

IN the Matter of THE FIRESTONE TIRE & RUBBER COMPANY and UNITED  
RUBBER WORKERS OF AMERICA, CIO

*Case No. 5-C-1865.—Decided April 16, 1946*

DECISION

AND

ORDER

On August 3, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged and was engaging in certain unfair labor practices in violation of Section 8 (1) of the Act and that it had not engaged in unfair labor practices in violation of Section 8 (3) of the Act by the discharge of J. A. Sebastian, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action and that the complaint be dismissed insofar as it alleged a violation of the Act with respect to the discharge of J. A. Sebastian.

The respondent filed no exceptions to the Intermediate Report. Counsel for the Union and the Board filed exceptions, with a supporting brief, to the Trial Examiner's recommendation that the complaint be dismissed with respect to the discharge of J. A. Sebastian. 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 considered the Intermediate Report, the exceptions and brief of counsel for the Union and the Board, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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 The Firestone Tire & Rubber Company, Winston-Salem, North Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Rubber Workers of

America, 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 purpose of collective bargaining or other mutual aid or protection.

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

(a) Post at its Winston-Salem, North Carolina, plant, copies of the notice attached to the Intermediate Report herein, marked "Appendix A."<sup>1</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth Region, after being duly signed by the respondent's representative, shall 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 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;

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminatorily discharged J. A. Sebastian within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

#### INTERMEDIATE REPORT

*Mr. George L. Weaster*, for the Board.

*Mr. Harold Mull*, of Akron, Ohio; *Messrs. J. M. Moore* and *W. C. Guthrie*, of Winston-Salem, N. C., for the respondent.

*Mr. Ray C. Nixon*, of Charlotte, N. C., and *Mr. M. W. Lynch*, of Winston-Salem, N. C., for the Union.

#### STATEMENT OF THE CASE

Upon an amended charge duly filed by United Rubber Workers of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated June 27, 1945, against The Firestone Tire & Rubber Company, Winston-Salem, North Carolina, 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, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that the respondent: (1) questioned its employees concerning their union affiliation and activities, made disparaging and derogatory remarks about the Union

<sup>1</sup> Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "RECOMMENDATIONS OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER."

and its members, urged and warned its employees to refrain from affiliation with the Union, and threatened them with discharge or other reprisals if they joined or assisted the Union; (2) on January 18, 1945, discharged J. A. Sebastian, an employee, because of his union and concerted activities; (3) and because of the foregoing, engaged in conduct violative of Section 8 (1) and (3) of the Act.

In its duly filed answer, the respondent denied that it had engaged in the alleged unfair labor practices and asserted as affirmative defense that it discharged Sebastian on the date alleged for cause. Prior to the hearing, the respondent filed a motion for a bill of particulars, and this motion was on July 10, 1945, granted in part, denied in part, by a duly designated Trial Examiner.

Pursuant to notice, a hearing was held at Winston-Salem, North Carolina, on July 16 and 17, 1945, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the Board's case the undersigned denied a motion by the respondent to dismiss the complaint. The respondent renewed its motion near the close of the hearing and ruling thereon was reserved. It is disposed of in the body of the Intermediate Report. Near the close of the hearing the undersigned granted, without objection, a motion by Board's counsel to conform the pleadings to the proof. After the testimony had been taken, counsel for the respondent and for the Board argued orally before the undersigned. All parties waived the filing of briefs with the undersigned.

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 Firestone Tire & Rubber Company is an Ohio corporation with its principal office at Akron, Ohio. It operates a plant at Winston-Salem, North Carolina, its sole plant involved in this proceeding, where it has been engaged at all times material herein in the manufacture of rubberized bridge pontoons for the military forces of the United States Government.

During the calendar year 1944, its purchases of raw materials for its Winston-Salem plant consisted of processed fabric, solvents, cement, rope, and metal valves and related products, of a value in excess of \$2,000,000, of which 98 percent was purchased and shipped to the Winston-Salem plant from points outside the State of North Carolina. During this same period, finished products of the Winston-Salem plant of a value in excess of \$5,500,000 were sold and shipped to points outside the State. All sales were made directly to the United States Government.

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

##### II THE ORGANIZATION INVOLVED

United Rubber Workers of America is a labor organization affiliated with the Congress of Industrial Organizations and admitting to membership employees of the respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Interference, restraint, and coercion

J. A. Sebastian was employed by the respondent in June or July, 1944. During the latter part of August or early September, 1944, he became interested in union

affiliation and arranged to meet with Ray C Nixon, a field representative of the Union. There is no record of organizational activities among the employees of the Winston-Salem plant prior to this time. Nixon advised Sebastian of organizational procedures and gave him a quantity of union application cards. Beginning in September, Sebastian was very active in soliciting for the Union and in distributing union literature among the respondent's employees. Another employee active in the organizational effort was Chester French.

Sebastian testified credibly that shortly after he began soliciting for the Union, Chief Supervisor Fred Bennett asked him if he was handing out union cards and warned him that he was "sticking his neck out" by engaging in union activity and would get nothing out of it.<sup>1</sup> Sebastian advised Bennett that he intended to continue his union activities. A few weeks later Bennett asked him how he was getting along and if he had signed up many employees in the Union. At a later date Foreman Dunn, who was shortly to become Sebastian's immediate supervisor, asked the latter if the Union was affiliated with the AFL or the CIO. On another occasion, Foreman Cheek instructed Sebastian that he could not sign up employees on company property, that it was against company rules, but that he (Cheek) did not care what Sebastian did outside the plant. While it appears that Sebastian solicited inside the plant, he denied that he carried on this activity during working hours and it is clear that Cheek did not limit his instructions with respect to working time. Cheek testified that he thought there was a rule forbidding solicitation on company property but could not recall that he had ever received specific instructions to this effect. Respondent's counsel admitted that there was no such rule. In the fall of 1944, as Sebastian and another employee, Clarence Freeman, were leaving the plant at the end of their work shift, Claude Wilson, foreman on another shift, called after them, "TO Hell with the CIO," and when Sebastian looked back at him, added, "TO hell with you, too."<sup>2</sup>

Chester French testified that he signed a union card at Sebastian's solicitation. In April, 1945, according to French, Supervisor James Hill approached him and asked him about the union badge he was wearing and what he was "trying to represent." French replied that it was a CIO badge. Hill then told French that he (Hill) had been affiliated with another union for 8 or 10 years and referred to unions as racketeers and gangsters. French made a memorandum of Hill's statements at the time they were made, since he considered they were violative of the Act, and Elmer Sink, a fellow employee who overheard the statements, signed it jointly with him. At the hearing Sink admitted that he signed the French memorandum, but denied that Hill used the terms racketeers or gangsters in referring to the Union. While testifying that he overheard the conversation and that it had to do with unions, he could not recall anything that was said. Hill also testified that he was unable to recall the conversation though he did not deny that it may have occurred. He admitted that he had been affiliated with an AFL union for 8 or 10 years but denied that he had employed the terms racketeers and gangsters in referring to unions. French's testimony in contrast to that of Sink and Hill, was clear and definite, and the undersigned credits it.

<sup>1</sup> Bennett denied the statements thus attributed to him by Sebastian or that he had any knowledge of Sebastian's union affiliation or activities. He testified that he had known Sebastian from the time the latter was employed at the plant, and further testified that he had no knowledge of organizational activities among the employees until a date subsequent to Sebastian's discharge on January 18, 1945. In view of the fact that Sebastian distributed union pamphlets outside the plant and engaged in solicitations openly both inside and outside the plant, and from his observation of the witnesses, the undersigned is unable to credit Bennett's denials.

<sup>2</sup> This finding is based on the credited testimony of Sebastian and Freeman. Wilson denied that he made the statement thus attributed to him.

Norwood Cockerham testified that in August 1944, French gave him some union cards and he began handing them out to employees inside the plant just prior to this work shift. According to Cockerham, Supervisor James Llewellyn approached him and told him that the cards he was handing out would cost him his job and he replied, "Well, if they do I can get another." Questioned, "Did you have any other conversation about the union with Llewellyn?" Cockerham testified, "Nothing only he just come up once in a while at the work, he says, you had better watch . . . those cards you are handing out, they will cost you your job." Cockerham was discharged in October 1944, and there is no allegation that his discharge was discriminatory. Llewellyn denied that he ever observed Cockerham passing out union cards or literature or that he ever had a conversation with Cockerham relating to unions. He admitted that he had heard of union activity in the plant and had seen union cards on the floor and in the employees' pockets. Questioned by the Board's attorney, "Have you ever seen Cockerham carrying any of those union cards in his pocket?" Llewellyn testified, "I couldn't say. I have seen them probably in most all of the boys' back pockets." The undersigned is unable to believe that Llewellyn repeatedly warned Cockerham that handing out union cards would cost him his job, particularly in view of the fact that it is not charged that Cockerham's discharge, which followed closely on the heels of this alleged activity, was discriminatory. Llewellyn's denial was convincing and is credited.

#### Concluding findings

The statements and conduct of Supervisors Bennett, Cheek, Wilson and Hill, set forth in detail above, considered in their totality, do not, in the opinion of the undersigned, fall within the category of sporadic expressions of personal opinion by minor supervisors, as argued by respondent's attorney. Cheek's instruction to Sebastian to cease solicitations in the plant, without limitation as to working hours, was on the same footing as a rule which if it incorporated the same unlimited prohibition would contravene the principle established in the *Republic Aviation* case,<sup>3</sup> and therefore imposed an unlawful restraint upon the employees' organizational activity. Bennett's questioning of Sebastian concerning the latter's union activities, and admonition that he was "sticking his neck out" in soliciting for the union, clearly exceeded the bounds of permissible conduct. The undersigned accordingly finds that the respondent, because of the anti-union statements and conduct of its Supervisors Bennett, Cheek, Wilson and Hill, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

#### B. The discharge of J A Sebastian

Sebastian was first employed in June or July, 1944, on a job which appears to have required little skill, at a starting wage of 50 cents an hour. After two weeks, he was assigned to assist Foreman Henry Capps in installing bulkheads, and while working under Capps his wages were increased to 75 cents an hour. After working only a few weeks on the job with Capps, he was transferred to the repair and testing department, and continued in that department until January 18, 1945, when he was discharged.

The testing and repair department is situated in a large building known as the George Davis warehouse, physically separated from the production departments. In this department, the rubberized pontoons or bridge sections manu-

<sup>3</sup> *Matter of Republic Aviation Corporation*, 51 N. L. R. B. 1186, enf'd 824 U. S. 793.

factured by the respondent are tested under the general supervision of government inspectors, and are repaired for leaks or other defects. During the period in question, from 40 to 75 employees were assigned to this department, of which number from 6 to 8 were testers. When Sebastian was first transferred to this department, his immediate supervisor was Gordon Cheek. In September or October 1944, Cheek was succeeded by James Dunn who from that date until Sebastian's discharge was the latter's immediate supervisor. The chief or floor supervisor for the entire plant on the second shift—the shift on which Sebastian worked throughout his employment with the respondent—was Fred Bennett. The general foreman of this shift, and Bennett's immediate supervisor, was Joel T. Webb. During the weeks immediately preceding Sebastian's discharge, Webb was succeeded on the second shift by Foreman William Linkie. The general foreman over the three shifts was Swartwood, who at the time of the hearing was employed by the respondent at its plant in Pennsylvania, and the plant superintendent was Moore. Linkie, Swartwood and Moore did not testify.

Sebastian testified that during his entire tenure of employment he was never criticized or reprimanded for failure to perform his work satisfactorily and had on occasion been complimented on his work by Foremen Cheeks and Capps. Capps did not testify but since during the same 2 weeks in the summer of 1944 that Sebastian worked under his supervision the latter's wages were increased 25 cents an hour, it is assumed that his work was satisfactory during that period. Cheeks admitted that Sebastian was a competent workman at the time he was engaged as a repair man, but testified that later, when Sebastian was engaged in soap testing, a process by which a liquid solution is applied to the surfaces of the rubberized pontoons to determine if there are leaks, it was necessary to look him up in order to get him back on the job.<sup>4</sup> Bennett testified that Cheek complained to him about Sebastian's absences from the job during working hours, and on September 25, Shift Foreman Webb filed a written complaint or reprimand against Sebastian.<sup>5</sup>

Dunn, who succeeded Cheek as Sebastian's immediate supervisor, testified that when he first became foreman of the testing and repair department, production in that department was off and the testers did no repair work. At this time, and during the rest of his period of employment, Sebastian was a tester. According to Dunn, he found that the testers had a great deal of spare time and required them to do repair work when not actually engaged in testing. He testified that Sebastian objected to repair work and complained that it was not required of testers on other shifts, and that Sebastian was the "mouth-piece" of the group of testers in objecting to the soap test.<sup>6</sup> It appears that the gist of the complaint was that the liquid solution used in the test hurt the operators' hands.

---

<sup>4</sup> Cheek, who at the time of the hearing had been demoted to a nonsupervisory position, testified concerning Sebastian's work: ". . . he was a good worker when he was working on repairs, he was as good a worker as I have ever seen, but the time when he went on testing, he didn't want to come back over and repair, soap test . . ."

<sup>5</sup> Webb's memorandum states, in substance, that Dunn had reported that several employees working with Sebastian had complained that Sebastian did not do his part of the work but continuously loafed and killed time on the job. Dunn requested that Sebastian be removed to another job. Later, Dunn reported back that Sebastian had told him (Dunn) that if given another chance he would perform his duties efficiently "and cause no further friction in the department." Thereafter, Webb had checked back with Dunn and was advised by Dunn that Sebastian's "attitude" was poor and that he continued to loaf. Both Webb and Dunn testified that it was late in 1944 that Dunn requested Sebastian's removal from the department, and it appears from Dunn's testimony that he may have made a second request of this nature since he refers to the "last time" he sought Sebastian's removal.

<sup>6</sup> There is no evidence that the employees authorized Sebastian to act as their spokesman with reference to this or other matters, except Dunn's testimony quoted above.

Dunn further testified that from the time he was put on testing, Sebastian was frequently away from his job during working hours, that on numerous occasions it was necessary to send someone to look him up, and that on these occasions he would be found loafing. According to Dunn he would talk to Sebastian on such occasions and the latter would promise to do better. On one occasion Dunn requested his superior, Webb, to remove Sebastian from the department but later rescinded his request after again talking to Sebastian and obtaining his promise to stay on the job.<sup>7</sup> Dunn's testimony was corroborated by that of Webb and Bennett. Bennett testified that Dunn filed complaints with him against Sebastian and that he himself had on several occasions found Sebastian away from his job and loafing. He testified that he made out three or more written reprimands against Sebastian, and filed them with his superiors, Swartwood and Moore.<sup>8</sup> Some two or three weeks prior to the date of Sebastian's discharge, he recommended the latter's discharge to Swartwood but Swartwood at that time told him to talk to Sebastian and see if he couldn't get the latter "on the ball a little more."

David Todd, a government inspector, was assigned to the Respondent's Winston-Salem plant in August 1944, and continued in that capacity until January 15, 1945, when he was employed by the respondent. As a government inspector, Todd worked closely with the testers and inspected their work to determine if it met government requirements. He testified, as did Dunn, Webb and Bennett, that Sebastian was frequently absent from his job during working hours so that it was necessary to look him up, and that Sebastian's work as a tester was unsatisfactory. He testified specifically that on numerous occasions Sebastian failed to seal the pontoon bows or valves properly, and that he had complained both to his own supervisors and to Sebastian's supervisors about the latter's failure to perform his work satisfactorily. Todd admitted that other employees were similarly negligent, but testified that Sebastian was the chief offender.

Claude Wilson, a first shift foreman, was assigned to the second shift for a 2 weeks' period beginning January 1, 1945, to assist Dunn in overcoming the production deficiencies which had developed on this shift.<sup>9</sup> He testified that during this period he reported Sebastian and others to Dunn and to Swartwood for loafing on the job.

Some 10 days or 2 weeks prior to his discharge, Sebastian was made head tester or checker and given a 5 cents an hour wage increase. Previous to this, there had been no head tester. Sebastian testified that as head tester, he continued the same work he had been doing, but had the additional responsibility of assigning the other testers to their jobs and of seeing that their work was done properly. Dunn testified that he made Sebastian head checker in order to make the latter directly accountable to him. "I couldn't work the guy," Dunn testified, "and I thought I would put him in a place where he would have to be directly responsible to me, see, for the whole thing, and that is the reason he was appointed to be a checker." He further testified on the same subject that the

<sup>7</sup> See footnote 5, *supra*.

<sup>8</sup> The Board introduced into evidence two written reprimands signed by Bennett. The first dated October 25, 1944, stated that Dunn had complained about Sebastian being "always off the job and away from the place in which he was supposed to work"; that on such occasions he was always "in another part of the plant and generally found in the men's rest room", that when Dunn found Sebastian off his job, the latter "readily admitted that he was doing wrong" and assured Dunn "that he would remain on his job." The second written reprimand, dated January 18, 1945, is set forth in the main text of the Report.

<sup>9</sup> Wilson was not employed by the respondent at the time of the hearing, having resigned on January 25, 1945.

department was losing production and he thought it would be a good idea to put one man in charge "to make sure that these boats were sealed the right way" and no time was lost, and that he selected Sebastian "because he was the one that I could not find all the time and I thought if he was chargeable with a job like that I could."

A few days prior to Sebastian's discharge, an unspecified number of pontoons were found to have been improperly sealed. Dunn called a group of testers together and advised them of the matter. Sebastian stated that he would assume responsibility for the occurrence. There was no identification which would disclose which of the testers had worked on any individual pontoon. Dunn testified, however, that the defective seals were Sebastian's fault since he had been designated the final checker and he "was the man that was supposed to see that they were sealed properly." The failure to seal the bows properly caused a substantial delay in meeting production quotas.

On January 18, 1945, the date of Sebastian's discharge, a group of employees of the testing and repair department were summoned to the office of Plant Superintendent Moore who told them that production was lagging behind schedules and he wanted them to get out more pontoons. Sebastian questioned Moore about a plant bonus and apparently suggested that a wage incentive plan might result in increased production. He also complained about working conditions. Later that same day and near the end of the work shift, Bennett advised Sebastian that he was wanted in the office of the Personnel Manager, William Guthrie. He accompanied Sebastian to the latter's office. Guthrie advised Sebastian that he was being discharged for unsatisfactory work. It does not appear that Sebastian asked for or was given any further explanation for his discharge. He returned to the plant at a later date and asked for his job back but was refused.

Guthrie testified that he did not know Sebastian by name prior to the date of the discharge and that he discharged the latter on the basis of written reprimands and the oral recommendations of Shift Foreman Linkie and Floor Supervisor Bennett. He admitted that Dunn, Sebastian's immediate supervisor, was not consulted in the matter of the discharge. On the date of Sebastian's discharge, but after the discharge had been effectuated, Bennett filed the following memorandum with Guthrie:

In going through the plant this afternoon I saw the above employee off his job again and running all around in one section of the plant, talking to a number of different employees and not satisfactorily doing the job to which he was assigned, as it seemed almost impossible for him to remain in any one spot very long.

I took this matter up with Mr. Linkie and Mr. Linkie in turn said he would take this matter up with you.

Sebastian, as previously stated, made a general denial that he was ever criticized or reprimanded for unsatisfactory work, and specifically denied that Bennett or Webb had to look him up to get him back on the job, or that he was advised that Todd reported him as being absent from his job. Several employees who worked in the department with Sebastian testified that they considered his work as good as the average and that they had not heard him criticized or reprimanded by his supervisors

#### Concluding findings

The undersigned believes it is clear from statements and conduct of supervisory personnel, set forth in detail in Section III (a) above, and the open and undisguised character of Sebastian's union activity, that the respondent had knowledge of the latter's union affiliation and efforts to organize the plant.

Sebastian testified that he began this activity in August or September 1944, and continued active in behalf of the Union until his discharge. There is no showing, however, of an intensified organizational drive by the Union, and no specific showing of union activity by Sebastian, on or in the period immediately preceding the date of his discharge.

While Sebastian testified that he was never criticized by his supervisors or reprimanded for unsatisfactory work, the record is replete with evidence that he was negligent in the performance of his duties as a tester and that he had on at least several occasions been reprimanded by his supervisors. Believing that there was a measure of exaggeration in the testimony of respondent's supervisors, two of whom are shown by their statements to Sebastian to have been biased against the Union,<sup>10</sup> the undersigned is nevertheless convinced that this testimony in its totality carries a weight which cannot be ignored and establishes that Sebastian was frequently absent from his job during working hours and otherwise negligent in the performance of his duties. The undersigned accordingly is convinced that in testifying, Sebastian did not give a full and true account of his employment record. That he was not discharged earlier has a plausible explanation in the manpower shortage which admittedly caused the respondent to retain some employees who were incompetent and who otherwise would have been discharged.<sup>11</sup> The testimony further tends to show that there was a serious lag in production on Sebastian's shift and that while Sebastian was not the sole employee accused of loafing on the job, he was regarded by his superiors as the chief offender in this respect. Assuming, contrary to Sebastian's testimony, that during these periods when he was absent from his job during working hours he was engaging in union or concerted activities, this does not alter the situation since such activities do not afford an employee engaging therein immunity from discharge for neglect of work.

While on first impression it appears inconsistent that an employee whose work has been found unsatisfactory over a period of months should be advanced to a degree of responsibility and given a wage increase, Dunn's explanation of Sebastian's advancement, when related to the entire situation, is not unreasonable. As previously stated, there is no specific showing of union activity by Sebastian during the period between his promotion and his discharge which would explain the timing of the discharge if it be assumed that the discharge was discriminatory. Furthermore, had the respondent merely been waiting for a pretext, it appears that Webb's reprimand issued in September when Sebastian's organizational activity was well under way would have served such purpose. Admittedly, Dunn in making Sebastian head checker, was placing him in a position where he would be more readily and directly accountable for his own proper attention to his duties as well as the performance of the group. Dunn's explanation for his action was convincing in absence of a showing that he was really setting the stage for the discharge by placing Sebastian in a more vulnerable position, and that in so doing he was moved by discriminatory intent.

The circumstances of the discharge itself give rise to considerable speculation as to its actual motivating cause. A few days prior to the discharge and while Sebastian was acting as head checker, Dunn discovered some pontoons improperly sealed and, as he testified, he considered that this was Sebastian's fault since it was the latter's primary responsibility as head checker to see that the pontoon bows were properly sealed. There is no showing, however, that he

<sup>10</sup> That is, Bennett and Wilson.

<sup>11</sup> Guthrie testified: "We have put up with people . . . that really should have been discharged, and we have people that are working that under normal conditions would not fit into the plant. If we had a normal labor supply market they certainly would not fit and it is a question of getting production."

reported this to his superiors or that it was considered at the time of the discharge. The memorandum filed by Bennett on the date of the discharge makes no mention of the incident and, in fact, Bennett testified that he did not know that Sebastian had been made head checker. It appears that Guthrie in ordering the discharge relied solely on the reprimands which had been filed in his office, and the oral recommendations of Foreman Linkie and Chief Supervisor Bennett. It would appear that normally Dunn, Sebastian's immediate supervisor, would have been consulted in the matter of the discharge though admittedly he was not. A further difficulty in resolving the issue of the discharge lies in Bennett's denial of all knowledge that Sebastian had engaged in union activities or that there was organizational activity in the plant, a denial which the undersigned has been unable to credit. It is felt, however, that in view of Sebastian's employment record, a valid reason for his discharge did exist, and that the Board has not by a preponderance of evidence shown that the actual motivating cause of his discharge was his union or concerted activities. Accordingly, the undersigned, while not without very grave doubts, will recommend the dismissal of the complaint insofar as it alleges a discriminatory discharge.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III occurring in connection with the operations of the respondent described in Section I, 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

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

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

#### CONCLUSIONS OF LAW

1. United Rubber Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.
4. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by discharging and thereafter refusing to reinstate J. A. Sebastian.

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent, The Firestone Tire & Rubber Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from :

Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Rubber Workers of America, 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 purpose of collective bargaining or other mutual aid or protection.

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

(a) Post at its Winston-Salem, North Carolina, plant, copies of the notice attached to the Intermediate Report herein, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Fifth Region, after being duly signed by the respondent's representative, shall 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 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 ;

(b) Notify the Regional Director for the Fifth Region in writing within ten (10) days from 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 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.

It is recommended that the complaint be dismissed insofar as it alleges a discriminatory discharge of J. A. Sebastian.

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 25, 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.

WILLIAM E. SPENCER,  
*Trial Examiner.*

Dated August 3, 1945.

## APPENDIX A

## NOTICE TO ALL EMPLOYEES

Pursuant to 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 United Rubber Workers of America, 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 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.

THE FIRESTONE TIRE & RUBBER 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.