

In the Matter of SWAN RUBBER Co. and UNITED RUBBER WORKERS OF
AMERICA, CIO

Case No. 8-C-1607.—Decided June 9, 1944

DECISION

AND

ORDER

On March 4, 1944, the Trial Examiner issued his Intermediate Report 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 copy of the Intermediate Report annexed hereto. The Trial Examiner also found that the respondent had not engaged in unfair labor practices in discharging Lewis Cole and recommended that the complaint be dismissed with respect thereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. The Union did not file exceptions. Pursuant to notice and at the request of the respondent, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on May 16, 1944. The respondent and the Union participated in the oral argument. The Board has considered 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 Intermediate Report, the respondent's exceptions in brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.

1. The Trial Examiner found, *inter alia*, and we agree, that the posting of certain notices by the respondent in its plant during the Union's organizational campaign for members constituted unfair labor practices. However, in view of the absence of a sufficient showing of relationship between the notice dated December 10, 1943, assuring employees of post-war job security, and union activity in the plant, we do not agree that the posting of this particular notice interfered with, restrained, or coerced employees within the meaning of Section 8 (1) of the Act.

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2. We agree with the finding of the Trial Examiner that, by Lane's communication to the respondent's employees of Supervisor Boettcher's threat that the respondent would establish a rule prohibiting its employees from leaving the plant during the hours of 7:30 a. m. and 11:30 a. m., and thereby deprive its employees of a long established privilege, the respondent has violated Section 8 (1) of the Act. We credit Lane's testimony set forth in the Intermediate Report, as did the Trial Examiner, and find that Boettcher made the statements attributed to him by Lane. Assuming, *arguendo*, that Boettcher did not make such statements to Lane, we are of the opinion, nevertheless, that Boettcher, by failing to advise the employees that Lane's fears of invocation of such a rule, expressed to employees in Boettcher's presence, were groundless, in effect, indicated to the employees that he adopted the statements of Lane. In either event, the respondent is responsible for Lane's statements to the employees referred to above.

3. In lieu of the Trial Examiner's ultimate findings in the Intermediate Report, with respect to the respondent's violations of Section 8 (1) of the Act, we substitute the following:

We find that, by the respondent's interrogation of Carley concerning his union activities, its warning to him that such activities could result in his discharge, its exaction from him of a promise to cease these activities under the continuing implied threat that no further action would be taken against him at that time, the respondent's posting of a no-solicitation rule which was discriminatory on its face, being applicable only to union solicitation and which, together with the notice of January 25, 1944, was strategically timed to coincide with the organizational drive, coupled with Assistant Factory Manager Boettcher's derogatory statements of unions generally, his thinly veiled threat to close the plant, and his comments to Lane which, with Boettcher's full knowledge and acquiescence, were communicated to the respondent's employees, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Swan Rubber Co., Bucyrus, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Rubber Workers of America (CIO) or any other labor organization by discriminating in regard

to hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Warren A. Bosworth, without prejudice to his seniority or other rights and privileges, full and immediate reinstatement to his former or substantially equivalent employment;

(b) Make whole the said Warren A. Bosworth for any loss of pay suffered by him as a result of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period between the date of his discharge and the date of the offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in the plant at Bucyrus, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to remain or become members of the United Rubber Workers of America (CIO) or any other labor organization, and that the respondent will not discriminate against any of its employees because of membership in or activities in behalf of that organization or any labor organization;

(d) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges: (1) that the respondent engaged in unfair labor practices in connection with the discharge of Lewis Cole; and (2) that the respondent has engaged in surveillance of union members or union meetings.

INTERMEDIATE REPORT

Russell Packard, Esq., and *William A. Murdock, Esq.*, of Cleveland, Ohio, for the Board.

John D. House, International Representative, of [133½ East Center Street,] Marion, Ohio, for the Union.

Edward J. Myers, Esq., of Bucyrus, Ohio, and *Frank Wiedeman, Esq.*, of Marion, Ohio, for the respondent.

STATEMENT OF THE CASE

Upon an amended charge filed February 7, 1944, by United Rubber Workers of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated February 7, 1944, against Swan Rubber Co., herein called the respondent, alleging that the respondent, at its plant in Bucyrus, Ohio, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and amended charge accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

In respect to unfair labor practices, the complaint alleges in substance that the respondent since on or about December 1, 1943, has questioned and interrogated its employees concerning their affiliation with and activities on behalf of the Union; has advised, urged, threatened, and warned its employees to refrain from assisting, joining, or becoming or remaining members of the Union; has kept meetings of the Union under surveillance; has indicated to its employees its disapproval of and opposition to their self-organization and on January 31, 1944, posted a notice prohibiting union solicitation on company property. The complaint further alleges that on or about December 20, 1943, the respondent discharged Warren A. Bosworth and on or about January 19, 1944, discharged Lewis Cole, and at all times since then has failed and refused to reinstate them for the reason that they joined and assisted the Union and engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection, and that all the foregoing acts of the respondent constitute unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

The answer of the respondent duly filed herein admits the allegations of the complaint with reference to the corporate existence and the nature and extent of business transacted by the respondent, and the character of the Union as a labor organization; it admits the discharge of Bosworth and Cole, but denies all the allegations of the complaint concerning unfair labor practices.

Pursuant to due notice, a hearing was held on February 22 and 23, 1944, in Bucyrus, Ohio, before R. N. Denham, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its international representative. All parties participated in the hearing where full opportunity was afforded them to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of the taking of the testimony, counsel for the Board moved to amend the pleadings to conform to the proof. The motion was granted without objection, to apply to all pleadings herein for the purpose of correcting names, dates and other minor recitals not affecting the issues of the case. Oral argument was waived. Opportunity was afforded all parties to file briefs with the Trial Examiner within 7 days from the close of the hearing. No briefs have been received.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted into evidence, and upon the entire record herein, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is an Ohio corporation with its principal office and place of business in Bucyrus, Ohio, where it engages in the manufacture, distribution,

and sale of mechanical rubber products, including rubber hose, tires and specialties. In the course and conduct of its business, the respondent causes large quantities of reclaimed rubber and chemicals to be purchased and transported in interstate commerce from and through States of the United States to its plant in the State of Ohio. During the calendar year of 1943, the total value of such raw material was in excess of \$500,000, of which more than 10 percent was shipped from points outside the State of Ohio. During the same period, the respondent shipped finished products manufactured or processed at its plant in Bucyrus, Ohio, of the value of more than \$1,000,000, of which, in excess of 50 percent represented products shipped to points outside the State of Ohio. The respondent raises no question concerning the jurisdiction of the Board in this proceeding.

II. THE ORGANIZATION INVOLVED

United Rubber Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.¹

III. THE ALLEGED UNFAIR LABOR PRACTICES

The respondent's plant is in a three story building and its products consist of rubber hose and accessories manufactured chiefly from reclaimed rubber and various synthetics, as well as miscellaneous chemicals. One of these is zinc stearate, commonly referred to as stearic acid, which is used in substantial quantities. The initial process is carried on in the milling department, situated on the ground floor, where the materials are first ground into a fine powder, then by other milling processes worked into a product which eventually leaves the department in the form of rolls, to be worked up into the respondent's finished materials. About 265 persons are employed in the production and maintenance operations, which are carried on in 8 departments. At the times that are material herein, the plant operated with 3 shifts and approximately 12 foremen. Approximately 40 percent of the business now being done is devoted to war work.

In the past there have been one or two abortive attempts to organize the employees, one of which developed into an effort to set up an inside union. Nothing came of these, however, and there is now no charge that the respondent was involved in any of them.

In the early part of December 1943, Howard Carley, maintenance electrician who had been in the employ of the respondent for about 4½ years, was approached by two other employees who suggested the introduction of a union in the plant. He made no commitment but stated that he would talk to the other employees to see how they felt about it. His work was such that it carried him to all parts of the plant and afforded him an opportunity to see and converse with many of the employees during the working day. He availed himself of this and spent the next day conducting an active canvass of the employees in an effort to create an interest in the Union. This attracted the attention of Gilbert Boettcher, the assistant factory manager. The day after Carley started his canvass, Boettcher met him in the plant and inquired how "his" union was getting along. Carley made no effort to deny his activities but told Boettcher that it was not his union. In fact, up to that time, Carley had not joined and the indications are that no applications had been signed by anyone. Carley's activity was more of the nature of a poll of the employees to determine whether they would be interested in or-

¹ The above recitals with respect to the business of the respondent and the organization involved are derived from a stipulation entered into on the record by the parties, that the recitals on those subjects set out in the complaint are true and correct and may be found as facts by the Board.

ganization. The next morning Carley was called to the office of the factory manager, Cody Ressegger, where he was interviewed by both Ressegger and Boettcher. They asked him why the men wanted a union. Carley replied that they were dissatisfied; that they felt they were being "kicked" around, and that they could get some relief for their grievances if they were organized. Boettcher told him there was no need for organization and that everything could be settled at the office as it had been in the past. Carley agreed with this if the employees could feel there would be no "aftermath" of reprisals. After the conversation had continued along this line for a while, Boettcher told Carley that the company was paying him to work during working hours; that he had no business spending the company's time going around the plant soliciting for the Union; and that he could be discharged for what he had done. Carley admitted to them that he had put himself in the position where he was eligible for discharge but was told by Boettcher and Ressegger that they would say nothing further about it, but they did not want him to continue his activity. Carley agreed to have nothing further to say about the Union and to completely suspend all his activities in its behalf. He immediately reported what had happened to Warren Bosworth, a mill operator, and advised Bosworth that he would have nothing further to do with promoting the Union in the plant. A week or so later, Carley was called to the office of M. G. Nussbaum, the respondent's president, who asked him whether he was the ring-leader of the Union. When Carley denied it, nothing further was said to him on the subject by Nussbaum. Carley maintained this position until early January when he became a member. Since then he has again become active. No disciplinary action has ever been taken against Carley who is still employed by the respondent.

Up to the time of the Carley incident, there seems never to have been any rule restricting solicitations of any character in the plant. The matter of interruptions during working hours was governed largely by the discretion of the men themselves, not only within their respective departments but also as to leaving the premises during working hours. This particularly applied to visiting the grocery store operated by Robert Lane next to the plant. Lane has been the proprietor of this store for more than 10 years. He has no connection with the respondent other than that for the past 5 years, since the respondent acquired the land on which the store stands, he has leased the property from the respondent on a month to month basis. For many years it has been a custom among the employees to leave their work during the day and visit Lane's store to buy candy, cakes, soft drinks or other such refreshments. Many of them make two or three such visits a day during working hours. The supervisory staff similarly frequent the store and, so far as the record discloses, the respondent not only has never sought to terminate the practice but has recognized it as an established custom and privilege. Somewhat in line with this and illustrative of the fluctuations of the work during the day, the mill operators technically work a straight 8-hour shift with no fixed time for a lunch period. The nature of the mill operation is such that at frequent intervals in each day, there comes a time when, for 15 or 20 minutes, the operator's mill does not operate and the operator has idle time. At such intervals he eats his lunch or otherwise occupies his time as he wishes. While there is some testimony that there has been a rule prohibiting employees going from one department to another except on business, there is no credible evidence that notices to that effect have been posted or that it has been consistently enforced. On the contrary, while such conduct appears to have been indulged in rarely, the evidence indicates that the employees did not regard such visits as unusual.²

²There is no question that, since the respondent has been engaged in war work, the military authorities have required it to restrict visitors to the Boiler Room, Engine Room and Pump Room. Notices to this effect are posted but there are no such notices relating

The conversation between Carley, Boettcher, and Ressegger took place during the first week in December. There is no evidence as to what arguments Carley or Bosworth advanced to the other employees concerning the desirability of Union representation, but on December 10, 1944, the following announcement was posted on the bulletin boards throughout the plant:

TO ALL SWAN EMPLOYEES

TO CORRECT SOME FALSE INFORMATION THAT IS BEING CIRCULATED IN THIS PLANT—

ANY WORTHY EMPLOYEE NOW ON OUR PAYROLLS SHOULD NOT BE CONCERNED ABOUT LOSING THEIR JOBS AFTER THE WAR BECAUSE:

- (1) PRIOR TO THE WAR AND RUBBER RESTRICTIONS, WE EMPLOYED 475 PEOPLE. WE NOW HAVE LESS THAN 300.
- (2) WE HAVE COMPLETED PLANS FOR AN EXPANSION PROGRAM FOR POST-WAR WHICH WILL CONSIDERABLY INCREASE THE NUMBER OF PRE-WAR EMPLOYEES.
- (3) MEN, WHO THROUGH THEIR OWN EFFORTS NOW, WILL BE QUALIFYING FOR BETTER POSITIONS IN THE POST-WAR EXPANSION PERIOD.

AS AN OVERSEA'S VETERAN OF WORLD WAR 1, I CAN APPRECIATE WHAT MUST BE IN THE MINDS OF OUR EMPLOYEES NOW IN THE ARMED SERVICES AND, AS PATRIOTIC AMERICANS, YOU MUST AGREE THAT MEN WHO GIVE UP YEARS AT LOW PAY AND DO OUR FIGHTING AND DIEING (sic) FOR US ARE WORTHY OF EVERY CONSIDERATION.

ANY OF OUR FORMER EMPLOYEES NOW IN SERVICE WHO WILL HONOR US BY COMING BACK WILL MOST CERTAINLY BE EMPLOYED.

FORTUNATELY, OUR PLANS WILL ABSORB ALL OF THESE MEN AND EVERY ONE OF YOU, SO PLEASE DO NOT BE MISLED IN ACCEPTING FALSE INFORMATION.

RESPECTFULLY,

[s] M. G. NUSSBAUM,
President.

MGN:ET

December 10, 1943

While this notice, standing alone, may appear to have no bearing on organizational activities, its proximity to the preliminary steps that ripened into an organizational campaign is such that it is reasonable to infer the subject matter of the notice was closely related either to some of the stated objectives of union organization or to the discussions within the plant that led to the initiation of the organizational movement.

When Carley advised Bosworth that he was quitting his activity concerning the Union, Bosworth picked up where Carley had stopped and began a systematic campaign among the employees, sometimes talking to them about the Union and at other times merely getting their names and addresses and advising them that he wanted to send them some union literature. At that time, Bosworth had not yet joined the Union. However, on December 13, 1943, at a meeting called by the representative of the Union, he signed an application card and obtained a number of other cards which he subsequently passed out at the

to the ordinary operating departments. The testimony that notices restricting inter-departmental visits have been posted in the past is disregarded. If true, it was either so long ago as to have been forgotten or so ignored as to have become inoperative through disuse.

plant, sometimes during working hours and at other times in the shower room while the men were changing clothes preparatory to going off shift. On one such occasion, Harold Kennedy, the foreman of the maintenance gang, was in the shower room and Bosworth, in passing out the cards, jokingly remarked to him that he could not have one because he was a foreman. Some four or five days after the meeting of December 13, Bosworth observed the foreman, Henry Steffens, of the milling room, performing some manual labor ordinarily done by helpers, and in talking to him about it, said "when we get the Union organized here you won't have to do that."

Lane testified that at about the time the Union activities began at the plant, Boettcher told him, on one of the occasions when he was in the store, that if the Union came into the plant the respondent would establish a rule prohibiting the men from leaving the plant between 7 o'clock a. m. and 11.30 a. m., which began the usual lunch period. Since this would deprive Lane of much of his business from the employees, he told Boettcher that if that were done, he would have to close the store since he did not feel he could carry on under such restrictions. Lane further testified that he is personally opposed to unions, and that when the men, coming into the store as usual, mentioned the union, he told them on numerous occasions that Boettcher had advised him that if the Union came into the plant, they would not be permitted to visit the store during working hours as they had in the past, and that he would have to go out of business. Boettcher denied having made this statement to Lane. Like the others in the plant, he was a frequent visitor at the store, and testified that during the period when the Union was an active topic, Lane often expressed the opinion when talking to the men, that if the Union came into the plant the company would become more strict and not permit them to leave the plant as freely as heretofore for the purpose of visiting the store, and that he would have to close the store. Boettcher was unable to explain how Lane should have arrived at this conclusion without having it suggested to him by someone representing the company. Lane's admitted antipathy to the Union lends weight to his testimony. Under such circumstances, Boettcher's denial loses all persuasive value and is not credited. It is found that Lane's testimony with reference to his conversations with Boettcher on the subject of restricting employees and his statements to the men, which were inspired by the Boettcher conversations, is substantially correct.

The activities of the Union's proponents continued through December and into January. On January 25, 1944, the respondent posted a notice signed by M. G. Nussbaum, its president, reading as follows:

JANUARY 25, 1944

An Open Letter to Swan Employees:

Recently certain individuals have been soliciting our employees for membership in a labor organization.

I feel that our employees, before making any decision on this matter, are entitled to know certain fundamental truths.

This company began operations in 1929, and all through the depression years provided steady work and reasonable pay to a large portion of the working population of Bucyrus. Many of these people are still here. Never during the entire fifteen year period has my door ever been closed to any employee who had a legitimate grievance or a constructive suggestion. My full cooperation was given in every such instance. Since you have this privilege now, as in the past, it seems to me that you can represent yourselves better than a third party can do it for you.

As most of you know, the company wage schedules were frozen by law in late 1942. Since that time, with no other motive than the welfare of our

employees and purely as a voluntary measure on our part, the company solicited and obtained permission to grant retroactive wage increases to well over half of the employees of the company. In my opinion, no one could have done more than this.

Based upon the foregoing facts, it is my sincere belief that the existence of a Union in this plant will have no good result for you or for the company. This, of course, is my opinion and you are free to accept it or reject it, as you see fit. You have a right to join any organization you desire. You have an equal right to refuse to join any organization you desire. You have an equal right to refuse to join any organization which you do not believe will be of benefit to you. Whatever your decision may be, your position with this company will in no way be affected. My only request is that before making any decision, you consider all the facts.

Sincerely yours,

[s] M. G. NUSSBAUM,
President.

On January 31, 1944, Ressegger posted the following notice:

NOTICE TO ALL EMPLOYEES

EFFECTIVE THIS DATE NO UNION SOLICITATION WILL BE ALLOWED ON THIS COMPANY'S PREMISES. ANY VIOLATION OF THIS RULE WILL BE CONSIDERED GROUNDS FOR IMMEDIATE DISMISSAL OF THE PARTIES INVOLVED

Signed [s] CODY RESSEGGER,
Factory Manager.

JANUARY 31, 1944
2 P. M.

The above notice immediately brought forth a storm of protest from the employees. Several copies of it were torn from the bulletin boards within a few moments after they were posted. Others remained up for 2 or 3 days, after which they were removed by the respondent because of the protests of the employees.

The foregoing reflects the pattern of the respondent's disapproval of the Union and of attempts on the part of the employees to organize. From it, it is found that by the warning to Carley which stopped his activities, the comments of Boettcher to Lane which, with Boettcher's knowledge, were passed on to the employees, and the notices posted as above set forth, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

In support of the allegation of complaint that the respondent had engaged in surveillance of the union meetings, there was testimony of one witness that on the occasion of one union meeting he had observed Ressegger sitting in his parked car about 75 feet from the entrance of the hotel where the meeting was being held; and the testimony of another witness that on the occasion of another union meeting, Boettcher was seen to drive slowly by the hotel at about the time the meeting was due to begin, and was observed looking at the door of the hotel as he went by. The hotel in question is on the main street of Bucyrus, which is a small midwest town. There is a reasonable presumption that both Ressegger or Boettcher were legitimately where they were seen to be on the occasion mentioned. There was no evidence to the contrary. The testimony above noted is inadequate to establish surveillance by any of the representatives of the respondent, and it is accordingly found that the respondent has not engaged in such practice.

The discharge of Warren A. Bosworth

Warren A. Bosworth has been employed by the respondent continuously since 1933. His first employment was as a mill operator, carrying on the first processing operation heretofore described. In 1936 he was made shift foreman in the mill room, and in early 1943 became chief foreman of the mill room, in charge of the first shift and responsible for maintaining a constant supply of raw materials with which to carry on the operation of the mill. This was done by requisitioning such supplies through the main office. As foreman, his salary was approximately \$52 per week, working 6 days per week regularly, and 7 days when necessary. The wage of the mill operators under him, who worked at piece rates, averaged about \$72 a week. Bosworth was not satisfied with his job as foreman, either as to the responsibilities it entailed or the amount of pay as compared with that of the men working under him. On several occasions he asked Ressegger for increases in pay and at first was told that his wages were frozen but was later told that an effort was being made to get him a pay rate of \$1 per hour. However, such wage increase never materialized. On several occasions he also requested Ressegger to be relieved of his duties as foreman and to be put back to work as a mill operator where he could make more money and not have a foreman's responsibilities. This request was refused, chiefly on the ground that they could not get anyone to replace him.

In the respondent's plant, inventory is taken every 4 weeks, usually on Sundays. October 24, 1943, was such an inventory day. On Saturday, October 23, Bosworth decided he was unwilling to continue at his job under the conditions then existing, imbibed too freely of liquor, got drunk and not only failed to report at the plant on Sunday to take inventory but did not show up until the afternoon of Monday, October 25. At the beginning of the business day on Monday, the officials at the plant learned that the millroom inventory had not been taken, suspended part of the plant operation and had the foremen of the other millroom shifts take the inventory. At the same time, Ressegger and Boettcher decided to remove Bosworth as foreman and appointed Henry Steffen, one of the mill operators, to take his place. Notice of this appointment was posted during the day on the 25th and was observed by Bosworth when he came to the office on the afternoon of that day, determined to quit his job. He saw Boettcher, told of his intention to quit and commented on the change in foremen that had been made over the week end. Boettcher prevailed upon Bosworth not to quit, offered him a job as mill operator and gave him his choice of mills and shifts. Bosworth expressed relief and gratification at the change and took the job, but told Boettcher he might not be there long since he had another job in view. He agreed to cooperate with Steffen and assist him in becoming acquainted with his duties but otherwise assumed his place as any other mill operator, working at piece work rates. As a mill operator he earned approximately \$72.00 per week and was fully satisfied although he did not immediately abandon his interest in a job elsewhere. The only time, however, when he evidenced this interest was during the week following his demotion when he was allowed to leave the plant an hour early in order to go to a nearby town where he had another job in view. Boettcher testified that when Bosworth was demoted and went to work as a mill operator, there was an agreement between them that his work would be only temporary and would last no longer than it took him to find other employment. Bosworth denied this and stated that he took the operator job as permanent employment but that he did, in fact, tell Boettcher he might leave in the near future to take other employment. Boettcher testified that Bosworth was a wholly satisfactory operator and that there were no complaints to be made of his work either in quantity or quality. As a foreman, however, he had been criticized to some extent,

chiefly concerning the accumulation of scrap. In view of the fact that the work of a mill operator is one requiring skill and experience, which is not easily replaceable, and in the light of the present acute shortage throughout the nation, of skilled men in all classifications, it is improbable that Boettcher would allow a qualified man to leave the employ of the respondent if he was willing to remain. Boettcher's testimony that he had an unqualified agreement with Bosworth that he would be allowed to remain as a mill operator only for a short period and would then find employment elsewhere, is not credited. None of the circumstances point to it. Boettcher and Steffen knew he was interested in finding another job elsewhere but there was no show of desire on their part that he leave them for other employment and no inquiries by them during the 2 months following his demotion, as to his success in finding another job. It is found that no such condition was attached to his employment.

Shortly after Steffen assumed his duties as foreman, he inquired of Bosworth as to the amount of stearic acid it was customary to order and to keep on hand for carrying on the work. Bosworth did not give him an informative answer but merely replied, in substance, "that is something you are going to have to learn from experience just like I did." Steffen never again requested information or cooperation from Bosworth and Bosworth volunteered none. No criticism was directed to Bosworth about this incident.

As has been heretofore stated, in the early part of December, Bosworth undertook to arouse interest in the Union among the employees, passing out application cards to some and taking names and addresses from others so that he could send union literature to them. On December 20, Bosworth carried on his union activities in the same manner that he had in the past, and at about noon, after he had finished the work on his machine to the point where he had some idle time, he went to the third floor while the employees on that floor were eating their lunch and obtained a number of names and addresses from them. A little later in the day, Walter Robinson, the foreman on the third floor, inquired of Steffen what business Bosworth had on the third floor, taking names and addresses from the employees there. Steffen replied that he did not know. He did not speak to Bosworth about this but promptly reported it to Boettcher who directed him to have Bosworth come to his office at the close of work. At about the time Bosworth was ready to quit for the day, Steffen told him that Boettcher wanted to see him. On reporting to Boettcher's office, the latter told Bosworth that he would have to resign, Bosworth refused to do so and told him that if they wanted to get rid of him they would have to discharge him. This precipitated a somewhat acrimonious discussion in which Boettcher reviewed Bosworth's inability as a foreman and also told him that he had not kept his agreement with Boettcher to find another employment after his demotion. Bosworth denied having such an agreement and called Boettcher's attention to the fact that he had been operating his mill 2 months and that if there was any criticism of him, they should have decided long since that they did not want him in the shop. The outcome of this meeting was that Bosworth was discharged, the reason stated on his separation slip being, "lack of cooperation."

The only testimony with reference to lack of cooperation was the incident with Steffen which occurred just a day or two after October 25. There is no evidence that any other thing occurred which would invite criticism to Bosworth until the incident of his appearance on the third floor came to the surface. Boettcher testified that that was not the reason for his discharge, but that he simply decided Bosworth's continued presence in the mill room, working under a foreman who previously had been a mill operator under him, was "creating an unsatisfactory condition," and that he should be held to his agreement to remain with the respondent, only long enough for him to obtain other employment and that

for that reason he discharged him as he did. This explanation is wholly unconvincing in the light of the respondent's established antipathy to the organization of its employees and Bosworth's activity in that respect, which, notwithstanding the denials of Ressegger, Boettcher and Steffen, was well known to them. On the day following the discharge, Bosworth, by appointment, came to the office for a meeting with Ressegger and Boettcher and brought with him as his representative, John D. House, the international representative of the Union. House attempted to discuss Bosworth's discharge but was told by Ressegger that since he was not an attorney they would not talk to him. They referred him to the respondent's attorney, if he desired to discuss the discharge.

Bosworth's discharge is hardly susceptible of explanation on any basis other than that, in the light of the respondent's antipathy to the Union and Bosworth's open activity on behalf of the Union, his discharge was prompted wholly by a desire to eradicate whatever influence he might have on the other employees. The reasons for the discharge that were given by Boettcher do not reflect the normal attitude of a factory manager to whom regular and satisfactory production is essential. Such a superintendent does not quickly discharge an employee who admittedly is an excellent worker and about whom the record reveals no complaints concerning either his production or his relation to the other employees. It is found that Bosworth was in fact discharged by the respondent on December 20, 1943, because of his membership in and his advocacy of the Union and to discourage membership in the Union.

The discharge of Lewis Cole

Lewis Cole first began to work for the respondent on March 29, 1943. On June 29, 1943, he quit. On November 22, 1943, he returned and took a job trucking material from one machine to another throughout the plant. His initial pay rate was 65 cents per hour. Within 2 weeks his pay was raised 5 cents per hour. Cole's work required no skill and was not criticized. Boettcher stated that he was an ordinary normal worker of reasonably satisfactory quality. His assignment was the third shift, working from 11:00 p. m. until 7:00 a. m. under Foreman James Harris. On January 13, 1944, Cole became a member of the Union and talked to a number of employees in the plant about his union membership. He also talked to several of them about joining and solicited their memberships, although the evidence does not indicate that he was very active in this regard, or that his activities were known to anyone in management. On January 19, 1944, Cole became ill with a cold and on the evening of that day, his mother telephoned to the guard at the gate, at about 9:00 o'clock that he was sick and in bed with a cold, and would be unable to report for work. The guard passed the message on to Merle Groves, the foreman of the second shift in the department where Cole normally was employed on the third shift. Groves promised to relay the message to the foreman of Cole's shift when he came on duty. The evidence discloses that Groves failed to notify Foreman Harris that Cole was not reporting for work that night because of illness, and that at no time thereafter did anyone notify any of Cole's superiors of his inability to return to work. The respondent has a rule that after 4 days of unreported absence, an employee is automatically removed from the pay roll. After 5 days of absence, Cole returned on January 25, found his time card still in the rack, punched it, and prepared to start to work. Harris stopped him, told him that he was off the pay roll, and that he would have to see Boettcher the next day. Cole returned to the plant on the following day, called on Haller, the paymaster and obtained his pay up to date together with a separation slip which gave as the reason for his discharge, "Absent without report." Cole told Haller that this was incorrect and that his mother had called in to the plant on the night of the first day he was absent.

Haller replied that he knew nothing about it and could do nothing about it, whereupon Cole took the check which Haller gave him and started to leave. Just inside the door, he met Boettcher and told Boettcher that a mistake had been made about him reporting in when he was unable to come to work. Boettcher told him he had received no such report and that under the rule he automatically was severed from the pay roll after 4 days of unreported absence. At this stage Cole waved his pay check at Boettcher and told him that it did not make any difference because he had intended quitting anyway. With this statement Cole walked away and Boettcher dismissed the matter from his mind. Later in the day he met Cole who asked him to check with the guard about the call and correct the separation slip but he did not ask to be returned to work and Boettcher did not offer to reinstate him, nor did Boettcher immediately check the call although it is now undisputed that such a call actually was made as testified to by Cole and by Braydon, the guard who received it. The whole affair grew out of Groves' failure to pass the information on to Cole's immediate superior.

The evidence does not reflect that the respondent or any of its supervisory employees had any knowledge of Cole's union membership or affiliation or that his union membership or affiliation played any part in his discharge. The discharge was prompted by a breach of a reasonable rule of the Company. It was automatic. It is unfortunate that the discharge should have grown out of a circumstance where Cole was not actually at fault but in the absence of a showing of discrimination, the circumstance is beyond the Board's jurisdiction. The discharge was accomplished in good faith and in the ordinary course of business of the respondent pursuant to its established rules and regulations. It is found that in discharging Lewis Cole on January 25, 1944, the respondent has engaged in no unfair labor practices within the meaning of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, with the exception of those pertaining to the Lewis Cole discharge, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States and to the extent that they are found to have been in contravention of Sections 7 and 8 of the Act, tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

It having been found that the Swan Rubber Company, by the actions above described, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, it will be recommended that the respondent cease and desist from such conduct and take other appropriate affirmative action designed to effectuate the policies of the Act.

It will also be recommended that the respondent offer full and immediate reinstatement to Warren A. Bosworth to his former or substantially equivalent position, without loss of seniority or other rights or privileges, and that the respondent also make whole the said Warren A. Bosworth for any loss of pay he may have suffered by reason of his discharge on December 20, 1943, by paying to him a sum of money equal to the amount he normally would have earned in his regular employment with respondent from the date of his discharge to the date of the offer of reinstatement, less his net earnings during such period.³

³ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Rubber Workers of America (CIO) is a labor organization within the meaning of Section 2 (5) of the Act admitting to membership the employees of the respondent.

2. By discriminating in regard to the hire and tenure of employment of Warren A. Bosworth, on December 20, 1943, and thereby discouraging membership in the United Rubber Workers of America (CIO); the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

5. By discharging Lewis Cole on January 25, 1944, the respondent has engaged in no unfair labor practice within the meaning of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondent, its officers, supervisory representatives and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Rubber Workers of America (CIO) or any other labor organization by discriminating in regard to hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Warren A. Bosworth, without prejudice to his seniority or other rights and privileges, full and immediate reinstatement to his former or substantially equivalent employment;

(b) Make whole the said Warren A. Bosworth for any loss of pay suffered by him as a result of the respondent's discrimination against him, between the date of his discharge and the date of the offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in the plant at Bucyrus, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to all employees stating: (1) that the respondent will not engage

discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U. S. 7.

in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to remain or become members of the United Rubber Workers of America (CIO) or any other labor organization, and that the respondent will not discriminate against any of its employees because of membership in that organization or any labor organization;

(d) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is also recommended that the complaint be dismissed insofar as it alleges; (1) that the respondent engaged in unfair labor practices in connection with the discharge of Lewis Cole; (2) that the respondent has engaged in surveillance of union members or union meetings.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the Regional Director for the Eighth Region in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take such action.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

R. N. DENHAM,
Trial Examiner.

Dated March 4, 1944.