In the Matter of L. A. YOUNG SPRING & WIRE CORPORATION *and* FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER NO. 155

Case No. 21-C-2716.—Decided August 26, 1946

Mr. James A. Cobey, for the Board.

Cook, Smith, Jacobs & Beake, by *Mr. Grant L. Cook*, of Detroit, Mich., for the respondent.

Mr. Warren B. Logan, of South Gate, Calif., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by Foreman's Association of America, Chapter No. 155, an unaffiliated organization herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 15, 1946, against L. A. Young Spring & Wire Corporation, 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 accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, on or about March 5, 1946, and thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on February 1, 1946, had designated and selected the Union as their exclusive representative for the purposes of collective bargaining, and that the respondent thereby interfered with, restrained, and co-

erced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent thereafter filed its amended answer in which it admitted that on February 1, 1946, a majority of the persons in the unit described in the complaint, in an election conducted under the supervision of the Board, had affirmatively expressed their desire to be represented by the Union, and that on approximately the date mentioned in the complaint, and thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in such unit; but denied that (1) the foremen and assistant foremen are employees within the meaning of the Act, contending that they are "employers," (2) the foremen and assistant foremen constitute a unit appropriate for the purposes of collective bargaining, within the meaning of the Act, particularly Section 9 (a) and (b) thereof, (3) the Union is a labor organization, within the meaning of Section 2 (5) of the Act, and (4) it had engaged in any unfair labor practices, within the meaning of the Act.

Pursuant to notice, a hearing was held on May 15, 1946, at Los Angeles, California, before Victor Hirshfield, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing, the Trial Examiner ruled on various objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds no prejudicial error. The rulings are hereby affirmed.

On May 29, 1946, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had unlawfully refused to bargain with the Union and recommending that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report, a supporting brief and a supplement thereto, and a motion to dismiss the complaint. The Union has not filed any exceptions. For reasons stated, *infra*, the motion to dismiss the complaint is hereby denied. Subsequent to the issuance of the Intermediate Report, counsel for the Board moved to supplement the record by incorporating therein a stipulation embodying additional facts concerning the respondent's business. This motion is hereby granted, and the stipulation dated July 1, 1946, is hereby incorporated in and made part of the record as Board Exhibit No. 9. On July 16, 1946, the Board at Washington, D. C., heard oral argument, in which the respondent and the Union participated.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and supplement thereto, and the entire record in the case, and finds that the exceptions are without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

L. A. Young Spring & Wire Corporation, a Michigan corporation, having its principal place of business at Detroit, Michigan, is the world's largest manufacturer of spring wire products, and normally supplies about 40 percent of the springs used by the automobile industry. The respondent operates numerous manufacturing plants throughout the United States and Canada, including the plant at Los Angeles, California, which is involved in this proceeding. At the Los Angeles plant, the respondent is engaged in the manufacture and sale of automobile cushion spring constructions, inner spring mattress units, cushion pad supports, plastic parts, and miscellaneous aircraft parts. During the fiscal year ending July 31, 1942, the last year of considerable peacetime production, the respondent purchased for use at the Los Angeles plant raw materials valued at approximately $285,451, of which approximately 38 percent was shipped to the plant from points outside the State of California. During the same period, the respondent sold products manufactured at the same plant valued at approximately $889,400, of which practically all were shipped to customers located within the State. Although the respondent's production since the termination of the war has been very much below the pre-war normal for the plant, it contemplates resumption of full peacetime production as soon as practicable. The respondent admits, and we find, that it is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization admitting to membership supervisory employees of the respondent.[1]

[1] The respondent contends that the Union is not a labor organization within the meaning of Section 2 (5) of the Act. There is no merit in this contention. Section 2 (5) defines the term "labor organization" as meaning "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." The foremen and assistant foremen being employees within the meaning of the Act, the organization which seeks to represent them in collective bargaining relationships with the respondent is clearly a "labor organization" within the definition of Section 2 (5).

III. THE UNFAIR LABOR PRACTICES

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

On January 8, 1946, the Board issued a Decision and Direction of Election in Case No. 21–R–2816,[2] finding, *inter alia*, that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

On or about February 1, 1946, pursuant to said Decision and Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Twenty-first Region. Upon the conclusion of the election, a Tally of Ballots was furnished the respondent and the Union in accordance with the Rules and Regulations of the Board. No objections to the conduct of the election were filed either by the respondent or the Union within the time provided therefor. The Tally showed that there were approximately 17 eligible voters, all of whom cast valid votes for the Union. On February 13, 1946, the Board certified the Union as the collective bargaining representative of the employees in the unit heretofore described.

The respondent disputes the appropriateness of the unit formed by the Board on the ground that (1) its foremen and assistant foremen are not employees, within the meaning of the Act, and that, consequently, the Board is without jurisdiction to entertain any proceeding involving them, and (2) the Union is not independent of the labor organization which represents the respondent's rank-and-file employees.

In the representation proceeding,[3] we considered the status of these foremen and assistant foremen under the Act and held that they were employees, within the meaning of Section 2 (3), thereof. The respondent has introduced neither evidence nor argument in this unfair labor practice proceeding which, in our opinion, effectively challenges the correctness of this holding. Despite the respondent's apparent contention to the contrary, the definitions of "employer" and "employee" contained in the Act are not mutually exclusive.[4] The same individual may be an "employer" for some purposes and an "employee" for others. "A foreman, in his relation to his employer is an employee, while in his relation to the laborers under him he is

[2] *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298.
[3] *Matter of L. A. Young Spring & Wire Corporation, supra.*
[4] *N. L. R. B.* v. *Armour & Co.*, 154 F. (2d) 570 (C. C. A. 10).

the representative of the employer and within the definition of Section 2 (2) of the Act."[5] The present proceeding involves only the "employee" aspect of the foremen's relationship to the respondent. Accordingly, for the purposes of this proceeding, the foremen and assistant foremen are employees, within the meaning of Section 2 (3) of the Act.[6]

The greatest part of the evidence adduced at the hearing on the unfair labor practice charges pertained to the foremen's relationship to a strike of the respondent's rank-and-file workers which commenced on April 17, 1946. The respondent relies on this evidence, together with that introduced in the representation proceeding, as proof of its contention that the Union is not independent of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, herein called the UAW, the labor organization which represents its rank-and-file employees.

Approximately a week before the start of the strike, the executive committee of the Union arranged a meeting with officials of the UAW for the purpose of learning if the UAW would permit the foremen to cross the picket line in the event that the strike of rank-and-file employees then impending materialized. The UAW officials indicated that they would have no objection to the foremen's entering the plant should the strike occur. The meeting then adjourned without further discussion.

The strike of rank-and-file employees began at 9:30 a. m. on April 17, 1946, when all operations in the plant ceased. Shortly thereafter, the striking employees walked out of the plant and formed a picket line. The foremen and assistant foremen remained in the

[5] *N. L. R. B.* v *Skinner & Kennedy Stationery Company*, 113 F (2d) 667, 671 (C C A. 8). See also *Jones & Laughlin Steel Corp* v. *N L. R B*, 146 F (2d) 833 (C C. A 5); *N. L. R. B.* v. *Armour & Co, supra; N. L. R. B.* v. *Packard Motor Car Company*, decided August 12, 1946, 157 F (2d) 80 (C C A 6). *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L R B. 386, and cases cited therein Cf *N L. R B.* v *Atkins and Co*, decided May 31, 1946, 155 F (2d) 567 (C C. A 7), where the Circuit Court of Appeals held that plant guards were not employees within the meaning of the Act. The Board does not acquiesce in that decision. Moreover, the case involved plant guards and not foremen.

[6] In its brief, the respondent has denied the accuracy of the examples cited in the majority decision in the representation proceeding in support of the statement that the authority of the foremen is circumscribed in a number of respects. Assuming the validity of the respondent's criticism, the record nevertheless fully substantiates the conclusion that "The foreman's authority, although extensive in these many respects, is circumscribed in others." To cite other and more complete examples of limitation of authority. A foreman working overtime must secure written authorization from his immediate superior A foreman does no interviewing or hiring of new employees, except that, in the case of certain skilled occupations, the employment manager, who usually does all the interviewing and hiring, customarily requests a foreman with the necessary qualifications to interview applicants for these skilled positions and follows the recommendation of such foreman as to hiring The foreman does not participate in collective bargaining negotiations with the rank-and-file union, although the negotiators in behalf of the respondent solicit the foremen—at least they did so in the negotiations that preceded the making of the last collective bargaining contract previous to the representation hearing—for suggestions which the foremen desire to see incorporated in the contract

plant for some hours after the start of the strike awaiting instructions from higher officials. About noon, Horner, the respondent's factory manager, told the foremen that "if they (foremen and assistant foremen) went out to lunch and couldn't get in through the line to wait for a call, the Company would let them know when to come back." The foremen left the plant at various times after receiving these instructions and did not return either that day or the day following.

On April 18, 1946, the respondent sent a telegram to each of its foremen and assistant foremen, directing the recipient to report for work at 8 a. m. on the following day.[7] The telegram also stated: "You will be requested by the pickets not to cross their lines but under law you have the right to enter the plant. Enter by main office door." Prior to the receipt of the telegram addressed to him, Logan, president of the Union, received a telephone call from White, president of the UAW at the plant. White informed Logan that the respondent was sending out telegrams directing the foremen to return to work. He also said that he didn't want the foremen to go through the picket line and that nothing would happen to the foremen the next day if they did go through the line, but he refused to commit himself as to what would happen thereafter.

Instead of reporting for work on April 19 as directed in the telegrams, the foremen assembled on a parking lot outside the plant at the stated hour. After some parleying with the respondent's officials, who refused to withdraw the instructions contained in the telegrams, Logan or some other official of the Union telephoned Vallance, national vice president of the Foreman's Association of America, in Detroit asking for guidance. The union officials received what they regarded as confused advice. The union officials then unsuccessfully sought to persuade the UAW to agree to allow the foremen to pass the picket line. Thereafter, the union officials, in the company of the UAW national representative who was directing the rank-and-file strike, telephoned Vallance again, but the latter was not in his office. The intended purpose of this second telephone call was to have the representative of the UAW speak to Vallance. An official of the Union then telephoned Mrs. Vallance in Detroit and had her read from the statement of policy adopted by the national executive board of the Foreman's Association on January 6, 1946, respecting the conduct to be observed by members of the Foreman's Association in the event of strikes by rank-and-file employees. Mrs. Vallance began reading this statement of policy over the telephone and, according to Logan's uncontradicted testimony, "when we came to a certain section, that is C, I believe, where is said, unless it is

[7] The regular shift reporting hour was 7 a. m.

mutually agreed we should not go through the line, we decided then and there not to go through the line." [8] The foremen then notified the respondent that they would not return to work unless and until the respondent and the UAW mutually agreed to their crossing the rank-and-file picket line. The foremen appear to have adhered to this decision.

This evidence does not affect our finding in the representation proceeding that the Union is an independent labor organization. The refusal of one union to permit its members to cross a picket line established by another does not prove that the first union is subordinate to the second. It is almost a rule of trade union ethics for one labor union to respect a picket line established by another. Even unions affiliated with rival national labor organizations not infrequently adhere to the rule. In the first *Packard* case,[9] we held that the Foreman's Association of America was an independent labor organization, notwithstanding that we anticipated that its members and separately organized rank-and-file employees would "express moral sympathy for the organizational efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike." Our conclusion in that case, that the Foremen's Association is an independent labor organization, was affirmed by the Circuit Court of Appeals for the Sixth Circuit.[10] In accord with the aforesaid decision respecting the Union's parent organization, we find, as we did in the representation proceeding,[11] that the Union is an independent, unaffiliated labor organization organized for the exclusive purpose of representing supervisory employees. Moreover, in view of our holding in the *Jones & Laughlin* case,[12] the question of the character of the union seeking to represent a unit of foremen has become immaterial.

We find, as did the Trial Examiner, that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining.

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[8] Section C of this statement of policy reads: "Should the striking union prevent supervisory employees from entering the plant to perform their regular work only or as provided for herein, there shall be no undue effort made by members of the Foreman's Association to enter the plant."

Section B of the same statement of policy provides: "During such a strike [an authorized strike by rank and file employees] should the company and the union by agreement permit all supervisory employees to enter the plant they may do so, but members of the Foreman's Association shall not perform any work similar to that normally performed by the non-supervisory employees on strike, and they shall perform only their regular supervisory duties except as hereinafter provided."

[9] *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, 16.

[10] *N. L. R. B.* v. *Packard Motor Car Company*, decided August 12, 1946. 18 LRRM 2268 (C. C A 6).

[11] *Matter of L. A. Young Spring & Wire Corporation, supra.*

[12] *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386.

We further find, as did the Trial Examiner, that on and after February 1, 1946, 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 February 1, 1946, 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

On February 27, 1946, after its certification by the Board, the Union wrote a letter to the respondent requesting the start of collective bargaining negotiations. By letter dated March 5, 1946, the respondent rejected the Union's request, giving as its reason therefor its desire to test in the courts the validity of the Board's decision in the representation proceeding. Accordingly, we find, as did the Trial Examiner, that on March 5, 1946, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, we must order the respondent, pursuant to the mandate of Section 10 (c), to cease and desist therefrom.

We shall also order the respondent to take certain affirmative action designed to effectuate the policies of the Act. Having found that the respondent has refused to bargain collectively with the Union as the exclusive representative of the foremen and assistant foremen in the production and maintenance division, we shall order the respondent, upon request, to bargain collectively with the Union.

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

CONCLUSIONS OF LAW

1. Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant 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, Chapter No. 155, unaffiliated, was on February 1, 1946, and at all times thereafter has been, the exclusive representative of all 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 March 5, 1946, and at all times thereafter, to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the 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.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, 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, L. A. Young Spring & Wire Corporation, Los Angeles, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Foreman's Association of America, Chapter No. 155, unaffiliated, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of its Los Angeles plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first 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 a period of 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 Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

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 BARGAIN collectively upon request, with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all our employees in a bargaining unit composed of:

All foremen and assistant foremen in the production and maintenance department of our Los Angeles plant.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain with us, or refuse to bargain with said Union as the exclusive representative of the employees in the bargaining unit set forth above.

L. A. YOUNG SPRING & WIRE CORPORATION,
Employer.

By _____
(Representative) (Title)

Dated _____

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

MR. GERARD D. REILLY, dissenting:

For reasons which I stated in *Matter of Packard Motor Car Company*,[13] I am constrained to dissent with the decision in the instant case. I should like to make one further observation.

In the *Packard* case, the majority found that the charging union in this case, the Foreman's Association of America, was an independent organization; consequently, my colleagues did not pass upon the question which was ultimately decided by the Board in the *Jones & Laughlin* case[14] with respect to making the machinery of the Act available to organizations which represented both the foremen and the very employees they were hired to supervise.

It seems to me that the facts in this record[15] with respect to developments since our certification in this case reveals that, although the

[13] 61 N L R B 4

[14] *Matter of Jones & Laughlin Steel Corporation, Vesta-Shannopin Coal Division*, 66 N. L. R. B. 386

[15] The facts referred to are as follows During the hearing in the complaint case there was considerable testimony taken with respect to a strike of the production and maintenance employees which commenced on April 17, 1946 The principal witness was one, Logan, president of the Foreman's Association local The quotations given are from his testimony:

About a week before the start of the strike, the executive committee of the Foreman's Association local met with officials of the UAW-CIO local The meeting was called at the request of Logan, because, "there had been a rumor of a strike [and] we wanted to know whether they were going to let us through the line in case they had a strike and they said that they had no objection to our coming in the plant, and that is about all that was said there"

The strike began at 9:30 a. m on April 17, 1946, when all operations in the plant ceased and the production workers walked out They formed a picket line shortly thereafter. The foremen remained in the plant for some hours until about noon they had a conference with Horner, the respondent's factory manager Horner told the foremen that "if they went out to lunch and couldn't get in through the line to wait for a call, the Company would let them know when to come back" The foremen left the plant at various times thereafter None of them returned to work either that day or at any time during the strike

In the evening of April 18, the respondent sent to each foreman a telegram directing the recipient to report for work at 8 a m on the following day (The regular shift reporting hour was 7 a m) The telegram also stated "You will be requested by the pickets not to cross their lines but under law you have the right to enter the plant. Enter by main office door."

Before the receipt of the telegram addressed to him, Logan received a telephone call from White, president of the UAW-CIO local White told Logan that the latter would probably receive a telegram requesting him to return to work White said that he didn't want the foremen to go through the picket line, that nothing would happen to the foremen the next day if they went through the line but "after that" and he didn't finish his conversation.

The same evening Logal received a number of telephone calls from various foremen asking for advice on what to do on the receipt of the expected telegrams Logan had another official call Evans, day superintendent, and ask about the telegrams in view of the previous instructions not to cross the picket line. Evans replied that he didn't know anything about the telegram but would find out before the foremen entered the plant the next morning. Logan then instructed his fellow foremen to meet on the parking lot outside the plant on the following morning, which they did While waiting for a report from Evans, the foremen received from the pickets a leaflet addressed to office and supervisory employees asking these two groups of employees not to cross the picket line despite the respondent's order to return to work. Evans reported to the assembled foremen that the telegram still stood as it read.

The foremen then decided to call the national office of the FAA in Detroit for instructions and advice. Either Logan or some other official spoke to Vallance, vice president

charging union is nominally independent, it is subject to the discipline of the C. I. O. union which represents the production employees. The most striking instance of this was the refusal of the Foreman's Union to let its members pass the picket lines of the C. I. O. union, although the issues involved in the strike had nothing to do with the relationship between the foremen and their employer. In fact, the controversy which led to the strike related to issues in a different bargaining unit. Moreover, it will be noted that the action of the Foreman's local was in conformity with the "national policy" of the parent organization.

It has been well established (*Mackay Radio & Telegraph Co.* v. *N. L. R. B.*, 304 U. S. 333, reversing 92 F. (2d) 761 (C. C. A. 9), aff'g 87 F. (2d) 611 (C. C. A. 9), setting aside 1 N. L. R. B. 201) that in an economic strike, not arising out of unfair labor practices (which was the case here), an employer has the right to replace the strikers. It is conceded that one of the duties of the foremen here was to pass ultimate judgment upon the applicants referred to them by the personnel office, in order that workmen possessing the appropriate skills

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of the FAA over the telephone Vallance told the foremen to apply for unemployment insurance and enter the plant but, "I don't think he [Vallance] understood us, and it was rather mixed up, because we could not apply for unemployment insurance and also go into the plant too." The FAA local officials returned to the parking lot after this conversation with Vallance and asked the committee of the UAW-CIO to let the foremen through the picket line. The UAW-CIO committeemen replied that they still didn't want the foremen to pass the line. The foremen then left the lot to make another telephone call to Detroit. This time they were accompanied by the national representative of the UAW-CIO who was leading the strike of the rank and file employees. The purpose was to have this representative speak to Vallance "to find out just their views on it." However, they were unable to reach Vallance Thereupon, one of the FAA local officials telephoned Vallance's wife and had her read from the statement of policy adopted by the national executive board of the FAA on January 6, 1946, respecting the conduct to be observed by members of the FAA in the event of strikes by rank and file employees. Vallance's wife began reading this statement of policy over the phone "and when we came to a certain section, that is C, I believe, where it said, unless it is mutually agreed we should not go through the line, we decided then and there not to go through the line."

Section C reads: "Should the striking union prevent supervisory employees from entering the plant to perform their regular work only or as provided for herein, there shall be no undue effort made by members of the Foreman's Association to enter the plant."

Section B of the same statement of policy provides "During such a strike [an authorized strike by rank and file employees], should the company and the union by agreement permit all supervisory employees to enter the plant they may do so, but members of the Foreman's Association shall not perform any work similar to that normally performed by the nonsupervisory employees on strike, and they shall perform only their regular supervisory duties except as hereinafter provided"

After this telephone conversation with Vallance's wife the foremen told the respondent, through Superintendent Evans who was acting as intermediary, that they would stay out until the UAW-CIO and the respondent agreed to the foremen's crossing of the picket line. While all these events were occurring the foremen remained on or about the parking lot. They did not participate in the picket line but had casual conversation with the rank and file strikers.

Logan's attitude which is probably that of the FAA respecting the crossing of rank and file picket lines is summed up in this examination of Logan by respondent's counsel:

Q. If they [the strikers] didn't want you to cross it you wouldn't?
A. If it meant bodily injury, no.
Q. And if it did not, you wouldn't cross the picket line either, would you?
A. No, I don't believe I would

be hired. Refusal of the foremen in this case to return to their posts of duty during the strike rendered this right of replacement completely nugatory.

It seems to me, therefore, this case should be dismissed and that the decision of the Circuit Court of Appeals for the Sixth Circuit affirming the Board's decision in the *Packard* case has no application here.