

In the Matter of WOOSTER BRASS COMPANY *and* UNITED AUTOMOBILE  
WORKERS OF AMERICA (A. F. L.)

*Case No. 8-C-2064.—Decided March 30, 1949*

DECISION  
AND  
ORDER

On January 28, 1949, Trial Examiner James A. Shaw issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices, and recommending that the complaint filed herein against the Respondent be dismissed in its entirety. Thereafter, the General Counsel and the Union filed exceptions and supporting briefs to the Intermediate Report, and the Respondent filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members.\*

The Board has reviewed the rulings made by the Trial Examiner 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 hereby adopts the findings, conclusions,<sup>1</sup> 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, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Wooster Brass Company, Wooster, Ohio, be, and it hereby is, dismissed.

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\*Chairman Herzog and Members Houston and Gray.

<sup>1</sup>In agreeing with the Trial Examiner's conclusion that the discharge of employee Goodman was not violative of the Act, we do not rely on the fact that the Respondent did not discharge other employees who were active in the Union and who testified against the Respondent in Case No. 8-C-1880. *Matter of Stewart Warner Corporation*, 55 N. L. R. B. 593.

82 N. L. R. B., No. 62.

## INTERMEDIATE REPORT

*Ramey Donovan, Esq.*, for the Board.

*Dwight A. Blackmore, Esq.*, of Greenwich, Ohio, and *K. E. Hoover, Esq.*, of Wooster, Ohio, for the Respondent.

*Mr. Lloyd N. Loveland, of Wooster, Ohio*, for the Union.

## STATEMENT OF THE CASE

Upon an amended charge duly filed by United Automobile Workers of America (A. F. L.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated June 10, 1947, against Wooster Brass Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act. Copies of the complaint together with notices of hearing thereon, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges that the Respondent on or about September 26, 1946, discharged Howard Goodman, and at all times since that date has refused and does now refuse to reinstate him to his employment, for the reason that he had on August 6, and 10, 1946, given testimony in a proceeding known as "Matter of Wooster Brass Company and United Automobile Workers of America, Local Union No. 813 (A. F. L.) case No. 8-C-1880," and because he joined and assisted the Union and engaged in other concerted activities with his coworkers for the purposes of collective bargaining and other mutual aid and protection.

The Respondent in its answer, duly filed June 20, 1947, admitted certain jurisdictional allegations. The answer averred, however, that it discharged Howard Goodman, for good and sufficient causes. The answer denied that the Respondent denied the commission of any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held at Wooster, Ohio, on July 8, and 9, 1947, before the undersigned, James A. Shaw, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the Respondent were represented by counsel and the Union by a representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the Board's case-in-chief, counsel for the Respondent moved that the complaint be dismissed for lack of proof. The motion was denied. Counsel for the Respondent at the close of the hearing again moved to dismiss the complaint for the same reason. Ruling upon the motion was reserved, it is disposed of by the finding of fact, conclusions of law, and recommendations embodied in this report. Counsel for the Board then moved to conform the pleadings to the proof as regards minor matters, such as names, dates, and the like. The motion was granted without objection. Counsel for the Board also moved that the Intermediate Report in the instant case be deferred until the Board issued its Decision and Order in the "Matter of the Wooster Brass Company and United Automobile Workers of America, Local No. 813, (A. F. L.) Case No 8-C-1880." The undersigned refused to rule on the motion, and requested that counsel for the Board file a formal motion in this regard with the Board in Washington, D. C. Thereafter he filed a motion<sup>1</sup> with the Board to consolidate Case No. 8-C-1880 and the

<sup>1</sup> An examination of the formal file in the instant case does not contain the above tion. However, the undersigned received a copy of same about 2 weeks after the

instant case. Pending the disposition of the motion to consolidate, the undersigned withheld the issuance of an Intermediate Report in the instant case. On December 31, 1948, the Board decided Case No. 8-C-1880 without passing upon the motion to consolidate. All parties were given an opportunity to argue orally before the undersigned. The parties did not avail themselves of this opportunity. Briefs have been received from counsel for the Board and for counsel for the Respondent.

From his observation of the witnesses and upon the entire record in the case, the undersigned makes the following:

#### FINDINGS OF FACT

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

The Respondent is an Ohio corporation having its principal place of business in Wooster, Ohio, where it is engaged in the manufacture, sale, and distribution of fire department and soda fountain equipment. During the year 1946, it purchased approximately \$50,000 worth of raw materials, from points outside the State of Ohio. During the same period the Respondent shipped to points located outside the State of Ohio finished products valued in excess of \$200,000. The Respondent concedes it is engaged in commerce, within the meaning of the Act, and the undersigned so finds.

##### II. THE ORGANIZATION INVOLVED

United Automobile Workers of America (A. F. L.) is a labor organization admitting to membership employees of the Respondent.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Background

Howard Goodman worked for the Akron Brass Company, Wooster, Ohio, as a machinist from 1920 to 1942, and for the Respondent from some time in the later year to September 26, 1946, when he was discharged. The Akron Brass Company was formerly owned and operated by John C. Schellin, the principal stockholder and president of the Respondent herein.

The Union started its organizational drive among the Respondent's employees in April, 1943. Goodman joined the Union and immediately became very active in its behalf. At the time of the hearing in Case No. 8-C-1880, he was chairman of the grievance committee in the Respondent's plant, and president of Amalgamated Local Union, No. 813, the membership of which included the employees of the Respondent together with the employees in two other plants located in Wooster, Ohio. In addition to Goodman, the following employees of the Respondent were also very active on behalf of the Union, to wit: Scott Corbin, a committee man, Wilson Corbin, John R. McClain, and Lee Sowers.

At the hearing in case No. 8-C-1880, Goodman testified on August 6 and 10, 1946, adversely to the Respondent. Scott Corbin, Wilson Corbin, McClain, and Sowers likewise testified against the Respondent.

On October 24, 1946, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in Case No. 8-C-1880 finding that the Respondent had engaged in

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close of the hearing. In any event the Intermediate Report was deferred by the undersigned until the Board issued its Decision and Order in case No. 8-C-1880, December 31 1948.

and was then engaging in certain unfair labor practices, to wit: (1) by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) of the Act; (2) by discriminating in regard to the hire and tenure of employment of Carl Braden, John R. McClain, and Herbert King, thereby discouraging membership in a labor organization, the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (3) of the Act; and (3) by refusing to bargain collectively with the United Automobile Workers of America, Local Union No. 813, affiliated with American Federation of Labor, as the exclusive representative of the employees in a certain appropriate unit, the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

On December 31, 1948, the Board issued its Decision and Order in Case No. 8-C-1880, (80 N. L. R. B. 1633) in which it adopted the Trial Examiner's findings, conclusions, and recommendations, except that it found that the Respondent had not discriminated against Carl Braden, John R. McClain, and Herbert King; nor had it refused to bargain collectively with the Union as the exclusive representative of its employees in a certain appropriate unit.

The undersigned takes judicial notice of the Board's Decision and Order in Case No. 8-C-1880 (80 N. L. R. B. 1633).

#### *B. The events leading up to the discharge of Howard Goodman*

During the war years the Respondent was engaged in the manufacture of specialized equipment for the United States Navy. During the last year of the war it had contracts for such equipment in excess of \$1,000,000. During the war period it had approximately 132 employees. Shortly after V-J day a large number of its contracts with the Navy Department were cancelled. By the end of 1945, all such contracts were either cancelled or completed. The Respondent was then forced to return to the manufacture of its regular line of fire fighting equipment. Prior to the war it enjoyed an excellent business in a field where there was little competition; there were only 4 companies in the United States that specialized in the manufacture of this type of equipment. By the end of the war, however, the field had expanded to 18. Thus changing the situation from a practically non-competitive to a highly competitive business. Faced with this situation the Respondent was forced to reduce its force from a peak of 132 to 78 employees, which it had at the time of the hearing herein. Again, due to increased competition it was necessary to cut down its manufacturing costs and increase its production. In order to accomplish this management was compelled to require its employees to increase their efficiency and cut idle time to a minimum. Instructions to this effect were given its supervisors in July 1946. According to the credible testimony of John C. Schellin Respondent's President, and Joseph O. Masson, assistant treasurer, and personnel manager, the situation was so critical in the early part of the summer of 1946, that the company was operating at a loss. In an attempt to remedy the situation individual workmen were watched carefully by their respective foremen, particularly by Carl Braun, foreman of the machine shop, and by Charles J. Green in the foundry. Individual employees were cautioned, and warned to be careful in their work and to cut spoilage and tool breakage to a minimum. Employees who disregarded such warnings and continued to operate their machines in an inefficient and careless manner were reprimanded. In furtherance of this policy the Respondent required its foreman

to keep a record of all instances of inefficiency, carelessness, spoilage of work, and tool breakage of individual employees. All such records were kept in the Respondent's office.

*The discharge of Howard Goodman*

For several months prior to Goodman's discharge on September 26, 1946, he operated a lathe with Fox attachments. This is an engine type lathe, and the cutting is done by a single pointed tool, which is held in place by a jaw chuck. On September 25, Goodman was assigned to work on a No. 3, Warner-Swasey turret lathe. He was instructed to machine a number of faucet bodies. The machine had been set up for the job by Foreman Carl Braun. Before Goodman started to operate the lathe, Braun ran a few of the faucets himself to see if the job had been set up correctly and found that everything was in order and ready for Goodman to go to work. A turret lathe of this type operates on a different principle from an engine lathe, particularly as regards the chuck, and, at least in this instance, the cutting tool. On this particular job the cutting was to be done by a fluted die. Goodman was instructed to bore and thread the faucets. Sometime in the afternoon of the 25th, he either accidentally or carelessly brought the die up against the shoulder of a faucet and broke 1 of the flutes. However, he kept on using the die. Shortly thereafter he did the same thing again and broke another flute. He continued to use the die, however, and did not report the damage to Foreman Braun. On the morning of the 26th, Goodman continued to use the die and broke 3 more flutes. He then told Foreman Braun about it. Braun took him off the job and took the die out of the chuck. He then inspected the faucets that Goodman had worked on and found that of the 113 he had finished, 37 were spoiled and had to be scrapped. Goodman then went back to his regular lathe. Sometime in the afternoon Braun came to him and told him that President Schellin wanted to see him in the office.

When Goodman entered the office he found assembled therein, Schellin, personnel manager Masson, Braun, and a stenographer, Mrs. Carl Albaugh.

Schellin told Goodman that the purpose of the meeting was to discuss with him the quality of his work. A stenographic record of what transpired at the meeting was made, and is set forth in its entirety herein below :

Conference, September 26, 1946

Subject: Discharge of Mr. Howard Goodman

Present: Mr. J. C. Schellin

Mr. Carl Braun

Mr. Joe Masson

Mr. Howard Goodman

MR. SCHELLIN. Howard, I had Carl bring you in here to discuss with you the matter of your workmanship in the shop. I talked to you about a year or so ago about a lot of other jobs that I think you have spoiled because of plain carelessness and not watching what you are doing. I have here a report of the mistakes that you have made over a period of about a month. Have they been totalled up Joe?

MR. MASSON. Yes, it's around two hundred dollars.

MR. SCHELLIN. The actual cost of the work you have spoiled runs around two hundred dollars in a period of one month.

(The report was presented to Mr. Goodman for his inspection.)

MR. SCHELLIN. Now there is no mention made there of the latest charge and that is a matter of putting you on the Number 3 Machine and the matter of breaking the die and the matter of ruined castings. Neither is there any-

thing there about what appears to have been your work of making a ring of stainless steel.

Mr. GOODMAN. It hasn't been made as yet. I just bored a hole in a piece of stainless steel.

Mr. SCHELLIN. What for?

Mr. GOODMAN. It would have been made into something, but I didn't finish it. That stopped it right there when they asked me about it. That stopped it.

Mr. SCHELLIN. Why did you make it in the first place without permission from the company? Do you know what we pay for stainless steel?

Mr. GOODMAN. I do not.

Mr. SCHELLIN. And you know if we permitted you to make something we could not deny anyone else.

Mr. GOODMAN. No, you could not. I will agree with you.

Mr. SCHELLIN. Now what excuse do you have for all this bad work?

Mr. GOODMAN. This one item here that I made—the very next day they sent them out and I was accused of doing them wrong.

Mr. MASSON. Yes, but at that particular time we did not have that order. They are generally small orders because they are specialties. The castings could have layed around here six months or longer. It just so happened we got an order where we could utilize them.

Mr. BRAUN. We had thrown them away and when we got the order we fished them out of the scrap barrel to fill the order.

Mr. SCHELLIN. Which indicated that we did not consider them as worth anything.

Mr. BRAUN. That's right because that's a type that is very seldom made, but it just happened that we got that order so we got those two out. Otherwise we wouldn't have used them for a long time.

Mr. SCHELLIN. Well, Howard, in short you are a Class A man out here and claim you can handle any machine in the shop. In fact, your classification requires you to be qualified to do it. The number of pieces you turned out is far below what Grade B men have been turning out. Grade B men have turned out many more. You are supposed to do the work you are qualified to do, and as a result of that record and the fact that our company is at the present time facing a financial crisis, we just cannot afford to keep you on the machine. You are costing the company much more than what we pay you for your work. Sorry as I am because of your seniority and because of the friendship that has existed between you and I personally, I am just going to have to ask you to find work some place else. Don't you think the company is justified in taking this position in lieu of our financial status and in view of the fact that we have been operating "in the red" for the past twelve months?

Mr. GOODMAN. As far as I am concerned, I will not argue. I'm not denying anything, but I will say this. In fairness to all of you I am not going to say a word about this, but give it to all—don't pick on one. I'm taking mine like a man and I'm not going to say a thing about anyone, but give it to all, not just one.

Mr. SCHELLIN. We make an honest effort here to treat every man alike and in your case we have been more tolerant. If it were not for your seniority, if it had been any other employee they would have been dismissed months and months ago.

Mr. GOODMAN. May I have this paper? (Indicates report)

Mr. SCHELLIN. No, that is the only record we have.

Mr. GOODMAN. Well, I would like to have a record.

Mr. SCHELLIN. Howard, this is our record and you see why we called you in here. We had this record made and put on paper, so if you claimed that we did not bring to your attention these errors you have made, we would have it in writing. It's not my work, it's Joe's and Carl's and I asked them to make this record.

Mr. GOODMAN. That's all right. I'm not arguing that point. I am entitled to a copy of it as well as anyone else.

Mr. SCHELLIN. No one else is being discharged today.

Mr. GOODMAN. That's not the point. I'm not arguing that point, I just want to have a copy made.

Mr. SCHELLIN. I am sorry, but that is a company record that we are going to keep here.

Mr. GOODMAN. I don't want that copy, but I believe in all fairness I should have a copy to keep for myself.

Mr. SCHELLIN. You have read these and have stated that they are all true.

Mr. GOODMAN. I will never deny the truth.

Mr. SCHELLIN. Then let's drop it there.

Mr. GOODMAN. But I do want a copy.

Mr. SCHELLIN. I don't think they issue a copy any place else.

Mr. GOODMAN. Well, in all fairness there should be a copy given. I'm not arguing anything else, I am not arguing anything else, I am just asking as a man would ask.

Mr. SCHELLIN. We did this so that we would have a record.

Mr. GOODMAN. That's all right. I am not arguing that point. I am asking for a copy for myself.

Mr. MASSON. I don't believe you are entitled to one and I base my argument on this fact. If you were working for some other company and being discharged they wouldn't give you a record of your activities. They give you a reason for discharge, but not a record of your discharge and that is what that amounts to. That would be the same as asking for a record of production. That is something no company gives out to its employees.

Mr. SCHELLIN. Yes, I agree with Mr. Masson, so the book is closed. Make out his time and pay him in full for today, but that does not mean that you work the balance of the day. Is that fair?

Mr. GOODMAN. I'm not arguing with you. I never will.

Mr. SCHELLIN. I am again sorry, but if we were to give you a written copy of this reason for discharge, any other employee who we might discharge could also insist upon a written report.

Mr. GOODMAN. I won't argue with you. There is only one thing and that is I will take mine. I will never say anything about it, but play with the rest just the same. There is a lot more of it.

Mr. SCHELLIN. During the war period we were obliged to overlook many errors. About 15 or 18 months ago you spoiled work and tools for this company that amounted to five or six hundred dollars. I reprimanded you for this and impressed on you the need for more care about your work. And also, about the time you were in the plant intoxicated. If it had been anyone else I would have fired them immediately.

Mr. GOODMAN. That is one thing you are not telling the truth. I was not drunk and I never have come in this plant drunk. That is one thing—if I fell on this floor dead—I was not drunk. I had been out all night long and I w

asleep and I laid my head on the chuck and slept, but that is "water past the dam." You had workmen come in here and sleep in the ladies rest room. Carl Braun knows about it.

Mr. BRAUN. I don't know what you are talking about and as far as that morning, you told me yourself that you were out the night before and you had too many. We took you over to your car so you could sleep and you appreciated it at that time. You told me so.

Mr. GOODMAN. That's right, I did.

Mr. SCHELLIN. Was he paid for that day?

Mr. GOODMAN. No, I rang my card out.

Mr. BRAUN. It might be possible. I don't recall—I don't know.

Mr. GOODMAN. I don't ask for anything I don't get.

Mr. SCHELLIN. Well, I want you to leave here in good spirit with no animosity toward me, Mr. Masson, Mr. Braun or the company and if and when you decide to come back here and do better work and straighten out—we are not barring you from the company—and agree to do better work, we will make a place for you.

Mr. GOODMAN. There's some of those Siamese that I made up out there. I want you to go out and look at them.

Mr. BRAUN. What's wrong with them?

Mr. GOODMAN. Nothing. I just want you to go out and look at them.

Mr. BRAUN. That's the way your work should be all the time. There shouldn't be anything wrong with it.

The conference was then closed.

As indicated above the Respondent promulgated in July 1946, the policy of keeping a record of major dereliction of its employees. Goodman's record in this regard is set forth below:

#### HOWARD GOODMAN

July 16, 1946—On this date, Mr. Goodman was given a  $2\frac{1}{2} \times 1\frac{1}{2} \times 1\frac{1}{2}$ " Siamese to machine the  $2\frac{1}{2}$ " male ends for one of our customers' orders, namely, Trautwein's. The  $2\frac{1}{2}$ " end was completely finished. Nevertheless, he finished this end to 3" size ruining the casting entirely, thereby holding up delivery of this particular order. (\$20.00)

July 29, 1946—On this date, while running  $6\ 4 \times 5$  males on Shop order 680, machined one of these males to  $1\frac{1}{4}$ " long instead of  $1\frac{1}{8}$ " long as called for on the order. This error on Mr. Goodman's part was found at the time the males were threaded on the thread mill which necessitated the remachining of the casting and delayed delivery approximately three days due to Mr. Goodman's absence from the plant from 12:00 o'clock noon July 29 to 12:00 noon July 31st. (\$10.28)

August 14, 1946—Shop Order #716, L. N. Curtis & Sons. All parts of this order was taken to him together in one pan. One part of this order called for a style SLP-25VG, long type Siamese with screw stem gate valves fastened to Siamese. Male ends to be on discharged end of gates. Goodman machined Siamese the same as a plain open type Siamese (less gates). This necessitated machining a new complete Siamese casting. Time lost will be about  $1\frac{1}{2}$  hrs. This type of work is about 50% of the work involved on this particular machine. (\$20.00)

Week of August 12, 1946—Shop order #431, Neep Equipment Co. Part of this order called for  $2\ 1\frac{1}{2}$ " Style VQT-15 Gate Valves. The swivels for

this are iron pipe thread and Mr. Goodman threaded them  $1\frac{1}{2}$  PCT. Paul Cicconetti had to return these in order to get order out on time (1 hr lost time.) This includes getting swivels buffed out plated. (\$3.70)

August 23, 1946—A Blue Book of Rules (8-25-43) handed to H. Goodman by J. O. Masson in the presence of C. J. Braun.

September 9, 1946—Derbyshire Machine & Tool Company, Order 1438 calling for 4— $2\frac{1}{2}$ " VQT-25 Butterfly Valves with Male inlet and male outlet. He was told by K. Kostenbader to watch this order. He machined all 4 valves with one side female instead of male, thereby ruining all 4 body castings. (\$144.00)

September 24, 1946—Was found machining a piece of  $1\frac{1}{2}$ " round stainless steel bar stock, evidently to be used for a finger ring. At least it was not anything to be used in company products. Steel chips falling into brass chips in bed of machine.

September 26, 1946—On Thursday morning while matching faucet bodies on the #3 Warner & Swasey Turret Lathe, through carelessness, while he was threading the head of the body with an eight fluted solid die with overhanging flutes, he ran the die into the shoulder of casting breaking five flutes out of the die, thereby holding up production and necessitating the making of a new die, the cost of which amounted to \$40.00. In addition to breaking the die, it was necessary to scrap 37 faucets bodies out of a total of 113 which he had machined on September 25th and 26th due to faulty workmanship. The cost of the castings scrapped amounted to \$14.07.

Goodman admitted that he was responsible for the errors and work spoilages as described above. He also admitted that for over a period of months prior to his discharge he had been cautioned and warned on several occasions about the quality of his work and that on occasions he had been reprimanded by his superiors.

In the candid opinion of the undersigned some of the above derelictions are inexcusable, especially in view of the fact that Goodman was a class "A" operator. The record clearly shows that he was one of the sponsors, and in fact, the chief spokesman of the Union for the establishment of the classification system. At one of the meetings between the union committee and the Respondent, Goodman insisted that he should be classed as an "A" operator in view of his long experience coupled with the fact that he could operate and set up all types of machines in the Respondent's plant, including the turret lathes.

Under the rules of the classification system subsequently adopted in the Respondent's plant, a class "A" operator must be able to set up a job in a machine, read blueprints, operate any machine in the shop, and complete the job without supervision. If Goodman's admitted derelictions are considered as criteria of his qualifications as a workman, it is difficult to understand why he was permitted to remain on the pay roll as a class "A" operator. For example, on September 9, he was given 4,  $2\frac{1}{2}$ " butterfly valves to machine. He was told by Karl Kostenbader, stockroom clerk, that they were for a special order, and Goodman was given detailed instructions in this regard. He was also given a copy of the shop order and the blueprints to guide him in machining the valves. Both the order and the blueprints called for "male" inlet and outlet threads. In total disregard of these instructions Goodman machined all four valves with one side "female" and the other "male."

At the hearing herein he admitted that he didn't even look at the shop order or the blueprint until he had completed the job. Due to his admitted error :

four valves were practically valueless. Moreover, in addition to the time lost, the Respondent suffered a monetary loss of \$144.

Another typical example of Goodman's carelessness and negligence was the manner in which Goodman used the fluted die while machining the faucet bodies on September 25, and 26, which has been described above. Goodman in justification of his conduct on this occasion, contended at the hearing that he was put on a machine that he had never operated before, and that this made him nervous and that this was a contributing factor to his faulty workmanship. It must be remembered that he was a class "A" operator and under this classification he was expected to be able to operate not only a turret lathe but in fact any machine in the shop. Moreover he was one of the most ardent proponents of the classification system, and well knew the standards required of an "A" operator.

The Board contended at the hearing that someone tampered with the die before Goodman started to work on the morning of September 26 and that this was also a contributing factor in the breaking of the die, and the resultant work spoilage. In support of this contention, the Board offered the testimony of Paul Graber, a former molder in the Respondent's foundry. Graber testified that shortly after Goodman was discharged he was told by Charles J. Green, foreman of the foundry, that someone at the instigation of the Respondent, in order to get "something on" Goodman, changed the die on the No. 3 Warner-Swasey turret lathe without Goodman's knowledge, and that when he started to machine the faucets he broke the die, and that the Respondent used this incident as an excuse to discharge him. Green flatly denied Graber's testimony in this regard. His denial is buttressed by the testimony of Goodman himself, who testified upon interrogation by the undersigned that (1) he broke two flutes of the die on the afternoon of September 25, (2) that on the morning of the 26th he broke three more flutes on the same die; (3) he made no contention that there had been any change of the dies, and (4) that he reported to his foreman, Carl Braun, that he had broken said die. In such a state of the record, the undersigned is convinced, and finds, that Goodman's lathe was not tampered with between the night of the 25th and the morning of the 26th of September, accordingly the undersigned credits Green's denial and gives no credence to Graber's testimony in this regard.

Also typical of Goodman's attitude towards his job was the chincing of a piece of 1½" stainless steel during working hours, for the admitted purpose of making a finger ring. He admitted that he picked up the steel in the stock room, but justified his conduct on the grounds that it was scrap and of no value. Regardless of the value of the steel, the vice of his conduct in this regard is the fact that he machined the steel with a drill designed to work on brass, a much lighter metal, and permitted the cuttings to drop in the cuttings pan which contained only those of brass. Thus the steel could have ruined a whole run of castings because the brass cuttings are melted down and made into new castings. Since brass is a lighter metal it requires different tools to machine it, and when a tool designed to cut brass runs into a steel chip in the casting it usually causes the tool to break.

Counsel for the Board both at the hearing herein, and in his brief, contends that Goodman was discharged not only because he testified in Case 8-C-1880, on August 6 and 10, 1946, but also for the further reason that he was the most active proponent of the Union among the respondent's employees. The record in Case 8-C-1880, and in the instant case, does not, in the considered opinion of the undersigned, sustain this contention and the undersigned so finds. True, he was chairman of the grievance committee, and president of the local, but on the other hand, the record in both cases shows that Scott Corbin was equally active on

behalf of the Union, and also testified adversely to the Respondent in Case No. 8-C-1880. Moreover, John R. McClam, Wilson Corbin, and Lee Sowers, likewise were active on behalf of the Union, and also testified adversely to the Respondent in Case No. 8-C-1880. None of these employees were discharged by the Respondent. Nor is there a scintilla of evidence in the present record that they have been discriminated against by the Respondent since so testifying.

#### Concluding findings

The sole issue herein is whether or not Goodman's discharge on September 26, 1946, was motivated by the fact that he was a prominent union member, and had testified adversely to the Respondent on August 6 and 10, 1946, in Case No. 8-C-1880, or because of his carelessness and negligence in performing his work in the respondent's shop.

In view of the above findings the undersigned is convinced that the motivating force behind Goodman's discharge on September 26, 1946, was his inefficiency and carelessness in the performance of his work. The record is clear that his derelictions extended over a period of several months. When this fact is considered in the light of his admissions the undersigned is convinced that under such circumstances the only reasonable inference that can be drawn therefrom is that he was discharged for just cause, and the undersigned so finds.<sup>2</sup> The undersigned is not unmindful of the fact that the Respondent has committed unfair labor practice in the past, and he has given this matter due consideration. It is well settled that findings of fact must be predicated on reliable, probative, and substantial evidence, not on surmise, suspicion, and speculation. Such is the situation herein. As the Fifth Court of Appeals speaking through Holmes, Chief Justice, in the *Union Manufacturing Co.* case said; "It is unnecessary for an employer to justify the discharge of an employee as long as it is not for union activities. The presumption is that the employer has not violated the law, and the burden of proof is not on the employer, but upon the one who asserts the fact to prove that the discharge was because of union activities. This burden has not been met, and the Board's findings are not supported by substantial evidence." A like situation exists herein. Accordingly the undersigned is convinced and finds that the Board did not prove the allegation in its complaint by reliable, probative, and substantial evidence that Howard Goodman was discharged for the reason that he formed and assisted the Union and engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining and other mutual aid and protection, and, also because he gave testimony under the Act on August 6 and 10, 1946, and that by so doing violated Section 8 (1) (3) and (4) of the Act. Hence, the undersigned recommends that these allegations in the complaint be dismissed.

In view of the above findings and conclusions of law the undersigned recommends that the complaint herein be dismissed in its entirety.

#### CONCLUSIONS OF LAW

(1) The operations of the Respondent, Wooster Brass Company, constitute, and affect trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) and (7) of the Act.

(2) United Automobile Workers of America, (A. F. L.) is a labor organization within the meaning of Section 2 (5) of the Act.

<sup>2</sup> See *In the Matter of Eagle & Phenix Mills*, 15 N. L. R. B. 1044; *N. L. R. B. v. Union Manufacturing Company*, 28 N. L. R. B. 357, 124 F. (2d) 332 (C. A. 5).

(3) The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the complaint against the Wooster Brass Company, Wooster, Ohio, be dismissed in its entirety, insofar as it alleges that the Respondent engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (4).

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, 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 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 and Recommended Order 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 and Recommended Order. 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. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As 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 thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of January, 1949.

JAMES A. SHAW,  
*Trial Examiner.*