
NORTH VAN SHIP S V R REPAIRS LIMITED
SHIP BUILDERS LTD. AND REPAIRERS
NORTH VANCOUVER, B.C.

March 29th, 1945.

Myron Kuzych,
3558 Fraser Ave.,
Vancouver, B.C.

Dear Sir:

10

Upon demand of the Union, you are today being terminated from our employ, as per the terms of the collective agreement between the North Van Ship Repairs Limited and the Boilermakers' & Iron Shipbuilders' Union, Local No. 1.

The Union has advised us, that should you file an appeal as per terms of the constitution of the Union, your expulsion order becomes inoperative pending the results of such an appeal. Should the expulsion order become inoperative, we know of no reason, at the moment, why we would not be able to re-employ you.

Yours very truly,

20

NORTH VAN SHIP REPAIRS
LIMITED

"J. W. Thompson"

J. W. Thompson,
Personnel Officer.

JWT/PS

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

715

Attached to EXHIBIT No. 40

(Pink Slip attached to upper left hand corner of Exhibit No. 40.)

NAME: "M. Kuzych"

CLOCK No. 187

INSTRUCTIONS TO
EMPLOYEE

This form must be taken first to Personnel Dept. whether you have time or not.

10

Call at Time Office the last day you work to check time; also bring in final Time Ticket signed by Foreman.

Secure Tool Clearances from Tool Room the last day you work. Cheque or Insurance Book will not be given out without it.

Time Office ONLY will state when cheque and Insurance Book will be ready.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 40

Letter, North
Van Ship Repairs
to Plaintiff,
Mar. 29, 1945

(Continued)

RECORD

EXHIBIT No. 54

In the Supreme Court of British Columbia

MINUTES, November 4th

(further undated)

* * * * *

Exhibit No. 54

Extracts, Minutes of Boilermakers' Union, Nov. 4.

Brother Stewart reported re negotiations with the Canadian Congress of Labor, and read out proposed agreement between C.C.L. and this Union. M/S/C report be accepted and agreement endorsed.

The auditor's quarterly statement was submitted and it was moved, seconded and carried that the statement be accepted and be filed for reference at the Main Office and that a notice be put in the Main Deck to the effect that the statement was in the office and available to any member of the union wishing to peruse same.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY

Put in by Dft.

Date: 1/2/49

"T.C." Registrar

EXHIBIT No. 15

EXTRACTS FROM MINUTES REGULAR GENERAL MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 8 P.M., THURSDAY, JANUARY 20, 1944.

RECORD
In the Supreme
Court of British
Columbia

Exhibit No. 15

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
8:00 p.m.
Jan. 20, 1944

Meeting opened at 8:10 p.m. by Chairman, Brother Stewart.

At the morning meeting a quorum was not in attendance, therefore an informal discussion took place.

10 At the night meeting the minutes of the last meeting were read and adopted.

* * * * *

Brother McKendrick reported as chairman of the Kuzych trial committee. This report recommended the expulsion of Brother Kuzych from the B.&I.S.U. of Canada, Local No. 1.

* * * * *

Moved, seconded and carried that a brief case be purchased for presentation to Brother M. McLeod, recently elected Provisional President of the Shipyard and General Workers' Federation.

20 Moved, seconded and carried that the proposed Constitution of the Shipyard and General Workers' Federation be mimeographed and made available to the membership.

* * * * *

Moved, seconded and carried that a by-laws committee be elected at the next regular meeting. Nominations were then called for various committee positions—these include:

Trustee—Brothers J. Hall and L. Hunter.

Consumers Council—Les Buckley (elected); and T. G. Mackenzie (elected).

30 Compensation Committee—J. Lawson (elected), W. Gee (elected), V. Forster, H. Matzon (elected) and J. Forrest.

By-Laws Committee—5 to be elected.

Brothers W. Stewart, W. Schwartz, W. McKendrick, T. G. Mackenzie, G. Farrington, G. Home, C. Caron, G. King, Wilson, P. Wrigley, Woods.

SUPREME COURT OF B.C. — VANCOUVER REGISTRY

Put in by Plt. Date: 26/1/49 "T.C." Registrar

RECORD

EXHIBIT No. 16

*In the Supreme
Court of British
Columbia*

Exhibit No. 16

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m.
Mar. 16, 1944

(Continued)

EXTRACTS FROM MINUTES REGULAR GENERAL MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M., THURSDAY, MARCH 16, 1944.

Chairman, Brother Stewart opened the meeting at 11:10 a.m.

Letter read from Shipyard General Workers' Federation explaining that Brother Austin Delany has been appointed Editor of the Main Deck and requesting that each yard elect a reporter. Moved, Seconded and Carried that these proposals be accepted. 10

REPORTS OF COMMITTEES

Brothers White, Franks and MacSween reported as Business Agents of this Union. Moved, seconded and carried that these reports be accepted.

Brother White reported as a delegate to the B.C. Shipyard Conference.

Brother Stewart reported that the By-laws Committee has completed its task and suggested that because of the many points to be considered in connection with these by-laws, that a special meeting be held on Sunday, March 26th. 20

* * * * *

8 P.M., THURSDAY, MARCH 16, 1944.

Chairman, Brother Stewart opened the meeting at 8:00 p.m.

CORRESPONDENCE

Letter read from Shipyard General Workers' Federation explaining that Brother Austin Delany has been appointed editor of the Main Deck and requesting that each yard elect a reporter. Moved, seconded and carried that these proposals be accepted.

* * * * *

30

REPORT OF COMMITTEES

Brothers White, Franks and McSween reported as business agents of this Union. Moved, seconded and carried that these reports be accepted.

Brother White reported as a delegate to the B.C. Shipyard Conference.

Brother Stewart reported that the By-laws Committee has completed its task and suggested that because of the many points to be considered in connection with these by-laws, that a special meeting be held on Sunday, March 26th. 40

* * * * *

Moved, seconded and carried that a portion of the special

meeting to discuss by-laws be allotted to the interpretation of what constitutes a "lead hand."

* * * * *

Moved, seconded and carried that the Shipyard Federation be approached with the object of taking up with the National War Labour Board the question of revision of the holiday with pay regulations.

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

RECORD
In the Supreme Court of British Columbia
Exhibit No. 16
(Continued)

10

EXHIBIT No. 17

EXTRACTS FROM MINUTES REGULAR GENERAL MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M., MONDAY, JUNE 5, 1944.

President Wm. Stewart in the chair.

* * * * *

A series of three recommendations from the Shipyard General Workers' Federation were read, suggesting:

- (1) That a committee composed of war veterans be elected for the purpose of setting up a co-ordinating bureau of veterans from the various committees elected from the locals.
- (2) That each local take steps to have Safety First men come under the direct supervision of the Compensation Board and that they be paid by the Board.
- (3) That the Federation publish a Shop Stewards Manual as quickly as possible.

Moved, seconded and carried that these suggestions be accepted and that action be taken on them immediately.

* * * * *

30

Moved, seconded and carried that the regular order of business be suspended and that we proceed with balloting to elect one member to the Hall Committee and also to discuss the by-laws. For the voting, Brothers Baine and McGilary acted as tellers.

Moved, seconded and carried that Articles 1 to 9 which were discussed at a previous meeting be accepted and become part of the by-laws of this Union.

Moved, seconded and carried that for the purpose of discussing the remainder of the by-laws each speaker be limited to

Exhibit No. 17
Extracts from Minutes Regular General Meeting, Boilermakers' Union, 11:00 a.m. June 5, 1944

RECORD

In the Supreme Court of British Columbia

Exhibit No. 17

(Continued)

a maximum of five minutes on the floor on any given point.

Articles 10-12 were discussed and it was moved, seconded and carried that with certain amendments, they be accepted.

Charges against Brother J. Foslette were read and it was explained that the Trial Committee which was elected at the last general meeting would bring in a verdict shortly.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

Exhibit No. 18

Extracts from Minutes Regular General Meeting, Boilermakers' Union, 8:00 p.m. July 3, 1944

EXHIBIT No. 18

10

EXTRACTS FROM MINUTES REGULAR GENERAL BUSINESS MEETING, BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 8 P.M., MONDAY, JULY 3, 1944.

* * * * *

President W. Stewart in chair.

* * * * *

Charges against Brothers Stewart and Caron were read to the meeting.

Moved, seconded and carried that the charges were unfounded and spurious. 20

* * * * *

Also, at the morning meeting, Brother Gee on behalf of the Trial Committee which was set up to study charges against Brother Fawcellette reported their findings.

- a) that Brother Fawcellette be fined the sum of \$15.00.
- b) that Brother Fawcellette acquaint himself with the rules and regulations of this Union.

Moved, seconded and carried that this report be accepted.

* * * * *

30

At 9:20 during the evening meeting, the regular order of business was suspended and the meeting proceeded to discuss the proposed by-laws.

Moved, seconded and carried that Articles 1-9 which had been previously discussed be adopted.

Brother King, on behalf of the By-laws Committee read from Articles 9-13. After discussion, it was moved, seconded and carried that these articles be adopted.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

EXHIBIT No. 19

EXTRACTS FROM MINUTES REGULAR GENERAL BUSINESS MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M., MONDAY, AUGUST 7, 1944.

RECORD
In the Supreme Court of British Columbia

Exhibit No. 19

* * * * *

The verdict of the Trial Committee which studied charges against Brother Fawcellette was read to the meeting.

Moved, seconded and carried that the verdict be endorsed.

Extracts from Minutes Regular General Meeting, Boilermakers' Union, 11:00 a.m. Aug. 7, 1944

10

EXECUTIVE REPORT

(2) All members who have any resolutions or any proposed changes in the Constitution of the C.C.L. or S.G.W.F. should prepare their resolutions so that they will be ready for review by a committee of five, which should be elected at the following meeting.

.

Moved, seconded and carried that the regular order of business be suspended and the meeting proceed to discuss the proposed by-laws.

Moved, seconded and carried that the addition to Article 8 dealing with the function of Political Action Committees be approved.

Discussion ensued on Articles 11 to 13 and it was moved, seconded and carried that these articles up to and including 13 be approved.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

RECORD

EXHIBIT No. 20

In the Supreme Court of British Columbia

Exhibit No. 20

Minutes Regular General Meeting, Boilermakers' Union, 8:00 p.m. Aug. 7, 1944

EXTRACTS FROM MINUTES REGULAR GENERAL BUSINESS MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA. LOCAL No. 1, 8 P.M., AUGUST 7th, 1944.

President Brother Stewart presided at the meeting, and vice-pres. Brother Schwartz was in the chair at the morning meeting.

Verdict of the Trial Committee which studied charges against Brother J. Fawcellette were read to the meeting. The Committee recommended that Brother Fawcellette be fined the sum of \$15.00 and that he acquaint himself with the activities of this Union. 10

Moved, seconded and carried that the decisions of the Committee be endorsed.

(2) All members who have any resolutions or any proposed changes in the Constitution of the CCL or SGWF should prepare their resolutions so that they will be ready for review by a committee of five, which should be elected at the following meeting. 20

* * * * *

Moved, seconded and carried that the regular order of business be suspended and that the meeting proceed to discuss the draft by-laws.

Moved, seconded and carried that additions to Article 12 dealing with the functions of Political Action Committee and Hall Committee be accepted.

Brother King, on behalf of the By-laws Committee read from Articles 14 to 20 of the by-laws. After discussion, it was regularly moved, seconded and carried that since the by-laws have now been fully considered by the evening meeting, they should become the rules of this Union. This to become effective on recommendation of the executive. 30

Moved, seconded and carried that members of the By-laws Committee who have lost time from work while formulating or presenting the by-laws to the membership be reimbursed for time lost.

Moved, seconded and carried that a hearty vote of thanks be extended to the By-laws Committee for their efforts.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

EXHIBIT No. 21

EXTRACTS FROM MINUTES REGULAR GENERAL BUSINESS MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M., MONDAY, AUGUST 21, 1944.

Brother Stewart in the chair.

* * * * *

Moved, seconded and carried that the agenda be suspended and the meeting proceed to discuss the draft by-laws. Brother King, on behalf of the By-laws Committee, presented amendments to the by-laws.

Moved, seconded and carried that the by-laws, with amendments, be adopted.

Moved, seconded and carried that the by-laws become the rules and regulations of this Union on and after Sept. 1, 1944.

.

Moved, seconded and carried that a resolutions committee of five be elected to compile resolutions for presentation to the C.C.L. and S.G.W.F. conventions in October.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 21

Extracts from Minutes Regular General Meeting, Boilermakers' Union, Aug. 21, 1944

RECORD

EXHIBIT No. 22

In the Supreme Court of British Columbia

Exhibit No. 22

Extracts from Minutes Regular General Meeting, Boilermakers' Union, 8:00 p.m. Aug. 21, 1944

EXTRACTS FROM MINUTES REGULAR GENERAL MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 8 P.M., MONDAY, AUGUST 21, 1944.

President W. Stewart in the chair.

* * * * *

At this point Brother Kuzyeh rose to speak—numerus speakers objected to Brother Kuzyeh being in attendance at the meeting. Moved, seconded and carried that because Brother Kuzyeh is suing this Union for damages that he (Kuzyeh) be excluded from meetings of this Union until the damage suit is finally concluded. (August 21, 1944.)

* * * * *

Moved, seconded and carried that the dues increase specified in the by-laws become the rules and regulations of this Union from September 1, 1944.

* * * * *

Moved, seconded and carried that the Executive Committee review the news material which is submitted to the Main Deck.

Nominations were then called for members to serve on the Resolutions Committee—function of this committee is to compile and review resolutions which will be submitted for consideration at the S.G.W.F. and C.C.L. Conventions. From a total of five nominees, Brothers Stewart, M. MacLeod and Mills were elected. Brothers Forster and Purvis were elected by acclamation at the morning meeting.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

EXHIBIT No. 23

EXTRACTS FROM MINUTES REGULAR GENERAL BUSINESS MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M., 8 P.M., MONDAY, AUGUST 21, 1944.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 23

Extracts from Minutes Regular General Meeting, Boilermakers' Union, 11:00 a.m and 8:00 p.m. Aug. 21, 1944

Brother Stewart in the chair.

* * * * *

At the morning meeting it was moved, seconded and carried that the agenda be suspended and the meeting proceed to discuss the draft by-laws.

Brother King, on behalf of the By-laws Committee, presented amendments to the by-laws.

Moved, seconded and carried that the by-laws as a whole, with amendments, be adopted.

Moved, seconded and carried that dues increase, specified in the by-laws become the rules and regulations of this Union from September 1, 1944.

At the evening meeting, Brother Kuzych rose to speak—numerous speakers objected to Brother Kuzych being in attendance at the meeting.

Moved, seconded and carried that because Brother Kuzych is suing this Union for damages that he (Kuzych) be excluded from meetings of this Union until the damage suit is finally concluded. (August 21, 1944.)

* * * * *

Moved, seconded and carried that the Executive Committee review the news material which is submitted to the Main Deck.

Nominations were then called for members to serve on the Resolutions Committee—function of this committee is to compile and review resolutions which will be submitted for consideration at the S.G.W.F. and C.C.L. Conventions. From a total of five nominees, Brothers Stewart, M. MacLeod and Mills were elected. Brothers Forster and Purvis were elected by acclamation at the morning meeting.

* * * * *

The following motions were moved, seconded and carried at morning meeting.

That we protest the Federal Government's interpretation of P.C. 1003 relating to Halifax strike and that copies be circulated to the Shipyard General Workers' Federation for distribution throughout the industry.

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
Put in by Plt. Date: 26/1/49 "T.C." Registrar

RECORD

EXHIBIT No. 24

*In the Supreme
Court of British
Columbia*

Exhibit No. 24

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m.
8:00 p.m.
Nov. 20, 1944

EXTRACTS FROM MINUTES REGULAR GENERAL MEETING BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, 11 A.M. AND 8 P.M., MONDAY, NOV. 20, 1944.

Brother Schwartz was in the chair at the morning meeting.

Brother Stewart presided at the evening meeting.

* * * * *

At the morning meeting Brother Janzen informed the membership that Brother Kuzych was in attendance at the meeting. 10
As a result it was moved, seconded and carried that Brother Kuzych be excluded from the meeting.

* * * * *

EXECUTIVE REPORT

Brother Caron, on behalf of the Executive, dealt with the following points:

1. The special meeting for small shop employees which is being called by the S.G.W.F.
2. The inclusion of seniority clauses in our Union agreement.
3. Arbitration procedure for settling grievances. 20
4. Plans for the forthcoming general election.

Moved, seconded and carried that the report be accepted.

Nominations were then called for candidates to contest the various positions which will be vacant on December 31st. Those nominated include, for president:

Brothers W. Stewart, T. Bain, C. A. Henderson, M. Kuzych, A. MacLeod, J. Wright, V. Forster, R. H. Thompson and M. Mills.

For First Vice-President:

Brothers W. Schwartz, L. Hunter, T. Strain, and A. Anderson. 30

For Second Vice-President:

Brothers D. Buckley, J. Nuttal, S. Sykes and T. Buchanan.

For Secretary-Treasurer:

Brothers C. Caron, D. Franks, W. Allen and J. McPheator.

For Recording-Secretary:

Brothers N. MacSween and F. Shaw.

For Two Executive Members:

Brothers J. Baker, J. Joynson, J. Railton, W. Gee, J. Downie, A. Lanoue, C. Gaywood, E. Mole, J. Lucas, V. Connelly and A. Delany. 40

Trustee:

Brothers J. Burt, L. Gourley, W. Burbridge, W. McGaw,

T. Flannagan, W. Renwick and R. Boivin.

Reporter:

Brothers G. Farrington and W. Welch.

Conductor:

Brothers D. Janzen, W. Church and H. Holiday.

Warden:

Brothers F. Bartlett and J. Power.

Discussion ensued regarding the election, as a result the following motions were moved, seconded and carried:

- 10 1. That Union officials stand instructed to reach men working at outside points, with ballots.
2. That the election be conducted by referendum and that voting take place in the yards and shops and at the main and north shore offices. Boxes to be open from 7 a.m. until 1 a.m.
3. That nominees refrain from using the press for publicity purposes in connection with the election.

20 Brother Stewart reported re the Kuzych case. Moved, seconded and carried that the case be appealed and that the executive stand instructed to obtain necessary legal assistance.

* * * * *

SUPREME COURT OF B.C. — VANCOUVER REGISTRY

Put in by Plt.

Date: 26/1/49

“T.C.” Registrar

EXHIBIT No. 25

MINUTES

REGULAR GENERAL MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

30 339 W. Pender St. 11 a.m. and 8 p.m. Monday, December 4, 1944

At the morning meeting Brother Schwartz was in the chair. Brother Stewart presided at the evening meeting.

At the morning meeting the minutes of the previous meeting were read and adopted.

At the night meeting it was moved, seconded and carried that Brother Kuzych be excluded from the meeting.

The minutes of the previous meeting were read and adopted.

Correspondence:

The list of candidates running for the forthcoming elections were read to the meeting.

Letter read from N.V.S.R. rejecting a seniority clause which

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 24
(Continued)

Exhibit No. 25

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Dec. 4, 1944

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 25

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Dec. 4, 1944

(Continued)

had been submitted to them by this Union.

Moved, seconded and carried that the communication be referred to the report of the Executive Committee.

Letter read from the Socialist Labor Party of Canada—the communication explained that Myron Kuzych is not a member of the above-mentioned group, having been expelled in 1939.

Moved, seconded and carried that the letter be received and filed.

Executive Report:

Brother Caron, on behalf of the Executive Committee, dealt 10 with the following points:

(a) Details for the forthcoming election which will be held on Dec. 12th.

(b) Seniority clause—in this connection it was suggested that action re this matter be postponed until after the election.

Moved, seconded and carried that the report of the Executive be accepted.

The bi-monthly bills were read to the meeting.

Moved, seconded and carried that the bills be paid.

The proposed list of scrutineers for the elections were read 20 to the meeting.

Moved, seconded and carried that the names be accepted.

Notice of motion re issuing printed or mimeographed financial statements to the membership attending meetings were discussed; as a result it was moved, seconded and carried that the motion be non-concurred in.

The names of Brothers MacLeod and White were presented to the meeting as suggested members of the Burrard North "dirty money" Arbitration Board.

Moved, seconded and carried concurrence in the names sug- 30 gested.

Report of Committees:

Brother Franks reported as chairman of the Sports Committee.

Moved, seconded and carried that the report be accepted.

Brother Delany reported as chairman of the "Field Rate" Committee.

Moved, seconded and carried that the report be accepted.

Moved, seconded and carried that the motions restraining nominees from using the press in connection with the election be 40 deleted from the minutes of the previous meeting.

Meeting adjourned.

EXHIBIT No. 26

MINUTES

REGULAR GENERAL MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF

CANADA, LOCAL No. 1

339 W. Pender St. 11 a.m. and 8 p.m. Monday, Dec. 18, 1944

Brother Stewart presided at both meetings.

The minutes of the previous meeting were read and adopted.

The results of the annual election of officers were announced
10 to the meeting—these include:

President	Brother C. A. Henderson
First Vice-Pres.	" L. Hunter
Second Vice-Pres.	" J. Nuttal
Secty.-Treas.	" C. Caron
Recording Secty.	" F. Shaw (ac- clamation)
Exec. Members:	" J. Downie
	" W. Gee
Reporter	" G. Farrington
20 Trustees:	" W. McGaw
	" W. Renwick
Conductor	" H. Halliday
Warden	" J. Power

The officers elect were sworn in by the chairman.

President elect Brother Henderson spoke briefly to the meeting, outlining aims and policies for the forthcoming year. Past President Brother Stewart pledged support to the new president and Executive Committee.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 26

Minutes Regular
General Meeting,
Boilermakers'
Union
11:00 a.m. and
8:00 p.m.
Dec. 18, 1944

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 26

Minutes Regular
General Meeting,
Boilermakers'
Union
11:00 a.m. and
8:00 p.m.
Dec. 18, 1944

(Continued)

At this point it was brought to the attention of the meeting that Brother Kuzych was in the hall.

Moved, seconded that Kuzych be excluded from the meeting. Brother Kuzych rose to speak and Brother Schwartz, who had taken the chair when Brother Stewart vacated, ruled him out of order—as a result it was moved, seconded that the ruling of the chair be sustained. The motion carried.

The previous motion covering the exclusion of Kuzych was now put and carried 168 to 46.

* * * * *

10

Executive Report:

Brother Caron, on behalf of the executive committee, dealt with the following points:

1. That the next general business meeting should be held on Tuesday, January 2, 1945—this date was amended from the floor to January 5th.

2. Expansion of the Hall Committee to include members whose task would be to organize tournaments in checkers, cribbage, etc.

3. The re-election of shop stewards at the various yards and plants. 20

Moved, seconded and carried that the report of the Executive be accepted.

At the evening meeting Brother MacLeod reported as a member of the Burrard North "dirty money" Board—

Moved, seconded and carried that the report be accepted.

Brother Caron reported re negotiations for Union Agreements at Canadian Liquid Air Dominion Bridge and other plants.

Moved, seconded and carried that the report be accepted.

Moved, seconded and carried that when bargaining representatives to act as signatories to agreements are being selected, in future, they should consist of names of certain executive members and an equal number of employees from the plant or shop where the agreement is signed. 30

Moved, seconded and carried that a special meeting of rivet passers be called early in January for the purpose of discussing equalization of wages for the above-named group.

Moved, seconded and carried that this Union notify the N.W.L.B. that we fully support the Street Railwaymen's Union in their request for increased wages and improved union conditions. 40

Moved, seconded and carried that the S.G.W.F. be requested to run articles in the Main Deck, regarding the Patent Laws.

At the morning meeting the following motions were moved, seconded and carried:

1. That ambulance facilities at N.V.S.R. be investigated as soon as possible.

2. That Brother White investigate reports that women employees of N.V.S.R. are not allowed to work on the drydock.

3. That the Hall Committee investigate the possibility of holding a Union smoker.

Brother Asson reported as a delegate to the W.E.A. Convention.

Moved, seconded and carried that the report be accepted.

10 Meeting adjourned.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 26

Minutes Regular General Meeting, Boilermakers' Union,

11:00 a.m. and 8:00 p.m.
Dec. 18, 1944

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 27

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Jan. 5, 1945

EXHIBIT No. 27

MINUTES

REGULAR GENERAL MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

339 W. Pender St. 11 a.m. and 8 p.m. Friday, January 5, 1945

Brother C. Henderson in the chair.

Brother F. Shaw recording secretary.

Meeting opened with inaugural speech of new president, followed by reading of minutes of previous meeting which were 10 adopted as read.

Moved, seconded and carried that the regular order of business be suspended in order to deal with charges against two members.

Charges were read against one, Oscar Smith, card No. 198.

Moved, seconded and carried that charges be accepted.

Charges were then read against one, Myron Kuzych.

Moved, seconded and carried that charges be accepted.

Moved, seconded and carried that Myron Kuzych be barred from all meetings of the BISU, until such time as his case is disposed of. 20

Correspondence:

Letter read from the Vancouver Art Gallery requesting donation of \$25.00 towards the support of the Gallery.

Moved, seconded and carried that this donation be made.

Two letters from members in Armed Forces, sending greeting to members of Local No. 1 were read.

Recommended that these letters be answered by the secretary, enclosing current issues of the Main Deck.

Letter read from the Labour Arts Guild, containing brief on reconstruction and rehabilitation programme in this field, also 30 asking for the endorsement of attached resolution.

Moved, seconded and carried that the resolution be endorsed.

Letter read from Labor Arts Guild, outlining programme of contests and concerts.

Moved, seconded and carried that the communication be received and filed.

Letter read from S.G.W.F. containing notice of Special Conference Meeting, January 7th. This meeting to deal with proposed amendments to P.C. 1003 and P.C. 9384.

A committee of five were selected to attend this meeting as 40 delegates.

Secretary's Report:

Brother Caron opened his report with written notice of motion signed by C Caron, Card No. 5123, and F. Shaw, Card No. 2860. Proposed motion to amend Article 17, Paragraph (5) of the by-laws in so far as it effects appointment of business representatives.

Moved, seconded and carried that notice of motion be accepted.

Moved, seconded and carried that nominations for standing committees be accepted at this meeting as per by-laws.

- 10 Moved, seconded and carried that this Union employ full time social organizer to promote social activities in the hall and that nominations be accepted at this meeting for this position.

The chair also ruled that—due to such short notice, written nominations would be in order. Such nominations to be in the hands of secretary not later than January 11th, 1945.

At the morning meeting it was moved, seconded and carried that this Union donate \$100.00 to the Labor Arts Guild for prizes.

New Business:

- 20 Considerable discussion took place in connection with proposed amendments to P.C. 1003 and P.C. 9384.

Point of order raised that Brother A. MacLeod had had floor well over allotted 5 minutes, with result it was moved by Brother Buchanan and seconded by Brother M. Mills that Brother MacLeod have use of microphone for additional 2 minutes.

Nominations were then called for standing committees, with a result that:

- | | | | | | | |
|----|----|---------|-----------|-----|-----------------|---|
| | 17 | members | nominated | for | Sports | Committee. |
| | 14 | " | " | " | Arts | Ed. Cttee. |
| | 8 | " | " | " | Sick & Death | Cttee. |
| 30 | 22 | " | " | " | Political | Action Cttee. |
| | 20 | " | " | " | Hall | Cttee. |
| | 28 | " | " | " | Labour | Council. |
| | 24 | " | " | " | Press & Invest. | Cttee. |
| | 12 | " | " | " | Social | Organizer, and this to be left open for written nomination. |

- 40 At the morning meeting it was moved, seconded and carried that a Veterans' Cttee. within the Union be referred to the Executive, with recommendation that should such a committee be set up the name of Brother A. Staub, at present overseas, be entered as life member.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 27

Extracts from Minutes Regular General Meeting, Boilermakers' Union,

11:00 a.m. and 8:00 p.m.

Jan. 5, 1945

(Continued)

RECORD

*In the Supreme
Court of British
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Exhibit No. 27

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Jan. 5, 1945

(Continued)

Brother Caron reported on activities in the hall and stressed the need for greater interest by membership in concerts, etc., which are put on for their entertainment.

Brother Burbridge reported that in the near future schools are to be held for shop stewards, to acquaint them with their duties and proper handling of various situations. Dates and time of these schools to be announced by posters in yards and shops.

Morning meeting adjourned 1:15.

Evening meeting adjourned 11:10.

Nominations for Standing Committees—Friday, January 5, 1945. 10

Social Organizer:

D. Franks
H. Halliday
C. Donald
T. Flannagan
J. Nuttall
J. McPheator
E. Simpson
G. Holmes
L. Aiken 20
J. Railton
T. Dunn
F. Shaw

Sports Committee:

P. Moran
J. Railton
P. Parken
L. Cochrane
W. Watson
R. Coronado 30
L. Hunt
D. Franks
T. Flanagan
H. Halliday
G. Holmes
B. Keeley
J. Chaney
L. Mowrie
Jones
D. Brown 40
L. Aiken

Arts - Education Committee:

10

Sister N. Thomas
 H. Asson
 W. Hallett
 W. Burbridge
 A. McLeod
 V. Forster
 Fuerst
 Reykel
 F. Mole
 M. Eagle
 J. McPheator
 Cluett
 R. Lewis
 R. Boivin

Sick and Death Committee:

20

R. Lynn
 W. Purvis
 Tucker
 E. Smith
 L. Hunt
 T. Bain
 J. Railton
 J. Brown

Political Action Committee:

30

M. Mills
 A. Lanoue
 E. Simpson
 W. Schwartz
 J. McPheator
 A. McLeod
 D. Franks
 D. Pearson
 C. Caron
 Bullock
 W. Gee
 G. Holmes
 M. McLeod
 V. Forster

40

J. Lucas
 Sister A. Goode
 T. Bain
 C. Henderson
 R. Kline

RECORD

*In the Supreme
 Court of British
 Columbia*

Exhibit No. 27

Extracts from
 Minutes Regular
 General Meeting,
 Boilermakers'
 Union,
 11:00 a.m. and
 8:00 p.m.
 Jan. 5, 1945

(Continued)

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 27

Extracts from
Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Jan. 5, 1945

(Continued)

Hall Committee:

W. White
H. Asson
G. Farrington

J. Wilson
J. McKendrick
F. Mole
A. McLeod
D. Franks
E. Simpson
Rimmer
G. King
M. Mills
W. Schwartz
W. Allen
Buckley
J. Lawson
Jacobs
H. Halliday
H. Carey
T. Dunn
H. Asson
S. Dove
J. Mortinson

10

20

Press Committee:

V. Forster
J. Nuttall
J. Powers
E. Simpson
J. Lucas
Hendry
M. Mills
G. Holmes
W. White
J. Henderson
A. Lanoue
D. Clarke
R. Lewis
F. Duncan
T. Bain
W. Burbridge
T. Dunn
J. Brown
C. Henderson
O. Braaten

30

40

		McArthur	RECORD
		R. Boivin	<i>In the Supreme</i>
		F. Mole	<i>Court of British</i>
		J. Chaney	<i>Columbia</i>
	Labour Council:		Exhibit No. 27
		W. White	Extracts from
		E. Simpson	Minutes Regular
		C. Caron	General Meeting.
10		C. Henderson	Boilermakers'
		E. Jensen	Union,
		J. Brown	11:00 a.m. and
		T. Dum	8:00 p.m.
		V. Forster	Jan. 5, 1945
		A. McLeod	(Continued)
		M. Mills	
		G. Holmes	
		L. McPheator	
		J. Lucas	
20		W. White	
		F. Shaw	
		M. McLeod	
		W. McGaw	
		W. Gee	
		D. Franks	
		J. Nuttall	
		A. Lanoue	
		Buckley	
		J. McKendrick	
30		J. Downie	
		W. Schwartz	
		W. Allen	
		J. Murray	
		L. Hunter	

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 28

Minutes Regular
General Meeting,
Boilermakers'
Union
11:00 a.m. and
8:00 p.m.
Jan. 22, 1945

MINUTES

REGULAR GENERAL BUSINESS MEETING
BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

339 W. Pender 11 a.m. and 8 p.m. Monday, January 22, 1945

Brother Henderson in the chair, Brother Shaw recording
secty.

Moved, seconded and carried that minutes of previous meet-
ing be adopted as read. 10

Moved, seconded and carried that regular order of business
be suspended in order to carry out balloting. (At morning meet-
ing it was m/s/c that boxes be moved to rear of hall and balloting
continue till 12:15.)

Brother Caron then delivered Executive Recommendations,
and they were accepted as a whole.

(1) That J. Mills' account be endorsed.

(2) That prize money of \$100.00 for Labor Art Exhibit,
advanced by Federation, be paid. Moved, seconded and carried
that this matter be endorsed. 20

(3) It was m/s/c that the books of the Union be closed
in view of the contemplated lay-offs in some of the yards.

(4) Executive reported payments made to Kuzych re his
account. Moved, seconded and carried that this matter be en-
dorsed.

(5) Moved, seconded and carried that Union continue to
purchase and distribute buttons to membership.

The Secty-Treas. then presented the annual financial re-
port.

Brother McGaw, on behalf of the Board of Trustees, elabor- 30
ated on the report (at the evening meeting), mentioning certain
alterations in the methods of accounting.

At the conclusion of the trustees' report, Brother A. McLeod
challenged the status of one of the Trustees to act as such, on
constitutional grounds. As a result it was moved, seconded and
carried that the status of Trustees be referred to the Executive for
complete investigation and that they bring in a report to the next
general meeting.

Moved, seconded and carried that the financial report be ac- 40
cepted, and referred to the Trustees, and that they bring in a re-
port at the next general meeting.

At the morning meeting, it was moved, seconded and carried that a condensed edition of financial report be supplied to the membership by the President and Secty.

Brothers Simpson and Nuttall reported at the morning meeting, and Brother M. McLeod at the evening meeting, on the recent Conference, held by the Federation to deal with PC 1003 and 9384.

Moved, seconded and carried that these reports be accepted.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 28

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Jan. 22, 1945

(Continued)

SUPREME COURT OF B.C.
Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

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Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 29

Minutes Execu-
tive Meeting,
Boilermakers'
Union,
2:30 p.m.
Jan. 29, 1945

EXHIBIT No. 29

MINUTES

EXECUTIVE MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

339 W. Pender 2:30 p.m. Monday, Jan. 29/45

Brother Henderson in the chair; and Brother Shaw recording-
secty. All members present.

Moved, seconded and carried that minutes be adopted as read.

Moved, seconded and carried that those members in West 10
Coast and Hamilton Bridge who were in arrears when new agree-
ment was signed, be readmitted upon paying re-initiation only.
All others to pay back dues only. This ruling applies only to
February 28th. By-laws to be applied after that.

Moved, seconded and carried that J. Heggie be credited with
two months dues for time acting as shop steward in South Yard
Division 2.

Moved, seconded and carried that H. D. McConnell's request
re income tax forms be granted.

Moved, seconded and carried that Lon Lambe be assessed 20
\$2.50 fine and dues, due to domest troubles, bailiff, etc.

Moved, seconded and carried that Brothers McGaw and
Christie be contacted re trustee election with a view to one drop-
ping out. Failing such, search of minutes to clear matters.

Moved, seconded and carried that motion of January 4/45
re election of three business agents be rescinded.

Moved, seconded and carried that two business agents be
elected, one for north shore and one for small shops and field work;
West Coast and Hamilton Bridge and South Yard to be handled
by president and secretary. 30

Moved, seconded and carried that secretary be instructed to
contact North Burrard re appointment of Brothers Nuttall, Gee
and Downie to Executive.

Moved, seconded and carried that secretary be instructed to
contact telephone company re phone for Brother Nuttall.

Moved, seconded and carried that delegation from Execu-
tive be sent to City Council in North Vancouver on matter of
lighting. Brothers Henderson, Caron and Nuttall to be delegation.

Moved, seconded and carried that the Executive Committee
suspend further issuance of membership cards while some of our 40
members are unemployed. (West Coast excepted.)

The following correspondence was handled:

Letter read from General Printers regarding the name of "Sports Review" already in use.

Moved, seconded and carried that this letter be referred to the Sports Committee.

Letter read from the W.E.A. announcing trade union meeting to be held on January 30th.

Moved, seconded and carried that this be received and filed.

Letter read from C. W. Hodgson advising that he was handling Kuzych's trial, and could same be postponed till Feb. 15th.

10 Moved, seconded and carried that this be received and filed.

Letter read from Better Business Bureau urging members to investigate before investing.

Moved, seconded and carried that this be recommended.

Letter and resolution received from Khalso Diwan Society dealing with situation regarding East Indian vote.

Moved, seconded and carried that this be endorsed and presented to the General Meeting under Secretary's report.

Letter read from Regional War Labor Board dealing with Canadian Liquid Air Co. bonus payments.

20 Moved, seconded and carried that this be appealed to the National War Labor Board.

Letter read from K. D. McConnell requesting co-operation in handling Income Tax Reforms.

Moved, seconded and carried that this request be granted.

Letter read from Shipyard General Workers Federation announcing a meeting on Tuesday, Jan. 30th to deal with Shop Stewards classes.

Moved, seconded and carried that representation be sent.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 29

Minutes Execu-
tive Meeting,
Boilermakers'
Union,
2:30 p.m.
Jan. 29, 1945

(Continued)

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 30

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Feb. 5, 1945

EXHIBIT No. 30

MINUTES

REGULAR GENERAL BUSINESS MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

339 West Pender 11 a.m. and 8 p.m. Monday, Feb. 5/45

Brother Henderson in the chair, Brother Shaw recording-
secty.

Moved, seconded and carried that minutes of previous meet-
ing be adopted as read. 10

Moved, seconded and carried that notice of motion be adopted
(260-1).

Moved, seconded and carried that matter of Aid to Poland
be referred to executive for consideration.

Moved, seconded and carried that recommendation re mass
meeting for February 18th be endorsed.

Moved, seconded and carried that executive recommendation
re delegate to Legislature Lobby (F. Shaw) be endorsed.

Moved, seconded and carried that executive recommenda-
tion on affiliation to B.C. Federation of Labour be endorsed. 20

Moved, seconded and carried that recommendation re new
election of Press and Investigation Committee be endorsed.

Moved, seconded and carried that recommendation re pay-
ment of contractor be endorsed.

Moved, seconded and carried that we concur in recommen-
dation of executive re election of two business agents.

Moved, seconded and carried that we recommend to Sub-
Local that they bring in further nominations for Business Agent
in Small Shops (191-79).

Moved, seconded and carried that the recommendation re 30
West Coast members be endorsed.

Moved, seconded and carried that we take immediate steps
to implement five day week in yards under same conditions and
wages as at present time.

Moved, seconded and carried that the Main Deck publish
above motion.

Moved, seconded and carried that recommendation re Article
30 of agreement be upheld.

Moved, seconded and carried that member in question (NV
Welder) be denied membership. 40

Meeting adjourned.

ATTACHED TO EXHIBIT No. 30

BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
CANADA, LOCAL No. 1

TAKE NOTICE that the following resolution will be presented at a regular business meeting of the beforementioned Union to be held on the 2nd day of April, A.D. 1945.

RESOLUTION

That the following members of this Union are hereby nominated at this regular business meeting as shareholders of MARINE
10 WORKERS HOLDING LTD., to hold the shares (the property of Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1) IN TRUST for the aforesaid Union.

That is to say the present seven (7) members of the Executive as follows:

20 W. L. White
C. W. Caron
W. Schwartz
J. Nuttall
W. Gee
F. Shaw
S. Jenkins

And the present seven (7) members of the Hall Committee as follows:

30 M. W. McKimmon
H. Carey
C. J. McKendrick
E. King
T. Rimmer
W. Jacobs
J. Lawson

DATED at Vancouver, B.C., this March 19th day of A.D. 1945.

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 30

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Feb. 5, 1945

(Continued)

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 31

Minutes Regular
General Meeting,
Boilermakers'
Union
11:00 a.m. and
8:00 p.m.
Feb. 19, 1945

EXHIBIT No. 31

MINUTES

REGULAR GENERAL BUSINESS MEETING
BOILERMAKERS' & IRON SHIPBUILDERS' UNION
LOCAL No. 1

339 W. Pender St. 11 a.m. and 8 p.m. Monday, Feb. 19, 1945

Brother Henderson in chair, Brother Shaw recording sec.

Moved, seconded and carried that the minutes of previous meeting be adopted as read.

Charges were laid against Brother Kuzych and it was moved, 10 seconded and carried that Bro. Kuzych be barred from all meetings till his case be disposed of. (Unanimous.)

Moved, seconded and carried that condensed brief of the B.C. Shipbuilders Federation be published with explanation, by Federation.

EXECUTIVE REPORT:

Moved, seconded and carried that executive recommendation re members of armed services be endorsed.

Moved, seconded and carried that the recommendation re riveters quota be accepted at \$35.00 per day limit, and \$21 for 20 Saturday.

Moved, seconded and carried that endorsement of executive recommendation be made; that Bro. White be business agent for the North Shore.

Moved, seconded and carried that recommendation be endorsed, that L. Anderson be our representative on Arbitration Board for Dominion Bridge.

Moved, seconded and carried that recommendation concerning balloting on both nominees for small shops be endorsed.

RESULTS OF BALLOT:

30

Bros. Nall, Albo, Buckley and Shaw, declared the results of ballot for business agent for small shops: T. Strain, 93 votes; A. Kinloch, 236.

A. Kinloch duly declared elected to that position.

BUSINESS AGENT'S REPORT (Morning Meeting):

Bro. White reported success in elimination of practice of fingerprinting employees, other than enemy aliens, at N.V.S.R. Also progress of Board sitting at N.B.

Moved, seconded and carried that report be accepted.

Bro. Henderson reported for South Yard and declared finding lay-off is being watched carefully and management is adhering to Article 30 of agreement.

COMMITTEE REPORTS (Morning Meeting):

Report from Bro. E. Johnson on the progress being made by committee for aid to the handicapped, informing meeting that articles relating to this field will appear in the Main Deck.

Moved, seconded and carried that report be accepted.

Report from Bro. Asson in connection with progress and intentions of P.A.C.

Moved, seconded and carried that report be accepted.

Moved, seconded and carried that notice of motion by trustees be accepted. (24 for—18 against.)

Moved, seconded and carried that notice of motion presented by Bros. Bullock and Forster be rejected. (25 for—18 against.)

Moved, seconded and carried that Brother in N. Burrard (welder) be granted a membership card.

BUSINESS AGENT'S REPORT (Evening Meeting):

Brother White reported re sittings of Burrard N. "Dirty Money Board" and other activities pertaining to Union activities.

Moved, seconded and carried that report be accepted and that activities of foreman and charge hands in passing out slates be investigated.

Bro. Henderson reported as representative of S.B.

Moved, seconded and carried that report be accepted.

Bro. Caron reported that S.B. had refused to recognize the correspondence signed by the Sec. Treas. Bro. Henderson also explained his opinion of the incident.

Moved, seconded and carried that opinion of the president re the above be condoned.

TRUSTEES' REPORT:

Bros. A. McLeod reported as Senior Trustee. Report suggested some minor changes in the accounting system. Bro. McLeod explained that the report was a majority report concurred in by the Trustees McGaw and Renwick. Bro. McLeod further said that he was making a minority report—the minority report suggested that a chartered accountant be hired to audit the books.

Moved, seconded and carried that the majority report of the Trustees be accepted. A lengthy discussion ensued re this motion. Bro. Henderson vacated the chair at this point as he wished to speak on the motion. First Vice-Pres. L. Hunter assumed the role of the chairman. Bro. Simpson asked Bro. Henderson if,

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*In the Supreme
Court of British
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Exhibit No. 31

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Feb. 19, 1945

(Continued)

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 31

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Feb. 19, 1945

(Continued)

in his opinion, the Pacific Coast Labor Bureau were auditing the books honestly. Bro. Henderson replied he was not casting reflections on the honesty of the Pacific Coast Labor Bureau, but that he doubted their capabilities as auditors.

Moved and seconded that the president be authorized to select a chartered accountant to peruse our books. Motion lost.

Moved, seconded and carried that B. Marcuse of the Pacific Coast Labor Bureau be requested to attend our next meeting for the purpose of clarifying that body's method of accounting.

Bro. Henderson then offered his resignation at this point, 10 because he stated that the membership had declared a lack of confidence in him as president, when they refused to support the motion calling for an outside chartered accountant.

Moved, seconded and carried that Bro. Henderson be requested to reconsider his resignation at this meeting, and that a special meeting of the executive committee be called to study the question of Bro. Henderson's actions.

A lengthy discussion ensued as a result of the motion, during the course of discussion, Bros. L. Hunter, J. Downie, offered their resignations as members of the executive committee, and 20 Bro. A. McLeod resigned as Trustee and Bro. H. Holliday as conductor.

A motion to adjourn was accepted by the chair and as a result the above resignations were not voted upon.

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

EXHIBIT No. 33

MINUTES

SPECIAL GENERAL BUSINESS MEETING
 BOILERMAKERS' & IRON SHIPBUILDERS' UNION OF
 CANADA, LOCAL No. 1

339 W. Pender St. 11 a.m. Tuesday, Feb. 27/45

Brother John Nuttall, 2nd Vice-President, opened the meeting requesting direction from meeting.

10 Information was given to the meeting that Myron Kuzych was in the meeting.

A motion was passed that he leave, he was asked by the chair to leave, on his refusal to leave, he was ejected.

The floor was thrown open for nominations for chairman. Malcolm MacLeod was elected by acclamation. C. W. Caron rec-
 secty. in absence of Brother F. Shaw.

Brother Caron explained the request for a special meeting, and the purpose for meeting which was in accordance with the by-laws.

20 The resignations were read by the Chairman to the meeting. It was moved and seconded that the resignation be accepted.

During the course of the discussion on this motion, Brother Culhane, Secty. of the Shipyard General Workers Federation, read the transcript of inquiry conducted by the Federation Executive Committee into allegations of the resigning members of the Boilermakers' Union.

Following, a brother rose to state that he was in full agreement with the acceptance of the resignation before the meeting, but not on the terms upon which they were handed, and therefore proposed the following amendment.

30 Moved and seconded that we accept the resignation on the grounds that those who have resigned are incompetent and irresponsible.

Amendment carried 88 to 70.

Meeting adjourned.

RECORD

*In the Supreme
 Court of British
 Columbia*

Exhibit No. 33

Minutes Special
 General Meeting,
 Boilermakers'
 Union,
 11:00 a.m.
 Feb. 27, 1945

SUPREME COURT OF B.C.

Vancouver Registry

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 Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 32

Minutes Regular
General Meeting,
Boilermakers'
Union
11:00 a.m. and
8:00 p.m.
Mar. 19, 1945

EXHIBIT No. 32

MINUTES

REGULAR GENERAL BUSINESS MEETING

BOILERMAKERS' & IRON SHIPBUILDERS' UNION

LOCAL No. 1

339 West Pender St. 11 a.m. and 8 p.m. Monday, Mar. 19/45

Brother John Nuttall in the chair, Brother Shaw recording-
secty.

Moved, seconded and carried that minutes of previous meet-
ing be adopted as read. 10

Moved, seconded and carried that regular order of business
be suspended in order to hear the report of the Press & Investiga-
tion Committee on Myron Kuzych.

Brother Nuttall outlined the procedure to be followed in
presenting the evidence and subsequent voting: only plaintiff,
defendant counsels and witnesses could speak on the report. Fol-
lowing vote on acceptance or rejection of report, meeting would
then be open to discussion of decisions dealing with same.

At the morning meeting, the committee's report was pre-
sented by Brother Orville Braaten, and at evening session by 20
Brother Gordon Farrington. After hearing evidence by witnesses,
plaintiff, defendant and counsels, it was moved, seconded and
carried that the report be accepted. Total vote: 454 for, 12 against.

It was then moved and seconded that Brother Kuzych be
expelled from the Boilermakers' Union. After considerable dis-
cussion, the Brother was asked to leave the meeting so that the
vote could be taken. The standing vote carried the motion with
a total of 456 in favor of expulsion and 12 against.

The regular order of business was then resumed and cor-
respondence dealt with. 30

CORRESPONDENCE:

Letter from May Day Continuance Committee, requesting
delegates from our Local to assist in May Day preparations.

Moved, seconded and carried that we send five delegates to
this Conference and the following were elected: Brothers McKen-
drick, Lanoue, Jenkins, Bidden and Bullock.

Letter read from Workers Educational Association, request-
ing delegates to the Educational Conference to be held March
30th and 31st. In accordance with the membership of our local,

we were entitled to send seven delegates, and it was moved, seconded and carried that our Arts-Ed Committee as a group be our delegates to this Conference.

Letter read from Vancouver Junior Board of Trade, extending an invitation to this Local to have two representatives on this Board. Moved, seconded and carried that Brothers C. Caron and F. Shaw be our representatives to the Junior Board of Trade.

Letter read from Canadian-Chinese Friendship Society, requesting assistance in their work. Moved, seconded and carried 10 that donation of \$15.00 be made to this worthy cause.

EXECUTIVE REPORT:

Request from Social Organizer for the setting up of a Ladies Auxiliary to Local No. 1. After considerable discussion it was moved, seconded and carried that Shop Stewards consult with their wives in an attempt to organize such an auxiliary.

Report was given on overtime conditions in the north yards, and proposed solution by the executive. Moved, seconded and carried that letter be sent as agreed upon.

Executive recommended that Brother Len Gervais replace 20 Brother L. Nowry on Sports Committee, Brother Nowry having joined the Armed Services. Moved, seconded and carried that we concur in this recommendation.

BUSINESS AGENT'S REPORT:

Brother White reported some confusion on prices on new type landing craft, and asked for a definite settlement.

Moved, seconded and carried that rivetters present price lists to managements of yards building such craft.

Meeting was informed of the fact that certain rivetters in N.V.S.R. were exceeding agreed quotas.

30 Moved, seconded and carried that rivetters in N.V.S.R. be instructed to live up to agreement re day limit, and failing to do so, they be called before Executive Committee to explain their actions.

NEW BUSINESS:

It was brought to the attention of the meeting by Brother J. McDonald that the wonder drug "penicillin" had been placed on the market far beyond the financial reach of the average working man.

40 Moved, seconded and carried that our delegates to the Vancouver Labor Council be instructed to raise this question at their next meeting.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 32

Minutes Regular
General Meeting,
Boilermakers'
Union,

11:00 a.m. and
8:00 p.m.

Mar. 19, 1945

(Continued)

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 32

Minutes Regular
General Meeting,
Boilermakers'
Union,
11:00 a.m. and
8:00 p.m.
Mar. 19, 1945

(Continued)

Brother Malcolm McLeod reported recent developments in proposed new "holiday with pay" plan, and outlined certain new advantages gained in this application.

Moved, seconded and carried that we endorse this new plan, and together with the Operators, we present it as a joint application to Ottawa.

Meeting adjourned at 10:30 p.m.

SUPREME COURT OF B.C.

Vancouver Registry

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EXHIBIT No. 42

THE PROCEDURE OF THE PRESS AND
INVESTIGATING COMMITTEE

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 42

Procedure of the
Press & the In-
vestigating Com-
mittee.

The procedure of the Press and Investigating Committee in the trial of Myron Kuzych shall be as follows. All the parties to the trial shall first be brought into the room where the committee is to hold its hearing and then be advised as follows:

The witnesses for the complainant shall be kept in one hall, separate from the witnesses of the defendant. After they have
10 given their evidence they may stay in the committee rooms and hear the rest of the trial, but they shall not under any circumstances be allowed to go back among the other witnesses who have not been heard, they may if they so desire leave the building, but only if all of their evidence is in.

At the commencement of the trial, and after the witnesses have retired to their respective rooms, the charges against the defendant will be read out to the complainant and defendant by the recording secretary.

After the charges have been read out the defendant will
20 be asked how he pleads—guilty or not guilty. When he has pleaded the complainant will call his first witness, and continue to call them until all of them have been heard.

All witnesses will be placed on their honor as Union members to tell the truth without evasions or reservations.

The defendant will then call his witnesses and continue to call them until such times as all have been heard.

The complainant shall then be allowed a rebuttal.

Members of the Press and Investigating Committee shall
30 be allowed to examine and cross-examine witnesses for either side.

The complainant, defendant, their counsel, the Union's counsel if one is appointed and anyone named in the charges may examine or cross-examine witnesses, such procedure must be kept within the bounds of common decency and order, and rules of evidence.

Statements not relative to the charges shall be ruled out of order by the chairman.

SUPREME COURT OF B.C.

Vancouver Registry

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RECORD

EXHIBIT No. 35

*In the Supreme
Court of British
Columbia*

REPORT OF THE PRESS AND INVESTIGATING
COMMITTEE

Exhibit No. 35 R.M.S. & C.

Report of Press
& Investigating
Committee

That M. Kuzych be found guilty as charged on all three counts by individual poll of each separate charge.

We members of the Press Comtt. having heard all the evidence in the trial of M. Kuzych and having surveyed the said evidence both oral and documentary are of the opinion that no other conclusions than that the said brother M. Kuzych is guilty as charged. 10

The charges are of a very serious nature involving not only individual members of the Union but the organized Union as a whole and its organization structure and its aims and objects.

The first charge of which in our opinion he is guilty of concerns a direct violation of the By-laws, Part B, Article 26, Section (2) (1). Brother Kuzych did not deny that he called, held or assisted in holding an unauthorized public meeting to discuss internal business of the said Union in view of the fact three witnesses testified that he attended said meeting. 20

On the second charge M. Kuzych refused to make any statement at all only that he opposed the closed shop in principle. Documentary evidence was introduced by the plaintiff which the defendant recognized as a true copy of evidence he gave at the West Coast arbitration board. In the said evidence he stated his whole attitude toward closed shop and the Boilermakers' Union was hostile in the extreme.

It is quite certain in the minds of the Comtt. Brother Kuzych is inalterably opposed to the C. Shop policy of this Union and has publicly campaigned against it. Therefore on this count we find him guilty. 30

On the third charge Brother Kuzych failed to repudiate slander against W. Stewart.

On cross-examination Kuzych became most evasive, frequently suffered loss of memory. Yet he demonstrated that he has a most remarkably memory in that he could remember quotations from speeches he had made at Hastings Auditorium some 2 years ago. He admitted that he knew the persons who made

the broadcasts and that he had read them.

When asked if he had taken any step to repudiate the statements over the radio by his campaign supporters he said he could not remember.

It is too much to ask the Comtt. to believe that a man could or could not repudiate statements and fail to remember if he had done so. Therefore we find the Brother guilty as charged and submit the following motion on behalf of the Comtt.

R.M.S. & C. That six members of the Press Comtt. be paid 10 the \$2.00 per meeting as called for in the By-laws. Meetings of March 13th and March 16th.

R.M.S.C. That Brother Hadley be paid the \$2.00 for acting as warden during meeting of March 13th. That Brother Farrington be reimbursed for time lost in connecting with Kuzyeh hearing. M.S. & C. that Mrs. Culhane be given vote of thanks for her work on behalf of the Press Comtte.

R.M.S. & C. That Brother Braaten read Press report at morning meeting March 20th.

I move the report be accepted.

20

“D. B. Clark”
 “S. C. Belt”
 “F. Duncan”
 “K. Garrison”
 “O. Braaten”
 “D. Pearson”
 “G. Farrington”

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

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 Registrar

RECORD

*In the Supreme
 Court of British
 Columbia*

Exhibit No. 35

Report of Press
 & Investigating
 Committee

(Continued)

RECORD

EXHIBIT No. 4

*In the Supreme
Court of British
Columbia*

MEMORANDUM OF AGREEMENT made the second day
of January, 1940.

Exhibit No. 4

BETWEEN:

Excerpt, Agree-
ment between
North Van Ship
Repairs Ltd. &
Boilermakers
Union
Jan. 2, 1940

NORTH VANCOUVER SHIP REPAIRS LTD.
OF THE FIRST PART

—and—

THE BOILERMAKERS' & IRON SHIPBUILDERS' UNION
OF CANADA, LOCAL No. 1
OF THE SECOND PART 10

The parties hereto each in consideration of the agreement
of the other, AGREE AS FOLLOWS:

1. All employees must punch in and out of the Yard on the time clock number assigned to them.
2. Eight hours will constitute a day's work.
3. Starting whistle will be blown at 8.00 a.m., at which time all men must be at their work.
A whistle will be blown at 12:00 noon for lunch.
The starting whistle will be blown at 1:00 p.m., at which time all men must be at their work. 20
The whistle to stop work will be blown at 5:00 p.m.
4. Forty-four hours will constitute a week's work for men employed on the day shift.
5. Second shift hours will be from 4:30 p.m. to 12 midnight with a designated twenty minute period for lunch for which eight hours' pay will be allowed. (It has been usual for the first shift, when two shifts have been operating, to have one-half hour for lunch, recommencing work at 12:30 p.m. and finishing at 4:30 p.m.)
6. Third shift hours will be from 12 midnight to 7:30 a.m., 30
with a designated twenty minute period for lunch, for which nine hours' pay will be allowed.
7. Forty hours will constitute a week's work for 2nd and 3rd shifts.
8. When second and third shifts for any employee do not last three nights or more, the time worked by these shifts will be paid at the usual overtime rates.
9. Overtime will be paid for at the rate of time-and-a-half for the first four hours and double time thereafter. Every

effort to be made to eliminate excessive overtime when members of the Union are idle.

* * * * *

22. Any employee being discharged for disobeying the rules of the Company will only be paid up to the time of discharge.

* * * * *

25. The following rates to be paid to members of the Union:

10	Acetylene Welders and Burners, Anglesmiths, Boilermakers, Electric Welders, Riveters, Chippers and Caulkers, Ship- fitters, Drillers, Tappers & Packers	90c per hr—\$7.20 per day
	Ironworkers' Helpers	67c " " 5.36 " "
	Rivet Heaters	68c " " 5.44 " "
	Reamers and Countersinkers	70c " " 5.60 " "
	Punch & Shearmen, Holders-on Drilling out Rivets	76c " " 6.08 " "
20	Passer Boys under 21 years	45c " " 3.60 " "

30 26. The above rates to be subject to adjustment quarterly in accordance with the cost of living, and wages to be increased or decreased in an equal percentage to the increase or decrease in cost of living, as ascertained by the Department of Labor of the Provincial Government of British Columbia, it being understood that the cost of living figures as at December 1st, 1939, be the basis of this arrangement. It is also understood that the above rates are to be the minimum rates to be paid during the life of the agreement.

27. That no Mechanic of this Union be allowed to go working as a Helper while there are Helpers of this Union available.

28. Only members of this organization will be employed and, in the event of the Union being unable to supply men, no man who is unfair to this organization will be employed.

RECORD

In the Supreme
Court of British
Columbia

Exhibit No. 4

Excerpt, Agree-
ment between
North Van Ship
Repairs Ltd. &
Boilermakers
Union
Jan. 2, 1940
(Continued)

RECORD

In the Supreme Court of British Columbia

Exhibit No. 4

Excerpt, Agreement between North Van Ship Repairs Ltd. & Boilermakers Union
Jan. 2, 1940

(Continued)

THIS AGREEMENT TO REMAIN in effect for the duration of the present War, and thereafter until completion of any contracts entered into previous to the cessation of hostilities.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their names to be subscribed and their seals to be affixed by their respective officers, thereunto duly authorized.

NORTH VANCOUVER SHIP REPAIRS LTD.

“Donald M. Service”

BOILERMAKERS' & IRON SHIP- 10 BUILDERS' UNION OF CANADA LOCAL No. 1

“L. C. Campbell”

“A. Young”

SUPREME COURT OF B.C.
Vancouver Registry

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EXHIBIT No. 5

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 5

Agreement be-
tween C.C.L.
& Union,
Dec. 3, 1943

THIS INDENTURE OF AGREEMENT made at the City of Vancouver in the Province of British Columbia on this 3rd day of December, in the year of our Lord One Thousand Nine Hundred and Forty-three.

BETWEEN:

10 THE CANADIAN CONGRESS OF LABOUR for itself by its Executive Council as set out in the Constitution of the Canadian Congress of Labour, which is unincorporated and a National-wide Union, organized to promote the interests of its affiliated and chartered local Unions thereof in Canada.

HEREINAFTER CALLED THE PARTY OF
THE FIRST PART,

AND:

BOILERMAKERS' AND IRON SHIPBUILDERS'
UNION OF CANADA, Local No. 1, heretofore being a
Local Chartered Union of the Canadian Congress of La-
bour, for itself and by its Executive,

20 HEREINAFTER CALLED THE PARTY OF
THE SECOND PART.

WHEREAS the Party of the First Part herein is as afore-
said a National Labour Union, its object being for purposes of
promoting the interests of labour generally in Canada and par-
ticularly the interests of its affiliate and chartered local organi-
zations.

AND WHEREAS the Party of the Second Part has been
heretofore a chartered local of the said Canadian Congress of
Labour.

30 AND WHEREAS on or about the 27th day of January, A.D.
1943, the Party of the First Part herein by an Investigating Com-
mittee composed of Messrs. Patrick Conroy and J. E. McGuire,
did suspend the members consisting of the Party of the Second
Part herein, as a chartered local Union of the Party of the First
Part.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 5

Agreement between C.C.L. & Union, Dec. 3, 1943

(Continued)

AND WHEREAS at a recent convention of the Party of the First Part herein held in the City of Montreal, representatives of the Party of the First Part and of the Party of the Second Part herein had tentatively discussed the re-adjustment of all the difficulties with a view of re-establishing cordial relationships between the Parties hereto.

AND WHEREAS certain litigation has been pending in the Supreme Court of British Columbia as between various factions of the Party of the Second Part herein, and particularly in a Supreme Court action in the Supreme Court of British Columbia dated on or about the 25th day of February, A.D. 1943, at the instance of Robert James Rollo Stephen, Thomas Bradley, David Thompson for themselves and other members of the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1, and William Stewart, Thomas G. MacKenzie, F. Cardwell, Fred Carr, Joseph Wright, Edward Simpson, John Lucas, and Arthur Staub and Victor Wadham Forster for himself and as representative of all other members in good standing of the said Union. 10

AND WHEREAS judgment was given to the Plaintiffs in the terms prayed for by the Honourable Mr. Justice Sidney Smith on or about the 20th day of March, A.D. 1943. 20

AND WHEREAS the Defendants herein did appeal certain portions of the said Judgment to the Court of Appeal in the Province of British Columbia and were successful on certain issues therein.

AND WHEREAS it is desired by and between the Parties hereto that the matters as between the Parties hereto and the litigants herein referred to be dealt with and disposed of with finality.

AND WHEREAS it is desired by and between the Parties hereto that the status of the Party of the First Part be ascertained in relationship with the Party of the Second Part and vice versa with finality. 30

* * * * *

6. As of the first day of January, A.D. 1944, the Party of the Second Part shall cease to be a chartered local Union of the Party of the First Part and shall not be subject to any constitutional rights or obligations appertaining to chartered local Unions, therein, but shall be considered for all purposes an affiliate Union, and subject to the constitutional dispositions of the Canadian Congress of Labour as such.

* * * * *

EXHIBIT No. 6

THE CANADIAN CONGRESS OF LABOUR

Le Congres Canadien Du Travail
230 Laurier Avenue West, Ottawa, Canada

AGREEMENT

Entered into this "Tenth" day of "April 1944"

Between THE CANADIAN CONGRESS OF LABOUR
hereinafter referred to
as the "Congress"

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 6

Agreement be-
tween C.C.L. &
Shipyard General
Workers' Fed-
eration,
April 10, 1944

10 THE SHIPYARD GENERAL WORKERS' FEDERATION OF BRITISH COLUMBIA

And The following local unions:

Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1.

Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 2.

Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 4.

Dockyard and Shipyard Workers' Union, Local No. 1.

20 Dockyard and Shipyard Workers' Union, of Vancouver and District, Local No. 2.

Dock and Shipyard Workers' Union, of Prince Rupert and District, Local No. 3.

Blacksmiths' and Helpers' Union of Canada, Local No. 1, Confined to Shipyards.

National Union of Machinists, Fitters and Helpers, Local No. 1.

National Union of Machinists, Fitters and Helpers, Local No. 2.

1. The aforementioned local unions shall establish a Federation to be known as "The Shipyard General Workers' Federation of British Columbia."

30 2. The Congress shall accord to the said Federation the status of a National Union affiliated with the Congress with regard to the payment of per capita tax, the disposition of funds and property of the Federation, or of the local unions affiliated

RECORD

In the Supreme Court of British Columbia

Exhibit No. 6

Agreement between C.C.L. & Shipyard General Workers' Federation, April 10, 1944

(Continued)

therewith and also with regard to the administration of the said Federation and local unions.

3. Each of the said local unions joining the Federation, shall cease to become local chartered unions of the Canadian Congress of Labour and shall be chartered directly by the Federation.

4. Any union wishing to be part of the Federation may do so upon agreement between the Federation and the Canadian Congress of Labour.

5. The Federation may adopt such constitution as is found necessary for its orderly conduct, such constitution to become effective upon the approval of the Executive Committee of the Congress. 10

6. Each local union affiliated with the Federation shall pay to the Federation a per capita tax of 20c per member per month, the payment of which by a local union shall release the said local union from payment of direct per capita tax to the Congress.

7. The Federation shall pay to the Congress a per capita tax of three cents per member per month and two cents per member per month for organizing purposes for each member in each of the local unions affiliated therewith. 20

8. The Federation will assume full responsibility for organizational activities and the servicing of the membership of the local unions affiliated therewith.

Signed in the City of Vancouver, in the Province of British Columbia, this day of , 194.....

Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1 "W. Stewart" "C. W. Caron" Witness. "A Foster"

Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 2. "Gerard Sheehy-Culhane" Witness. "E. A. McLennan"

"Frederick H. Dyke" Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 4. "Geo. Stanton - James Nicoll" Witness. "J. K. Waters"

Dockyard and Shipyard Workers' Union, Local No. 1. "N. Russell. J. Sault" Witness. "S. Robertson".

Dockyard and Shipyard Workers' Union of Vancouver and District, Local No. 2. "C. A. Saunders. W. S. Alcock" Witness. "Elsie Dobson"

Dock and Shipyard Workers' Union of Prince Rupert and District, Local No. 3.

Witness.

Blacksmiths' and Helpers' Union of Canada, Local No. 1, Confined to Shipyards.

"F. F. Tiefensee. C. T. Rouse" Witness. "Elsie Dobson"

National Union of Machinists, Fitters and Helpers, Local No. 2.

"H. Hayes. Wm.A.S.Ashworth" Witness. "Robert Noble"

10 National Union of Machinists, Fitters, Blacksmiths, Moulders and Helpers, Local No. 1.

"J. B. Smith. Louis Duey" Witness. "E. T. Russell"

THE SHIPYARD GENERAL WORKERS' FEDERATION OF BRITISH COLUMBIA.

"Malcolm MacLeod"

"Gerard Sheehy-Culhane"

THE CANADIAN CONGRESS OF LABOUR

"A. R. Mosher

"Pat Conroy"

RECORD

In the Supreme Court of British Columbia

Exhibit No. 6

Agreement between C.C.L. & Shipyard General Workers' Federation,
April 10, 1944

(Continued)

SUPREME COURT OF B.C.

Vancouver Registry

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REPORT OF BY-LAW COMMITTEE

In presenting this draft form of the By-Laws, your Committee wishes to point out that the guiding principles were a sincere effort to establish democratic and practicable machinery for the operation of this Union; giving due regard to existing customs worthy of retention or amplification; as well as seeking to remedy the mistakes and misconceptions that existed in the past, or still exist to this day.

A maze of contradictory rules and regulations brought into effect since this Union reached its present strength, had to be fused into one workable policy; and above all, serious consideration had to be given to the probable future developments of this Union. 10

Your Committee gives you the assurance that a great deal of time and care was given to the present version and, in order to do justice to all members who evidence a keen interest in any Article or Section, members of the Committee will gladly give a full explanation; and any member who wishes to submit extensive amendments is solicited to do so in writing at his earliest convenience, so that all worthwhile and essential changes may be incorporated in the ultimate form. 20

Judging by remarks voiced by members, there is some astonishment as to the great volume of the draft and the many detailed provisions. The answer to the former query is, of course, that any function of this organization that is not regulated by the Constitution; or rules of order that are not contained in Roberts Rules of Order, or do not fit in the frame work of our democratic process, must be provided for in our By-Laws.

In answer to the latter point, an explicit outline of rules and procedure has the two-fold purpose of, firstly, to establish a uniform, fair and practical rule to follow at meetings and all other union activities; and secondly, to make the rules readily available to all members, so that they may become fully acquainted with same and govern themselves accordingly. 30

While certain faults and errors are now noticeable in the mimeographed copy, due to unavoidable last-minute rush, essential corrections have been entered in the master-copy, and will be specially drawn to your attention.

An attempt was made to present the text in easily understandable language that precludes misinterpretation and describes the process of trade-union democracy in logical and chronological form.

In your deliberations, please be not unmindful of the fact that in the formulation and adoption of just rules, tolerance and sincerity should be the guiding principles. Every member of the Committee had to compromise to make the present form possible; and let me assure you, that as long as the above characteristics are in evidence, our meeting will be both, interesting and educative.

Respectfully yours,

“E. King,”
Chairman.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 50

Report of By-
Law Committee

(Continued)

SUPREME COURT OF B.C.
Vancouver Registry

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Registrar

RECORD

EXHIBIT No. 8

*In the Supreme
Court of British
Columbia*

Exhibit No. 8

Draft By-Laws,
Boilermakers'
Union

MIMEOGRAPHED COPY OF DRAFT BY-LAWS OF BOIL-
ERMAKERS' AND IRON SHIPBUILDERS' UNION, LOCAL
No. 1 (UNDATED), CONSISTING OF TWENTY PAGES.

Not Printed

SUPREME COURT OF B.C.
Vancouver Registry
PUT IN BY Plt. DATE: 26/1/49

751/45

"T.C."
Registrar

765

EXHIBIT No. 9

MIMEOGRAPHED COPY OF DRAFT BY-LAWS OF BOILERMAKERS' AND IRON SHIPBUILDERS' UNION, LOCAL No. 1, DATED MAY, 1944, CONSISTING OF SIXTEEN PAGES.

Not Printed

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 9

Draft By-Laws,
Boilermakers'
Union
May 19, 1944

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

EXHIBIT No. 10

*In the Supreme
Court of British
Columbia*

Exhibit No. 10

Draft By-Laws,
Boilermakers'
Union
May, 1944

(Continued)

MIMEOGRAPHED COPY OF DRAFT BY-LAWS OF BOIL-
ERMAKERS' AND IRON SHIPBUILDERS' UNION, LOCAL
No. 1, DATED MAY, 1944, CONSISTING OF FIFTEEN
PAGES.

Not Printed

SUPREME COURT OF B.C.

Vancouver Registry

PUT IN BY Plt.

DATE: 26/1/49

751/45

"T.C."
Registrar

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EXHIBIT No. 11

MIMEOGRAPHED MASTER COPY DRAFT BY-LAWS,
BOILERMAKERS' AND IRON SHIPBUILDERS' UNION,
LOCAL No. 1, DATED MAY 2nd, 1944, CONSISTING OF
TWENTY PAGES.

Not Printed

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 11

Master copy
draft ByLaws,
Boilermakers'
Union
May 2, 1944

* The U.S. Constitution (Art. 1, Sec. 5) provides that each House of Congress may, "with the concurrence of two-thirds, expel a member."

SUPREME COURT OF B.C.

Vancouver Registry

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*In the Supreme
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Columbia*

Exhibit No. 12

Draft By-Laws,
Boilermakers'
Union
May, 1944

MIMEOGRAPHED COPY OF DRAFT BY-LAWS OF BOIL-
ERMAKERS' AND IRON SHIPBUILDERS' UNION, LOCAL
No. 1, DATED MAY, 1944, CONSISTING OF TWENTY
PAGES.

Not Printed

SUPREME COURT OF B.C.
Vancouver Registry

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EXHIBIT No. 13

PRINTER'S COPY MIMEOGRAPHED COPY OF BY-LAWS,
BOILERMAKERS' AND IRON SHIPBUILDERS' UNION,
LOCAL No. 1, UNDATED, CONSISTING OF SIXTEEN
PAGES.

Not Printed

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Columbia*

Exhibit No. 13

Printer's copy
of By-Laws,
Boilermakers'
Union.

SUPREME COURT OF B.C.
Vancouver Registry

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DATE: 26/1/49

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EXHIBIT No. 46

*In the Supreme
Court of British
Columbia*

MIMEOGRAPHED COPY OF DRAFT BY-LAWS; NUMBER-
ING FIFTEEN PAGES, DATED MAY, 1944. (BOILERMAK-
ERS' AND IRON SHIPBUILDERS' UNION, LOCAL No. 1.)

Exhibit No. 46

Not Printed

Draft By-Laws,
Boilermakers'
Union
May, 1944

SUPREME COURT OF B.C.
Vancouver Registry

PUT IN BY Dft.

DATE. 27/1/49

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Registrar

771

EXHIBIT No. 51

MASTER (MIMEOGRAPHED) COPY OF DRAFT BY-LAWS
OF BOILERMAKERS' AND IRON SHIPBUILDERS' UN-
ION, LOCAL No. 1, DATED MAY 6th, 1944.

Not Printed

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Court of British
Columbia*

Exhibit No. 51

Master copy of
Draft By-Laws,
Boilermakers'
Union,
May 6, 1944

SUPREME COURT OF B.C.

Vancouver Registry

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751/45

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RECORD

EXHIBIT No. 3

*In the Supreme
Court of British
Columbia*

CONSTITUTION OF CANADIAN CONGRESS OF LABOUR

September, 1942

Exhibit No. 3

(Inserted in Pocket at Back of Record)

Constitution
Canadian Con-
gress of Labour
September, 1942

SUPREME COURT OF B.C.
Vancouver Registry

PUT IN BY Plt. DATE: 26/1/49

751/45

"T.C."
Registrar

773

EXHIBIT No. 7

CONSTITUTION OF SHIPYARD GENERAL WORKERS
FEDERATION OF BRITISH COLUMBIA

February, 1944

(Inserted in Pocket at Back of Record)

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 7

Constitution,
Shipyards General
Workers' Fed-
eration,
February, 1944

SUPREME COURT OF B.C.
Vancouver Registry

PUT IN BY Plt. DATE: 26/1/49

751/45

"T.C."
Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

EXHIBIT No. 14

BY - L A W S
of the
Boilermakers' & Iron Shipbuilders' Union
Local No. 1



VANCOUVER, B. C.
EFFECTIVE AUGUST EIGHTH - 1944

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ORDER OF BUSINESS

- For all Regular Business Meetings:
1. Meeting called to order by Chairman; special announcements;
 2. Roll Call of Officers by Recording Secretary;
 3. Reading of minutes of previous meetings;
 4. Applications for membership and deciding questions of admission to meeting;
 5. Initiation of new members; installation of officers; admission of guest speakers;
 - 10 6. Communications; report of the Executive Committee;
 7. Reports of Executive Board and members of Executive Committee; financial statement and appropriation of monies;
 8. Reports of Business Representatives;
 9. Nomination of Officers, Delegates and Committees; election of candidates;
 10. Reports of Delegates and Committees; notice-of-motion;
 11. Unfinished Business;
 12. New Business;
 13. Questions by members; regular announcements;
 - 20 14. Good and Welfare;
 15. Adjournment.

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*In the Supreme
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Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

ARTICLE ONE—NAME

This organization shall be known as the BOILERMAKERS' AND IRON SHIPBUILDERS' UNION, LOCAL No. 1, and its Head Office shall be in the City of Vancouver, British Columbia.

ARTICLE TWO—OBJECTS

The objects and purposes of this Union are:

- 30 (a) to organize all workers within its jurisdiction on an industrial basis and to promote industrial unionism generally;
- (b) to act on behalf of its members as the sole collective bargaining agency with their employers and generally protect the economic interests of its members;
- (c) to consummate closed shop agreements in order to establish an equitable and lasting relationship with employers;
- (d) to strive continuously for safe and healthful working conditions;
- (e) to advocate and work for the adoption of the five-day, thirty-hour work week;
- 40 (f) to assist its members to secure and stabilize employment;
- (g) to offer practical encouragement for the acquisition of a higher standard of skill and knowledge;
- (h) to cultivate feelings of friendship among its members and all legitimate sections of organized labor;
- (i) to cooperate with labor, civic and political bodies to establish and protect full labor rights and interests, civil rights, and to take suitable action towards this end.

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*In the Supreme
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makers' Union,
Aug. 8, 1944.

(Continued)

ARTICLE THREE—CONSTITUTION AND ORGAN

The Constitution of this Union shall be that of the Shipyard General Workers' Federation of British Columbia (hereinafter called the "Federation") for so long as it remains chartered by that body; and the official regular publication of said Federation, presently known as "The Main Deck," shall be the official organ of this Union.

ARTICLE FOUR—BY-LAWS

(1) These By-laws shall become valid on August eighth, 1944, and remain in force until amended by the membership, as hereinafter provided. All Constitutions, By-laws and Rules under which this Union operated prior to the said date (excepting the Constitution of the Shipyard General Workers' Federation), are hereby declared inapplicable to this Union. 10

(2) Amendments to these By-laws may be made by notice-of-motion which shall be dealt with as follows: The proposed amendment shall be in writing, signed by the mover and seconder, who must be members in good standing, and must affix their Union number. It shall be read out by the Recording Secretary at a Regular General Business Meeting, and at the following Regular General Business Meeting the proposed amendment shall be read a second time and thereupon becomes debatable. If passed by majority vote it shall be given a third reading at the Regular General Business Meeting next following. Upon adoption by a two-thirds affirmative vote the amendment comes into effect. 20

(3) When necessary, for the reasonable execution of the business of this Union, or the conduct of its meetings, any rule of order or procedure contained in any Article or Section, or both, of these By-laws from and including Article Seven, to and including Article Twenty-six, may be suspended for a stated period of not more than 30 days by any competent meeting of not less than 100 members in good standing; providing, that such suspension is endorsed by not less than 75 per cent of the members voting. 30

(4) Rules governing working conditions and the conduct of members on the job may be adopted by Regular and Special General Business Meetings by decision of a majority of the members voting; and if such rules are published in the official organ and are confirmed by the Regular General Business Meeting next following such publication, shall be of the same force and effect as these By-laws and shall become part of same.

ARTICLE FIVE—JURISDICTION 40

- (1) The jurisdiction of the Union shall include:
- (a) All work usually performed by mechanics, helpers and allied workers in all the boilermaking trades and the iron shipbuilding trades, (including operators of power machines, gas generators, testing devices, and all appliances and appurtenances employed thereby);

- (b) all work in the processing and handling of plates and shapes;
- (c) all work in the fabrication, assembly, heat treatment, dismantling, repairing and testing of all boilers, pressure work, such as: receivers, digesters, accumulators, penstocks, surge tanks, inter-coolers, steel stacks, etc., all pressure vessels, open vessels and all floating vessels;
- 10) (d) all work in the fabrication, erection, dismantling and repairs of and to structural steel and appurtenances thereto, steel frame works and machinery parts of malleable and cast iron, steel, cast steel and alloys.

(2) The territorial jurisdiction shall include all the territory bounded to the north by the fiftieth degree of latitude, to the east by the forty-ninth degree of latitude, to the east by the one hundred twenty-first degree of longitude west of Greenwich; and to the west by a line representing mid-channel of the Strait of Georgia, to be reckoned from the mean-average contour of the coastline of the Mainland.

ARTICLE SIX—ADMISSION TO MEMBERSHIP

20 (1) Any mechanic, improver or helper whose usual full, or part-time work is covered by the jurisdiction set forth in Article Five, may apply for membership in the Union by signing the prescribed application form and by paying in full an entrance fee of \$7.50 for mechanics and improvers, and \$5.00 for helpers, and such application shall be voted on at a Regular General Business Meeting. If accepted, the applicant shall be granted membership in this Union for so long as he maintains himself in good standing and does not violate the obligation oath.

30 (2) No person who is otherwise eligible under the qualifications fixed herein but who is opposed to Organized Labor, or has been guilty of anti-union activity shall be admitted to, or retain membership in the Union; except with the consent of a Regular General Business Meeting.

(3) No person shall be admitted to membership who is under suspension by any other bona fide Labor Union or has an unpaid fine or suspension charged against him, or has been expelled for misconduct, unless he first obtains an honorable withdrawal card from such other Labor Union.

40 (4) In all doubtful cases, the application shall lie on the table until the Standing Press and Investigating Committee is satisfied that the applicant is worthy to become a member. If deemed advisable, a probationary membership up to 12 months may be granted, subject to cancellation at any time.

(5) If an applicant is rejected, his entrance fee shall be returned to him. A rejected applicant may re-apply for membership after a lapse of 90 days following his rejection.

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Aug. 8, 1944.

(Continued)

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Exhibit No. 14

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(Continued)

ARTICLE SEVEN—REGULAR GENERAL
BUSINESS MEETING

(1) Regular General Business Meetings may be held whenever deemed advisable by the Executive Committee, but unless otherwise stated, on the first and third Monday of each and every calendar month at the Union's Headquarters, 339 West Pender Street, Vancouver, B.C. It shall not be necessary to issue invitations or meeting summonses unless there be a change of date or meeting place, in which case three days' notice shall be given by posters displayed in all places where members of the Union are employed. 10

(2) All meetings shall be called to order at 11 a.m. and shall in due course rise for recess until 8 p.m. when the meeting shall re-convene. The combined votes of both sessions shall decide any question.

(3) Thirty members in good standing shall form a quorum at the first session, and 50 members in good standing shall form a quorum at the second session. Members attending the first session shall not be entitled to vote on the same question at the second session.

(4) All officers and members shall assist in the consummation of the business with due dispatch and seek to conclude each session 20 within 2½ hours from the call for order. At the discretion of the chairman, or the meeting, business matter properly belonging to different departments (such as individual shop problems, or problems pertinent to one or more trades organized within one Division), shall be excluded from discussion at General Business Meetings, unless such matters have been duly referred to the General Business Meeting by a Division or Sub-Local with the knowledge of the Executive Committee.

(5) Any member of this Union in good standing and in possession of his Union card shall be admitted to all General Business Meetings, together with such persons as are in possession of a written invitation or summons, signed by any member of the Executive Committee, and such persons who are not more than two months in arrears with the payment of their dues. 30

(6) Only those persons entitled to admission as aforesaid in Section (5) of this Article), shall be entitled to voice and vote on business before the meeting; but invited or summoned persons, when admitted, may be given the privilege of the floor only for the order of business for which they have been invited or summoned. Invited and summoned persons shall be assigned a separate place in the hall at the discretion of the Conductor or any as his assistants. 40

(7) Any meeting of the Union may, by majority vote, rule on the admittance or the exclusion to, or from such meetings of any person or persons, including members in good standing, and may by such vote expel anyone, or more persons, including members in

good standing, from such meeting; but such admittance, exclusion or expulsion shall apply only to the particular meeting in question and shall not affect the status of the person or number admitted, excluded or expelled at any future meeting.

ARTICLE EIGHT—SPECIAL GENERAL BUSINESS MEETINGS

(1) A Special General Business Meeting may be called by decision of a Regular General Business Meeting; or of the Executive Committee; and shall be called on request of 50 members in good
10 standing—as specified in Section (5) of this Article.

(2) Whenever practicable, Special General Business Meetings shall be held at Union Headquarters, 339 West Pender Street, Vancouver, British Columbia and conducted in accordance with the terms set out in Sections (3), (4), and (5) of Article Seven of these By-laws, and shall convene at such reasonable time as may be decided by the body or members calling such Special General Business Meeting.

(3) A Special General Business Meeting may only be called
for:

- 20 (a) consideration and decision of important new business arising since the last Regular General Business Meeting, or is expected to arise before the Regular General Business Meeting next following;
- (b) conclusion of business unfinished at a previous General Business Meeting;
- 30 (c) re-consideration of business transacted at the last Regular General Business Meeting, if such mooted reconsideration cannot be postponed until the Regular General Business Meeting next following without jeopardy to the interests of this Union or of Organized Labor.

(4) It shall be the duty of the Executive Committee, the Business Agents and Shop Stewards to give good and sufficient publicity for all Special General Business Meetings. The nature of the business to be transacted shall be clearly stated on the posters and at the beginning of the Special Meeting. Only subject matter directly pertinent to the business so announced shall be entertained by the Chairman.

40 (5) A request by at least 50 members in good standing, for a Special General Business Meeting must be signed by the applicants together with their Union number, and must state fully the business to be transacted at such Special Meetings. This request must be served personally by any two of the petitioners on any member of the Executive Committee, and receipt issued therefore. The Executive Member receiving such petition shall make all arrangements for the Special Meeting at a suitable time and place and in accordance

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Aug. 8, 1944.

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(Continued)

with the provisions of this Article; but the date of the meeting shall not be fixed within less than two full days, exclusive of Sundays and holidays, from the time the request has been served, nor later than seven days, exclusive of Sundays or holidays.

ARTICLE NINE—DIVISIONAL BUSINESS MEETINGS

(1) The basic problems appertaining to any trade shall be dealt with at business meetings of the Division within which such trade is organized, in accordance with the following classifications:

Division 1—All tradesmen and their helpers, not included in other Division groups, (i.e. mainly: boilermakers, bolters, erectors, layers-up, loftsmen, machine operators, ship fitters and slabmen). 10

Division 2—All tradesmen and helpers being part of and attached to rivetting gangs, drillers and reamers, caulkers and packers.

Division 3—All burners, welders and their helpers and operators of automatic welding and burning machines.

Sub-Locals—All tradesmen and their helpers coming within the Union's jurisdiction who are employed in metal working shops. 20

(2) Any member in good standing may attend any Divisional or Sub-Local Meeting, but shall be given full voice and vote only in the Division or Sub-Local which is established to cover his trade and place of employment. The Division or Sub-Local to which a member belongs shall be marked on his membership card. Members attending Divisional or Sub-Local Meetings other than their own may, with permission of the Chairman or the meeting speak on questions directly concerning their own trade.

(3) Executive Committee Members and Business Representatives shall be ex officio entitled to attend, speak and vote at all Divisional or Sub-Local Meetings; and Chairmen of Standing Committees may attend such meetings, but may speak only on matters pertinent to their department. 30

(4) All provisions of Article Seven and Eight regarding Regular and Special Business Meetings shall apply wherever practicable, to Divisional and Sub-Local Meetings, but the quorums for sessions commencing at or before 1 p.m. shall be 10 members, and for sessions commencing after 1 p.m. shall be 15 members.

ARTICLE TEN—ORDER OF BUSINESS 40

(1) For all Regular Business Meetings of the Union, the following order of business shall be adopted unless modified or suspended by a two-thirds vote of all members voting at any meeting:

1. Meeting called to order by Chairman; special announcements;

2. Roll call of Officers by Recording Secretary;
3. Reading of minutes of previous meetings;
4. Applications for membership and deciding questions of admission to meeting;
5. Initiation of new members; installation of officers; admission of guest speakers;
6. Communications; report of the Executive Committee;
7. Reports of Executive Board and members of Executive Committee; financial statement and appropriation of monies;
8. Reports of Business Representatives;
9. Nominations of Officers, Delegates and Committees; election of candidates;
10. Reports of Delegates and Committees; notices-of-motion;
11. Unfinished Business;
12. New Business;
13. Questions by members; regular announcements;
14. Good and Welfare;
- 20 15. Adjournment.

(2) A special Order of Business may be adopted by the meeting, either as to the order of consideration, or as to the time when that item of business must be raised. A Regular Meeting can also make such provisions, which are to be followed at the next Regular or Special Meeting without further vote, unless vetoed by such next meeting.

ARTICLE ELEVEN—RULES OF ORDER

(1) The rules contained in "Roberts Rules of Order Revised" shall govern this Union in all cases to which they are applicable, and in which they are not inconsistent with the Constitution or By-laws, or both, of this Union.

(2) It shall be the duty of the Presiding Officer to enforce the rules of order and special instructions of any meeting. He shall never entertain dilatory or frivolous motions, nor points-of-privilege; nor permit unnecessary interruptions of the speaker on the floor, and shall exercise his full power to preserve order and expedite the transaction of the business before the meeting.

(3) Unless modification is granted, or ordered, by the Chairman or by decision of a meeting, no member shall be permitted to debate any main question and amendments and subsidiary motions thereto for more than five minutes, nor to debate any question more than once, unless the member be:

- (a) the mover of the question;
- (b) a member of the Executive Committee;

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(Continued)

- (c) a member reporting for a Standing, or Special Committee while the report of the Committee is being considered;
- (d) a Business Representative directly concerned in the subject matter; and
- (e) a member who feels he has been misquoted, implicated or slighted, but only then for the purpose of clarifying the personal detail in a period not exceeding two minutes.

(4) Before putting important questions to a vote, the Chairman shall state the established policy of the Union, and clarify the intent of the motion, if deemed necessary; and shall instruct the Recording Secretary to read the main motion and all subsidiary motions thereto, and shall announce the method of taking the vote. 10

(5) A motion to table shall not be debatable except as to the length of time the matter shall lie on the table. Points-of-information shall never be entertained while another member has the right of the floor; and when in order, the time consumed to state and attend to such point-of-information shall be taken out of the time allowed for debate; but points-of-information shall be in order after debate on the question has been closed. 20

(6) Points-of-order shall be admissible whenever the sense of the proceedings shall permit, but shall not be entertained if the point raised appears dilatory or frivolous, or can equally well be postponed till the report is completed or the speaker has resumed his seat.

(7) Motions affecting the policy of this Union, or calling for disbursement of funds in excess of twenty-five dollars shall be accepted only as notices-of-motion, unless such motions are placed before the assembly in the form of a recommendation of the Executive Committee. All notices-of-motions shall be stated in writing, bearing the signatures and Union numbers of the mover and seconder, who must be members in good standing. Such notices shall be read out at the following Regular Business Meeting under the specific order of business and, to be adopted, must carry by a two-thirds vote of the members voting. 30

ARTICLE TWELVE—EXECUTIVE COMMITTEE

(1) The Executive Committee shall be composed of a President, a First Vice-President, a Second Vice-President, a Secretary-Treasurer, a Recording Secretary, and two Members-at-large. It shall be the function of the Executive Committee to administer the Union according to its Constitution and By-laws, decisions of General Membership Meetings, direction of the Executive Board and established Trade Union policies. Any four members of the said Committee shall form a quorum at any of its meetings. 40

(2) The Executive Committee shall meet weekly to review current Union business, hear reports on any activity of the Union and prepare the agenda for General Business Meetings. It shall offer to General Business Meetings recommendations on correspondence, fiscal matters, notices-of-motion, unfinished business, and on reports of the Union's employees, functionaries, boards, delegates and committees. Members of the Executive Committee who are not regularly employed by the Union, shall be reimbursed for time lost at their regular occupation at the established rate for mechanics.

10 (3) The Executive Committee shall be the governing body of the Union and shall have power to:

- (a) administer the general funds and all other property of the Union;
- (b) employ and appoint, as necessary, employees, specialists, business firms and temporary functionaries, to assist in the proper discharge of the business of the Union;
- (c) make rulings on any issue that may arise, subject, however, to endorsement by the General Business Meeting next following;
- 20 (d) summon any member or members to any of its regular or special meetings to investigate alleged misdemeanors or breach of the obligation oath. Actual time lost at work because of appearance in response to a summons shall be reimbursed at the normal rate of earnings of the member or members.

(4) Any three or more members of the Executive Committee may require a Special Meeting of the said Committee to be held, and the President or the Secretary-Treasurer being notified by such
30 members of their desire for such meeting, shall cause the same to be convened not less than 24 hours and not more than 72 hours after receipt of such request. Notice of such special meeting shall be given to each member of the Executive Committee either verbally or in writing and shall specify the time and place at which the meeting is to convene.

ARTICLE THIRTEEN—EXECUTIVE BOARD

(1) The Executive Board shall consist of the Executive Committee, three Trustees, the Reporter, Conductor and Warden of the Union, and the Chairmen of the Divisions and Sub-Locals of the
40 Union and the Chairmen of the Standing Committees. In the absence of any Chairman of a Division, Sub-Local or Standing Committee, the Secretary of such body shall be seated on the Executive Board in place of such Chairman. Any ten members of the Executive Board shall constitute a quorum at any of its meetings.

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(2) The Executive Board shall meet on at least four days' notice given by the President or Secretary-Treasurer in the months of January, March, May, July, September and November, at Union Headquarters, on dates from time to time determined by the Board or by the Executive Committee. The Board shall review the current position and affairs of the Union, hear reports of employees, functionaries and committees of the Union. It shall have power to issue instructions to such parties and formulate the policy to be followed until the Executive Board Meeting next following—subject to endorsement by a General Business Meeting.

10

(3) Members of the Executive Board attending meetings of the Executive Board from roll call to adjournment, and who are not regularly employed by this Union shall be reimbursed for the time actually lost at their regular occupation at the established rate for mechanics.

ARTICLE FOURTEEN—STANDING COMMITTEES

(1) There shall be six Standing Committees, namely: Sick and Death Benefit Committee; Arts-Education Committee; Sports Committee; Press and Investigating Committee; Hall Committee; and Political Action Committee. Each Committee shall be composed of not less than seven members, one of whom shall be Chairman and another of whom shall be Secretary of such Standing Committee.

20

(2) The Standing Committees shall meet monthly, or more frequently as required, at such regular time and place as shall be announced from time to time in the official organ. Not less than one-half of the active committee members shall form a quorum.

(3) It shall be the function of the Sick and Death Benefit Committee to receive all claims referred to it, interview claimants and witnesses, and administer the funds strictly in accordance with the provisions of Article Twenty-one.

30

(4) It shall be the function of the Arts-Education Committee to maintain and operate the library, sponsor public meetings on behalf of the Union and offer social recreational facilities to members in good standing and persons holding a paid-up auxiliary membership in this Union.

(5) It shall be the function of the Sports Committee to regulate all sports activities and offer physical recreational facilities to members in good standing and persons holding a paid-up auxiliary membership in this Union.

40

(6) It shall be the function of the Press and Investigating Committee to compile news and announcements of and on behalf of this Union, for publication in the "Main Deck" and other labor organs, and to assist the Press Committee of the Shipyard General Workers' Federation in a suitable manner. It shall enquire into all matters referred to it, in writing, by any Membership Meeting,

Executive Committee or Executive Board, Standing Committee, or General Shop Stewards' Meeting, and report its findings as soon as completed to the body requesting such enquiry. This Committee shall pass on all doubtful applications for membership, reinstatements and withdrawals, investigate alleged irregularities, deal with charges preferred against any member or members, satisfy itself that the provisions of the Constitution and these By-laws are rigidly adhered to and seek to protect the interests of this Union and Organized Labor. The Chairman of this Committee shall be the duly
 10 elected Reporter.

(7) The Hall Committee shall be composed of the members of the Executive Committee and seven members elected by the membership. It shall be the function of the Hall Committee:

- (a) to take charge of the operation and business management of any premises which are owned and/or occupied by the Union, for the benefit of the membership;
- (b) to engage and to terminate the services of a building manager upon such terms as the committee thinks proper, who shall have charge of day to day operations of such premises including the hiring of janitor services, the rental of facilities and the use of bowling alleys;
- (c) to make any recommendation to the membership regarding the development, improvement or use of such premises;
- (d) to supervise the activities of the building manager.

(8) It shall be the function of the Political Action Committee:

- (a) to bring to the attention of the membership by any means deemed advisable, any and all government policies and political issues which in the committee's view, affect or concern the welfare of Organized Labor, and to recommend the taking of such action upon such issues as the committee thinks proper, with a view to the Union's participation in direct political action upon such issues;
- (b) to study and to make recommendations to the membership for action upon legislative matters, including Workmen's Compensation, Unemployment Insurance, Health Insurance, Selective Service regulations, Wage Control Order, the Labor Code and all other similar matters affecting the welfare of the workers;
- (c) to work in conjunction with similar committees which may be established in other Unions, to the end that this Union may participate fully with the Trade Union movement as a whole in independent political action beneficial to that movement;

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(9) Duly elected members of Standing Committees, who are not regularly employed by this Union, shall be reimbursed for personal expenses and loss of time in attending Regular Meetings of Standing Committees, at the rate of \$1.00 for each session of not less than two hours' duration; provided, however, that no member can claim such indemnity for services on more than one Standing Committee, nor reimbursement for loss of time at his regular occupation. Chairmen and Secretaries of Standing Committees shall be entitled up to double indemnity paid Committee Members, if their additional activity on behalf of the Committee so warrants. 10

ARTICLE FIFTEEN—DUTIES OF OFFICERS

In addition to the duties and powers enumerated elsewhere in these By-laws or in the Constitution:

(1) President.

A. The President shall:

- (a) preside at all General Business Meetings, Executive Board and Executive Committee Meetings;
- (b) enforce the Constitution and By-laws of this Union;
- (c) at such Meetings decide all questions of order, subject to appeal to the meeting and cast the deciding vote in case of a tie; 20
- (d) appoint Tellers for elections and referendums;
- (e) appoint Temporary Officers, Special Committees and Delegates, as may be necessary—unless otherwise ordered;
- (f) sign the minutes of previous meetings, all financial statements, budget and audit reports on acceptance by the meetings;
- (g) release all official union statements for publication in the daily press and other organs; and 30
- (h) perform such other duties as are incidental to his office or which from time to time may be delegated to him by General Membership Meetings, the Executive Board or the Executive Committee.

B. The President may:

- (a) ex-officio attend, speak and vote at all Divisional Meetings, Sub-Local Meetings, Meetings of Standing Committees, Special Committees and Shop Stewards' Meetings;
- (b) summon any Officer, Employee or Functionary of this Union, during usual office hours and request reports and accounting of all omissions and commissions concerning this Union. 40

(2) First Vice-President.

The First Vice-President shall:

- (a) assist the President in the discharge of his office and fill his place in his absence or resignation;
- (b) have such other powers and duties as are customarily incident to his office and as from time to time may be specifically delegated to him by General Membership Meetings, the Executive Board or the Executive Committee;
- 10 (c) ex-officio be entitled to attend, speak and vote at all Divisional Meetings, Sub-Local Meetings, Meetings of Standing and Special Committees, and Shop Stewards;
- (d) be reimbursed for loss of time at his regular occupation at the established rate for mechanics, when required to do so in the interests of the Union; and
- (e) assist the Secretary-Treasurer as directed by the Executive Board or Executive Committee, and fill his place in his absence or resignation.
- (3) Second Vice-President.
The Second Vice-President shall:
- 20 (a) assist the President and First Vice-President in the discharge of their offices in such manner as directed; and
- (b) have such other power and duties as from time to time is specifically delegated to him by General Membership Meetings, the Executive Board or Executive Committee.
- (4) Secretary-Treasurer.
The Secretary-Treasurer shall:
- 30 (a) receive and cause to be deposited at a bank approved by the Executive Board all monies and all funds paid to the Union;
- (b) keep a correct financial ledger of each member together with the name and address of each;
- (c) make suitable payments towards the fixed obligations of the Union;
- (d) make such other disbursements as General Business Meetings or the Executive Committee may direct;
- (e) keep a complete record of all financial transactions in accordance with a system approved by the Executive Board;
- 40 (f) prepare his books for audit on or after the last day of March, June, September and December in every year;
- (g) submit the books to the Trustees for inspection monthly, by appointment;
- (h) prepare a complete monthly financial statement for consideration by the Executive Committee;

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- (i) prepare a complete financial statement following each quarterly audit to Regular General Business Meetings;
 - (j) keep copies of such quarterly financial reports open for inspection, but not copying, by members in good standing, at Headquarters, during regular business hours;
 - (k) prepare, within four weeks after assuming office, a budget for the fiscal year, listing all obligations and assets of the Union, and setting forth the proposed disposition of all revenue and assets;
 - (l) submit this budget to the Executive Board which shall report its findings to a Regular General Business Meeting; 10
 - (m) satisfy himself of the faithful performance of duties allocated to all Employees and Agents working in his Department and shall protect the Union's interest by securing fidelity bond and necessary insurance for all Officers, Members and Employees handling the Union's funds;
 - (n) severally, with the President, enter into a bond with an insurance company approved by the Executive Board, to the amount of not less than \$10,000.00 each, as security for the faithful performance of their duties, the premium to be paid out of the treasury; 20
 - (o) have charge of the seal and affix same to official documents;
 - (p) have control of all supplies;
 - (q) issue all printed matter, summonses for Special Meetings, Executive Committee, Executive Board, Standing or Special Committee Meetings;
 - (r) be responsible for all correspondence and reports; and 30
 - (s) perform such other duties as are connotative to his office, or which, from time to time, may be delegated to him by General Membership Meetings, the Executive Board or Executive Committee.
- (5) Signing Officers.
The President, the First Vice-President, the Second Vice-President, and the Secretary-Treasurer shall be signing officers for all withdrawals from any fund of the Union, and the signatures of these officers shall be furnished to the bank holding such funds. Any two signatures shall validate withdrawals, provided, however, that the signature of either the President or the Secretary-Treasurer appears thereon. 40
- (6) Recording Secretary.
The Recording Secretary shall:
- (a) keep the minutes of all General Business Meetings;
 - (b) read all communications and documents;

- (c) supervise all preparations for the annual elections of officers;
- (d) fulfill such other duties as are customarily connotative to his office or which, from time to time may be delegated to him by General Membership Meetings, the Executive Board or Executive Committee;
- (e) in the absence of the President, the First and Second Vice-Presidents from a meeting, he shall call the same to order and a Chairman pro tem, shall be elected who shall serve as Presiding Officer for such meeting.

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(7) Executive Members.

The two Executive Members-at-large shall also be members of the Executive Board, and ex-officio members at all Regular and Special Divisional and Sub-Local and Shop Stewards' Meetings and perform such other duties as General Membership Meetings, the Executive Board or Executive Committee may from time to time determine.

(8) Trustees.

- A. There shall be three Trustees of the Union, each to hold office for three years from the date of his election, except he be elected to complete the unfinished term of a Trustee who resigns or loses membership in the Union. At each annual election of officers, one new Trustee shall be elected to replace the retiring or Senior Trustee.

B. The Senior Trustee shall be Chairman of the Board and it shall be his duty to call a meeting of the Board of Trustees after each audit of the Union's books, or more frequently as deemed necessary, or as instructed by the Executive Board.

C. The Trustees shall:

- (a) attend all meetings of the Executive Board and report their findings and recommendations;
- (b) have supervision of all funds and property of the Union under such instructions as they shall from time to time receive from General Business Meetings;
- (c) satisfy themselves that all funds received or administered by the Union are and continue to be the property of the Union and that all Committees of the Union handling funds and other property are at all times accountable to the Union for such funds and property;
- (d) examine the bank books and records of the Secretary-Treasurer and any other Officer, Member, Employee or Standing Committee and see that same are correct and the recorded disbursements justified;
- (e) act as custodian of the bonds covering Officers, Members and Employees handling the Union's funds;
- (f) report at the second Regular General Membership Meeting in April, July, October and January of every year the results of the audit of the Union's books;

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- (g) peruse the monthly financial statements and annual budget of the Secretary-Treasurer;
- (h) cause an audit to be made semi-annually of all Departments and Standing Committees and report the results of the audit at the second Regular General Business Meeting of August and February of every year;
- (i) have power to summon any Officer, Member or Employee to explain the condition of his records. Any such person, or persons so summoned shall be required to turn over to the Trustees all papers, records, books and property belonging to the Union demanded by them, subject to the approval of any General Business Meeting. 10

D. Reimbursement for time lost at work shall be as for Executive Board Members in accordance with Article Thirteen, Section (3), and indemnity for attending Regular Board Meetings shall be as for Members of Standing Committees, in accordance with Article Fourteen, Section (9).

(9) Reporter.

The Reporter shall:

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- (a) preside over all meetings of the Press and Investigating Committee;
- (b) be ex-officio on the Arts-Education and Sports Committee;
- (c) in cooperation with members of the Executive Board be responsible for the release of essential announcements and advertisements in "The Main Deck" and other recognized Labor Organs.

(10) Conductor.

The Conductor shall at General Business Meetings:

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- (a) satisfy himself that all persons entering meeting halls where membership meetings are to be held, are members in good standing or entitled to a seat;
- (b) conduct new members to the President for the Initiatory Ceremony;
- (c) introduce guests to the President;
- (d) assist the Warden in his duties;
- (e) assist the Chairman in the conduct of meetings, of secret ballots, and preservation of decorum;
- (f) concern himself about the comfort of the Meeting; 40
- (g) request Members, when necessary, to assist him in the discharge of his duties;
- (h) and perform such other duties as are customarily incident to his office, or which may be delegated to him by General Membership Meetings, the Executive Board or the Executive Committee.

(11) Warden.

The Warden shall, at General Business Meetings:

- (a) take charge of the doors to see that none but members in good standing, or those entitled to attend, enter;
- (b) refer all guests or summoned persons to the attention of the Conductor and allow no Member to retire when so directed by the Chairman;
- (c) when necessary, request members present to assist him in the discharge of his duties; and
- 10 (d) perform such other duties as are incidental to his office, or which may, from time to time be delegated to him by General Membership Meetings, the Executive Board or the Executive Committee.

ARTICLE SIXTEEN—DELEGATES

- (1) Delegates to all permanent and semi-permanent Labor Councils, Federations, Conventions or civic bodies shall fully acquaint themselves with the nature of the business to be transacted, and work in close and harmonious relation with the Executive Board and Executive Committee to pursue and ably represent the policy
- 20 of this Union. They shall unfailingly and punctually attend each and every session, or notify the Secretary-Treasurer in sufficient time of their inability. They shall prepare a concise report, preferably in writing, for presentation to the body from which they are dispatched.

(2) Whenever the body to which Delegates are elected or appointed, cease to function, or a General Membership Meeting decides to sever connections, or affiliation with said delegate body, such delegates' function shall also be at once terminated; but a two-thirds vote shall be required to recall Delegates from active delegate bodies, or before the 31st of January in any year.

30 ARTICLE SEVENTEEN—SPECIAL COMMITTEES AND BUSINESS REPRESENTATIVES

(1) Special Committees may be elected, or appointed, at any time by any authoritative body within this Union to fulfill a function that must be clearly defined to, and accepted by the Special Committee Nominees before election is held, or appointment made.

- (2) If elected, the candidate receiving the most votes shall be the Chairman of the Special Committee, and the candidate receiving the next largest number of votes shall be Secretary. It shall be the duty of the Special Committee to render reports promptly and in
- 40 writing to the body that elected or appointed them. On acceptance of the report, the Committee ceases to function and its members shall be required to return all funds, books and papers to the proper authorities.

(3) Any Committee member who fails to maintain his membership in good standing, or fails to attend two successive sessions without good and sufficient cause shall be recalled without further vote

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or notice and may be replaced by another member appointed by the Special Committee. A majority of Committee Members shall form a quorum; and a two-thirds vote shall be required to recall any Special Committee before the final report is rendered.

(4) No Standing Committee, Delegate or Special Committee shall have power to recommend to a General Business Meeting disbursements for any cause whatever in excess of \$25.00—unless such recommendation is offered by, or with the full endorsement of the Executive Committee. The Board of Trustees stands instructed to closely scrutinize the necessity of all such disbursements. 10
Business Representatives.

(5) Candidates for the position of Business Representative shall be nominated by a General Business Meeting and such list of candidates shall be referred to the Executive Committee for recommendation to the following Regular General Business Meeting; whereupon the meeting shall elect a Business Representative. It shall be the duty of a Business Representative to work in the Union's interest within the territory allocated to him; faithfully and promptly carry out such special instructions as are assigned to him from time to time by the Executive Committee, or the President, the Secretary-Treasurer, or any General Business Meeting. 20

(6) Business Representatives shall: (a) work in close co-operation with Shop Stewards of their territory; (b) observe that the existing agreements are rigidly adhered to; (c) organize non-members into this Union, or any Local Union affiliated with the Shipyard General Workers' Federation; (d) assist fully at every show-of-cards and receive dues payments when so instructed; (e) attend whenever possible all General Business Meetings, and such membership meetings that are expected to discuss business pertinent to his regular work and territory, and (f) perform such other duties as are connotative to his function, or which may, from time to time, be assigned to him by the Executive Committee or General Membership Meeting. 30

(7) Employment of Business Representatives shall be for no fixed period, and a Business Representative may be dismissed, for cause, by a two-thirds majority vote of all members voting at any Regular General Business Meeting.

ARTICLE EIGHTEEN—ELECTIONS

A. Union Officers.

(1) The Officers of the Union shall be the members of the Executive Committee, the Trustees, Reporter, Conductor and Warden. Nomination of Officers shall take place at the second Regular General Business Meeting in November in every year, and may be made verbally on invitation of the Chairman, or in writing. Any written nomination must be filed with the Recording Secretary prior to the said meeting, must bear the signatures and Union numbers 40

of the candidate and the mover, and must specify the office for which nomination is made.

(2) To validate his candidature, the nominee must:

- (a) be a member in good standing with an uninterrupted membership of not less than one year prior to the nomination;
- (b) be nominated by a member in good standing;
- (c) if nomination is made verbally, be present at the nomination meeting, declare his willingness to stand and show his membership card to the Recording Secretary;
- (d) be working at a trade under the Union's jurisdiction or be employed as prescribed in Sections (a) and (b) of Group B, Article Twenty-three.
- (e) be nominated for only one office;
- (f) not be a Junior Trustee; and
- (g) not be above the rank of a charge-hand at his place of employment.

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(3) All nominated candidates may withdraw their nomination by notifying the Recording Secretary in writing within four clear days after the nomination date, but not later.

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(4) Any candidate whose nomination appears not to be in accordance with the Constitution or these By-laws shall be so notified by the Recording Secretary by registered mail directed to their last known address within four clear days after the nomination date. If the nominee so notified does not dispute the notice of disqualification within five clear days of the mailing of the notice, his name shall then be struck from the roster of eligible candidates.

(5) If the nominee disputes the notice of disqualification he may, within five clear days of the mailing of the notice, appeal to the Executive Board which may allow or reject his appeal. If his appeal is rejected, that decision shall be final and such nominee's name shall be struck from the roster of eligible candidates.

30

(6) Elections of Officers shall be held in December of every year before the Second Regular Business Meeting and at such locations and over such period as the Regular General Business Meeting may determine on nomination day. Except in cases of acclamation, such elections shall be by secret ballot. If good and sufficient notice is given in "The Main Deck", stating all necessary election details, no special election notices shall be required. At least two Tellers, or their Deputies, shall be in charge of sealed ballot boxes at all times. Only members in possession of their dues card and with dues marked paid thereon for the month of November, shall be eligible to cast their ballot.

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(7) The Recording Secretary shall be Returning Officer and he shall satisfy himself that the election is held in an efficient and satisfactory manner. Any candidate may credential one personal scru-

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tineer to inspect the ballot boxes before sealing, attend while balloting is in progress and while the ballots are being counted.

(8) Installation of Officers shall be held at the second Regular General Business Meeting in December and their term of office shall commence on the first day of January next following. Candidates who are unavoidably absent at the regular installation ceremony may be installed at any General Business Meeting thereafter, by any member of the Executive Committee. The successful candidates shall be required to take, and sign, the following obligation oath:

"I, _____, being elected to the office of _____, 10
hereby sincerely promise and declare that I will faithfully perform the duties devolving upon me as an Officer of this Union as prescribed by the Constitution and By-laws of this Union; attend all General Business Meetings of the Union and all Regular and Special Board or Committee Meetings incident to my office, whenever possible; and at the end of my term of Office, deliver to my elected successor all books, funds, papers, keys and all other property in my possession belonging to the Union."

B. Divisions and Sub-Locals Officers. 20

Nomination of Officers of Divisions and Sub-Locals shall take place at a Regular Business Meeting in January or February each year and for the following Officers: Chairman, Vice-Chairman, Secretary, Conductor and Warden. Election of Officers shall be held at the first Regular Business Meeting of the month following nomination. Members of the Executive Committee, or Chairmen of Standing Committees shall not be eligible for nomination as Chairman of a Division or Sub-Local.

C. Delegates and Standing Committees.

(1) Nomination of Delegates and Members of Standing Committees shall take place at the first Regular General Business Meeting in January, in every year, and be governed, wherever applicable by the rules of Group A of this Article. 30

(2) Election shall be held at the second Regular Business Meeting in January and may be by show-of-hands or secret ballot and shall be governed, wherever applicable by the rules prescribed in Group A of this Article; except however, that members' dues must be marked paid for the previous December before they are eligible to vote.

(3) Successful candidates for Standing Committees polling the largest number of votes shall be Chairmen of such Committees, and candidates receiving the next largest number of votes shall be Secretaries; except: 40

(a) that members of the Executive Committee cannot also serve as Chairman or Secretary of any Standing Committee; and

- (b) except in the case of the Press and Investigating Committee, the most successful candidate shall be Secretary, (the Reporter being chairman by Article Fifteen, Section (9)).

(4) All Chairmen and Secretaries of Standing Committees shall take the obligation oaths for Union Officers set forth in this Article, and their term of office shall commence on the first day of February next following.

D. By-elections and Disqualifications.

- 10 (1) Any office or position declared vacant shall be filled as soon as possible after such vacancy is declared; and in the filling of such vacancy the same procedure shall be followed as set forth under Group A, B, and C of this Article, in so far as the said Sections are applicable.

- (2) Any Executive Board Member, Division Executive Member, Sub-Local Executive Member, Standing Committee Member, or Delegate who ceases to be a member in good standing, or who fails without reasonable excuse to attend three consecutive meetings of the body or bodies to which he has been elected, shall forthwith
20 cease to hold the office or position to which he has been elected, and such office or position shall thereupon be declared vacant by the President, Secretary-Treasurer, or Committee Chairman. No member to whom this Section applies shall be deemed to have a "reasonable excuse" for non-attendance unless he communicates with the Secretary-Treasurer in advance of the meeting from which he will be absent and unless the reason he gives for non-attendance is proper and reasonable.

ARTICLE NINETEEN—REFERENDUMS

A General Membership referendum may be held at any time
30 to decide important questions of policy, and may be ordered:

- (a) By a General Business Meeting on a two-thirds majority vote, provided that the affirmative votes are not fewer than double the prescribed quorum; or
(b) By the Executive Board or the Executive Committee, on a two-thirds majority vote. Referendums shall be held, as far as possible in accordance with the provisions contained in Sections (6) and (7) of Group A. of Article Eighteen; except that members voting must be paid up to (but not including), the month preceding
40 that in which the Referendum is held.

ARTICLE TWENTY—SHOP STEWARDS

(1) In every place of employment where the Union maintains contractual relationship with an employer, Shop Stewards shall be nominated and elected in the month of January each year; and in other plants whenever practical. The date, time and place of such

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nominations and elections shall be determined by the members concerned. Business Representatives are instructed to assist in the preparation of due notices and offer every assistance.

(2) There shall be one Shop Stewart for approximately every twenty-five men, and whenever necessary, by-elections shall be held to establish or maintain that ratio. Shop Stewards may at any time be recalled for cause, by the members of his trade and work shift, or the Shop Stewards of his Division, Sub-Local, or Union.

(3) The First Vice-President shall be the supervisor of all Shop Stewards' activities; issue the requisite credentials to newly elected Shop Stewards; furnish them with copies of the valid working agreement; an explicit outline of their rights and duties, as well as special information and instructions from time to time; and he shall be responsible for the efficient functioning of the Shop Stewards. 10

ARTICLE TWENTY-ONE—SPECIAL UNION BENEFITS AND ACTIVITIES

A. General.

(1) The Sick and Death Benefit funds are organized and maintained for the comfort of members in good standing, and their dependents, in time of stress; and as an additional incentive to members for prompt payment of dues; but no member or person shall be entitled as of right to claim or receive any payment from either of the said funds. 20

(2) These funds shall be administered by the Standing Committee for Sick and Death Benefits and the two funds shall be kept in two separate accounts and operated strictly independent from one another. The signing officers, on behalf of this Standing Committee shall be members of the Executive Committee prescribed in Article Fifteen, Group A., Section (5). The Committees' fiscal year shall end on the 31st of January in any given year. 30

(3) The Standing Committee shall hold two Regular Meetings, on the second and fourth Monday of each month, at the Union's Headquarters, and all claims and communications relevant to this Committee shall be received at such meetings, and no other. Doubtful cases shall be referred to the Board of Trustees for arbitration. An appeal may be taken from any decision of the Board of Trustees to the next following meeting of the Executive Board; whose decision is final and binding. In the event of an epidemic or catastrophe, the Executive Board shall have full power and be the final authority with respect to administration of the sick and Death Benefit funds. 40

(4) The Sick and Death Benefit funds shall be maintained by equal deposits into each fund, to be made monthly by the Secretary-Treasurer, equivalent to 12½ percent of all dues payments collected, after regular per capita tax payments; and the disbursements which can be made from either fund are limited to the cash funds at its disposal, and no more.

B. Sick Benefits.

(1) A member wishing to claim Sick Benefits must do so on the form provided therefor; and claims shall only be entertained if the claimant:

- (a) was recorded in good standing on his last working day;
- (b) has an uninterrupted and paid-up membership in the Union of not less than six months;
- (c) is not receiving or expecting to receive payments from the Workmen's Compensation Board;
- 10 (d) claim is filed at Union Headquarters not later than seven days after returning to work;
- (e) produces a certificate (in the form provided by the Union) by the attending physician, surgeon, naturopathic physician or chiropractor, setting forth full particulars of the claimant's illness; and
- (f) satisfies the Standing Committee that he has not worked during the period for which benefits are claimed. Disability due to alcoholism, mental illness or venereal disease is exempt from Sick Benefits.

20 (2) If the claim is approved, Sick Benefits shall be paid at the rate of One Dollar (\$1.00) per day from, and including the eighth day of disability for the period of total disability and may continue for a maximum of 50 days, (Sundays and Holidays included). In any period of 12 calendar months the maximum amount payable from the Sick Benefit fund to any one claimant shall be Fifty Dollars (\$50.00), and no more; said 12-months period being calculated from the date upon which the claimant was paid such maximum amount, whether in a lump sum or otherwise.

30 (3) Members contracting tuberculosis shall receive regular Sick Benefits within the limitations of Section (2) of this Group, from the day they are ordered to stop work until they are admitted to a sanitarium; and from the time they are confined to a sanitarium they shall be paid Five Dollars (\$5.00) each calendar month for a period not exceeding six months, and Two Dollars Fifty Cents (\$2.50) each month thereafter, as long as they remain in the sanitarium.

C. Death Benefits.

(1) Claims for Death Benefits shall only be entertained if the late member:

- 40 (a) was recorded in good standing 30 days prior to his death;
- (b) had an uninterrupted membership in this Union of not less than six months; and
- (c) a claim on the prescribed form is filed by, or on behalf of his recorded beneficiary, at the Union Office within 30 days of his death.

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(2) Claims for Death Benefits, if found in order, shall be paid at the rate of Fifty Dollars (\$50.00) for each six months' uninterrupted membership of the deceased member, after the first six months; until the limit of Two Hundred Fifty Dollars (\$250.00) for three years' uninterrupted membership, has been reached.

ARTICLE TWENTY-TWO—RIGHTS AND DUTIES
OF MEMBERS; OBLIGATION

(1) Any member in good standing may, in addition to the rights and privileges cited elsewhere in the Constitution or these By-laws, be admitted to any Regular Business Meeting of any Division, Sub-Local, Standing Committee and Shop Stewards' Meeting to state, and bring to the attention of such bodies, subject matter properly coming within the jurisdiction of such bodies, and within such period as may be directed by the Chairman of the meeting; provided he is in possession of his dues card and no disciplinary action is pending or has been ordered against him. 10

(2) Any member in good standing may request appointment to appear before a Regular Meeting of the Executive Board or Executive Committee, by application to the Secretary-Treasurer; and if the business the member desires to bring to the attention of such Executive Body appears reasonable and proper, he shall be invited, and admitted to such body, for such period as the Chairman or the meeting may direct. 20

(3) It shall be the duty of every member to keep his membership in good standing and uninterrupted; attend meetings of the Division or Sub-Local into which he is organized, and General Membership Meetings, whenever possible; help expedite the transaction of business at all meetings; obey all summonses; produce his Union card on reasonable request by Shop Stewards, Business Representatives, Chairmen at meetings, Conductors and Wardens; report to the Secretary-Treasurer change of address and failure to receive the official organ; and faithfully carry out any function on behalf of the Union allocated to, and accepted by him. 30

(4) For the purpose of interpreting the provisions of these By-laws, "uninterrupted membership" shall be taken as membership that has not been disturbed in any manner by suspension or other disciplinary action (for any cause whatever), or delinquent dues standing. In cases of interrupted membership, the date of the last reinstatement, or re-admission (in cases of absence or transfer or withdrawal cards) shall be the date from which the uninterrupted membership shall be reckoned. 40

(5) Any person who in the future is admitted to membership in this Union, and any person who, after the effective date of these By-laws remains a member of this Union, shall be deemed to have entered into a contract with this Union and with every other Member therein, whereby in consideration of the benefits bestowed by such

membership, such person undertakes to accept, endorse, and at all times abide by the Terms of the Oath of Obligation set forth in the next following clause.

(6) The Oath of Obligation required to be taken by all persons who become members of this Union, is as follows:

10 "I _____, do solemnly promise that I will in accordance with the Constitution and By-laws of the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, Vancouver, British Columbia, (hereinafter called the "Union"), remain a member until I have been granted a withdrawal card, or transfer card, or until expelled; that I will not violate any of the provisions of said Constitution, By-laws or Working Rules of this Union, nor its schedule of hours and wages; and I hereby authorize this Union to act exclusively on my behalf as my collective bargaining agent with any employer of labor by whom I am or may be employed at work coming within the jurisdiction of this Union; and I give this Union the right to arrange for the check-off of the monthly dues, and assessments authorized by a General Membership meeting.

20 "I further promise, in the event of a claimed grievance by me against the Shipyard General Workers' Federation of British Columbia, (hereinafter called the "Federation"), or against this Union, that I will faithfully observe the procedure of and fully accept the findings of the Trial Board and Appellate Tribunal set up within this Union and the said Federation; and I further promise that I will not become a party to any suit at law or in equity against this Union or the Federation, until I have exhausted all remedies allowed to me by said Constitution and By-laws.

30 "I further promise that I will do all in my power to advance the interests of this Union and of said Federation and all its duly affiliated Local Unions; and recommend to membership only such persons whom I believe to be worthy to become a member.

40 "I further promise that I will never wrong a member of this Union or of any Local Union affiliated to said Federation or see him wronged if it is in my power to prevent it. I further promise that I will never divulge any of the secrets of this Union to any person or persons who are not known to me to be members in good standing; and I further promise that I will at all times give Union labor preference in filling any position of which I may have control and give preference to Union label goods and services. To all of which I pledge my sacred honor."

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

RECORD

In the Supreme
Court of British
Columbia

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

ARTICLE TWENTY-THREE—DUES,
REINSTATEMENTS; ASSESSMENTS AND FINES

A. Definitions.

(1) A "member in good standing" is a Member who has his current month's dues marked "paid" on his dues card and who is not in debt to the Union. No other person shall be deemed a "member in good standing." Only Members in good standing are entitled to full rights of membership and benefits of the Union.

(2) A "delinquent member" is a Member who has not paid his current month's dues and who does not owe the Union more than 10 two months' dues, or the equivalent of two months' dues.

(3) A "member in bad standing" is a Member who is in arrears in the payment of his dues to the Union for two months but not in excess of three months, or who owes the Union an amount equivalent to two months' dues or more. A Member in bad standing shall not be:

- (a) admitted to any meeting;
- (b) entitled to any benefits of membership;
- (c) entitled to serve and continue serving as an Officer or Employee of this Union, or in any capacity whatever.

(4) An "Auxiliary Member" is a person who has a valid withdrawal card from the Union, or is a Member in good standing of any Local Union affiliated with the "Federation", and who prepays to the Union \$2.50 for any year ending December 31st, (or major fraction thereof). An auxiliary Member may participate in the activities of the Standing Arts-Education Committee and the Standing Sports Committee; and shall receive a free subscription to the Union's official organ, and such other preferences as Members in good standing may enjoy at public and social functions sponsored by the Union.

B. Dues.

(1) Dues shall be payable to the Union by each Member, (other than auxiliary members) in accordance with the following scale: 30

(a) \$1.50 per month for all mechanics, mechanics' improvers, employees of this Union, or the Federation, or of any legitimate Union, Council, Federation, Conference, Standing Committee or any permanent or semi-permanent delegate body to which a number of legitimate Local Unions are affiliated; and all mechanics and mechanics' improvers who are receiving, or expecting to receive Workmen's Compensation.

(b) \$1.25 per month for all mechanics' helpers; 40

(c) \$.50 per month for those Members in good standing who:

- (i) are unable to work at their trade or occupation (as coming under this Union's jurisdiction) owing to sickness or other disability not covered by

Workmens' Compensation, (including Members who are receiving any benefits whatever from this Union);

(ii) or who are affected by a strike or lock-out duly recognized by this Union;

(iii) or who worked or are expected to work, at their trade under the Union's jurisdiction, a total of less than twenty-four hours in any calendar month; provided, however, that this rate of dues can become effective only upon application made in advance and upon approval of such application by the Secretary-Treasurer.

10

(2) Dues shall be charged against all members, (other than auxiliary Members), and shall be payable not later than the first of each and every calendar month.

20

(3) Advance payment of dues shall be accepted with the understanding that any over-payment of dues shall be refunded if a Transfer or Withdrawal Card is issued, or in case of death, or if a reduction of dues becomes effective (as provided in this Article). Any balance to the credit of a member may be written off against any dues or other debt owing to the Union by such Member.

C. Suspensions and Reinstatements.

(1) Any person who, being a Member in bad standing, continues in arrears with payment of his dues beyond the end of the third month, shall be automatically suspended from membership in the Union and thereupon his name shall be reported to the Shop Stewards of his department.

30

(2) Any person who is suspended from membership in this Union shall forthwith cease to have any rights of membership in this Union.

(3) Any person who has been suspended for any cause whatever, and applies for reinstatement (on the form provided therefor), shall pay all the regular dues and assessments, if any, from the month he last paid dues for, together with a reinstatement fee of \$7.50 if three months, or over, in arrears; and a minimum of \$2.50 if more than two months, but less than three months in arrears; and he shall prepay regular dues for not less than two months.

40

(4) At the discretion of the Executive Committee, any suspended person may further be required to prepay dues for as many months as he fell in arrears, but not more than 12 months; and the Executive Committee may reject his application or refer his case for decision by a Regular General Business Meeting, or proceed as provided in Article Six, Section (4) and (5).

D. Assessments and Fines.

Assessments and Fines are not payable unless ordered by a General Business Meeting and shall, when so ordered, be charged against

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*In the Supreme
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Exhibit No. 14

By-Laws, Boiler-
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(Continued)

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(Continued)

all Members in case of assessments; and against a specified Member or Members in case of fine, on the first day of the month next following such decision. Assessments and Fines must be paid before any further credit is allowed towards dues payments.

ARTICLE TWENTY-FOUR—WITHDRAWALS;
TRANSFERS AND FUNDS

Withdrawal Cards.

(1) Withdrawal Cards shall be issued free of charge to any member in good standing within 10 days of his request, and on surrender of his dues card, provided that one or more of the following conditions obtain: 10

- (a) that he is no longer employed at a trade coming under the jurisdiction of this Union;
- (b) that he is not working at any trade coming under the jurisdiction of any Local Union affiliated with the Shipyard General Workers' Federation;
- (c) that he is promoted to a rank above that of a Foreman;
- (d) that he enters the Armed Services; or
- (e) that he moves beyond the territorial jurisdiction of such Federation. 20

Withdrawal Cards shall remain valid only as long as the condition applicable in the given case is never violated.

(2) A holder of a valid Withdrawal Card, from any Local Union affiliated with the Shipyard General Workers' Federation may, on application, be reinstated to full membership by decision of a General Membership Meeting or the Executive Committee and on deposit of the Withdrawal Card and payment of two months' dues in advance.

Transfer Cards.

(3) Transfer Cards shall be issued to members in good standing on the same conditions as Withdrawal Cards, wherever applicable, to enable the bearer to transfer to any other Local Union affiliated to the Shipyard General Workers' Federation. Transfer Cards remain valid sixty days from date of issue and may be accepted on payment of two months' dues. Transfer and Withdrawal Cards from all other legitimate Unions shall be accepted as a credential only, and admission shall be governed by Article Six of these By-laws. 30

FUNDS.

(4) All funds and property of the Union received or administered by it, or by any of its Committees are, and shall at all times remain, the property of the Union and not of any individual member or members, or persons who cease to be members. There shall be no division of funds; but in the event of dissolution of this Union, all funds and property shall be transferred to the Shipyard General Workers' Federation or its legal successor. 40

ARTICLE TWENTY-FIVE—COMPLAINTS
AND GRIEVANCES

(1) If complaints or grievances arise between a member or a group of members, and any Section or Department of this Union, such grievance shall, if there appears to be no direct violation of the Constitution or By-laws, be brought to the attention of the Section or Department so concerned, by the party aggrieved; and every effort shall be made to adjust the difference.

10 (2) After the case has thus been dealt with, the party aggrieved may, if not fully satisfied, refer the case to the Executive Committee, in writing, which may make a final ruling in the case, or refer it to the Standing Press and Investigating Committee for investigation and report. If the grievance arose out of an action or omission of the Executive Committee, the complaint shall be filed with the Executive Board, (which may first refer the case to the Standing Press and Investigating Committee for investigation and report), and the Executive Board shall then pass judgment final and binding.

20 (3) In all cases of complaints and grievances where there appears to be a violation of the provisions or intent of the Constitution or By-laws, or both, the complaint must be filed as a charge, in accordance with the provisions of Article Twenty-six.

ARTICLE TWENTY-SIX—DISCIPLINE

A. Misdemeanors.

Any member who, being physically able:

- (a) fails to obey a special summons, providing not less than three clear days' notice to appear is allowed from the time the summons has been served;
- (b) refuses to receive, or acknowledge receipt of a special summons;
- 30 (c) fails to perform any duty required of him and accepted by him—unless fully excused by any member of the Executive Committee;
and any member who,
- (d) attends membership meetings while under the influence of intoxicants;
- (e) is unruly at membership meetings:
shall be liable, on summary conviction by majority vote at the appropriate Business Meeting to a fine of not more than Five Dollars, for each offence; and the convicting meeting shall fix the penalty.

40

B. Serious Offences.

(1) Any member found guilty of any offence hereinafter listed shall be fined and suspended, or fined and expelled; the fine not to be less than One Dollar for each offence, nor more than One Hundred Dollars, plus costs incurred in connection with the conviction:

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*In the Supreme
Court of British
Columbia*

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

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*In the Supreme
Court of British
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Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

- (2) Any member who:
- (a) makes a misstatement on his application card;
 - (b) or violates any of the trade rules after due warning;
 - (c) or violates any part of the obligation oath or oath of office;
 - (d) or violates the letter or intent of the Constitution or By-laws;
 - (e) commits an act or offence discreditable to this Union;
 - (f) or is guilty of conduct unbecoming a member;
 - (g) or improperly comes in possession of, or seeks to come in possession of, confidential business of this Union; 10
 - (h) or circulates confidential information or unfounded rumors designed to harm the interests, or good-will of this Union or any Officer or Member thereof;
 - (i) or calls, holds, or assists in holding an unauthorized public meeting to discuss the internal business of this Union;
 - (j) or commits an act that is contrary to the interests of this Union;
 - (k) or causes expenses of Union funds, otherwise avoidable; 20
 - (l) or wilfully slanders officers or members of this Union, or the Shipyard General Workers' Federation, or of a Local Union affiliated with said Federation;
 - (m) or defrauds another member;
 - (n) or fraudulently receives, attempts to misapply, or embezzles monies of this Union—or monies entrusted to him by other members for payment;
 - (o) or helps another fraudulently to obtain Union funds;
 - (p) or improperly acquires and retains property of the union; 30
 - (q) or bears false witness against another member or refuses to give full and true testimony in any case of which he is a witness;
 - (r) or attempt to falsify, or defraud returns of elections or referendums, or is negligent with respect thereto;
 - (s) or creates dissension;
 - (t) or advocates secession of a group of members from the Union;
 - (u) or reports for work where there is a strike or lockout affecting this, or any Union affiliated with the Shipyard 40
General Workers Federation;
 - (v) or aids in the formation of a dual Union;
 - (w) or becomes identified with such dual Union without specific consent of the Executive Committee or a General Membership Meeting;—

is guilty of an offence against this Union and may be charged and put on trial as hereinafter provided.

- (3) For the purpose of this Article:
- (a) "slander" means "the malicious publication, whether orally or in writing, of false or defamatory reports, statements or suggestions to the injury of any Union Member";
 - (b) a Member making a misstatement on his application card shall, in addition to any penalty imposed following a charge and trial, be forthwith suspended, but may apply for re-admittance on payment of any fine imposed.
- 10 (4) The charge in respect of any offence or offences mentioned in Group B. of this Article may be laid by any member of the Union in good standing. Such charge must:
- (a) be in writing, signed by the member making the charge, who must also state his Union number;
 - (b) name the alleged offender or offenders;
 - (c) specify the alleged offence or offences and the Section of the Constitution or By-laws alleged to be violated;
 - (d) be filed with the Recording Secretary before a Regular General Business Meeting;
 - 20 (e) be read out to such meeting by the Recording Secretary under the order of business for notice-of-motion;
 - (f) any member, other than the President of the Union, who files a charge, must deposit \$10.00 at the time of filing, and if the charge is proved the deposit shall be returned to the member filing same, and if not proved, shall be forfeited to the Union.
- (5) After a charge is read out, the accused shall temporarily be debarred from full membership until the charge is disposed of, but his standing within the meaning of Article Twenty-Three shall
- 30 not be affected by reason of such debarring only. The Regular General Business Meeting before which a charge is read, shall decide on the basis of the degree of seriousness of the charges, if the accused shall be admitted to meetings, be entitled to vote, or, if he be an officer or employee of the Union, whether he shall be allowed to continue his usual function.
- (6) Except by a three-fourth majority vote to the contrary, no charge shall be read out at any General Business Meeting in November, nor before the second Regular Business Meeting in December, in any year.
- 40 (7) After the charge is read out as aforesaid, the charge shall be handed to the Chairman or Secretary of the Standing Press and Investigating Committee, to conduct the trial at a date not less than 10 days, nor more than 30 days from the date of the meeting at which the charges were read out. All parties entitled to participate at the trial, including the accused, shall be notified of the date and place of the trial and the text of the charges. Such notification shall be

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*In the Supreme
Court of British
Columbia*

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

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*In the Supreme
Court of British
Columbia*

Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

deemed duly given if personally served, or if posted by registered mail, addressed to the party concerned at his last known address (as it appears on the Union's records), at least six clear days prior to the date of trial.

(8) If the complainant wilfully fails to appear at the time set for the trial, the Chairman of the Trial Committee may rule the charges dismissed; and if the accused wilfully fails to appear at the time set for the trial, the said trial may be conducted in his absence and the verdict based on the testimony of witnesses present. The complainant and the accused shall each be permitted to appoint a counsel, who must be a member of the Union; and if the Union's interests are vitally affected, the President may appoint a counsel to act on behalf of the Union. Testimony of persons not members shall be admissible; and all testimony must be recorded by a competent stenographer. 10

(9) After the evidence is all in, the trial committee shall take a vote of the committee members present to determine the guilt or innocence of the accused and shall prepare a concise report for the next Regular General Business Meeting. In case opinion of the committee is divided, the minority shall also submit their views, as outlined in paragraph 52 of Roberts Rules of Order Revised. 20

(10) After the report is read out at a General Membership Meeting, the motion shall be put to accept or reject the Committee's report and there shall be no debate or review of the case by the meeting; but the meeting shall first hear the views of the minority of the trial committee, if any, and shall permit one each, of the complainant's and accused's witnesses to plead for, or state their side, and shall permit statements to be made by the complainant and the defendant, or by their counsels, and by the Union's counsel if one has been appointed; and all the said persons shall be given the right of the floor for an equal and predetermined period. 30

(11) The meeting shall then vote on the motion by show-of-hands, standing or secret ballot, and if the charges are sustained by a majority of the members voting, the accused stands convicted and the meeting shall fix the penalty, also by majority vote; but concurrence of a two-thirds majority present and voting shall be required to expel a member. If the charges are not sustained, the defendant shall automatically be declared exonerated of the alleged offence.

C. Appeals.

If a member has been found guilty by a General Business Meeting of any offence under Group B. of this Article and feels that the decision is unfair, or the penalty too severe, he may, within sixty days file an appeal in writing with the Executive of the Shipyard General Workers' Federation; but no appeal shall be permitted from the imposition of a fine, or in cases where a fine was part of 40

some other penalty, unless such fine is first paid. If expulsion has been the penalty, an appeal shall stay the order, until decision by the Appellate Tribunal, but shall not restore the accused to regular membership, and his status shall be that of a charged member, as specified in Group B., Section (5) of this Article.

RECORD

*In the Supreme
Court of British
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Exhibit No. 14

By-Laws, Boiler-
makers' Union,
Aug. 8, 1944.

(Continued)

SUPREME COURT OF B.C.

Vancouver Registry

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Registrar

In the Supreme
Court of British
Columbia

Exhibit No. 45

Election Circular
of William
Stewart

ATTENTION : BOILERMAKERS

As president of the Boilermakers' & Iron Shipbuilders' Union, Local No. 1, I feel it incumbent upon myself to expose the source and reasons for a news item appearing in the News-Herald on Monday, December 11th, wherein one Kuzych is quoted as announcing his full support of a "ticket" headed by C. A. Henderson, welder in Burrard South.

Kuzych is quoted in part as saying:

"MR. HENDERSON IS A GOOD UNION MAN, AND I 10
SUBSCRIBE TO HIS PLATFORM, BECAUSE IT COINCID-
ED CLOSELY WITH MY OWN."

Henderson is also quoted as expressing appreciation of the support of the Kuzych group. Kuzych has stated on several occasions that he is opposed to Union shop contracts. (The obtaining of Union shop contracts is the avowed policy of the Boilermakers Union.)

It should be pointed out that a certain group met with Kuzych on Friday, December 8 to discuss how best they could remove the present executive of the Union. 20

AMONG THOSE PRESENT AT THE MEETING WERE DOUG FRANKS, VICTOR FORSTER, ALLISTAIR MacLEOD, JOHN McPHEATOR, H. C. HENDERSON, MYRON KUZYCH AND OTHERS.

The welfare of the Union was furthest from their mind, because they agreed, as quoted in the News-Herald, that they had a common platform (the Kuzych platform) which is known to all trade unionists as being anti-union.

The leaflets, radio broadcasts and material which have been circulating on behalf of Kuzych required large sums of money. 30
It would be interesting to know the source of such funds.

THIS INFORMATION IS GIVEN TO THE MEMBERS OF THE BOILERMAKERS, BECAUSE I FEEL THAT YOU SHOULD BE ACQUAINTED WITH THIS GRAVE THREAT TO OUR UNION.

IF SUCH ANTI-UNION ELEMENTS WERE TO GAIN CONTROL AND USE IT AS AN EXPERIMENT FOR FALSE THEORIES, IT WOULD ONLY RESULT IN THE SMASHING OF OUR UNION, THEREBY WEAKENING THE ENTIRE TRADE UNION MOVEMENT. 40

I URGE ALL MEMBERS OF THE BOILERMAKERS UNION TO VOTE IN THIS ELECTION, IN ORDER THAT A DECISIVE ANSWER WILL BE GIVEN TO ALL ANTI-WORKING CLASS ELEMENTS.

Signed, WILLIAM STEWART, President.

RECORD

In the Supreme Court of British Columbia

Exhibit No. 45

Election Circular of William Stewart

(Continued)

SUPREME COURT OF B.C.
Vancouver Registry

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RECORD.

EXHIBIT No. 52

In the Supreme
Court of British
Columbia

NEWSPAPER CLIPPING, SOUTH HILL NEWS, SIGNED
BY KUZYCH

Exhibit No. 52

Article "South
Hill News"
signed by Plaintiff

(The publishers do not necessarily endorse
the views expressed under this heading.)

Editor, South Hill News, Sir:

Times without number I have been asked how it feels to be
the one man in the whole of Canada, who is unaffected by the
Selective Service red-tape. The answer is: It's like the old
times again! The Boilermakers' Local No. 1, seems to feel that
I was "unfair" to them in testifying before the Board of Arbitration,
so it has instructed the N.V.S.R. to dismiss me. Whether
any heart-balm has accrued to the Local from this act, I leave
for you to decide, in the meantime here's the how do you do. The
Selective Service finds it difficult to put me to jail after testifying
before the Arbitration, as my presence there was strictly in order.
It cannot with propriety let me loaf at the time when everyone is
straining for the "big push," and when there is a skilled labor
shortage, in spite of the headlines screaming lay-offs. Also, a
workingman does not need an eternity to mercifully starve to
death. I do not pretend to know how this whole mess will end.
I only know that I cannot do other than I am doing:— NOTHING,
because were I attempt to do SOMETHING, and let Local No.
1 get away with the outrage, a workingman's life would not be
worth a plugged nickel, should he in future dare to testify before
a Board of Arbitration.

Myron Kuzych,
3558 Fraser Ave.

SUPREME COURT OF B.C.

Vancouver Registry

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EXHIBIT No. 48

ARTICLE IN "THE MAIN DECK" OF DATE APRIL 7, 1944,
BY GENE KING—"COPIES OF BY-LAWS NOW AVAIL-
ABLE."

Not Printed

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 48

Article in "The
Main Deck,"
April 7, 1944.

SUPREME COURT OF B.C.

Vancouver Registry

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DATE: 31/1/49

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"T.C."

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RECORD

EXHIBIT No. 41.

*In the Supreme
Court of British
Columbia*

EXTRACT FROM "THE MAIN DECK," FEBRUARY 2, 1945

Exhibit No. 41

KUZYCH DRAINS \$1600 OF WORKERS' MONEY

By C. W. Caron

Article in "The
Main Deck" by
C. W. Caron,
Feb. 2, 1945

At the last general meeting of the Boilermakers' Union, Local No. 1, executive reported that the court order for damages to Myron Kuzych were paid on demand. This court order cost our Union \$1624.00.

The membership should be clear as to the reasons why we did not appeal this case, namely because T. G. Mackenzie, then 10 secretary-treasurer of this union, failed to serve a copy of the charges to the accused in the required time provided for by the constitution.

The Trial Committee at that time, in view of this technical error, did not have jurisdiction to act. After the expulsion of Myron Kuzych, our union recognizing this error reinstated him in the union, and informed the management where he was previously employed, to that effect.

We are of the opinion that as a responsible body, we are prepared to live up to our responsibilities, and follow the regu- 20 lations of our union. This being the case, we find it impossible to proceed with an appeal, which would infer that we are trying to justify the fact that the provisions of our constitution were not adhered to but still could expel a member.

We also wish to explain that in the reason for judgment it is stated that it appears to be highly unreasonable to expect a union man, who has been wrongfully deprived of his membership in the union, to be compelled to seek employment as a non-union man.

It was the opinion of the court that the plaintiff, during the 30 period in which the legality of his expulsion as a member was being determined, was not bound in order to mitigate the damages which flowed not from his wrongful act, but the wrongful act of the defendant, to seek similar employment other than as a union man. And of course during the period of his wrongful expulsion, he could not obtain employment.

This is the key to the whole question in regard to this particular case. We, the trade unions, will retain the right to determine who is a trade unionist, and we are of the opinion, with justification, that Myron Kuzych certainly is not a trade unionist. 40

Let us quote some of his own statements when he appeared as a witness in the arbitration hearing for a closed shop, presented by our union, for West Coast and Hamilton Bridge.

The question was asked: "Are you a member of the Boilermakers' Union?" "Yes," was the answer, "an unwilling member."

"You don't believe in the present trade unionism that exists in Canada?"

The answer was "No . . . a union that stands in contraposition to anything that is spurious or a fake, such as for example, the Boilermakers Union Local No. 1."

"Do you believe in a closed shop?"

10 "No, I am opposed to a closed shop in principle, but I am willing to submit to a closed shop under compulsion, but not a minute longer."

Before the demand for closed shop was presented to West Coast and Hamilton Bridge, it was thoroughly discussed at our union meeting and agreed upon. The action of Myron Kuzych in testifying against a closed shop, contrary to the policy of our union, was not the action of a trade unionist.

We therefore say that the expulsion of Myron Kuzych was correct in principle. New charges are now pending against
20 Myron Kuzych, and our union will determine whether his past and present actions are a violation of the provisions of our by-laws, after the press and investigating committee has brought its report and recommendation to the union meeting.

If Myron Kuzych intends to take us to court again he will be placing the entire trade union movement on trial, as to whether a trade union has the right to discipline its members for violation of union policies and individual members' obligations.

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 41

Article in "The
Main Deck" by
C. W. Caron,
Feb. 2, 1945

(Continued)

SUPREME COURT OF B.C.

Vancouver Registry

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In the Supreme
Court of British
Columbia

Exhibit No. 56

"The Main
Deck"
Feb. 2, 1945

EXTRACT FROM "THE MAIN DECK," FEBRUARY 2, 1945
BISU ELECTS STANDING COMMITTEES
By Gordon Farrington

Election of the standing committees for the year took up the major part of the morning and evening sessions of the Boilermakers' and Iron Shipbuilders' Union, Local No. 1 at their regular meeting January 22 in the Boilermakers' Hall.

Brother Ed. Simpson was elected as social organizer, receiving more votes than the combined total of other candidates. 10
Brother Simpson will be meeting with the various committees to plan a series of social events.

Brother Burbridge and Sister N. Thomas were elected chairman and secretary of the Arts-Ed Committee, and the executive are H. Asson, M. Eagle, F. Cluett, J. Fuerst and J. Reykdal.

Lloyd Aiken is the new chairman of the sports committee, and he has Jimmy Railton, our fishing enthusiast as his secretary. D. Buckley and H. Carey were elected to the posts of chairman and secretary of the hall committee, and Brothers McKendrick, King, Rimmer, Jacobs and Lawson comprise the executive. This group 20
has a tremendous responsibility. It is their job to administer and operate the hall.

Let's get behind our hall committee and support their plan for full use of our building.

The Press and Investigating Committee will be responsible for the publication of news, advertising and announcements. The committee comprise Brothers D. Clarke, F. Duncan, B. Lewis, O. Braaten, W. Hendry, Gordon Farrington and Tom Bain, the last two being chairman and secretary respectively.

The Vancouver Labor Council delegation elected as follows: 30
C. Caron, Malcolm MacLeod, J. Nuttall, E. Simpson, J. McKendrick, William McGaw and V. Forster.

The Political Action Committee consists of C. Henderson, chairman; Malcolm MacLeod, secretary; H. Asson, T. Bain, A. Good, and W. Schwartz.

SUPREME COURT OF B.C.

Vancouver Registry

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DATE: 17/2/49

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"T.C."
Registrar

EXHIBIT No. 47

Seventh Address Delivered over the CXWX,

SATURDAY, DECEMBER 29th, 1945.

By Myron Kuzych.

Good evening, Friends:

This is the seventh address of the series sponsored by the Genuine Socialist Industrial Unionists of British Columbia. It is a continuation of the topic which we raised last week. The topic being: the undemocratic origin of the Closed Shop. As every
 10 Closed Shop has the same beginning as the one which occurred in our Vancouver shipyards, or one very similar to it, it will pay us to tarry a while longer on this topic, in order to examine it still more closely.

We have seen last week that, here in Vancouver, some hundred and eighty-five men, calling themselves members of a certain, well-known Vancouver shipyard union, entered into certain contractual relations with certain Vancouver shipyards. That in the course of their mutual relations both the shipyard employers and these Union-members, or their representatives, executed two
 20 distinct things. One: setting up a right to act wholly for themselves and in their own behalf. This right is not, here, disputed. But beside this right, they set up another RIGHT OF ASSUMPTION! This right BY ASSUMPTION was set up by inserting a Closed Shop clause in their contractual relations. By this Closed Shop clause both:the employers and the Union stipulated certain conditions, NOT FOR THEMSELVES and in their own behalf, but rather to do certain things in FUTURE; which thing, at the particular time of the signing of those Closed Shop contracts, it was impossible for them to do. The future tense, in which the
 30 Closed Shop Clause is worded, makes the employer-Union attempt to control Future, daylight clear!

“Only members of this organization (meaning Union) WILL be employed and, IN THE EVENT of the Union being unable to supply men, no man who is unfair to this organization WILL be employed.”

Thus we have it! Only this WILL happen! Only these WILL be employed! The future tense, and the future intent to institute and enforce certain conditions, is unmistakable. This, and the RIGHT to this employer-Union attempt to govern other
 40 men's future, we challenge and dispute. Regardless of what excuses the Closed Shop worshippers offer in support of so outrage-

RECORD

In the Supreme
 Court of British
 Columbia

Exhibit No. 47

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 Address by
 Plaintiff
 Dec. 29, 1945

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*In the Supreme
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Copy of Radio
Address by
Plaintiff
Dec. 29, 1945

(Continued)

ous an act, regardless of their claim that this was done to advance the cause of Unionism, we still challenge and dispute it. Indeed, we go further than that. We denounce it as a very clever trick, conceived ONLY for the special benefit of the FEW, and instigated with every cunningness of an ambush! As for the Closed Shop labor-dictators' claim that it was done in support, and for the sake of Unionism, we can only answer: Oh Unionism! Of all the anti-Union things that are committed in thy name! Just like Patriotism, or Democracy, or Autonomy, or Self-government, is the last refuge of every tyrant, so equally "Unionism," is the last resort of the Closed Shop dictators' strangulation of Unionism!

We, are not the first to notice this. Identical battles have been fought in the past, over identical questions, with the tyrants of the past using almost identical excuses for their nefarious work. The precedent which we are going to quote, and which is nearest us, arose in the United States of America in the days of Abraham Lincoln. In those days, it will be recalled, slavery—having entrenched itself in the South—was attempting to make further inroads and entrench itself in what, up to that time, were FREE territories. And it was attempting to make these inroads on exactly the same Closed Shop principle which, some ninety years later, was employed in the Vancouver shipyards. The difference, if any, was that "Self-government," instead of "Unionism," was used as the last refuge. But the slavers' effected love for "Self-government" by no means fooled Abraham Lincoln. Discussing the whole matter at length, in his "Peoria speech", (1854), he puts it thus:

"Another important objection to this application of right of self-government is that it enables the FIRST FEW TO DEPRIVE THE SUCCEEDING MANY of a free exercise of the right of self-government. The first few got slavery in, and the subsequent many cannot easily get it out. How common is the remark now in the slave states: "If we were only clear of our slaves, how much better it would be for us. They are actually deprived of the privilege of governing themselves as they would, by the action of a VERY FEW IN THE BEGINNING. The same thing was true of the whole nation at the time our Constitution was formed . . ."

The above, brilliant quotation is so apropos to the subject before us that we need but to substitute "Closed Shop" for the words "slavery" and "slave states," and Lincoln's observation goes straight to the heart of our problem; just as surely as if these immortal words were written today. It also proves that tyrants and their tactics hadn't changed any either. "Self-government"

was used as a last refuge of the scoundrels of those days, "Unionism" and "Democracy" is used as the last refuge excusing the Closed Shop, today.

In disputing the right, and the moral propriety of the institution of the Closed Shop clause, we also reject this affected, this hypocritical love for Unionism and Democracy, spouted by the current Closed Shop labor-dictators. We unconditionally reject it and say:

The whole and entire membership of the Union ALONE
 10 has the right of deciding for itself, as to the form of Unionism they mutually agree to operate under, and be governed by. This whole and entire Union-membership must be AS free to act for itself IN ALL CASES, as were the original, "FIRST FEW," the One Hundred and eighty five, free to act FOR themselves and in their own behalf. A workingman has no property, has no "goods and chattels" invested in another workingman! Neither had the original One hundred and Eighty five any investment, in the Nineteen Thousands that followed! This Hundred and Eighty five, of January 2nd, 1940, or of any other period, had no more
 20 right to dispose of the rights of the coming many, or to bind, or to control them IN ANY SHAPE WHATEVER, than we, today, have any right to decide the status-quo for the next, and all future generations! Just as every generation, the WHOLE generation, is, and must be competent to meet all needs and purposes which its life and occasions will require, so equally ONLY the WHOLE membership of the Union is so competent to act! It's the living, not the dead or those "as yet unborn," who are to be accommodated in this world. And it's the Union-members, ALL the Union-members who are to be accommodated in the Union, not just a
 30 few labor-dictators!

We, the Genuine Socialist Industrial Unionists of British Columbia, are not contending for or against any form of Unionism, here or elsewhere. That which the WHOLE and ENTIRE Union-membership, after full and proper discussion of BOTH SIDES of every question, chooses to do, it has a right to do! But the Closed Shop labor-dictators say NO! Where, then, does the right exist? We contend for the rights of ALL Union members who comprise the Union, as AGAINST these, their rights being willed-away, contracted for, and controlled by a contract based on the
 40 ASSUMED — or still better — PRESUMED authority of the few! That's our contention! The Closed Shop labor-dictators are contending for the authority of the few, and incidentally THEIR OWN, as against and over-riding the authority of ALL, and as against and over-riding the freedom of ALL to rise to the occasions and meet emergencies IN ALL CASES for, and in their

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own behalf! This is what the Closed Shop labor-dictators are contending in favor of! And apparently they are seriously expecting the democratic world to submit to this outlandish version of Democracy and be cowed by it.

There was a time when European despot-kings used to dispose of their crowns by their OWN will, and usually on their death-beds, and used to consign the people like beasts of the field, to whatever successor they appointed. This notion of government is now so exploded as to be scarcely even remembered, and so monstrous as hardly to be believed! But the Closed Shop clause, upon which all labor-dictators are endeavoring to build their industrial church, is still exactly of the same marvelous and monstrous kind! We submit that there is no end to what certain creatures will do, at the expense of the trusting and unsuspecting Working Class! And there is equally no end to the many subtleties or absurdities, under which the divine right to govern can be imposed on the simple credulity of the workingman! 10

In reviewing and summing up all the factors which combine to create and back-drop, the stage-setting of the Closed Shop, in glancing back at poverty, at age, at youth, at women, at children, at inexperience, at the physical and mental inability to fend for themselves, all of whom were herded into the preconceived Closed Shop compounds, one is struck dumb at the sight and at the reflection that such a thing can happen in Canada. In analyzing this situation, an intelligent workingman becomes all the more astonished and disappointed at the conduct of the employers, who joined in this Closed Shop plot, which was instigated and executed with every cunningness of an ambushade. An average workingman can understand the motives of the self-seeking, socially-irresponsible, legally-unrecognizable labor-dictators. But the employers, outside of being legal-entities in our society, are obliged to maintain happy public-relations, aspire to public positions, form something of pillars in our communities, and generally set the example of social conduct. Because of these things, the workingman while not surprised at the Hottentot-behaviorisms of the Closed Shop labor-dictators, did come to form of employers other and happier expectations! 30

We find it difficult to understand the employers' interest and acquiescence to the Closed Shop. In fact, we have given up trying. We are now far more concerned with the general study of the question, with a view, and in the hope of finding a proper, peaceful, legal constitutional means of putting an end to it. 40

One means which we have come upon so far, and which offers the greatest promise, is that of putting the entire question of the

Closed Shop to a popular vote. There is considerable precedent for this in the United States of America and elsewhere. Some states have already outlawed, by popular vote, the institution of the Closed Shop. Note that this was done democratically, by popular vote! In the State of Arkansas, for example, the anti-Closed Shop law reads as follows:

10 "No person shall be denied employment because of membership or affiliation with or resignation from a labour union, or because of refusal to join or affiliate with a labour union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labour union; or because of resignation from a labour union; nor shall any person against his will be compelled to pay dues to any labour organization as a prerequisite to or condition of employment."

"The General Assembly shall have power to enforce this article by appropriate legislation."

20 In addition to the foregoing, the following are some of the States which have introduced legislation affecting labour unions:
Minnesota, Idaho, South Dakota, Texas, Kansas, Colorado, Michigan, Utah, Oregon, Indiana, New Mexico, Maryland, Alabama, Wisconsin, Delaware and Arizona.

The Commonwealth of Australia, also found it necessary to enact similar legislation.

30 All this was done democratically, by popular vote. In view of this great evidence of people of other countries already grappling with the evil of the Closed Shop, it appears very reasonable that we, in Canada, should do likewise. For the sake of the Working Class itself for the safety of Democracy, and for the sake of our country we should follow in their foot-steps. It will be remembered that neither the Closed Shop labor-dictators, nor the Closed Shop employers have ever asked for, or were ever given a popular mandate for the establishment of the Closed Shop. It is therefore only fitting that both parties are made aware of the popular decision on the matter. For our part, we say to both parties alike, the employers and the labor-bosses, that the vanity and presumption of their attempting to govern the Working Class dictatorially and in contempt of those governed, by the Closed
40 Shop means, is the most ridiculous and insolent of all contemporary tyrannies upon this continent!

Good night!

SUPREME COURT OF B.C.
Vancover Registry

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DATE: 27/1/49

751/45

"T.C."
Registrar

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In the Supreme
Court of British
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Exhibit No. 47

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Plaintiff
Dec. 29, 1945

(Continued)

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EXHIBIT No. 49

*In the Supreme
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EXTRACT FROM "ROBERT'S RULES OF ORDER"
(REVISED).

p. 299.

Exhibit No. 49

Extracts from
Roberts Rules
of Order.

Art. XIII. Legal Rights of Assemblies and Trial of Their Members.

73. Right of an Assembly to Eject any one from its Place of Meeting. Every deliberative assembly has the right to decide who may be present during its session; and when the assembly, either by a rule or by a vote, decides that a certain person shall not remain in the room, it is the duty of the chairman to enforce the rule of order, using whatever force is necessary to eject the party. 10

The chairman can detail members to remove the person, without calling upon the police. If, however, in enforcing the order, any one uses harsher measures than is necessary to remove the person, the courts have held that he, and he alone, is liable for damages, just the same as a policeman would be under similar circumstances. However badly the man may be abused while being removed from the room, neither the chairman nor the society is liable for damages, as, in ordering his removal, they did not exceed their legal rights. 20

* * * * *

p. 302.

75. Trial of Members of Societies. Every deliberative assembly, having the right to purify its own body, must therefore have the right to investigate the character of its members. It can require any of them to testify in the case, under pain of expulsion if they refuse.

When the charge is against the member's character, it is usually referred to a committee of investigation or discipline, or to some standing committee, to report upon. Some societies have standing committees whose duty it is to report cases for discipline whenever any are known to them. 30

In either case, the committee investigates the matter and reports to the society. This report need not go into details, but should contain its recommendations as to what action the society should take, and should usually close with resolutions covering the case, so that there is no need for any one to offer any additional resolutions upon it. The ordinary resolutions, where the member is recommended to be expelled, are (1) to fix the time to which the society shall adjourn; and (2) to instruct the clerk to cite the member to appear before the society at this adjourned meeting to 40

show cause why he should not be expelled, upon the following charges which should then be given.

After charges are preferred against a member, and the assembly has ordered that he be cited to appear for trial, he is theoretically under arrest, and is deprived of all the rights of membership until his case is disposed of. Without his consent no member should be tried at the same meeting at which the charges are preferred, excepting when the charge relates to something done at that meeting.

- 10 The clerk should send the accused a written notice to appear before the society at the time appointed, and should at the same time furnish him with a copy of the charges. A failure to obey the summons is generally cause enough for summary expulsion.

- At the appointed meeting what may be called the trial takes place. Frequently the only evidence required against the member is the report of the committee. After it has been read and any additional evidence offered that the committee may see fit to introduce, the accused should be allowed to make an explanation and introduce witnesses, if he so desires. Either party should
20 be allowed to cross-examine the other's witnesses and introduce rebutting testimony. When the evidence is all in, the accused should retire from the room, and the society deliberate upon the question, and finally act by a vote upon the question of expulsion, or other punishment proposed. No member should be expelled by less than a two-thirds* vote, a quorum voting. The vote should be by ballot, except by general consent. The members of the committee preferring the charges vote the same as other members.

- In acting upon the case, it must be borne in mind that there is a vast distinction between the evidence necessary to convict in
30 a civil court and that required to convict in an ordinary society or ecclesiastical body. A notorious pickpocket could not even be arrested, much less convicted by a civil court, simply on the ground of being commonly known as a pickpocket; while such evidence would convict and expel him from any ordinary society.

The moral conviction of the truth of the charge is all that is necessary in an ecclesiastical or other deliberative body to find the accused guilty of the charges.

- If the trial is liable to be long and troublesome, or of a very delicate nature, the member is frequently cited to appear
40 before a committee, instead of the society, for trial. In this case the committee reports to the society the result of its trial of the case, with resolutions covering the punishment which it recommends the society to adopt. When the committee's report is read, the accused should be permitted to make his statement of the case, the committee being allowed to reply. The accused then

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Exhibit No. 49

Extracts from
Roberts Rules
of Order.

(Continued)

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Exhibit No. 49

Extracts from
Roberts Rules
of Order.

(Continued)

retires from the room, and the society acts upon the resolutions submitted by the committee. The members of the committee should vote upon the case the same as other members.

If the accused wishes counsel at his trial, it is usual to allow it, provided the counsel is a member of the society in good standing. Should the counsel be guilty of improper conduct during the trial, the society can refuse to hear him, and can also punish him.

SUPREME COURT OF B.C.
Vancouver Registry

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DATE: 31/1/49

751/45

"T.C."
Registrar

EXHIBIT No. 2

Representative Order

BEFORE THE HONOURABLE : WEDNESDAY, the 14th day

MR JUSTICE MACFARLANE : of November, A.D. 1945

RECORD

*In the Supreme
Court of British
Columbia*

Exhibit No. 2

Representative
Order of
MacFarlane, J.
Nov. 14, 1945

UPON THE MOTION of the Plaintiff herein; AND UPON reading the Notice of Motion herein dated the 23rd day of October, A.D. 1945; AND UPON reading the affidavit of the Plaintiff sworn herein the 23rd day of October, A.D. 1945, and filed; and
 10 the affidavit of Gavin Neil Ferguson sworn herein on the 23rd day of October, A.D. 1945, and filed; and the affidavit of Robert Edward Bellamy, sworn herein the 23rd day of October, A.D. 1945, and filed and the affidavit of William Lee Huck, sworn herein the 23rd day of October, A.D. 1945, and filed and the affidavit of Charles Walter Hodgson, sworn herein the 23rd day of October, A.D. 1945, and filed and the exhibits therein referred to; and the pleadings and proceedings had and taken herein; AND UPON hearing C. Walter Hodgson, Esq., of Counsel for the Plaintiff and John S. Burton, Esq., of Counsel for the Defendants;

20 THIS COURT DOTH ORDER THAT for the purposes of this action W. L. White, W. Schwartz, J. Nuttall, W. Gee, C. W. Caron, S. Jenkins, W. Renwick, W. McGaw, Roy Aquino, G. Farrington, Dave Clark, Fred Dumean, K. Garrison, Orville Braaten, Sidney Belt and David Pearson represent and be authorized to defend the action herein on behalf of and for the benefit of all other persons constituting the Boilermakers' & Iron Shipbuilders' Union of Canada, Local No. 1, otherwise known as Boilermakers' and Iron Shipbuilders' Union Local No. 1;

30 AND THIS COURT DOTH FURTHER ORDER THAT for the purpose of this action W. L. White, W. Schwartz, J. Nuttall, W. Gee, C. W. Caron and S. Jenkins represent and be authorized to defend this action on behalf of and for the benefit of the Executive Committee of the said Union and all other persons constituting the said Executive Committee;

AND THIS COURT DOTH FURTHER ORDER THAT for the purposes of this action W. Renwick, W. McGaw and Roy Aquino represent and be authorized to defend this action on behalf of and for the benefit of the Trustees of the said Union and all other persons constituting the said Trustees;

40 AND THIS COURT DOTH FURTHER ORDER THAT for the purposes of this action G. Farrington, Dave Clark, Fred Dumean, K. Garrison, Orville Braaten, Sidney Belt and David

RECORD
 In the Supreme
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Exhibit No. 2

Representative
 Order of
 MacFarlane, J.
 Nov. 14, 1945

(Continued)

Pearson represent and be authorized to defend this action on behalf of and for the benefit of the Press & Investigating Committee of the said Union and all other persons constituting the said Press & Investigating Committee;

AND THIS COURT DOTH FURTHER ORDER THAT service of this Order and copies of the Writ of Summons herein by leaving copies of each in envelopes addressed to W. Gee, W. McGaw, Roy Aquino, Fred Duncan, Orville Braaten and Sidney Belt as follows:— 339 West Pender Street, Vancouver, British Columbia, at 339 West Pender Street, aforesaid, shall be good and sufficient service of the Writ of Summons herein upon the said persons. 10

AND THIS COURT DOTH FURTHER ORDER THAT the costs of this application be costs in the cause.

BY THE COURT

“A. L. Rodway”
 Dep. District Registrar

“A.D.M.”J.

Approved

“J.S.B.”

Checked

“T.O’N.”

Vancouver
 Nov. 26, 1945
 Registry

ENTERED
 Nov. 26, 1945
 Order Book Vol. 115 Fol. 262
 Per “I.G.”

SUPREME COURT OF B.C. — VANCOUVER REGISTRY
 Put in by Plt. Date: 26/1/49 “T.C.” Registrar

EXHIBIT No. 5

THIS INDENTURE OF AGREEMENT made at the City of Vancouver in the Province of British Columbia on this 3rd day of December, in the year of our Lord One Thousand Nine Hundred and Forty-three.

BETWEEN:

10 THE CANADIAN CONGRESS OF LABOUR for itself by its Executive Council as set out in the Constitution of the Canadian Congress of Labour, which is unincorporated and a National wide Union, organized to promote the interests of its affiliated and chartered local Unions thereof in Canada.

HEREINAFTER CALLED THE PARTY OF THE FIRST PART.

AND:

BOILERMAKERS' AND IRON SHIPBUILDERS' UNION OF CANADA. Local No. 1, heretofore being a Local Chartered Union of the Canadian Congress of Labour, for itself and by its Executive.

20 HEREINAFTER CALLED THE PARTY OF THE SECOND PART.

WHEREAS the Party of the First Part herein is as aforesaid a National Labour Union, its object being for purposes of promoting the interests of labor generally in Canada and particularly the interests of its affiliate and chartered local organizations.

AND WHEREAS the Party of the Second Part has been heretofore a chartered local of the said Canadian Congress of Labour.

30 AND WHEREAS on or about the 27th day of January, A.D. 1943, the Party of the First Part herein by an Investigating Committee composed of Messrs. Patrick Conroy and J. E. McGuire, did suspend the members consisting of the Party of the Second Part herein, as a chartered local Union of the Party of the First Part.

AND WHEREAS at a recent convention of the Party of the First Part herein held in the City of Montreal, representatives of the Party of the First Part and of the Party of the Second Part herein had tentatively discussed the re-adjustment of all the diffi-

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Exhibit No. 5

Agreement
Between C.C.L.
and Union
Dec. 3, 1943

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and Union
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culties with a view of re-establishing cordial relationships between the Parties hereto.

AND WHEREAS certain litigation has been pending in the Supreme Court of British Columbia as between various factions of the Party of the Second Part herein, and particularly in a Supreme Court action in the Supreme Court of British Columbia dated on or about the 25th day of February, A.D. 1943, at the instance of Robert James Rollo Stephen, Thomas Bradley, David Thompson for themselves and other members of the Boilermakers' and Iron Shipbuilders' Union of Canada. Local No. 1, and William Stewart, Thomas G. MacKenzie, F. Cardwell, Fred Carr, Joseph Wright, Edward Simpson, John Lucas, and Arthur Staub and Victor Wadham Forster for himself and as representatives of all other members in good standing of the said Union. 10

AND WHEREAS Judgment was given to the Plaintiffs in the terms prayed for by the Honourable Mr. Justice Sidney Smith on or about the 20th day of March, A.D. 1943.

AND WHEREAS the Defendants herein did appeal certain portions of the said Judgment to the Court of Appeal in the Province of British Columbia and were successful on certain issues therein. 20

AND WHEREAS it is desired by and between the Parties hereto that the matters as between the Parties hereto and the litigants herein referred to be dealt with and disposed of with finality.

AND WHEREAS it is desired by and between the Parties hereto that the status of the Party of the First Part be ascertained in relationship with the Party of the Second Part and vice versa with finality.

NOW THIS INDENTURE for and in consideration of these presents and the mutual covenants contained, the Party of the First Part by its Executive Council for and on behalf of the Party of the First Part, and the Party of the Second Part by its Executive for and on behalf of the Party of the Second Part HEREBY COVENANTS AS FOLLOWS: 30

1. The Party of the Second Part herein shall continue as an organization of workmen as heretofore constituted insofar as membership and types of employment is concerned and as officered by those members of the Union who now hold office, namely: William Stewart, Thomas G. Mackenzie, and George Home, Austin Delany, Gordon Webb and others who shall continue in and exercise the duties of their several offices, subject to such changes as may 40

take place after the conclusion of the regular election of officers of the Party of the Second Part to be held in the month of December.

2. The Parties hereto covenant and agree as aforesaid that all per capita dues and obligations owing or that may be owing by the Party of the Second Part to the Party of the First Part to the 1st January, 1944, shall be fixed, and the sum is hereby fixed in the sum of Ten Thousand (\$10,000.00) dollars computed on a basis of twenty-five (25c) cents per member per month on Ten Thousand (10,000) members for the months of September, October,
10 November and December.

3. The Parties hereto covenant and agree by and between themselves that upon payment of the said sum by the Party of the Second Part to the Party of the First Part any and all claims and demands which the Party of the First Part herein may have against the Party of the Second Part by way of per capita tax or any other claims shall be absolutely satisfied and released. All monies presently held at the Royal Bank of Canada, Hastings and Main Streets, Vancouver, British Columbia, the property of the Party of the Second Part will be released to the Party of
20 the Second Part and the Party of the First Part will execute such documents as are necessary to effect such release. It is understood that the Ten Thousand (\$10,000.00) dollars above mentioned is to be paid out of the monies at the aforesaid Royal Bank of Canada.

4. The Parties hereto covenant and agree by and between themselves that the suspension hereinbefore referred to in the recitals shall be lifted by the Party of the First Part insofar as the Party of the Second Part is concerned upon the execution of these presents.

30 5. It is covenanted and agreed by and between the Parties hereto that as of the first of January, A.D. 1944, the Party of the Second Part herein shall be considered and shall pay dues to the Party of the First Part herein by way of per capita dues and in satisfaction thereof a sum computed as follows, namely: Three (3c) cents per member per month, plus Two (2c) cents per member per month for organization purposes, either directly to the Party of the First Part or through the Federation of Boilermakers' and Iron Shipbuilders' to be formed in the Province of British Columbia as herein set out.

40 6. As of the first day of January, A.D. 1944, the Party of the Second Part shall cease to be a chartered local Union of the Party of the First Part and shall not be subject to any constitutional rights or obligations appertaining to chartered local Unions, therein, but shall be considered for all purposes an affiliate

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and Union
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(Continued)

Union, and subject to the constitutional dispositions of the Canadian Congress of Labour as such.

7. The Parties hereto covenant and agree by and between themselves that as soon as reasonably possible after the first of January, A.D. 1944, a Conference of all locals of shipyard workers in the Province of British Columbia, chartered by the Party of the First Part herein shall be held in the City of Vancouver for purposes of establishing a Federation of Shipyard Workers in the Province of British Columbia which Federation when formed, shall affiliate to the Canadian Congress of Labour and shall there 10
after be for all intents and purposes an affiliate Federation of the said Congress and subject to all dispositions of the said Canadian Congress of Labour, governing affiliated Unions. And all locally chartered Unions joining such Federation shall cease to be locally chartered Union and assume affiliate status through the Federation.

8. It is further covenanted by and between the Parties hereto that upon formation of the said Federation of Shipyard Workers in the Province of British Columbia the same shall pay 20
per capita dues as hereinbefore recited to the Party of the First Part but such sum of Three (3c) cents plus Two (2c) cents per member per month shall represent the total sum payable per member to the Party of the First Part and shall not be in addition to the beforementioned sums as recited in paragraph five (5) herein.

9. The Party of the First Part herein covenants and agrees not to invoke the provisions of the constitution of the Party of the First Part herein, or any amendment thereto, insofar as the same applies to chartered locals pending the establishment of the Shipyard Workers Federation for the Province of British Columbia as hereinbefore stipulated. 30

10. The Parties hereto covenant and agree by and between themselves that insofar as the Parties hereto may, they will cause Robert James Rollo Stephen, former Secretary of the Party of the Second Part herein to return to the Party of the Second Part all monies, books, records and documents that may be in his possession or in the control or custody of the said Stephens relating to the business of the Party of the Second Part herein to the officers of the Party of the Second Part herein forthwith after the execution of these presents.

11. The Party of the Second Part herein covenants and agrees 40
with the Party of the First Part herein that they will cause the Defendants in the Supreme Court Suit hereinbefore referred to to give a release to the Plaintiffs in the said action of any costs that the said Plaintiffs may be responsible to pay to the Defen-

