

without their applications completed; and in a letter to the Board dated October 15, in evidence, he stated that the improper applications would have caused Respondent "to fire them if we had hired them."²¹

Wilburn was confused and inconsistent as to dates, and less than persuasive in all his reasons for wanting to help Gonzales, much less Villarreal about whom he admitted he knew nothing. Nevertheless, these negative factors in Respondent's case cannot, in the absence of positive evidence in the record, support any inference of a discriminatory motive on Respondent's part. At most, only a basis for suspicion appears. On the other hand, I am unable to credit Gonzales that he and Villarreal were flatly told by Wilburn that they were hired and to report to work—although they might have mistakenly believed, in the circumstances, that their recall by Wilburn on August 9 was for the specific purpose of hiring them. The probabilities are far greater that they would not be hired before the results were known of their physical examinations, and before their applications were filled out showing at least their past employment history and similar qualifying data normally required by employers of applicants. Other elements in the evidence raise questions as to the sincerity of Gonzales and Villarreal in seeking employment with Respondent. Gonzales admitted that he applied at no other companies during the course of the strike; he made no further attempts to obtain work with Respondent, although encouraged by Wilburn; and he as well as Villarreal deliberately, I find, withheld significant information on their application forms. From an evidentiary standpoint, the absence of testimony by Villarreal could only operate to detract from the General Counsel's case.²² While not controlling, *per se*, the General Counsel's failure to show available jobs for Gonzales and Villarreal, and the Respondent's clear evidence that it hired no employees for a period for about 2 months after the incidents in question, constitute important considerations in the ultimate determination herein.²³

Accordingly, it is concluded that the record does not sustain the alleged violations of Section 8(a)(1) and (3).

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act have not been supported by substantial evidence.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed in its entirety.

²¹ However, Wilburn indicated that the incomplete applications had no bearing upon his decision not to employ Gonzales and Villarreal; that he would normally have assisted them in completing the forms before bringing the applications into Maxey.

²² The General Counsel's attorney asserted at the close of the hearing that Villarreal is "undoubtedly" a citizen of Mexico; that 2 weeks before the hearing he attempted, without success, to obtain Villarreal's address; and that he heard only last night that Villarreal was in Monterey, Mexico. Further, he stated that he probably would have called Villarreal, who speaks English, rather than Gonzales; however, he considered that in any event the testimony of only one of the two complainants was necessary to establish his case.

²³ See *Iowa Beef Packers, Inc.*, 144 NLRB 615.

Chevrolet, Division of General Motors Corporation and Braxton C. Shankle. *Cases 31-CA-43 and 88.* October 25, 1966

DECISION AND ORDER

On August 1, 1966, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent
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ent had not engaged in unfair labor practices as alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party filed exceptions to the Trial Examiner's Decision and the Respondent filed a brief in reply to the Charging Party's exceptions and in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations 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 Jenkins].

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 and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

[The Board adopted the Trial Examiner's Recommended Order and dismissed the complaint.]

¹ Member Brown concurs in the result.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon charges filed by Braxton C. Shankle, herein Shankle, on February 8 (amended July 8), and June 7, 1965, the General Counsel of the National Labor Relations Board, herein the Board, issued an order consolidating cases, consolidated complaint and a notice of hearing dated November 18, 1965, alleging that Chevrolet, Division of General Motors Corporation, herein Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein the Act.

Pursuant to due notice, a hearing in this matter was held before Trial Examiner E. Don Wilson at Los Angeles, California, on February 8 and 9, 1966. The parties fully participated except that Shankle did not enter an appearance until all sides had rested. Briefs of all parties have been received and considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation engaged in the manufacture and assembly of automobiles at numerous plants located in various states of the United States. Respondent maintains a plant at Van Nuys Boulevard, Van Nuys, California, the only plant involved in this proceeding. Annually, in its business operations, Respondent 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 its business, Respondent 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. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, herein the Union, for which Shankle was

a committeeman or shop steward, has at all material times been a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES ¹

A. *The issues*

1. On or about February 3, 1965,² did Respondent interfere with an employee's efforts to file a grievance and with the committeeman's efforts to process the grievance?

2. On May 18, did Foreman Kirkwood threaten to increase the workload of an employee if he persisted in filing a grievance and interfere with a committeeman's efforts to process the grievance?

3. On June 25, did Foremen LaGrasta and Striegel interfere with an employee's efforts to file a grievance and interfere with the committeeman in processing the grievance?

B *Shankle and Savini* ³

Braxton C Shankle has been an employee of Respondent since September, 1959. During material times, he worked on the second shift.⁴ Since 1963, he has been the committeeman or department steward for the Union in department 220, on the second shift.

On February 3, Faaluoluo Savini told his foreman, William S Wilson, that he would like to see his committeeman to find out why drivers with less seniority than he were working instead of Savini in a department from which he had been transferred. Wilson said he would try and get the answer for Savini and advise him and if Savini did not like the answer they would get the committeeman. Savini agreed. Wilson talked to General Foreman Ralph Smith, and got an "answer" which he conveyed to Savini⁵ Savini was not satisfied and asked for his committeeman. Wilson sent for Shankle through Shankle's foreman, Robert Kirkwood. Shankle arrived at Wilson's desk about 8.30 p.m. Wilson left Shankle at the desk while he went to get Savini. While Shankle was at Wilson's desk, Smith was nearby, checking tickets on a repair operation. Smith approached Shankle and spoke to him, believing he could expedite a pending grievance. Smith explained his position at some length to Shankle in an attempt to persuade him that Savini no longer had the same seniority. During the course of the discussion, Savini and Wilson arrived at the desk. Wilson asked Savini to state his grievance. Before Savini could state it, Shankle told Savini not to say anything, adding that he wanted to talk to Savini in private. Wilson again asked Savini to state his grievance and Shankle directed him not to do so. Smith asked Shankle why he did not stand by the desk and let Savini state his grievance. Shankle said to Smith, "You don't seem to understand the grievance procedure." Smith suggested that the four of them go to his office

¹ In this section I have generally not credited the testimony of Shankle or Savini unless corroborated by otherwise credible evidence. I was unfavorably impressed by the demeanor of each. Shankle impressed me as a witness who attempted deliberately to contrive his testimony so as to advance what he considered to be his own best interests, without regard to truth. So I am convinced that his testimony that on various occasions involved herein he was pushed, shoved, or grabbed by supervisors or a plant guard was made from whole cloth. So, also, his testimony that Wilson or Smith "carried" Savini or touched him is at least an exaggeration arising out of Shankle's obvious desire to have his case appear to have merit. He testified that no force was used on Savini. Subsequently he testified that General Foreman Smith "grabbed" one of Savini's arms and Foreman Wilson "grabbed" the other arm while "carrying" him to Smith's office. He showed an unrealistic lack of memory as to whether he was invited to Smith's office to discuss the "grievance procedure." Savini likewise had a poor memory as to some relevant matters. Further, he contradicted himself, e.g.—he testified Shankle did not tell Smith that Smith did not understand the grievance procedure, he then said he couldn't remember such statement by Shankle, he then admitted that in a prehearing affidavit to a Board agent he had said, "I believed I heard Shankle say to Smith, 'I do not think you understand the grievance procedure'"; he then said he thought the affidavit was true, he then said the matters contained in the affidavit were true at the time he signed it.

² Hereinafter all dates refer to 1965, unless otherwise specified.

³ I find Foremen Wilson and Smith were honest witnesses.

⁴ 4.30 p.m. until 1 a.m.

⁵ Smith considered the problem to be very complicated.

for the purpose of clarifying the grievance procedure. Shankle said he would not leave the area Smith again asked him to go to the office to clarify the grievance procedure. Shankle refused Smith ordered Shankle to go to the office with them. Shankle said he would not leave the area Smith, Wilson, and Savini left for Smith's office, leaving Shankle behind. Neither Smith nor Wilson touched Savini. Smith, when they arrived at his office, told Wilson and Savini to enter, saying he would send for Shankle. He got in touch with a plant guard, requesting him to escort Shankle to the office. In about 5 minutes, Shankle and the guard arrived. Smith was sitting at his desk when the guard opened the door and announced that Shankle would not enter. Shankle stood at the doorway Smith asked him to come in to clarify the grievance procedure. Shankle refused. Smith repeated this request four or five times and each time, Shankle did not move and refused to come in. Smith left his desk and went within 5 feet of Shankle. Smith gave Shankle a direct order to come into the office. Shankle demanded union representation. Smith told him he could have a union representative when they clarified the grievance procedure. Shankle again refused to enter the office. Smith told Shankle he was giving him notice of disciplinary action and directed him to the personnel office where he could see his committeeman. Smith then asked Wilson to write up a history of the entire episode. The office clerk, at Smith's request, prepared a reprimand and discipline order. Within 5 minutes or so, Smith served Shankle with a disciplinary action form and gave his committeeman a copy.⁶ Shankle was given a disciplinary layoff for the balance of the work day, plus one day, for "Refusal to obey orders of foreman or other supervision." The notice summarized the actions of Shankle as found above. The decision to discipline Shankle was not made by Smith at Wilson's desk but was made only after Shankle refused to obey the direct order to enter Smith's office to discuss the grievance procedure as it related to Savini.

About 9 30 p.m. an alternate committeeman satisfactorily checked out Savini's grievance.

I find Smith and Wilson dealt with Shankle and Savini in a reasonable manner and in good faith. I find insufficient probative evidence that Smith or Wilson interfered with, restrained, or coerced Savini in filing a grievance. I find insufficient probative evidence that Smith or Wilson interfered with, restrained, or coerced Shankle in his efforts to process Savini's grievance. In light of all the facts as found above, I find that Shankle was insubordinate and was disciplined for cause. It was he who said Smith did not understand the grievance procedure. It was he who refused a reasonable request to clarify the grievance procedure through discussion and disobeyed a reasonable and direct order of his supervisor. There is insufficient probative evidence that Respondent violated Section 8(a)(1) or (3) of the Act in its dealings with Shankle and Savini.⁷

C *Shankle and Campbell*⁸

On May 17 employee Bruce Campbell⁹ told his foreman, Robert Kirkwood, that he was having trouble with a choke pipe and he had too much work to do in the time allotted, one minute and eighteen seconds. Kirkwood did not agree that he had too much work but said he would get Campbell's committeeman. He got Shankle. Campbell stated his grievance before Shankle and Kirkwood. Then Shankle conferred with Campbell. A grievance that an employee has too much work is called a 78 grievance because such is the number of the paragraph of the contract which covers such grievance. On May 17, Shankle spent about 3 hours observing Campbell's work and talking to him. On May 18, Shankle returned about 7:30 p.m. and observed Campbell at work for about 1 hour. Kirkwood had been observing Campbell as Shankle observed him. Kirkwood was of the opinion that Campbell was ahead of the job. After an hour he asked Shankle for his opinion. Shankle said Campbell was "running his ——— off." Kirkwood told Shankle he thought the answer strange because Campbell was walking and had been ahead of his job the whole time Shankle had been there. Shankle mumbled something Kirkwood could not understand. Kirkwood said, "Let me give you some good advice. The kindest thing you could do for Campbell is advise him to let well enough alone,

⁶ General Counsel's Exhibit 3.

⁷ Shankle's grievance that he was unjustly laid off was withdrawn by the Union at the third step.

⁸ I find Robert Kirkwood was an honest witness.

⁹ He did not testify.

because if you let him sign a 78, we will take a time study, and if the job shows up light, and it can't go any other way, then, we will have to add work." Shankle accused Kirkwood of threatening and harassing him. Kirkwood replied he was simply giving good advice. Kirkwood was satisfied with Campbell's work. On May 20 Shankle served Kirkwood with a policy grievance because of Kirkwood's remarks of May 18.¹⁰ Thereafter from day to day and for a total of about 18 to 20 hours, Shankle observed the repetitive operations of Campbell which, as noted, did not take more than 1 minute and 18 seconds per operation. On May 28, the eighth time Shankle was there to observe, Kirkwood asked Shankle how he felt about Campbell's job. Shankle replied only that Campbell was "running his ——— off." Kirkwood asked Shankle to state what he thought was the problem with Campbell's job. Shankle made no answer. Kirkwood asked Shankle to explain how there could be a problem when Campbell was ahead of his job. Shankle claimed the line was being run more slowly. Kirkwood suggested Shankle should have an open mind. Shankle's only reply was a threat to write a policy grievance if Kirkwood did not cease to harass and interfere with him. Kirkwood again asked Shankle to state Campbell's problem. Shankle refused to answer but checked out to write a policy grievance on Kirkwood.¹¹ At no time during the 18 to 20 hours that Shankle observed Campbell's operations did he request a list of the job elements or cycle times in Campbell's operations. Shankle never filed a 78 grievance on Campbell's job.

I find that Kirkwood dealt with Shankle in a reasonable and cooperative manner. There is insufficient probative evidence that Kirkwood threatened to increase Campbell's workload if he filed a grievance. He did offer good advice to Shankle. There is insufficient probative evidence that Kirkwood interfered with, restrained, or coerced Shankle in connection with his efforts to process a grievance on behalf of Campbell. I find insufficient probative evidence that Respondent violated Section 8(a)(1) of the Act in its dealings with Shankle and Campbell. Shankle was allowed every reasonable opportunity to investigate and process any grievance Campbell might wish to have processed. In contrast to Kirkwood's cooperative approach, I find Shankle was surly and provocative.

D. Shankle and Martinez ¹²

Employee Martinez worked on trim on the line. Prior to June 22, his foreman, LaGrasta, found him to be a satisfactory employee. On June 22, LaGrasta received a report from a repairman that Martinez was leaving various parts on the floor of automobiles as he worked on them. Also Martinez had been installing improper parts on the cars. LaGrasta spoke to Martinez about this. He directed Martinez to read instructions as to just which parts to place on cars. Shortly thereafter, LaGrasta received another report that Martinez was not properly performing his job. On five or six occasions on June 22, LaGrasta spoke to Martinez about his shortcomings. Finally, about 10:15 p.m., LaGrasta told Martinez that he was fed up with his work and would give him a written reprimand. Martinez replied that he wanted his committeeman because LaGrasta was harassing him and because he had too much work. LaGrasta, advising Martinez that the "too much work" had been settled a short time before through a 78 grievance, said he would get the committeeman for the "harassing" problems and asked Foreman Greenwood to send Shankle to handle the grievance. Shankle appeared in the department and talked to Martinez. Then LaGrasta told Shankle that Martinez had been doing his job well since June 1 but had been doing poorly that night and LaGrasta had to reprimand Martinez. He thereupon gave Martinez a written reprimand¹³ in the presence of Shankle. Shankle claimed Martinez had too much work. LaGrasta advised them that the work on the job had been settled on a 78 grievance a short time before. Shankle said he knew Martinez had too much work and LaGrasta was threatening Martinez by speaking to him so often that night. LaGrasta said he was not threatening but just doing his job as foreman. Martinez never suggested he was discriminated against because of union activities. Later that evening Shankle served LaGrasta with a 6 and 8 grievance for harassing and intimidating Martinez.¹⁴

¹⁰ The grievance was settled on July 19.

¹¹ Respondent's Exhibit 2. This grievance was settled.

¹² I find LaGrasta, Striegel, and William C. Campbell were honest witnesses.

¹³ Respondent's Exhibit 4.

¹⁴ Paragraphs 6 and 8 of the contract concern discrimination because of union activities or membership.

On the next evening, at 7:12, Shankle again appeared in LaGrasta's department investigate the 78 or "too much work" on Martinez job. LaGrasta again told Shankle that the 78 or question of "too much work" on the job performed by Martinez had already been settled between Respondent and the Union. LaGrasta insisted the job had not changed since the settlement. On the same evening Martinez told LaGrasta he wanted Shankle so he could have his reprimand removed. At LaGrasta's request, Shankle appeared a couple of times and finally spoke to Martinez from 12:50 p.m. to 1 a.m., at which time Shankle told LaGrasta he would like to continue the conversation on the next evening.

On June 25, Shankle again appeared in the department at 9:30 p.m. He walked toward Martinez and his job. LaGrasta asked him why he was there. Shankle replied it was to check on the 78 on Martinez' job. LaGrasta reminded him that at the end of the shift on the previous evening, Shankle had said he was returning to discuss the reprimand to Martinez. LaGrasta told Shankle he was not in the department on a 78 and he should return to his department and resign his committeeman's sheet.¹⁵ Shankle refused to leave the department. LaGrasta said he would not discuss the matter further until Shankle returned to his department and changed his sign out sheet, adding that then they would discuss Martinez' reprimand. Shankle again refused to leave the department. LaGrasta phoned General Foreman Lowell Striegel and gave him a report of the incident. Striegel instructed LaGrasta to direct Shankle to leave the department because the 78 on Martinez' job was a settled grievance. LaGrasta thereupon gave Shankle a direct order to leave the department. Shankle again refused. Shankle insisted he was legally there under a Government ruling which he cited as K-19. LaGrasta repeated his direct order, adding that if he were wrong Shankle had recourse to the grievance procedure. Shankle again refused. LaGrasta reported the events to Striegel who shortly appeared on the scene at 10:05 p.m. He asked Shankle what his problem was. Shankle told Striegel to "get out of here and leave me alone." Shankle added that Striegel was in violation of K-19. When Striegel inquired what was K-19, Shankle said, "Never mind. Leave me alone." Striegel told Shankle he was there on a settled 78 and such was contrary to the grievance procedure. Striegel ordered Shankle to leave the department. He repeated the order and Shankle made no response. Striegel told Shankle he would call a guard. Shankle still did not reply. Striegel thereupon sent for Sergeant Campbell of Respondent's plant protection. Campbell arrived on the scene. Striegel told Campbell he wished Shankle to be escorted back to his department. Striegel, in Campbell's presence, again ordered Shankle to leave the department. Shankle brushed by Striegel and may have bumped into him. Campbell followed Shankle and told him he was there to escort Shankle back to his department. Shankle insisted in loud tones that he was protected by Federal law and that he was checked out on a proper grievance. Shankle insisted he did not have to leave the area. Finally, after Shankle picked up his briefcase, Campbell escorted Shankle to his department and turned him over to his foreman. At no time on this date did LaGrasta, Striegel, or Campbell reach out for or grab Shankle or make any threatening gesture toward him.

I find insufficient probative evidence that LaGrasta, Striegel, or Campbell interfered with, restrained, or coerced Martinez in his efforts to file a grievance. I find insufficient probative evidence that either of the above men interfered with, restrained, or coerced Shankle in his efforts to process Martinez' grievance. LaGrasta, Striegel, and Campbell acted in a constrained and reasonable manner in their dealings with Shankle.¹⁶ In connection with his dealings with Martinez and Respondent, I find Shankle was stubbornly insubordinate. There is insufficient probative evidence that Respondent violated Section 8(a)(1) of the Act in its dealings with Shankle and Martinez.

E. Concluding findings

There is insufficient credible evidence that Respondent violated the Act as alleged in the complaint.

¹⁵ Shankle did not sign out on a 78 on this evening until he was escorted back to his department as will be discussed *infra*.

¹⁶ Shankle's grievance about this matter is presently pending at the third step.

CONCLUSIONS OF LAW

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

1. Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of the Act.

2. The record does not establish that Respondent has engaged in the unfair labor practices, or any of them, alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record, it is recommended that the Board issue an order dismissing the complaint.¹⁷

¹⁷ In light of my Recommended Order, I find it unnecessary to consider Shankle's or the Union's invocations of the grievance procedure. There has been no arbitration.

White Furniture Company and United Furniture Workers of America, AFL-CIO. Case 11-CA-2633. October 25, 1966

DECISION AND ORDER

On February 24, 1966, Trial Examiner Lowell Goerlich issued his Decision in the above-named proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.¹

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, the brief, and the entire record in this case, and hereby adopts only such portions of the Trial Examiner's Decision as are consistent with the following.

The facts are basically as stipulated by the parties.² As described more fully in the Trial Examiner's Decision, the Respondent had given its employees a Christmas bonus annually between 1957 and 1963. The decision on whether to give a bonus, and the amount and distribution, was made each year by the Respondent's board of directors. During the period in question, the amounts of all bonuses were based on a percentage of the Company's profits, and they were distributed to employees according to seniority. The Union was certified as collective-bargaining representative of the Respondent's

¹ The Respondent has requested oral argument. This request is hereby denied because the record, the exceptions, and Respondent's brief adequately present the issues and the positions of the parties.

² The General Counsel and the Respondent entered into a written stipulation, and amplified the stipulation orally at the hearing. The Union, though not a signatory to the stipulation, was aware of its contents and offered no conflicting evidence.