

In the Matter of **PACKARD MOTOR CAR COMPANY** and **FOREMAN'S
ASSOCIATION OF AMERICA**

Case No. 7-C-1452.—Decided December 6, 1945

DECISION

AND

ORDER

On July 18, 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. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties, and none was held. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, save insofar as the recommendations are modified in our Order set forth below.

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, Packard Motor Car Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America as the **exclusive** representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan;

64 N. L. R. B., No. 204.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist, or bargain collectively through Foremen's Association of America, 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) Upon request, bargain collectively with Foremen's Association of America as the exclusive representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plants in Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Seventh 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; and

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN PAUL M. HERZOG, concurring:¹

The issues in this case cannot be analyzed in terms of black and white. They present a study in grey. Both company and union present their arguments in good faith; no one can be wholly right or wholly wrong in a matter of this sort. But the Board remains faced with the responsibility of deciding which is nearer right, in the light of the announced policies of the Act.

Although there has sometimes been a tendency to assume that the issue before us is whether foremen should or should not join unions, that assumption misconceives the Board's function. We are faced, instead, with the narrower question of whether, granting that many foremen have now decided that "the necessities of the situation"² dictate that they seek to bargain through an unaffiliated

¹ Not having been a Member of the Board when the representation case was heard and decided, I have thought it only proper to set forth these views, after examining the record, the briefs and the minutes of oral argument in that earlier proceeding. *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, decided March 26, 1945. Concurrence here may be taken as agreement with the representation decision, although I might not have joined in every sentence or every metaphor. I join fully with Mr. Houston in the present order, believing that this company should bargain with the union selected by its foremen

² *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33

union, the Act affords them access to the orderly administrative machinery that is concededly available to rank-and-file employees. I think that it does.

The company asserts that its supervisory employees are not "employees" at all, but "employers."³ To the extent that foremen may sometimes speak for or bind a respondent in dealing with their subordinates, because then "acting in the interest of an employer," they are "employers" within the meaning of the Act. Here, however, we are not concerned with foremen's relations with their subordinates, but with their own status vis-a-vis the company that hires, discharges and compensates *them* and that directs *their* work. In that relation the company is the employer and the foreman the employee; when they sit on opposite sides of the bargaining table, their interests are momentarily adverse. This is true whether they bargain individually or collectively. The foreman is not "acting in the interest of an employer" when he seeks to improve his own working conditions; he is acting for himself. The company suggests that the same man cannot, in logic, be both employer and employee. But "the life of the law has not been logic; it has been experience."⁴ High judicial authority has held that a foreman can be both employer and employee;⁵ the Board, including our dissenting colleague, has always held him to be both;⁶ the facts of industrial life have made him both.

All employees may ask our protection in the exercise of the rights declared in Section 7 of the Act, unless another section can be found to bar that result. One protected right is that of employees to bargain collectively through representatives of their own choosing. Because the Board, even when denying protection, has never doubted that a foreman is an "employee," the majority opinion in *Maryland Drydock* and the dissent in the *Packard* representation case were based largely upon the theory that foremen do not constitute a "unit appropriate for the purposes of collective bargaining." The theory assumes that because Congress, by Section 9 (b) of the Act, empowered the Board to determine which of several units is appropri-

³ Sections 2 (2) and 2 (3).

⁴ O. W. Holmes, *The Common Law*, p. 1

⁵ *N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, at 670 (C. C. A. 8), where the court said, "A foreman, in his relation to his employer, is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2 (2) of the Act * * *." These definitions in the Act "are not mutually exclusive." *N. L. R. B. v. Armour and Co.* (C. C. A. 10, Nov 5, 1945), 17 L. R. R. 372. 373.

The fact that a man promoted to a foremanship may become an "arm of management" does not mean that he thereupon ceases to be an employee of management. This view is consistent with the familiar legal doctrine that an agent, although he must act in behalf of his principal as against third persons, does not forfeit his rights against that principal where their relations with one another are in issue.

⁶ *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733 (1943); *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348 (1944).

ate, "in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act," it also authorized us to find that persons who are employees belong in no unit at all. The assumption is open to question.

It seems much more probable that Congress intended Section 9 (b) to authorize the Board to *group* employees appropriately rather than to exclude them from coverage. The only express exclusions appear in Section 2 (3).⁷ The language of Section 9 (b) is language of classification.⁸ It empowers the Board to select between alternatives; we are to "decide in each case whether" employees should vote and bargain in an "employer unit, craft unit, plant unit, or subdivision thereof." It nowhere suggests that we should hold that, despite their desires, certain employees may never utilize the Act to select some representative or to bargain in any unit whatsoever.⁹ Under the power to classify, the Board may, and properly does, segregate supervisory employees from their subordinates, as by declining to place them in the same unit with rank-and-file employees. Here, however, we are not asked to segregate, but to ostracize. Even assuming that Section 9 (b) might permit such a result,¹⁰ that particular section certainly cannot be said to encourage it.

There are practical problems before us as well as legal ones. The company is deeply concerned at the foremen's decision to join an unaffiliated labor organization. The company's concern is as understandable as is its employees' decision. Both flow from the character of American industrial life in the 1940's. The company is troubled lest the unionization of its foremen detract from the single-minded loyalty which it considers essential to efficient mass production; the

⁷ These exclusions are limited to agricultural, domestic, and family workers. Supervisory employees are not mentioned; no Member of the Board suggested their exclusion until as late as 1942.

⁸ The 1935 Congressional committee hearings and reports are to the same effect.

⁹ See *Matter of Bee Line, Inc.*, 6 N. Y. S. L. R. B. 686, 695 (1943):

"The concept of appropriate unit is an affirmative one, intended to bring about the most desirable form of organization. It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group of employees in all circumstances. Once it is determined that a group of persons are employees, they have a right under the Act and the Constitution of the State of New York to be placed in *some* appropriate unit—that one which will best facilitate their participation in the practice and procedure of collective bargaining."

Of course, the reference to the State Constitution is immaterial here. It might be noted that the New York Board still adheres to this view, despite a change in personnel under a different State Administration.

¹⁰ This view as to the limited power vested in the Board under Section 9 (b) is not to be taken to mean that the Board lacks discretion to decline to proceed with a representation case upon proper cause shown. Our view of the fundamental policies of the Act may sometimes require the Board to decline, despite the danger of strikes, to make its machinery available to effectuate every choice that employees may make. See *Matter of Briggs-Indiana Corporation*, 63 N. L. R. B. 1270. Section 9 (c) of the N. L. R. A. provides that this Board "may", not that it must, investigate a question concerning representation and certify the representatives selected. This differentiates the Act from certain State statutes, such as that of New York, which contain mandatory language.

foremen have thought collective action necessary because they believe that individual bargaining has not afforded them the protection that men require in a large, inevitably depersonalized, plant. Self-interest is present on both sides, and so is fear. Fear, perhaps more than self-interest, is a ready cause of industrial strife. In the long run, collective bargaining will tend to reduce both the cause and the effect. It will provide more fertile soil for the ultimate loyalty of foremen than can the resentment that is likely to be engendered by hostile disregard of their chosen representatives.

Bargaining can only succeed, however, if responsible unions representing supervisory employees, once their legal rights are established, recognize the validity of some of management's special fears and seek to dispel them by the terms of the ultimate bargain.¹¹ Many of the problems arising from possible dual allegiance, which give Mr. Reilly such genuine concern, are particularly susceptible of this treatment. Such problems flow inevitably from the foremen's dual existence. They cannot be made to disappear simply by telling foremen that the Wagner Act is not available to them. American management has shown such resilient genius that, once foremen's representatives lose their sense of insecurity and can adopt a policy of self-restraint, the parties will find a way to resolve their occasional conflict of interest. Government cannot resolve that conflict for them. But it can intercede to lay the groundwork for reasoned negotiation, so that that which seems anathema today may become habitual tomorrow.

It is not for this Board to determine whether supervisory employees, sensing inequality of bargaining power, should seek to better their lot by exercising the right of free association. They have already done so. In this case we need only decide whether the Act's peaceful processes are to be proffered or denied to employees who, for reasons known best to themselves, desire to act in unison through what appears to be a truly independent union.¹² In the absence of any Court decision,¹³ Congressional mandate or other declaration of national policy to the contrary,¹⁴ and in the further absence of proof that collective bargaining by supervisory employees has failed where it has been

¹¹ See *Matter of Delporte Realty Corporation*, 6 N. Y. S. L. R. B. 907, 915.

¹² The fact that the Foreman's Association's interests, and therefore its actions, may sometimes coincide with those of rank-and-file employees does not suffice to convert natural sympathy into partnership. Collaboration may be relevant, but the presumption that a constitutionally autonomous organization is in fact autonomous is not so easily rebutted. Affiliation *per se* is not before us here, and Mr. Houston and I do not pass, one way or the other, upon its possible effect.

¹³ Indeed, a State Board order finding appropriate a unit of supervisors has been enforced by the courts in the test case of *New York State Labor Relations Board v. Metropolitan Life Insurance Company, et al*, 183 N. Y. Misc. 1064, affirmed by the Appellate Division, First Department, at 114 N. Y. Law Journal, p. 1075 (October, 1945). There are no contrary Federal decisions.

¹⁴ The Labor-Management Conference reached no conclusion on this subject.

attempted,¹⁵ it is better that a Board dedicated to encouraging the bargaining process move forward, not backward,¹⁶ and continue to put a premium on the conference table rather than on the harsh arbitrament of industrial war. The more difficult the problem, the more important it is that the stage be set for men to sit down and reason together.

MR. GERARD D. REILLY, dissenting:

Since the respondent does not deny that it has refused to bargain with the charging labor organization in this case, the issue before us is the same one upon which we passed in our Decision and Direction of Election in case 7-R-1884,¹⁷ the representation matter which resulted in the certification upon which the complaint in the instant proceeding is premised. The findings of the Trial Examiner to which respondent has taken exception rest almost entirely upon the evidence submitted in that preliminary phase of the case, except for three exhibits which the respondent introduced as additional support for its position.

Having set forth at some length my disagreement with the views of the majority in the representation case, I see no reason for repeating them here, since the dissenting opinion is a part of the record, other than to note that the additional documentary evidence contained in this case strengthens my inference that the charging union is not truly independent, but rather an organization whose fate is inextricably bound up with the policy of the United Automobile Workers, the CIO union which represents the rank and file employees in respondent's plant.¹⁸ This being the case, we do have a situation here which presents a genuine question of divergent loyalties,—the conflict arising from the foreman's duty to his employer to enforce the company rules with respect to subordinate employees, and his allegiance to a union allied with one representing the interests of those very subordinates. Consequently, I am unable to agree with the view expressed in

¹⁵ The history of bargaining by supervisory employees in the maritime and railroad industries and in the printing and building trades establishes, at the least, that collective agreements *can* be made to work in practice. So also does the testimony adduced in the Packard representation case concerning the Foreman's Association's current contract with the Ford Motor Company.

The record is barren of any proof that the Packard foremen have been disloyal to the company or less efficient as supervisors because of their membership in the Association, or that such membership has operated to deprive the rank-and-file employees of their primary rights under the Act.

¹⁶ Two reversals in as many years are enough.

¹⁷ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.

¹⁸ Particularly reference is made to an excerpt from the March 1, 1945, issue of "The Searchlight," an official publication of the Chevrolet Local No. 69 of the United Automobile Workers (CIO), stating that about 300 Chevrolet foremen had joined the Foremen's Association and that the rest of the foremen in that company should join this group without delay.

the special concurrence of the Chairman that the concerted activities of the foremen here are solely directed at improving the wages and working conditions of the foremen vis-a-vis their employer. That is of course their ultimate objective, but its attainment necessarily contemplates compromising the members of the charging organization in the discharge of the duties they were hired to perform.

If the certified organization were really independent or took steps to guarantee against future instances of collaboration, or if the certification contained safeguards which would effectively insulate its activities from the union of the rank and file, I should feel quite differently about the matter.

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 refuse to bargain with Foreman's Association of America as the exclusive representative of our supervisory employees in the bargaining unit described herein.

WE WILL NOT engage in any like or related acts or conduct interfering with, restraining, or coercing our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our supervisory employees are free to become or remain members of the above-named union.

WE WILL bargain collectively upon request with the above-named union as the exclusive representative of all supervisory employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment. The bargaining unit is:

All general foremen, foremen, assistant foremen, and special assignment men employed at the Detroit, Michigan, plants.

PACKARD MOTOR CAR COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Messrs. David Karasick and David Citin, for the Board.
Mr. Louis F Dahling, of Detroit, Mich., for the respondent.
Mr. Walter M Nelson, of Detroit, Mich., for the Union

STATEMENT OF THE CASE

Upon a charge duly filed on June 8, 1945, by Foreman's Association of America, an unaffiliated organization, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint on June 28, 1945, against Packard Motor Car Company, Detroit, Michigan, 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 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the charge, with notice of hearing thereon, were duly served on the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that (1) on March 26, 1945, the Board in its Decision and Direction of Election in Case No. 7-R-1884¹ found that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constituted a unit for the purposes of collective bargaining; (2) on April 28, 1945, the Board in its Certification of Representatives in the same case, certified the Union as the exclusive representative of all the employees in the said unit for the purposes of collective bargaining, and that the Union is still such representative; (3) that on May 18, 1945, although requested to bargain collectively by the Union, the respondent refused to do so; and (4) by the foregoing acts and conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 6, 1945, the respondent duly filed an answer denying the commission of the alleged unfair labor practices. The answer admitted, however, the allegations of the complaint as to the corporate existence of the respondent and the nature, character, and extent of the business transacted by it, and the allegation that it refused to bargain collectively with the Union although the Union had requested it to do so. By way of affirmative defense, the answer asserted that the Board erred in its findings in Case No. 7-R-1884 as to the appropriateness of the unit in question for the reason, *inter alia*, that the Board had no power, authority or jurisdiction to hold or conduct any hearing in that case, or to issue any decision or direction, or to order the holding of any election, or to issue any certification or order thereon, and that therefore all findings, determinations, directions, and orders therein are unconstitutional without legal force or effect, wholly void, and not binding on the respondent.

Pursuant to notice, a hearing was held on July 9, 1945, at Detroit, Michigan, before Howard Myers, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union 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 upon

¹ *Matter of Packard Motor Car Company and Foreman's Association of America*, 61 N L R. B. 4.

the issues was afforded all parties. Before the taking of any evidence, counsel for the respondent moved to dismiss the complaint on the grounds that (1) the persons who compose the unit alleged to be appropriate are not employees within the meaning of the Act; (2) the alleged unit is inappropriate; (3) the Board has no jurisdiction over the subject matter alleged in the complaint; (4) the Board's action, by proceeding herein, is an illegal, unwarranted, arbitrary and unreasonable interference with the rights of the respondent and therefore the Board by proceeding herein is violating the respondent's constitutional rights; (5) the Board may not in this proceeding lawfully order the respondent to bargain collectively with the Union because to do so, the Board would be proceeding contrary to the Act, abusing its discretion, and committing acts detrimental to public interest; (6) the Board has no jurisdiction, power, or right to proceed with Case No. 7-R-1884 and therefore it should not proceed with the present case because this is the outgrowth of the former proceeding; (7) the findings, certification, decisions, and directions issued in Case No. 7-R-1884 are illegal, unconstitutional, null and void, and of no effect and therefore they do not afford a basis for the filing of the complaint in the present proceeding; and (8) the findings, certificate, decisions, and directions issued in Case No. 7-R-1884 are contrary to the evidence submitted therein, beyond the limits of the Board's discretion, an abuse of the Board's discretion, and contrary to the provisions of the Act and therefore they are detrimental to public interest. The motion was denied with leave to renew. At the close of the Board's case, Board's counsel moved to conform the complaint to the proof. The motion was granted without objection. The respondent's counsel renewed the motion which he made at the opening of the hearing to dismiss the complaint. The motion was denied with leave to renew. At the conclusion of the hearing, Board's counsel moved to conform the complaint to the proof and the respondent's counsel moved to conform the answer to the proof. Both motions were granted without objection.² The respondent's counsel then renewed the motion which he made at the opening of the hearing and at the end of the Board's case to dismiss the complaint. Decision thereon was reserved. The motion is hereby denied.

Upon the entire record in the case, including the record in Case No. 7-R-1884,³ the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Packard Motor Car Company is a Michigan corporation with its principal office and place of business in Detroit, Michigan. Prior to 1941, the respondent was engaged at its Detroit plants in the manufacture and sale of automobiles. Since 1941, the respondent's manufacturing facilities have been converted to the manufacture of munitions for Army and Navy Ordnance and the respondent is at the present time engaged almost entirely in war production. The respondent annually purchases raw materials valued in excess of \$5,000,000, of which 50 percent is obtained from sources outside the State of Michigan and is shipped to the respondent's plants located in the State of Michigan. The respondent's annual sales of finished products exceed \$5,000,000, of which 90 percent represents sales of such products shipped from the Detroit, Michigan, plants of the respondent to points outside the State of Michigan.

² By error, the stenographic transcript does not show that the respondent's motion was granted. It is hereby ordered that the transcript be deemed corrected accordingly.

³ It was stipulated at the hearing that the record in Case No. 7-R-1884 (including the oral argument before the Board) be included herein.

The respondent admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II THE ORGANIZATION INVOLVED

Foreman's Association of America is an unaffiliated labor organization admitting to membership supervisory employees of the respondent.

III THE UNFAIR LABOR PRACTICES

The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein

On March 26, 1945, the Board issued its Decision and Direction of Election in Case No. 7-R-1884 (61 N. L. R. B. 4), in which it found that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constituted a unit appropriate for the purposes of collective bargaining. On April 17, 1945, an election was held pursuant to the aforesaid Direction of Election. According to the Tally of Ballots certified to by representatives of the respondent and the Union, of the 1315 eligible voters 666 votes were cast for the Union, 435 against, and 155 votes were challenged. No objections to the voting or to the conduct of the election were filed by any of the parties. On April 28, 1945, the Board in its Certification of Representatives, certified the Union as the representative of the employees in the aforesaid unit for the purposes of collective bargaining.

The respondent contests the appropriateness of the unit, referred to above, and hence the subsequent certification of the Union therefor. No additional evidence to support the respondent's contention was introduced in the present hearing except the following: (1) a copy of a memorandum issued by Mr. Sam Sponseller, C. I. O., Cleveland Regional Director, in which he states, among other things, that the C. I. O. has opened its membership in a certain named local to all "foremen and supervisory employees, excluding superintendents etc." and solicits membership from among those eligible to join the named local; (2) a copy of an article appearing in the May 27, 1945, issue of the Pittsburgh Press, a Pittsburgh, Pennsylvania, daily newspaper, stating that the United Steelworkers of America, an affiliate of the Congress of Industrial Organizations, plans to organize "all bosses who do not have 'hire and fire' authority"; and (3) an excerpt from the March 1, 1945, issue of "The Searchlight", the official publication of CIO-UAW, Chevrolet Local No. 69, wherein the author states that about 300 Chevrolet foremen had joined the Union herein and that the remaining foremen should join the Union without delay. The undersigned is convinced, and finds, that the evidence relied on by the respondent in this proceeding, including the evidence submitted by it in Case No. 7-R-1884, is insufficient to warrant a finding that the unit heretofore found by the Board to be appropriate is inappropriate.

The undersigned finds that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and after April 28, 1945, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on April 28, 1945, and at all times thereafter has been, and now is, the exclusive representative of all the employees in the aforesaid unit for

the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2 The refusal to bargain

By letter dated May 2, 1945, the Union requested the respondent to fix a time and place for the purpose of commencing collective bargaining negotiations. By letter dated May 11, the respondent replied that it would meet with the Union's representatives on May 18. Instead of meeting with the Union's representatives on May 18, the respondent wrote the Union that day stating, among other things, that the respondent considered the Board's proceedings which culminated in the Board's certifying the Union as the collective bargaining representative of the respondent's general foremen, foremen, assistant foremen, and special assignment men, unconstitutional, void, and of no force or effect and therefore the respondent would not recognize the said certification nor would it bargain collectively with the Union as such representative until the issues involved had been finally determined by judicial review. It is clear from the respondent's letter and from the admissions contained in the answer filed by the respondent in this proceeding, that at all times since May 18, 1945, the respondent has not receded from its position as outlined in its letter of May 18. The undersigned accordingly finds that the respondent on May 18, 1945, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and thereby has 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 such of them as have been found to be unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been 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.

Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

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

CONCLUSIONS OF LAW

1. Foreman's Association of America, unaffiliated, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All general foremen, foremen, assistant foremen, and special assignment men, employed by the respondent at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3 Foreman's Association of America, unaffiliated, was on April 28, 1945, and at all times thereafter has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act

4. By refusing on May 18, 1945, and at all times thereafter, to bargain collectively with Foreman's Association of America, unaffiliated, as exclusive representative of all its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. 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.

6. 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 above findings of fact and conclusions of law, and upon the entire record in the case, including the record in Case No. 7-R-1884, the undersigned recommends that the respondent, Packard Motor Car Company, Detroit, Michigan, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, unaffiliated, as the exclusive representative of all of its employees in the above-described appropriate unit;

(b) Engaging in like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organization, or to join or assist Foreman's Association of America, unaffiliated, 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 undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Foreman's Association of America, unaffiliated, as exclusive representative of all of its employees in the above-described appropriate unit and if an understanding is reached, embody such understanding in a signed agreement:

(b) Post at its plants in Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director of the Seventh 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;

(c) Notify the Regional Director for the Seventh Region (Detroit, Michigan), in writing, within ten (10) days from the receipt of this Intermediate Report, of 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 the said Regional Director in writing that it will comply with the foregoing recommenda-

tions, 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 July 12, 1944, 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 within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,
Trial Examiner.

Dated July 18, 1945.

APPENDIX A

NLRB 582
(9-1-44)

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner 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 Foreman's Association of America 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. All our employees are free to become or remain members of this union, or any other labor organization.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: all general foremen, foremen, assistant foremen, and special assignment men employed at the Detroit, Michigan, plants.

PACKARD MOTOR CAR COMPANY,
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.