

In the Matter of SOHIO PIPE LINE COMPANY and OIL WORKERS  
INTERNATIONAL UNION, CIO

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INTERNATIONAL UNION, CIO

*Cases Nos. 14-C-1145 and 14-R-1384, respectively.—Decided January  
16, 1948*

*Mr. Harry G. Carlson, for the Board.*

*Mr. James R. Tritschler, of McAfee, Grossman, Hanning, Newcomer  
& Hazlett, and Messrs. C. J. Spahr and T. J. Shirreffs, of Cleveland,  
Ohio, for the respondent.*

*Mr. William V. Flower, of Toledo, Ohio, for the Union.*

DECISION  
AND  
ORDER

On March 19, 1947, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceedings, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the respondent had not interfered with the election conducted by the Board among the respondent's employees for the purpose of determining a collective bargaining representative, and recommended that the objections to the election be dismissed. Thereafter, the respondent filed a brief in support of the Intermediate Report and Board counsel filed exceptions to the Intermediate Report and a supporting brief. The respondent requested and was granted permission to argue orally before the Board in Washington, D. C. On November 10, 1947, the Board notified the respondent that it had rescinded its action in granting oral argument, and that, in lieu thereof, any parties desiring to do so, would be permitted to file, within 20 days, a supplementary brief or written argument setting forth the matters which would have been covered in the oral argument. On November 15, 1947, the respondent replied that it would rely on its brief to the Trial Examiner.

The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and, to the limited extent consistent with the Decision and Order herein, hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

1. The record shows, as the Trial Examiner substantially found, that shortly after the union appeared in the plant in June 1945, T. J. Samples, the respondent's superintendent, instructed the supervisory employees and Fred B. Tate, who at the time was non-supervisory, to be on the lookout for union activities. Pursuant to this instruction, Tate surreptitiously obtained information regarding the union affiliation of several employees and admittedly, on several occasions, reported it to Samples. Insofar as appears, Samples readily accepted this information and thereby indicated that Tate was acting with the respondent's approval. The Trial Examiner failed to find whether or not this conduct was violative of the Act. However, we are convinced and find that such conduct by the respondent constituted unlawful surveillance of organizational activity, and that the respondent thereby interfered with, restrained, and coerced its employees in violation of the Act.<sup>1</sup>

2. The Trial Examiner found that Samples' interrogation of employee Czerwonka with respect to his union affiliation was not an unfair labor practice, on the ground that "Samples already knew that Czerwonka was a member of the union." We do not agree. Whether or not Samples had prior knowledge of Czerwonka's union membership does not, in our opinion, alter the unlawful nature of the interrogation in question. We, therefore, find, in accordance with established precedent,<sup>2</sup> that Samples' interrogation of Czerwonka was, *per se*, violative of the Act.

3. The record shows that, shortly after Frank Ramsey joined the union, Superintendent Samples engaged him in a conversation by saying: "I hear you are going union . . ." Ramsey replied in the affirmative, and Samples expressed the hope that the employees were not joining the Union because they had something against him personally. The Trial Examiner failed to pass on the propriety of Samples' conduct. We are convinced, and we find, that Samples' remarks were calculated to, and did, cause Ramsey to disclose his union affiliation and sympathies in violation of the Act.<sup>3</sup>

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<sup>1</sup> *Matter of Clark Bros Co, Inc v N. L. R. B.* (C C A 2), 163 F. (2d) 373, enforcing 70 N. L. R. B. 802, *Matter of Collins & Askman Corporation*, 55 N. L. R. B. 735.

<sup>2</sup> See *Matter of Sewell Manufacturing Company*, 72 N. L. R. B. 85; *Matter of Wadesboro Full-Fashion Hosiery Mills, Inc*, 72 N. L. R. B. 1064

<sup>3</sup> See *Matter of Libbey-Owens-Ford Glass Company*, 63 N. L. R. B. 1; *Matter of Consolidated Machine Tool Corporation*, 67 N. L. R. B. 737.

4. The Trial Examiner found that Foreman Fred B. Tate was lawfully discharged because his activities on behalf of the union, after he attained supervisory status, imperiled the neutrality of the respondent under the Act. We agree. In so agreeing, we rely primarily upon the credible findings of the Trial Examiner that Tate sought to coerce several employees under his supervision and that such unlawful conduct on the part of Tate actually motivated the respondent to discharge him. Had the facts been found otherwise by the Trial Examiner, the doctrine enunciated in the *Wells* and *Vail* cases might well be applicable.<sup>4</sup>

5. Inasmuch as the unfair labor practices found herein are based on events outside the scope of the union's objections to the conduct of the consent election held on March 5, 1946, we find, as did the Trial Examiner, that the objections are without merit. Accordingly, we hereby overrule the union's objections to the election and we shall dismiss its petition for investigation and certification of representatives.

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the respondent, Sohio Pipe Line Company, Cleveland, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Engaging in surveillance of its employees' self-organizational activities on behalf of the Oil Workers International Union, CIO, or any other labor organization;

(b) Interrogating its employees as to their union affiliation or views.

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

(a) Post at its places of business at Mount Vernon, Illinois, copies of the notice attached hereto, marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by a representative of the respondent, be posted by the respondent, immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that such notices are not altered, defaced, or covered by any other material;

<sup>4</sup> *Wells, Inc v N L R B.*, 162 F. (2d) 457 (C C A. 9); enforcing 68 N. L. R. B. 545; *Vail Manufacturing Company v N. L. R. B.*, 158 F. (2d) 664, cert denied 331 U. S. 835.

<sup>5</sup> In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted before the words "A DECISION AND ORDER" the words "A DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING."

(b) Notify the Regional Director for the Fourteenth 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 that the respondent discriminatorily discharged Fred B. Tate in violation of the Act.

IT IS FURTHER ORDERED that the petition for investigation and certification of representatives of employees of Sohio Pipe Line Company, Mount Vernon, Illinois, filed by Oil Workers International Union, CIO, in Case No. 14-R-1384, be, and it hereby is, dismissed.

MEMBER HOUSTON, dissenting in part:

The facts relating to the Tate discharge convince me that the doctrine of the *Wells* case,<sup>6</sup> in which the position of the Board was affirmed by the circuit court, is controlling here. I see no issue of policy which dictates a departure from the principle established there and I would find a violation of the Act in the discharge.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT engage in surveillance of our employees in their self-organizational activities on behalf of the OIL WORKERS INTERNATIONAL UNION, CIO, or any other labor organization.

WE WILL NOT interrogate our employees concerning their union affiliation or views.

SOHIO PIPE LINE COMPANY,  
*Employer.*

Dated ----- By -----  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

*Mr. Harry G. Carlson*, for the Board.

*Mr. James R. Tritschler*, of *McAfee, Grossman, Hanning, Newcomer and Hazlett*, and *Messrs. C. J. Spahr and T. J. Shirreffs*, of Cleveland, Ohio, for the respondent.

*Mr. William V. Flower*, of Toledo, Ohio, for the Union.

STATEMENT OF THE CASE

On January 31, 1946, Oil Workers International Union, CIO, herein called the Union, filed with the Regional Director for the Fourteenth Region (St. Louis,

<sup>6</sup> *Wells, Inc. v. N. L. R. B.* 162 F. (2d) 457 (C. C. A. 9) ; enforcing 68 N. L. R. B. 545.

Missouri), a petition<sup>1</sup> alleging that a question affecting commerce had arisen with respect to the representation of the employees of Sohio Pipe Line Company, at Mount Vernon, Illinois, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Pursuant to agreement of the parties, the National Labor Relations Board, herein called the Board, on March 5, 1946, held a consent election among the operating, maintenance, and construction employees of the respondent in its Mount Vernon division, which the Union lost.<sup>2</sup> On March 8, the Union filed objections to the election and on May 9, the Regional Director issued a report finding that certain of the objections<sup>3</sup> raised substantial and material issues. On August 29, the Board issued an order directing a hearing on the Union's objections.

On March 11, 1946, the Union filed a charge<sup>4</sup> and on November 12, 1946, an amended charge alleging that the respondent, by the conduct referred to in the objections to the election, and by other acts, had engaged in unfair labor practices.

On November 6, 1946, the Board, acting in conformity with Section 203.58, subsection (c) (2) and Section 203.42 (b) of the Board's Rules and Regulations, Series 4, issued an order consolidating the unfair labor practice case with the hearing on the objections to the election.

On November 13, 1946, the Board, by the Regional Director, issued its complaint against 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 (3) and Section 2 (6) and (7) of the Act. Copies of the complaint accompanied by notices of hearing thereon, and copies of the Union's objections to the election, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, among other things, (1) from June 1945, to the date of the issuance of the complaint, threatened its employees with economic loss and other reprisals if they chose the Union as their bargaining representative; engaged in surveillance of Union meetings; questioned employees concerning their union membership; invited the filing of individual grievances; and otherwise interfered with the organization of its employees; and (2) on or about January 30, 1946, discharged Fred Tate because of his union membership and activity.

On November 20, 1946, the respondent filed an answer admitting certain allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on December 2 and 3, 1946, at Mount Vernon, Illinois, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. The Union was represented by an international representative. Full opportunity to be heard, to

<sup>1</sup> Case No 14-R-1384.

<sup>2</sup> The results of the election were as follows:

Approximate number of eligible voters.....	161
Votes cast for the Union.....	58
Votes cast against the Union.....	93
Valid votes counted.....	151
Challenged ballots.....	4
Valid votes counted plus challenged ballots.....	155

<sup>3</sup> These had to do solely with a series of speeches and letters uttered by the respondent's officers during the pre-election period. Other objections made by the Union were found to be without merit.

<sup>4</sup> Case No. 14-C-1145.

examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

At the close of the hearing the undersigned granted a motion by counsel for the Board to conform the pleadings to the proof in formal matters, as well as a motion by counsel for the respondent to dismiss the complaint in certain particulars.<sup>5</sup> He reserved ruling on motions to dismiss other allegations of the complaint. These motions are disposed of by the recommendations hereinafter made.

The undersigned advised the parties that they might argue orally before the undersigned, and might file briefs and/or proposed findings of fact and conclusions of law with the undersigned by December 17. On December 13, the time to file briefs was extended to December 31. No oral argument was had. On December 31, the Board and the respondent filed briefs.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

#### FINDINGS OF FACT

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

Sohio Pipe Line Company, a subsidiary corporation with its principal office in Cleveland, Ohio, is wholly owned by the Standard Oil Company of Ohio, a corporation, and is engaged in the transportation of crude oil by pipe line in the States of Illinois, Indiana, Ohio, Michigan, and Kentucky. During the year 1945, a representative period, the respondent transported through its Illinois pipe lines in excess of 1,000,000 barrels of crude oil, valued in excess of \$1,000,000. Approximately 90 percent of such crude oil was transported from or through the State of Illinois to points outside the State of Illinois.

The respondent admits that it is engaged in commerce within the meaning of the Act.

##### II. THE ORGANIZATION INVOLVED

Oil Workers International Union is a labor organization admitting to membership employees of the respondent. It is affiliated with the Congress of Industrial Organizations.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *Alleged acts of interference, restraint, and coercion*

###### 1. Solicitations of supervisors

Organization of the respondent's employees into the Union was begun in June 1945, by Knox Walker, international representative of the Union. During the next several months Walker visited the various properties of the respondent in the Mount Vernon division and solicited the employees for membership in the Union. His solicitation took place largely during working hours, and sometimes in the presence of supervisory employees. Although his activities were known to the respondent's officials, Walker stated, while testifying, that the respondent at no time made any attempt to exclude him from its property.

In June 1945, according to the testimony on direct examination of Fred Tate, whose alleged discriminatory discharge is hereinafter discussed, J. T. Samples,

<sup>5</sup> The allegations of the complaint so dismissed were that the respondent engaged in the surveillance of union meetings, granted individual wage increases to discourage union membership, and shifted employees to less desirable work because of their union membership and activities.

the respondent's superintendent, asked Tate to find out what employees were sympathetic to the Union. On cross-examination, however, Tate testified that Samples asked him to "keep your eyes and ears open and see what you can find out," but that Samples did not ask him to question the employees directly whether they belonged to the Union. At this time Tate was working as a tank strapper, but was sometimes permitted to attend meetings of supervisors because, on occasion, he did surveying work and directed the work of one or two employees. Samples denied, while testifying, that he asked Tate to find out the names of employees interested in the Union, but testified that he asked all supervisors as well as Tate, merely to be on the lookout for Union activity so that they "would be able to answer the questions with respect to whether or not the employees could or could not belong to a labor organization." On the whole the undersigned was impressed with Samples' credibility as a witness and accepts his testimony in this respect as being more accurate than that of Tate. Moreover, his version of this conversation is corroborated to some extent by the further testimony of Tate himself, which was to the effect that in point of fact he never asked any employee if he belonged to the Union, but merely inquired of some of the foremen concerning the progress of union organization in their departments. Information thus gained he reported to Samples.

W. J. Czerwonka, a laborer, testified that he joined the Union in June or July 1945, among the first to do so, and that about 2 weeks later Samples engaged him in a conversation during which Samples stated that since the War Labor Board had gone out of existence it would be possible for the respondent to grant certain wage increases which it had wanted to give for some time. Samples then, according to Czerwonka, asked him if he was a member of the Union. Samples' version of the conversation differs from that of Czerwonka only in that, according to Samples, he said: "You are a member of the Union, are you not?" putting question this way because it was generally known that Czerwonka was a member of the Union and Samples had seen him wearing a Union button. Czerwonka admitted that he frequently wore a Union button on the job, although neither he nor Samples could recall while testifying whether Czerwonka had it on the day of the conversation between the two men. It seems to the undersigned that the version given by Samples is more accurate than that of Czerwonka, and that Samples assumed that Czerwonka was a member of the Union, and merely put this assumption into words while talking with Czerwonka.

Frank Ramsey, a truck driver, testified and the undersigned finds, that in June or July, shortly after he had joined the Union, Samples stated to him that he had heard that the employees were "going union," and that when Ramsey replied that such was the case Samples expressed the hope that it was not because the men had something against him personally.<sup>6</sup> When Ramsey assured Samples that he had never heard anything unfavorable concerning him, Samples declared if that was the case then union organization was a matter of indifference to him and that if the employees wanted a union it was "all right." On a later occasion, again according to Ramsey, Samples said that he would "rather not see" the Union come in, and, referring to the dissolution of the War Labor Board, expressed the opinion that wage adjustments would now be made which would be satisfactory.

## 2. The speeches and letters

Between the filing of the Union's petition on January 31, 1946, and the consent election on March 5, the respondent caused to be delivered by its officials and attorney a series of four speeches, and mailed copies of three letters to its em-

<sup>6</sup> Samples had been appointed Superintendent the previous October.

ployees, all of which the Board contends were violative of the Act when considered in conjunction with the other alleged acts of interference, restraint, and coercion, considered above. The speeches were made at meetings of employees on February 7 and March 1 at Mt. Vernon, on February 27 at Centralia, and on February 28 at Flora, Illinois. The speeches conform to the general pattern of that in the *American Tube Bending* case,<sup>7</sup> held not to be violative of the Act in the absence of other evidence of coercion. The respondent, by these speeches, justified its wage policies, then under attack by the Union in a series of pamphlets, as being fair and reasonable. The arguments of the Union were taken up and discussed in detail, and while the speeches were obviously designed to persuade and convince the employees that they would be better off without a union than with one, they were objective in their approach and moderate in language.<sup>8</sup> Nowhere was the idea conveyed, either openly or by intimation, that the employees would suffer reprisals if they joined the Union, or if the Union won the election. The question was raised as to whether a union victory would not destroy the feeling of "unity," said to exist between the respondent and the employees, but it was indicated that the respondent would nevertheless bargain with the Union in accordance with its obligations under the law. The employees were repeatedly assured that they had a right to join the Union if they wished and to vote for it in an election, without fear of retribution.

The respondent's letters were to the same effect as its speeches.

The speeches and letters were uttered several months after the other alleged acts and declarations of respondent's supervisors which have been described above. The undersigned does not find that the speeches and letters, or the statements made by the respondent's supervisors, and previously discussed, either when taken separately or considered as a whole, constitute interference, restraint, or coercion within the meaning of the Act.<sup>9</sup>

#### B. *The alleged discriminatory discharge*

Fred Tate was first employed by the respondent in 1938. He held various jobs, but his work during the latter part of his employment was that of a tank strapper and gauger.

In October 1945, Tate was assigned to the Fairfield district as head gauger, with 22 employees under his supervision. It is admitted that from this time until his discharge in January 1946, Tate was a foreman.

According to Tate on direct examination, when Samples assigned him to the Fairfield district he told him that there were rumors of union activities there, and that he wanted him to "hold them down" as much as he could, and that shortly thereafter Samples told him that he was doing a good job in "getting along with the men and holding down the union activity." On cross-examination Tate stated that he did not understand Samples to mean that he was to campaign against the Union, but rather that he should be "practical" and "fair

<sup>7</sup> *N. L. R. B. v. National Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), setting aside 44 N. L. R. B. 121; 320 U. S. 768. Cert. denied

<sup>8</sup> Although on one occasion in a speech by Tritschler, the respondent's attorney, at Mt. Vernon, on March 1 it was stated that "the poor duffers who don't belong to the Union will be forced by these rascals to join," this statement is not typical of the speeches as a whole, and is so far as the undersigned can determine the only instance where organizers for the Union were referred to in terms more opprobrious than "outsiders."

<sup>9</sup> While the undersigned is cognizant that for an employer to inquire of an employee if he belongs to a Union is normally held by the Board to be *per se* violative of the Act, he nevertheless does not find that Samples' statement to Czerwonka "You are a member of the Union, are you not?" falls in that category. Samples already knew that Czerwonka was a member of the union and merely put this assumption into words while talking with him.

and square" in handling his employees, and that if he pursued this course there would be less reason for a union. Samples testified that while he could not recall any such conversation with Tate as related above, he did have conversations with his foremen generally in which he compared the wages paid by the respondent with those paid by oil companies where there was a union, and endeavored to show that the respondent's employees were as well off without a union as they would be with one.

During the latter part of November the field force in the Fairfield district was cut. This seems to have had a considerable effect upon Tate's opinion of the benefits of union organization. While theretofore he had expressed himself as opposed to the Union, during the following month or so he declared to various and sundry employees that union organization would benefit them. As the result of his conversion, Tate, according to his own testimony, on about January 20, 1946, requested Ramsey, heretofore identified as an active union member, to get an organizer to come to the Fairfield district. On the occasion of this conversation with Ramsey, Tate himself signed an application card in the Union. Pursuant to Ramsey's request, Walker arrived in the Fairfield district on January 23, and on that day he and Tate discussed at some length the benefits of the Union and how the employees might be organized. A meeting was agreed upon for the night of January 25. Tate notified his employees of the event, as a result of which most of the non-supervisory employees in the Fairfield district, excepting those on duty, were present at the meeting, together with employees from other districts in the Mt. Vernon division.

The above-related events came to the attention of Samples, who, on Monday, January 28, instructed Tate to present himself at the office in Mt. Vernon the following morning. When Tate saw Samples, the latter told him that he was discharged, giving as the reason, according to Tate, that he was "unhappy" in his job. Tate expressed a wish to appeal his discharge to Edward Morrill, the respondent's vice president at St. Louis, and Samples granted permission. Tate further testified that he asked Samples if his discharge could have been because of his having attended a union meeting, to which Samples replied that it "could have been." Samples testified that he said nothing to Tate on this subject.

When Tate saw Morrill he asked him if his work had been satisfactory, and Morrill said that as far as the work itself was concerned it had been, but that Tate was unhappy and that Tom Goddard, a foreman who was returning to the Fairfield district, and who had more seniority than Tate, would have to be given Tate's job as gauger foreman. When Tate asked if the fact that he had attended a union meeting had anything to do with his discharge, Morrill replied that he had not heard of it. Morrill testified that this was the first information he had that Tate had attended a union meeting, and that he was "astounded" when Tate told him so.

#### The defense to the discharge

The respondent's defense to Tate's discharge is that he attempted to coerce employees under his supervision into joining the union. The information upon which the respondent based its belief was derived as hereinafter set forth

On Friday evening, January 25, Paul Hawkins and Earl Dobbs, two gaugers from the Fairfield district who worked under Tate's supervision, called upon Samples who at that time was in a hospital, and asked him if it was necessary to join the Union in order to continue to hold their jobs. Samples said that it was not, and asked his visitors who had created an impression to the contrary. Hawkins and Dobbs avoided the question, and left. Hawkins testified, however, that one day earlier in that week while he was sitting in a restaurant, Tate

entered and engaged him in conversation, telling Hawkins that he had changed his mind about the Union and that he thought all the employees should join it, and asked Hawkins if he would attend a union meeting. When Hawkins told Tate that he did not want to join the Union, Tate rejoined, according to Hawkins, that Hawkins would attend a meeting "upon request," to which Hawkins replied that it would have to be "an awfully strong request." Tate, according to Hawkins, gave as his reason for wanting Hawkins to interest himself in the Union that he was the oldest gauger in the Fairfield district in point of seniority, and that if he were to join the Union most of the other gaugers would follow suit.

On Friday, January 25, the day of the meeting, when Hawkins was in Tate's office at the Fairfield warehouse, Tate asked him if he had changed his mind about the Union and if he would attend the meeting that night. Hawkins told him that he would not. Tate, according to Hawkins, then said that various of the employees to whom he had made the same request had "one excuse or some other" and asked Hawkins what his excuse was, to which Hawkins replied that he had no excuse other than his lack of interest. Following this conversation, Hawkins and Dobbs, as above related, called upon Samples.

On the following Sunday, Sims, a gauger, told Hawkins that Tate had told him that if he, Hawkins, did not join the Union both he and C. B. Wright, another gauger similarly opposed to the Union, and perhaps Sims himself, might be transferred to a part of the district known as Mill Shoals, which it was stipulated was a less desirable place to work. Accordingly, that night Hawkins and Dobbs again called on Samples at the hospital, this time accompanied by Sims and Wright.<sup>20</sup> Hawkins again asked Samples if it was necessary to join the Union in order to continue working for the respondent, and named Tate as the one who was creating that impression, adding that Tate had said that he might be transferred to Mill Shoals if he did not affiliate with the Union. The testimony of Samples does not differ materially from that of Hawkins and Dobbs with respect to their two visits to the hospital.

On Monday, January 28, Samples called Morrill at St. Louis, told him that Tate was bringing pressure on his employees to join the Union, and recommended that he be discharged. Morrill replied that he would have to clear the matter with the Cleveland office. The two men agreed that Tate was dissatisfied, and Morrill stated that it would shortly become necessary to replace Tate with Goddard, because of the latter's greater seniority as a foreman.

The undersigned found Hawkins and Dobbs, as well as Samples, to be credible witnesses, and he finds their testimony as to their conversations with Samples, as well as to those with Tate, above related, to be substantially in accord with the facts. Their testimony is corroborated, in part, by admissions made by Tate himself while testifying. For example, Tate admitted stating to employees with respect to the January 25 meeting of the Union, that he believed it would be to their interest to attend it, and that on various other occasions he suggested to employees that they should join the Union. He further admitted having a conversation with Hawkins in a restaurant and in Tate's office where he had talked in favor of the union, and that Hawkins had stated that he was not interested in it. Tate further testified that he had a conversation with Sims in the following vein concerning Sims, Hawkins, and Dobbs:

Q. What did you say to Sims?

A. I said "Sims, how do you like this gauging in the Mill Shoals area?" Oh, she was muddy there. There was quite a conversation.

<sup>20</sup> Neither Wright nor Sims was employed by the respondent at the time of the hearing and neither was called as a witness.

Trial Examiner RUCKEL. Just what you said. Never mind all of that.

A. Let's see. I asked him was he going to attend the union meeting. This was the afternoon before the meeting, or the day before, one of those two days between. Or that Tuesday, I couldn't say. But I said "Sims, what is your opinion? Have you changed your mind in regard to the union?" He said "No, I haven't changed, but I can't understand you turning over so quickly." I explained to him. I said "If I was so minded and wanted to use what little authority I had down there, I could really cause one hell of a stir."

Q. (By Mr. TRITSCHLEE.) You said that to Sims?

A. Yes, I said "Wouldn't old Hawk cuss if he had to come back down to Mill Shoals?" Hawkins had gauged in Mill Shoals about four years. I said "Wouldn't Hawkins raise Cain if he had to come back and gauge in Mill Shoals area, and you would be taking his district up there, and Dobbs would be some place else?" I said "That would cause a big stir."

#### Conclusions as to the discharge

The undersigned believes and finds that the activities of Tate in urging employees under him to join the Union, as related above, and his implied if not open threats to transfer Sims, Walker, and perhaps others, to less desirable jobs if they did not affiliate themselves with the Union, were not legitimate activities on behalf of the Union. Tate's urging of employees under him to join the Union, particularly when coupled in the same conversation with speculations, no matter how vague, concerning their possible transfer to less desirable places of work, were calculated to intimidate and to coerce. In the case of Hawkins, at least, they had that effect. It is the duty of employers under the Act to refrain from any interference with the organization of its employees. Tate, as gauger foreman, was an employee whose acts and declarations are ordinarily attributable to management. His activities in behalf of the Union, as related above, imperiled the neutrality required of the respondent, and were not protected by the Act. The undersigned finds that the respondent discharged Tate because of illegitimate activities on behalf of the Union, and in order to protect its neutrality as required under the Act, and that it was justified in so doing.<sup>11</sup>

#### IV. THE OBJECTIONS TO THE ELECTION

Counsel for the Board stated at the hearing that the same evidence which he relied upon as supporting the allegations of unfair labor practices, and only that, was relied upon in support of the Board's contention that the election of March 5 should be set aside. The undersigned, having found that the above findings of fact do not support a finding of unfair labor practices, also finds that they do not constitute adequate grounds for sustaining the Union's objections to the election. Accordingly the undersigned will recommend that both the complaint and the Union's objections to the election be dismissed.

Upon 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. Oil Workers International Union, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.
2. The respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

<sup>11</sup> See *Soss Manufacturing Co.*, 36 N. L. R. B 348

3 The respondent has not engaged in any unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the complaint against the respondent, Sohio Pipe Line Company, Mount Vernon, Illinois, be dismissed in its entirety.

He further recommends that the Union's objections to the election of March 5 be dismissed.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of the service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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 service of the order transferring the case to the Board.

HORACE A. RUCKEL,  
*Trial Examiner.*

Dated March 19, 1947.