

IN the Matter of THE ELECTRIC AUTO-LITE COMPANY and UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO and HELEN MEIER, GRACE (CROUT) VERMETT, IYA (BENTLEY) BRAUN, DOROTHY ZIMMERMAN, AND ARLENE AMANN

Case Nos. 13-C-3058 and 13-C-3247.—Decided December 31, 1948

DECISION

AND

ORDER

On July 28, 1948, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled consolidated proceedings, finding that the Respondent had not violated Section 8 (1) or (3) of the Act¹ as alleged in the complaint, and recommending that the complaint against the Respondent be dismissed in its entirety. Thereafter, counsel for the charging parties filed exceptions to the Intermediate Report and a supporting brief.²

The Board³ has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.⁴ The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as set forth in the copy of the Intermediate Report attached hereto.

¹ The provisions of Section 8 (1) and (3) of the National Labor Relations Act, which the complaint alleged were violated, are continued in Section 8 (a) (1) and (3) of the Act as amended by the Labor Management Relations Act, 1947

² In view of our decision, as hereinafter set forth, we hereby deny the Respondent's request for oral argument.

³ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Gray].

⁴ As stated in the Intermediate Report, the Trial Examiner denied the General Counsel's motion to amend the complaint by adding additional 8 (a) (1) allegations thereto. Although some testimony relating to matters covered by the proffered amendment was received in evidence, we do not believe, in view of the Trial Examiner's ruling, that such matters were litigated and that we could properly make findings on the merits of the allegations in question. Under these circumstances we find it unnecessary to express any opinion concerning the propriety of the Trial Examiner's rulings denying the amendment.

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 complaint issued herein against the Respondent, The Electric Auto-Lite Company, Woodstock, Illinois, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Robert Ackerberg, for the General Counsel.

Messrs. Max Raskin and Harold A. Katz, by *Mr. Harold A. Katz*, of Chicago, Ill., for the Union.

Rathbone, Perry, Kelley & Drye, by *Mr. T. R. Iserman*, of New York, N. Y., and *Mr. James P. Falvey*, of Toledo, Ohio, for Respondent.

STATEMENT OF THE CASE

Upon a charge filed October 29, 1946, by United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, herein called the Union, in Case No. 13-C-3058, and upon a charge filed August 21, 1947, by Dorothy Zimmerman in behalf of herself and four others in Case No 13-C-3247, and said cases having been ordered consolidated on April 13, 1948, by the Regional Director for the Thirteenth Region (Chicago, Illinois), the General Counsel of the National Labor Relations Board,¹ by said Regional Director, issued a complaint dated April 13, 1948, against The Electric Auto-Lite Company, herein called Respondent, alleging that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act.² Copies of the complaint, the charges, and notice of hearing thereon were duly served upon the parties.

With respect to the unfair labor practices, the complaint, as amended, alleged in substance that Respondent on or about September 9, 1946, discharged Helen Meier, Grace (Crout) Vernett,³ Iva (Bentley) Braun, Dorothy Zimmerman, and Arlene Amann,⁴ and thereafter refused to reinstate them for various periods of time prior to July 1, 1947, because they (1) joined and assisted the Union and (2) engaged in concerted activities for their mutual aid and protection by presenting a grievance concerning working conditions, and by engaging in a work stoppage on September 9, 1946, to implement said grievance, said conduct constituting a violation of Section 8 (a) (1) and (3) of the Act.

Respondent's answer admitted the allegations of the complaint with regard to the nature and extent of its business operations, denied the commission of any unfair labor practices and alleged affirmatively that the complaint had been

¹ The General Counsel and his representative in this case are referred to herein as the General Counsel. The National Labor Relations Board is referred to as the Board.

² Judicial notice is taken at the request of the General Counsel, that Section 8 (a) (1) and (3) of the Act, as amended, is substantially identical, for the purposes of this proceeding, with Section 8 (1) and (3) of the original Act which was in effect at the time of the commission of the alleged unfair labor practices and which section was reenacted in the amended Act.

³ Also appearing in the transcript as Vernett.

⁴ Also appearing in the transcript as Amenn.

issued without authority because it was based upon alleged unfair labor practices occurring more than 6 months prior to the filing of the charges and service of same upon Respondent.

Prior to the hearing Respondent moved that the complaint be dismissed on the grounds (1) that the charge in Case No. 13-C-3058 was not served on Respondent within 6 months of the commission of the alleged unfair labor practices, and (2) the charge in Case No. 13-C-3247 was not filed or served upon Respondent within 6 months of the commission of the alleged unfair labor practices, although Section 10 (b) of the Act requires the filing of a charge and service of same upon the person against whom the charge is made within 6 months of the commission of the alleged unfair labor practices. In an order dated May 6, 1948, Trial Examiner William F. Scharnikow denied the motion to dismiss. The Board, in an order dated May 13, 1948, upon Respondent's motion for leave to appeal said ruling, reaffirmed the Trial Examiner's ruling and held, ". . . Section 10 (b) of the amended Act imposes no limitation upon the issuance of complaints in any case in which the charges have been filed and served within 6 months after August 22, 1947, the effective date of the amendments. It is not alleged that the charges upon which the consolidated complaint was issued were not filed and served within six months after August 22, 1947. Accordingly, the respondent's motion for leave to appeal is denied."⁵

Pursuant to notice, a hearing was held on June 3, 4, and 9, 1948, at Woodstock, Illinois, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Chief Trial Examiner. The General Counsel, the Union, and Respondent were represented by counsel and all 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.

During the hearing, the undersigned denied a motion by the General Counsel to amend the complaint by adding a new alleged violation of Section 8 (a) (1) of the Act which read, ". . . by acts in September and October 1946, of the said Mr. Giles in (1) interrogating employees as to union membership, inclinations and activities and (2) in his publishing to employees prohibitions against any union activities or solicitations on company property at any time."⁶

In the course of the hearing, a witness called by the General Counsel, Amann, was unable to complete her testimony because of illness which necessitated her leaving the witness stand and prevented her return for completion of direct examination and for cross-examination. The undersigned denied a motion by Respondent to strike the witness' testimony in part but offered to entertain a motion to strike her testimony in full, stating that Respondent had not been afforded an opportunity to cross-examine the witness. It was finally stipulated by the parties, with the consent of the undersigned, that the testimony of the

⁵ Respondent renewed its motion before the undersigned at the instant hearing and it was denied.

⁶ This motion was made at the hearing on June 3, 1948, more than 6 months after August 22, 1947, which was the effective date of the amendments to the Act. The motion embraces conduct allegedly taking place in September and October 1946. Both charges herein alleged only that Respondent had discharged five employees on September 9, 1946, and had reinstated them on October 10, 1946, under discriminatory conditions thereby violating Section 8 (1) and (3) of the original Act. Both charges were silent as to any independent conduct allegedly violative of Section 8 (a) (1) of the Act in any way resembling in point of substance the subject matter of the proposed amendment. In the opinion of the undersigned the 6-month proviso of Section 10 (b) of the Act forbids this proposed amendment as said allegations, if admitted to the complaint, would render the complaint violative of the injunction that "no complaint shall issue based upon an unfair labor practice occurring more than six months prior" to the filing and service of the charge.

witness would be considered by the undersigned in the light of the noncompletion of direct examination and the absence of cross-examination. The witness' testimony has been so considered. At the close of the General Counsel's case, a motion by Respondent to dismiss the case was denied. At the conclusion of the hearing, the undersigned granted a motion by the General Counsel to conform the pleadings to the proof with respect to purely formal matters. The parties were afforded an opportunity to argue orally upon the record and to file briefs and/or proposed findings of fact and conclusions of law with the undersigned. Oral argument was waived and briefs have been received from the General Counsel, the Union, and Respondent.

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 RESPONDENT

The Electric Auto-Lite Company is an Ohio corporation whose principal offices are located in Toledo, Ohio. It operates manufacturing plants in the States of Ohio, Michigan, Wisconsin, New York, Indiana, Oklahoma, Illinois, and in Canada. Its plants include a plant at Woodstock, Illinois, which is the only plant involved in this proceeding, where it is engaged in the manufacture, sale and distribution of die castings and other products. During the year 1947, Respondent purchased raw materials valued in excess of \$500,000, of which more than 25 percent was shipped to its Woodstock, Illinois, plant from points outside the State of Illinois. During the same period, Respondent sold finished products valued in excess of \$1,000,000 of which more than 50 percent was shipped from its Woodstock, Illinois, plant to points outside the State of Illinois.

The undersigned finds that Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, is a labor organization, admitting to membership employees of Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Sequence of events*

1. Preliminary events

At no time during the events material herein has there been a collective bargaining representative selected by a majority of Respondent's employees and so recognized by Respondent, nor does the record disclose that there has ever been one. On or about August 20, 1946, after an organizing campaign, the Union filed a petition for investigation and certification of representatives at Respondent's plant.⁷ Of the five ladies, whose alleged termination of employment on September 9 is the primary issue herein, three, Meier, Zimmerman, and Vermett, joined the Union shortly before September 9; one, Braun, joined after that date; and the record does not reveal when the fifth, Amann, joined.⁸ None of them were outstanding, insofar as the record indicates, in their union activities.

⁷ Case No 13-R-3891.

⁸ It will be recalled that this is the witness whose testimony was interrupted by illness.

These five ladies worked together as a group in the plating department where, in connection with their work, it was regularly necessary to lift pans or trays filled with objects to be plated, the weight of which varied. For some weeks previous to September 9 the group had complained about this lifting operation, asking that a handler be provided by the management for this purpose. The record shows that at one time a handler had been provided by Respondent but that he left and was never replaced. These employees also complained of their piece-work rates and it appears that their piece-work rates played at least some part in their objections to the lifting operation. It appears further that they also discussed excesses, which are additional allowances by management on some piece-work operations because of their difficulty.

In their various talks, largely with Foreman Julius Thomas and also on occasion with General Foreman Merle Young, during the period preceding September 9, the group continued to repeat their grievance and both Thomas and Young generally replied that they would see what they could do about it. Nothing was done about the situation by Thomas or Young or anyone connected with management, although time-study men on several occasions in the weeks immediately preceding September 9 did check on the various operations of this crew of five in the plating department.

2. Events of September 9⁹

The Facts

During the morning of September 9 the five women again expressed their grievance to Foreman Thomas. Thomas, who was apparently quite harassed because of a mechanical break-down elsewhere in the plant, promised to look after the matter but took no action that morning. After lunch the group resumed work as usual, but at 1:30 p. m., as Mrs. Meier testified, ". . . we [the five women] decided we would stop working until we found out what was going to be done [concerning their grievance]." They did halt work completely and stood about in the department.¹⁰ Within 5 minutes, Foreman Thomas came upon the scene and was informed by the group that they had stopped work; that they desired an understanding on their grievance; and that they wanted to know whether or not a handler would be provided. Thomas replied, according to Meier, that he would get Mr. Young if the women did not resume work. The women then told Thomas that he could get Young if he chose and Thomas immediately went to Young's office. He returned shortly, announced that Young was busy but would appear as soon as possible, and that the women would have to wait to see Young. The women continued to stand near their machines in a group, performed no work, and awaited Young's appearance on the scene.

Twenty or thirty minutes later General Foreman Young, who had been informed by Foreman Thomas of the work stoppage and its causes, appeared on the scene and, according to Mrs. Meier, the following took place:

He just walked up to us and said "If you girls are not going to work, get the hell out of the department" so no one said anything, then he asked

⁹ Findings herein, except as otherwise indicated, are based upon a consensus of the testimony of the five women. In large measure the testimony of Respondent's witnesses did not conflict with their version except as indicated below.

¹⁰ Although it appears that one or two may have been sitting, the record does not support any contention that they engaged in a sit-down strike.

where our cards were and we said in the racks, so he told us to get them and punch them out.¹¹

The group of five went to the lobby of the plant at approximately 2:30 p. m., followed by Young, and proceeded to punch out their cards. There was some talk between them and Young, on an amicable basis, and they asked for their pay checks. They were informed by Thomas that they could obtain the checks on the following Friday, the customary pay day. Young then told them that they could talk to General Superintendent Giles, but that he doubted if Giles could do any more for them than he (Young) had already done. None of the women desired to see Giles. Young stated that they were satisfactory workers and that he regretted to see them leave.¹²

Conclusions

The General Counsel contends that these five employees were discharged by Respondent on September 9 for their union or concerted activities. There is no evidence of any outstanding union activities on the part of these five employees or that their union membership played a part in Respondent's treatment of them on September 9. As a result, the General Counsel's position is reduced, in the opinion of the undersigned, to the view that these employees were discharged on September 9 for engaging in concerted action for their mutual aid or protection. The position of Respondent is that the girls voluntarily quit Respondent's employ on September 9, but it alleges, in the alternative, that this may have been an economic strike. As appears below, the undersigned is of the belief that the employees, on September 9, were in the position of economic strikers who left Respondent's employ and that they neither quit nor were discharged on that date.

These employees had concertedly stopped work approximately one-half hour earlier and had jointly communicated their grievances to Foreman Julius Thomas. Thereafter, they concertedly abstained from performing any further work and awaited Young's arrival on the scene. He extended to them the alternatives, although his language was not that of the parlor, of returning to work or *leaving the plant*. Significantly, the alternatives were not to return to work or *be discharged*. By their uniform silence, after brief consideration of the alternatives propounded by Young, and more particularly their failure to return to work under existing conditions as proposed by management, which Respondent was entitled to demand of them, they manifested an intent to continue with their concerted activities. Bearing in mind that another shift was due to start shortly thereafter, and that Respondent was entitled to get his equipment back into operation, Young quite properly instructed the workers to punch out and leave the premises. This too they did in concert and this activity constituted a continuation of their joint action previously embarked upon. Their further alleged efforts in unison to later return to Respondent's employ and to the same

¹¹ Meier's testimony was substantially duplicated by that of the other four. According to Foreman Thomas, Young came upon the scene, first spoke to Thomas and then spoke substantially as appears above. According to Young, he had a discussion with the women wherein he explained Respondent's difficulty in obtaining a handler and invited them to return to work whereupon they all remained mute and he instructed Thomas to move them out of the department. The undersigned accepts Mrs. Meier's version as substantially reflecting what took place. In any event, on either the version of the women or of Young, the conclusions drawn by the undersigned from the incident would be identical.

¹² There was a conflict as to whether Young or the women said they were fortunate not to be living in Russia where workers were shot for leaving their work. Regardless of who said it, the undersigned considers the remark immaterial.

allegedly onerous positions only add weight to the view that this was a concerted activity throughout. Although there was no picketing as such, the cessation of work by this group was no less a strike because the group may not have labeled it as such or engaged in the additional activities which usually accompany a strike.¹³ It is accordingly found that the five employees, in leaving the plant on September 9, 1946, engaged in an economic strike in response to Respondent's order to return to work under existing conditions.¹⁴

3. Later events

It has been found that the group of five employees, after having been spoken to by Young, continued their concerted activity on September 9 and became economic strikers. As all five were reinstated by Respondent approximately 5 weeks later on October 14 or 15,¹⁵ the undersigned will now consider the evidence offered by the General Counsel, apparently in support of the position that the strikers made application for reinstatement shortly after the walk-out. His theory, it would seem, is that they unconditionally applied for reinstatement at dates well in advance of their actual reinstatement and that the delay in reinstating them was, as a matter of law, a discrimination against them.¹⁶ Inasmuch as the entire period that they were absent from employment is a short one of approximately 5 weeks, the undersigned will take up the various alleged applications for reinstatement *seriatim*:

September 10

On the morning after the commencement of the strike, one of the five strikers, Iva (Bentley) Braun, went to the plant employment office. She testified on direct examination that she then asked Plant Superintendent Giles if "I could get back on the night shift" and he replied that he would advise her if an opening presented itself.¹⁷ On cross-examination she testified that she was not sure whether she spoke to Giles or Employment Manager Fish, but thought that it had been Giles. Giles denied that Braun had spoken to him on September 10, and Fish was not questioned concerning the incident. Although it appears that she probably spoke to Fish on the morning of September 10, it is unnecessary to resolve this conflict because in any event Braun did not apply for reinstatement to the position she held at the time of the strike but asked for a different one on another shift. This does not constitute unconditional application for reinstatement to a position filled at the time of a strike and it is so found.

¹³ *Matter of Massey Gin and Machine Co.*, 78 N. L. R. B. 189.

¹⁴ Walter Thomas, a set-up man at the plant, testified that the employees asked him sometime during September 9 to obtain gate passes for them; this was offered presumably in support of the position that the girls intended to quit their employment that day. Four of the girls denied speaking to Walter Thomas that day and the fifth, whose testimony was not completed, was not questioned concerning this. Thomas was a singularly unimpressive witness whose testimony was very vague and lacked clarity and his testimony is rejected in any event, in view of the situation as it developed between Young and the workers that afternoon, Thomas' testimony is immaterial.

¹⁵ As will be discussed hereinafter, it is also alleged that reinstatement on October 14 in several cases was carried out under discriminatory conditions.

Although the testimony referred to reinstatement on October 14, Respondent's records indicate that it was effected on October 15.

¹⁶ *N. L. R. B. v. Mackay Radio Co.*, 304 U. S. 333.

¹⁷ Braun, as in the case of the other four, was employed on the day shift. At a previous time, however, she had worked on the night shift and she preferred work on that shift. Upon reinstatement on October 14, 1946, she was assigned to the night shift as she desired.

September 13

On September 13, the five women assembled by pre-arranged plan at the home of Dorothy Zimmerman for the purpose of jointly obtaining their pay checks.¹⁸ Zimmerman then telephoned Giles and asked him if they could get their checks. Giles replied that the checks were ready and at the employment office. Zimmerman asked Giles, as she testified, "how about our jobs?" Giles replied that he was sorry that they had "quit" whereupon Zimmerman insisted that they had not "quit" but had been "fired." The conversation between Zimmerman and Giles ended on this note of discord.

As the women had previously been advised by their union representative, Cutcher, to find out whether Giles would meet them in his, the representative's, presence, Meier telephoned Giles 5 minutes later and asked if he would meet them as a group. Giles replied that he would, whereupon Meier asked if they could bring their union representative with them. Giles then stated that he would be glad to meet the group individually or jointly, but was not interested in meeting their representative.¹⁹

The undersigned is unable to see how the above conduct by the strikers on September 13 amounted to an unconditional offer to return to work. They asked to see Superintendent Giles and, although he took the position that they had "quit," he did agree to talk to them either as a group or individually. They then attempted, as Meier testified they had been instructed by their union representative, to introduce the representative into the meeting, whereupon Giles refused to meet them if the representative were present. As the Union had no official representative status in the plant at the time, Giles was clearly entitled to take the position that he did take. Further, he still expressed a willingness to confer at once with the group which was assembled at Zimmerman's home, as they informed Giles, and he knew that her home was located directly across the street from the plant. In view of the above, the undersigned finds that the conversations of September 13 do not constitute unconditional application for reinstatement by the strikers.

September 25

On September 24, the Board-ordered election in the representation case was conducted in Respondent's plant and the Union lost. Afterwards, Personnel Manager Fish was asked by Union Representatives Cutcher and Stucker if Respondent would reinstate the five women and whether they could come in to see Giles. Fish replied that it was a matter for the women to decide.²⁰ The representatives then told the women, somewhat inaccurately, that Respondent had requested that they report to the plant.

On the following day, they presented themselves at Giles' office. When asked by Giles what was the purpose of the visit, they stated that they had been instructed by Cutcher and Stucker to call upon him. Giles then stated that he regretted that they had not come in of their own volition, but asked what it was they wished to discuss. The women replied that they desired to return to work, whereupon Giles proceeded to talk over with them the operations in the various

¹⁸ Findings as to this incident are based on the testimony of Meier, Zimmerman, Vermett, Braun, and Superintendent Giles which although differing in some minor aspects is in substantial agreement.

¹⁹ According to Meier, Giles stated, "You had better stick with your representative."

²⁰ This finding is based on the uncontroverted testimony of Fish. Cutcher and Stucker did not testify.

departments of the plant, as well as the respective merits of night and day work.²¹ Giles agreed to give them all consideration as openings presented themselves, and instructed the group to leave their telephone numbers at the employment office. He also ordered Young to give the women the first jobs that became available. In view of the above, it is found that the five women unconditionally applied for reinstatement to their positions on September 24, and it is clear that Plant Superintendent Giles informed them that they would be rehired as positions arose.²²

October 7 and 14; reinstatement of the strikers

On October 7, Giles summoned the five women to the plant and conferred privately with each one.²³ He told each of them that he expected to be able to place them; he also told Meier and Vermett that there would be no union to represent them. Giles attempted to persuade two of the five, who had previous drill press experience, to take positions in that department at equal earnings because only three positions were then open in the plating department. Accordingly, Amann and Zimmerman agreed to start on drill press work and Giles promised Zimmerman that she could return to plating if the drill press work, as she claimed, made her nervous.²⁴ Respondent's records corroborate Giles herein and indicate that the other three women had only plating department experience; according to Giles, he desired to assign them to operations they had previously performed where their earnings might be high.²⁵

²¹ According to the testimony of Meier and Giles, and as indicated by notes made by Giles at the time, Braun stated that she preferred to return to night work.

²² The above findings are based on the testimony of Giles, who impressed the undersigned favorably in this aspect of his testimony. Meier, Zimmerman, and, in part, Vermett, were generally in agreement that Giles said he was sorry that they were under the influence of the union representatives and that it was impossible to reinstate them. The testimony of the three women is, however, in the opinion of the undersigned, self-contradictory herein; although Meier and Zimmerman testified that Giles said he doubted if he could reinstate them, they elsewhere admitted that he did discuss problems of the departments, the nature of the work, and the question of wages. Furthermore, Meier admitted that Braun indicated she wanted to go on night work and the others indicated they desired plating work, thus supporting Giles' version of the conversation. It is difficult to see how Giles would have discussed all these items directly pertaining to reemployment and then told the women to leave their telephone numbers at the employment office, as all three admitted, had the incident not transpired as he testified and set forth above.

In any event, and irrespective of which version of the incident is accepted, the record clearly indicates that the women unconditionally applied for reinstatement on this occasion.

²³ There is some testimony to the effect that the women, shortly before October 7, went to Toledo, Ohio, where the Union already represented employees at another plant of Respondent and that they were there told by union officials, not identified, that pressure would be brought to bear upon officials at the Woodstock plant to reinstate them and to expect a telephone call from said officials. The record further indicates that Plant Superintendent Giles knew of this trip to Toledo. Although the coincidence is somewhat persuasive, the undersigned makes no finding that the October 7 interviews of the women by Giles were brought about as a result of their trip to Toledo.

²⁴ Giles so testified. Zimmerman's testimony generally agreed herein with that of Giles, although she had no recollection of his promise to transfer her to plating work if she became nervous.

²⁵ It will be recalled that the undersigned denied the motion by the General Counsel to add to the complaint a new 8 (1) allegation consisting of (1) interrogation of employees, and (2) prohibition of union activities on company property at any time. Mrs. Braun uncontrovertedly testified that in her interview on October 7, Giles asked her if she were a union member and if she had a union card, Giles only denied interrogation of Braun at an earlier meeting on September 25. Although the undersigned accepts Braun's testimony herein, no findings adverse to Respondent are made thereupon, in view of the ruling on the proposed amendment to the complaint.

On October 14, the five women were summoned back to work and reinstated. Amann and Zimmerman reported to drill press operations, Braun was assigned to night plating work, and Meier and Vermett were assigned to their former positions.²⁶

Contentions and Conclusions

The five women, as economic strikers, were entitled to reinstatement to their former positions upon unconditional application for same if they had not, in the interim, been permanently replaced.²⁷ As found above, such unconditional application was made on September 25, and, after being informed on October 7 by Giles that he could probably reinstate them, they were reinstated on October 14. This reinstatement was effectuated approximately 2½ weeks after it was unconditionally requested by the strikers. In view of the size of this plant, employing in excess of 1,200 workers, and upon all the circumstances in this case, as set forth above, the undersigned is persuaded that there was not an unreasonable delay on the part of Respondent in offering these employees reinstatement after their application for same.²⁸

Furthermore, there is testimony on the part of Plant Superintendent Giles that after the walk-out of September 9 he transferred employees from other plating operations in the plant to those performed by the strikers, and that permanent replacements were hired by the personnel office prior to September 25 to take the places of the transferees.²⁹ It is accordingly found, in the alternative, that the strikers were permanently replaced, prior to their unconditional application for reinstatement on September 25, by transferees from other operations in the plant and that such transferees were replaced in their original operations by newly hired permanent replacements.³⁰

One additional allegation remains for consideration, namely, that Zimmerman and Amann were discriminatorily assigned to less favorable operations on their reinstatement on October 14, 1946. Although Amann was unable to complete her testimony because of illness, Respondent's records reveal that she was transferred from drill press operations to racking, presumably her former operation, on January 6, 1947. Similarly, Zimmerman was offered a transfer to plating operations in January 1947, which she refused, contending that she desired to return to her former job and in March 1947 she was returned to her former plating operation.

In the opinion of the undersigned, there is an absence of competent testimony to indicate that in any way, other than in matter of personal preference, Amann or Zimmerman was given a discriminatory assignment on their return to work. There was no difference in earning potentialities and earnings were approximately parallel. Further, there is no evidence that Zimmerman and Amann

²⁶ There is considerable conflict in the record as to whether Giles, in conversations with the women on October 14, immediately prior to their return to work, told them to abstain from union activities on company property at all times or merely to abstain from union activities during working hours. In view of the ruling on the proposed amendment to the complaint, the undersigned deems it unnecessary to resolve this conflict. See footnote 25.

²⁷ *N. L. R. B. v. Mackay Radio Co.*, *supra*.

²⁸ Assuming that Giles did mention the Union in his discussions with the women on October 7 and 14, as contended by the General Counsel and as found in part, this does not establish the conclusion that it played any part in the date of their reinstatement by Respondent.

²⁹ Giles was not asked to give the names of the transferees or their replacements. His testimony stands uncontroverted and as he personally approves all hiring slips of employees, it is entitled to some weight.

³⁰ *N. L. R. B. v. Reed & Prince Mfg. Co.*, 118 F. (2d) 874 (C. C. A. 1), cert. den. 313 U. S. 595. *Matter of Republic Steel Co.*, 62 N. L. R. B. 1008.

could have been assigned by Respondent to vacant positions in plating operations on October 14, 1946. It is accordingly recommended that this allegation in the complaint be dismissed.

It having been found that the five strikers were not discriminatorily denied reinstatement prior to their actual reinstatement on October 14, 1946, because they had been permanently replaced prior to their applications for reinstatement, and in the alternative, that the Respondent reinstated them within a reasonable interval after their unconditional application for reinstatement, it will be recommended that the complaint herein be dismissed in its entirety.

Upon the basis of the foregoing and upon the entire record, the undersigned makes the following

CONCLUSIONS OF LAW

1. The operations of Respondent, The Electric Auto-Lite Company, constitute trade, traffic, and commerce among the several States within the meaning of Section 2 (6) and (7) of the Act.

2. United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. Respondent has not engaged in unfair labor practices, as alleged in the complaint, within the meaning of Section 8 (a) (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint against the Respondent be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of the said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. The further provided in said Section 203.46, 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.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

MARTIN S. BENNETT,
Trial Examiner.

Dated July 28, 1948.