

In the Matter of E. I. DU PONT DE NEMOURS & COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFFILIATED WITH AMERICAN FEDERATION OF LABOR

Case No. 5-C-1775.—Decided June 25, 1945

DECISION

AND

ORDER

On January 26, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, 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 engaged in unfair labor practices by discharging James A. Duncan and recommended that the complaint be dismissed with respect thereto. Thereafter, exceptions to the Intermediate Report and supporting briefs were filed by the respondent, the Union, and counsel for the Board. Oral argument, in which the respondent and the Union participated, was held before the Board in Washington, D. C., on May 31, 1945. The Board has reviewed the Trial Examiner's rulings made prior to and 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 the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings, conclusions, and order hereinafter set forth.

We do not agree with the Trial Examiner's conclusion that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act.

The Trial Examiner has found that Supervisor McKenna's presence near the union hall on four occasions in April and May 1944, was for the purpose of observing who entered the union hall; and that by this surveillance and by certain statements derogatory of the Union made by McKenna and Fore-

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man Deitz, set forth in the Intermediate Report, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. In finding that McKenna had engaged in surveillance, the Trial Examiner credited Armstrong, a union representative, who testified that on four different occasions between mid-April and mid-May 1944, he had seen McKenna sitting alone in his car near the union hall between 7 and 9 p.m.; that on these occasions at least five of the respondent's employees, whom he named, informed him that they, too, had seen McKenna outside the hall; and that on two other occasions during that period he had seen McKenna and his wife in the car at approximately the same place at 7 p.m. and at 9 p.m., but not between those hours. Armstrong admitted that, although the Union held meetings every Saturday, he had never seen McKenna near the hall on a meeting day.

McKenna denied having engaged in surveillance. He admitted that he had been in his car in the vicinity of the union hall on numerous occasions at and before 7 p.m., and also at 9 p.m., but denied ever having been outside the union hall between 7 and 9 p.m. He explained that he and his wife regularly attended a theatre across the street from the union hall and usually parked their car on that street; that, since the theatre did not open until 7 p.m., they waited in the car if they arrived before that hour; and that when the first performance ended, usually at 9 p.m., they returned to the car and drove home. McKenna also testified that he patronized the barber shop next to the union hall and that, after leaving the shop, he and his wife often waited in the car until the theater opened at 7 p.m.

McKenna's testimony was corroborated by that of his wife and the barber. On the other hand, of the five employees named by Armstrong as among those who had informed him of McKenna's presence near the hall between 7 and 9 p.m., only one, John Leake, was called as a witness. And Leake testified that although he had visited the union hall from five to eight times, at about 7 or 8 p.m., between May and September 1944, he had never seen McKenna near the hall. Leake denied having told Armstrong that McKenna was near the union hall.

The Trial Examiner considered plausible McKenna's testimony that he and his wife were regular attendants at the theatre and McKenna a patron of the barber shop, and accepted McKenna's explanation for his presence near the union hall on the two occasions on which Armstrong saw the McKennas together. The Trial Examiner did not, however, credit the remainder of McKenna's testimony, but instead relied upon Armstrong's testimony in finding that McKenna's presence near the union hall on four occasions between 7 and 9 p.m. was for the purpose of surveillance. We do not agree. Under the circumstances set forth above, including the absence of any evidence that McKenna was near the union hall on a meeting day, we are unable to accept Armstrong's uncorroborated and controverted testi-

mony as the basis for an inference that McKenna had engaged in surveillance

Nor do we feel that the statements of McKenna and Deitz attain the stature of interference, restraint, or coercion. These statements were separated in point of time and were unrelated to any other anti-union conduct of the respondent. Considered in connection with the circumstances under which they were made, they provide no substantial basis for a finding that the respondent has violated the Act

Accordingly, and since we agree with the Trial Examiner's findings and conclusion with respect to the discharge of Duncan, we shall dismiss the complaint in its entirety.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, and pursuant to Section 10 (c) of National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint against the respondent, E. I. du Pont de Nemours & Company, Incorporated, Waynesboro, Virginia, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. Sidney J. Barban and Mr. Herman Goldberg, for the Board
Mr. E. C. First, Jr., and Mr. P. B. Collins, of Wilmington, Del., for the respondent
Mr. C. C. Cochran, of Roanoke, Va., for the Union

STATEMENT OF THE CASE

Upon charges duly filed by International Association of Machinists, affiliated with American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated September 16, 1944, against E. I. du Pont de Nemours & Company, Incorporated, Waynesboro, Virginia, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent (1) on May 29, 1944, discharged James A. Duncan and thereafter refused to reinstate him because Duncan had joined or assisted the Union or had engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection, (2) since March 1, 1944, had engaged in certain specified conduct interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; by (a) vilifying, disparaging, and expressing disapproval of the Union, (b) urging employees to refrain from joining or assisting the Union, and threatening them with reprisals if they engaged in such conduct; (c) questioning employees concerning union membership and activities and keeping them under surveillance for the purpose of ascertaining such membership and activities.

On September 25, 1944, the respondent filed a motion for a bill of particulars, which was granted in part on September 27, 1944, by James R. Hemingway, the Trial Ex-

aminer duly designated by the Chief Trial Examiner. On September 28 counsel for the Board led a bill of particulars. On the same day, the respondent filed an answer admitting various allegations of the complaint, but denying the commission of any unfair labor practices.

Upon due notice a hearing was held at Waynesboro, Virginia, on October 3 to 8, 1944, before the undersigned Charles W. Schneider, the Trial Examiner duly designated by the Chief Trial Examiner to conduct the said hearing. The Board, the respondent, and the Union were represented at and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties.

At the close of the Board's case, upon motion by counsel for the respondent, the undersigned dismissed certain allegations of the bill of particulars to the effect that the respondent had committed unfair labor practices through Foreman Marshall Beck and J. W. Hagwood.

At the close of the hearing, upon motion by counsel for the Board and without objection, the complaint was amended to conform to the proof with respect to names, dates and other formal matters. All parties waived oral argument before the undersigned. Thereafter, counsel for the Board and counsel for the respondent filed briefs.

Upon the record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

E. I. du Pont de Nemours & Company is a Delaware corporation having its principal office at Wilmington, Delaware, and operating a plant at Waynesboro, Virginia. At the Waynesboro plant the respondent is engaged in the manufacture of acetate rayon yarn and related products. During 1943 it used at the Waynesboro plant raw materials valued at approximately \$5,150,000, of which 84.9 percent was received from sources outside the State of Virginia. During the same period the respondent manufactured at the Waynesboro plant finished products valued at approximately \$22,400,000, of which 91 percent was shipped to points outside the State of Virginia. The respondent concedes, for the purposes of this proceeding, that it is engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATION INVOLVED

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III THE UNFAIR LABOR PRACTICES

1 Events in 1940

During the early part of 1940, United Textile Workers of America, herein called UTWA, a labor organization affiliated with the American Federation of Labor, began a campaign to organize the employees of the Crompton-Shenandoah Company in Waynesboro. At that time, Jones P. Armstrong, presently a representative of the American Federation of Labor, was employed as a guard at the respondent's Waynesboro plant.

Armstrong testified that during this campaign, Sergeant Ernest W. Jones, head of the respondent's Waynesboro guard force, sent him to the office of K. L. Williams, then the respondent's superintendent at Waynesboro. Williams is presently manager of

the plant. According to Armstrong, Williams told him that it was rumored that a large number of the respondent's employees were interested in the UTWA campaign and had applied for membership in that organization. Armstrong also testified that Williams further said that he did not think that the respondent's employees needed organization; that the respondent had always been fair to its employees, that there was already a union in the plant, and that although it was "a very good union" and the employees seemed "very well satisfied" with it, even that organization was not needed.¹ Armstrong further testified that Williams told him that he would like to know whether any of the respondent's employees were involved in the organizational campaign, and that he wanted Armstrong to ascertain where the meetings were being held, and whether any of the respondent's employees were attending, and, if so, who they were. According to Armstrong, he and Sergeant Jones thereafter attempted to ascertain where the meetings were being held, but were unable to do so; and after some ten days of investigation, during the course of which Armstrong made daily written reports on their activities, the effort was abandoned.²

Williams and Jones testified that there was a conference in 1940, between themselves and Armstrong, in which the activities at Crompton-Shenandoah were discussed. They otherwise denied Armstrong's testimony. Their version of this conference is as follows. According to Jones, Armstrong approached Jones and requested him to make an appointment for Armstrong to see Williams. Jones then arranged the appointment and, at Armstrong's request, accompanied him to Williams' office, but without inquiring or being informed as to Armstrong's purpose. The testimony of both Jones and Williams was that Armstrong told Williams that he had heard that a large number of the respondent's employees were interested in the activity at Crompton-Shenandoah and were joining the UTWA, and that Armstrong offered to ascertain whether the reports were true; that Williams answered that he did not believe the reports, but that in any event he was not interested in the employees' activities. From his observation of the witnesses and after consideration of their testimony, the undersigned credits the testimony of Armstrong.³

¹ A reference to United Workers Incorporated, known as the UWI, an unaffiliated labor organization, which is recognized by the respondent as the exclusive bargaining representative of the employees. The UWI has an oral agreement with the respondent and an arrangement for the checking off of UWI dues.

² Armstrong testified that the meetings were held secretly and at different locations each time, and that although he discovered after the meetings where they had been held, he was unable to ascertain the location in advance.

³ Armstrong impressed the undersigned as a straightforward and credible witness. Jones and Williams did not. In addition, certain other factors support Armstrong's story and discredit that of Williams and Jones. Thus, Armstrong's version is consistent with other conduct of the respondent described hereinafter; while Williams testified that he was not in charge of the guard force in 1940, the conversation occurred during a period when the plant manager had been absent from work for some time, and his office was being occupied by Williams, Armstrong and Williams were personal friends; Jones admittedly discussed the Crompton-Shenandoah activities with Armstrong both prior to and after the conversation with Williams; there were rumors in the community at the time to the effect that the respondent's employees were organizing; and Armstrong was related to one of the union officials in the Crompton-Shenandoah campaign, a fact of which Jones was aware. In addition, it is conceded that Armstrong made written reports during the time in question. Although counsel for the Board requested at the hearing that these reports be made available for examination, they were not produced.

However, no finding of unfair labor practices is made upon the above events. Evidence as to these facts was offered by counsel for the Board solely as background material. The complaint did not allege the commission of unfair labor practices prior to March 1, 1944. The above facts have therefore been considered by the undersigned only to show the respondent's attitude toward the self-organization of its employees, and to assist in the interpretation of subsequent events.

2 Events of 1944

(a) Interference, restraint, and coercion

Early in 1944, some of the employees at the respondent's Waynesboro plant evinced interest in establishing a labor organization affiliated with the A F of L. A meeting was then arranged by representatives of the Union. This meeting took place on April 5, 1944, in Staunton, Virginia, some 10 miles from Waynesboro. The respondent was aware of the meeting and of its purpose. Some 70 or more of the respondent's employees attended. Approximately 60 joined the Union, the majority of them maintenance department employees. Among the latter was James A. Duncan, who became one of the most active of the Union's members, and whose subsequent discharge is discussed hereinafter.

On the morning of April 6, 1944, Maintenance Crafts Supervisor Richard McKenna, a supervisory employee, asked Employee Lowell Hughson, in the plant, whether he had attended the Staunton meeting. Hughson answered that he had. McKenna then asked whether Hughson had got any "satisfaction" out of the meeting. When Hughson indicated that he had not, McKenna said that he had once belonged to the A F of L himself; that he'd got "very little out of it"; that the UWI would do as much for the employees as the Union could.⁴

About April 15, 1944, the Union established a headquarters on Arch Street in Waynesboro, and began to hold weekly meetings. This hall was kept open in the evening from 7 to 9 o'clock for the convenience of the employees who would come in during those hours. During the period from mid-April to mid-May, Supervisor McKenna frequently parked and sat in his automobile across the street from the union hall during the evening hours from 7 to 9 p.m. in such a position as to be able to observe who entered the hall. On some of these occasions, according to Armstrong's testimony, McKenna was accompanied by his wife; on others he was alone.

McKenna admitted having sat in his automobile at that location on occasion. However, he, his wife, and the proprietor of a barber shop adjacent to the union hall, testified that McKenna and his wife are regular attendants at a movie house in the block opposite the hall. Their testimony was that the McKennas attended the movie on an average of twice a week and regularly parked their car in that block. They further testified that McKenna also patronized the barber shop, and that after leaving the barber's he and Mrs. McKenna would sometimes sit in the car until the movie opened at 7 o'clock. McKenna, however, denied having sat in the car for the purpose of observing who entered the union hall.

In view of the proximity of the movie and the barber shop to the union hall, the undersigned considers plausible the assertion that the McKennas were regular attendants at the movie and McKenna a patron of the barber shop. However, Armstrong, whose testimony the undersigned has heretofore credited, saw McKenna sitting in the car about six times over a period of a month; whereas McKenna's visits to the barber shop were admittedly at intervals of from 10 days to 2 weeks. On four of these occasions, on each of which McKenna was alone, Armstrong saw him sitting in the car between 7 and 9. When Mrs. McKenna accompanied him, Armstrong could not say that he saw them between those hours. The undersigned therefore concludes that on occasions when McKenna sat in his car alone he was not awaiting the opening of the movie, as he testified. That the respondent and McKenna had an inordinate interest in the organizational attempts of the employees is evidenced by Williams' effort to ascertain the extent of the activity in 1940, and by McKenna's questioning of

⁴The finding as to these statements of McKenna are based on Hughson's uncontradicted testimony

Hughson on the day after the Staunton meeting. Upon these facts and circumstances, from his observation of the witnesses, and after consideration of all the testimony, the undersigned concludes that McKenna's presence in his car during the period from 7 to 9 p m on the occasions when he was alone was for the purpose of observing who entered the union hall⁵

On May 27, 1944, a group of employees, among them Odell Lucas, and Foreman Paul B Deitz, a supervisory employee, were eating lunch in the plant cafeteria. Lucas testified that on this occasion,

Mr Deitz made this statement that there wasn't anything to the damn union, that they would call men on strike and they would be out for weeks and the children would go hungry and they didn't let the men go to work any place else.

James A. Duncan corroborated Lucas' testimony. Deitz denied having made the statement. Employees Sprinkel, Smith, Bowers, and Miller, who were identified as being present at the time of Deitz's alleged declaration, testified that they did not hear Deitz make the assertion. After consideration of the testimony, and upon observation of the witnesses, the undersigned credits the testimony of Lucas, and finds that Deitz made the statement attributed to him⁶

It is found that by McKenna's statements to Lowell Hughson, by McKenna's surveillance of the union hall, and by the statement made by Deitz in the cafeteria on May 27, and by the totality of this conduct in connection with other acts of the respondent herein found, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.⁷

(b) The discharge of James A. Duncan

Duncan was hired by the respondent in October 1933, as a construction mechanic, and in 1935, was made a maintenance millwright. In June 1938, he contracted tuberculosis and was given a 30-month leave of absence. He returned to work in November 1940. Some months after his return, out of consideration for his physical condition, he was transferred to lighter employment as a maintenance mechanic. In addition to this leave, during his employment by the respondent Duncan was also granted other leaves for varying durations, because of illness or disability. During the period of the 30-month leave the respondent voluntarily gave him approximately \$1600 to carry him over the period of his unemployment. The quality and quantity of Duncan's work

⁵ General Foreman C H Moore was also seen at or near the entrance to the barber shop on 3 or 4 occasions in May, around 5.30 or 6 p m. Moore explained that he sometimes boarded a bus at an adjacent location. In view of the plausibility of Moore's explanation, and the unlikelihood that he would be engaging in surveillance at such an hour, the undersigned is of the opinion that the evidence will not support the conclusion that he was there for the purpose of surveillance.

⁶ According to further testimony by Lucas and Duncan, the latter had, early in May, 1944, jokingly asked Deitz whether he wished to join the Union, and Deitz had replied that he, "wouldn't belong to the damn union." Deitz admitted the solicitation by Duncan, but testified that he merely answered that he was "not interested." The undersigned credits Lucas' and Duncan's testimony as to this incident.

⁷ Instructions were given by Manager Williams and passed down to the supervisors, enjoining them to adopt an attitude of neutrality with respect to labor organizations. These instructions were not, however, communicated to the employees. An employer cannot evade responsibility for unneutral conduct by his supervisors within the apparent scope of their authority, unless the divestment of authority is made known to the employees.

The respondent also seeks to avoid responsibility for the utterances of McKenna and Deitz on the ground that they constituted expressions of personal opinion. In view of the nature of the utterances and the circumstances under which they were expressed, the undersigned finds no merit in this contention.

was good throughout his employment and met the respondent's requirements. In addition, he designed a valuable improvement on one of the respondent's machines.

Duncan joined the Union on April 5, 1944, at the Staunton meeting, and thereafter became one of its most active members. He solicited openly for the Union in the plant during his free time and secured some 60 members from among the employees in the maintenance department, in which department the Union was most active. Credible testimony establishes, and it is conceded, that during April and May 1944, Duncan was kept under close observation by his supervisors. Several times between April 5 and May 29, Duncan reported to Armstrong, the union representative, that he was being watched, but that he was confining his activities to his own time. On May 29 Duncan was discharged. His discharge slip states as the reason: "Failure to follow instructions as to staying on his job." Duncan's supervisors testified that he was discharged for that reason and also because of insubordination.

The circumstances leading up to the discharge are in dispute. Duncan's version, in substance, is as follows.⁸ Immediately after April 5, 1944, Deitz, who was Duncan's immediate foreman, and General Foreman Moore, began to watch and follow Duncan around the plant, attempted to eavesdrop on his conversation with other employees, and on a number of occasions ordered him to "go to work and quit talking about the Union." On one occasion, as Duncan was returning from the personnel office, W. F. Lawless, Works Engineer and head of the maintenance department, followed him back to his job and told him, "Duncan, I want you to stay right here on this job . . . you are heading up this union around here . . . we don't permit that . . . I want it stopped." About the first of May, Duncan's custom of going to the cafeteria twice a day during working hours to drink milk, a privilege which he had theretofore enjoyed, was revoked, but was restored 4 or 5 days prior to his discharge, after Duncan had protested to his doctors. About 1 or 2 weeks prior to his discharge, Duncan was called to the office by General Foreman Moore and Maintenance Supervisor E. H. White, presented with a typewritten document of several pages, and told to sign it if he wished to continue working at the plant. He was given no opportunity to read the document, but he "noticed 2 or 3 lines where it said there was too much talking on the job." Duncan signed the document. On May 29, 1944, he was again summoned to the office. There, in the presence of Deitz, White, and Moore, Lawless told him, "Duncan, you talk too much around the job. You don't suit us." Duncan said that he was tired of their "watching" and "picking on" him. Lawless then told Deitz to take Duncan back to his work. Duncan left the office and went to the cafeteria. Several minutes later, Moore came into the cafeteria and told him that he was dismissed. Duncan asked, "For union activities?" Moore answered, "Yes. We don't permit that here."

The testimony of the respondent's witnesses, principally Deitz, Moore, White, and Lawless, was to the effect that Duncan had been a "problem child" for several years; that he wandered away from his work, talked with other employees, visited in other portions of the plant, and was insubordinate; that he was repeatedly warned both before and after April 1944, to remain at his job, but that he ignored these warnings; and that his discharge was caused by his insubordinate refusal to explain an unauthorized absence from his work for 50 minutes on May 27. This testimony is corroborated by various documentary evidence in the record in the form of memoranda, purportedly made at the time of the events, and extending back to March 1943.

These memoranda, and the testimony, indicate that on February 28, 1944, Moore referred to the respondent's medical department the question whether Duncan should be permitted to continue to go to the cafeteria during working hours; that the medi-

⁸ Except where otherwise indicated, the following statements in this paragraph merely set out Duncan's testimony, and do not constitute findings of fact.

cal department reported that there was no medical reason for the practice; that Duncan was then notified by Moore to discontinue going to the cafeteria, that Duncan told Moore that he would continue to go, that he could "find other work" and he had had "several offers." Thereafter, Duncan apparently continued to go to the cafeteria.

A memorandum dated April 20, 1944, indicates that on that day Deitz reprimanded Duncan for leaving his work too often; that Duncan replied that he would "do as he goddamned pleased"; that he was going to the cafeteria, and that if the supervisors did not like it they knew what they could do; that later in the day Duncan repeated substantially the same assertions to Moore; that he was again instructed not to go to the cafeteria during working hours; but that on the same day he ignored the instructions.

A memorandum dated April 24, 1944, and signed by Duncan (the document referred to by Duncan in his testimony) states that an interview was held between Duncan, Moore and White on that day regarding the incident of April 20; that Duncan was again informed that he must remain at his job and not go to the cafeteria during working hours; that Duncan expressed regret over the April 20 incident, explained that he had been upset, stated that his physical condition required trips to the cafeteria to drink milk, and asked that the privilege be restored; that this request was granted, but that he was told that he must otherwise stay at his work, and that any further incidents would result in his discharge; and that Duncan said that he would give no further trouble.⁹

Further memoranda and testimony of the respondent indicate that on May 27, 1944, Duncan was reported by Deitz as absent from his job for 50 minutes during working hours without permission; that on the following Monday he was called to the office; that, in the presence of Moore, White, and Deitz, Lawless told him of the report and asked him what he was going to do about it; that Duncan replied that he was not going to do "a god dam thing about it," and that they could do as they wished; that Lawless then told Deitz to take Duncan back to his job; and that a discussion was thereafter held in which it was decided to discharge him. Moore then notified Duncan that he was dismissed.

Conclusions as to Duncan's discharge

The evidence establishes that over a period of several years preceding the discharge, Duncan had been treated with considerable consideration by the respondent, and had been allowed exceptional latitude in his conduct in the plant. Some of this conduct, which it is unnecessary to relate here, clearly bordered on the insubordinate. In September 1943, when he was granted a 30-day leave of absence, upon inquiry by Duncan as to whether he would have a job when he came back, he was told that he would, provided he can take care of it, but [the respondent] did not want any more of this fooling around—losing time from the job, complaining and general confusion. He had a good job here and it wasn't a hard one and if the job did not agree with him, it would be to his advantage to work some place else. The Company had done a lot for him and it was time for him to get in the frame of mind in which Duncan would see what he could do for the duPont Company.

In sum, it appears clear that prior to 1944, Duncan was permitted unusual privileges, left his work when he chose, and, in large measure conducted himself in the plant as he pleased. Whether or not he was constantly reprimanded up to the time of his

⁹ The testimony of Moore and White was that an interview was held with Duncan on April 24 concerning the incident of April 20; that the memorandum was then prepared as a recordation of the interview; that Duncan was then called back in, read the memorandum carefully, compared the original with copies, and then signed it. The undersigned credits this testimony.

discharge for this conduct (as his supervisors assert, and which Duncan denied) it is unnecessary to determine. In any event, prior to 1944, his conduct was tolerated. The sudden determination to put an end to it thereafter therefore suggests that, however grievous his faults, the respondent had been willing to overlook them until he began to enroll the employees in the Union, and that the supervisors then began to build up a record against him that would justify his discharge.

Duncan's testimony and the close observation he was subjected to in April and May 1944, support such a conclusion. The undersigned is unable, however, to give complete credence to Duncan's testimony. Thus, it is implausible that if a record was being built up against him, his supervisors would frequently have told Duncan to quit talking about the Union, and that Lawless would have accused him of "heading up the Union" and have said that the respondent would not permit it. It is equally implausible that Moore would bluntly have told him that he was being discharged for his union activities. Other factors, which need not be related here, also weigh against the credibility of his assertions. The undersigned is therefore unable to credit Duncan's uncorroborated testimony as to the events leading up to his discharge.

While the volume and detail of the written memoranda introduced by the respondent, and the thoroughness with which his case was handled by the supervisors, demonstrate highly unusual attention and care, the undersigned is unable to discern ground for questioning the authenticity of the documents. The memoranda disclose that the events leading immediately to Duncan's discharge began in February 1944, more than a month prior to his becoming interested in the Union, and that his habit of leaving his place of work and wandering about the plant was a matter of concern. The memoranda further establish that Duncan's conduct on May 29, when he was asked about the report that he had left his work on May 27, was plainly insubordinate, and, unless excusable by reason of provocation, merited discharge.¹⁰ While Duncan denied having made the statements attributed to him at that time, the undersigned concludes that he did make them. There is therefore no basis in his testimony for inferring (as might otherwise have been done) provocation by reason of the observation to which he was subjected. In view of its resemblance to the conduct of Williams and McKenna, heretofore described, the subjection of Duncan to observation at about the time he began his solicitation for the Union, is highly suspicious. However, in view of all the circumstances, the undersigned does not feel justified in finding that the observation was motivated by and designed to inhibit Duncan's union activity, or to provoke an incident which would provide a colorable pretext for his discharge.

Upon these considerations, although the matter is not free from doubt and suspicion, the undersigned concludes that the evidence will not support the conclusion that Duncan was discharged because of his activities on behalf of the Union. It will be recommended that the complaint, in that respect, be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

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

¹⁰ Duncan admitted that he was absent from his machine for 30 minutes during working hours on May 27, visiting an employee in another part of the plant on personal business. While he testified that this absence was with the permission of Deitz (an assertion which Deitz denied) the undersigned does not credit Duncan's testimony. It is to be noted that, according to Duncan's version, this incident was not mentioned in connection with his discharge.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act

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

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

4. The respondent has not engaged in unfair labor practices by the discharge of James A. Duncan.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, E. I. du Pont de Nemours & Company, Incorporated, Waynesboro, Virginia, its officers, agents, successors and assigns, shall

1. Cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with American Federation of Labor, 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, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Post immediately in conspicuous places in its plant at Waynesboro, Virginia, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations; and (2) that the respondent's employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor;

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

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent engaged in unfair labor practices by the discharge of James A. Duncan

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

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 26, 1943,

any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board

CHARLES W SCHNEIDER
Trial Examiner

Dated January 26, 1945.