

WE WILL NOT threaten employees with the closing down of Midwestern Engine and Equipment Co., Inc., the loss of their jobs, withdrawal of benefits accorded to younger employees, and other reprisals, to defeat employees union organizing activity, assistance to Local 627, or authorization to Local 627 to act as their collective-bargaining representative.

WE WILL NOT promise employees increases in wages or other benefits to defeat their union organizing activity, their assistance to Local 627, or their authorizations to it to act as their collective-bargaining representative.

WE WILL NOT conduct individual conversations with employees to solicit them to vote against Local 627 in a Board-conducted election.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local 627 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 membership in a labor organization as a condition of employment as authorized in Section 8(a)(3), of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become or refrain from becoming members of International Union of Operating Engineers, Local No. 627.

MIDWESTERN MANUFACTURING COMPANY, INC.; MIDWESTERN
ENGINE AND EQUIPMENT CO., INC.; AND MIDWESTERN PIPE-
LINE PRODUCTS COMPANY,

Employer.

Dated----- By-----
ARMON H. BOST, *President*

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, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, Telephone No. 335-4211, Extension 2145.

General Motors Corporation and Paul Joseph Goldener

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW-AFL-CIO (General Motors Corporation) and Paul Joseph Goldener. *Cases Nos. 31-CA-29 (formerly 21-CA-6263) and 31-CB-10 (formerly 21-CB-2427). June 9, 1966*

DECISION AND ORDER

Upon charges filed by Paul Joseph Goldener, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, on January 14, 1966, issued a consolidated complaint against Respondent General Motors Corporation and Respondent International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW-AFL-CIO. Copies of the charges and the consolidated complaint and notice of hearing before a Trial Examiner were duly served upon the Respondents and the 158 NLRB No. 149.

Charging Party. In substance, the complaint alleged that Respondent Employer and Respondent Union had violated and were violating Section 8(a) (1) and (b) (1) (A), respectively, of the National Labor Relations Act, as amended, by maintaining a collective-bargaining agreement containing a provision which unlawfully restricts the right of employees to distribute union literature on the Employer's property. The answers duly filed by Respondent Employer and Respondent Union substantially admit the jurisdictional and factual allegations of the consolidated complaint, but deny the commission of any unfair labor practices.

On or about January 24, 1966, the Charging Party, counsel for the General Counsel, the Respondent Employer, and the Respondent Union entered into a stipulation and a joint motion to the Board. The stipulation recited the jurisdictional facts; the facts relevant to the complaint in the consolidated cases; and the agreement of the parties that the charges, the order of consolidation, the complaint and notice of hearing, the answers of the Respondents, and the stipulation and motion shall constitute the entire record in the consolidated cases, and that no oral testimony was necessary or desired by the parties. The parties further stipulated that they waived a hearing before a Trial Examiner, the ruling on motions by a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision, and that they desired to submit these cases directly to the Board. The parties further petitioned the Board to transfer the cases to the Board.

On February 7, 1966, the Board approved the stipulation, granted the motion, and ordered the proceedings to be transferred to the Board. Thereafter, the Charging Party, the General Counsel, the Respondent Employer, and the Respondent Union filed briefs which the Board has considered.

Upon the entire record in these cases, the Board hereby makes the following:

I. FINDINGS OF FACT

A. *The business of Respondent Employer*

General Motors Corporation is a Delaware corporation engaged in the manufacture and assembly of automobiles at numerous plants located in various States of the United States. Respondent Employer maintains a plant at 8000 Van Nuys Boulevard, Van Nuys, California. Annually, in the course and conduct of its business operations, Respondent Employer purchases goods valued in excess of \$50,000 which it causes to be transported to its various plants directly from States other than those in which said plants are located. Annually, in the course and conduct of its business operations, Respondent

Employer sells and ships products valued in excess of \$50,000 directly to firms located outside the State in which said goods are manufactured or assembled. Respondent Employer admits, and we find, that it is now, and at all times material herein has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction in this proceeding.

B. The labor organization involved

The answer of Respondent International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW-AFL-CIO, admits, the stipulation provides, and we find that Respondent Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

C. The unfair labor practices

Since November 10, 1964, and at all times material herein, Respondents have maintained in effect a collective-bargaining agreement, effective until September 6, 1967, which covers production and maintenance employees at those plants of Respondent Employer located throughout the United States, including the said plant at Van Nuys, California, containing, *inter alia*, the following provisions:

(92) The plants covered by this Agreement will erect bulletin boards which may be used by the Union for posting notices bearing the written approval of the President of the Local Union or the Chairman of the Shop Committee and restricted to:

- (a) Notices of Union recreational and social affairs.
- (b) Notice of Union elections.
- (c) Notices of Union appointments and results of Union elections.
- (d) Notices of Union meetings.
- (e) Notices concerning bona fide Union activities such as: Cooperatives; Credit Unions; and Unemployment Compensation information.
- (f) Other notices concerning union affairs which are not political or controversial in nature.

The Union will promptly remove from such Union bulletin boards, upon the written request of management, any material which is libelous, scurrilous, or detrimental to the labor-management relationship.

(93) The number, location and size of such bulletin boards in each bargaining unit under this Agreement shall be decided by the Local Management and the Shop Committee.

(94) There shall be no other general distribution, or posting by employees, of pamphlets, advertising or political matter, notices, or any kind of literature upon Corporation property other than as herein provided.

In *General Motors Corporation*, 147 NLRB 509, we found that these Respondents violated Section 8(a)(1) and (b)(1)(A), respectively, by maintaining a provision similar to the present paragraph 94 insofar as the contract prohibition extended to the distribution of literature on behalf of labor organizations other than the Respondent Union. We rested this conclusion on the reasons set forth in *Gale Products, Div. of Outboard Marine Corp.*, 142 NLRB 1246, where we recognized the salutary purpose of refusing to disturb "concessions yielded by either party through the processes of collective bargaining even where such a concession may infringe upon rights guaranteed employees under Section 7 of the Act." But we also pointed out that the validity of a particular concession or waiver must depend upon whether the interference with the employees' statutory rights is so great as to override any legitimate reasons for upholding the waiver, or would unduly hamper the employees in exercising their basic rights under the Act. Accordingly, we found in *General Motors*, as in the earlier *Gale Products* case, that neither an employer nor an incumbent union is entitled to attempt to freeze out another union by waiving the employees' right to urge a change in their collective-bargaining representative.

We must again point out, as we did in *Mid-States Metal Products Inc. (Local 738, International Chemical Workers Union)*, 156 NLRB 872, that employees also have the right to completely revoke their earlier selection of a collective-bargaining representative at an appropriate time, and revert to individual bargaining or no bargaining at all.

Since we may not have adequately explicated the full sweep of our reasoning in the earlier *General Motors* case, we now emphasize that the Act commands us to protect the employees' statutory right at appropriate times to review and reconsider their former selection of a union as their collective-bargaining representative, either by replacing it with another union or by completely abandoning collective bargaining. Although enforcement was denied in the previous *General Motors Corporation* case, 345 F. 2d 516 (C.A. 6), and with due respect for the court's opinion, we nevertheless adhere to our conclusion in that case, for reasons amplified herein.

We recognize fully the importance of preserving the integrity of the collective-bargaining contract, and of encouraging labor and management to reach an effective voluntary agreement through the proc-

ess of negotiation, even though that agreement might involve a barter by the union of certain rights of the employees for the purpose of obtaining certain benefits for them. We are also keenly aware, however, of the advantage that accrues to an incumbent union, and perhaps to an employer, from an agreement which prohibits employees from opposing the union by using the customary and vital channel of communication proscribed by the contract under consideration.

This factor may be worthy of further comment. In a case involving the same problem as this one, it has been suggested that, presumably, ". . . the union obtained from [the employer] a *quid pro quo* for its assent to the clause." *Armco Steel Corporation v. N.L.R.B.*, 344 F. 2d 621, 623 (C.A. 6). It may be that, in this case, the bulletin boards which the Employer agreed to provide were, in a sense, a *quid pro quo* for the Union's agreement in paragraph 94 to refrain from the distribution of literature, or that, perhaps, other *quid pro quo* benefits were conferred. But to treat the clause as simply the result of an arms-length transaction, as if the Union were constrained to "assent" to a clause which so clearly advantages the Union (in its capacity as a union) at least as much as it serves the purposes of the Employer, seems somewhat unrealistic to us. The clause has the natural, and, to the Union, beneficent effect of barring disaffected employees from contacting their fellows in ". . . the one place where they clearly share common interests and where they traditionally seek to persuade fellow workers in matters affecting their union organizational life . . ." (*Gale Products, supra* at 1249). That this interdiction furthers the organizational interests of the incumbent union is unmistakably apparent.

The authority of a collective-bargaining representative to make decisive and binding commitments on behalf of the employees for whom it speaks is undisputed and not in issue here. But the union and the employees are and remain separate entities for many purposes, and the employees, by once selecting the union as their representative, do not forfeit their fundamental right to change their representative at appropriate times. When a union acts to abridge that right in the manner presented in this case, it is essentially benefiting the union *qua* union, to the detriment of the employees it represents. There surely are limits to a union's power to waive the individual statutory rights of employees; a provision in a contract, however otherwise advantageous to the employees, in which the union promised that the employees would not, during the term of the contract, file a petition for decertification, would be clearly invalid. The present effort to debar employees, in a significant way, from their legal right to encourage a change of union representative similarly infringes upon a right deeply rooted in the Act: the employees' free-

dom to change their bargaining agent. This attempt to impede that free choice, unmitigated as it is by any persuasive countervailing considerations, must be held invalid.

The Respondents argue, however, that the decision of the Court of Appeals for the Sixth Circuit in the earlier *General Motors* case is *res judicata* in this proceeding. They point out that three of the principal parties (the General Counsel, the Employer, and the Union) are the same, and that the contract provision upon which the present finding is based is identical to that found lawful by the court in the prior decision. We do not consider the doctrine of *res judicata* to be applicable here. One essential difference between the two cases is that the no-distribution rule adjudicated in the first case was provided for in a different contract, separate and distinct from the one which imposes the restraint here condemned. In *Commissioner of Internal Revenue v Sunnen*, 333 U S 591, the parties, in an earlier proceeding, had litigated to finality the tax consequences of a separate contract, which was however identical in form to the contracts then before the Court. The Court held that where the second proceeding involved an instrument or transaction "identical with, but in a form separable from, the one dealt with in the first proceeding," the parties are not bound by *res judicata* or collateral estoppel, and the tribunal in the second proceeding is free to make an independent examination of the legal matters in issue (333 U S at 601). In the present case, the Respondents are maintaining the no-distribution rule under a new contract, not the old contract which gave rise to the earlier case considered by the Court of Appeals for the Sixth Circuit. By analogy to the reasoning of the *Sunnen* case, it follows that the parties are not bound by the result reached in the previous *General Motors* case.

Furthermore, one of the elements necessary to the application of the doctrine of *res judicata* is that the identical parties, or their privies, be involved in both proceedings. Different charging parties have initiated these two cases. While it might be argued that the individual Charging Party in this proceeding, and all employees who are similarly situated, are but nominal parties and were in theory represented by the General Counsel in his enforcement of the "public right" in the first case, we take note of the recent discussion by the Supreme Court, in *International Union, UAW, Local 283 v Scofield*, 382 U S 205, 218, 220, concerning the status of a charging party in a Board case.

In prior decisions, this Court has observed that the Labor Act recognizes the existence of private rights within the statutory scheme. These cases have, to be sure, emphasized the "public

interest" factor To employ the rhetoric of "public interest," however, is not to imply that the public right excludes recognition of parochial private interests

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In short, we think that the statutory pattern of the Labor Act does not dichotomize "public" as opposed to "private" interests Rather, the two interblend in the intricate statutory scheme

An employees' freedom to express his opposition to an incumbent union, or his support of another union, seems to us to be a particularly important right, with implications of both public and private interests, and we think that the employee should be afforded the opportunity to oppose and to argue against an attempt by his employer and his collective-bargaining representative to dilute that right

Accordingly, we conclude that Respondent Employer and Respondent Union have violated, and are violating, Section 8(a)(1) and (b)(1)(A), respectively, by proscribing the distribution of literature, during nonworking time and in nonworking areas, in opposition to Respondent Union, or in favor of or opposition to any other labor organization

II THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth above have a close, intimate, and substantial relation to trade, traffic, and commerce among and between the several States, and tend to lead to industrial strife burdening and obstructing commerce

III THE REMEDY

Having found that Respondent Employer and Respondent Union violated and are violating Section 8(a)(1) and (b)(1)(A) of the Act, respectively, by maintaining in effect the provision described above, we shall order that they cease and desist from maintaining, giving effect to, or enforcing said provision However, we believe that in the circumstances of this case it will not be necessary in order adequately to remedy the aforesaid unfair labor practices that Respondents be required to post the customary notices *General Motors Corporation (Buick-Oldsmobile-Pontiac Assembly Division) etc*, 147 NLRB 509, 513

CONCLUSIONS OF LAW

1 General Motors Corporation is engaged in commerce within the meaning of Section 2(6) and (7) of the Act

2. Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW-AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Employer and Respondent Union, by maintaining in effect a collective-bargaining agreement prohibiting the distribution of literature in opposition to Respondent Union, or in behalf of or in opposition to any labor organization other than Respondent Union, during nonworking time in nonworking areas of the Employer's property, violated and are violating Section 8(a)(1) and (b)(1) (A) of the Act, respectively.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, General Motors Corporation, Van Nuys, California, its officers, agents, successors, and assigns, and Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW-AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from maintaining, giving effect to, or enforcing any provision of a collective-bargaining agreement which prohibits any employee from distributing literature in behalf of any labor organization other than the contracting labor organization or distributing literature in opposition to any labor organization where, in either case, the activity occurs in nonworking areas on nonworking time.

2. Notify the Regional Director for Region 31, in writing, within 10 days from the date of this Decision and Order, what steps have been taken to comply herewith.

CHAIRMAN McCULLOCH AND MEMBER JENKINS took no part in the above Decision and Order.

**The Rushton Company and International Union of District 50,
United Mine Workers of America. Case No. 10-CA-6178.
June 9, 1966**

DECISION AND ORDER

On February 18, 1966, Trial Examiner Lowell Goerlich issued his Decision in the above-entitled case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within