Gafner Automotive & Machine, Inc. *and* Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Cases Nos. 30–CA–158 and 30–RC–153. January 4, 1966

DECISION AND ORDER

On October 26, 1965, Trial Examiner Eugene E. Dixon issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the 8(a)(1) violation constituted grounds for setting aside the election of December 29, 1964. However, having concluded that Respondent previously had refused to recognize and bargain with the Union in violation of Section 8(a)(5), he recommended that appropriate relief be ordered to remedy the refusal to bargain, and that no second election be held. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

1. We agree with and adopt the Trial Examiner's findings that Respondent independently violated Section 8(a)(1) by coercively interrogating employees concerning their union membership, by threatening reprisals, and by granting and promising benefits to discourage membership and activities on behalf of the Union. However, in adopting the Trial Examiner's findings in this regard, we find it unnecessary to pass upon and do not rely upon Office Manager Thiry's statement to employee Allgeyer that the employees did not need outsiders but could get things settled by themselves, and his comment, in response to Allgeyer's reference to picketing, that employees would be "out in the street."

2. We also agree with the Trial Examiner's finding that the Union represented a majority of the employees in the appropriate unit at all

times material herein.[1] Under all the circumstances, including Respondent's serious violations of 8(a)(1) subsequent to the Union's demand for recognition, we find, in accord with the Trial Examiner, that Respondent's refusal to recognize and meet with the Union was not based upon a good-faith doubt of the Union's majority. We find, rather, that Respondent seized upon the Union's filing of a representation petition as an excuse for avoiding its obligation to bargain, in order to gain time to undermine the Union's majority. Accordingly, we find that Respondent violated Section 8(a)(5) of the Act.[2]

[The Board adopted the Trial Examiner's Recommended Order and dismissed the petition for certification of representatives in Case No. 30–RC–153 and vacated all proceedings held thereunder.]

---

[1] Finding that the appropriate unit consisted of at least 18 employees, but that the Union had majority status even if three disputed employees were included, the Trial Examiner did not determine the unit placement of the three However, the record clearly shows that one of the disputed individuals, Barry Gereau, should be included, and the remaining two, Richard Cousineau and his wife, Leona, should be excluded. Thus, Gereau's duties as parts controller are functionally related to continued operation of production equipment, require contacts with production employees, and plainly reveal a community of interest with unit employees On the other hand, Richard Cousineau, who works on a sporadic or intermittent basis, is excluded under the Board's established policy with respect to irregular, part-time employees, *Haag Drug Company, Incorporated,* 146 NLRB 798, 800. Similarly Cousineau's wife, being a janitress who once a week cleans the office after normal working hours, is within a category customarily excluded from a production and maintenance unit, *J. Heber Lewis Oil Company, Inc*, 123 NLRB 1115, 1116 Accordingly, we find that at all times material herein the appropriate unit included 19 eligible employees

At the hearing, 13 union authorization and membership applications were authenticated and introduced as evidence of the Union's majority. Respondent, without disputing the authenticity of the signatures appearing on these cards, contends that nine were improperly induced because the employees involved were informed that as a new group the initiation fee would be $25 rather than the customary $84 In agreement with the Trial Examiner we do not believe that the record supports Respondent's contention that this reduction was coercive. The evidence does not disclose that the reduced rate was improperly limited or conditioned in any way, as it appears to have been available to all of Respondent's employees without restriction. In these circumstances, we cannot find that the reduction constituted an improper economic inducement or a basis for negating the *prima facie* validity of these designations. *Edro Corporation and Anasco Gloves, Inc*, 147 NLRB 1167, enfd. 345 F. 2d 264 (C A. 2), *Von Der Ahe Van Lines,* 155 NLRB 126. Additionally, Respondent contests the cards signed by employees Allgeyer, Makosky, Koehler, and Donald Cousineau, contending that their signatures were obtained by misinformation as to the number of employees who had already signed cards. With respect to Allgeyer, Makosky, and Koehler, Respondent's contention is not substantiated since the record shows that the statements involved were in plain reference to those employees who had, in fact, either already signed or previously indicated their intention to join the Union. Although certain ambiguities exist with respect to execution of Cousineau's card, they need not be resolved; for, having sustained the validity of 12 authorizations in a unit of 19 employees, the status of that card can have no bearing upon our decision herein.

[2] As we agree with the Trial Examiner that a second election is unnecessary, we shall dismiss the petition in Case No 30–RC–153 and order that all proceedings in connection therewith be vacated.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard before Trial Examiner Eugene E. Dixon at Escanaba, Michigan, on April 6 and 7, 1965, pursuant to

due notice with the General Counsel and Respondent represented by counsel. The complaint was issued on February 26, 1965, by the Regional Director for Region 30 of the National Labor Relations Board on behalf of its General Counsel, herein called the General Counsel and the Board. It was based upon charges filed on January 4 and February 15, 1965, by Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and alleges that Respondent had engaged in unfair labor practices proscribed by Section 8(a)(1) and (5) of the Act. The substance of the allegations was that Respondent had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act by various specified conduct and had refused to bargain with the duly-designated bargaining agent of an appropriate unit of its employees.

In its duly filed answer, Respondent denied any violation of the Act.

In addition to the unfair labor practice matter, the complaint herein was consolidated with a hearing on the matters of whether or not the employees had been afforded a fair and free choice in a representation election which had been conducted by the Board on December 29, 1964, and which the Union lost by a vote of 8 to 10, and on 3 challenged ballots therein.

A motion to correct the record was made after the close of the hearing by way of stipulation and is hereby granted.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent is a Michigan corporation maintaining its principal office and plant at Escanaba, Michigan, where it is engaged in the manufacture of log-loading machinery. During the calendar year preceding the issuance of the complaint, a representative period, Respondent purchased directly from points outside the State of Michigan products valued in excess of $50,000. At all times material herein, Respondent has been an employer as defined in Section 2(2) of the Act, engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

On November 23, 1964 (all dates are in 1964 unless otherwise noted) a group of nine of Respondent's employees went to the union hall in Escanaba to join the Union.[1] At that time the entire group signed authorization cards and applications for membership in the Union.[2] One of the employees paid the full initiation fee at this time while the others each paid $10 toward the $25 fee which had been reduced to that amount from $84 as a group discount to the employees for a 2-week period. At the time these people met with the union officials and prior to signing their authorizations and membership applications, they were told that if the employer would not agree to recognize the Union as their bargaining agent, there would be a representation election. One of the assembled employees "spoke up, and he said if we lost, then who gets the—how do we get the $25 back?" The union official answered him, "If you have any doubt in your mind, forget it."

In addition to the nine who joined at the hall at this time, two other employees were solicited by a fellow employee and signed up on that same day, one being a

[1] There had been discussion among the employees prior to this and the consensus was that they wanted to have a union represent them.

[2] They signed two different forms, one unequivocally designating the Union as bargaining agent and specifically authorizing the Union "to conduct negotiations with respect to wages, hours and all conditions of employment and to represent him in all lawful subjects of collective bargaining and to request and seek recognition as his collective-bargaining agency." The other form was an application for membership in the Union, further designating the Union as the employee's collective-bargaining agent and also indicating the amount paid on the application and the balance due

former member of the Union who had a withdrawal card and was thus not subject to the current initiation fee. Two more employees joined the Union on November 25 and paid $10 each toward their initiation fees at that time. Thus, as of November 23, 11 of Respondent's employees had joined the Union, and as of November 25 the number had been increased to 13.

Respondent admits that the unit described in the complaint is an appropriate unit for the purposes of collective bargaining. That unit is composed of "all production and maintenance employees, including truckdrivers, employed at Respondent's plant located at 2301 Ninth Avenue, North Escanaba, Michigan, exclusive of office clerical employees, and professional employees, guards and supervisors as defined in the amended Act."

At all times material herein, there were at least 18 employees in the above unit, and 21 if the 3 employees whose ballots were challenged in the election were to be included in the unit as Respondent contends they should be.[3] Thus, it is apparent that even including the three challenged employees in the unit, the Union at all times material represented a majority of Respondent's employees.

Respondent would negate the validity of these authorizations by reason of the comments made to the employees before they signed their authorizations and applications regarding the possibility of an election and also by reason of alleged misrepresentations made to some of the prospects regarding the number of people who had already signed.[4] It seems to me that considering the clear and unequivocal wording of the instruments signed by the employees and the fact that they were willing to back up their applications with money toward their initiation fees[5] clearly shows the employees' intention to join the Union and negates any coercion here.[6]

On November 24, the Union wrote Respondent by certified mail that it represented a majority of employees in the bargaining unit which it described in its letter, offered to permit a card check to verify the majority status, and requested a date for negotiations. On the same date, Union Representative Dunlap took a copy of this letter to Respondent's office where he presented it to President Emil Gafner, in the presence of Tom Gafner, Emil's son and Respondent's vice president. Dunlap told the Gafners that the Union represented a majority of the employees. Emil Gafner said, "This is a pretty sneaky way of doing this, isn't it?", and added, "I guess not to you." Then he asked Dunlap if he wanted to buy the place and asked if all his employees had "signed up." Dunlap replied, "Most of them. The letter that you have will tell you which ones we represent or which unit."

On November 25, the Union filed a representation petition with the Board.

On November 27, Dunlap called Emil Gafner and asked if he wanted the designation forms brought over to him or whether he wanted to come over to the union hall for the purpose of making a signature check.[7] Pursuant to this call, Tom Gafner went to the union hall where he examined the designations and signed the following statement:

> On November 27, 1964, I the undersigned reviewed union certification forms for the following named employees of Gafner Automotive & Machine Company.
>
> | | | |
> |---|---|---|
> | Donald Benoit | Rodney Thomma | Richard Puddy |
> | Clarence Allgeyer | Russel Wery | Ward Stiemert |
> | Wilfred Groleau | Robert Makosky | Merle Valind |
> | Lon Jackson | Donald Palmgren | |
>
> Signed Tom Gafner

[3] These employees were Barry Gereau, Richard Cousineau, and his wife, Leona Cousineau. The issues of their challenges I do not decide since, as will be seen, I find that even if they were in the unit, the Union represented a majority of the employees in the unit at all times material.

[4] In this connection Donald Palmgren, who solicited some of the signers, admitted that he had indicated to them that a group of employees either had already signed or that they intended to sign. He testified that "their intentions were to sign anyway, and they did."

[5] This reduction in the regular initiation fee was not coercive or illegal.

[6] As for the possibility of an election, while the Union's answer to the inquiry about a refund of the $25 initiation fee may be subject to varying interpretations, it seems to me that the most logical one (since the remark was made before the employees signed the applications) is that if the employees had any reservations or question about joining the Union they should simply "forget" the whole matter.

[7] Tom Gafner had gone to the union office after lunch on the 24th for this purpose, but apparently was unable to get the cards because only the office secretary was present at the time.

On November 28, Dunlap wrote Respondent by certified mail referring to the signature check which had been made by Tom Gafner the day before and enclosed copies of each of the designation forms signed by the 11 employees whose cards Tom had inspected, plus 2 more that had been signed on the 25th. The Union's letter closed with the following paragraph:

> Having established proof of our majority, it becomes your duty to bargain and we would suggest meeting on Friday, December 4. Unless otherwise advised, we shall contact you at that time.

On November 30, the Union received the following letter from Respondent's counsel:

> Your letter of November 24, 1964, requesting recognition for certain of the above-named Company's employees has been referred to me for reply.
>
> Since we have been informed by the National Labor Relations Board that on November 25, 1964, you petitioned the Board for certification as the representative of this Company's employees, it would appear appropriate to let the Board dispose of the question of representation raised in your letter by the conduct of a secret ballot election.

On December 1 Dunlap called Respondent and asked for a meeting on December 4. Gafner told Dunlap that he did not know much about labor and would talk to his attorney. Whether a meeting was agreed upon at this time or subsequently does not appear. It would seem that one must have been contemplated in view of Dunlap's testimony that they did not meet on December 4 because he had a cold and had called Gafner saying he would write a letter requesting another meeting date. In any event, on December 8 Dunlap wrote the following letter to Respondent with a copy to Respondent's counsel:

> In furtherance of our letter of November 28, 1964, and my phone conversation with you on December 4, 1964, I am requesting a meeting date to commence negotiations.
>
> In reference to Mr. Hoebreckx's letter concerning the forthcoming National Labor Relations Board election, we are agreeable to the election for the purpose of certification. However the impending election does not relieve the Employer of his duty to bargain where a union has established proof of its majority.

On December 9, Respondent's counsel wrote the Union as follows:

> Following the filing of your petition for certification in the above-entitled case, the Company has agreed and the arrangements have been made for the conduct of a secret ballot election among the employees of Gafner Automotive and Machine, Inc., for December 29, 1964. While I understand that you have displayed to certain company officials some openly executed authorizations, we are of the view that a secret ballot election is the best evidence of the free choice of the employees.
>
> Under these circumstances, we must decline your request for negotiations pending the outcome of the certification election.

On December 14 the Union executed the consent-election agreement.

The Board has recently held in effect that absent any overt evidence of bad faith an employer is entitled to have his employees' choice of a bargaining agent made through a Board election. *John P. Serpa, Inc.*, 155 NLRB 99. Whether under foregoing facts and absent any other evidence, it could be said that this is the kind of situation contemplated by the Board in the *Serpa* case is unnecessary to decide since there is ample additional evidence as will be seen which impugns Respondent's good faith here in insisting on an election and which shows that Respondent has refused to bargain with the Union in violation of Section 8(a)(5) of the Act.[8]

B. *Interference, restraint, and coercion*

Several employees testified that a day or so after Respondent had been informed by Union Representative Dunlap that the employees had designated the Union as

[8] I have already rejected Respondent's defenses regarding the validity of the Union's authorizations by the employees. Nor does the mere filing of a representation petition relieve the employer of his duty to bargain, absent any good-faith doubt of majority status. *Galloway Manufacturing Corporation*, 136 NLRB 405; *Permacold Industries, Inc*, 147 NLRB 885. Moreover, the filing of a petition does not constitute an irrevocable commitment by the Union to establish its majority by a representation proceeding. *Arts & Crafts Distributors, Inc.*, 132 NLRB 166; *Bernel Foam Products Co., Inc.*, 146 NLRB 1277.

their collective-bargaining agent, Emil Gafner came into the plant and angrily addressed himself to several of them. A composite of this direct testimony attributed the following remarks to Gafner: It was a "low blow that the men would join the Union, and he didn't know why the men didn't come to him first." He said, "You guys want my business . . . I'll give you the business." "If you want to work like Harneschfeger (a unionized employer in the area) I'll show you how they operate." He told them that "there will be no more visiting." He also said, "If he caught two guys talking to each other, why, out the door they'd go . . . he didn't want . . . two men together at any time." He said that if the Union got in "the part-time help would be all through," [9] or that "the part time men may be out of a job." He further said, "From now on, you will be working for the Union. You won't be working for Emil Gafner."

None of the foregoing testimony was specifically denied by Gafner. As to his comments he testified as follows:

> Well, this happened the day after I received the notice there, and the first thing I came into my office that morning, I usually go out in the plant, and say good morning to the boys. As soon as I stepped out of the plant—into the plant, rather, the first thing I saw was two bunched together not at their stations, bunched together, and I just blew up. And I knew they were speaking about anything but their job. . . . It was Puddy and I believe it may have been Lon Jackson, but I'm not absolutely sure on Lon, because I walked by too fast. I mentioned to Puddy, I said, "Goddamn you guys, go to your post and stay at your post, and if I catch any of this here bunch together off your jobs, there's the door" I says, "and you'll have to find your way to get back in." And from there, I went all through the plant which I knew in the other corner, which is 250 feet away to a half block, where Bud Groleau is suppose to be in his station, we had stations, and the machine shop is on the opposite end, which Ward Stiemert and a few of the others—everytime I'd go out, they be visiting in this corner by Groleau's. I am paying these guys by the hour to stay on their machines or stations it only requires one man. As I walked through—its been happening all the time for the past month before that. They've been clicking together, and the production was down. And that morning I really blew up, which I don't do very damn often. And I went to Bud Groleau and I mentioned to Groleau the same way. I says, "By God, you guys stay on your station. If I see any two men in the station, there is the door. You guys wants to work like a union shop, its going to be run like a union shop."

Respondent apparently would excuse Gafner's orders cutting down on the give and take between employees on the grounds that Gafner was angry. This I reject as a defense. I also deem it immaterial whether Gafner's threat regarding the loss of employment by the part-time employees was attributed to the Union or not.

The undenied and credited evidence further shows that on or about the same day that Emil Gafner was indulging in the foregoing remarks to the employees his son, Tom Gafner, asked several of the employees if they had joined the Union. According to the testimony of Don Cousineau, when Tom asked him if he had joined the Union, he told Tom that he did not know anything about it. Tom then asked if he was going to join and Cousineau replied that he was. Tom said, "You better not" and walked away. According to Cousineau's further testimony, he had several other conversations with Tom Gafner between this time and the election. Tom would ask what he knew about the Union, if he knew how unions operated. Tom made the statement that if the Union came in, the employees would be on strike—that the Union would demand more than the Company could afford to pay. He further told Cousineau that if they "go for the Union, his Dad wouldn't let it in. . . . Any other union, he would have okayed."

Another employee, Russell Wery, testified about a conversation with Tom Gafner about a week after the Union had first requested recognition. It was snowing outside and Wery had said to Tom that it looked cold. Tom replied, "Yes, it's going to be a lot colder yet when you're out there carrying them signs around." Tom

[9] This statement was attributed to Gafner by Robert Makosky. On cross-examination Makosky testified that he believed that Gafner had said that the Union would not permit part-time employees to stay on the job. Makosky also testified that Gafner talked to him alone and asked him if he belonged to a union on his other job. (Makosky was a part-time employee of Respondent and had a full-time job elsewhere.) Gafner told him that he did not have to join the Union, but that it was his right to do so. He further said that he hoped there was no hard feelings between them

then asked Wery why the employees had picked the Teamsters. Wery asked Tom, "What was wrong with the Teamsters?" Tom replied that "Some other union might get in here, but not the Teamsters."

On December 19, Respondent gave a Christmas party for the employees. Emil Gafner spoke on this occasion reviewing the development of the Company and relating how he got into the automotive business. At this time, according to the testimony of Donald Cousineau and Clarence Allgeyer, Gafner also announced that the employees were going to start receiving hospitalization insurance for a Christmas present, and also Christmas as a paid holiday for the first time.[10] The substance of the foregoing testimony was substantially admitted by Gafner in his own testimony.

According to Russell Wery's further undenied and credited testimony, at the Christmas party Tom Gafner told him that if the Union came in he would have "to do a lot better work." Wery asked Tom why no mention of work had ever been made in this manner to him before but received no reply. Tom also told him on this occasion that "There was going to be a lot less trips to the washroom, too." Wery further testified without denial and credibly that the day after the election Tom greeted him and receiving no reply from Wery said, "No use being sore because you lost the election. . . . I think things will be better this way." Tom then added, "You guys got what you went for anyhow."

Clarence Allgeyer testified that early in December, Office Manager Nicky Thiry (an admitted supervisor) had offered him "some words to the wise, I wouldn't go along with the union deal." Donald Cousineau also testified that one Friday at a tavern, Thiry had said that the employees "could settle things among themselves" and that they "didn't need any outsiders" to do the employees' bidding. Either at this time or at another unidentified time, according to Cousineau's further testimony, Thiry also had said that the employees would "be out in the street and the wind blows cold out there." This testimony stands undenied in the record since Thiry was not called as a witness.

According to Allgeyer's further undenied and credited testimony, Production Foreman John Flinn had told him that the employees should have talked to Emil Gafner instead of the Union and that he "was afraid that Emil would close the door."

The foregoing evidence is replete with illegal interrogation, threats of reprisals or reprisals, promises of or the grant of benefits, all for the purpose of influencing the employees in the exercise of rights guaranteed them in the Act and all prohibited by Section 8(a)(1) of the Act. Specifically, I find the following to be in this category:

1. Emil Gafner's restriction on employees visiting.
2. The threat of loss of employment to the part-time employees.
3. His interrogation of Makosky whether he belonged to a union in his other job.
4. His announcement at the Christmas party of the new paid holiday and his promise at that time of hospitalization insurance for the employees.[11]

---

[10] Wilfred Groleau testified that in his Christmas speech, Gafner had said that he was working on a hospitalization plan which the employees might have by the first of the year. According to Groleau's further testimony, Gafner also told them at this time that the insurance program had been "in the making . . . before the election deal came up . . . ." As for the holiday pay, the first Groleau heard of it, according to his testimony, was when he received his check Another employee who worked part time, Robert Makosky, testified that he had asked Gafner how much his Christmas holiday pay was going to be, and that Gafner replied that he could not tell him until after the election.

[11] Respondent defends in this matter on the grounds that the matter of the insurance had been inaugurated prior to the appearance of the Union The evidence shows that an insurance agency tried to sell Gafner on a group policy as early as June 1963 and again in June 1964 According to Gafner's testimony, he asked in June 1964 that a proposal be drafted but, inconsistently, also told the agent at the same time "to hold off" because he was going to Europe and wanted the program set up "for New Years" When he got back from Europe according to Gafner's further testimony he called the agent but was unable to reach him because he was at his hunting camp The hunting season started "about the 15th" of November and ran until the 30th. However, Gafner was able to get in touch with the agent after the season ended and then "got the proposal" which would start an insurance plan for the first of the year.

The agent testified that not only had he called on Gafner in June 1964 but also in August 1964. In August Gafner "indicated that he wasn't ready at that time" and told the agent that he would contact him when he wanted to see him again It was "approximately the 20th or so" of November when Gafner finally called him The matter apparently became urgent at this time because the agent contacted his home office by tele-

5. Tom Gafner's interrogation of Don Cousineau
6. His threats to Cousineau that he "better not" join the Union.
7. The statement to Cousineau that his father would not accept the Union.
8. A similar comment by Tom Gafner to employee Wery.
9. His statement to Wery at the Christmas party that if the Union came in Wery would have to do "a lot better work" and that there would be less trips to the washroom.
10. Nick Thiry's words of counsel to Allgeyer about not going along with the union deal clearly implying a reprisal if he did.
11. Thiry's further comment to Allgeyer that the employees did not need any outsiders to do their bidding and that they could get things settled among (by) themselves thus implying a promise of benefit for rejecting the Union.[12]
12. Thiry's threat to Allgeyer that the employees would "be out in the street."
13. Production Manager Flinn's comment to Allgeyer about being afraid that Gafner "would close the door" because the employees had talked to the Union rather than going to Gafner.

The foregoing evidence [13] clearly shows Respondent's rejection of the collective-bargaining principle and its desire to gain time in which to undermine the Union. Accordingly, I find that its refusal to recognize the Union and its insistence on an election was a refusal to bargain within the meaning of Section 8(a)(5) of the Act. *Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd. 185 F. 2d 732 (C.A.D.C.).

C. *The objections to the election*

It is clear from the foregoing that there is merit in the Charging Party's objections to the election and that the election should be set aside. I so recommend. However, in view of my finding of a refusal to bargain under Section 8(a)(5) and my Recommended Order in that connection, I do not recommend that a new election be held.

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 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 conduct interfering with, restraining, and coercing employees in the exercise of rights guaranteed in the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent refused to bargain with the Union which represented a majority of the employees in an appropriate unit. Accordingly, I shall recommend that upon request Respondent be ordered to bargain with the Union as the exclusive representative of the employees in the appropriate unit.

---

phone to secure a proposal to present to Respondent The agent testified that it normally takes the home office from 2 to 7 days to comply with such a request In this case the home office's covering letter which contained the proposal commenced with the statement that "Fortunately, we were able to get at this right away" The letter was dated December 2 and was received by the agent on the 4th or 5th The inference is clear from the foregoing testimony that whatever Gafner's intentions were regarding group insurance for his employees, it was the Union that provided his incentive to take action. I so find.

[12] This was borne out by Tom Gafner's comment to Wery that the employees had got what they had been after by seeking the aid of a union

[13] The General Counsel also alleged that Respondent had engaged in surveillance of its employees' union activities and adduced evidence in support of the allegation This evidence amounts to the testimony of two employees who, when they arrived together one evening at a union meeting, saw Tom Gafner parked in his automobile about a half block from the union hall. As the two entered the hall Gafner drove off While there is a suspicion of surveillance here, I do not believe that the evidence is sufficient to make such a finding.

In view of the foregoing findings of fact, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. At all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.
2. At all times material herein, Respondent has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
All production and maintenance employees, including truckdrivers, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act
3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.
4. By refusing to bargain with the Union, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in the case and the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, Gafner Automotive & Machine, Inc., its officers, agents, successors, and assigns, shall:
1. Cease and desist from
(a) Refusing to bargain with Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.
(b) Illegally interrogating its employees about their union activities or inclinations or threatening them or imposing upon them reprisals or promising and granting them benefits for the purpose of influencing their union activities or sympathies.
(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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 is affected by the provisions of Section 8(a)(3) of the Act, as amended.
2. Take the following affirmative action which I find will effectuate the policies of the Act
(a) Upon request, bargain collectively with Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all its production and maintenance employees, including truckdrivers, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.
(b) Post at its plant in Escanaba, Michigan, copies of the attached notice marked "Appendix" [14] Copies of said notice, to be furnished by the Regional Director for Region 30, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 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 such notices are not altered, defaced, or covered by any other material.

[14] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

(c) Notify the Regional Director for Region 30, in writing, within 20 days from the date of receipt of this Trial Examiner's Decision, what steps the Respondent has taken to comply herewith.[15]

[15] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, an in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain, upon request, with Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All of our production and maintenance employees, including truckdrivers, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT interrogate employees as to their union interests and activities in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.

WE WILL NOT threaten employees with reprisals or promise or grant them benefits for the purpose of influencing their union activities or sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Teamsters and Chauffeurs Union, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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 the provisions of Section 8(a)(3) of the Act, as amended.

GAFNER AUTOMOTIVE & MACHINE, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 230, 744 North Fourth Street, Milwaukee, Wisconsin, Telephone No. 272–8600, Extension 3866.

International Union of Operating Engineers Local No. 571 AFL–CIO *and* V. E. Casler and M. W. Casler d/b/a Casler Electric Company and International Brotherhood of Electrical Workers Local No. 1525, AFL–CIO.

Case No. 17–CD–79. January 3, 1966

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges under