

employee because of membership in or nonmembership in any such labor organization.

McCANN STEEL 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.

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LATE CHEVROLET COMPANY, INC. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. Case No. 32-CA-285.  
July 9, 1953

DECISION AND ORDER

On April 23, 1953, Trial Examiner Richard N. Ivins issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent, Late Chevrolet Company, Inc., had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom, and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings,<sup>2</sup> conclusions,<sup>3</sup> and recommendations of the Trial Examiner, with the exceptions, modifications, and additions noted below.

1. While we find, in agreement with the Trial Examiner, that because the Respondent operates as an integral part of a multistate enterprise, the Board should assert jurisdiction in this proceeding, we find as an additional reason for asserting jurisdiction the fact that the Respondent's purchases and sales in commerce, respectively, together represent in excess of

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<sup>1</sup>Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Peterson]

<sup>2</sup>We correct the following misstatement of fact in the Trial Examiner's findings, which does not affect the validity of his ultimate conclusions nor our concurrence therein. It appears from the record that Owen, not Cook as found by the Trial Examiner, spoke with Barnes on June 28 as certain of the employees were leaving work at noon. (IR p. 70).

<sup>3</sup>We find no merit in the Respondent's contentions (1) that the charging party is not a labor organization within the meaning of the Act and (2) that its Local, Lodge 924, has not complied with the filing requirements of the Act.

100 percent of the Board's requirements of inflow and outflow<sup>4</sup> as the basis for asserting jurisdiction. Accordingly, under Board precedent, we find that it will effectuate the policies of the Act to assert jurisdiction herein.<sup>5</sup>

2. In addition to the violations of Section 8 (a) (1) of the Act detailed in the Intermediate Report, the record shows these further violations of that section:

(a) On the morning of June 28, 1952, Late, Sr., made a statement, heard by employees Cook, Owen, and Bowen, that because of the Union he might as well close his shop.<sup>6</sup> We find that this statement represents still another instance of Late, Sr., threatening employees that the shop would be closed if it went union. (IR p. 70.)

(b) The Trial Examiner found that Late, Sr., said to Owen and other employees on one occasion in June 1952 that "I will never have anybody that works for that durned old union in my shop." The Trial Examiner failed, however, to include this incident in his concluding findings. We find that this statement was a threat to discharge employees who were members of the Union and, accordingly, violated Section 8 (a) (1) of the Act.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Late Chevrolet Company, Inc., Springdale, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union interest, attitude, membership, or activities.

(b) Threatening its employees with discharge if its employees joined a union.

(c) Threatening to close its shop if its employees joined a union.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join Lodge 924, International Association of Machinists, AFL, 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, or to refrain from any or all such activities except to the extent that such right may be affected by an

<sup>4</sup>Less than 5 percent of the Respondent's sales was made outside the State of Arkansas. For purposes of computing the direct outflow figure, we have assumed that 4 percent of the Respondent's sales was outside the State.

<sup>5</sup>See The Rutledge Paper Products, Inc., 91 NLRB 625.

<sup>6</sup>In this regard, Owen testified that Late, Sr., said: "I am not making any money and this old union is coming up. I am just going to close the doors." Bowen testified that Late, Sr., said: "Well the way that the boys was doing and the blamed old union, just might as well lock up." Cook testified that Late, Sr., said: ". . . between the men he had working there for him and the blamed old union, . . . he was just going to close her down."

agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

(e) Discouraging membership in Lodge 924, International Association of Machinists, AFL, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or by otherwise discriminating in regard to their hire and tenure of employment or any term or condition of employment.

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

(a) Offer to James F. Cook, Hershhal Van Owen, and Jay Bowen immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges.

(b) Make whole James F. Cook, Hershhal Van Owen, and Jay Bowen for any loss of pay they may have suffered by reason of Respondent's discrimination against them by payment to each of them of a sum of money equal to the amounts determined in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) Upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and any other records necessary to compute the amounts of back pay due.

(d) Post immediately in conspicuous places at Respondent's "M" Avenue establishment, in Springdale, Arkansas, copies of the notice attached to the Intermediate Report and marked "Appendix A."<sup>7</sup> Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in places where notices to employees are customarily posted, and if there is no such place at Respondent's said establishment, to be posted in conspicuous places in Respondent's said premises. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

<sup>7</sup>This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner," the words "A Decision and Order" In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

## Intermediate Report

### STATEMENT OF THE CASE

Upon an original charge filed July 25, 1952, and a first and second amended charge subsequently filed by the International Association of Machinists, AFL, hereinafter called the

Union, the General Counsel of the National Labor Relations Board,<sup>1</sup> by the Regional Director for the Fifteenth Region, issued his complaint dated January 13, 1953, against the Late Chevrolet Company, Inc., hereinafter called the Respondent. The complaint alleged in substance that since on and prior to June 30, 1952, the Respondent engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the original charge and of the first and second amended charge were duly served upon the Respondent. Copies of the complaint and notice of hearing were duly served upon the Respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance (1) that the Respondent on June 30, 1952, discharged employees James F. Cook, Jay Bowen, and Hershall Van Owen, and that since said discharges the Respondent has failed and refused to reinstate said employees because of their membership in, sympathy for, and activity on behalf of the Union; (2) that the Respondent commencing on and prior to June 30, 1952, and thereafter interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, by questioning its employees concerning union membership, sympathy, and activities of its employees, by threatening to close down the shop where its employees worked, if it went union, and by threatening to fire its employees if they joined the Union; that by the acts described above the Respondent violated Section 8 (a) (3) and (1) of the Act.

The Respondent in its answer to the complaint, denied that it committed any of the unfair labor practices alleged in the complaint and challenged the Board's jurisdiction in the premises, because (1) of a bargaining petition which was heretofore filed by the Union and subsequently withdrawn, (2) that the Respondent's business is not of such nature as to affect commerce within the meaning of the Act, and (3) that the Union had not complied with requirements of Section 9 (f), (g), and (h) of the Act.

Pursuant to notice, a hearing was held at Fayetteville, Arkansas, on February 24 and 25, 1953, before the undersigned, the duly designated Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union by a Grand Lodge representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the outset of the hearing, the Respondent orally moved to dismiss the complaint upon the jurisdictional grounds set forth in Respondent's answer, and referred to above. The motion was denied. Thereafter at the close of the General Counsel's case-in-chief, the Respondent renewed its motion to dismiss the complaint, asserting as an additional ground, that the record failed to sustain the material allegations of the complaint. It was again denied. At the close of the hearing, the Respondent again renewed its motion to dismiss. Ruling thereon was reserved. It is hereby denied. The General Counsel, at the close of the hearing, moved to conform the pleadings to the proof as regards minor matters, such as names, dates, and the like. The motion was granted. Though given an opportunity to do so all parties waived oral argument.

The 20-day period granted counsel at the hearing to file briefs was subsequently extended by the Chief Trial Examiner to April 6, 1953. The General Counsel filed his brief on that date, and it has been duly considered by the Trial Examiner. Briefs were not filed by the Respondent or the Union.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT<sup>2</sup>

### I. THE BUSINESS OF THE RESPONDENT

The Late Chevrolet Company is an Arkansas corporation, having its place of business and used-car lot in Springdale, Washington County, Arkansas, where it is engaged as a retail

<sup>1</sup> The General Counsel and his representative at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

<sup>2</sup> The findings of fact are based upon a consideration of the entire record and observation of witnesses. To avoid unnecessarily burdening this report, all evidence on disputed points is not set forth but all has been considered, and where necessary resolved. In determining credibility, the undersigned has considered *inter alia* demeanor and conduct of witnesses; their means and opportunity for knowledge of the things about which they testified; their candor or lack thereof; apparent fairness, bias, or prejudice; their interest or lack thereof, and whether they have been contradicted or otherwise impeached.

dealer in selling automobiles, trucks, automobile and truck parts, and service, operating under selling agreements with the Chevrolet Motor Company to sell Chevrolet products, and under a selling agreement with the General Motors Corporation to sell Oldsmobile automobiles. During the year preceding July 1952, it purchased new cars, trucks, parts, and other accessories, in the approximate amount of \$357,000, approximately 90 percent of which was purchased outside the State of Arkansas. In the same period it sold new cars, trucks, services, and accessories, valued at approximately \$420,000, less than 5 percent of which was sold outside of the State of Arkansas.

I find that the Respondent is engaged in commerce within the meaning of the Act.<sup>3</sup>

## II. THE LABOR ORGANIZATION INVOLVED

I find that Lodge 924, International Association of Machinists, AFL, is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. Events leading up to the discharges

The Respondent operated its principal place of business, salesroom, and shop on "M" Avenue, and a used-car lot and body shop on Highway 71, at Springdale, Washington County, Arkansas. It employed four mechanics, James F. Cook, Hershhal Van Owen, Jay Bowen, and Norbert Kilsdung, and a combination wash, greaseman, and mechanic, Argus Barens, at the "M" Avenue, downtown location.

The events hereinafter described all took place in 1952, unless otherwise indicated. John Late, Sr., hereinafter called Late, Sr., is and was during the pertinent period, the president of the Respondent corporation; John N. Late, Jr., secretary-treasurer and general manager, and Bruce C. Vaughan was the shop foreman and service manager. Late, Sr., appears to have been the active, dominant figure in the management of Respondent's affairs, delegating little authority to Late, Jr., or Foreman Vaughan.

James F. Cook, one of the mechanics involved in the June 28 incident, later described, testified that about the middle of May he was present in Respondent's shop when Late, Sr., came in "swinging his cane around and talking pretty loud," and engaged in an argument with Jay Bowen, one of the other mechanics. Bowen threw his tools down and announced that he was going to quit. Cook had left a good job to come there to work. He felt that there was no future in working for an employer like Late, Sr. So Cook discussed the problem with Bowen, Argus Barens, and Hershhal Van Owen. He told them that there was a union at Fayetteville, Arkansas, and asked if they wanted to join. It was mutually agreed among the four to do so. Membership cards were obtained, and signed at Bowen's bench in the shop on the following day during the noon lunch hour by all four employees, and were turned in to the Union. This version of the signing of the union membership cards is based upon the uncontradicted testimony of Cook, Barens, Owen, and Bowen, which I credit.

During the first or second week in June, Late, Sr., returned from an out-of-town business trip. About 9 or 10 o'clock in the morning, he went to the shop grease shed where Cook was working alone and told Cook he wanted to talk to him. Late then asked Cook whether he had ever run a shop, and if he thought he could run Late's shop, Cook answered that he had, and thought he could run the Late shop. Late then said that Foreman Vaughan "is buying into a barber shop. Now, I want you to keep this confidential, but if he does, I want you to take the shop over." Cook agreed to this. As Late started walking away he said, "Have you ever belonged to the Union?" Cook answered, "Yes, I have." Late started swinging his cane around and talking "real loud," and said, "well, if you belonged to the Union, I don't want you or anybody else that has." Cook did not remember Late, Sr., ever speaking to him again.

Following the conversation with Cook, described above, Hershhal Van Owen testified that Late, Sr., walked back into the shop, waving his walking cane around (Owen thinks Bowen, Cook, and Foreman Vaughan were present), and said, "I will never have anybody that works for that darned old union in my shop."

Cook testified that the morning of the following day Foreman Vaughan came into the

<sup>3</sup>Baxter Brothers, 91 NLRB 1480, 1481; Carrington Chevrolet Company, 101 NLRB 1784; N. L. R. B. v. M. L. Townsend, 185 F. 2d 378 (C. A. 9), certiorari denied 341 U. S. 909. N. L. R. B. v. Howell Chevrolet Company 204 F. 2d 79 (C. A. 9).

shop after talking to Late, Sr., laughing, and said, "Well, John [Late, Sr.] thinks he has Buddie Owen<sup>4</sup> and Argus Barends on his side, but said that there wasn't no use talking to Cook, or Bowen, because he [Late, Sr.] thought they would vote for the Union." Jay Bowen also testified that Vaughan made this statement in his presence, and Vaughan did not deny it.

Jay Bowen testified that sometime after the signing of the union cards, Foreman Vaughan told him that Late, Sr., wanted to talk to him about the Union, and sent him up to the used-car lot to see Late. Late, Sr., then said, "'Jay, you and me had a lot of run together . . . That is all in the past. . . Let's just forget it . . . You have a job with me as long as I live and you want to work. I said, 'Mr. Late, we have had a lot of little fusses and couldn't get along too good together,' He said, 'Well, now, you know this old union is coming up . . . what do you think about it?' I said, 'A union is all right in a way, I guess.' He said, 'What way?' And I said, 'Well, they give you more wages, better working conditions.' He said, 'Well, if you get more money, why the groceries just go up.' I said, 'Well, you put the price of your cars up and the price of the parts and I am working for the same wages as I started for.'" That about wound up the conversation and Late, Sr., drove Bowen back to the shop and let him out.

Bruce McCoy, an automobile salesman formerly employed by the Respondent, testified that in the spring, or June (1952), Late, Sr., would frequently be at the used-car lot where the witness was working, and that he remembered hearing Late, Sr., say on one or more occasions that before he would have the Union "he would just close up completely." In connection with the termination of Cook, Bowen, and Owen's employment, Late, Sr., said, "he just didn't want the union."

Owen was taking his baby to the hospital on the morning of June 15, and stopped on the way to tell Late, Sr., that he would be absent from work on the following day. Late, Sr., said, "I want to know how you feel about this union." Owen answered, "The union has got its good places and good things." Late, Sr., inquired, "What do you think about it in the shop?" Owen said, "I think it would be fine in the shop." Late, Sr., then referred to a strike at the Jones Truck Line, and stated, "The darned old union will cause you nothing but trouble and lose you your wages . . . If you boys join the union, I will have to close the shop down and you boys will lose your wages."

Sometime prior to August 1952, Argus Barends had a conversation with Late, Sr., at the used-car lot about a vacation. Late inquired whether he had "heard any talk about the union--what do you think about it?" Barends answered that he did not know, that he had "never belonged to the union before." Late said, "Well, you have got a good car now . . . if you don't go on that blamed union . . . you will never be sorry." Barends said, "Well, I don't know nothing about it . . . I'm just with the boys." Late stated, "Before I go union, I will close the blamed doors."

The undersigned takes official notice of the transcript of a representation hearing held at Springdale, Arkansas, on July 2, 1952, Late Chevrolet Company, Inc., from which it appears that the Respondent stipulated that it received a letter dated June 7, 1952, from C. A. Buskel, Grand Lodge representative, International Association of Machinists, AFL, Tulsa, Oklahoma; that such letter stated that the Union had been authorized by a majority of the employees in Respondent's dealer shop to represent them in collective bargaining; requested recognition as such bargaining agent, and also requested a conference in order that such representation might be proven. It was further stipulated that the Respondent decided to refuse to grant such recognition unless certified by the Board, and that no reply was made to this letter. The undersigned also takes official notice that the Union subsequently on July 28, 1952, (date of Board order) withdrew its petition in said matter.

## B. Concluding findings as to interference, restraint, and coercion

The foregoing findings are based upon the testimony of the General Counsel's witnesses Cook, Owen, Bowen, McCoy, and Barends, whose demeanor impressed me favorably and whose testimony I credit. The only possible contradiction arises from a stipulation that Late, Sr., who was not present at the hearing, if present would have testified "that he did not interrogate employees as to their feelings concerning the Union"; "threaten employees that the shop would be closed down if it went union"; "threaten employees that they would be fired if they joined the Union." Further, that he did not discharge Cook, Bowen, and Owen for union or concerted activities, but that said employees "voluntarily went of their own accord." Although the complaint and notice of hearing were served upon the Respondent

<sup>4</sup>Hershal Van Owen is referred to by various witnesses as Buddie Owen.

on or about January 15, 1953, no request for an adjournment of the hearing was made for more than a month thereafter, nor was any effort made to take the deposition of Late, Sr., so as to afford the General Counsel an opportunity to cross-examine him, I credit the testimony of the General Counsel's witnesses, and reject the stipulated conclusory testimony of Late, Sr.

On the basis of the above findings of fact, and the record as a whole, I find and conclude that the General Counsel has established by a preponderance of the credible evidence that the Respondent has interfered with, restrained, and coerced its employees, as alleged in the complaint, in the following respects:

(1) Through interrogation of employees by President John Late, Sr., as to their union affiliation, and feelings toward the Union. The Board has uniformly held interrogation of this type to be a violation of Section 8 (a) (1) of the Act. See Standard-Coosa-Thatcher Company, 85 NLRB 1358; Syracuse Color Press, Inc., 103 NLRB 377, and cases therein cited.

(2) Through President John Late, Sr., threatening employees that the shop would be closed if it went union.

(3) Through the thinly veiled threat to fire employees if they joined the Union, made by President John Late, Sr., to employee James F. Cook.

Based upon the above findings of fact and conclusions, I am convinced and find that the Respondent, by the conduct described above, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and is consequently violative of Section 8 (a) (1) of the Act.

### C. The discharges

The General Counsel contends that the Respondent discharged Cook, Bowen, and Owen on Monday, June 30, 1952, because they joined and assisted the Union and engaged in "other concerted activities." The Respondent denies this, and contends instead that it discharged these employees because they walked off the job without permission at noon, on Saturday, June 28, 1952. Since the circumstances under which the employees were absent from their jobs on the afternoon of June 28 are of crucial importance in disposing of this feature of the case, the undersigned feels constrained to set them forth in some detail.

Cook testified that the shop was cleaned up and there was no work left to be done about noon, Saturday, June 28, and that he, Owen, and Bowen were present. He asked Foreman Vaughan to talk to Late, Sr., and see if they could "get off that evening,"<sup>5</sup> but that Foreman Vaughan answered, "No, you call him." Cook said, "Bruce, I think its your place to call him." Shortly thereafter, John Late, Jr., appeared at the window of the parts room, and Cook, in the presence of Owen and Bowen, said, "Junior, how about us boys getting off? The shop is cleaned up and swept up." Late, Jr., said, "You might as well . . . There is nothing to do." Cook then turned to Owen and Bowen and said, "Boys, let's go." The three mechanics punched out at the time clock at about 12:10 p. m. and went home. Barends testified that he was outside the shop, and that as they were leaving Cook asked him if he was going home, that he understood that "they had permission to take off."

Late, Jr., admitted that the conversation with Cook occurred. He corroborated the testimony of the General Counsel's witnesses as to there being no automobiles in the shop requiring work at that time. However, he denied that he told Cook, or any other employee on June 28, that they might as well take the afternoon off. He was asked on direct examination, "What did you tell Mr. Cook?" and answered, "I told him we worked Saturday afternoon."

Cook testified that Foreman Vaughan called him at home on the telephone shortly after 1 p. m., June 28, and asked if he was coming back to work that afternoon. He told Vaughan that he was not, "that I had a severe headache is why I wanted, asked to get off . . ." Vaughan asked where Owen and Bowen were, and Cook answered, "Well, I reckon they went home. I said, 'Junior told us we had off.'" Cook had been 5 to 15 minutes late to work on several occasions, but this was the first time Vaughan had telephoned him.<sup>6</sup>

Foreman Vaughan described this telephone conversation as follows:

I said, "What's the matter you are not back to work?" He (Cook) said, "No, Bruce, it was too hot to work." . . . I said, "Isn't any hotter today than it was yesterday."

<sup>5</sup> Cook explained that he used the word "evening" to denote the working hours after 1 p. m., the afternoon. It was stipulated that it was customary for the shop force to work Saturday afternoons.

<sup>6</sup> There is no dispute that at the time the four employees left the shop there was no repair work in the shop. It is Respondent's contention that between the time they left and the time Vaughan called Cook some repair work had come in the shop.

He said, "I have got a headache. That is one reason I wanted off." I said, "You have got me in an awful tight because I have a shop full."

Owen testified that Foreman Vaughan had gone into the room where Late, Jr., was standing, when Cook asked Late, Jr., for permission to take the afternoon off. Vaughan denied knowledge of that conversation. He was asked specifically whether Cook told him in the telephone conversation that he assumed that Owen and Bowen would not be back to work that afternoon because Late, Jr., had told them they could take the afternoon off. Vaughan answered, "I don't know whether Mr. Cook told me Junior told him they could or not."

Foreman Vaughan further testified that after talking with Cook, he called Late, Sr., and "told him that the boys were gone"; that Late, Sr., said, "Go ahead and do the best you can. I will talk to my attorney and see you later"; that Late, Sr., did not then tell him "that there was going to be anybody laid off." Before Vaughan left home for work on the morning of Monday, June 30, Late Sr., instructed him to discharge Cook, Owen, and Bowen, upon his arrival at the shop. He complied with these instructions and upon reaching the shop told the three employees, "Well, just might as well stack your tools. This is it."

On the afternoon of June 28, Late, Jr., telephoned Late, Sr., and told him that he intended talking to Courtney C. Crouch of Springdale, one of their attorneys. Late, Sr., told him that he intended getting in touch with another attorney, Rex Perkins of Fayetteville. After talking to these attorneys, and being informed that they would not be in violation of the Taft-Hartley Act if they fired Cook, Owen, and Bowen, Late, Sr., and Late, Jr., decided about 4 p. m. to discharge them, Late, Jr., pulled their timecards from the rack after closing hours. Late, Jr., was not present when Late, Sr., instructed Foreman Vaughan to fire these employees, but stated that Late, Sr., had informed him of giving these instructions on Sunday afternoon. He knew Late, Sr., "would fuss" with their employees and had fired employees within the preceding 2 years. He insisted that he shared the right to "hire and fire" employees with Late, Sr., but when asked to name one employee he had ever fired, was unable to do so. Three new mechanics were hired by Late, Sr., and Foreman Vaughan 3 or 4 weeks after Cook, Owen, and Bowen were discharged, to take their places.

Cook, Owen, and Bowen reported at Respondent's shop, as usual, ready to commence work at 7:30 a. m. on Monday, June 30. When they started to "punch in" at the time clock, they found that their timecards had been removed from the rack where they were kept. Foreman Vaughan laughing said, "John (referring to John Late, Sr.) called down and said you boys just as well pack up your tools"; Cook asked, "Why," and Vaughan said, "You boys know why." The three mechanics then gathered up their tools and went home.

#### D. Concluding findings on discharges

I was favorably impressed with the demeanor and testimony of Cook, Owen, Bowen, and Barends, whose testimony and version of the occurrences on June 28 and 30 I accept and credit. Consequently, I reject the testimony of Late, Jr., Foreman Vaughan, and the stipulated testimony of Late, Sr., insofar as it conflicts therewith.

From the above findings of fact, and the entire record in the case, I find that the Respondent did not discharge James F. Cook, Hershel Van Owen, and Jay Bowen on June 30, 1952, because they walked off the job without Respondent's permission on June 28.

I also find that John N. Late, Jr., Respondent's secretary and treasurer, and general manager, granted Cook, Owen, and Bowen permission to be absent from their work on the afternoon of June 28. It is significant that Foreman Vaughan in answer to the question, "What reason were they laid off for, if you know," answered, "I couldn't swear what reason, just to tell the truth."

It seems unlikely that Cook, Owen, and Bowen would all have misunderstood the conversation between Late, Jr., and Cook, and they testified in substantially identical language that he did grant them permission to be absent from their work for the remainder of the day. As they were leaving the shop Cook told Barends that they had secured "permission to take off," and asked Barends whether he also was going home. Likewise, Cook told Foreman Vaughan in the telephone conversation shortly after 1 p. m. that "Junior had told us we had off."

Late, Sr., as I have already found in connection with the violations of Section 8 (a) (1) of the Act, had interrogated his employees as to their feelings toward the Union, and union affiliation; had threatened his employees that the shop would be closed if it went union; and had threatened to fire employees if they joined the Union. He had specifically questioned the four union card signers, Cook, Owen, Bowen, and Barends about their union affiliation, and feelings toward the Union. He knew through the letter from the union official dated

June 7, 1952, hereinabove mentioned, that the Union claimed to be the authorized bargaining representative for a majority of the employees in the "M" Avenue shop. The representation hearing was scheduled to occur within a few days, viz, on July 2, 1952. With the discharge of Cook, Owen, and Bowen on June 30, the Union only had one remaining member in Respondent's employ.<sup>7</sup>

Cook is an experienced mechanic whom Late, Sr., had, until he learned of Cook's union membership, wanted to take over as shop foreman in the event Foreman Vaughan left the business. Bowen had worked for Late for a number of years as a mechanic. Late, Sr., indicated to Bowen that he "had a job with him as long as he wanted to work." Owen is a mechanic of 8 years' experience. He worked for Late, Sr., in 1948, and returned to the Respondent's employ in 1951, at higher wages than he was receiving from another employer.

Even if Cook, Owen, and Bowen had left the job on Saturday afternoon, without permission, or under the mistaken impression that they had in fact secured permission from Late, Jr., I am convinced that Late, Sr., would not, in the absence of the union issue, have summarily and without any warning discharged them when they reported for work on Monday morning.

On the basis of the record, as a whole, the undersigned concludes that the General Counsel has established by a preponderance of the evidence that James F. Cook, Hershhal Van Owen, and Jay Bowen were discharged because they joined and assisted the Union.

#### 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 certain unfair labor practices, I will recommend that the Respondent cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act. I have found that beginning June 30, 1952, the Respondent discriminated against James F. Cook, Hershhal Van Owen, and Jay Bowen and therefore recommend that the Respondent be ordered to offer James F. Cook, Hershhal Van Owen, and Jay Bowen immediate reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay suffered by them as a result of the discrimination by payment to each of them of a sum of money equal to the amount each of them would normally have earned as wages, from June 30, 1952, the date of the discrimination, until such time as they are offered reinstatement, less their net earnings during that period.<sup>8</sup> The back pay shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289. In addition, I will recommend, in accordance with the Woolworth decision, that Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the amounts due.

The Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights under the Act, and has also committed acts of discrimination with regard to the tenure of employment of its employees. The latter is a form of unfair labor practice which has been held to "go to the heart of the Act." I am convinced that there is a danger of a repetition by Respondent of the unfair labor practices directed against its employees. Therefore, to make effective the interdependent guarantees of Section 7 of the Act, prevent a recurrence of the unfair labor practices, and thereby effectuate the policies of the Act, I will recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed by Section 7 of the Act.

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

### CONCLUSIONS OF LAW

1. Lodge 924, International Association of Machinists, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

<sup>7</sup>The remaining union member was Argus Barens, who is not involved in the charges in this case but who was discharged by the Respondent in September 1952.

<sup>8</sup>Crossett Lumber Company, 8 NLRB 440; Republic Steel Corporation v. N. L. R. B., 311 U. S. 7.

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 (a) (1) of the Act.

3. By discriminating in regard to the tenure of employment of James F. Cook, Hershall Van Owen, and Jay Bowen, thereby discouraging membership in Lodge 924, International Association of Machinists, AFL, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

**APPENDIX A**

**NOTICE TO ALL EMPLOYEES**

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL offer James F. Cook, Hershall Van Owen, and Jay Bowen immediate and full reinstatement to their former or equivalent positions without prejudice to any other rights or privileges previously enjoyed and to make them whole for any loss of pay suffered as a result of the discrimination.

WE WILL NOT interrogate our employees as to their union interests, attitude, membership, or activities.

WE WILL NOT threaten our employees with discharge or to close our shop if they join Lodge 924, International Association of Machinists, AFL, or any other labor organization.

WE WILL NOT in any other manner interfere with or restrain our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Lodge 924, International Association of Machinists, AFL, 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, and to refrain from any or all such activities except to the extent that such right may be affected by agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

All our employees are free to become or refrain from becoming members of the above-named union or any other labor organization except that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

LATE CHEVROLET COMPANY, INC.,  
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.

AMERICAN RUBBER PRODUCTS CORP. and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, LOCAL 914. Case No. 13-CA-1145. July 10, 1953

**DECISION AND ORDER**

On December 10, 1952, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled