

In the Matter of SCHNACKE MFG. CORP. and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW-CIO.

Case No. 14-C-951.—Decided July 21, 1945

DECISION

AND

ORDER

On November 4, 1944, 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 from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Although, at the request of the respondent, oral argument was scheduled before the Board in Washington, D. C., neither party appeared. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's brief and exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the addition noted below:

We agree with the Trial Examiner's findings that the respondent, by the acts and conduct of President Walter H. Schnacke and Assistant Superintendent John G. King, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. In addition, we find that by the statements of the afore-mentioned officials, described in Section III, B, of the Intermediate Report, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Schnacke Mfg. Corp., Evansville, Indiana, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) 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, UAW-CIO, 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 Act.

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

(a) Offer to Chloe Lynde and Wesley Goodman immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

(b) Make whole Chloe Lynde and Wesley Goodman for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant in Evansville, Indiana, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director of the Eleventh Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Eleventh Region in writing,

within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order

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

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, UAW-CIO, 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.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Chloe Lynde
Wesley Goodman

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCHNACKE MFG. CORP (*Employer*)

By

(Representative)

(Title)

Dated

NOTE: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

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

INTERMEDIATE REPORT

Mr. Harry G Carlson, for the Board.

Mr. Isidor Kahn, of Evansville, Ind, for the respondent.

STATEMENT OF THE CASE

Upon an amended charge duly filed on September 8, 1944, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourteenth Region (St Louis, Missouri), issued its complaint dated September 8, 1944, against Schnacke Mfg. Corp., Evansville, Indiana, 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. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) from about March 1944, by its officers, agents, and representatives, urged, warned, and threatened its employees against engaging in concerted activities for the purpose of collective bargaining and other mutual aid or protection, and against joining, assisting, or remaining members of the Union, or any other labor organization; made derogatory statements concerning labor unions and their leadership, and questioned its employees concerning their union activity and affiliations; (2) discharged employees Chloe Lynde and Wesley A. Goodman in April 1944, and thereafter refused to reinstate them or either of them, because they joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid or protection; and (3) by such acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act

Pursuant to notice, a hearing was held at Evansville, Indiana, on September 19, 20, and 21, 1944, before the undersigned, W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, 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 the parties. At the beginning of the hearing, the respondent filed its answer, which admitted certain allegations of the complaint in respect to the character of its business, but denied the commission of any unfair labor practice.

At the beginning of the hearing, the respondent's counsel filed a request for a bill of particulars, which was denied by the Trial Examiner, after certain information had been supplied, on the record by Board's counsel. At the close of the Board's case, and again at the conclusion of the hearing, the respondent's counsel submitted written motions to dismiss the entire complaint for lack of proof. Ruling was reserved on these motions which at this time, are denied. A motion by the Board's counsel to conform the pleadings to the proof in respect to formal matters, was granted by the Trial Examiner, over the objection of the respondent's counsel.

The opportunity to argue orally before the Trial Examiner at the conclusion of the hearing, and also to file briefs with the undersigned, was waived by the parties.

Upon the record thus made and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT¹

The respondent, Schnacke Mfg Corp., is an Indiana corporation, having its prin-

¹ Prior to the war, the respondent was engaged in the manufacture, sale and distribution of tools and dies, and also did machine work on medium and small parts. The respondent is now doing practically the same type of work, only its output is for war purposes.

cipal office and place of business in Evansville, Indiana. It is engaged in the manufacture, sale, and distribution of machine and airplane parts, principally under sub-contracts with prime war contractors. The principal raw materials used by the respondent are steel and aluminum, the greater portion of which is shipped to the respondent's plant by the prime contractors from points outside Indiana. During the first 6 months of 1944, the value of the finished products produced by the respondent at its Evansville plant was approximately \$500,000, of which about 98 percent was for war purposes. Some of the prime contractors for whom the respondent manufactures and processes certain machine and airplane parts have their principal offices within Indiana, and others are located outside Indiana, such as the Mack Truck Company, American Locomotive Works, and Republic Aviation Corporation. The undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Prior to 1942, the respondent's employees were unorganized. In the spring of that year, both the Union and United Electrical and Radio Workers, another C. I. O. affiliate, began organizational campaigns among these employees. However, the jurisdictional dispute which arose on that account was settled in favor of the Union, and the United Electrical and Radio Workers retired from the scene of action. The Union continued its campaign. Handbills and authorization cards were distributed at the plant. The Union was successful in securing a few signed authorization cards among the employees, but, on the whole, the campaign failed and efforts to organize these employees were temporarily discontinued by the Union. In the fall of 1943, a second campaign was inaugurated in the plant, under the direction of J. B. Mansfield, international representative of the Union. Employee Goodman was the leading spirit in this drive. He was assisted by employee Hartley Hale.² This campaign was not so openly conducted as the first one in 1942. Authorization cards were supplied by Mansfield and were made available in the plant for those who wished to sign them. After the cards were signed, they were turned over to Goodman, who turned them in at union headquarters. No handbills were distributed at the plant, and no union notices of any kind were posted in the plant. While an appreciable number of organizational cards were signed, this campaign was hardly more successful than the first, and the efforts of Goodman and Hale to sign up the employees were discontinued, after a conference with Mansfield.

According to Mansfield, in February 1944, Goodman and a group of other employees informed him that a number of employees were inquiring about the Union and that it would be advisable to start another campaign for members in the plant. Mansfield supplied Goodman and some others with authorization cards and instructed them to get as many of them signed as possible. The third effort by the Union to organize the respondent's employees was begun along the same lines as the second campaign and no handbills were distributed. This campaign continued, with some degree of success, up to about the middle of June 1944, at which time employees Wesley Goodman and Chloe Lynde were discharged by the respondent. Following

² Hale's employment with the respondent ceased about the first of August 1944.

these discharges, further efforts to secure members in the plant were discontinued by the Union, pending the outcome of charges filed by the Union against the respondent³

B. *Interference, restraint, and coercion*

In the first part of April 1944, Assistant Superintendent John G. King said to employee Louise Nelson, while she was at work in the plant, that he had heard that she and employee Chloe Lynde were trying to organize a union in the plant and that Lynde had been seen at a meeting of the Union. King further said to Nelson, referring to the union's efforts to organize the employees, that he did not think it was a nice thing to do, "as nice as he had been" to the employees. Nelson had already signed a union authorization card, but after this conversation with King, she instructed Mansfield, the union organizer, to "tear up" her card. She then told King that she was sorry she had had anything to do with the Union.⁴

According to the denied testimony of John S. Bilderback, a watchman at the respondent's plant, which is credited by the undersigned, in the latter part of March or the first part of April 1944, Assistant Superintendent King asked Bilderback if he knew anything about the Union organizing and Bilderback replied that he did not know very much about it. King then said to Bilderback, "Well, they better not" or words to that effect. . . . "Mr. Schnacke won't stand for it"

In March or April 1944, Assistant Superintendent King said to Ralph West, a set-up man in the plant, that he knew the Union was organizing and he hoped that West "was not one of them."⁵

In June 1944, employee Hartley Hale was laid off for a week by the respondent because he had checked out and left the plant an hour before quitting time without notifying his foreman. When Hale returned to work after the week's absence, President Schnacke called him into his office and, during the conversation which ensued, Schnacke told Hale that he knew he had joined the Union, as they had ways and means of finding out whether or not he belonged to the Union. Schnacke further told Hale that he did not care how many unions he joined "so long as it was outside the plant."⁶

In summary, the undersigned concludes and finds from the entire record that by the aforesaid acts and conduct of President Walter H. Schnacke and Assistant Superintendent John G. King, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act

C. *The discriminatory discharges*

Chloe Lynde was first employed by the respondent in April 1943. She worked as a lathe operator making stove caps until the following September, at which time she was given leave of absence on account of illness. She returned to work in the plant

³ No Local was ever established by the Union for the respondent's employees, as practically all three efforts to organize these employees were unsuccessful

⁴ This finding is based upon the credible and undenied testimony of employee Nelson

⁵ This finding is based upon the denied testimony of West. On direct examination West testified that in May 1944, he told a Field Examiner of the Board that in March or April 1944, "Mr. King came up to where I was working and said he knew the Union was organizing, and hoped that I was not one of them." On cross-examination West testified that King did not mention the Union in this conversation, but King did say that he "Wanted to talk to me man to man about this thing that is going on" and he said he hoped that I wasn't one of them. Well, of course we both knew what we was talking about."

⁶ This finding is based upon the credible and undenied testimony of Hale. Schnacke testified that, from rumors that had been going around since the first part of 1944, he felt that Hale "was fairly well connected with the Union," and that he had told Hale so. Hale was not in the employ of the respondent at the time of the hearing

in the latter part of January or the first part of February 1944, and was put back to work on the same lathe but performing operations on pistons. She signed a union authorization card on March 6, 1944, and became active in the Union's third effort to organize the respondent's employees. She distributed union cards and solicited the employees to sign them. She collected signed cards and turned them over to employee Wesley Goodman and attended union meetings at the union headquarters.

On March 31, 1944, during the lunch hour, Assistant Superintendent King said to Lynde, "Chloe, why are you trying to cut my throat?" Lynde asked him to explain King replied that he could not be seen talking to her there, but he would meet her in front of her home at 7:00 p. m. that night. King arrived at Lynde's home at the appointed time and stopped his car in front of the house. Lynde went out to the car and asked King what he wanted. King told her that he had to talk to her and to get into the car. Lynde said that she had to go to town with some friends, but she would return about 10:00 p. m. King reiterated that he had to talk to her, but he did not return to Lynde's home that night. Lynde did not go to work the next day because she had broken her spectacles. That night, employee Louse Nelson told Lynde that King had accused them, Lynde and Nelson, of organizing the Union, and that he had also told her that three different persons had told him. President Schnacke, and Personnel Director Huffman that they had seen Lynde and Nelson at union meetings.⁷ When Lynde returned to work on Monday, April 3, 1944, she asked Assistant Superintendent King what he had been telling Nelson. King repeated to her what he had told Nelson, i. e. that three different persons had reported to Schnacke, Huffman, and himself that they had seen Lynde and Nelson at a union meeting. Lynde denied to King that she had been to the meeting.⁸

On April 5, about 2 00 p. m., King came to Lynde's machine and told her that the plant was "going under" because they could not get any more contracts and he was looking for orders at any time to lay off a "bunch" of employees. King then told Lynde to ask for her release. Lynde replied that she did not want to ask for a release and that she would stay there and work as long as she could. King then said to her, "You won't have any trouble getting work elsewhere; you have made a good record here." Lynde asked King what they would put on her release. King replied "Looking for work elsewhere . . . or they could put work unsatisfactory." About 2 hours later King asked Lynde if she had made up her mind to ask for her release. Lynde replied in the negative and reiterated her intention to continue working in the plant King then told her to go into the office. King then left and went into Huffman's office and, when he returned in a short time, said to Lynde, "Go get your release. It is ready for you" Lynde punched out at 4:30 p. m. and went into Huffman's office to get her release Huffman was not in and she so informed King. King told her to come back the next day and get it; that he had given her a good release; and that she would not have any trouble in getting a job anywhere. Lynde received her release the next day, which stated that the reason for her unemployment was "inefficiency."⁹

The respondent's contention that Chloe Lynde was discharged for inefficiency is not supported by the facts and its without merit. Assistant Superintendent King testified that he discharged Lynde because of her "poor work and poor production." King was uncertain as to just when he decided to discharge Lynde. He stated that it probably could have been "two or three days or four days or five days before it happened, or it

⁷ Nelson testified that about April 1, 1944, King told her he had heard that she and Chloe Lynde were trying to organize a union in the plant.

⁸ Lynde testified that she had attended several union meetings, which is credited by the undersigned, although she denied it when confronted with it by King.

⁹ The foregoing findings are based upon the credible and undenied testimony of Lynde

could have an accumulation of several weeks" King further testified that he had checked up Lynde's record at several different times and that he had discussed her work with President Schnacke, Foreman Perkins, and Casey, a set-up man King could not remember just when he talked to Schnacke about Lynde's work but he stated that it was "several times," and that the first time was about 3 months before he discharged her. Obviously this cannot be true as the record shows that Lynde did not return to work after her illness until some time in the last of January or the first part of February 1944, about 2 months prior to her discharge King also testified that he spoke to Lynde several times about her unsatisfactory work, but he could not recall when he first spoke to her or what he had said to her.¹⁰ King also testified that he could not remember what he had said to Lynde at the time he discharged her. The undersigned was not favorably impressed with King as a witness and finds that his testimony was evasive, indefinite, and not convincing. The record discloses, and the undersigned finds, that King knew in the summer of 1943 that the Union was endeavoring to organize the respondent's employees. According to the testimony of Lynde, which is credited by the undersigned, no one ever said anything to her about her work except Assistant Superintendent King and set-up man Casey, both of whom had told her several times that her work was allright.¹¹

President Schnacke testified that when Assistant Superintendent King told him, in February 1944, that Lynde had returned to work in the plant and that he had put her to work on a lathe, he told King that he did not think she could do that work. The record shows that Lynde continued to operate the lathe until her discharge. Schnacke further testified that he gave the order for her discharge on the day of her discharge because he did not think she could handle the job. This testimony does not coincide with that of King, who testified that he decided to discharge Lynde several days or even several weeks before it occurred. Schnacke's testimony in respect to how he arrived at the conclusion that Lynde could not handle the lathe job was vague and indefinite and is not convincing.

Norman Stock, chief inspector in the plant, testified that in the operations performed by Lynde from February 1944, to the time of her discharge, a number of pieces had to be rejected because they did not meet the specifications, but, that this could have been due to several different causes, such as the failure of the set-up man to set up the machine properly, the machine not being in good running order, and the tool being worn, which was likely to occur after the machine had been operated for a short time. Stock further testified that there were a number of elements entering into the correct operation of the machine besides the "human element." He stated that he did not know whether any of the rejected pieces attributable to Lynde were "scrapped" or whether they were accepted by the customer as the Army Procurement Board would accept a limited amount of rejects. Stock also testified that at the time Lynde was discharged the respondent had 13 inspectors and a chief inspector and that all operators made mistakes, otherwise there would have been no need for inspectors. *The record shows that Lynde's machine was at least 3 years old and required constant supervision by the set-up man in order for it to perform the operations.* The record also shows and the undersigned finds that it was the duty of the set-up man to keep the machines properly adjusted so that the work turned out would meet the specifications. Machine operators were not required to use micrometers, although they were

¹⁰ King's testimony reads as follows:

I remember talking to her about the work. We were going into that work and it was just in the experimental stages and we were following it pretty closely.

¹¹ Foreman Perkins first testified that he never talked to Lynde about her work. Later during his testimony he stated that he had talked to her about 30 or 40 days prior to her discharge.

useful in making tests, at intervals, or the parts turned out Lynde was not supplied with a micrometer until about a week or 10 days prior to her discharge.

Lynde was not offered a different job in the plant although the respondent hired over 100 new employees during the first 4 months of 1944.¹² When asked whether he offered Lynde any other job in the plant President Schnacke testified as follows:

No because she was qualified particularly for this job and our force was decreasing and the type of work that we had to offer, there was nothing there similar or within her ability; the jobs would just simply not fit her ability. That was the simplest job that we knew of and that is the reason that Mr. King selected her.

Wesley Goodman began working for the respondent on September 21, 1942, as a hand screw machine operator¹³ in Department No. 3 of the plant at 65¢ an hour. He continued on this work until he was discharged on April 19, 1944. On January 3, 1943, his wage rate was increased to 70 cents an hour, on May 24, 1943, to 80 cents an hour, on November 1, 1943, to 90 cents an hour and on April 10, 1944, just 9 days prior to his discharge, to 95 cents an hour. Goodman signed a union authorization card at the beginning of the Union's second campaign in 1943. He signed an official application for membership in the Union on March 11, 1944. Goodman was primarily responsible for the Union's second organization campaign. Together with several other employees Goodman contacted Mansfield, the union representative, soon after Mansfield had relieved the previous union organizer. Goodman acted as spokesman for the employees. As related above, Mansfield supplied Goodman with union authorization cards. Goodman undertook to personally solicit the employees in Department No. 3 where he worked. At that time, there were approximately 40 employees in that department. Goodman solicited all of these employees except 2 and supplied them with authorization cards. After these cards were signed they were handed to Goodman and he turned them in at the union headquarters. There were, at that time, approximately 90 employees in the other departments of the plant. Goodman selected certain employees in each department, supplied them with authorization cards and instructed them to get them signed, after which they were returned to Goodman. Goodman also solicited some of the employees in the other departments whenever he came into contact with them, but he did not go into these other departments for that purpose. This campaign lasted about 3 months. As related above, in January or February 1944, the third union campaign was inaugurated. Goodman was in charge of this drive and attended all of the union meetings.¹⁴

In February 1944 Foreman Perkins, whose desk was some 60 or more feet from the five screw machines, one of which Goodman operated, moved his tool box over to a point about 15 feet from the machines, so that he could spend more time watching these operators. Soon after this Goodman asked Assistant Superintendent King why he was being watched. Goodman further told King that once or twice when he went to the rest room Foreman Perkins followed him and opened the rest room door and looked in. King replied that there was something going on in the plant that neither he nor President Schnacke liked. Goodman rejoined that at the present time there were a few things going on that they, the employees, did not like. Foreman Perkins denied that he had ever followed Goodman around to see what he was doing, but he admitted that he moved his tool box near to the screw machines so that he could spend more time watching the five screw machine operators, as he thought by doing so it would

¹² During this period the services of 77 employees were terminated of which only 2 besides Lynde and Goodman were discharged for alleged inefficiency and unsatisfactory service.

¹³ There was a battery of five screw machines with an operator for each machine.

¹⁴ These findings are based upon the credible testimony of Goodman and Mansfield.

stimulate production. Perkins further testified that at that time the production of three of the screw machine operators, Goodman, Hale, and Schmidt, was down Perkins kept his tool box near these operators for about 2 weeks.

In the afternoon of April 19, 1944, the day of Goodman's discharge, Assistant Superintendent King came to Goodman's machine and asked him how many pieces he had run off and, after Goodman told him, King said, "Well, that is not any production" Goodman replied, "Well, Mr. King, I bet you cannot put out that many of them in that length of time" King replied, "There is one thing I can do, I can give you yours" King then told Goodman that he had given him a 5¢ raise to speed up production and he wanted more pieces. Goodman replied, "Next time, Mr. King—I cannot keep up my production the way it is, and the next time don't give me but 2½¢ raise and maybe I can keep up."¹⁵ King told Goodman to come with him They went to King's desk and King sat down. He then told Goodman to punch out his card Goodman went to the card rack near the office door but found that his card was not in the rack. After about 3 minutes Personnel Director Huffman came up and told Goodman that his release would be ready for him in just a minute. About that time a clerk came out of the office and handed Goodman his check and release.¹⁶ King remained at his desk. Goodman had never been told by any supervisory employee that the quality of his work was not satisfactory, although he had been spoken to in regard to his production. Neither was he ever informed as to why he was discharged.

The respondent's contention that Wesley Goodman was discharged because he neglected his work and failed to keep up his production is not convincing and is without merit. According to employee Ralph West, the set-up man for Goodman's machine, Goodman was a good worker and "he just stayed at his machine the average time and worked." Foreman Perkins testified that Goodman was a good operator and "he was there every day, on the job, and he came to work regularly." Perkins further testified that in the latter part of January or the first part of February 1944,¹⁷ Goodman began to leave his machine at intervals and appeared to have developed a careless attitude toward his work. He spoke to him about it and Goodman denied that he was not keeping up his average production Perkins was asked, on examination at the hearing, if he could explain why Goodman, who had been a good operator since September 1942, should suddenly begin to neglect his work Perkins' reply reads as follows

Well, now, you might say that one of the reasons of it was that he had so much to say to the other operators, or he had to make frequent trips to the drinking fountains, or, we have soft drinks in the shop, and he would go back and get a soft drink and talk to a fellow or two back there before he came back to his machine And four or five trips like that in a day—just say four or five in a day—that amounts to a whole lot of time.

The respondent introduced into evidence selected excerpts of the production records of operators Goodman, Casey, Doerner, and Flegger, in order to show that Goodman's production had dropped These excerpts are admittedly selected data from the work records of these men. They do not portray the over-all record of these men on this particular job. As to Goodman, the record is fairly consistent, and fails to reflect any

¹⁵ At the time of his discharge Goodman had been working about 3 hours on a different machine, as his machine was shut down for repairs

¹⁶ Huffman testified that he had been instructed earlier in the day by Schnacke and King to make up Goodman's release Goodman's release showed that his services had been terminated because of "unsatisfactory services"

¹⁷ The Union began its third campaign in January or February 1944

period of higher production from which he had fallen, and it is significant that he had worked on this machine, and largely on the same operation, for more than a year prior to his discharge. For the purposes of this report, it may be accepted that Goodman's production capacity was not altogether equal to that of the other men with whose work the comparison is sought to be made. Such variations are normal. The respondent contended that Goodman's production had fallen off, but it offered no proof of this by way of production records when his production had exceeded that shown on the above-referred to excerpts, although attention was invited to this omission by the undersigned. In view of this, it may be inferred that if Goodman's record for the entire period that he had operated the machine had been produced, it would not have shown a substantial variation from the record for his last 19 days of operation.

The inconsistency of the respondent's contention that Goodman's discharge was prompted by the decline in his production is emphasized by the circumstances surrounding his last pay increase. The increase occurred on April 10, 1944, 9 days before his discharge, and more than a month after his foreman, Perkins, Assistant Superintendent King, and President Schnacke, according to their testimony, had begun to observe Goodman's alleged inattention to his work and the falling off of his production and while they were considering replacing him. Goodman was one of 50 employees in the plant who were selected for merit pay increases at that time. The significant fact, which wholly discredits the respondent's contention as to the reason for Goodman's discharge, is that the respondent's "Personnel Change Notice" gives as the reasons for Goodman's last pay raise, "Merit and Ability. Increased productivity and greater accuracy." Of even greater significance is the fact that this "Notice" shows that the increase was requested by King and approved by President Schnacke.

From the entire record in the case, the undersigned finds that the respondent had no substantial reasons for discharging Lynde and Goodman, or either of them, but seized upon the pretexts of "inefficiency" and "unsatisfactory services" as means of ridding itself of these employees whom it knew to be actively engaged in assisting the Union.

Concluding findings

The undersigned finds that the respondent discharged Chloe Lynde on April 5, 1944, and Wesley Goodman on April 19, 1944, and has since refused to reinstate them, or either of them, not because of the reasons alleged by the respondent, but because they joined and assisted the Union, and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and thereby the respondent discriminated in regard to their hire and tenure of employment, discouraged membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act

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 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

V. THE REMEDY

Having found that the respondent has engaged 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 discharged Chloe Lynde and Wesley Goodman and thereafter refused to reinstate them, or either of them, for the reason that they joined and assisted a labor organization and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection. It will, therefore, be recommended that the respondent offer them immediate and full reinstatement to their former or substantially equivalent positions. It will be further recommended that the respondent make them whole for any loss of pay each has suffered by reason of his or her discharge, by payment to him or her of a sum of money equal to that amount which he or she would normally have earned as wages from the date of his or her discharge to the date of his or her offer of reinstatement, less his or her net earnings¹⁸ during said period.

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 Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Chloe Lynde and Wesley Goodman, thereby discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) 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 (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.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusion of law, the undersigned recommends that the respondent, Schnacke Mfg. Corp., Evansville, Indiana, its officers, agents, successors, and assigns shall

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(b) 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 Imple-

¹⁸ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N L R B 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v N L R B*, 311 U S 7.

ment Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Chloe Lynde and Wesley Goodman immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges,

(b) Make whole Chloe Lynde and Wesley Goodman for any loss of pay they have suffered by reason of the respondent's discrimination against them, in the manner set forth herein under the title "The remedy."

(c) Post immediately in conspicuous places throughout its plant at Evansville, Indiana, and maintain for a period of sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of the aforesaid recommendations, (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations, and (3) that the respondent's employees are free to become or remain members of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of his or her membership in, or activity on behalf of, this organization,

(d) Notify the Regional Director for the Fourteenth 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 herewith.

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.

W P WEBB
Trial Examiner

Dated November 4, 1944.