MONSANTO CHEMICAL COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE NO. 1933, AFL. Case No. 19-CA-918. May 27, 1954

DECISION AND ORDER

On February 15, 1954, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudical error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in this case, and hereby adopt the Trial Examiner's findings, conclusions, and recommendations.[1]

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Monsanto Chemical Company, Soda Springs, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Enforcing its rule prohibiting the distribution of union literature on its parking lot during the employees' nonworking time.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, Local Lodge No. 1933, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring

[1] In his report, the Trial Examiner incorrectly found that during the morning of October 1, 1953, no car stopped at the highway intersection where union representatives were trying to distribute literature and that during the afternoon of that day 4 cours stopped there. The report is hereby corrected to show that 1 car stopped during the morning and 3 cars stopped during the afternoon.

The Intermediate Report is further clarified by adding the words, "according to Phelan's testimony," after the words "Dunlap acknowledged" on page 5, line 55.

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

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

(a) Rescind immediately its rule prohibiting the distribution of union literature upon its parking lot during the employees' nonworking time.

(b) Post at its plant at Soda Springs, Idaho, copies of the notice attached to the Intermediate Report and marked "Appendix A."[2] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by Respondent's representative, be posted by 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 Respondent to insure that said notices are not altered, defaced, or coveredy any other material.

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

Member Beeson, dissenting:

Upon the particular facts in this case, I cannot agree that the Respondent should be found guilty of having violated Section 8 (a) (1) of the Act.

The complaint in this case alleges that the Respondent interfered with the rights guaranteed its employees by Section 7 of the Act by refusing to permit the charging Union to distribute its literature on company property.

The Respondent's chemical manufacturing plant involved in this case is situated in the midst of a 500-acre tract of land, approximately 1 mile from the nearest town limit of Soda Springs, Idaho, a community of about 2,000 inhabitants. The plant operates 7 days a week on a 3-shift basis around the clock with a total complement of approximately 130 employees. Bounded by the most part by a fence, the plant is reached by means of a State highway which passes along the border of the company property. The plant buildings are set back from the State highway. They are approached by means of a two-lane private company road which, meeting the State highway at a curved angle, extends a distance of approximately four-tenths of a mile to the nearest plant structure, the Respondent's office building.

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[2] This 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." In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted 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."

The private road, wholly on the Respondent's property, as it nears the State highway, veers in a southerly direction toward Soda Springs, the direction in which all but one of the Respondent's employees reside; the State highway proceeds in a southwesterly direction as it approaches Soda Springs. As a result, the company road joins but does not cross the State highway. On the right side of the company road, proceeding from the plant, there is a stop sign, erected by the State of Idaho, standing approximately 60 feet from the point where the company road and the State highway meet. State law requires automobiles to stop at the sign before proceeding onto the State highway.

There is no public transportation system in the area for travel to the plant. All employees ride to work either singly or in groups in private automobiles.

Adjoining the plant office building is the sole gate for employees. Employees reporting for work drive along the company road and park their cars in a designated parking area, the nearest point of which is approximately 50 feet from the gate. After leaving their automobiles, arriving employees enter the building housing the plant offices where they change clothes and punch timecards. They leave the office building by the same door, and enter the fenced-in area, where they work, by means of the employee gate. On leaving work, this procedure is reversed.

In August 1953, the Respondent promulgated, among others, rules which prohibited solicitation of funds or distribution of literature on its property. These rules were incorporated in a manual circulated to employees, and read as follows:

> SOLICITING
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> Soliciting funds and selling tickets or any article on company property without approval of the plant manager is prohibited.
>
> PEITITIONS
>
> Circulating petitions or posting or distributing any literature on company property without approval of the plant manager is prohibited.

Admittedly, the Respondent does not bar solicitation for union membership by employees on company property, and the rule forbidding distribution of literature on company property has been uniformly enforced against outsiders, as well as employees, on a nondiscriminatory basis.

The complaint alleges that, at all times since on or about September 28, 1953, the Respondent has refused to permit the Union to distribute union literature to employees upon property of the Respondent located in the proximity of or adjacent to

the gate by which the Respondent's employees enter and leave the fenced-in area of the Soda Springs plant.

On September 28, 1953, union representatives sought permission from the Respondent to distribute union literature "at the gate where the employees came out from the plant." The Respondent refused to grant permission on the ground that distribution of literature on company property was contrary to company policy. On October 1, 1953, when two union representatives began to distribute union literature to employees in the parking area, the Respondent's guard forbade such distribution under penalty of forcible removal, and the union representatives left the parking area. However, on these and other occasions, union representatives distributed union literature to employee occupants of automobiles at or near the stop sign where the company road and the State highway meet. The Respondent had no objection to such distribution and has never interfered with it. In fact, the Respondent's plant guard, who enforced the company's rule against the Union on one occasion, invited the Union to make distribution of its literature at that location.

Upon substantially these facts, the Trial Examiner found (1) that the distribution of union literature to employees off of the Respondent's property is virtually impossible, at times hazardous, and that it cannot readily be conducted; (2) that there are no special circumstances which justify the necessity of the Respondent's rule insofar as it prohibits the distribution of union literature on its parking lot; and (3) that such rule constitutes an unreasonable impediment to the freedom of communication in the exercise of its employees' rights to self-organization. In view thereof, the Trial Examiner concluded that the Respondent violated Section 8 (a) (1 of the Act by enforcing the rule forbidding the distribution of union literature on its parking lot.

The underlying issue here is the proper accomodation, which is necessitated in cases of this kind, between the employer's right to control the use of his private property and the right of his employees under the Act "fully and freely to discuss and be informed" concerning their choice of representatives, as well as the "correlative right of the union, its members and officials to discuss with an inform its employees concerning matters involved in their choice".[3] N. L. R. B. v. LeTourneau Company of Georgia, 324 U. S. 793, 797-798.

By affirming the Trial Examiner, my colleagues apply the rule of the LeTourneau case. That rule constitutes an exception to the fundamental doctrine that an employer has the right to control the use of his own property. As an exception, it should be strictly limited and not applied in the absence of the overriding considerations given effect by the Supreme Court in LeTourneau. So viewed, the LeTourneau case, in my opinion,

is inapplicable here. Describing the LeTourneau property, the Supreme Court said (324 U. S. 793, at 797):

> The plant is bisected by one public road and built along another. There is 100 feet of company-owned land for parking or other use between the highways and the employee entrances to the fenced enclosures where the work is done, so that contact on public ways or on non-company property with employees at or about the establishment is limited to those employees, less than 800 out of 2100, who are likely to walk across the public highway near the plant on their way to work, or to those employees who will stop their private automobiles, buses or other conveyances on the public roads for communications. The employees' dwellings are widely scattered.

It was because of these facts that the Board concluded in LeTourneau (54 NLRB 1253, 1261) that

> Distribution of literature to employees is rendered virtually impossible under these circumstances, and it is an inescapable conclusion that self-organization is consequently seriously impeded. (Emphasis supplied.)

That is not the situation in the instant case. Here, distribution of literature to employees was not virtually impossible. The Union was free to distribute literature at or near the stop sign. This afforded the Union access to all the employees as they all rode home in automobiles which were required by law to stop at the traffic sign. Indeed, on several occasions, the Union distributed literature at that point. As brought out in the record of this case, out of the 7 occasions on which union representatives stationed themselves at the traffic sign to distribute literature, employees failed to stop on only 2 occasions, and this the Union could remedy by appeal to the sheriff to enforce the State law. On these 7 occasions, and taking the figures least favorable to the Respondent, of the approximately 103 cars which traveled outbound from the plant over the company road onto the State highway, 36, or more than 33-1/3 percent, stopped and accepted union literature.[4] This cannot, in my opinion, be characterized, as ineffectual distribution. Much less can it fairly be said that it was virtually impossible for the Union to distribute its literature to the Respondent's employees. It may well be that union representatives, by stationing themselves in the center of the roadway, exposed themselves to traffic hazards, but this hazard was of their own making as distribution could reasonably be effected by standing at the side of the road and handing literature to occupants of

[4] Contrary to the Trial Examiner, I do not regard it as significant that on one occasion a higher percentage of cars stopped when the union representative happened to be wearing a western type hat and a long leather jacket and may have been mistaken by the employees as sheriff. The fact of the matter is that the employees stopped and accepted union literature whatever may have been their reason for stopping.

cars as they stopped at the traffic sign without any substantial risk of personal injury.

Moreover, the employees are accessible to the Union in the nearby town of Soda Springs. Unlike the situation in LeTourneau, the homes of the Respondent's employees are not widely scattered. Eighty-eight, or 67.6 percent of the total number of employees, reside in Soda Springs. At the hearing, the Union's Grand Lodge representative admitted that the Union is in "communication with some of the employees practically all the time." Virtually all the employees, during all seasons of the year, wear jackets, bearing the Respondent's name on the back, in which they appear on the streets of Soda Springs. Thus, the employees could readily be identified by the Union. No reason appears why the Union could not distribute literature to the employees when they appear in this nearby small town during their nonworking time.

There is further reason for dismissal of the complaint. As stated above, the Union demanded permission to distribute its literature at the employee gate adjacent to the parking lot as well as in the parking area. The plant operates on a 24-hour basis. In the course of their employment duties, the Respondent's employees, in a continuous stream, pass through the gate back and forth from the operating plants to the office building, where are located the laboratory, personnel office, lockers, and first-aid room. Employees "move from a sample preparation room located inside the plant area back and forth to the laboratory preparing samples and taking them back to the laboratory for analysis." In addition, maintenance employees perform duties in the parking area itself. Distribution of literature in these areas would have a tendency to interfere with the performance of the employees' duties and thus disrupt the Respondent's normal operations. Moreover, employees carry samples of live phosphorous, a spontaneously combustible chemical, in the area of the gate. Strangers present in the area thus subject themselves to the risk of injury; and, in the case of accident, the Respondent would be exposed to the liability of lawsuits.

As this record fails to establish that this case comes within the narrow exception of the LeTourneau case, it being clear that it was not virtually impossible or hazardous for the Union to distribute its literature to the employees, and, in view of the fact that such use of the Respondent's property by the Union would result in interference with business operations and undue hardship, I would find that the Respondent did not violate Section 8 (a) (1) of the Act, and I would dismiss the complaint.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

This proceeding is brought under Section 10 (b) of the National Labor Relations Act, 61 Stat 136, herein called the Act, and is based upon a charge duly filed by International Association of Machinists, Local Lodge No. 1933, AFL, herein called the Union, against Monsanto Chemical Company, herein called Respondent. The General Counsel of the National Labor Relations Board thereafter issued a complaint dated December 17, 1953, against Respondent, alleging that Respondent had engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act Copies of the charge, complaint, and notice of hearing thereon were duly served upon Respondent

Specifically, the complaint alleged that Respondent, at all times since on or about September 28, 1953, had refused to permit the Union to distribute union literature on company property, including a parking lot, to employees of the Soda Springs plant of Respondent, thereby imposing an unreasonable impediment to the employees' right to self-organization The answer of Respondent denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Soda Springs, Idaho, on January 20, 1954, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. The parties were represented by counsel who participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. During the hearing, on motion by the General Counsel, concurred in by Respondent, a view was taken of those portions of the premises of Respondent which are involved herein. At the close of the hearing the parties were given an opportunity to argue orally and to file briefs Oral argument was presented and a brief has been received from Respondent

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Monsanto Chemical Company, a Delaware corporation with plants in several States of the United States, is engaged in the manufacture of heavy chemicals, organic chemicals, and intermediates. This proceeding involves solely Respondent's plant at Soda Springs, Idaho, which annually purchases materials valued in excess of $100,000, of which approximately 75 percent is shipped to the plant from points outside the State of Idaho. In addition, this plant annually manufactures and ships products valued in excess of $100,000 to points outside the State of Idaho I find that Respondent is engaged in commerce within the meaning of the Act

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, Local Lodge No 1933, AFL, is a labor organization which admits the employees of Respondent to membership

III. THE UNFAIR LABOR PRACTICES

A. The issue

The sole issue herein is the accommodation between Respondent s right to control the use of its private property and, on the other hand, the right of its employees to be informed concerning a choice of a bargaining representative by the Union, together with the right of union representatives to discuss with and inform employees of matters involved in this choice. More specifically, this case involves only the right, claimed by the Union and denied by Respondent, to distribute union literature to the employees of Respondent on an open parking lot maintained on company property by Respondent for its employees adjacent to the plant proper There are no substantial conflicts in the evidence

B. The situs

The Soda Springs plant covers approximately 500 acres and is bounded for the most part by a fence. It operates 7 days a week on a 3-shift basis around the clock and has approximately 130 employees with the largest number on the first or daytime shift The plant went into operation on or about December 1, 1952, and its employees are unrepresented by any labor organization for the purposes of collective bargaining It is located in a nonbuilt-up area approximately 2 miles from the center of the town of Soda Springs, Idaho, a community of about 2,000. The town limits are located 1 and 4 miles respectively from the plant

There is no public transportation in the area for travel to the plant and employees ride to work either singly or in groups in private automobiles The record does not disclose that any employees walk to work and, in view of the location of the plant, this would appear unlikely The plant is reached by means of a State highway which passes along the border of the company property. The plant buildings are set back some distance from the highway, however, they are approached by means of a two-lane private company road which, intersecting the State highway at a sharp angle, then extends a distance of slightly less than four-tenth of a mile to the plant buildings. This company road is located entirely on company property

Employees reporting for work drive along the company road and then park their cars in a designated parking area located immediately adjacent to and outside of a fenced area which circumscribes the plant buildings There are no plant or other structures between the parking area and the State highway After leaving their automobiles, arriving employees enter a building located immediately outside the only plant gate, this building also houses the various plant offices. Once inside, employees change to working clothes, punch their timecards, depart via the same door, and then enter the fenced area by means of the sole plant gate. On leaving work this procedure is reversed. As stated, the sole issue herein evolves about the right of union representatives to distribute literature to employees alighting from or entering their automobiles in the parking area which is located some feet from the above-described plant gate.

C. The company rule

The complaint attacks the restraint on distribution of union literature on and after September 28, 1953 In August of 1953, Respondent promulgated plant rules which, inter alia, state as follows

SOLICITING·

> Soliciting funds and selling tickets or any article on company property without approval of the plant manager is prohibited

PETITIONS

> Circulating petitions or posting or distributing any literature on company property without approval of the plant manager is prohibited

Respondent contends and I agree that there is no rule barring the solicitation for union membership by employees on company property, nor is there any evidence that such a policy has been followed. And the above-quoted rule, forbidding distribution of literature on company property, has been uniformly enforced. In addition to the attempt of the union representatives to distribute literature described below, the record discloses that Respondent, on two occasions, immediately stopped the distribution of other literature in this parking area, once by an automobile dealer and once by high school students, soliciting purchases of automobiles and attendance at a school function respectively. No other distributions of any nature have been attempted or permitted.

It may be noted at this point, despite the testimony of Plant Manager Whiteside to the contrary, that the record will not support a finding that this parking area was part of the plant "operating unit." No production operations are carried on in the parking area and it is not used for storage purposes While management contemplates utilizing a portion of the area in the future for the storage of coke, this would be accomplished by extending the plant fence into

a portion of the parking area and segregating that portion of the lot; the remainder of the lot would continue to be used as at present.

It is true that company vehicles, on occasion, leave the fenced production area to perform various operations in the parking area, but these are operations solely for maintenance of the area such as grading, snow removal, removal of trash, or applying a topping to the ground There is no logical basis for distinguishing this area from the company road conceded by Whiteside not to be part of the operating unit. I find therefore that plant operations, in the true sense of the word, are not carried on in the parking area

D. Sequence of events

Initially it may be helpful to describe the area at the intersection of the company road and the State highway because it plays a part in the events that follow As stated, the distance from the plant gate via the private company road to the intersection of that road and the State highway is slightly under four-tenths of a mile The company road, as it nears the State highway, veers in a southerly direction toward Soda Springs the State highway proceeds in a southwesterly direction as it approaches Soda Springs As a result, the company road joins but does not cross the State highway at a sharp angle of roughly 30°.

On the right side of the company road, proceeding from the plant, and approximately 60 feet from the intersection of the 2 roads, is a stop sign erected by the State. State law requires cars to stop at this point before proceeding into the State highway. It may be noted that as the driver leaving the plant property approaches the stop sign, there is no obstruction to his vision in either direction along the State highway. The natural result, as will appear, is that drivers tend in large measure to ignore the stop sign and merely slow down somewhat before entering the State highway.

This practice was known by Respondent for, according to the uncontroverted testimony of Grand Lodge Representative A. L. Phelan of the Union, Production Superintendent Dunlap admitted to him on September 28, 1953, that the sheriff of the county had on occasion stationed himself at this intersection in order to combat this practice and some employees had been fined for ignoring the stop sign. Another factor contributing to this practice is the fact that the State highway, as Plant Manager Whiteside admitted, is very lightly traveled and presumably the risk of collision at the intersection is therefore small

Turning to the organizational campaign, the Union first attempted to organize the plant on January 22, 1953.[1] Grand Lodge Representative Phelan visited then Resident Manager Gurvin. He introduced himself, announced his intention to organize the plant in behalf of the Union, and gave Gurvin copies of the literature he proposed to distribute. Phelan asked permission to distribute this literature in the parking area described hereinabove so as to contact the employees as they left the plant. Gurvin refused, stating that it was contrary to company policy to permit the distribution of union literature on company property. Phelan left but returned to the plant property that evening

It was to the intersection of the 2 roads that Phelan returned at midnight on January 22. He stationed himself in the middle of the company road, midway in the 60-foot stretch between the stop sign and the actual intersection of the 2 roads, in an effort to distribute literature to departing cars either as they stopped for the stop sign or at the actual intersection; he also hoped to distribute the literature to entering cars, hence his position in the middle of the road. From 6 to 8 cars left the plant on this occasion and about the same number entered. None stopped at the stop sign or the intersection and as a result he was unable to distribute any literature. Of the cars that entered none stopped or slowed down, there is no sign or other impediment to the progress of a car entering the company road from the State highway

On the morning of January 23, Phelan again attempted to distribute literature at the same location He chose the hour of 8 a m. so as to contact the departing midnight shift and the arriving day shift. None of the 25 to 30 cars that entered the company road from the State highway stopped for literature, of the 5 to 7 cars that left, 3 stopped for the literature The remainder of the departing cars did not stop at all He returned to the same location that afternoon at 4 and all but 1 of the 25 cars that left stopped near Phelan It appears, however, that

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[1] In the findings that follow hereinafter no findings of unfair labor practices are predicated upon events taking place more than 6 months prior to the filing and service of the charge herein in October of 1953; they are considered only as background evidence. See N. L. R. B. v. Sharples Chemicals, Inc., 209 F 2d 645 (C. A. 6).

Phelan, on this occasion, wore a western type hat and a long leather jacket and was mistaken by at least some of the drivers as the sheriff of the county. None of the 7 or 8 cars that entered the company road stopped for the literature that Phelan carried in his hand.

On February 9 Phelan again attempted to distribute literature at this location between 4 and 5 p. m. Of 25 cars that left, only 5 stopped for literature and several of the latter were compelled to stop because the preceding car had stopped. Phelan did not wear the same apparel as on the earlier occasion when he was mistaken for the sheriff. Seven or eight cars entered the company road from the State highway but did not stop.

Due to the pressure of other duties Phelan was not able to devote additional time to the organization of the plant for over 7 months. On September 28, he returned to the plant, accompanied by W. T. Wright, the newly appointed business representative of Lodge 1933. The two men parked their car in the company parking area and approached the guard at the gate which is guarded around the clock. They announced that they wished to distribute union literature, handing the guard a sample. He replied that a company rule forbade this. The union representatives then asked to see the resident manager; in his absence they were taken to see Production Superintendent W. P. Dunlap. Also present were several other management officials

Phelan asked for permission to distribute the literature in the parking area and Dunlap refused, stating that the distribution of union or other literature on company property was contrary to company policy and that if the Union were given permission other labor organizations would also seek it. There is a conflict whether or not Dunlap added that the distribution was forbidden without the approval of the plant manager. Phelan's testimony did not contain any reference by Dunlap to the obtaining of permission from the plant manager, and Dunlap was uncertain whether or not he included the qualification. Phelan's testimony is supported by that of Maintenance Superintendent Depp which is silent as to the seeking of permission from the plant manager. I therefor credit Phelan's testimony. In any event, Respondent uniformly refuses to permit the distribution of any type of literature in the parking area and permission was sought and refused in this instance

Dunlap acknowledged that there were hazards connected with the distribution of literature at the highway intersection and that Respondent was having difficulty in getting employees to obey the stop sign Although not expressly stated, it is clear and I find that Respondent had no objection to the distribution of literature at the intersection and has at no time interfered therewith. The interview ended and the 2 union representatives returned to the intersection of the 2 roads at approximately 4:30 p. m About 5 cars left the plant premises and none stopped for the stop sign at which Wright stationed himself or at the actual intersection where Phelan was standing.

On October 1, the two union representatives returned to the plant at 8 a. m. and parked their car in the parking area. They split up and commenced the distribution of literature to employees who entered the parking area. The guard on duty promptly approached them and forbade the distribution of the literature under penalty of forcible removal from the company property. The two men agreed to leave peaceably and did so. None of the literature which they succeeded in distributing on this occasion was discarded by the recipients. In fact, the record discloses no littering of company property in any of the distributions attempted by the Union and no such contention is raised by Respondent.

The union representatives returned to the highway intersection that morning and, of the approximately 5 to 8 cars that left, none stopped. The men returned to the scene that afternoon and of the 15 to 25 cars that left, 4 stopped for one or the other of the 2 union representatives. Six to nine cars entered on this occasion but none stopped.[2] No further attempt to distribute literature, either at the highway intersection or at the parking area, was made by the Union.

E. Contentions, analysis, and conclusions

The foregoing recitation of facts discloses that the attempted distribution of literature at the highway intersection was a failure due to the widespread practice of drivers leaving the plant premises to ignore the stop sign at the highway intersection, a practice known to Re-

[2] Findings concerning automobile travel to and from the plant on September 28 and October 1, are based upon a synthesis of the testimony of the two union representatives which is in substantial agreement.

spondent. Moreover, the location was completely ineffectual in contacting drivers entering the plant premises due to the absence of any impediment to their progress into the company premises.

The record also warrants the finding that the distribution of literature at the intersection of the two roads, under these circumstances, was a hazardous undertaking as it involved the attempted distribution of matter to people in moving cars, particularly so where the union representative stationed himself in the middle of the company road in order to pass literature to the drivers passing on either side. See N. L. R. B. v Carolina Mills Inc., 190 F. 2d 675 (C. A. 4). It would seem that if distribution were to be successful at any location away from the parking area, but in the general vicinity of the plant, the area selected by the union representatives, at the stop sign, would have been the most promising. However, the record of the attempts made by the union representatives discloses that the undertaking not only was hazardous but virtually impossible of success in contacting the drivers.

The General Counsel's basic premise is that the decision in N. L. R. B. v. LeTourneau Company of Georgia, 324 U. S. 793, is dispositive of the present issue There the Court upheld the Board's finding that the application of a long standing and strictly enforced rule against the distribution of any literature on company property without the permission of management to the distribution of union literature by employees on a company-owned parking lot adjacent to a fenced-in plant was an unfair labor practice. As is apparent, the surrounding facts in that case are substantially identical with those present herein.

Also supporting the position of the General Counsel are two cases whose facts are almost identical with those in the present case. N. L. R. B. v. Carolina Mills Inc., supra, and N. L. R. B. v Caldwell Furniture Company, 199 F. 2d 267 (C. A. 4), cert denied 345 U. S. 907. In those cases, the court of appeals enforced Board orders setting aside company rules forbidding the distribution of union literature by union representatives in a company parking lot and at a company gate, respectively, in effect following the LeTourneau decision.

Respondent has raised a number of contentions to the general effect that the LeTourneau rule should not be followed in this proceeding.

(1) Respondent contends that in view of recent Board decisions in related cases a fresh look at the present problem is in order. It cites specifically Livingston Shirt Corp., 107 NLRB 400, and Peerless Plywood Co., 107 NLRB 427. It is true that those decisions reflect a change in Board policy by, in effect, rescinding the former right or privilege of a labor organization to reply to preelection speeches by management on company property. However, that change of policy is on a totally different issue and I deem myself bound by existing Board policy, as reflected in the Supreme Court decision in the LeTourneau case as well as recent Board decisions And while Respondent stresses that the LeTourneau case was decided prior to the 1947 amendments to the Act, the Caldwell and Carolina Mills decisions of the Fourth Circuit, cited above, were decided subsequent to those amendments, involved conduct taking place after the amendments, and the court in the former decision expressly followed the LeTourneau decision.

(2) Respondent raises the contention that the employees involved in the LeTourneau decision constituted a large complement of personnel in a large plant and that the case is therefore distinguishable from the present case. While it is true that Respondent had a complement of 130 employees, as opposed to the much larger number of personnel involved in the LeTourneau decision, I deem this a difference of no substance If the criteria behind the LeTourneau decision are still valid, namely the virtual impossibility or unreasonable difficulty of distributing literature off the premises of the employer, they would be equally applicable irrespective of the size of the employer or the number of employees involved The only difference would be in the number of personnel to be reached and the greater amount of distribution required but not in the difficulty of distributing as such.

(3) Respondent also cites the fact that in the LeTourneau decision the would-be distributors of literature were employees rather than union representatives, as in the instant case. While this contention might have more appeal were this an issue of distribution by union representatives within the plant proper and in the area of production facilities, and perhaps particularly so in a plant devoted to military production, such is not the case here. The only area involved is one removed from the production area and in fact outside the fenced-in area. Significantly the Caldwell and Carolina Mills decisions, supra, involved attempts by union representatives to distribute literature under circumstances similar to those present herein.

(4) Respondent has cited several decisions where the Board has not followed the LeTourneau rule, in support of its contention that it should not be followed here. An inspection of those decisions discloses however that they are distinguishable in their factual context from the LeTourneau decision and the present case

Thus, in Monolith Portland Cement Co., 94 NLRB 1358, the Board held that a ban on the distribution of union literature inside plant buildings during working and nonworking hours and confiscation of such literature as was brought in was not an unfair labor practice, particularly where the employees were permitted to distribute literature in the company parking lot and near plant entrances. Moreover, the employer in that case permitted the labor organization involved to utilize the plant bulletin board in order to post notices of meetings. Actually, this decision supports the position of the General Counsel herein.

In Mooresville Mills, 99 NLRB 572, enfd. as modified 204 F 2d 87 (C. A. 4), the Board found that it was not an unfair labor practice to refuse to permit a labor organization to distribute literature on a driveway 15 or 20 feet long located on company property and extending from a public sidewalk to the plant gate. The employer did not interfere with 3 other union adherents standing nearby on the sidewalk at a point where the driveway from the mill crossed it. It also appears that public transportation was available, that buses stopped on the highway in the vicinity, and, as is apparent, the distance of the plant gate from the highway was but a matter of 15 or 20 feet rather than almost four-tenths of a mile. Likewise, and contrary to the present case, there was no evidence that this other distribution was not effective and that the company policy was a serious impediment to the freedom of communication among employees.

In Newport News Children's Dress Company, 91 NLRB 1521, the Board held that the denial to a labor organization of the right to distribute literature on the employer's property was not an unfair labor practice. There however, the 60 employees involved left the employer's property, which in its entirety covered an area 50 by 120 feet, by means of a single gate bordering on a public street An undisclosed number then boarded public transportation consisting of a bus which loaded across the public street from the plant gate. The Board specifically contrasted this procedure with the more than 60 percent of the personnel complement in the LeTourneau case who boarded buses or entered private automobiles on company property and could not be given literature as they left by means of the plant gate. By contrast it would seem, in the Newport News decision, as the Board found, that literature could effectively be distributed to pedestrians on the public street.

In Colonial Shirt Corp., 96 NLRB 711, the Board held it not to be an unfair labor practice to bar the distribution of literature in the plant itself, in the interest of keeping the plant clean and orderly. I deem that decision not in point because there is no issue in the present case of maintaining plant tidiness; unlike the present case, there was not a showing that the activities could not readily be conducted away from the employer's premises, and, the issue there related to distribution in the plant proper and not, as here, in a nonproduction area, namely the parking lot outside the fenced-in plant.

(5) Respondent adduced evidence with respect to the content of the pamphlets which the Union sought to distribute, directing attention to cartoons which cast a hypothetical employer in an unfavorable light. Without passing upon the temperateness or objectivity of the cartoons, I do not deem the matter to merit substantial weight herein The simple answer is that Respondent at no time raised any issue with respect to the content of these cartoons. Its restriction of the distribution of union literature was predicated upon its belief, maintained in good faith, that it could prohibit the use of its property for the purpose sought by the Union.

In sum, the present case involves solely the claimed right of the Union, under the circumstances present herein, to distribute literature to employees during their nonworking time, not in the plant or even in the fenced-in plant area, but solely on the adjacent open parking lot maintained by Respondent for its employees The Board and courts have recognized that employees and a labor organization do not have an absolute right to the use of company property for the distribution of union literature But it has likewise been held that where, as here, it is virtually impossible or unreasonably difficult for a labor organization to disseminate literature to employees off the premises of the employer, the Act protects the right to carry on such distribution on company property.

Respondent does contend that special circumstances, namely the use of the gate for general business purposes, warrant its ban on distribution of literature by the Union, but the record does not support this The fact is that the Union sought only to distribute matter in the parking area, which is some feet from the gate and to one side of the traveled company

road. While a showing of unusual circumstances pertaining to the operation of a particular plant might well override the right of a labor organization to carry out such a distribution, there is no such showing here; moreover, there is no evidence of littering of company property.

The plant involved herein is located in a rural or semirural area several miles from a town of 2,000. Its employees drive to work, there being no public transportation, and enter company property at a point almost four-tenths of a mile from the sole plant gate. There is no provision or requirement for a stop by cars entering the company road from the State highway and I find that, apparently due to the favorable view in either direction along the State highway, drivers leaving company property, in large measure, ignore the stop sign at the intersection of the company road and the State highway.

Respondent's records show, as it stresses, that 85 percent of all employees live within a radius of 12 miles from the plant and that 67.6 percent live in the Soda Springs area, the remaining 15 percent live at distances varying from 17 to 39 miles from the plant. Nevertheless, inasmuch as all drive to and from the plant in the manner described above, this serves only to emphasize the extreme difficulty of an attempted distribution of literature at a location other than the parking lot.

Respondent ably contends however, that literature can effectively be distributed at the highway stop sign; the facts set forth above do not support this claim. Respondent also contends that the Union had access to the mails for organizational work and that a majority of the employees, residing in the Soda Springs area, could readily be identified by their alleged practice of wearing jackets, furnished by Respondent, which bore Respondent's name on the back. A resort to the mails would obviously be impossible absent possession of a roster of personnel, with respect to the wearing of company insignia, not all the employees reside in Soda Springs and it would further be speculative to reach any conclusions on the matter absent definitive evidence as to the extent the jackets are worn and the social proclivities of their wearers. It is contended that the rule is warranted because of the possibility of auto tampering and theft by strangers on the lot. There is no evidence that such incidents had taken place or that they were feared. I find that this possibility was not an operative factor in the imposition of the rule

I find, therefore, that the distribution of union literature to employees off of Respondent's property is virtually impossible, at times hazardous, and that it cannot readily be conducted. I further find that there are no special circumstances which justify the necessity of Respondent's rule insofar as it prohibits the distribution of union literature on its parking lot, and that such rule constitutes an unreasonable impediment to the freedom of communication in the exercise of its employees' rights to self-organization. Respondent's claim that its tolerance of the distribution desired by the Union would constitute unlawful assistance to that organization has in effect been disposed of by the decisions which have expressly permitted and sanctioned such distribution.

It follows, therefore, that Respondent's right to control the use of its private property, which I find was asserted in good faith, should, in the circumstances of this case and upon established precedent, accommodate itself to the exercise of its employees' rights to self-organization and that Respondent, by enforcing a rule forbidding the distribution of union literature on its parking lot, has engaged in conduct violative of Section 8 (a) (1) of the Act. See N. L. R. B. v. Caldwell Furniture Company, supra; N. L. R. B. v. Carolina Mills, Inc., supra; Remington Rand, Inc , etc, 103 NLRB 152; Grand Central Aircraft Co., Inc., 103 NLRB 1114, Monarch Machine Tool Co., 102 NLRB 1242, Glen Raven Silk Mills, Inc., 101 NLRB 239, enfd. as modified 203 F. 2d 946 (C. A. 4); Carthage Fabrics Corp., 101 NLRB 541; and George Noroian Company, 101 NLRB 1127.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations 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 Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has prohibited the distribution of union literature on its parking lot during nonworking time, it will be recommended that Respondent cease and desist from the unfair labor practice found and from any like or related acts or conduct which would tend to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed under Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Respondent, Monsanto Chemical Company, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Association of Machinists, Local Lodge No 1933, AFL, is a labor organization within the meaning of Section 2 (5) of the Act
3. By denying the use of its parking lot for the distribution of union literature during the nonworking time of its employees, Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) 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, as amended, we hereby notify our employees that:

> WE WILL cease and desist from enforcing our rule prohibiting the distribution of union literature on our parking lot during our employees' nonworking hours
>
> WE WILL NOT engage in any like or related acts or conduct which interferes with, restrains, or coerces our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Association of Machinists, Local Lodge No. 1933, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act

We hereby rescind our rule prohibiting the distribution of union literature on our parking lot during nonworking hours of employees

MONSANTO CHEMICAL 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.