

In the Matter of VICTORY RETREADERS & VULCANIZERS, INC. and TIRE,  
BATTERY, AUTOMOTIVE PARTS & ACCESSORIES EMPLOYEES UNION,  
LOCAL 21082, AFL

*Case No. 2-C-5186.—Decided July 10, 1944*

## DECISION

AND

## ORDER

On February 29, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8 (1) of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. The Trial Examiner also found that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (3) and (5) of the Act, as alleged in the complaint, and recommended that the complaint be dismissed with respect thereto. Thereafter, the respondent and counsel for the Board each filed exceptions to the Intermediate Report and briefs. Oral argument was not requested, and was not held. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the briefs and exceptions of the respondent and of counsel for the Board, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

## 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 respondent, Victory Retreaders & Vulcanizers, Inc., New York City, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Tire, Battery, Automotive Parts & Accessories Employees Union, Local 21082, AFL, or any other labor organization,

to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places in its plant in New York City and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges (1) that the respondent discriminated with respect to hire or tenure of employment or any term or condition of employment within the meaning of Section 8 (3) of the Act; and (2) that the respondent refused to bargain collectively within the meaning of Section 8 (5) of the Act.

#### INTERMEDIATE REPORT

*Richard J. Hickey, Esq.*, of New York City, for the Board.

*Robert M. Stanlea*, 160 Fifth Ave., New York City, for the Union.

*Aaron Solomon, Esq., of Solomon, Schein & Sheldon*, 1450 Broadway, New York City, for the respondent.

#### STATEMENT OF THE CASE

Upon a second amended charge filed January 7, 1944, by Tire, Battery, Automotive Parts and Accessories Employees Union, Local 21082, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York City, New York), issued its complaint dated January 10, 1944 against Victory Retreaders and Vulcanizers, Inc., herein called the respondent, alleging that the respondent at its plant in the City of New York, State of New York, had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and amended charge accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleges: (1) that on or about May 28, 1943, the respondent discharged Michael Lovett, Thomas Brennan, and John Lander, and since that date has failed and refused to reinstate them to their former or substantially equivalent employments, for the reason that they joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; (2) that all the employees of the respondent employed at its plant in New York City, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, that on or about May 26, 1943, a majority of

the employees in such unit designated the Union as their representative for purposes of collective bargaining, and that on or about May 28, 1943, the Union requested the respondent to bargain with it with respect to rates of pay, wages, hours of employment, or other conditions of employment, as the exclusive representative of all the employees in the unit above described, but that on such date and at all times thereafter the respondent has refused and continues to refuse to bargain collectively with the Union as such representative; (3) that from on or about May 26, 1943, up to the date of the complaint, the respondent has vilified, disparaged, and expressed its disapproval of the Union; has interrogated its employees concerning their union affiliation; has urged, persuaded and warned its employees to refrain from assisting or becoming members of the Union; and has threatened its employees with discharge or other reprisals if they joined or assisted the Union.

The answer of the respondent denies all the allegations with respect to the alleged unfair labor practices but admits the discharge of Michael Lovett, Thomas Brannon, and John Lander on May 28, 1943, and states that these employees were discharged for just cause.

Pursuant to due notice a hearing was held on February 10 and 11, 1944, at New York City, New York, before R. N. Denham, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. At the hearing the Board and the respondent were represented by counsel and the Union by its Secretary-Treasurer. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the conclusion of the presentation of evidence on behalf of the Board, a motion by counsel for the Board to conform the pleadings to the proof was granted without objection and made applicable to all pleadings for the correction of names, dates and other minor matters not affecting the issues involved. At the conclusion of the respondent's testimony, the motion of the respondent to conform the pleadings to the proof was granted without objection and with the same limitations. At the close of the taking of all testimony, counsel for the respondent moved for the dismissal of the complaint for failure of proof. The motion was taken under advisement and except as otherwise indicated in this report, is now denied. Formal oral argument at the close of the hearing was waived by all parties although there was an informal discussion between counsel for the Board, counsel for the respondent and the Trial Examiner, covering certain matters within the issues. This discussion is part of the record. Counsel for the respondent was allowed 7 days within which to file a brief with the Trial Examiner. No brief has been received.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted in evidence, and upon the entire record made herein, the undersigned now makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Victory Retreaders and Vulcanizers, Inc., is and has been a New York corporation since February 1942. It maintains its principal place of business and sole plant in New York City, where it engages in the business of vulcanizing, retreading, and the sale and distribution of automobile tires. In connection with the operation of its business, the respondent utilizes rubber and other incidental materials which in the past 18 months it has purchased to an amount in excess of \$75,000, of which more than 15 percent has been shipped to it from points outside the State of New York. During the same period the respondent has re-

treaded automobile tires and performed other similar services of total value of more than \$75,000 and has transported tires so processed to points outside the State of New York to the extent of more than 25 percent of its total production. The respondent admits that it is engaged in commerce within the meaning of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Tire, Battery, Automotive Parts & Accessories Employees Union, Local 21082, A. F. of L., is a labor organization admitting to membership the employees of the respondent.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

The respondent engages in a wholesale and retail business of retreading, recapping, and vulcanizing used automobile tires for truck and passenger car service. This process involves vulcanizing tires where the fabric or carcass is broken and thereafter grinding down the surface of the tire to be retreaded or recapped, applying the material which is to make up the new tread or cap and then placing the tire in a hot mold where it is kept for an hour, after which it is removed. This completes the process. There are some five or six steps in the process of thus reconditioning an automobile tire. The work is arduous and is carried on under high temperatures. It is also integrated so that an interruption in one step interferes with the entire line of production. Normal employment is about 12 persons, of whom 2 are the superintendent and foreman, respectively, the others being ordinary production workers or truckdrivers who pick up and deliver the tires upon which the respondent performs its service. On May 26, 1943, there were nine persons employed in the production, maintenance and delivery work of the respondent, other than the superintendent and the foreman.

On or about May 24, 1943, Theodore Bernard, a mold operator, got in touch with a representative of the Union and obtained a number of membership application cards from him. These were distributed among the employees who showed an interest in the union organization and as a result, by the morning of May 26, 1943, five signed cards, including his own, were in Bernard's possession.

During the morning of May 26, Bernard got word to Robert M. Stanlea, the Union's secretary and organizer, that he had the cards and requested him to come and get them during the lunch period. At noon he delivered the cards to Stanlea at a nearby lunch room and bar.<sup>1</sup> Within the next 24 hours Bernard obtained 2 more signatures and on May 27 turned those over to Stanlea. Of the seven cards, four bore dates May 25 or May 26 in the handwriting of the applicants and three bore no date originally. Each of these had the date, "May 26" inserted in Stanlea's handwriting. Stanlea stated he made these entries upon receiving the cards on that date. Although the authenticity of the signatures is not questioned, there is conflict in the testimony as to whether all the cards were placed in the hands of Stanlea, on or before May 26. He testified that he received them all on the occasion of his first call on Bernard at noon on May 26. On the other hand Bernard testified that he gave Stanlea only five of the cards on May 26 and that on the following day he obtained the two remaining cards, signed respectively by John Tracy and Steve Yermeny. All the cards, however, were identified by credible testimony as having been in existence and in the possession of Stanlea not later than May 28, and it is now found that they were in fact executed by the persons whose names appear thereon and placed in Stanlea's possession on or before May 28, 1943.

<sup>1</sup> The lunch room and bar is next door to the plant and hereafter will be referred to as the bar.

In May 1943, the operations of the respondent were being carried on by two shifts, each of which worked 12 hours, beginning at 8 o'clock a. m. and 8 o'clock p. m. respectively. John Tracy, a mold operator, and two others constituted the night shift, working without direct supervision. Bernard, with Michael Lovett as helper, operated the molds in the day shift. John Lander and Meyer Alper operated the two trucks of the respondent during the day shift hours, picking up tires to be retreaded and delivering the finished tires, and also did odd jobs in the plant when they were not actually engaged on their trucks. Louis Mushlin acted as watchman and also did numerous odd jobs around the plant. He usually came to the plant an hour or so before the day shift came on duty at 8 o'clock, opened up the office which is on the ground floor and remained on duty in the office or at the front door until 9 o'clock when he took up his production work on the second floor of the plant. Alper and Mushlin were the only employees who did not sign application cards authorizing the Union to represent them<sup>2</sup>

When Stanlea received the application cards from Bernard on May 26, he went immediately to the plant, and met Morris Libman, the plant superintendent, who is one of the stockholders in the respondent corporation. Stanlea introduced himself to Libman and asked to see "the boss." He was told that the member of the firm who would handle matters pertaining to labor relations was Jack Nelson; that Nelson came to the plant every Tuesday and Friday afternoon and that if he wanted to see Nelson he could do so by calling at the plant the following Friday, May 28 at about 2:30 p. m.

Early in the afternoon of May 26, after Bernard had given Stanlea the cards and had returned to his work, Emanuel Gramaglia, the shop foreman, who is generally referred to throughout the record as "Al," approached Bernard and asked him who it was he had been talking to during the lunch hour, referring to the person as a "racketeer." Bernard told him it was a union representative. Gramaglia then questioned Bernard about the union activities in the shop and particularly about his own membership in the Union. A little later Gramaglia approached Thomas Brennan who was working on the other side of the room and asked him about the Union. After Brennan had told him that he had joined the Union, they engaged in a discussion concerning the costs and possible benefits of union membership. Gramaglia continued his inquiries among most of the men, but there is no evidence that he threatened any of them or did anything more than to inquire whether they had joined. Most of them answered him in the affirmative.

On the morning of May 28, 1943, Gramaglia arrived at about 7:30 and began laying out plans for a rather heavy day's work. Bernard came in before 8 o'clock, as did John Lander, the truck driver. When Lovett, Bernard's helper, did not show up at 8 o'clock, Gramaglia helped Bernard get his molds in operation and also assisted Lander in getting a large delivery ready to take out. Although the tardiness of Lovett and Brennan discommoded Gramaglia in getting the plant in operation, he did no more than comment critically on it since these two men, who lived near each other, frequently were a few minutes late<sup>3</sup>. At about 8:10, Lander took a large tire down stairs and placed it in the truck,

<sup>2</sup> There was some testimony to indicate that possibly Yermeny's signature was obtained by coercion or duress. The Trial Examiner invited counsel for the Company to pursue this subject but his suggestions were not followed, and in view of other testimony indicating that Yermeny's signature was obtained in regular course and without coercion, his application is herein regarded as one which was executed in regular course and represented his free choice of a collective bargaining representative.

<sup>3</sup> Concerning tardiness, Gramaglia testified without contradiction, that the men were not docked for tardiness unless they came in after about 8:20. On such occasions, he started their time as at 8:30, but for shorter periods of lateness made no deductions.

after which he went to the nearby bar to buy a cigar. There he found Brennan and Lovett who had been in the bar since before 8 o'clock. In getting to the place, they had passed by the office and were seen doing so by Mushlin. Lander joined Brennan and Lovett who explained to him that since they were already late, they intended to wait until 8:30 before reporting for work because they expected to be docked for 30 minutes of time in any event. By 8:30, Lander had not returned and Gramaglia went in search of him. He inquired of Mushlin whether he had seen Lander and was told that after Lander put the tire in the truck, he had gone into the bar and was still there. Mushlin also volunteered the information that Brennan and Lovett had walked past the office at about 8 o'clock and gone into the bar. Gramaglia, followed by Mushlin, went to the front door of the bar, found Lovett, Brennan and Lander standing at the end of the counter near the open door drinking beer, and beckoned to them to come to the door. Lovett responded. When he reached the door, Gramaglia, in a voice loud enough to be heard by all three of the men, asked why they were in there drinking beer at that time of day instead of being in on the job. To this Lovett replied, "Aw, don't get your bowels upset." The others said nothing. Gramaglia, who admitted that he was "burned up" by this conduct, told the men that this was no time to be there drinking beer and directed them to get into the shop and at work. To this, Lovett replied, "Go to hell!" and turned around to rejoin his companions who still said nothing nor made any move to leave the bar.\* Gramaglia, whose working schedule had been disrupted by the absence of the men, replied, in effect, "If you fellows feel that way about it, you're through; you can stay here and drink all the beer you want and wait until Moe (Morris Libman) comes." Gramaglia regarded this as a discharge and returned to the plant office.

When Libman came to the plant at about 9:30 a. m. Gramaglia reported that he had discharged Brennan, Lovett and Lander because of their unauthorized absence from the plant and the attitude they took when he asked them to come into work. Libman approved his actions although both expressed regret that Lander had not returned. Shortly after this conversation Lander appeared at the office, demanded his pay, and announced that the Union would take care of them. Libman told him to come back at about 2:00 or 2:30 in the afternoon when Jack Nelson would be at the shop with the regular Friday pay roll and would pay him off. In the meantime Lander, Brennan and Lovett had telephoned Stanlea about their discharge. Stanlea and one LaGuardia, also a union representative, immediately came to the bar where they met the discharged men and, after discussing the discharges, went to the plant office, demanded of Libman to know why the men had been discharged, and accused Libman of having discharged them because of union activities. Libman stated that he did not discharge the men but that they had been discharged by the foreman Al Gramaglia. During this conversation, Gramaglia was either called or came into the office and was asked by Stanlea to put the men back to work. His reply, in effect, was "I wouldn't hire those rummies if they were the last men on earth." A little later Stanlea and LaGuardia returned to the office and asked Libman to have Gramaglia go with them to the saloon and discuss the discharges face to face

\* There is sharp conflict in the testimony as to whether the men were drinking beer or coffee. Without analyzing this conflict, it is found that they were, in fact, standing at the bar with partially filled beer glasses before them when the above conversations took place, and that testimony of Lander and Lovett to the contrary is not to be credited. It is also to be noted that on two or three other occasions, Gramaglia had discharged Brennan for reporting at work in an intoxicated condition and that each time Libman had rehired him on pleas of Brennan's wife.

with the men. Gramaglia did as requested and met with Stanlea, LaGuardia, Brennan, Lovett, and Lander.

The conversation was a general one, sometimes rather heated. Stanlea asked whether the men had been discharged because of their union activities. Gramaglia assured him they had not. Stanlea also asked Gramaglia whether he would take them back to work and was told that the matter was entirely up to Libman. Gramaglia reviewed the incident, told them of his anger at Brennan and Lovett for going by the shop without reporting for work and criticized all of them for neglecting the work when there was a heavy day of operations scheduled. He expressed regret that Lander had participated but stated he could do nothing further about it. During the conversation, the men then demanded their pay but were told that during the afternoon Nelson would be in and would settle with them. That afternoon all three of the men were paid in full and have not been since rehired at the plant. Lander obtained employment the next working day, lost no time, and stated on the witness stand that he did not care to return to his former employment. Brennan is in the armed service of the United States. Lovett stated that he was without employment between May 28, 1943 and about June 10, and that he desires to return to his former employment at the plant of the respondent.

Although LaGuardia and Stanlea were advised that Nelson was really the last authority in the plant on matters pertaining to industrial relations, they did not attempt to see him on the afternoon of Friday, May 28, when, according to the information they had received both from Libman and Gramaglia, he paid his customary semi-weekly visit to the plant.

It was well known to Gramaglia that the discharged men were members of the Union. At no time did he conceal the fact that he did not approve of the Union and during his conversation with the dischargees and Stanlea and LaGuardia on the morning of the 28th, stated that he did not care to have anything to do with the Union and did not like it.

At the plant there is an unwritten law which forbids the individual workers to leave their work during working hours to go out to the bar or to other places for refreshments. Instead, the respondent allows one of the men to take orders twice a day for such refreshments as the men wish. He then goes out, gets whatever has been requested and delivers it to the men in the plant. For this purpose, a 15-minute rest period is allowed all employees each morning and afternoon. In short, the men are expected to report at 8 o'clock and stay on the job at all times except during the lunch period. This rule is recognized throughout the plant and in the past has been observed by all employees except Brennan who had been caught several times by Gramaglia sneaking over the back way to visit the bar during working hours. The presence of Brennan, Lovett and Lander in the bar at 8:30 was in conflict with the known working rules of the plant. The work history of Brennan was especially unsatisfactory. That of Lovett, a friend of Brennan for whom the latter had obtained employment at the plant, was brief and also not wholly satisfactory. Lander's work history was not criticized. Gramaglia and Libman admittedly regretted the necessity for discharging him. But the failure of all three to indicate any affirmative response to Gramaglia's direction that they get to work and their apparent approval of Lovett's insolence was inexcusable. Whether they were drinking coffee or beer is not material. Whether they were sober or intoxicated does not change the issue. They were off duty without permission and contrary to the rules. They were neglecting their work and must be said to have participated in Lovett's insolence and insubordination. There is no evidence that their union affiliations or activities in any manner affected Gramaglia's decision to discharge them.

or his refusal to rehire them. It is accordingly found that such discharges were for good and proper cause and without intent to discriminate because of the union activities of the discharged persons.

#### The alleged refusal to bargain

##### The appropriate unit

It was agreed by all parties and is here found that all the employees at the respondent's plant, exclusive of supervisory and clerical, constitute a unit that is appropriate for collective bargaining purposes.

##### The Union's representation of a majority in the unit

On May 27, 1943, the Unit consisted of nine employees of whom seven were represented by the Union. No additions were made to the unit at any of the times that are pertinent herein. At no time between May 27, 1943 and June 1, 1943, inclusive, was the unit reduced to less than five persons and at no time were there more than two persons employed who had not designated the Union for purposes of collective bargaining. It is therefore found that at all times pertinent herein, the Union was the duly designated representative for purposes of collective bargaining with respect to wages, hours, rates of pay and other conditions of employment, of a majority of all the employees of the respondent in the unit heretofore found to be appropriate for purposes of collective bargaining.

##### The alleged refusal to bargain

The complaint alleges a refusal by the respondent on May 28, to bargain with the Union. The evidence discloses no support for this. On May 26, Stanlea called on Libman and was referred to Nelson who was available only on Tuesdays and Fridays. At that time, no demand was made for recognition or for bargaining. On May 28, the demands or conversations of Stanlea with Libman had to do only with the reinstatement of Brennan, Lovett and Lauder. If there ever was a refusal to bargain, it occurred on June 1, when Stanlea and LaGuardia called on Nelson. Stanlea, Libman and Nelson all testified concerning this meeting and there is little conflict in their testimony. The composite of the recollections of these three witnesses is substantially the following:

Stanlea and LaGuardia called at the plant in the afternoon of Tuesday, June 1st. Stanlea was the union's spokesman. After introducing himself, he stated that he was there to discuss a union agreement and the reinstatement of the three discharged employees. Nelson stated he would be glad to negotiate with him if they would poll a vote of the employees any place other than in a beer garden but that no matter what was done, the three discharged men would not be allowed to vote or in any other manner be regarded as employees. He explained that the men had gone off the premises on company time, had disrupted the schedules and had cost the company money by so doing; that they had been properly discharged and would not be rehired.

There is no question but that the matter uppermost in the minds of all was the question of the reinstatement of Brennan, Lovett and Lauder. At no time did the union representative demand recognition or Nelson refuse it. When, during the early stages of the conversation, Stanlea stated that the Union represented a majority of the employees, Nelson neither agreed with this nor denied it. When Stanlea threatened to take the entire controversy to the Board, Nelson stated he did not know what the Union's rights were but if the Board ordered

him to take any kind of action, he would abide by the Board's order. The conversation rather quickly veered off into the possibility of a strike and what each side could or would do if a strike should take place and at that point, after telling Nelson that they could paralyze the business with a strike, the union representatives left. There were no subsequent conferences.<sup>5</sup>

The record leaves the clear impression that the main objective of all conferences by Stanlea with any representative of the respondent after the discharges of May 28, was the reinstatement of the discharged employees. There was no demand for recognition of the Union. There was no proposal made by the Union at any stage, and there was some sketchy conversation concerning an election. Under such circumstances, there having been no demand by the Union that the respondent engage in collective bargaining with it, there could have been no refusal. We can only speculate on what Nelson would have done had such a demand been clearly made. It is therefore found that the respondent has not, at any time, on demand from the Union, refused to collectively bargain with it as the representative of the employees in the appropriate unit in regard to wages, hours, rates of pay or any other conditions of employment of the employees in such unit.

#### Interference, restraint, and coercion

There is no credible evidence of interference, restraint, and coercion of any of the employees by either Libman or Nelson. John Tracey, the mold operator on the night shift testified that on the evening of the 28th, he received a telephone message not to report for work that night but to come in at 8 o'clock the next morning, Saturday.<sup>6</sup> On reporting Saturday morning, Gramaglia told Tracey he had discharged Brennan, Lovett and Lander the day before. He also mentioned that they were all members of the Union and asked Tracey whether he belonged. Tracey avoided the question. Gramaglia then indicated that if Tracey belonged to the Union, he might want to join his discharged union brothers but that otherwise he could go upstairs and to work. Tracey told Gramaglia that he had once got into trouble with a Union by not going along with the others and that now he would "stick" with the men who had been discharged. Although Gramaglia then asked him to stay and work, Tracey refused to do so but got his current pay from Libman and joined Brennan, Lovett and Lander who were again assembled at the nearby bar. When Libman paid Tracey, he asked him not to leave the work but Tracey again refused to return. The follow-

<sup>5</sup> During the meeting with Nelson, according to Stanlea, Nelson referred to the existence of a shop union. Gramaglia testified that there had been a shop organization which was of the nature of a union, starting early in 1942 and continuing up to March 1943 when it ceased to function because of loss of men to the armed forces. Gramaglia was the shop steward or "go-between" who conveyed to Nelson or Libman, such matters coming from the employees as required attention. These usually were wage increases which Gramaglia recommended and obtained. This case does not involve Section 8 (2) of the Act and apparently the organization referred to is no longer in existence. Gramaglia had entirely forgotten about it when talking to Stanlea and did not recall the subject until he was called into the June 1 conference by Nelson and reminded of it. This latter action was taken by Nelson when Stanlea mentioned that Gramaglia had denied all knowledge of, or belief in unions in general.

<sup>6</sup> Gramaglia testified, and his testimony is credited, that when the three men were discharged on the 28th, it became necessary to discontinue the night shift for lack of personnel, that Bernard, the mold operator on the day shift had been laid off the afternoon of the 28th, because he required a helper while Tracey could handle the molds alone and they decided to put Tracey on the day shift mold operation and lay Bernard off until conditions got better. On June 13, 1943, the respondent sent for Bernard and put him back on his old job on June 14. There is no charge that Bernard's layoff was discriminatory.

ing week, when Tracey returned for the balance of his pay, Libman again asked him to come back. He again refused. On June 13, Libman telegraphed Tracey, requesting him to report for work. Tracey telephoned that he had a job but would call him later on. He never did so and on the witness stand stated that he is not a complainant and does not desire either reinstatement or back pay.<sup>7</sup>

It was admitted by Gramaglia that he interrogated practically every man in the shop with reference to union membership and that he discussed the benefits of the Union with several of them and on occasion expressed disapproval of it. Aside from this and the Tracey incident, there is no substantial evidence of anyone, acting on behalf of the respondent, having threatened, coerced or attempted to intimidate any of the employees.<sup>8</sup> It is found, however, that by interrogating the various employees with respect to their membership in the Union and by inviting Tracey to join his brothers in the Union who had been discharged, the respondent through its foreman Gramaglia has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above which have been found to have interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. THE REMEDY

It having been found that the respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom and take affirmative action in order to effectuate the policies of the Act, by posting appropriate notices in its plant that it will not engage in the conduct from which it will be recommended that it cease and desist.

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. Tire, Battery, Automotive Parts and Accessories Employees Union, Local 21082, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

<sup>7</sup> Tracey testified that he considered himself discharged by Gramaglia's conversation. The testimony of Gramaglia and Tracey covering this incident differs only in detail, but it is found that while Tracey was not discharged, the effect of the conversation was to impress Tracey with the fact that the discharged men were standing together as union men; that Tracey might be impelled to join them; and that if he were so inclined, he should do so. Under such circumstances, Gramaglia's comments were coercive in character.

<sup>8</sup> Witness Ramsey, a deaf mute, testified that, in an interchange of notes, Gramaglia asked him whether he belonged to the Union and told him that if he joined he would be discharged. This was specifically denied by Gramaglia. The testimony was not impressive and is not credited. Similarly, testimony by Lander that, on May 27, Libman was riding with him in his truck and asked him whether he belonged to the Union, which was denied by Libman, is not credited.

2. By discharging Thomas Brennan, Michael Lovett and John Landor on May 28, 1943, the respondent has engaged in no unfair labor practices within the meaning of the Act.

3. Respondent has not refused to bargain collectively with Tire, Battery, Automotive Parts and Accessories Employees' Union, Local 21082, A. F. of L. as the exclusive representative of all the employees within an appropriate unit of the employees of the respondent, with regard to wages, hours, rates of pay, or other conditions of employment, and has engaged in no unfair labor practice within the meaning of Section 8 (5) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondent, its officers, supervisors, representatives and assigns shall:

1. Cease and desist from:

Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Post immediately in conspicuous places in its plant in New York City and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all employees that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations;

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is also recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the Regional Director for the Second Region in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take such action.

It is further recommended that the complaint be dismissed insofar as it alleges, (1) that any of the respondent's employees have been discriminated against with regard to their hire or tenure of employment or conditions of employment; (2) that the respondent has refused to bargain with the Union as the exclusive representative of any unit of its employees, and, (3) that the respondent has threatened its employees with discharge or other reprisals, if they joined or assisted the Union.

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 or 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 therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

R N DENHAM,  
*Trial Examiner*

Dated February 25, 1944.