

American Coach Company and International Union, District 50, United Mine Workers of America and The Newton American Union, Party to the Contract. Case 17-CA-3073

February 26, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

On November 16, 1967, Trial Examiner Herbert Silberman issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹ 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 finds merit in certain of the Respondent's exceptions. Accordingly, the Board adopts the findings of the Trial Examiner only to the extent consistent herewith.

1. The Trial Examiner found that the Respondent violated Section 8(a)(2) and (1) of the Act by unlawfully interfering with the formation and administration of The Newton American Union (herein called the Independent), by reason of the participation of Dale Bachman, whom the Trial Examiner found to be a supervisor and agent of the Respondent. We find merit in the Respondent's exception to this finding for the reasons set forth below.²

Bachman has been employed by the Respondent since December 15, 1955, as a maintenance man and was appointed group leader of the maintenance department in March 1956. His primary area of responsibility is to see to the maintenance of equip-

ment. The only employee who works with Bachman in the maintenance department is Walter Linscheid, Bachman's helper, who does routine maintenance work and assists Bachman in making more difficult repairs. The only evidence offered to show that Bachman has ever affected Linscheid's employment status is that 2 or 3 years ago Bachman conveyed Linscheid's request for a raise to the plant superintendent. Although Linscheid subsequently received a raise, there is nothing in the record to indicate that this action was taken on the basis of any recommendation made by Bachman or, indeed, that Bachman made a recommendation. The only other evidence of Bachman affecting the status of an employee involves the transfer of Dale Brown from the maintenance department 8 years ago. At that time Bachman went to the plant superintendent and complained to him that "Mr. Brown was not capable of doing the work he was hired to do and if they wanted to keep him in maintenance, they would have to transfer me to someplace else, because I had had it."³

As Bachman is also held responsible for the cleanliness of the plant, he regularly inspects the work areas to make sure they have been swept. The extent of his authority over the two janitors who sweep the plant is that when one of the janitors is absent from work, Bachman will either ask the other janitor to sweep the entire work area, or help with the sweeping himself; he has the authority, as do the other group leaders, to allow an employee to leave work early when sick;⁴ he may require the janitors to work up to 30 minutes overtime if they are unable to finish sweeping during regular hours;⁵ and on occasion he has told the plant superintendent that janitors were not doing their work properly. While the record indicates that Bachman has on at least one occasion discussed the work of the janitors with the plant superintendent, there is no indication that any of these discussions ever resulted in a change of status for any janitor. The janitors report directly to their work areas, work without supervision, and follow the same routine every day.

The Trial Examiner based his finding that Bachman was a supervisor primarily on the facts that, he is paid 38 cents an hour more than any other group leader, is given considerable freedom to move about the plant, is the only employee with his own parking space, and exercises authority over Linscheid and the two janitors. We do not agree. As

¹ In view of our findings herein, we deem it unnecessary to consider Respondent's exception alleging that the Trial Examiner improperly allowed the General Counsel to examine Kermit Oursler and Dale Bachman under Rule 43(b) of the Federal Rules of Civil Procedure.

² The Respondent also contends that even if Bachman were found to be a minor supervisor, his participation in the Union would not be sufficient to support a finding of interference. In view of our finding that the evidence was not sufficient to establish that Bachman was a supervisor, we deem it unnecessary to reach this question.

³ The Trial Examiner found that although another employee, Morris

Nash, voluntarily quit his job, Bachman was given specific authority to decide whether Nash should be discharged. The record discloses only that when Nash left the plant without permission, Plant superintendent Janzen instructed Bachman to remove Nash's timecard and hold it until Nash reported back, and that if Nash did not have a valid reason for his absence, he would be discharged. We do not agree that this evidence establishes that Nash's discharge was left to Bachman's independent judgment.

⁴ Bachman has never excused an employee for an entire day.

⁵ Nash, a former janitor, testified that he was not paid for working overtime at Bachman's request.

indicated, the record reflects that Bachman has no authority to hire, discharge, transfer, lay off, promote, reward, or effectively recommend action as to any of these matters.⁶ While he sometimes directs the work of other employees, the instruction he gives such employees is routine.⁷ Nor do we find anything in the record to support the Trial Examiner's finding that, "The rank-and-file employees undoubtedly associate his interests with those of management and would tend to view his attitudes regarding labor organizations as reflecting the sentiments of management." Bachman is hourly paid, punches the same timeclock and has substantially the same hours, vacations, and conditions of employment as other employees. While he has at times reported defective work, his recommendations in that regard were not solicited.⁸ The fact that he receives slightly higher pay than the other group leaders merely reflects his superior skill and experience.⁹ Moreover, the very nature of his work makes it necessary for him to move freely around the plant in order to make repairs and to have an accessible parking space so that he may leave the plant, purchase necessary parts and equipment, and return to work as quickly as possible.

Not only is the record devoid of evidence indicating that the other employees in the plant considered Bachman a supervisor, but Nash testified that while he, was working as a janitor, he was not aware that it was Bachman's duty to observe his work. In addition, while Bachman has at most three employees under his direction, the acknowledged supervisors in the plant each have authority over about 30 men. Moreover, while supervisors are generally forbidden to "regularly perform work on hourly rated jobs" under the terms of the existing contract, there is no such restriction on group leaders, and the record indicates that Bachman spends most of his time doing regular maintenance work. Further indication that the classification of group leader has historically been considered within the bargaining unit is the fact that Bachman voted in the previous certification election without being challenged. On the basis of the foregoing, and the entire record, we find that Bachman is not a supervisor. Accordingly, we conclude that the Respondent has not, by virtue of Bachman's activities, interfered with the formation or administration of the Independent in violation of the Act, and we shall dismiss this aspect of the complaint.

2. The Trial Examiner found that the Respondent further violated the Act by discriminatory application of a no-solicitation rule prohibiting employees from engaging in union solicitation during nonworking time on company property when it failed to enforce this rule against the Independent. The Board had previously found this rule to be unlawful and had ordered the Respondent not to enforce such a rule.¹⁰ While representatives of the Independent did solicit authorization cards in the

plant, the record does not indicate that any solicitation was done during company time or that representatives of District 50 or any other union were denied the same privilege. Further, there is no evidence that the Respondent knew that this solicitation was taking place. Moreover, it was stipulated that the Respondent has not enforced the rule at any time since the Board's decision finding it unlawful. In light of all the circumstances, we find that the Respondent's failure to enforce the unlawful no-solicitation rule against the Independent was not violative of Section 8(a)(2) and (1) of the Act, and we shall dismiss this aspect of the complaint as well.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

⁶ See *Purity Food Stores, Inc.*, 150 NLRB 1523, remanded on other grounds 354 F.2d. 926 (C.A. 1).

⁷ See *Greenfield Components Corp.*, 146 NLRB 757.

⁸ *Id.* at 759.

⁹ As the Trial Examiner pointed out, not only does Bachman repair breakdowns of machinery, but from time to time he has undertaken to build special jigs and machines and has even performed construction work on the plant building; Bachman has also been working at the plant longer than all but one other employee.

¹⁰ *American Coach Company*, 158 NLRB 415, enfd. 379 F.2d. 699 (C.A. 10)

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HERBERT SILBERMAN, Trial Examiner: Upon a charge filed by International Union, District 50, United Mine Workers of America, herein called District 50, on November 22, 1966, a complaint, dated June 30, 1967, was issued alleging that the Respondent, American Coach Company, herein called the Company, has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) and (2) and Section 2(6) and (7) of the National Labor Relations Act, as amended. The complaint, as amended at the hearing, in substance, alleges that the Company unlawfully has assisted and has interfered with the formation and administration of The Newton American Union, herein called the Independent: (1) by reason of the participation of Dale Bachman, who is alleged to be an agent and supervisor of the Respondent, in the affairs of the Independent; (2) by its discriminatory application of a no-solicitation rule; and (3) while Dale Bachman was actively participating in the affairs of the Independent, by recognizing the Independent as the exclusive representative for a unit of the Company's employees and, on March 6, 1967, by entering into a collective-bargaining agreement with the Independent. Respondent's answer to the complaint generally denies that it has engaged in the alleged unfair labor practices. A hearing in this proceeding was held in Newton, Kansas, on September 6, and 7, 1967. Thereafter, briefs were filed on behalf of the General Counsel and the

Respondent which have been given careful consideration.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Michigan corporation which maintains its principal office at Cassopolis, Michigan. Respondent also maintains a plant at Newton, Kansas, which is the facility involved in this proceeding, where it is engaged in the manufacture and sale of mobile homes. During the course and conduct of its business operations, Respondent annually sells from said plant products valued in excess of \$50,000 to customers located in States other than the State of Kansas. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

District 50 and the Independent are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint herein is that the Company unlawfully intruded upon the organization and administration of the Independent by reason of the activities of Dale Bachman who is alleged to be a supervisor and agent of the Respondent and that it rendered further unlawful assistance to the Independent by permitting solicitation of authorization cards on behalf of the Independent while maintaining in effect rules which prohibited employees on company property from engaging in union solicitation on nonworking time.

The formation of the Independent and its recognition by the Company as the exclusive representative of Respondent's production and maintenance employees followed unsuccessful efforts on the part of District 50 to organize Respondent's Newton plant. On October 21, 1964, a Board-conducted election was held among the Company's production and maintenance employees at its Newton plant pursuant to a Stipulation for Certification upon Consent Election entered into between the Company and District 50. The Union lost the election. Thereafter, on September 2, 1965, the Company distributed among its employees at the plant an "Employee Policy Manual" which set forth rules against solicitation and distribution. The next day the Company discharged employee John M. Zimmerman who was a principal, if not the chief, organizer among the employees on behalf of District 50. Unfair labor practice charges were filed in connection therewith, and a hearing in said proceeding was held on November 22, 1965. On February 25, 1966,

the Trial Examiner issued a Decision and Order finding that the Company had violated the Act by promulgating, maintaining and enforcing rules which prohibit employees on company property from engaging in union solicitation on nonworking time and by discriminatorily discharging John M. Zimmerman. This Decision was affirmed by the Board on April 26, 1966.¹ The Company failed to comply with the Decision of the Board and enforcement proceedings were duly instituted. On July 17, 1967, a Decree of the United States Court of Appeals for the Tenth Circuit was issued enforcing the Board's Order.² It was during the pendency of the foregoing proceedings that the activities complained of herein occurred.

In the fall of 1966, a group of the Company's employees, including Dale Bachman, met together with the object of forming an independent union.³ The meeting was attended by the president and the secretary of another independent union which represents employees who work in a plant in a neighboring city and by John K. Bremyer, that Union's attorney. For a period of several days following the meeting, employees were solicited to sign written authorizations designating the Independent as their representative.⁴ Thereafter, a second meeting was held at which the employees attending, including Bachman, by vote appointed a five-man board of directors which included Bachman. The board of directors at a later meeting among themselves voted for the officers of the Independent at which time Bachman was appointed vice president.

The signed authorization slips were turned over to John K. Bremyer, who was retained by the Independent as its attorney. Upon the advice of Bremyer, Kermit Oursler, who had made the arrangements for the Independent's first meeting and who later was elected a member of the board of directors and president of the Independent, telephoned plant manager, Ed Smith, and informed Smith that "we had enough authorizations for organization and wanted recognition."⁵

About 2 weeks after Oursler spoke with Smith, the Company recognized the Independent. On November 21, 1966, the five directors of the Independent and their attorney, John K. Bremyer, attended a meeting at the Company's offices at which the Company's attorney, William G. Haynes, also was present. Bremyer, on behalf of the Independent, claimed to represent a majority of the Company's production and maintenance employees in the same unit in which the Board conducted an election in October 1964, and requested recognition. The meeting adjourned in order that a check might be made of the Union's majority claim. Attorneys Bremyer and Haynes went to the offices of District Court Judge Sturm. The latter compared the authorization slips obtained by the Independent with a list containing 96 names purporting to compose all employees in the unit for which the Independent was requesting recognition. Upon completing this task Judge Sturm announced that there were 60 authorization slips signed by persons whose names ap-

¹ Case 17-CA-2749, 158 NLRB 415.

² *N.L.R.B. v. American Coach Company*, 379 F.2d 699 (C.A. 10).

³ The record is devoid of any explanation as to what stimulated the employees to form an independent union. Kermit Oursler, president of the Independent, testified that he made the arrangements for the first meeting of employees which was held to consider the formation of an independent. In so doing, he testified, "I acted as an agent for the group, I didn't call them (the meeting) on my own."

⁴ The authorization slips which were circulated among the employees

for signature, reads as follows: "I hereby request membership in The Newton American Union, and authorize it to be my agent in all negotiations with my employer."

⁵ Oursler testified that this conversation took place before the Independent had elected officers. He further testified that the conversation lasted about 12 minutes but all he can remember Smith saying was that "I was making a mistake" and "he would have to turn it over to the powers that be."

peared on the employee list.⁶ Thereafter, the Company accorded recognition to the Independent. Following this action there were several bargaining sessions between the parties and on March 6, 1967, the Company and the Independent entered into a collective-bargaining agreement. Representing the Independent in the negotiations was its board of directors, including Bachman who attended each of the bargaining sessions.

In addition to serving as an officer of the Independent and a member of its negotiating committee,⁷ Bachman materially assisted in the formation of the Independent. He testified that he paid for the rental of the premises used for one of the Independent's meetings. Further, during the period when authorization slips were being solicited, both the unsigned and the executed slips were stored in a box which was kept on a shelf in the maintenance room (of which he was in charge). The employees who engaged in such solicitations took blank slips from the box and deposited the signed slips in the box. Because custody of the authorization slips was lodged with Bachman, the solicitors must have assumed that Bachman was promoting the solicitation of authorizations on behalf of the Independent. Although Bachman testified that "[a]nyone who works in a plant of that size knows everything that is going on," inconsistently, he also testified that "[t]o my knowledge [management representatives] did not" know of the existence of the box. Also, Bachman personally solicited employees to sign authorization slips. He was able definitely to name three employees whom he had solicited but could not deny that it might have been as many as 10 to 15.⁸ Among the employees he solicited was his helper, Walter Linschied.⁹ Bachman denied knowledge of any company rule which prohibited union solicitation on company property.¹⁰

The principle is well established that an employer who assists, whether directly or indirectly through the participation of supervisors or employees who may not be supervisors but whose activities will be identified as expressions of their employer's desires, in the formation or administration of a labor organization violates the Act. The applicable considerations are set forth in *International Association of Machinists, v. N.L.R.B.*, 311 U.S. 72, 78-81. There the Court stated:

... Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure.

* * * * *

... Petitioner's argument is that since these men were not supervisory their acts of solicitation were not coercive and not attributable to the employer.

The employer, however, may be held to have assisted the formation of a union even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on

strict application of the rules of *respondent superior*. We are dealing here not with private rights (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261) nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts to his servants but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible. Thus, where the employees would have just cause to believe that the solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates. Here there was ample evidence to support that inference. As we have said, Fouts, Shock, Dininger and Bolander all had men working under them. To be sure, they were not high in the factory hierarchy and apparently did not have the power to hire or to fire. But they did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management.

In this case, Bachman's activities on behalf, and in furtherance, of the interests of the Independent were sufficiently extensive as to render his assistance unlawful if his conduct in such regard is attributed to the Respondent.¹¹

Dale Bachman has been working at the Company's Newton plant longer than anyone, including all management personnel except Roscoe Baker, the purchasing agent. Bachman was hired on December 15, 1955, before construction of the plant had been completed. About March 1956, when the Company began its production activities, Bachman was appointed group leader of the maintenance department and has held the same position continuously since that date.¹² He is hourly paid and punches a timecard. His primary areas of responsibility are "[t]o see to the maintenance of equipment, cleanliness of the plant."

With respect to maintenance, Bachman's duties involve the normal activities concerned with keeping mechanical equipment functioning and the repair of such equipment. In addition, he builds jigs and other machines. During most of the time that Bachman has been working for the Company he has been directly assisted by one other employee. For the past 6 years Walter Linschied has been employed in the maintenance department as Bachman's helper. According to Bachman, Linschied does certain routine maintenance work with no direct day-to-day supervision. In addition, Linschied assists Bachman in doing repair work and when assigned by Bachman Linschied alone will repair machines. If Linschied

⁶ Neither the Company nor the Independent was able to find and to produce at the hearing the employee list or the authorization slips which were used by Judge Sturm in making the check

⁷ The Independent's negotiating committee made several reports to its membership regarding the progress of negotiations with the Company. Bachman, among other members of the committee, spoke at these meetings. Bachman testified that he made reports to the membership about health insurance and about the management prerogatives clause in the proposed contract.

⁸ The inability of the Independent to produce the authorization slips prevented any effective examination of Bachman as to which employees he might have solicited in addition to the three whom he named.

⁹ Bachman testified that he did not solicit any janitors to sign authorization slips

¹⁰ Kermit Oursler likewise testified that he had no knowledge of any such rule

¹¹ *Anchorage Businessmen's Assn.*, 124 NLRB 662, 665-667, enf'd 289 F 2d 619 (C.A. 9); *Local 636 v. N.L.R.B.*, 287 F 2d 354 (C.A.D.C.)

¹² The various production departments also have group leaders

receives a complaint about an equipment failure when Bachman is not in the maintenance room Linschied sometimes will make the repair without first consulting Bachman. However, he refers to Bachman all complaints which he is unable to handle.

There is evidence in the record of only two instances where Bachman took action which substantially affected the status of his helper. About 2 or 3 years ago, Linschied complained to Bachman that he was being paid 10 cents less than the production workers' rate and that he should receive an increase to bring his rate up to that of the production employees. Bachman relayed this complaint to plant Superintendent Willard Janzen and recommended that Linschied should get a raise. Shortly thereafter Linschied was given an increase. About 8 years ago, Bachman complained to the plant superintendent that Dale Brown, who then had been working in the maintenance department for about a year and a half, did not have the competency to do the work expected of him as a maintenance man, and asked that Brown be transferred out of the maintenance department. Several days later Brown was transferred.

Although Bachman is charged with responsibility for the cleanliness of the plant, the two or three janitors, or sweepers, who do the actual plant cleanup work are not deemed to be in the maintenance department.¹³ The work of the janitors is routine. Morris H. Nash, a former janitor, testified that he did not receive instructions from day to day with regard to his duties because "I knew what to do." However, Bachman designates the areas of the plant where each janitor is to work, regularly inspects the areas to be sure that the work is done, and will reprimand a janitor who is deficient in the performance of his work.¹⁴ When a new janitor is hired he is informed by the plant superintendent that Bachman will tell him what to do. In case a janitor is absent from work Bachman may assign another janitor to cover some of the area for which the absent janitor is responsible. As it is a policy established by the plant superintendent that debris shall be removed and the plant shall be clean by the end of each workday, Bachman has the authority, which he regularly exercises, to require the janitors to work overtime in order to finish their cleanup work. However, if the amount of overtime will exceed 30 minutes Bachman first obtains permission from the plant superintendent before assigning the overtime work to the janitors.

While direct authority to hire, discharge, reward, or discipline janitors may not have been given to Bachman,

¹³ No testimony was offered as to which department the janitors are assigned. It would appear from the evidence adduced at the hearing that unless Bachman is their supervisor they either work without direct supervision or are subject to the direct supervision of the plant superintendent.

¹⁴ Thus, Bachman testified that "if I saw a man working who is not doing his work as I believe it should be done or is leaving areas undone, I go to him and tell him that we expect him to take care of his area or to do his work better."

¹⁵ Testimony was adduced on behalf of the General Counsel purporting to show that Bachman discharged Morris H. Nash. Upon considering all the evidence adduced with respect to the matter, I find that Nash was not discharged but voluntarily quit his job. However, while the situation did not come to pass, at least in the case of Nash, plant Superintendent Janzen gave to Bachman specific authority to decide whether Nash should be discharged. According to Bachman, during the afternoon of May 17, 1966, a report was made to him that Nash could not be found. Bachman checked Nash's timecard and found that it had been punched out at approximately noon. Bachman reported to Plant Superintendent Janzen that Nash had again left the premises without informing anyone of his intentions. Janzen instructed Bachman to remove Nash's timecard from the

latter testified that plant superintendent Willard Janzen "asks me how [the janitors] are getting along and if they are doing their work correctly." Bachman calls to the attention of the plant superintendent the fact that a janitor is not doing his work properly. Thus, Bachman testified that he told the plant superintendent that a sweeper, Morris H. Nash, was undependable and Bachman was instructed to speak to Nash to see if he could not bring his attendance up to par. Several times Janzen asked Bachman whether janitors deserve raises.¹⁵ Bachman, as well as other group leaders, has authority, when an employee reports that he is sick, to excuse the employee from work.

In addition to the foregoing the record shows that Bachman is paid 38 cents an hour, or 17 per cent, more than any other group leader. While all other group leaders work under the direction of supervisors who in turn answer to the plant superintendent, there is no immediate supervisor between Bachman and the plant superintendent. Furthermore, Bachman has considerable freedom not only to roam about the plant in connection with the performance with his regular work but also to leave the plant premises. This is so much the case that Bachman is the only employee who has a reserved parking space, near a plant doorway, assigned to him so that it will be more convenient for Bachman to leave and to return to the plant during normal working hours. While it may be in the interest of the Company to permit Bachman such freedom of movement and flexibility in deciding for himself what tasks he will do and when he will do them, reposing such discretion in Bachman indicates that he occupies a position of special responsibility and trust with the Company—a sign which undoubtedly does not go unrecognized by the other employees of the Company.

Although the evidence concerning the relationship of Bachman to his helper alone might not constitute proof of his supervisory status, when his authority over the janitors is added thereto any doubt as to his supervisory status is dispelled.¹⁶ Furthermore, as the employee with the greatest service longevity at the plant, not excluding management personnel other than the purchasing agent, with almost unrestricted freedom of movement and with largely unsupervised responsibility for doing nonroutine jobs,¹⁷ the rank-and-file employees undoubtedly associate his interests with those of management and would tend to view his attitudes regarding labor organizations as reflecting the sentiments of management.

rack and hold it until Nash reported in and if Nash did not have a valid reason for his absence Nash would be discharged. On Wednesday morning, May 18, 1966, after Nash had come to the plant and could not find his timecard, he sought out Bachman who asked him where he had been the previous day. Nash replied that he had gone to the Marion Dam and had obtained a job beginning the following Monday, at \$2.50 per hour. Bachman then said, "You mean you quit yesterday noon to go look for a job." Nash responded, "I guess so." Bachman then reported to Janzen that Nash had quit on Tuesday noon. Later the same morning when Bachman overheard Nash suggesting to a number of employees that they should give up their jobs with the Company and go to Marion to get better paying positions, he told Nash to leave the premises.

¹⁶ In finding that Bachman is a supervisor I have not overlooked the evidence that he voted in the 1964 election without challenge.

¹⁷ Not only does Bachman repair breakdowns of machinery, which activities do not fall into any orderly or repetitive pattern, but from time to time he has undertaken to build special jigs and machines and has even performed construction work on the plant building. Bachman testified that at times, such as when he was engaged in some major machine construction work, production employees are assigned to work under his direction.

The participation of Bachman, whom I find is a supervisor and agent of the Company, in the formation and administration of the Independent constituted unlawful intrusion on the part of Respondent in the self-organization activities of its employees in violation of Section 8(a)(2) and (1) of the Act. Such violation of the Act has been compounded by the Company recognizing the Independent as the exclusive representative of its production and maintenance employees although the Independent, because of the participation of Bachman in its affairs, was not the freely chosen representative of its employees and negotiating, entering into, and maintaining in effect, a collective-bargaining agreement with the Independent while Bachman was a member of the Independent's negotiating committee, thereby, in effect, placing the Respondent "on both sides of the bargaining table."¹⁸ Further, although Bachman denied personal knowledge of the existence of the no-solicitation rule found to be unlawful in Case 17-CA-2749, 158 NLRB 415, his solicitation of employees on behalf of the Independent and his knowledge of similar solicitations by other employees on company property while such rule had not been withdrawn is, nevertheless, attributable to the Respondent. Accordingly, I also find, as alleged in the complaint, that the Respondent has further violated Section 8(a)(2) and (1) of the Act by permitting solicitation on behalf of the Independent at a time when said no-solicitation rule had not been rescinded.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations, described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has violated Section 8(a)(1) and (2) of the Act by according recognition to The Newton American Union as the exclusive collective-bargaining representative of certain of its employees and by

entering into, maintaining, and enforcing in favor of the Independent the collective-bargaining agreement entered into with the Independent on March 6, 1967. In accordance with the Board's established policies in such cases, it will be recommended that the Respondent withdraw and withhold all recognition from the Independent as the collective-bargaining representative of its employees and cease giving effect to its March 6, 1967, contract with the Independent, or to any modifications, extensions, supplements, or renewals thereof, unless and until the Independent shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among Respondent's employees in a unit or units appropriate for the purpose of collective bargaining. Nothing in this recommendation, however, shall be construed to require the Respondent to vary or abandon any wage, hour, seniority, or other substantive feature of the relationship between Respondent and its employees, which may have been established pursuant to the aforesaid agreement, or to prejudice the assertion by the employees of any rights they may have under such agreement.

Upon the basis of the foregoing findings of facts and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. By assisting, contributing support to, and interfering with the formation and administration of the Independent, the Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(2) of the Act.
 2. By entering into, maintaining, and enforcing since March 6, 1967, a collective-bargaining agreement in favor of the Independent, although the Independent was not the lawfully and freely chosen representative of Respondent's employees, Respondent further has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(2) of the Act.
 3. By reason of its foregoing conduct Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act and thereby has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
 4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
- [Recommended Order omitted from publication.]

¹⁸ *N L.R.B. v. Mt. Clemens Metal Products Company*, 287 F 2d 790, 791 (C A. 6)