

In the Matter of FORD MOTOR COMPANY (RIVER ROUGE PLANT) *and*
UNITED PROTECTIVE WORKERS OF AMERICA

Case No. 7-C-1168.—Decided March 31, 1944

DECISION

AND

ORDER

Upon a complaint issued pursuant to charges filed by United Protective Workers of America, herein called the U. P. W. A., against Ford Motor Company (River Rouge Plant), Dearborn, Michigan, herein called the respondent, a hearing was held before a Trial Examiner in Detroit, Michigan, from November 4 to 20, 1943, in which the Board, the respondent, U. P. W. A., and the Plant Protection Association, herein called the Association, participated by their representatives. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On December 18, 1943, the Trial Examiner issued his Intermediate Report, a copy of which is attached hereto, in which he found that the respondent had not engaged in the unfair labor practices alleged in the complaint. Thereafter, U. P. W. A. and counsel for the Board filed exceptions to the Intermediate Report. Oral argument was held before the Board at Washington, D. C., on March 7, 1944, and was participated in only by counsel for the Association.

The Board has considered the Intermediate Report, the exceptions, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions noted below.

While we agree with the Trial Examiner that the evidence is insufficient to support the allegations of the complaint that the respondent dominated or interfered with the formation or administration of, or contributed support to, the Association, within the meaning of Section 8 (2) of the Act, we take notice of our findings and conclusions in a prior proceeding¹ that the respondent discharged

¹ *Matter of Ford Motor Company*, 50 N. L. R. B. 534.

55 N. L. R. B., No. 161.

certain employees because of their membership and activity in U. P. W. A. and otherwise manifested its hostility toward the latter organization. Under these circumstances, it would probably be advisable for the respondent, in order to avoid any possible future charge of unfair labor practices, not to recognize, or bargain or enter into a contract with, any labor organization as the representative of its plant-protection employees unless and until such organization is certified as such representative by the Board.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint herein against Ford Motor Company (River Rouge Plant), Dearborn, Michigan, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Frederick P. Mett, for the Board.

Messrs. I. A. Capizzi and *Malcolm L. Denise*, of Detroit, Mich., for the respondent.

Mr. Frank N. MacLean, of Detroit, Mich., for the UPWA

Mr. Herbert E. Munro, of Detroit, Mich., for the Association.

STATEMENT OF THE CASE

Upon a second amended charge filed September 15, 1943, by United Protective Workers of America, herein called the UPWA, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint, dated September 15, 1943, against Ford Motor Company (River Rouge Plant), herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent, the UPWA, and the Plant Protection Association, herein called the Association.

With respect to the unfair labor practices, the complaint alleges, in substance: (1) that the respondent has dominated and interfered with the formation and administration of the Association and has contributed financial and other support to it by (a) urging its plant protection employees to create an organization to oppose the UPWA, (b) securing the services of counsel for the Association, (c) making arrangements for an participating in membership meetings of the Association, (d) holding office in the Association, (3) permitting members of the Association to collect dues and engage in other Association activities in the plant during working hours but denying similar privileges to the UPWA; and (2) that by these acts the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

On September 23, 1943, the Regional Director of the Seventh Region granted a Petition to Intervene submitted by the Association. Thereafter the respondent and the Association filed separate answers to the complaint; both answers denied that the respondent had engaged in the alleged unfair labor practices. The Association also filed a Request for Bill of Particulars, which was referred by the Regional Director to the Chief Trial Examiner. Having been duly designated by the Chief Trial Examiner as the Trial Examiner in these proceedings, the undersigned issued an order granting certain parts of the Request for Bill of Particulars.

Pursuant to notice, a hearing was held in Detroit, Michigan, from November 4 to November 20, 1943, before the undersigned Trial Examiner. The Board, the respondent, the UPWA and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the close of the hearing the Trial Examiner granted a joint motion by counsel for the Board, the respondent, and the Association to conform the pleadings to the proof in minor particulars. Ruling was reserved upon a joint motion by counsel for the respondent and for the Association for dismissal of the complaint; disposition of said motion is made hereinafter.

Also at the close of the hearing counsel for the Board, the respondent and the Association argued orally before the Trial Examiner. The argument appears in the official transcript of the proceedings. Opportunity was afforded to all parties to file briefs with the Trial Examiner. No briefs have been received.

Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Ford Motor Company is a Delaware corporation, having its principal executive offices at Dearborn, Michigan. It owns, operates and maintains manufacturing and assembly plants in many States throughout the United States. Before February 1942, the respondent was principally engaged in the manufacture, assembly, sale and distribution of automobiles, automobile trucks and various types of automobile parts and accessories. Since February 1942 the respondent has been principally engaged at its plants in Detroit and vicinity, in the manufacture and assembly of ordnance and other materials for the armed forces of the United States.

Not less than 10 percent, and varying as high as 80 percent in value of its raw materials, the total value of which exceeds \$1,000,000 monthly, is shipped to the above-mentioned plants from points outside the State of Michigan.

These proceedings are concerned with the respondent's River Rouge plant at Dearborn, Michigan. The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED¹

The United Protective Workers of America and the Plant Protection Association are unaffiliated labor organizations admitting to membership employees of the respondent.

¹ The findings in Section I and II above, are based upon stipulations entered into by the parties at the hearing.

III. THE ALLEGED UNFAIR LABOR PRACTICES

*A. Background; organization of the UPWA; discriminatory discharges of its leaders; Board's Decision and Order in Case No. C-1016; failure of the respondent to comply with Board's order.*²

Plant protection employees, with whom these proceedings are concerned, were excluded from the bargaining unit in the contract entered into by the respondent and the UAW-CIO in June 1941. During the following month the UPWA was organized to serve as the bargaining representative of plant protection employees. In the latter part of 1941 the UPWA conducted a membership campaign among the respondent's employees in this department at its River Rouge unit. Prospective members were advised by UPWA leaders that it was planned to merge this organization with the UAW-CIO. The campaign met with the respondent's immediate and open hostility. An organizing leader, George R. Jonnard, was laid off in November because of his union activity. He returned to work in December following an agreement between counsel for the UPWA and the respondent. In April 1942, however, Jonnard was discharged because of his continued UPWA activity. In May three UPWA stewards were likewise discharged discriminatorily. In July the UPWA filed charges with the Board. A hearing was held in January 1943, and on June 16, 1943, the Board issued a Decision and Order in which it ordered, among other things, that the respondent reinstate the above-mentioned employees and that it cease and desist from discouraging membership in the UPWA and from other conduct which had been found to be unfair labor practices within the meaning of the Act.

At the time of the hearing in the present proceedings, the respondent had not complied with the provisions of the above-mentioned Decision and Order of the Board.

B. The Association; its formation and administration

1. Formation of the Association

(a) Surrounding circumstances; revival of UPWA activity at the River Rouge plant; election victory of UPWA at another nearby Ford plant

Following the discharge of some of its active leaders, as above described, the UPWA organizational drive at the River Rouge plant "took a . . . nose dive," according to the testimony of John Dickshott, acting president of the local unit. Efforts were made to revive activity at this plant in September 1942, when Dickshott was appointed to office. In November the UPWA won an election conducted by the Board among the respondent's plant protection employees at the engineering laboratory and airport of its Dearborn plant.³ On December 7 the UPWA filed a petition for an Investigation and Certification of Representatives covering plant protection employees at the River Rouge plant.⁴

(b) Early organizing meetings of the Association

Before the UPWA filed its petition on December 7, a few of the plant protection employees, some of whom had previously joined the UPWA, met at taverns

² Although some evidence was adduced in these proceedings relating to the organization of the UPWA and the respondent's conduct designed to discourage membership in it, the findings in this section are mainly in accordance with the Board's findings in Case No. C-1016.

³ Board case No. R-4162.

⁴ Board case No. R-4759. The Board dismissed the petition because the unit sought was inappropriate.

outside the plant to discuss the forming of another organization⁵ On December 11, 14 and 21, and on January 3, 1943, mass meetings of employees were held at social club quarters also outside the plant. A temporary chairman and secretary were selected, and minutes of these mass meetings were kept by the latter. Expenses of hiring the meeting halls were met by "passing the hat" among those present.

After the business session of the second mass meeting, the employees went into a private "tap room" adjacent to the meeting hall. Beer was served. Two members of the respondent's supervisory staff—Supervisor Harold J. Crout, and Foreman John Connolly, dropped in on the post-meeting party and shared in the drinking of beer, having previously been invited by employees of the service department.

At the third mass meeting membership applications were distributed and signed⁶ At the same meeting proposed bylaws were accepted by the attending employees. At the meeting of January 3 plans were laid for an election of officers to be held January 21.

(c) Stated purposes of the Association during its organizing period

The record permits no doubt that the prime objective of the employees who assumed leadership in forming the Association was to defeat the UPWA. Charles Roth, who served as acting and later as permanent secretary, testified that the "idea" of forming the Association was his own and that of a few others, and that although he had first signed up with the UPWA he believed that it was connected with the CIO and so wanted an organization to combat it. According to the minutes of the first mass meeting, employee John Silvi suggested that they form:

. . . not a Ford Motor Company Union, but only a social organization or Club towards our own personal interests.

⁵ In oral argument counsel for the Board contended that the "first step" in organizing the Association was taken on December 9, when Jack (F. C.) Giel, a leader, told employee Daniel A. Caton and others, according to Caton's testimony, "that he had heard from a very good source that Jimmy Brady (an official in the respondent's personnel department) had said he hoped the service men would not throw the company over for a union . . . (and) that on that basis it would be necessary to start some sort of a unit to combat the union." Giel was not a witness; the identity of the "very good source" is not revealed by the record. The Trial Examiner considers Caton's testimony on this point, although undisputed, as insufficient evidence upon which to base a finding that Brady instigated the forming of the Association. Counsel for the Board further contends that Giel, at the time of his conversation with Caton, was "a clearly supervisory employee." As discussed at greater length hereinafter, leaders such as Giel do not possess supervisory powers of a nature or to a degree causing the employees reasonably to believe that their statements bear the authority of management. Therefore the Trial Examiner finds that the evidence does not support the contention that the respondent is responsible for the foregoing statement of Giel. The above findings as to initial steps taken in forming the Association are based upon the undisputed testimony of other witnesses also called by the Board,—notably Leon Hill and Charles Roth.

⁶ The text of the application blanks was as follows:

PLANT PROTECTION ASSOCIATION

Rouge Division

I hereby apply for membership in the Plant Protection Association, Rouge Division. I have read or have heard read the Charter and By-Laws of the Association, and I hereby subscribe to them and agree to abide by them and all amendments thereto as long as I am a member of the Association. I am not now a member of any group or organization whose aims, purposes, and objects are in conflict with the aims and purposes of this Association, and I pledge myself not to join any other group without first resigning from this Association.

At the second mass meeting Silvi read from a statement, previously prepared by himself, in which he set forth the course which he suggested the organization should follow. Excerpts from this statement follow:

. . . I have come to the conclusion that most of the Ford Motor Co. plant protection men would like some sort of organization. By that I do not mean that the men want a union affiliated with the C. I. O. or A. F. of L. or X. Y. Z. or, what have you. Nor do I mean that the men feel that organization is absolutely necessary. I mean simply this—the men are of the opinion that an organization of some kind might possibly benefit them. Now, you all know, and I know that, in a general sense, the Ford Motor Co. has treated its plant protection men wonderfully. Our department has always been the pet of the company. At the present time, if everything is taken into consideration our department is the best treated plant protection dept. in the United States. There is no need for me to go into detail and I'm sure you men all agree with me on that score. But—there is nothing in this world that is absolutely perfect. There is nothing that could not in some small way be improved upon. So it is with the relationship that exists between the Ford Motor Co. and its plant protection department. Although that relationship is excellent—it can be improved upon. And—it is that small improvement that the men have in mind when they say they would like some sort of organization.

. . . we must face the fact that sometime, some outside interests, whose aims be purely selfish, may attempt to create an organization within our group for the sole purpose of advancing their own ends, and without any regard for the welfare of our men. Therefore, our course is very clear. If there is to be an organization in our department—let it be one created by our men, run by our men for the benefit of our men, and not for some outside interest.

Also at the second mass meeting John Dickshott, previously identified as acting head of the River Rouge unit of the UPWA, asked from the floor whether or not a labor organization was being formed. He was answered in the negative, also from the floor, by W. D. Gabbard, a leader, who further advised Dickshott to "wait and see."

According to the bylaws adopted by the Association:

This Association is a voluntary unincorporated association formed for the purpose of mutual aid, cooperation, exchange and interchange of information and to promote the general welfare, protection and well being of plant protection employees of various manufactories, branches, subdivisions, plants or divisions of the Ford Motor Company and all other similar and allied occupations, trades and professions and further to protect the welfare of all its members.

The "Preamble" of the bylaws states:

WHEREAS, the various members of the Plant Protection Department of the Ford Motor Company have been informed that there is a movement on foot to cause the formation of a union and various bargaining powers to be exercised on their behalf by said union, and

WHEREAS, the members have been informed that an application is now pending for an election to require bargaining powers to be exercised on their behalf with the National Labor Relations Board of the United States, and

WHEREAS, the various and sundry members are fearful that they may be forced to either join a union or other Association and be forced to delegate their individual bargaining rights and the conditions of their employment to some group whose interests might be antagonistic and

WHEREAS, the plant protection employees desire to formulate an organization of their own which will serve to protect them against any compulsion to join any union or other organization that might not fully represent the interest of their members because in the daily execution of their duties they act in some measures and to some extent as police officers policing and protecting the men and the plant, and

THEREFORE, they desire to remain as a distinct, separate entity not responsible to or beholden to any other group, association or union.

(d) Employment of Herbert E. Munro as attorney for the Association

The above-described Association bylaws were drawn up by Herbert E. Munro, a Detroit attorney who, since May 7, 1942, has been employed by the respondent as a part-time plant protection guard at the River Rouge unit.⁷ Munro first became connected with the Association, so far as the record reveals, after the second mass meeting of the plant protection employees. He was then approached by Leon Hill, temporary chairman of the Association, who asked him to assist in drawing up articles and bylaws. Munro agreed and thereafter became counsel for the Association.

(e) Activity of "leaders" in organizing the Association

Among plant protection employees assuming a leading part in forming the Association were Leon Hill and John Silvi. Both attended the tavern meetings; Hill became temporary chairman, and Silvi's remarks at one of the mass meetings have been quoted above.

Counsel for the Board contended in oral argument that Hill and Silvi were "basically supervisory officials of the Ford Motor Company." Hill is a leader assigned to the tool and die building, while Silvi is an assistant leader whose usual post is at the employment office.

The record contains much testimony about leaders, both in general and relating to certain individuals. Among the 850 plant protection employees at River Rouge about 75 are classified as "leaders" or "assistant leaders." Unclassified employees receive \$200 a month; assistant leaders \$210; and leaders \$215. The duties of leaders and assistant leaders are the same. All plant protection men, including leaders, "ring in" before each shift, and at the time clocks are assigned, by an assistant foreman in the office, to certain gates, buildings, or to roving or "free lance" duties. At some gates and in some buildings several employees are thus assigned. It is the duty of the leader or leaders at such points or areas to make sure that all posts are covered. In the event that a man requires a relief, the leader may arrange for such relief or take the post himself. Leaders are responsible to the assistant foreman of the plant protection department. They have

⁷ Munro's testimony is undisputed that sometime before May 1942, he received a circular letter sent out by the Detroit Bar Association, urging lawyers to obtain part-time work in war plants if possible. Responding to the request, Munro went to the Bar Association office, offered his services, and was sent first to a tool manufacturing plant. The work available there was too fine for his eyes, and he returned to the Bar Association office for other suggestions. This time he was sent to the Ford Motor Company, and at the employment office was hired as a guard. Munro has practiced law for about 32 years and some years ago, while in the Prosecutor's office, had as an assistant I. A. Capizzi, now one of the respondent's counsel.

no power to discharge or to discipline employees assigned to their area. If a leader observes a plant protection man breaking rules he must obtain authority from the foreman before sending him to the office. In some cases a leader may be the only employee at a gate, and at other gates or posts he may have several men under him. Leaders wear no distinguishing uniform, badges or insignia. No list of leaders has ever been posted by management; many witnesses at the hearing testified that they had no idea who among them had been so classified. Leaders are paid the same as "free lance" men, conceded by counsel for the Board to be non-supervisory. They are paid their classification salary, whether they have several men under them or are assigned alone to a post.

Early in the hearing counsel for the Board contended that leaders are agents of the respondent because they have supervisory powers. At another point he stated, "I take the position that they (leaders) are not proper members of an Association of plant protection . . . employees," and that under the circumstances,—the respondent's open hostility towards the UPWA,—the membership and activity of leaders in the Association constituted support by the respondent of that organization. The Trial Examiner does not consider that the respondent's hostility toward the UPWA has any bearing upon the question of the supervisory status of leaders.

According to a statement of counsel for the Board, read into the record after examining the membership lists of both the UPWA and the Association, it appears that at least 17 leaders and 23 assistant leaders have been or still are members of both organizations. John Dickshott, present head of the UPWA, is an assistant leader. The UPWA has never excluded leaders from membership, and this classification is included in the present contract between the respondent and the UPWA covering plant protection employees at the Dearborn engineering laboratory. Since their membership in both organizations is or has been general, such membership and activity cannot be held to be a determinant factor in deciding whether or not the respondent dominated or interfered with the organization or administration of the Association.⁸

In oral argument counsel for the Board implied that Hill, Silvi, Gabbard and Giel possessed authority greater than other leaders and that actually they were "clearly supervisory officials." As to Giel, his name appears on the membership lists of both organizations. His supervisory status, therefore, is irrelevant to the issues before the Trial Examiner. Hill, as noted above, is a leader in the tool and die building where from 9 to 11 other guards are assigned. While it is his duty to see that more posts are covered than some other leaders, there is no evidence that his authority over them is greater or of a different nature than that of a leader with only one man under him. As to Gabbard, at the time the Association was organizing⁹ he was a leader with

⁸ Counsel for the Board similarly contended that certain classifications in the fire department—members of which are eligible to membership in both the UPWA and the Association—are "supervisory." The same membership records, however, revealed that many employees in such classifications have been or still are members of both organizations. In view of this fact, the Trial Examiner believes it unnecessary to determine the question of supervisory authority of firemen in the classifications cited by counsel for the Board.

⁹ Gabbard was promoted to assistant foreman February 1, 1943. This promotion was made as a result of a request by a resident representative of the Army Air Forces, for reasons unrelated to the issues in this case. Gabbard has retained his membership in the Association, but he holds no office and there is no evidence of his activity in its behalf since his promotion. While Charles Bernard, head of the plant protection department, testified that he had never inquired whether or not Gabbard belonged to the Association, he stated that he did tell another foreman,—Hupke, that because of his position he "didn't belong in any organization." The Association records show that Hupke stopped paying dues in the Association after July 1943. Hupke's payment of dues, so far as the record shows, was his only Association activity.

14 guards to post, as above described, but with the same duties as other leaders. As to Silvi, his usual station is at the employment office, and as an assistant leader posts from 4 to 7 guards. His duties are similar to others in the same classification. The Trial Examiner can attach no special significance to the fact that Silvi's regular post was at the employment office, since Dickshott, at the time he was leading the UPWA membership drive in the fall of 1942, was an assistant leader regularly assigned to the plant protection office.

The Trial Examiner finds that the evidence does not support the contentions of counsel for the Board that the four employees above-named were "supervisory officials."

2. Administration of the Association

(a) The election of January 14, 1943

On January 14, 1943, Association members elected permanent officers. The election was conducted by secret ballot and under the supervision of a former employee of the Detroit Election Commission. On the same ballot appeared the following referendum:

Do you want the Plant Protection Association to demand representation rights before the NLRB as your independent employee organization and bargaining representative?

Thereafter the Association sought investigation and certification by the Board. The UPWA filed its original charge in these proceedings on April 19, 1943, and no hearing has been held on the Association's petition.

(b) Demand for recognition by the respondent

On February 18, 1943, counsel for the Association sent a letter to Harry Bennett, personnel director, asking for recognition by the respondent of the Association as the exclusive bargaining representative of employees in the plant protection division. No reply to this demand was received, and the respondent has not recognized the Association as the bargaining unit at its River Rouge plant.

3. Alleged disparity of treatment by the respondent between the Association and the UPWA

(a) Distribution of literature and campaigning on company time and property

Undisputed evidence establishes that Association members campaigned on company time and property. Undisputed evidence establishes that UPWA members did likewise. It appears that both organizations have not observed to the letter the respondent's rule that:

Soliciting or collecting contributions for any purpose whatsoever on Company time is prohibited unless authorized by the management.

There is no evidence that special permission was given to either organization, or that the rule was invoked as to one and not the other. In totality of incidents concerning which evidence was adduced, it appears that the Association has violated the rule on a greater number of occasions than the UPWA, but this fact is tenuous ground for basing a finding that discrimination was exercised by the respondent. There is also evidence that one plant protection employee, who worked nights in the office tending the switch-board, occasionally ran off

Association notices during his spare time on one of the respondent's duplicating machines, using some of the respondent's paper for the purpose. He was never instructed not to do this, and there is no direct evidence that his superiors were aware of it. While the surrounding circumstances warrant an inference that his superiors had knowledge of his conduct in this respect, and while their failure to forbid it might be construed as indirectly supporting the Association, the Trial Examiner does not consider such support as sufficient to mark the Association as company dominated or assisted.

(b) The sandwich incident

For the past two years Mike Savage, one of the plant protection employees, has been assigned to a lunchroom near the respondent's property. Guards are posted regularly at this and similar lunchrooms to inspect food and its containers which are brought into the plant for employees. On a Sunday evening in April 1943, while on duty at this lunchroom, Savage helped a restaurant employee make sandwiches which were to be used the following night at an Association "party." There is no evidence that management officials knew of the incident, which the Trial Examiner considers as too trivial to deserve further comment.

(c) The Evranian incident

In January 1943, while actively soliciting memberships for the UPWA Manoog Evranian, an employee of the respondent's fire department, was instructed by the fire chief that there "would be no union activities on Company time." Thereafter a written notice to this effect, but mentioning neither organization, was circulated among other members of the department. Evranian dropped his UPWA activity, according to his testimony, because "of the Chief's attitude and because the UPWA became inactive." A few months later he joined the Association and solicited memberships in that organization as he previously had for the UPWA. He became a director of the Association and in July was discharged by the department chief following a dispute in which Evranian endeavored to defend another employee who was being sent home. Evranian promptly consulted Walter Hogue, another officer of the Association, who was stationed as a guard at a parking lot. Without obtaining permission from his superiors Hogue left his post and with Evranian drove into Detroit to confer with Munro. Hogue returned to the plant but did not report his absence, and there is no evidence that the respondent's officials knew he had left the parking lot. Munro filed charges against the respondent with the Board's Regional Office for Evranian, who was advised by a Board representative to seek reinstatement. At Evranian's request, Mike Savage, vice-president of the Association, interceded on his behalf with Bernard, and the latter arranged for his re-employment as a plant protection guard, a position which he continued to hold at the time of the hearing.

The Trial Examiner is unable to conclude that any of the above facts, or all of them, establish either disparity of treatment or support of the Association. Neither the Chief's admonition to Evranian in January nor the circulated notice specified either the Association or the UPWA, although both were then organizing. Nor do the circumstances warrant attaching significance to the fact that Mike Savage interceded for Evranian. Bernard testified that Savage, in speaking for Evranian, did not represent himself as an Association officer. Savage and Bernard are friends of long standing,—both having played on the same university football team.

C. Conclusions

In Case No. C-1016 the Board found that the respondent discharged UPWA leaders and otherwise discouraged membership in that organization. Similar treatment has not been accorded to the Association or its leaders. A contrast in conduct on the part of the respondent has thus been created.

Such contrast obviously did not materialize until after the Association came into being, and therefore cannot be held to have been the cause of its formation. There is no evidence in the record that any of the respondent's officials affirmatively urged or advised organization of the Association.

The contrast in treatment has been noted, unquestionably, by plant protection employees. It may well have prompted many of them to withdraw from an organization which had received the respondent's positive disapproval and to join an organization which was being permitted to function without interference or discouragement. If such contrast be construed as assistance to or support of the Association, however, it appears that equalization would require either compliance with the Board's order in the above-mentioned case or the discharge of Association leaders. The Trial Examiner hesitates to recommend the latter alternative.

Counsel for the Board argues that the purposes voiced by Silvi and others active in forming the Association as well as those contained in the preamble of its by-laws are "masterpieces of company unionism." The Trial Examiner considers them to be indicia, no more, and like other signs to be believed only if they lead to the alleged destination. In this case there is no evidence of company domination or interference with the Association's administration. The Association is plainly functioning as a labor organization. Since the organization of its River Rouge unit, the Association has been certified by the Board at the respondent's Highland Park and Lincoln plants. Negotiations led to the signing of contracts with the Association at these two plants, as negotiations resulted in a similar agreement with the UPWA covering plant protection employees at the Dearborn Engineering laboratory.

In summary, it is the opinion of the Trial Examiner that the plant protection employees at River Rouge are being deprived, by the respondent's failure to comply with the Board's order in Case No. C-1016, of their rights freely to select a bargaining agent of their own choosing. As to these proceedings, however, the Trial Examiner concludes and finds that the evidence does not support the allegations of the complaint, and it will be recommended that the complaint be dismissed.

Upon the basis of the above findings of fact and the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Protective Workers of America and Plant Protection Association are labor organizations within the meaning of Section 2 (5) of the Act.
2. The operations of the respondent occur in commerce, within the meaning of Section 2 (6) of the Act.
3. The respondent has not dominated or interfered with the formation or administration of the Association and, insofar as the allegations in the complaint are concerned, has not engaged in unfair labor practices within the meaning of the Act.

RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, it is recommended that the complaint herein be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington, D C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefore must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

C W. WHITTEMORE,
Trial Examiner.

Dated December 18, 1943.