

In the Matter of MEYER & WELCH, INCORPORATED *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO (UAW-CIO), REGION 6

In the Matter of MEYER & WELCH, INCORPORATED *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, A. F. OF L.

Cases Nos. 21-CA-697 and 21-CA-789.—Decided October 19, 1950

DECISION AND ORDER

On August 28, 1950, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not discriminated against Eldon Clark as alleged in the complaint as amended and recommended dismissal of that allegation.¹ Thereafter, the Respondent and the IAM filed exceptions to the Intermediate Report and supporting briefs. The Respondent's request for oral argument is hereby denied, as the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Members Houston, Reynolds, and Styles].

The Board has reviewed 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

¹ As no exception has been taken to this finding, we will dismiss the amended complaint insofar as it alleges that the Respondent discriminated with respect to the terms and conditions of employment of Eldon Clark.

the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.²

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, Meyer & Welch, Incorporated, Vernon, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with the administration of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and International Association of Machinists, Lodge 1186, or with the formation or administration of any other labor organization, and from contributing support to either of the above-named labor organizations, or to any other labor organization;

(b) Giving effect to the collective bargaining agreement, dated June 5, 1950, between the Respondent and International Association of Machinists, Lodge 1186, or to any extension, renewal, or modification thereof, or any other contract or agreement between the Respondent and the said labor organization which may now be in force;

(c) Recognizing International Association of Machinists, Lodge 1186, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the said labor organization shall have been certified as such representative by the Board;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (UAW-CIO), Region 6, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of col-

² The Trial Examiner found that the Respondent unlawfully supported the IAM, among other ways, by "signing a collective bargaining agreement with IAM while a proceeding was pending before the Board to determine the collective bargaining representative." We find it unnecessary to determine whether the doctrine of the *Midwest Piping* case, 63 NLRB 1060, is applicable here. Both before and after the charges were filed in this case, the Respondent unlawfully supported the IAM in respects other than by executing the contract, as detailed in the Intermediate Report. Because of such unfair labor practices, we find that the Respondent gave further unlawful support to the IAM by entering into the exclusive bargaining contract with an illegally supported labor organization, as the IAM was. We therefore do not pass on the applicability of the *Midwest Piping* doctrine in the instant case.

lective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

(a) Withdraw and withhold all recognition from International Association of Machinists, Lodge 1186, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the said labor organization shall have been certified as such representative by the National Labor Relations Board;

(b) Reimburse all its employees whose initiation fees and membership dues in International Association of Machinists, Lodge 1186, were checked off, for the amounts thus deducted from their wages since March 4, 1950;

(c) Post at its plant in Vernon, California, copies of the notice attached hereto and marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent, be posted by it 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 said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, as amended, insofar as it alleges that the Respondent discriminated with respect to the terms and conditions of employment of Eldon Clark, be, and it hereby is, dismissed.

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, we hereby notify our employees that:

³ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

WE WILL NOT give effect to any and all agreements and contracts, supplements thereto or modifications thereof, or any superseding contract with INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1186.

WE WILL NOT interfere with the formation or administration of any labor organization or contribute financial or other support to it.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO (UAW-CIO), REGION 6, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

WE WILL reimburse all our employees, whose initiation fees and membership dues in INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1186, have been checked off, for the amounts thus deducted from their wages.

WE WILL withhold all recognition from INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1186, as representative of any of our employees for the purposes of collective bargaining unless and until said organization shall have been certified as such representative by the National Labor Relations Board.

MEYER & WELCH, INCORPORATED,

Employer.

By _____
(Representative) (Title)

Dated _____

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. Ralph Nutter, of Los Angeles, Calif., for the General Counsel.

Mr. Reymont Paul, of Detroit, Mich., for the Respondent.

Messrs. Robert E. Rissman (Wirin, Rissman & Okrand), *C. V. O'Halloran*, *Don Garriga*, and *Noah N. Tauscher*, all of Los Angeles, Calif., for the UAW-CIO.

Mr. Edward M. Skagen, of Los Angeles, Calif., for the IAM.

STATEMENT OF THE CASE

Upon charges duly filed in Case No. 21-CA-697 by International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO (UAW-CIO), Region 6, herein called the UAW-CIO, the General Counsel of the National Labor Relations Board,¹ on behalf of the Board and by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a complaint dated May 31, 1950, against Meyer & Welch, Incorporated, Vernon, California, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act as amended, Public Law 101, 80th Congress, 1st Session, herein called the Act. Upon a charge filed on June 2, 1950, in Case No. 21-CA-789, by International Union, United Automobile Workers of America, A. F. of L., herein called UAW-AFL, the Regional Director issued, on June 7, 1950, a consolidation of charges and amendment to complaint. Sair order, in substance, amended the caption to read as appears above and inserted the title of UAW-AFL in certain allegations of the original complaint. The charges, the complaint, the order of consolidation and amendment to the complaint, and a notice of hearing were duly served upon all the parties involved.

With respect to the unfair labor practices, the amended complaint alleges, in substance, that the Respondent: (1) since January 1950, has prevented its employees from exercising a free choice of union affiliation by various coercive act and conduct designed to discourage membership in UAW-CIO and UAW-AFL and to encourage membership in IAM and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., herein called the Teamsters; (2) in February 1950, entered into a collective bargaining agreement with IAM at a time when it was not the freely chosen representative of the respondent's employee; (3) dominated, supported, and assisted IAM and Teamsters; (4) discriminated in regard to the tenure and conditions of employment of its employees generally, and of Eldon Clark in particular; and (5) by these acts has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

The Respondent duly filed an answer and an amendment of answer, in which it admitted certain allegations as to the nature of its business but denied the commission of the alleged unfair labor practices.

Pursuant to notice a hearing was held in Los Angeles, California, from June 27 to June 30, 1950, inclusive, before the undersigned duly designated Trial Examiner. The General Counsel, the respondent, UAW-CIO, and IAM were represented by counsel. All parties except UAW-AFL participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing motions were denied, made by the Respondent and IAM, to dismiss the complaint in whole or in part. Ruling was reserved upon similar motions made by the same parties at the conclusion of the hearing. They are disposed of by the rulings, findings, conclusions, and recommendations appearing below. At the close of the hearing General Counsel argued orally, on the record; other parties waived the opportunity. A brief has been received from counsel for the Respondent, and a memorandum of citations from General Counsel.

¹The representative of the General Counsel at the hearing is herein referred to as General Counsel, the National Labor Relations Board as the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Meyer & Welch, Incorporated, is a California corporation engaged in reconditioning Ford automobile parts. It holds several franchises granted by the Ford Motor Company covering all or parts of California, Nevada, Utah, Idaho, Wyoming, and Arizona. The respondent's plant and main office is at Vernon, California. It has a warehouse and distribution plant at Salt Lake City, Utah. The Respondent's trucks deliver reconditioned parts to Ford dealers in Oregon, Idaho, Nevada, Wyoming, Utah, and Arizona, as well as in California.

During 1949 the Respondent bought Ford parts, materials, and supplies from the Ford Motor Company assembly plant at Long Beach, California, valued at more than \$1,000,000. Such parts and materials were shipped from the Ford Motor Company in Michigan to the Respondent's Vernon plant.

During the same year the Respondent made sales of more than \$2,000,000, shipping materials, equipment, and supplies valued at more than \$400,000 to points outside the State of California.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (UAW-CIO), Region 6; International Union, United Automobile Workers of America, A. F. of L.; International Association of Machinists, Lodge 1186; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., are all labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The setting*

The UAW-CIO lost a consent election held at the Respondent's plant in May 1949, and in January 1950, there was no collective bargaining agent for the production force of about 250 employees. In January President Lewis W. Welch, having been informed by his branch manager that the Respondent's products were being boycotted in that area, went to Oakland to see E. H. Vernon, a representative of an IAM local. Vernon told him that mechanics refused to work upon Meyer & Welch products because his employees were not "unionized." Welch promptly invited Vernon to come to the plant and organize them. The oral invitation was confirmed by letter.

Vernon delayed coming to the plant for several days. Early in February a Teamsters' dues collector² came to Welch's office. Welch told him of his boycott difficulties. The Teamsters' representative said that if his union was permitted to organize the employees it would try to lift the boycott. Welch agreed and, as he testified, "turned the place over" to the Teamsters, under circumstances described more fully below. This organization signed up about 180 employees and Welch thereupon gave it a check for \$1,500.

Welch then notified the IAM, through his Oakland management, that a majority of his employees had joined the Teamsters, and asked that the boy-

² Welch testified that his drivers "belonged" to the Teamsters.

cott be lifted. On February 10 Vernon and other IAM representatives called upon Welch, pointing out that the Teamsters, in effect, did not control the boycott. He turned the plant over to them that day and the following Monday. Despite protests from the UAW-CIO, Welch permitted representatives of the Teamsters and IAM to conduct elections during working hours at the plant on February 15, and thereafter signed a contract with IAM.

All of the issues raised by the pleadings stem from the conduct of Welch and other company officials following his admitted invitation to the IAM that it organize his employees. The record is barren of any evidence that, before Welch's invitation, any employee desired to be represented by the IAM or that this organization had ever attempted to organize the plant.

B. Assistance to the Teamsters

According to Welch's own testimony he told the Teamsters' representative on February 2 that the UAW-CIO had lost previous Board elections and that he "was welcome" to come in and organize the employees. On the same day or soon after, Welch had some nine employees, including Anthony Bauman, selected from plant departments and convened in his office to meet the Teamsters' official. Welch told the employees, according to his own testimony, that "It looks like we was going to have to get into a union in order to stay in business." He also told them that he had gone as far as he was going in "dumping money" into the business, and that it was up to the employees to "make up their minds" whether they wanted to go into the Teamsters.³ In Welch's presence the Teamsters told the employees that if they joined his organization the boycott would be lifted, gave them authorization cards, and instructed them to get as many signed as possible. Thereafter the cards were distributed and signatures solicited during working hours. Welch candidly admitted that "the whole shebang was on company time."

On February 6 two Teamsters' representatives came to the plant. Welch "turned the place over to them," he testified. He had all employees assembled in one department. In the presence of several company officials and introduced by its secretary, a Teamsters' representative told the audience that if they did not join his organization the plant would be closed. During the meeting Welch came in, to respond to a query raised by one employee, and according to his own testimony told them that although he "hated to see any of them being forced into a union . . . it had become necessary for them to join some kind of a union." One employee asked if they could vote for the UAW-CIO. Welch replied, "Why vote for C. I. O.? They don't have the boycott on us."⁴

A day or two after this meeting the Teamsters' representatives came to Welch with about 180 signed cards. According to Welch's testimony, since his employees "were being forced into a union, it wasn't their own wish" he agreed to pay their initiation fees, and gave the Teamsters a check for \$1,500.

C. Assistance and support to IAM

1. In organizing

By letter of February 6 the UAW-CIO formally requested recognition by the Respondent and voiced its trust that "Management will not enter into any Agreement with any other labor organization . . . until the issue of the bar-

³ It is reasonably inferred from the context that Welch meant the Teamsters, although he testified that he said "the union." Only the Teamsters' representative was present besides the employees and supervisors on this occasion.

⁴ Welch denied giving this advice. The finding rests upon the more credible testimony of employees present.

gaining agent is determined." On February 7 the UAW-CIO informed the Respondent that it had learned of the Teamsters' visit of the preceding day, and requested a similar opportunity to have access to the plant. Sometime during the afternoon of February 10—after having given the run of the plant to IAM officials—Welch told the UAW-CIO representative that he could come to the plant the following Monday, February 13, half an hour before closing time.

On Friday morning, February 10, Vernon and 4 other IAM officials called on Welch who, according to his testimony, "turned the place over to them." Since only a small shift was working that day, the same IAM officials returned the following Monday, and all employees were again assembled by management. In the presence of several supervisors Vernon told the employees that it was the IAM, not the Teamsters, which had "put on" the boycott, and that Welch had asked him to come down. Employees were also told by Vernon that if they joined the IAM the boycott would be lifted and they would have their jobs. IAM application cards were then distributed to the employees.

Pursuant to permission granted by Welch the preceding Friday, two UAW-CIO officials came to the plant late the same Monday afternoon. The spokesman told the assembled employees, among other things, that no Board election could be held until after May 18, 1950, because of the Act, but that his organization would welcome an election conducted by any unbiased outside agency.

2. In elections of February 15

Although Welch's testimony on the point is more confused and less candid than on general matters, he said he told his personnel manager, Vernard Kennan, on February 13 that a vote should be taken among the employees to see which union the "people wanted," and that he gave instructions that "it was up to the union to handle it, because the company didn't want anything to do with it." Welch's testimony that he talked with CIO officials and that they agreed to the election is not accepted as reasonable of belief. More credible evidence establishes that the UAW-CIO vigorously opposed such an election and that its officials took no part in its conduct. It was stipulated by the parties at the hearing and is found that the IAM prepared and mimeographed ballots upon which appeared boxes for "Yes" or "No" votes upon the single question:

Do you wish to be represented jointly by the
MACHINISTS and TEAMSTERS UNION?

Sometime between the IAM meeting of February 13 and the election on February 15, all employees were again assembled by management to hear representatives of the Teamsters and IAM. They told the employees that their differences were dissolved, an election would be held at which votes could be cast for both, and that later the two unions would decide upon individual classifications and memberships. They called for a hand vote. Employees protested against this procedure, and a "secret ballot" election was decided upon.

Soon after noon on February 15 all employees were gathered by the plant loud-speaker system. In the presence of supervisors, ballots described above were distributed by IAM and Teamsters' representatives, and employees voted. Apparently the results of this balloting were inconclusive. About 64 votes were for IAM alone, 43 for IAM and Teamsters combined, and 38 voted "No." According to Welch's testimony the Teamsters' representative came to him and told him "they were out of the picture and conceded to the IAM."

Shortly after this election a number of employees were selected by management and called to the office of Production Manager Jess Wilcox. When these

selected employees were convened Wilcox told them, "Mr. Bauman wants to talk to you people." (Bauman has previously been identified as one of the employees selected by management to solicit for the Teamsters.) Bauman told the employees that the matter must be settled that afternoon, declaring that: "I have seen the bulletin that Mr. Welch has ready to post on the clock closing the plant if this isn't settled this afternoon." When one of the employees asked if they could vote for the CIO on the next ballot Bauman said they could, but added, "I happen to know that if the IAM doesn't get in, the plant will close."⁵ When asked if the CIO knew of the next election Bauman replied, "I don't know and don't care." As the employees started to leave the office, Plant Manager Weidauer halted them and asked Bauman, "You have made it quite clear to these people they are to go back to their departments and tell exactly what you told them?"⁶

Late that afternoon a second election was held, in the presence of an IAM representative. No UAW-CIO representative was present. Bauman distributed ballots prepared by the Respondent upon which appeared only:

Please check which Union you prefer:
IAM_____ CIO_____

The votes were counted in the sales office, in Plant Manager Weidauer's presence. According to Welch, in a report thereafter made to the Regional Office, 109 voted for IAM and 79 for the CIO.

3. In recognizing IAM as sole bargaining agent

According to the date appearing on the document, also on February 15 Welch and a business representative of IAM signed a "Statement of Bargaining Agency," in which Welch stated that he had checked the "Authorization Cards" whereby his employees had selected IAM to represent them and agreed to recognize this organization as the "sole representative and bargaining agent" of the employees. This document and others were sent to the Regional Office on March 24, 1950. There is no credible evidence that on February 15 either Welch or any IAM representative had checked any IAM authorization cards.

On February 16 Welch posted a bulletin informing employees that "as far as Meyer & Welch is concerned," IAM was their bargaining agent.

4. In coercing authorizations for dues deductions

About a week after the elections four IAM representatives returned to the plant, were installed for several hours in management offices, and with the coercive assistance of officials and supervisors obtained employees' signatures to authorizations for dues deductions from their pay.

According to Weidauer's own testimony, upon instructions from the personnel manager he had two production managers send employees in groups to Wilcox's office, where IAM representatives were waiting. Credible evidence establishes that in the presence of management officials some employees were

⁵ Welch admitted that he "thought" he told Bauman the first election was inconclusive, that it "was no secret to anybody" that the plant "would be closed down if this thing wasn't settled," and that "there may have been a bulletin" to that effect. Because of these admissions the Trial Examiner does not accept as true his denial that he showed or discussed this bulletin with Bauman.

⁶ Weidauer denied "ever" making this remark. Bauman was not called as a witness. The finding rests upon the more credible testimony of employee Ellis, one of the employees called to the office by Wilcox, and the probabilities inherent in the situation admittedly created by management alone.

told by IAM representatives that they must sign then or be fined later. It is undisputed that in one group of employees thus sent to this office two deaf mutes were included, that Wilcox told the union representative to "Fix these guys up" and then himself transmitted the message to them in sign language.

Some employees refused to sign when first sent to the office, and were ordered back by their foremen. After having twice been sent to the IAM representative and twice refusing to sign, employee Ellis was told by her foreman (Al Schlager) that if she joined he might be able to get a raise for her. She thereupon returned and signed the deduction slip. Having refused to sign on the first occasion, employee Duncan was again sent to the office by Foreman Tracy Lus. This time Duncan signed, being informed by the IAM representative that only 6 employees had not already signed. Employees Barnett, Jenkins, Harris, and Tipton were likewise sent back to the IAM representative by supervision.

Credible evidence establishes that the Respondent began deducting IAM dues and fees from employees' pay during the first week of March 1950. No conclusive evidence was submitted to show precisely how many employees have been subjected to those dues deductions. IAM counsel stated that his calculations showed that as of June 23, 1950, 231 of 243 employees were having dues deducted, while counsel for the Respondent said his examination of company records showed 199 such deductions.

Despite protests from UAW-CIO and from employees themselves, it is plain from the statement of IAM counsel that the Respondent continued to deduct IAM dues. On March 22 a UAW-CIO official sent a written protest on this matter to Welch. Welch replied by asking "Since when do you think you are running Meyer & Welch, Inc?" Petitions bearing signatures of about 50 employees requesting cessation of such deductions were admittedly received by Welch, who said he did not recall giving any instructions to "personnel" about them.

4. In signing a collective bargaining agreement

Despite the fact that Welch was well aware that on February 7, 1950, the UAW-CIO had filed with the Regional Office a petition for certification (Case No. 21-RC-1154), and on the following day its first charges of unfair labor practices (in Case No. 21-CA-697), and despite Welch's admitted receipt of a letter from UAW-CIO, dated March 3, 1950, claiming some representation among the employees, Welch entered into an exclusive collective bargaining agreement with IAM dated June 5, 1950.

Although the contract contains a "union shop" clause, by agreement it does not become operative until a Board election on the point is held. There is no evidence that any employee has been discriminated against, as to employment, on the basis of this pending provision.

D. *Alleged discrimination as to Eldon Clark*

Employee Eldon Clark circulated the petitions, above referred to, protesting the checkoff of IAM dues. It is undisputed that Welch called him to his office and asked if he had passed them around, and that Clark admitted the fact. Welch accused Clark of forgery, declared he would "get" him, and then told him to "get the hell" out of the office.

According to Clark's testimony, sometime in the fall of 1949 he had been told by Wilcox that when the next opening occurred he would be promoted to lead man. Also according to his testimony, early in May an opening appeared, but employee Elmer Miller was given the job. Upon this paucity of evidence

rests General Counsel's claim that Clark was discriminatorily denied promotion.

Wilcox, on the contrary, denied that he ever promised Clark a lead man's job. He further testified, without rebuttal from Clark, that the latter actually functioned as lead man for a period early in 1950 but had to be reprimanded for getting involved in disputes with other employees. The Respondent's records show and Clark admitted that Elmer Miller had greater seniority at the plant than Clark.

While the issue is not free of doubt, the Trial Examiner concludes and finds that a preponderance of evidence fails to sustain the allegation of the complaint as to any discrimination against Clark. It is found, however, that Welch's threat to "get" Clark, for circulating the petitions, was plainly coercive, and constituted interference with rights guaranteed employees by Section 7 of the Act.

E. Allegations involving UAW-AFL

Two days after issuance of the original complaint based upon charges filed by UAW-CIO, a similar charge was filed by UAW-AFL. As noted heretofore, the complaint was thereafter amended to include UAW-AFL where UAW-CIO was mentioned. It appears needless to the Trial Examiner to set out in detail these amended allegations. No evidence relating to any UAW-AFL activity was adduced by General Counsel, except the one letter received by Welch and previously noted, until a motion was made by counsel for IAM to dismiss all allegations relating to UAW-AFL. General Counsel then called one UAW-AFL representative, who testified that on February 10 he distributed handbills outside the plant and that he saw Welch. There is no credible evidence that the respondent engaged in any conduct for the specific purpose of discouraging membership in the UAW-AFL.

It is apparent to the Trial Examiner, by the timing of its charge, that UAW-AFL was either unaware until issuance of the complaint of any unfair labor practices of the Respondent, or considered them of insufficient importance to warrant filing charges.

Under the circumstances revealed by the record, the Trial Examiner hereby grants the motion renewed by counsel for IAM at the close of the hearing to dismiss all allegations of the complaint relating specifically to UAW-AFL.

F. Conclusions

The Trial Examiner concludes and finds that by the following conduct the Respondent supported and assisted Teamsters: (a) Selecting and permitting employees, including Anthony Bauman, to solicit signatures to Teamsters' cards during working hours; (b) Welch's statement to these selected employees, in effect, that if employees did not join Teamsters he would close the plant; (c) Welch's statement to all employees on February 6, in the presence of Teamster's representative, that they must join a union; and (d) payment to Teamsters of \$1500.

By the following conduct the Respondent supported and assisted IAM: (a) urging and inviting IAM to organize the plant; (b) "turning the place over" to IAM representatives on February 10 and 13; (c) permitting and not disavowing statements by IAM representatives to employees gathered by the Respondent to the effect that their jobs depended upon their joining IAM; (d) permitting distribution of IAM cards during working hours; (e) permitting IAM to conduct an election at the plant on February 15; (f) permitting and instructing Bauman to tell employees that, in effect, the plant would be closed if they did not vote

for IAM; (g) posting a notice on February 16 recognizing IAM as the exclusive bargaining representative of its employees; (h) coercing employees into signing dues deduction authorizations; (i) promising wage increases if such authorizations were signed; and (j) signing a collective bargaining agreement with IAM while a proceeding was pending before the Board to determine the collective bargaining representative.⁷

By the above-described conduct the Respondent encouraged membership in Teamsters and IAM discouraged membership in UAW-CIO, and interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.⁸

The Trial Examiner further finds that the agreement entered into between the Respondent and IAM and the contractual relationship existing thereunder, has been and is a means of utilizing an employer-assisted organization to frustrate the exercise by the Respondent's employees of the rights guaranteed in Section 7 of the Act.

The Trial Examiner is of the opinion that while the evidence plainly establishes flagrant interference with the administration of, assistance to, and support of IAM and Teamsters by the Respondent, its conduct falls short of domination of either organization. The remedy to be recommended, therefore, will be in consonance with Board policy set forth in *Carpenter Steel Company*, 76 NLRB 670.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in Section III, above, occurring in connection with the operations of the Respondent set forth in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent has interfered with the administration of Teamsters and IAM and has assisted and contributed financial and other support thereto. The effects and consequences of the Respondent's interference with and support of IAM, as well as its continued recognition of IAM as the bargaining representative of its employees, constitute a continuing obstacle to the free exercise by its employees of their rights to self-organization and to bargain collectively through representatives of their own choosing. It will therefore be recommended that the Respondent withhold recognition of IAM and refrain from dealing with it unless and until it shall have been certified by the Board as the collective bargaining representative of its employees.

⁷ See *Sun Oil Company*, 89 NLRB 833.

⁸ Much of the conduct above described is alleged in the complaint as discrimination "in regard to tenure and conditions of employment" and therefore in violation of Section 8 (a) (3) of the Act. Except in the case of Eldon Clark, above described, there is no evidence that any employee was discriminated against. Since it appears to the Trial Examiner, having found violations of Section 8 (a) (1) and (2), that ample remedy exists under Board policy approved by the courts for reimbursing employees for IAM dues coercively deducted from their pay, it will be recommended that the complaint be dismissed as to 8 (a) (3) allegations.

It has been found that the agreement entered into between the Respondent and IAM has been a means whereby the Respondent has utilized an employer-assisted labor organization to frustrate self-organization and defeat genuine collective bargaining by its employees. Under these circumstances any continuation, renewal, or modification of the current agreement would perpetuate the conditions which have deprived employees of the rights guaranteed them by the Act and would render ineffectual other portions of these remedial recommendations. It will therefore be recommended that the Respondent cease giving effect to any agreement between it and IAM, or to any modification or extension thereof. Nothing in these recommendations should be taken, however, to require the Respondent to vary those wage, hour, and other substantive features of its relations with the employees themselves, if any, which the Respondent established in performance of the agreement as extended, renewed, modified, supplemented, or superseded.

The Trial Examiner is also of the opinion that, under the circumstances of this case, the Respondent should, as a means of restoring the *status quo* and remedying the unfair labor practices found, reimburse each employee for the amount of fees and dues which the Respondent has checked off his wages and paid over to IAM, less any amount already returned to him by IAM. It will be so recommended.

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

CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (UAW-CIO), Region 6; International Union, United Automobile Workers of America, A. F. of L.; International Association of Machinists, Lodge 1186; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with the administration of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L. and International Association of Machinists, Lodge 1186, and by contributing support thereto, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

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

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

5. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act, and has not dominated the formation or administration of Teamsters or IAM within the meaning of Section 8 (a) (2) of the Act.

[Recommended Order omitted from publication in this volume.]