In the Matter of DIAMOND T MOTOR CAR COMPANY *and* BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 73, A. F. L.

*Case No. 13–C–2414.—Decided December 7, 1945*

## DECISION

AND

## ORDER

On January 11, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in any unfair labor practices affecting commerce and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent and the Union duly filed exceptions to the Intermediate Report and supporting briefs. Oral argument before the Board in Washington, D. C., requested by the Union and the Independent, was scheduled for a day certain, but was thereafter waived by agreement of all the parties.

The Board has considered the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions noted below.

1. The Trial Examiner, relying on the doctrine enunciated in the *Rutland Court* case,[1] found that the respondent did not violate the Act in discharging Arquilla and Johns, because it did not know, at the time it discharged these two employees pursuant to a valid union-shop agreement with the Independent, that the Independent had expelled them and demanded their discharge because of their activities on behalf of the Union at a time when a question concerning representation was pending. We agree with the Trial Examiner that on the facts in this case such knowledge is essential to a finding of a violation of the Act on the part of the respondent.

2. The Union excepted to the Trial Examiner's finding, on the ground that the evidence in this case shows that the respondent knew that the Independent expelled the two employees and demanded their discharge because of their past activities on behalf of the Union

[1] *Matter of Rutland Court Owners, Inc.*, 44 N. L R B 587; 46 N L. R. B. 1040.

during the pendency of the representation proceeding. The Trial Examiner made no finding as to the reason for the Independent's expulsion of these employees and its demand for their discharge. However, even assuming that the reason was as stated by the Union, we agree with the Trial Examiner's evidentiary findings and conclusion that the evidence falls short of establishing knowledge of such reason on the respondent's part. While the respondent knew of the activities of these employees on behalf of the Union during the pendency of a question concerning representation, it does not follow that the respondent must have deduced that the Independent was motivated by such activities and not by lawful considerations in demanding their discharge.

3. The Union further excepted to the Trial Examiner's finding, on the ground that the respondent, even if it lacked knowledge of the Independent's unlawful reason for seeking the discharges, had a duty to inquire concerning the reason, particularly because the respondent knew that the two employees had been watchers for the Union at the consent election 3 weeks before their discharge. Without at this time passing on the merits of the Union's contention under other circumstances, we find that the circumstances and facts disclosed by this record imposed no duty of inquiry upon the respondent.

4. The Union also excepted to the Trial Examiner's finding, on the ground that the agreement pursuant to which the respondent discharged Arquilla and Johns was invalid because executed on March 25, 1944, during the pendency of a question concerning representation, as the respondent knew. The record shows, however, that thereafter the Union joined the Independent and the respondent in an agreement for a consent election to be conducted by the Regional Director. This election resulted in a clear majority for the Independent. When the Union subsequently failed to object to the election, the Regional Director issued a "Consent Determination of Representatives" to the effect that the Independent was the exclusive representative of all the employees in the agreed appropriate unit. Only thereafter, was the respondent shown to have put the closed-shop agreement into effect by making the discharges here involved. Under such circumstances, and in the absence of any attempt by the Union to invalidate the result of the election on the ground that it did not reflect the free choice of the employees, we are satisfied that after the election the respondent could have made the agreement here involved in entire conformity with the requirements of the proviso to Section 8 (3). To hold the agreement in this case invalid under the proviso, merely because the respondent did not go through the technical maneuver of signing a new piece of paper after the election embodying identical terms, would be a distortion of the intent of the proviso and a perversion of the purposes of the Act. Moreover, the instant case was not

litigated on any theory that the agreement was invalid for the reason now advanced by the Union; indeed, the Union made such an argument for the first time in its supplemental brief before the Board. We find no merit in the Union's exception.

5. The Union finally argued in its supplemental brief before the Board that the respondent unlawfully refused to reinstate Arquilla and Johns, as alleged in the Board's complaint, by failing to offer them reinstatement upon learning at the hearing before the Trial Examiner that the Independent had obtained their discharge because of their past union activities during the representation proceeding. We find this argument without merit. The respondent, having lawfully discharged the two employees, did not thereafter become obligated to offer them reinstatement. Accordingly, we shall dismiss the complaint herein.

## ORDER

Upon the basis of the foregoing findings of fact and 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 complaint against the respondent, Diamond T Motor Car Company, Chicago, Illinois, be, and it hereby is, dismissed.

## INTERMEDIATE REPORT

*Mr. Russell Packard*, for the Board.

*Miller, Gorham, Wescott & Adams*, by *Mr. Edward R Adams*, of Chicago, Ill., for the respondent.

*Mr. John F. Cusack*, of Chicago, Ill., for the Independent.

*Mr. William T. Hanrahan*, of Berwyn, Ill., for the Union.

### STATEMENT OF THE CASE

Upon a charge duly filed on June 10, 1944, by Building Service Employees International Union, Local 73, A. F. L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated August 18, 1944, against Diamond T Motor Car Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) 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, were duly served upon the respondent, the Union, and Automotive Workers Industrial Union, Inc., herein called the Independent.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, on or about June 7 and 9, 1944, discharged Anthony Arquilla and Ralph Johns, respectively, because of their membership in and activities on behalf of the Union, and thereafter refused to reinstate them, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter, the respondent filed its answer dated August 25, 1944, admitting the allegations of the complaint with respect to the nature of its business and denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Chicago, Illinois, on September 7 and 8, 1944, before the undersigned Josef L. Hektoen, the Trial Examiner duly appointed by the Chief Trial Examiner. At the opening of the hearing, the Independent filed its motion to intervene; it was granted, without objection, by the undersigned. The Board, the respondent, and the Independent were represented by counsel and participated in the hearing; the Union appeared by its representative. Full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded to all parties. During the hearing, the motion of counsel for the Board to amend the spelling of the name of one of those alleged to have been discriminatorily discharged was allowed, without objection. At the close of the Board's case, the motions of counsel for the respondent and for the Independent to dismiss the complaint were denied by the undersigned; they were reiterated at the close of the hearing, ruling was reserved by the undersigned, and they are now disposed of as hereinafter indicated. At the close of the hearing, the motion of counsel for the Board to conform the complaint to the proof with respect to the spelling of names and dates was allowed by the undersigned

Counsel for the Independent argued orally before the undersigned at the close of the hearing, and briefs were thereafter received by him from counsel for the Board and for the respondent.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The respondent, Diamond T Motor Car Company, is an Illinois corporation having its principal place of business in Chicago, Illinois It is engaged in the manufacture and sale of motor vehicles and service parts During 1943, it bought raw materials consisting of steel, wire, automobile parts, and similar items having a value in excess of $50,000,000, more than 50 percent thereof from points without the State of Illinois. During the same period it sold finished products having a value in excess of $50,000.000, more than 50 percent thereof to points without the State of Illinois. The respondent admits that it is engaged in commerce, within the meaning of the Act.

### II. THE ORGANIZATIONS INVOLVED

Building Service Employees International Union, Local 73, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

Automotive Workers Industrial Union, Inc, is a labor organization admitting to membership employees of the respondent.

### III. THE UNFAIR LABOR PRACTICES

#### A *Chronology of events*

The respondent and the Independent have enjoyed contractual relations since 1937,[1] and since 1942 have been functioning under union-shop contracts, the last of which was executed March 25, 1944, and was effective to February 5, 1945.

[1] In 1939, the Board found the Independent to have been company dominated (*Matter of Diamond T Motor Car Company, et al.*, 18 N. L. R. B. 204). In 1941, the Circuit Court of Appeals for the Seventh Circuit set aside the Board's order (*Diamond T Motor Car Company* v *N. L. R. B.*, 119 F. 978 (C C. A. 7)) the matter was not reviewed by the Supreme Court.

After unsuccessful organizational efforts in 1937–8 by a union affiliated with the Congress of Industrial Organizations, the respondent was free of attention from affiliated unions for a period of some 5 years.

Early in 1943, Local 713, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, affiliated with the American Federation of Labor, began organization of the employees at the respondent's warehouse.[2] In the fall of 1943, organization of the main plant was also undertaken and on December 3, Joseph de Lavan, union organizer, requested recognition of that organization as the exclusive representative of all of the respondent's employees. The respondent, by its counsel, refused the request on the ground that the respondent was under contract with the Independent. De Lavan thereafter, on the same day, filed a petition for investigation and certification of representatives with the Board's Regional Office. It was docketed as Case No. 13–R–2201 and alleged the appropriate unit to be "All production employees of the company, excluding skilled machinists and motor truck mechanics and foremen."[3]

During December 1943, or early in 1944, the Independent issued the following leaflet to the employees in the plant:

NOTICE TO ALL MEMBERS

It has come to the attention of your Executive Board that some people are attempting to have you adopt the principle of Dual Unionism They are asking you to attend meetings, to sign application blanks, and to do other acts in conflict with the purposes of our Union

We wish to call to your attention Article 3 of your contract of employment with the Company, which requires that you remain members in good standing with our Union, in order to continue your employment. The War Labor Board and the Courts have confirmed the legality of such a provision in labor contracts, and have recognized the duty of employers to discharge employees who fail to live up to this provision in a contract.[4]

Article 3 of your Union's constitution clearly specifies the requirements of a member to remain in good standing.[5] Dual Unionism is a violation of the

[2] The warehouse is one of three places of business maintained by the respondent in Chicago; about 600 persons are employed there The main plant employs about 1,000 persons, and there are about 50 employees at the service station.

[3] The then existing contract between the respondent and the Independent was effective to February 4, 1944. It provided that "Sixty days prior to the termination of this agreement both parties shall meet to negotiate its renewal . . . In the event that such negotiations shall not result in the execution of a new agreement prior to the expiration of this agreement, . . . this agreement shall remain in full force and effect for the further period of not exceeding sixty (60) days, or until a new agreement shall have been negotiated, whichever sooner occurs." It was therefore not a bar to the union petition. Negotiations for its renewal continued to March 25, 1944, when the present contract was executed by the parties, retroactive to February 5, 1944.

[4] The pertinent provision of the contract reads as follows:

(Article 3, Section 1) · It is a continuing condition of employment with the Company that employees covered by this agreement, both present employees and new employees, shall be and remain members in good standing in the Union. Employees losing their membership in the Union shall not be retained in the employ of the Company.

[5] The pertinent provision of the Independent's constitution reads as follows:

(Article III, Section 2) · If any member violates any of the articles of the Union's constitution, by-laws, rules or regulations, or if any member's conduct or action becomes detrimental to the welfare and interest of the Union, or its members, such member may be temporarily deprived of all privileges and rights in this Union or the property thereof by the Executive Board, or he may be permanently expelled and he shall forfeit all rights or claims in or against the Union.

There is nothing in the record to indicate that the respondent had knowledge of this provision of the constitution.

Constitution and subjects every person guilty of it to expulsion from the Union, and in turn, dismissal from the employment of the Company.

Do not be misled by False Propaganda and Empty Promises Study what you have against what other working classes are getting in nearby industrial plants Do not sign any application blanks without giving full consideration to the dangers flowing from your hasty action.

No Union is stronger than the members make it, and your fellow members intend to keep what they carefully built. Bad timber and Agitators will be "weeded out", and your Union will continue to function as the sole collective bargaining agent for all employees of Diamond T A word to the wise should be sufficient—we hope it will not be necessary to take official action to punish any one.

AUTOMOTIVE WORKERS INDUSTRIAL UNION, INC
By EXECUTIVE BOARD.

There is no evidence that this leaflet came to the attention of the respondent's management.

On February 18, 1944, de Lavan filed a first amended petition alleging the appropriate unit to be "all production employees of the Company, except for foremen, guards and clerical employees." This petition was filed in the name of "Joint Organizing Committee—Diamond T Division, American Federation of Labor" Evidence taken at a hearing on this petition held April 24, 1944, pursuant to notice, shows that the Joint Organizing Committee consisted of Building Service Employees International Union, Local 73;[6] Automobile Carriage, Car and Equipment Painters Local Union No 396; International Association of Machinists, District Lodge No. 8, and International Brotherhood of Teamsters, Local No 713, all affiliated with the American Federation of Labor

The April 24 hearing resulted in the execution of an agreement for a consent election to be conducted by the Regional Director, the agreed unit being "All of the employees of the Company in Cook County, Illinois, including plant clerical and watchmen but excluding superintendents, assistant superintendents, designing, experimental and factory engineers, draftsmen, foremen, militarized guards and office employees"

The consent election conducted by the Regional Director on May 15, 1944, was won by the Independent[7] and on May 22, the Regional Director issued his consent determination of representatives finding that the Independent was the exclusive representative for purposes of collective bargaining of the respondent's employees within the agreed unit.

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[6] The name of this Union appears in the transcript as "General Service Employees Union, Local No 73"

From the context of the records in both the representation case and the instant complaint case, it is clear to the undersigned, who finds, that this name was either incorrectly given by the witness testifying in respect to the make-up of the Joint Organizing Committee, or incorrectly transcribed; that the proper name of said union, the charging organization in the instant case, is "Building Service Employees International Union, Local 73;" and that all parties have at all times so considered it No "General Service Employees Union" is listed in the standard compendiums on the subject of labor organizations

[7] The tally of ballots was as follows:

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|---|---|
| Number of eligible voters | 1,677 |
| Valid votes counted | 1,493 |
| Votes cast for the Independent | 856 |
| Votes cast for the A F. of L | 599 |
| Votes cast against participating unions | 81 |
| Challenged ballots | 9 |
| Void ballots | 10 |

On June 7, the respondent discharged employee Anthony Arquilla, and on June 12, 1944, employee Ralph Johns, both pursuant to notice from the Independent that said employees were no longer in good standing therein.

B *The discharges*

Organizer de Lavan testified, and the undersigned finds, that beginning in December 1943, paid union employees distributed literature outside the main plant of the respondent The tempo of the Union's drive increased during the spring of 1944, and on about April 1, de Lavan appointed employees Arquilla, Johns, and George Nisivaco to take charge of a personal campaign among the employees and to be watchers at the anticipated Board election. Nisivaco, whose work on an assembly line in the plant closely confined him, took little part in the campaign although he acted as a watcher at the election.

*Anthony Arquilla* began work for the respondent on December 7, 1942, and at the time of his discharge on June 7, 1944, was affixing bumpers and cables to trucks His work took him about throughout the assembly department and into other parts of the plant When he first began soliciting union memberships in the plant, Arquilla told Foreman Ralph Barto that he thought the "A F. of L. has a good chance, and I think they are going to win" Barto replied, "You had better watch yourself, otherwise something may happen"[8] Arquilla marked the initials of the A F of L on trucks, conducted "straw votes" in plant restrooms, and just prior to the election told Edward Synek, vice president of the Independent, that he thought the A F of L would win

On May 13, the Saturday before the election, Arquilla obtained a clipping from a local newspaper of a classified advertisement appearing therein on the same morning and reading as follows:

> T L of D T M Co other outfit won't deal at any price, suggest legal suit to retain assets Found out they are very solid Advise before Mon C[9]

Arquilla interpreted it to indicate that T. M. Law, president of the Independent, was being communicated with in this way by John F Cusack, its counsel, and that some sort of "deal" in connection with the election was being referred to He thereupon showed the clipping to some 60 employees and told them of his interpretation He similarly spoke to Foreman Barto, who reiterated his warning that Arquilla "watch" himself, and to Raymond Bochantine, who although he voted in the election, was acting foreman in Barto's absence during the week thereof

On May 15, Arquilla acted as a watcher for the A. F. of L. at the election

On May 16, Arquilla called at the respondent's personnel office respecting pay for his time while acting as a watcher. When he emerged therefrom, Steward Louis Michelin, of the Independent, asked him if he had already been discharged. Arquilla replied in the negative, whereupon Michelin told him that Leo Perlan, member of the Independent's executive board, had inquired for him and adjured him to "watch" himself Bochantine and another employee also asked him if he had been discharged

On about May 18, Arquilla had an accident while driving a truck in the plant. He was disciplined by the respondent by a 5-day lay-off On appeal by the Independent's grievance committee, the respondent reduced the length of the lay-off to a day and a half or 2 days

[8] Arquilla's undenied and credible testimony

[9] The record does not reveal the identity of the person or persons who inserted the advertisement

On June 6, the Independent wrote the respondent the following letter:

> We wish to advise you that Anthony Arquilla, number 112 in Department XC of the Company is no longer a member in good standing of our Union.
>
> After service of notice upon him, he appeared before the Executive Committee of the Union on June 6th, A. D. 1944, and after a full hearing of the facts in his case, he was found guilty of violating the Constitution and By-Laws of our Union and more particularly was found in violation of Section 2 of Article 3 of our Constitution [10] His name was ordered stricken from the roll of members in good standing in our Union
>
> Under the circumstances, and in accordance with the provisions of our contract, he is no longer eligible for employment with the Company and we request his discharge.

On June 7, C. S Becker, personnel director of the respondent, discharged Arquilla, the release slip stating that the reason for such action was that he was "No longer a member in good standing of our Union . . ."

There is no evidence that Arquilla ever formally joined the A F. of L

*Ralph Johns*, originally employed by the respondent in October 1941, was inspecting and driving army trucks before and at the time of his discharge on June 12, 1944. His work took him throughout the plant and in the course thereof he spoke to employees of the A. F. of L, chalked its initials on trucks, conducted a "straw-vote" in a plant rest-room,[11] and on May 13, told Glenn Bruce, whom he described as a "key boss", but whom the undersigned finds to have been a fellow employee, that he thought the A. F of L. would win the imminent election On the same day, as the result of a conversation with another employee, Johns procured a copy of the newspaper containing the advertisement described above, showed it to about 12 employees, and told them that he believed the president and counsel of the Independent were making a "deal" respecting the election.

Johns acted as "chief watcher" for the A F of L at the election on May 15. On May 16, he endeavored to pay his monthly dues to the Independent in the plant [12] but was prevented from doing so by the collector's inability to change a $5 bill.[13] That evening Johns suffered an accident while on the way to his home and was necessarily out of the plant for more than 3 weeks.

On June 6, the Independent wrote the respondent the following letter:

> We wish to advise you that Ralph Johns, number 54 in Department I of the Company, is no longer a member in good standing of our Union.
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> After service of notice upon him, he failed to appear before the Executive Committee of the Union on June 6, A. D 1944, and after a full hearing of the facts in his case, he was found guilty of violating the Constitution and By-Laws of our Union and more particularly was found in violation of Section 2 of Article 3 of our Constitution [14] His name was ordered stricken from the roll of members in good standing in our Union.
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> Under the circumstances, and in accordance with the provisions of our contract, he is no longer eligible for employment with the Company and we request his discharge.

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[10] See footnote 5, *supra.*

[11] The record reveals that no employees knew of his activity in doing so, however.

[12] They were due the day before.

[13] Statements by counsel for the Independent, made at the hearing, indicate that dues arrearage automatically placed the delinquent member in bad standing. The constitution of the Independent provides, however, that "The failure of any member to pay the dues, fixed herein, within ten (10) days of the date due, shall subject said member to suspension at the discretion of the Executive Board" It is thus plain, and the undersigned finds, that non-payment of dues did not, *ipso facto,* result in bad standing.

[14] See footnote 5, above.

On June 9, Johns interviewed Becker and informed him that he would return to work on June 12.[15] Becker showed him the Independent's letter and indicated that the matter would be taken up with Johns when he reported on the latter date

On June 12, Becker discharged Johns, telling him, "It is too bad you got mixed up in this union business, Ralph . . . You have got a fine record here . . . You have done your job well." [16]

There is no evidence that Johns ever formally joined the A F. of L.

Simultaneously with its receipt of the Independent's letters regarding Arquilla and Johns, the respondent received the following letter from the Independent also dated June 6:

> We wish to advise you that Joseph Ramey, number 425 in Department MB at the warehouse branch of the Company, is no longer a member in good standing of our Union.
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> After service of notice upon him, he appeared before the Executive Committee of the Union on June 6th, A. D. 1944, and after a full hearing of the facts in his case, he was found guilty of violating the Constitution and By-Laws of our Union and more particularly was found in violation of Section 2 of Article 3 of our Constitution. His name was ordered stricken from the roll of members in good standing of the Union.
>
> Under the circumstances, and in accordance with the provisions of our contract, he is no longer eligible for employment with the Company and we request his discharge

The respondent thereafter discharged Ramey Nothing further respecting his case is revealed by the record.

The evidence reveals, and the undersigned finds, that in addition to Arquilla and Johns, at least six other employees acted as watchers for the A. F. of L. at the election. The Independent did not request that the respondent discharge any of such employees and none was discharged.

### C *Concluding findings*

Any finding of discrimination by the respondent within the meaning of Section 8 (3) of the Act in this case must be based upon the rationale of the Board's decision in the *Rutland* case.[17] In that case the Board held that discharges by an employer, pursuant to demand of a union holding a validly made closed-shop contract, because of activities by the employees on behalf of a rival union at a time when a question concerning representation was pending, were discriminatory despite the provisions of the proviso to Section 8 (3) of the Act[18] where the employer knew of the reasons upon which the union's request was based. The necessity of such knowledge by the employer was emphasized in the *Wallace* case.[19]

Absent such knowledge, the respondent in this case, pursuant to the terms of the valid and subsisting contract between it and the Independent, was under a legal duty to forthwith honor requests for the discharges of the employees

[15] Johns was finally "discharged" by his doctor on June 12.

[16] Johns' uncontradicted and credible testimony

[17] *Matter of Rutland Court Owners, Inc.*, 44 N. L R B 587, 46 N. L. R. B. 1040.

[18] The proviso is that nothing contained in the Act "shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employement, membership therein . . ."

[19] *Wallace Corporation* v *N. L R B.*, 323 U. S. 248, aff'g 141 F. (2d) 87 (C. C. A. 4), enf'g 50 N L R B 138

involved and to remove them from its pay roll. In the opinion of the undersigned, the proof fails to demonstrate knowledge by the respondent of the reasons for such requests by the Independent.

As has been found above, there is no evidence that the Independent's leaflet distributed about the first of the year came to the respondent's attention, nor that if it did, the respondent either had reason to or did in fact connect it in any way with the requests for the discharges received by it some 6 months thereafter. The casual knowledge of Arquilla's activities gained by Barto and Bochantine cannot, in the absence of any showing to that effect, be found to have informed the management of the respondent of the actual reason for the Independent's demand that he be dismissed. To find otherwise would be to indulge in mere speculation. The same is true of Becker's statement to Johns that he thought it a pity Johns had become "mixed up in this union business," which to the undersigned indicates at most that Becker knew of Johns' A. F. of L. partisanship; he had the same knowledge respecting Arquilla, as well as the at least six other employees who had publicly displayed their partisanship by acting as A. F. of L watchers at the election and whose discharges were not thereafter requested by the Independent. Furthermore, it will be remembered that simultaneously with the demands respecting Arquilla and Johns, Becker had also received a demand, couched in identical terms, for the dismissal of Ramey.

Under these circumstances, the Board having failed to sustain the burden of proof of showing that the respondent had knowledge of the reason or reasons for the Independent's requests, the undersigned will recommend that the complaint be dismissed.

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. The operations of the respondent, Diamond T Motor Car Company, constitute trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) of the Act.

2. Building Service Employees International Union, Local 73, A. F. L., and Automotive Workers Industrial Union, Inc., are labor organizations, within the meaning of Section 2 (5) of the Act.

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

4. By discharging and refusing to reinstate Anthony Arquilla and Ralph Johns, the respondent has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

## RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint against Diamond T Motor Car Company be dismissed in its entirety.

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 briet, 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.

JOSEF L. HEKTOEN,
*Trial Examiner.*

Dated January 11, 1945.