

**Camden Manufacturing Company, a Division of Batesville Manufacturing Company, a Subsidiary of Aerojet-General Corporation and Clyde E. Morton.** Case 26-CA-3037

March 27, 1969

## DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On October 1, 1968, Trial Examiner John P. von Rohr 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 Decision and a supporting brief, and General Counsel filed an answering 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 made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and orders that the Respondent, Camden Manufacturing Company, A Division of Batesville Manufacturing Company, a Subsidiary of Aerojet-General Corporation, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Add the following as paragraph 2(b), and reletter the following paragraphs accordingly.

"(b) Notify the above-named employee, if presently serving in the Armed Forces of the United States, of his right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces."

2. Add the following as the last indented paragraph of the Appendix:

WE WILL notify the above-named employee if presently serving in the Armed Forces of the

United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

JOHN P. VON ROHR. Trial Examiner: Upon charges, filed on March 21 and April 30, 1968, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 26 (Memphis, Tennessee), issued a complaint on May 3, 1968 against Camden Manufacturing Company, a division of Batesville Manufacturing Company, a subsidiary of Aerojet-General Corporation, herein called the Respondent or the Company, alleging that it had discharged employee Clyde E. Morton in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 51 Stat. 136, herein called the Act. The Respondent's answer denies the allegation of unlawful conduct alleged in the complaint.

Pursuant to notice, a hearing was held before Trial Examiner John P. von Rohr in Camden, Arkansas on June 18 and 19, 1968. All parties were represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses and to file briefs. Briefs have been received from the General Counsel and the Respondent and they have been carefully considered.<sup>1</sup>

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

### I FINDINGS OF FACT AND CONCLUSIONS

The Respondent is an Arkansas corporation with its principal office and place of business located at Camden, Arkansas where it is engaged in the manufacture of ordinance items for the Department of Defense. During the 12 months preceding the hearing herein, the Respondent sold and shipped goods manufactured at its Camden, Arkansas plant valued in excess of \$50,000 to points and places located outside the State of Arkansas. During the same period, the Respondent purchased and received at its plant in Camden materials valued in excess of \$50,000, which materials were shipped to it from points and places outside the State of Arkansas.

The Respondent concedes, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, AFL-CIO, Lodge 502, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Issue*

Clyde E. Morton was a probationary employee and a

<sup>1</sup>The Respondent attached an affidavit of one Ada Joyce Smith to its brief. In view of the submission of this affidavit after the close of the hearing and since this witness did not testify at the hearing, this affidavit must be rejected as an exhibit.

union steward at the time of his discharge. To quote from its brief, Respondent asserts that Morton was terminated on March 19, 1968, because "he failed to demonstrate the ability to perform in the classification of tool and die maker, in both the area of workmanship and attitude." The General Counsel, on the other hand, contends that Morton was terminated because of his aggressive activities as a union steward and that his discharge was therefore violative of Section 8(a)(1) and (3) of the Act

### B Background; Morton's Activities as a Union Steward

International Association of Machinists, AFL-CIO, Lodge 502 was certified as the collective bargaining agent for Respondent's production and maintenance employees on December 15, 1967. Thereafter the parties entered into a collective-bargaining agreement, effective from December 15, 1966 to November 13, 1969. There are approximately 1,060 employees in Respondent's employ.

Morton was hired by the Respondent on December 26, 1967, as a tool and die maker at the rate of \$3.80 per hour. He was placed to work in the machine shop along with approximately 10 to 12 employees classified as tool and die makers and machinists, all of whom are included in the above-mentioned bargaining unit. The machine shop (also referred to as the tool room) is under the supervision of Foreman Garnet Adamson.

Prior to his employment with the Respondent, Morton was employed for 3 or 4 years with a company whose employees were represented by the Machinists Union, of which during this period Morton was a member. He also became a member of the Union when employed by the Respondent and in latter February 1968, was elected to serve as steward in Respondent's machine shop. By letter dated February 21, 1968, the Union notified the Company of Morton's appointment to this position.

Except for the matter in dispute herein, the record reflects that at all times since the inception of the bargaining relationship the Respondent enjoyed a harmonious relationship with the Union. Particularly relevant to this case is the undisputed fact that prior to Morton's appointment as steward, no written grievances had ever been filed by the Union, it appearing that all employee complaints reached no further than oral discussions between the departmental stewards and the respective departmental foreman.<sup>2</sup>

There is no doubt, as the record amply demonstrates and as will be discussed below, that within his short tenure of employment Morton became by far the most active and aggressive of all the plant stewards. Indeed, in early February 1968, even before he became a steward, Morton made a protest to his foreman concerning a claim to Saturday overtime. When the matter was not resolved to his satisfaction, Morton pressed this grievance to the highest plant level by taking it to the office of Thomas A. Robertson, Respondent's Industrial Relations and Administration Manager.<sup>3</sup>

Following his appointment as union steward, Morton daily brought up grievances of his own and those of other employees with Foreman Garnet Adamson. As has been

indicated, Morton had formerly been a union member and had been employed by a union employer. That other employees looked upon him as being more experienced in union affairs than the other plant stewards, of which there were a total of six in Respondent's plant, was brought out in the following credited testimony of Ted L. Vickers, the Union president:

... Mr. Morton is a man that's been in labor for some time, and I felt, and he felt that he knew more about labor organizations than the other stewards did. Some of the other stewards are women, and they don't know what actually the purposes of the stewards are, getting right down to detail, and what they actually should bring up and so forth like the lighting and so forth in the machine shop down there. Mr. Morton is more educated, I feel, toward stewards than the rest of the stewards we have at the plant.

In addition, Vickers testified that whereas prior to Morton's becoming a steward there had been no problem in "thrashing out" matters with the foreman on an oral basis, Morton proceeded to bring up "major items" with Adamson which had not been theretofore discussed. The testimony of Morton and Vickers reflect that Adamson was not in a position of sufficient authority to resolve or give answer to the major problems and grievances which Morton brought to him. Accordingly, Morton finally advised Vickers that there was a need "to file some grievances." Vickers accepted this recommendation and made arrangements to meet with Robertson. A meeting was thereupon held in Robertson's office on March 6, 1967. Participating in the meeting were Morton, Vickers, Robertson and John Marlar, the employment supervisor. In preparation for the meeting, Morton prepared a handwritten list of 12 specific grievances. It is undisputed that Morton took this list with him to the meeting and that the discussion centered on the grievances listed thereon, these being taken up item by item. In reality, the so-called grievances presented by Morton were a list of requests or demands relative to changes of improvements concerning working conditions and wages. Included among these were the following: that a rest room and washing facilities be constructed for the machine shop area, that job descriptions be drafted and furnished; that an area for breaks be furnished, that safety shoes, a material rack, and a coke machine be provided; that machinery maintenance be improved; and that a 5-cent hourly wage increase be given to new hires. The meeting was amicable, with Robertson indicating that he would reject some of the requests but that he would take some action with respect to others.<sup>4</sup> At one point, however, Morton stated that he would "take action" if the matters he presented were not acted upon.<sup>5</sup> He made the same point to Adamson shortly after the meeting. Thus, Adamson testified:

I don't recall whether it was immediately after the meeting he had been in that he was talking to me or whether it was the next day. . . he told me that he had been up there. He said he thought he had some people straightened out. He said he thought he had brought some light on the subjects and he said from now on when you ask for things, he said I think there will be some action taken, and he said if it is not, he said, "We

<sup>2</sup>Such was in accordance with the first steps of the grievance procedure as set forth in the contract.

<sup>3</sup>On this occasion, and at Morton's behest, the president of the Local Union accompanied him to the office. The record does not reflect the outcome of their discussion with Robertson at this time.

<sup>4</sup>The record discloses, however, that the only result brought about by this meeting was the installation of a coke machine.

<sup>5</sup>Although Robertson denied that Morton made a statement to this effect, I credit the corroborated testimony of Morton and Vickers that the statement was made.

will carry it further.”

Additionally, Morton credibly testified that during a conversation with Adamson shortly after the March 6 meeting Adamson stated “that if we did not stay out of the personnel office, that the company would farm this work out and we would be out of a job”<sup>6</sup>

On March 18, 1967, the day before his discharge, Morton was instrumental in again attempting to get an appointment with Robertson. When Robertson advised that he was busy, Morton prevailed upon Vickers to accompany him to the office of Employment Supervisor Marlar.<sup>7</sup> Marlar advised that he was busy at the moment but that they should wait for him in the cafeteria. He appeared in the cafeteria a short time later and a discussion thereupon ensued concerning which there is no substantial dispute. Morton stated that although at the March 6 meeting Robertson had indicated that a 5-cent hourly wage increase in overtime pay would be granted to himself and two or three other machine shop employees, no action had been taken with respect thereto. Marlar testified that he responded by advising the two employees that “we were not in any contract violation on the five cents . . . but that we would check each man individually and let them know what the Company planned to do about putting them at the top of the rate . . .” Morton then alluded to the fact that one Jackie Rogers, a machine shop employee who had been absent the preceding work day, had been marked as A.W.O.L. He thereupon asked Marlar for an explanation of company policy concerning absences without leave, particularly “if they were held against a person.” Marlar stated that he was not familiar with company policy in this respect but that he would “look it up.” Marlar added, however, that he was “sure” that an employee would be subject to further action if he had too many A.W.O.L.’s marked against him. When the conversation thus terminated, Morton and Vickers returned to the machine shop and spoke to Adamson. Vickers reported their conversation with Marlar and particularly requested that he not mark employees A.W.O.L. until such time as there was a resolution of company policy in this respect. It is undisputed that Adamson thereupon took out the timecard of employee Jackie Rogers and erased the words “A.W.O.L.”<sup>8</sup>

<sup>6</sup>This testimony in substance was corroborated by Vickers. Thus Vickers, who testified that he was with Morton when the statement was made, testified that Adamson stated “that if we bring these major complaints up there, and the Company — in a roundabout way, if we bitched too much, you might say, that the Company might contract the work out.” I do not credit Adamson’s denial of not having made this remark. From my observation of them as they testified, Morton and Vickers impressed me as honest and credible witnesses. Indeed, since I observed that Vickers at times displayed a reluctance to testify against his employer, I hardly think he would fabricate this testimony.

<sup>7</sup>Morton testified, and correctly so, that under the collective-bargaining agreement it was requisite that he consult with the president of the Union before processing a grievance beyond the first step of the grievance procedure. It was for this reason, Morton said, that he requested Union President Vickers to arrange for any meetings, or to accompany to any meetings, with company officials beyond the rank of department foreman or supervisor.

<sup>8</sup>Marlar denied that this conversation with Morton and Vickers took place on March 18 and instead placed it as having occurred on or about March 6. The preponderance of the credible testimony and documentary evidence reflects that Marlar was mistaken. In the first place, Morton was positive in his testimony that this conversation occurred on the day before his discharge. Because of the unusual event of his discharge, I have no doubt but that the time and occasion of the conversation in the cafeteria would stand out in his memory and I credit his testimony as to the time

Early in the afternoon of the same day, which was shortly after the foregoing conversation, Adamson came up to Morton while he was working at a machine and said he wanted to talk to him. According to the testimony of Morton, which I credit, the following conversation then ensued: Adamson began by stating, “I don’t know what’s the matter with you lately. You are stirring up trouble around here and you are dragging your feet and trying to run the shop and not putting out enough production.” He thereupon added that Morton was taking up “too much union time” and that he was “tending to union business that wasn’t any of his business.” Morton responded that he did not think he was taking up too much union time, that anything that concerned the shop was his business, but that if he was tending to any “improper business” Adamson should so advise him and that he would “change his ways.” Morton then stated that he did not know how to answer the charge that he was dragging his feet and that he thought he had been doing a good job. He added, however, that if Adamson thought he was working too slowly Adamson should give him a time estimate on the various jobs and that he would try to work within the time estimates. Adamson replied to this by stating that he would not give time estimates because it would cut his production. When Morton thereupon responded that the department was a maintenance shop, not a production shop, Adamson stated that nevertheless he had to have so much production out of the shop. The conversation terminated with Morton stating that he did not know how to answer the latter point and his repeating that “if I was tending to any union business that wasn’t my business I would change it.” Adamson did not refute Morton’s testimony that during this conversation he charged Morton with stirring up trouble and that he was spending too much time on union business. However, on cross-examination Adamson conceded that during this conversation he alluded to various grievances which Morton had brought up (particularly his demands for a restroom and material racks) and that in this context he told Morton that he was “trying to run the shop.” Further, in his direct testimony concerning this conversation, Adamson testified, *inter alia*, “He (Morton) had been talking to, I believe, Mr. Robertson about facilities and certain items, and — the steel racks — and at that time I told him that he was concerning himself with things that didn’t concern him, such as steel racks.”

Morton was discharged on the following day, March 19, 1967, at about 2:30 p.m. At this time Adamson came up and told Morton that it was no use putting it off any longer, that he had to let him go. When Morton asked for the reason he was being terminated Adamson stated that he had been dragging his feet. The discharge was thereupon effected.

when it occurred. Secondly, Adamson stated in his pre-trial affidavit that it was on March 18 that he removed the A.W.O.L. from Roger’s timecard when Morton and Vickers came to see him. On re-direct examination, Adamson, upon leading questions from his counsel, sought to indicate that this date might not be correct because it was suggested to him by the Board agent who took his statement. Significantly, however, in his earlier cross-examination Adamson not only placed this date as March 18 but indeed testified that later in the same day he issued an oral reprimand to Morton. As hereafter indicated, there is no dispute but that this alleged reprimand occurred during a conversation which Morton had with Adamson the day before Morton’s discharge. Finally, Morton’s timecard, which was introduced in evidence, reflects that he was clocked for 16 hours on March 18 as being on union business.

### C. Respondent's Defense, Conclusion

As previously indicated, Respondent asserts that Morton was terminated because of unsatisfactory work performance and because of his poor attitude. Adamson testified that the decision to terminate Morton was initiated by him. He said that in the latter afternoon of March 18, following his conversation with Morton, he spoke to H. H. Speer, Respondent's maintenance supervisor and plant engineer and also his superior, and that they then "mutually agreed" that Morton be terminated. Adamson and Speer then consulted with Robertson and Robertson approved the decision.

Although the Respondent contends that Morton was terminated principally because of poor workmanship, there is very little other than generalized and conclusory testimony to support this assertion. Thus Adamson, the foreman directly in charge of the machine shop employees, was able to allude to only two specific instances involving defective work produced by Morton.<sup>10</sup> The first such incident occurred approximately 4 or 6 weeks after Morton was hired. According to the unrefuted testimony of Adamson, at this time a part produced by Morton had to be scrapped due to the fact that he cut some weld chamfers on the wrong side. Adamson did not indicate whether this was a minor or major mistake nor did he specify the cost or the loss of time involved. Morton was not reprimanded for this mistake.

The second incident occurred on March 16, which was the Saturday before he was discharged. On the preceding day, March 15, Morton was given a job to build a part known as a cam. Morton said that upon being given the job he studied the blueprints to determine the size of material required, which in this instance involved a long heavy piece of steel. After measuring for size with a scale, Morton asked Adamson whether an 8 inch piece would suffice.<sup>11</sup> Morton credibly testified that Adamson agreed that an 8 inch piece was proper for the job. When Morton thereupon asked where there was any material of that size, Adamson accompanied him out to the yard. According to Morton, Adamson pointed out a piece and said, "There it is." Adamson then helped Morton carry the piece into the machine shop. Adamson conceded that he went out with Morton and helped him carry in the piece of material. However, Adamson said that it was Morton, not he, who selected the material. On the following day, Saturday, Morton was still working on the cam when at a certain point he determined that the 8 inch piece of material was too small for the job. Morton thereupon called Adamson over and explained the situation. According to Morton, Adamson merely stated, "Well, the only thing we can do is just make another one." As to Adamson's testimony concerning this development, he testified as follows:

Well, like I said, he was working on the lathe, and made his remark again that he was going to give it the

<sup>10</sup>Although during the hearing Robertson indicated that absenteeism played some part in the decision to terminate Morton, Adamson testified that absenteeism "had nothing to do" with his recommendation that Morton be discharged. Since Respondent's brief also abandons any mention of this defense, I do not deem it necessary to discuss the testimony in this regard.

<sup>11</sup>This does not include a defective part which was discovered after Morton's discharge. Although there is a dispute as to whether this was caused by a defective machine on which Morton was working, this incident is immaterial since it was not discovered until after the discharge.

<sup>12</sup>Morton testified that it was usual shop procedure to discuss a job this type with the foreman before performing it.

tool and die touch, and he discovered that he had selected the wrong size material, the cam was too small, and I told him, "Well, that is certainly not a tool and die touch." I said, "We need this job. It is hot." And he asked what he should do about it and I said, "Well, there is nothing that we can do but start another one" and this we did.<sup>12</sup>

Although Adamson was also called upon to testify concerning Morton's alleged poor attitude, this testimony was mostly of a conclusory nature. Thus, Adamson began by stating that Morton "was a hard man to talk to." Continuing, Adamson said, "You couldn't hardly tell when (sic) he was getting across your message to him. Sometimes he would just smile as if he wasn't even listening and other times it didn't seem to make any effect on him." Later in his direct testimony Adamson testified that Morton's attitude was "poor from the beginning" and that he was "always rebellious." When asked to give some illustration or explanation concerning Morton's attitude and alleged rebelliousness, Adamson's response was that Morton continually complained about the sketches, drawings or blueprints which were furnished to him upon assignment to a job. Yet, when asked to give further specifics in this regard, Adamson could refer to only one such instance, this in regard to an occasion when Morton was furnished a blueprint from which to build a cam. According to Adamson, Morton at this time stated that "he wanted a graph drawing" and that "he made several remarks to the engineer that this (the blueprint) was poor, that it was not very good to do this, first one way and another, time and time again."

Jerome McCarty, employed with the Respondent in a non-supervisory capacity as a tool engineer, was called as a Respondent witness and testified that on one occasion he requested Morton to make a bracket for a gas machine and that he needed it in a hurry. McCarty said that some time later when he came back and found Morton to be still working on the piece he asked Morton when it would be finished. According to McCarty, Morton replied "that he would have been through with it an hour earlier if he hadn't heard all of that about the line being down." McCarty testified that it took Morton "probably three hours" to complete the job and that in his opinion this was "excessive time." Although McCarty said he "believed" that a similar part took about an hour to complete, McCarty was not present while Morton worked on the part in question and therefor was unable to say whether the alleged excessive time was due to loafing or to some delay that may have incurred at the welding shop. He did say, however, that "once it (the part) was finished it was satisfactory."<sup>13</sup>

I turn now to my conclusions. Although Respondent's collective-bargaining agreement with the Union gives it the right to discharge employees for any reason within their 90-day probationary period, there remains the issue, which is here essentially one of fact, as to whether Respondent terminated Morton for legitimate cause or for reasons proscribed by the Act. Upon the entire record in this case, and notwithstanding the fact that Morton was a

<sup>12</sup>Adamson said that the cam was about 75 percent completed when the error was discovered. Morton testified without contradiction that later in the day Adamson came up to him and said that he had some personal use for the scrapped cam and that he would take it home with him.

<sup>13</sup>Although Adamson and H. H. Speer also testified that Morton was a slow worker, this testimony was also of a conclusory and unspecific nature. Speer, it may be noted, testified that he spent only 30 minutes to 1 hour a day in the machine. Undoubtedly he had other duties there and did not spend much of this relatively short time in observing Morton at work.

relatively new employee (a factor which I have carefully considered) I am persuaded that a reason, if not *the* reason, for Morton's termination was Respondent's disapproval of his grievance activities as a union steward.

In reaching this conclusion, I would first note that not only was Morton the first steward to process employee grievances beyond the first step of the grievance procedure, but that the evidence also reflects that Respondent was aggravated with his bringing up matters which it apparently regarded as not being within the realm of his concern. Thus, during Morton's presentation of the 12 grievances at the March 6 meeting, Robertson admittedly told Morton that the matter of job descriptions was beyond the level of his stewardship, that it rather was a "negotiable item" with the International. Additionally, in his testimony Robertson also indicated that "other subjects" which Morton brought up at this meeting were "inappropriate."<sup>14</sup> That Respondent was aggravated over the extent of Morton's stewardship activities is further manifested by Adamson's statement to Morton and Vickers shortly after the March 6 meeting that Respondent would farm out the work and they would be out of a job if they did not stay out of the personnel office.<sup>15</sup> Morton, however, disregarded the warning and on the day prior to his discharge again took the lead in arranging a meeting with John Marlar, the employment supervisor, wherein he pressed his demands that certain grievances be settled. Later in the same day, accompanied by Vicker, these employees related their meeting with Marlar to Adamson and at the same time pressed him to delete an A.W.O.L. from another employee's timecard. While not alluding directly to this matter, Adamson's displeasure of Morton's foregoing activities was hardly concealed when shortly thereafter he approached Morton purportedly to criticize him for dragging his feet. Thus, during this conversation Adamson told Morton, *inter alia*, that he was "stirring up trouble," that he was "taking up too much union time," that he was "concerning himself with things that didn't concern him," and that he was "trying to run the shop." Indeed, and in view of all the foregoing, it must be concluded that the General Counsel has made out a *prima facie* case establishing that Morton's discharge on March 19 was in direct consequence of his above noted activities on March 18.

I further conclude that the Respondent has not overcome the case made out by the General Counsel. Aside from unspecific generalities, Respondent was only able to point to two occasions of deficiencies in Morton's

work. The first involved a defective part produced by Morton some 4 or 6 weeks after he was hired. However, he was not given any warning for this mistake. The second involved the cam which occupied Morton on March 15 and the morning of March 16. Although the cam had to be scrapped, under the circumstances heretofore detailed I can but conclude that Adamson must share at least some of the responsibility for this result in view of his participation with Morton in the selection of the material to be used for this job. It is also noteworthy, as Adamson conceded, that other of Respondent's permanent machine shop employees also made mistakes in their workmanship. As he further put it, "anyone makes mistakes." With respect to Respondent's further contention that Morton's "poor attitude" was a factor that led to his discharge, the testimony of Respondent witnesses in this regard has been heretofore set forth and requires little comment. Suffice it to say that Jerome McCarty, the tool engineer who was called by the Respondent to testify adversely to Morton, conceded that Morton "generally gave me good cooperation."

Perhaps yet the most incredible aspect of this entire case is the fact that Morton was terminated at a time when Respondent was in critical need of tool and die makers and machinists. Thus, H. H. Speer said that there was a lack of qualified personnel in the area and that he had sought to recruit skilled employees ever since the company began operations. He testified further that there was such an abundance of tooling and machining work that the machine shop was forced to work "extreme overtime right now" and that "if Clyde Morton had done his job as a tool and die maker I could use him right now and all other people that I can get hold of, up to six tool and die makers." Additionally, Respondent states in its brief "The Company has actually recruited for Tool & Die Makers through a large area of the United States with little success; the immediate Camden area produces virtually no Tool & Die Maker candidates." Notwithstanding the assertions of Speer and Adamson that they had discussed Morton's alleged deficiencies between themselves a number of times before his termination, the remarkable thing is that neither of them took it upon themselves to warn Morton, or to attempt to correct any such deficiencies, at any time prior to his discharge.<sup>16</sup> In view of Respondent's critical need for skilled machine shop employees, I consider very significant the fact that Respondent failed to take any meaningful steps to attempt to correct any of Morton's alleged deficiencies. Indeed, its failure to do so convinces me that the testimony of Respondent witnesses concerning such alleged deficiencies was grossly exaggerated.<sup>17</sup> In short, Respondent's defense that Morton was discharged because of deficient workmanship and a poor attitude does not stand up under scrutiny.<sup>18</sup> This conclusion is further buttressed by the testimony of Respondent Witness Jerome McCarty, the tool engineer, who testified that Morton was "a pretty fair machinist." Significantly, a little later in his testimony McCarty testified, "About all the work that we have is machinists work. We don't have any tool and die work as such, and these machinists can do the work . . . ."

<sup>14</sup>Concerning the manner in which the above was brought out at the hearing, it must be remembered that Robertson acted as counsel for the Respondent. Thus, Robertson in effect conceded his version of this aspect of the meeting when he queried Morton on cross-examination as follows

Q (By Robertson) *Is it not properly stated, Clyde, that what we said was that job descriptions were beyond the level of your stewardship, and that they were a negotiable item with the International, either through themselves or through a committee, and that we had no provision for job description negotiations at that time?* (underlining supplied)

A I believe you said something to that effect, but I also told you that it was in the contract for job classifications

Robertson's view of this aspect of the meeting was otherwise expressed when questioned by the General Counsel as an adverse witness, as follows

Q Was there any mention of job descriptions from the company, requesting job descriptions from the company?

A I don't believe there was, however, if that was the case, that would not be appropriate in that type of meeting, if you are requesting me to rule on them

<sup>15</sup>There is no allegation in the complaint that this statement was independently violative of Section 8(a)(1) of the Act. Accordingly, I make no finding in this respect

<sup>16</sup>To be sure, Adamson testified that on two occasions he told Morton that Morton was not giving his work "the tool and die touch." However, a mild statement of this nature, without anything further, can hardly be regarded as a serious warning or reprimand

<sup>17</sup>Such also was my reaction as I observed these witnesses testify

<sup>18</sup>Three machine shop employees who worked in the same room as Morton testified that as far as they were able to observe Morton

Accordingly, and for all of the reasons hereinabove set forth, I conclude and find that Morton's discharge was motivated by Respondent's hostility toward his zealous efforts as union steward.<sup>19</sup> By this conduct Respondent violated Section 8(a)(1) and (3) of the Act.

#### IV THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations set forth 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 unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, it will be recommended that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that Respondent offer to Clyde E. Morton immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of earnings he may have suffered by reason of the unlawful discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned, absent said discrimination, from the date of his discharge to the date of an offer of reinstatement, less his net earnings during said period. Backpay shall be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and with interest thereon as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer 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. By discriminating in regard to the hire and tenure of employment of Clyde E. Morton by discharging him because of his legitimate activities as a union steward, thereby discriminating against him because of his

protected concerted and union activities and thus discouraging union membership and activities among its employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, it is recommended that Respondent Camden Manufacturing Company, a Division of Batesville Manufacturing Company, a Subsidiary of Aerojet-General Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from discouraging concerted and union activity, and union membership, by discriminating in regard to the hire and tenure of employment of any of its employees by discharging or in any other manner discriminating against employees with regard to their hire or tenure of employment or any term of employment.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to Clyde E. Morton immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amount of backpay due under this Recommended Order.

(c) Post at its plant in Camden, Arkansas, copies of the notice marked "Appendix."<sup>20</sup> Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.<sup>21</sup>

<sup>19</sup>In the event that this Recommended Order be 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."

<sup>21</sup>In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 26, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

performed his work in a satisfactory manner. Although these employees (Doyle Langley, Jackie Rogers, and James Erwin) impressed me as credible witness, in view of all the other evidence herein I do not deem it necessary to rely on this testimony in reaching my ultimate conclusion that Morton was discriminatorily discharged.

<sup>19</sup>For a closely parallel case, see *NLRB v. Symons Mfg. Co.*, 328 F.2d 835 (C.A. 7), enfg. 141 NLRB 558.

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage concerted or union activity or membership in International Association of Machinists, AFL-CIO, Lodge 502, or any other labor organization, by discriminating in regard to the hire and tenure of employment of any of our employees because of their concerted or union activities.

WE WILL offer immediate and full reinstatement to Clyde E Morton to his former or substantially equivalent position, without prejudice to his seniority or

other rights and privileges, and make him whole for any loss of earnings he may have suffered because of the discrimination against him.

CAMDEN  
MANUFACTURING  
COMPANY  
(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, 746 Federal Office Building 167 North Main Street, Memphis, Tennessee 38103, Telephone 534-3161.