

In the Matter of EDWARD G. BUDD MANUFACTURING COMPANY and
FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 77

Case No. 7-C-1305.—Decided January 30, 1946

DECISION
AND
ORDER

On June 23, 1945, the Trial Examiner 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 out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Counsel for the Board filed exceptions and a supporting brief to the Trial Examiner's finding that the respondent had not violated the Act with respect to the lay-off of employee Fred P. Schieman. On January 22, 1946, the Board heard oral argument at Washington, D. C. The respondent participated in the argument; the Union submitted a brief in lieu of argument.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the respondent and counsel for the Board, the contentions advanced at the oral argument before the Board and in the briefs submitted by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

THE REMEDY

Having found that the respondent has engaged in conduct violative of the Act, we shall order it to cease and desist not only from such conduct, but also, for the reasons hereinafter set forth, from in any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent, acting through its personnel director and plant manager, questioned its foremen about their union affiliation, requested them under threat of discharge to resign from the Union and to

desist from organizational activities, threatened to close the plant before it would recognize the Union, and refused to transfer an employee to a production job, contrary to its well established practice, for the reason that said employee, after having been warned that continuation of union solicitation would result in his being laid off, failed to fulfill his promise to discontinue soliciting for the Union. The respondent's coercive course of conduct to defeat self-organization and its objects among its foremen culminated in the discriminatory discharge of employee Owens, conduct which "goes to the very heart of the Act."¹ Upon the entire record, it is reasonable to infer, and we find, that the respondent has displayed an attitude of opposition to the purposes of the Act to protect the rights of the supervisory employees, generally. Because of the respondent's unlawful conduct, and the underlying purpose manifested thereby, we are convinced that the unfair labor practices found are persuasively related to the other unfair labor practices proscribed by the Act, and that danger of their commission in the future is to be anticipated from the respondent's conduct in the past.² The preventive purposes of the Act will be thwarted unless our order is coextensive with the threat. However, unlike the recommendation of the Trial Examiner, we shall limit our cease and desist order to supervisory employees and to the Foreman's Association of America.

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, Edward G. Budd Manufacturing Company, Detroit, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Foreman's Association of America, by discharging, laying off, or refusing to transfer to production jobs any of its supervisory employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the

¹ *N. L. R. B. v. Entwistle Manufacturing Co.*, 120 F. (2d) 352, 356 (C. C. A. 4); see also *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 116 F. (2d) 350, 353 (C. C. A. 7), where the Court observed: "No more effective form of intimidation nor one more violative of the N. L. R. Act can be conceived than discharge of an employee, because he joined the union . . ."

² See *May Department Stores Company v. N. L. R. B.*, 66 S. Ct. 203.

purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Fred P. Schieman, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our supervisory employees are free to become or remain members of the above-named union. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization.

EDWARD G. BUDD MANUFACTURING COMPANY,
Employer

Dated ----- By -----
(Representative) (Title)

NOTE: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

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

INTERMEDIATE REPORT

Mr. David Cutrin for the Board.

Mr. Albert E. Meder, of *Beaumont, Smith, and Harris*, Detroit, Mich., for the respondent.

Mr. Walter M. Nelson, by *Mr. Bernard E. Konopka*, Detroit, Mich., and *Mr. William Vallance*, Detroit, Mich., for the Union.

STATEMENT OF THE CASE

Upon a second amended charge, duly filed by Foreman's Association of America, Chapter 77, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director of the Seventh Region (Detroit, Michigan) issued its complaint dated May 4, 1945, against Edward G. Budd Manufacturing Company, Detroit, Michigan, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleges in substance that the respondent: (1) from on or about March 19, 1944, did interrogate its supervisory employees as to their membership in and activities on behalf of the Union, did advise, urge, and warn its supervisory employees to refrain from assisting becoming, or remaining members of the Union, threatening them with discharge if they continued such activities, did vilify, disparage, and express disapproval of the Union and threatened to close its plant if the Union did succeed in organizing its Detroit plant; and (2) did discharge Fred P. Schieman and Oscar Owens, and failed and refused to reemploy said employees because of their union activities.

Respondent filed its answer, verified by Robert H. Erwood, its Director of Personnel, on May 11, 1945. The answer includes a motion to dismiss the com-

plaint. The answer admits the allegations of the complaint in respect to the nature and extent of respondent's business and that the Union is a labor organization within the meaning of Section 2 (5) of the Act. As to Schieman, respondent denies that he was discriminatorily discharged. As to Owens, the answer "admits that it laid him off and that it refuses to-reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so, whereupon he was laid off." The answer further admits the allegations of interrogation of its supervisory employees concerning union activities and warnings to desist, but denies that it threatened to close the plant, or vilified the Union.

Pursuant to notice, a hearing was held at Detroit, Michigan, on May 22 and 23, 1945, before the undersigned, Sidney L. Feiler, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by counsel and a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the hearing, respondent renewed its motion to dismiss the complaint. Decision was reserved on this motion. It is disposed of by the findings hereinafter made. Decision was also reserved on respondent's general motion to conform the pleadings to the proof in substantive matters. This latter motion is now denied.¹ At the close of the hearing, counsel for the Board moved to amend the complaint as to formal matters. This motion was granted without objection as to all pleadings. Oral argument was presented on behalf of the Board and the Union, and a brief was filed on behalf of respondent.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The respondent is a Pennsylvania corporation having its principal office in Philadelphia, Pennsylvania. It operates, among others, a plant in Detroit, Michigan, herein called the plant, which plant is the only one concerned in this proceeding. At this plant, respondent is now engaged in, and has been at all times hereinafter mentioned continuously engaged in, the manufacture, sale, and distribution of fabricated steel products, including heavy duty truck bodies, aircraft bomb-bay doors, and miscellaneous stampings. During the year 1944, respondent purchased materials, supplies, and equipment valued at approximately 5 million dollars, of which approximately 10 percent was shipped to respondent's plant, from points outside the State of Michigan. During the same period, respondent's receipts from the sale of fabricated and partially fabricated products, materials, and equipment manufactured at its plant were in excess of 5 million dollars. Approximately 90 percent of such products was sold by respondent to other manufacturing concerns in the State of Michigan, and these

¹ As indicated above, the answer was verified by Erwood, respondent's director of personnel. Counsel for respondent stated that the motion was made with special reference to the testimony of Erwood as elicited by counsel for the Board. Counsel for respondent further stated: "I wouldn't want to be more specific now, without having a chance to read the transcript. I would like to have the right to file a brief, in which brief I will cover that subject if, after receiving the transcript, I determine it is a matter I desire to amend." No discussion concerning the motion is contained in respondent's brief.

manufacturing concerns either further fabricated the said products and sold, transported, and distributed them to purchasers outside the State of Michigan, or incorporated them into their own products which were sold, transported, and distributed in a similar manner.

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

II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter 77, unaffiliated, is a labor organization admitting to membership supervisory employees of the respondent.²

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Foremen at respondent's plant first became interested in self-organization in the early part of 1944. After some communication with the Foreman's Association of America, a chapter was organized. The first meeting was held a few weeks before Easter and Foremen Oscar Owens, Ernest McNary, and Louis Harrison were elected temporary officers.

Robert Erwood, Director of Personnel, learned of the efforts of the foremen to organize.³ He also learned the identities of the officers selected. Prompt counter-measures were immediately taken to stop the organization drive. Erwood summoned Owens, McNary, and Harrison to his office. There, Erwood and Plant Manager Walton questioned them as to their membership in the Union, the offices they held therein, and their reasons for wanting a Union. This meeting occurred about March 29, 1944.

A few days later, the three foremen were called to another meeting with Walton and Erwood. Erwood told them, "you either got to resign as officers of the Union or resign from the Company." Walton added, "You fellows cannot belong to it [the Union] and work for Budd."⁴ They were also requested to stop all organizational activity. The men asked for time to arrive at a decision and the meeting then ended. Subsequently they were pressed for a decision and they finally informed Walton and Erwood that they would resign from office. Later they did so and notified Erwood accordingly.

Subsequently, all foremen, separately or in small groups, were called before Walton, Erwood, and other supervisors and questioned as to why they wanted a union, and what grievances they had. They were also told that they did not need a union, that respondent did not want them to belong to a union, and that respondent was opposed to a union of foremen.⁵

² See *Soss Manufacturing Company, et al*, 56 N. L. R. B. 348; *Packard Motor Car Company*, 61 N. L. R. B. 4.

³ Except where indicated, there was no dispute among the witnesses as to the union activities carried on by foremen and respondent's reaction to those activities. Respondent in its answer has admitted most of its activities as alleged in the complaint. The findings in this section are based chiefly on the testimony of Erwood.

⁴ These findings are based chiefly upon the testimony of Oscar Owens which is credited. Erwood's testimony was not as detailed as to the sequence of events or what was said, but he did testify that the men were asked to resign from office, and that he "inferred" that they would be discharged. His testimony is not at variance with that of Owens.

⁵ Erwood testified that the foremen were not asked whether they belonged to the Union. He further testified, "We assumed, after all, that they did belong to the Union or we wouldn't have had them in the meeting." This is at variance with the admission in the answer that foremen were asked such questions. Erwood also denied that foremen, other than officers of the Union, were threatened with discharge. The answer admits the allegations of the complaint that respondent "did warn and threaten its supervisory employees that they would be discharged unless they resigned their membership in or

It is undenied and, in fact respondent expressly admits, that it was and is strongly opposed to the unionization of its foremen and took direct action to prevent the organization of the Union by direct threats to its leaders and by statements to all other foremen that it was opposed to the Union and did not want them to be members in it. Its conduct constituted interference, restraint, and coercion and is not protected as an exercise of free speech⁶

In its answer respondent urges that the complaint be dismissed for the following reasons:

1. The Board does not have jurisdiction.
2. These foremen are not included within the Act.
3. The foremen involved are not employees within the meaning of the Act.
4. The foremen are employers within the meaning of the Act.
5. Including these foremen within the Act would not effectuate the policies of the Act nor the national welfare.
6. It is not in the public interest to include these foremen within the Act.

The testimony established the fact that the foremen at the plant are supervisory employees who occupy an intermediate position between top management and the rank and file employees. They are in charge of production in their respective departments where they carry out production schedules which have been arranged and blueprinted for them and from which they can only depart in minor matters or in emergencies. All hiring is done through the Employment Office which passes on their requests for help. Foremen can recommend discharges, but those recommendations only become effective after they have been passed upon by the Personnel Department. Foremen have the right and duty of attempting to settle grievances in the first instance, but they are bound by established rules and regulations and the contract between respondent and the Union representing its rank and file employees. Employees who wish to do so have the right to resort to the established grievance procedure and appeal decisions of foremen. In short, foremen are bound by directions from their own supervisors, but in their own departments, as supervisors, they exercise a good deal of discretion in carrying out their orders.

The Board has considered the status of employees in supervisory positions. In the *Soss* case⁷ the Board ruled that supervisors are "employees" within the meaning of the Act and are entitled to protection under Section 8 (1) and (3) of the Act. Respondent argues that the *Soss* decision is wrong and also that it is not controlling in this case. These contentions have been considered in the light of the recent *Packard* decision⁸ where the Board reaffirmed its decision in the *Soss* case and held arguments similar to those now urged as no bar to a petition filed by Foreman's Association of America for certification of representatives of a group of supervisory employees. Respondent's contentions are rejected, and the undersigned finds that respondent's supervisory employees

ceased to engage in activities on behalf of the Union." The undersigned finds that respondent openly expressed its strong opposition to the Union and urged its foremen to withdraw from it and that the statements carried with it the definite threat of reprisal in the supervisory employees continued to organize and was so understood by the foremen. Vincent Depuye testified that Erwood declared at one of the meetings that the plant would be closed before the Union would be recognized. Erwood denied making this statement. Depuye's testimony is credited.

⁶ *N. L. R. B. v. Virginia Electric and Power Co.*, 314 U. S. 469; *N. L. R. B. v. American Tube Bending Co.*, 134 F. (2d) 993 (C. C. A. 2), cert. denied 320 U. S. 768, *Edward G. Budd Mfg. Co.*, v. *N. L. R. B.*, 142 F. (2d) 922 (C. C. A. 3); *Elastic Stop Nut Corporation v. N. L. R. B.*, 142 F. (2d) 371 (C. C. A. 8); *N. L. R. B. v. M. E. Blatt Co.*, 143 F. (2d) 268 (C. C. A. 3).

⁷ *Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348.

⁸ *Packard Motor Car Company*, 61 N. L. R. B. 4.

are employees within the meaning of the Act and entitled to the protection of Section 8 (1) and (3) thereof.

The undersigned concludes and finds that by the remarks of Personnel Director Erwood and Plant Manager Walton, and by the totality of their acts and conduct as found above, respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby commit unfair labor practices within the meaning of Section 8 (1) thereof.

B The discriminatory discharge⁹

Oscar Owens was the leader of the organizing movement among the foremen at the plant. He had been elected temporary president of the Union at its first meeting. Erwood learned of his activities and, as previously related, Erwood and Walton threatened Owens and the other officers with discharge unless they resigned their positions in the Union, withdrew from it, and ceased all organizational activity on its behalf. Owens resigned his position with the Union at a meeting held on April 2, 1944.

On April 14, 1944, Superintendent Montee told Owens that his employment was terminated. Owens complained about the short notice and said, "This doesn't come from you." Montee replied, "Well, I know. You know what it is all about."

Owens then spoke to Erwood and asked to be placed in a production job as a rank and file employee.¹⁰ Owens was a competent employee and, at the time of his application for transfer, there was work to which he could be transferred.

However, Erwood had received word that Owens was still continuing activities on behalf of the Union and he refused to permit Owens' transfer because of the latter's union activities.

The Board alleges that Owens was discharged for his union activities. In its answer, respondent "admits that it laid him [Owens] off and that it refuses to reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so whereupon he was laid off." Erwood, who assisted in the preparation of the answer and who verified it, testified that actually Owens was laid off with some other foremen pursuant to a reduction in force and not because of his union activities.

After the lay-off of Owens, a group of foremen met with Erwood and Walton and protested his lay-off and asked for his reinstatement. This request was refused. Walton declared that Owens was "fired" because he was a liar.¹¹

The undersigned concludes and finds that the union activities of Owens played a part in his selection for lay-off. In any event, there is no dispute that he was refused further employment, which would normally have been offered him, solely because of his union activities. This in itself was a violation of Section 8 (3) of the Act.

C. The alleged discriminatory discharge

Fred P. Schreman had been employed by respondent since 1935. He had been acting as a supervisor since 1940. In March 1943, he became a foreman in the

⁹ The findings in this section are based chiefly on the testimony of Owens and Erwood.

¹⁰ It was respondent's policy to promote from the ranks and also to allow supervisors to return to non-supervisory jobs when there was no work for them as supervisors. Respondent's contract with the rank and file union expressly provided for these transfers.

¹¹ This finding is based upon the testimony of Foremen Dupuy, McNary, and Bimberg, whose testimony is credited. Walton did not testify.

Trim Shop Department A year later, on April 8, 1944, General Superintendent Roberts told him that he would have to take a demotion to a production job. Schieman refused the demotion and asked for and received his release.

The Board contends that respondent was actuated by anti-union bias in its treatment of Schieman. Respondent alleges that Schieman was demoted pursuant to a reduction in force.

Erwood testified without contradiction that the pay roll in the Trim Shop Department decreased from \$28,882.00 in January 1944, to \$24,992.00 in April 1944. Also, it is undenied that the night shift in the Trim Shop Department was eliminated about the time of Schieman's demotion. The undersigned finds that there was a reduction in force in the department at the time of Schieman's demotion.

Even though there was a reduction in force with a consequent need for reduction in the supervisory staff, the basis on which Schieman was selected for demotion must be considered. The supervisory staff was as follows: Superintendent Roberts was in general charge of the department. General Foreman Farr was in active charge of the operations. Schieman was foreman of the day assembly shift. Harold Moss, an assistant foreman, was in charge of the day shift in the sewing room. Norman Marshment, an assistant foreman, was in charge of all operations on the night shift.¹²

Of the three foremen, Schieman, Moss, and Marshment, Schieman was junior in the Trim Shop Department and the only one who did not have trimming experience. Marshment's experience in the department dated from 1938. He became an assistant foreman on March 15, 1943, approximately the same time when Schieman transferred to the department. Moss' experience also dated from 1938, when he was a foreman. He worked in another department from July 16, 1942 until March 26, 1943 when he returned to the department as an assistant foreman.

There was disagreement as to duties of John Spalding. The personnel records of respondent listed his classification as assistant foreman from November 1942 to January 1, 1945. Schieman testified that he displaced Spalding and that Roberts had told him that Spalding could not handle the job. Roberts testified that Spalding, whose experience in the department went back to 1938, actually was working as a trimmer at the time of Schieman's demotion.

Roberts told Schieman that he would have to demote him because of a reduction in force and that he wanted a professional trimmer.¹³ Schieman replied that he would take a release rather than a demotion. Roberts then took him to Joe Andrews, head of the Time Study Department, and tried unsuccessfully to place him there. Farr later handed him his release and said "Fred . . . I wouldn't let that be a quit-slip. I would take it down to Bob [Erwood], because I think he will do something for you, . . . you are too valuable to let go." Schieman went to Erwood and the latter said, "Are you in a hurry for that? . . . Let me take it for a couple of days." Erwood later told Schieman that he could place him only in a production job. Schieman then took the release.

Schieman also complained to Walton that he was "getting a dirty deal." Walton replied, "I don't think so. Roberts talks well of you."

¹² Both Erwin and Roberts testified that assistant foremen and foremen had equal authority and that the only difference between the categories was in the method of compensation, foremen being employed on a salaried basis and assistant foremen, on an hourly basis. Schieman testified that Roberts, at the time of his transfer to the department, told him that he was next in line of authority after Farr and that he did give orders to Moss, but he also testified that it was not necessary to give Moss orders. The testimony of Erwood and Roberts is credited on this point.

¹³ Schieman did not have that experience. This, and the following findings, are based on Schieman's testimony.

Schieman was a member of the Union. His union activity included leaving membership cards on the desks of Farr and Marshment and asked the latter if he wanted to join. Marshment replied that he was not interested.

The undersigned concludes and finds that Schieman was not demoted for union activities, but solely because of a reduction in force. It is true that he had no trimming experience, that none had been required of him when he was transferred, and that he had received no complaints as to his work. However, it is also true that the reduction in force required a consolidation of shifts and that Moss, who took over supervision of the entire day shift, had to supervise the sewing and assembly sections¹⁴. The undersigned is unable to conclude that Roberts' expressed reason for the demotion, i. e., that he needed a professional trimmer, was not the actual reason. Schieman's union activities were of a minor character and not of great significance in the entire picture of organizational activity at the plant. He undoubtedly was doing what others were doing. Respondent, while violently opposed to the Union, was following the course of ridding itself of any of the leaders of the Union who did not stop organizing. There is no proof of any such action against the members as such.¹⁵ The statements and activities of Roberts, Farr, and Erwood in Schieman's behalf indicate a genuine desire to retain Schieman and not get rid of him. The undersigned finds that this charge of discrimination has not been sustained by the evidence.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V THE REMEDY

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

It has been found that the respondent discriminated in regard to the hire and tenure of employment of Oscar Owens. It will therefore be recommended that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. It will be further recommended that respondent make him whole for any loss of pay he may have suffered by reason of respondent's discrimination by payment to him of a sum of money equal to the amount he would have earned as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during said period.¹⁶

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

¹⁴ The foremen retained all had that experience and had longer service in the department but respondent had no fixed seniority rule.

¹⁵ There is no clear evidence to prove that Schieman's supervisors learned of his activities.

¹⁶ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v N. L. R. B.*, 311 U. S. 7.

CONCLUSIONS OF LAW

1. Foreman's Association of America, Chapter 77, unaffiliated, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Oscar Owens, thereby discouraging membership in Foreman's Association of America, Chapter 77, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (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.

5. The respondent by demoting Fred P. Schieman has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Edward G. Budd Manufacturing Company, Detroit, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Foreman's Association of America, Chapter 77, or any other labor organization of its employees by laying off, discharging, or refusing to reinstate any of its employees and from refusing to employ any member of that union or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment.

(b) 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 or assist Foreman's Association of America, Chapter 77, 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 as guaranteed in Section 7 of the Act.

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

(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss in pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement less his net earnings¹⁷ during such period;

(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached to the Intermediaté Report herein, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

¹⁷ See footnote 16, *supra*.

(d) Notify the Regional Director for the Seventh Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the complaint, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Fred P. Schieman be dismissed

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

SIDNEY L. PEILER,

Trial Examiner.

Dated June 23, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist

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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.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Oscar Owens

All our employees are free to become or remain members of the above-named union or any other labor organization. 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.

EDWARD G. BUDD MANUFACTURING COMPANY,
Employer

Dated _____ By _____
(Representative) (Title)

NOTE: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

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