

In the Matter of UNITED AIRCRAFT CORPORATION, PRATT & WHITNEY
AIRCRAFT DIVISION *and* INTERNATIONAL ASSOCIATION OF MACHIN-
ISTS

Case No. 1-C-2350.—Decided April 23, 1946

DECISION

AND

ORDER

On June 20, 1945, 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 attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. On March 26, 1946, the Board heard oral argument at Washington, D. C., in which the respondent and the Union participated.

The Board has reviewed the Trial Examiner's rulings made 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 and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and exceptions hereinafter set forth.

1. We agree with the Trial Examiner that the respondent's treatment of Andrew G. Gaura was discriminatory and violative of the Act. In reaching this conclusion, we rely on all the findings of the Trial Examiner and all the circumstances revealed in the Intermediate Report and in the record, especially the disparity of treatment between Gaura and other employees with respect to proposed transfers. As set forth in the Intermediate Report, the respondent discriminatorily sought to compel Gaura to transfer to a Norton machine on penalty of separation from the pay roll. Gaura informed the respondent that he was afraid to operate that machine and refused to accept the transfer. Whereupon, the respondent forced his termination of employment. In contrast to this treatment, the record reveals, as the Trial Examiner points out, a number of instances in which other employees

refused, with impunity, to accept transfers to positions which they deemed unacceptable. Thus, these employees were permitted to reject the proposed transfers, and no disciplinary action was threatened or taken by the respondent.

We also agree with and adopt the Trial Examiner's recommendation that Gaura be reinstated with back pay.¹

2. We do not agree with the Trial Examiner's finding that the discharge of Leona C. Rocheleau was discriminatory. The respondent contends, and we agree, that Rocheleau was discharged because of her penchant for sleeping on the job. The record shows, as set forth in the Intermediate Report, that on two occasions prior to the day of her discharge, Rocheleau was observed sleeping on the job by Group Leader Arthur Maddock; that on the day of her discharge, both Maddock and Foreman William Bergstrom observed Rocheleau again sleeping during working hours; and that after Maddock had advised Bergstrom that he had warned her on two earlier occasions, Bergstrom, in accordance with an established policy of the respondent, discharged Rocheleau.² Accordingly, we find that the record fails to establish that Rocheleau's discharge was violative of the Act and we shall dismiss the complaint as to her.

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, United Aircraft Corporation, Pratt & Whitney Aircraft Division, East Hartford, Connecticut, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, or in any labor organization of its employees, by transferring, discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

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

¹ See *Matter of Theodore R. Schmidt*, 58 N. L. R. B. 1342; *Matter of Kopman-Woracek Shoe Mfg. Co.*, 66 N. L. R. B. 789.

² The record shows that Bergstrom had discharged several named employees who had been found sleeping on the job. The Trial Examiner's purported distinction between the conduct of these employees and that of Rocheleau is neither convincing nor indicative of discrimination.

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

(a) Rescind immediately its rules against solicitation and distribution of literature insofar as they prohibit union activity and solicitation on the employees' non-working time, and prohibit distribution of union literature outside the gates of the plant or in the parking lots;

(b) Offer to Andrew G. Gaura and Vernon S. Brown immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole Andrew G. Gaura and Vernon S. Brown for any loss of pay they have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of the respondent's discrimination against him, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(d) Post at its plant at East Hartford, Connecticut, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the respondent's representatives, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the First Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent has discriminated against Leona C. Rocheleau, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

MR. GERARD D. REILLY, concurring in part, dissenting in part:

I concur with the findings and Order in this case except that portion of the remedy which awards back pay to Andrew G. Gaura. Gaura elected to refuse a transfer to other work which was not shown to have been intolerable or actually more hazardous than his former work, and thus forced his termination. Gaura's proper course of action in the circumstances would have been to comply with the transfer order and then to file charges invoking his administrative remedies under the Act. I am of the opinion, therefore, that Gaura is entitled to no more than reinstatement to his former position.³

³ See my dissenting opinion in *Matter of Waples-Platter Company*, 49 N. L. R. B. 1156, at 1159-60, and the subsequent reversal of the majority by the Fifth Circuit in 140 F. (2d) 228. See also, *Matter of Kopman-Woracek Shoe Mfg. Co.*, 66 N. L. R. B. 789.

APPENDIX A

NOTICE TO ALL EMPLOYERS

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

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Andrew G. Gaura
 Vernon S. Brown

We hereby rescind General Shop Rules (22), Rules 1 and 2 of Rules and Regulations revised as of July 20, 1937, insofar as they prohibit union activity and solicitation on the employees' non-working time, and prohibit distribution of union literature outside the gates of the plant or in the parking lots.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

UNITED AIRCRAFT CORPORATION, PRATT &
 WHITNEY AIRCRAFT DIVISION

Dated _____ By _____
 (Representative) (Title)

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

Messrs. Leo J. Halloran and Samuel G. Zack, for the Board.

Shipman & Goodwin, of Hartford, Conn., by Mr. Walfrid G. Lundborg, for the respondent.

Mr. Harold F. Reardon, of Boston, Mass., Mr. David Clydesdale, of Hartford, Conn., and Mr. Edmund J. Pereslaha, of Manchester, Conn., for the Union.

STATEMENT OF THE CASE

Upon a second amended charge duly filed on September 18, 1944, by International Association of Machinists, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint on September 19, 1944, against United Aircraft Corporation, Pratt & Whitney Aircraft Division¹ of East Hartford, Connecticut, herein called the respondent, alleging that the respondent had engaged in and was 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 accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that: (1) from on or about December 23, 1943, by excluding union representatives from a public highway adjacent to the respondent's plant, as well as from a portion of the respondent's premises known as the South Parking Lot, and preventing the distribution of union literature upon the said highway and within the said South Parking Lot; by restraining its employees and members of the Union from distributing union literature upon the said public highway, as well as upon the said parking lot upon the employees' own time; by statements and threats of economic reprisals to its employees calculated to discourage union membership and activity, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; and (2) by discharging and refusing to reinstate certain named employees because of their union activity,² the respondent has discouraged membership in the Union.

The respondent's answer admits the allegations of the complaint concerning the nature of its business and its operations in interstate commerce, but denies the commission of any unfair labor practices.

Pursuant to due notice a hearing was held at Hartford, Connecticut on divers dates from October 16, 1944 to and including November 21, 1944, before Irving

¹ The name of the respondent as amended during the course of the hearing.

² The dates of the discharges and the names of the employees involved are:

December 23, 1943, Andrew G. Gaura

June 19, 1944, Richard W. Leroux.

June 20, 1944, Morris Davis *

June 23, 1944, Vernon S. Brown.

July 15, 1944, Leona C. Rocheleau.

*With respect to Morris Davis, counsel for the Board stated at the hearing that neither the Board nor the Union had been able to locate Davis up to the time of the hearing, and therefore moved to dismiss, without prejudice, the allegation in the complaint that he was discriminatorily discharged. The motion was granted over the objection of counsel for the respondent who contended that the complaint should be dismissed as to Davis "with prejudice."

Rogosin, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by representatives. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of the Board's case the respondent moved to dismiss the complaint with respect to certain allegations. The motion was renewed at the close of the hearing. Ruling on the motion was reserved in each instance. The motion is hereby denied. Motions by counsel for the Board and the respondent at the conclusion of the evidence to conform the pleadings to the evidence adduced with respect to formal matters were granted without objection. All parties were afforded an opportunity to argue orally upon the record and to file briefs. Counsel for the Board and the respondent argued upon the record and subsequently filed briefs with the undersigned.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

United Aircraft Corporation, a Delaware corporation, with its principal office and plant division at East Hartford, Connecticut, is engaged in the manufacture of aircraft engines, accessories, propellers, and air frames at its plants in several States. Pratt & Whitney Aircraft Division, involved in this proceeding, is engaged in the manufacture of aircraft engines, parts and accessories. Respondent's monthly purchases of raw materials at its several plants³ are valued in excess of \$1,000,000, of which more than 90 percent is shipped to its plants from points outside the State of Connecticut. The respondent manufactures and ships from its plants finished products valued in excess of \$1,000,000 monthly, of which 98 percent is shipped to points outside the State of Connecticut. The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

³ The divisions of United Aircraft Corporation are: Pratt & Whitney Aircraft Division, Hamilton Standard Propellers Division, both located at East Hartford, Conn., Chance-Vought Aircraft Division, located at Stratford, Conn., and The Sikorsky Aircraft Division located at Bridgeport, Conn. In addition to the foregoing, the respondent operates Pratt & Whitney Aircraft Corporation of Missouri, a wholly owned subsidiary. "Departments" of Pratt & Whitney Aircraft Division are also located at East Longmeadow, Mass., Willimantic, Buckland, and Southington, Conn., and at the Packard plant, so-called, located at Hartford, Conn. These "departments" as well as other subdivisions of Hamilton Standard Propellers Division, located in Rhode Island, Norwich and West Hartford, Conn., not here involved, are sometimes referred to as "satellite plants" of Pratt & Whitney Aircraft Division and Hamilton Standard Propellers Division respectively. It is apparent from the record that the satellite plants of Pratt & Whitney Aircraft Division are integrated with the operations of the principal plant at East Hartford. Personnel policies covering all divisions of United Aircraft Corporation are under the direction of Personnel Director Martin F. Burke, and emanate from his office in the Pratt & Whitney Aircraft Division at East Hartford.

III. THE UNFAIR LABOR PRACTICES

A *The plant site*

Pratt & Whitney Aircraft Division, sometimes hereinafter referred to as the plant, or the East Hartford plant, is situated in the town of East Hartford, Connecticut. It covers an extensive area bounded on the west and southwest by Main Street, a principal thoroughfare, on the north by Willow Street, north-west and east in part by Mercer and Whitney Avenues, all public highways. The principal administration and office buildings are situated on Main Street and are set back some distance from the public highway. The personnel and employment office is located in a building known as the "White House" situated at the corner of Willow and Main Street. The office parking lot is situated about 100 feet from this corner. Access to the factory buildings, located beyond the administration and office buildings, is afforded by means of three gates in a fence on the south side of Willow Street. The gate nearest the intersection of Main and Willow Streets, designated as Gate No. 2, is located at a distance of approximately 150 yards from the intersection. Proceeding in an easterly direction, Gate No. 4 is located approximately 200 yards beyond Gate No. 2; Gate No. 5, some 300 yards beyond Gate No. 4. On the northerly side of Willow Street at or near its intersection with Mercer Avenue there is situated a parking lot referred to as the North Parking Lot, which is used, because of its proximity to the plant gates, by Navy personnel and employees who are physically incapacitated. This entire parking lot is surrounded by an "anchor" fence consisting of heavy wire mesh in which there are three gates for the accommodation of "truck" travel and one for pedestrian travel. There is no sidewalk adjacent to this fence which is set back 12 feet from the street line.⁴ Approximately 240 automobiles were parked daily in this lot during the period in question. Situated on the north side of Willow Street, in addition to the North Parking Lot and medical and personnel buildings belonging to the respondent, are a number of private dwellings, a private parking lot referred to as "Tony's Parking Lot" and a restaurant known as "Montit's Grill."

Located in the southerly portion of the respondent's premises and separated by a driveway some hundred yards in length from Brewer Street, a public highway running east from Main Street, is another larger parking lot referred to as the South Parking Lot which, during the spring of 1944, accommodated an average of approximately 2300 to 2400 automobiles during the day shift.⁵

B. *Interference, restraint, and coercion*1. *The Willow Street incidents*

In October 1943, David Clydesdale, Grand Lodge Representative of the Union, arrived at Hartford to succeed a former union organizer in conducting the organizational campaign which had been initiated several months earlier among the respondent's employees at the Pratt & Whitney Aircraft Division.

At about 2 o'clock in the afternoon of November 8, 1943, Clydesdale, accompanied by Grand Lodge Representative William Howard, went to the southerly

⁴ The respondent contends that the 12-foot strip of land between the street line and the fence is part of the respondent's property. No evidence was adduced to establish title to this strip of land, and the undersigned considers it unnecessary to make a finding with respect to this contention in view of the findings hereinafter made.

⁵ According to Chief Guard Reginald J. Meehan, a tabulation of the number of passengers per car using the parking lots disclosed an average of 3.8 persons.

corner of Main and Willow Streets for the purpose of distributing copies of the Union's "Aircraft Bulletin" to employees entering the plant on the second shift.⁶ They observed a wooden barrier about 10 or 12 feet from the corner extending half way across Willow Street. A metal sign suspended from the barrier indicated that the street was closed to the public. Plant guards were stationed at about that point on Willow Street. No attempt was made by the union representatives to enter upon Willow Street at that time.⁷

During the latter part of January 1944, Grand Lodge Representative Edmund J. Peresluha, in the presence of Clydesdale and Howard, telephoned Personnel Director Burke, requested a conference regarding the closing of Willow Street and informed him that his investigation disclosed that the street had been illegally closed by reason of the fact that the Board of Street Commissioners rather than the Town Council, in which such authority was lodged, had ordered the closing of the street.⁸ Peresluha further informed him that neither the military authorities nor the State Police Department had closed the street and that Chief Kelleher had informed him that his department would not interfere with the entry by union representatives upon Willow Street. When Peresluha mentioned that Chief Kelleher had also informed him that a pass might be obtained from Burke to enter upon Willow Street inasmuch as Burke had been issuing passes to persons having legitimate business on the street, Burke retorted that he did not consider the Union's business on the street "legitimate" and declined to issue passes to its representatives. Burke further stated to Peresluha that he considered the street legally closed and saw no reason for meeting with the union representatives. Peresluha thereupon informed Burke that the Union was asserting its right to use the public highway for the purpose of distributing union literature at the plant gates, and urged that the controversy be resolved by a conference. Burke concluded the conversation by announcing to Peresluha that if the union representatives attempted to enter upon Willow Street they would be ejected.

On or about January 26, 1944, Grand Lodge Representatives Clydesdale, Howard and Peresluha drove into Tony's Parking Lot on the northerly side of Willow Street⁹ and, after parking the car, crossed diagonally to the Gate No. 2 entrance to the respondent's plant, each carrying about 500 copies of the union publication. They were approached by a plant guard who asked for their identification. When they informed him that they had no "Pratt & Whitney identification," the guard told them that they would not be permitted to distribute literature there unless they were Pratt & Whitney employees. The organizers remonstrated that Willow Street was a public highway, that the respondent had no right to order them off the street, and refused to leave. The guard left and returned shortly afterward reiterating his demand that they leave. About 5 or 10 minutes later a "cruising" car appeared and Chief Guard Meehan attired in civilian clothes approached them and identified himself. He asserted that the street had been legally closed by virtue of a town ordinance; that the respondent owned to the middle of the way and that they were, in effect, on private property. The union representatives refused to leave and Meehan informed them that if they did not leave peaceably

⁶ The first shift commenced at 7 o'clock a. m., the second shift at 3:30 p. m., and the third shift, at 12 midnight.

⁷ According to Clydesdale, however, approximately 1,000 copies of the Aircraft Bulletin were distributed on this occasion at the intersection of Main and Willow Streets within a period of about 2 hours.

⁸ Clydesdale and Peresluha had conferred earlier with Chief of Police Kelleher of the town of East Hartford and, at the latter's suggestion, Peresluha had communicated with the secretary of the Board of Street Commissioners.

⁹ Tony's Parking Lot could apparently be entered from Main Street.

he would remove them forcibly. When the men declined to leave, Meehan "escorted" Clydesdale and Howard to the corner of the street¹⁰ Peresluha crossed to his car in the parking lot and the men left in his car.

Sometime in March 1944, Field Examiner Knowlton informed Peresluha that the respondent had agreed to permit him to distribute union literature on Willow Street inasmuch as he was still considered an employee of the respondent¹¹ Thereafter, Peresluha entered upon Willow Street and took up a position in front of the gates to the North Parking Lot opposite the Gate 5 and 6 entrances to the plant, distributing union literature to employees passing from the parking lot to the plant gates on the opposite side. This continued without interference for a period of several weeks.

Early in April, however, at about 2:40 o'clock in the afternoon, while Peresluha was distributing literature, Plant Guard Scott approached him and asked for his Pratt & Whitney identification badge. Peresluha informed Scott that he had none, but that he understood that the respondent had agreed with Field Examiner Knowlton that he would be permitted to distribute union literature because of his status as an employee on leave of absence from the Hamilton Standard Propellers Division. Scott left and returned several minutes later, informing Peresluha that he was under orders not to permit distribution of literature on Willow Street, that Peresluha was not properly identified, that he had no business on Willow Street and would have to leave. Peresluha protested, asserting his right under the Act to remain on the street. Scott informed Peresluha that he was under orders to remove him forcibly if necessary. When Peresluha refused to leave, Scott left and returned with Chief Meehan. Meehan told Peresluha that he had communicated with Personnel Director Burke and learned that Peresluha's statement regarding his permission to enter upon Willow Street was untrue and ordered him to leave, threatening to eject him forcibly if necessary. A discussion ensued regarding the legality of the closing of Willow Street, during which, in response to a threat by Meehan to use "State Police authority" to remove him, Peresluha reminded him that he was not violating any municipal ordinance, as he had ascertained in the course of his investigation. Meehan instructed Scott to remove Peresluha, and as Scott undertook to comply, Peresluha gripped the fence near which he was standing. While Scott tugged at Peresluha, Meehan attempted to disengage Peresluha's fingers from the fence. Meanwhile a small group of employees had congregated during the change of shifts, and Peresluha remarked to Meehan that the latter was "putting on a pretty good show." Meehan thereupon replied, "That's what you want, is it?" With that, he instructed Scott to release Peresluha and left. Shortly afterward Meehan returned and told Peresluha that Burke had informed him that Peresluha would be permitted to distribute union literature on Willow Street, inasmuch as he was an employee on leave of absence, but that no one else would be permitted to do so. Meehan thereupon left and the episode ended. Peresluha was not subsequently hindered or interfered with in the distribution of union literature on Willow Street.¹²

¹⁰ Clydesdale testified, and the undersigned finds, that he showed Meehan his credentials as Grand Lodge Representative during this encounter.

¹¹ Prior to January 1, 1944, Peresluha had been an employee of the United Aircraft Corporation at its Hamilton Standard Propellers Division and, as president and chairman of the shop committee, had had occasion to confer with Burke. Since January 1, Peresluha has been on leave of absence and has been active in organizing employees at the Pratt & Whitney Aircraft Division.

¹² The findings in the foregoing section are based principally upon the credible testimony of Peresluha and Clydesdale. Howard did not testify, and the respondent's version did not differ materially from that of the Board's witnesses.

Respondent's contentions regarding exclusion of union organizers from Willow Street; conclusions

The respondent contends that the closing of Willow Street was necessitated by reason of plant security following the attack on Pearl Harbor. According to Chief Guard Meehan, he undertook to close Willow Street to public travel on his own initiative on that night and "considered" that he had authority to do so in his capacity as "Chief of the Guard of a vital war plant" and as a "special State Police officer." On the following night, an anti-aircraft battery arrived at the respondent's plant which was billeted at the air field on the plant premises. A military guard, augmenting the respondent's guards, was established, and Chief Meehan thereafter conferred with Army and Navy officers from time to time, receiving instructions relative to plant security. Rigid inspection of employees and visitors, both pedestrian and those arriving in automobiles, was enforced; employees were required to display identification badges and other customary precautions were established. In September 1942, the respondent's guard force was inducted into the United States Coast Guard and Chief Meehan was commissioned a lieutenant commander in the Coast Guard Reserve.

On June 20, 1942, in response to a request by W. Y. Humphreys, director of plant protection for United Aircraft Corporation, addressed to the chairman of the Board of Street Commissioners for the town of East Hartford, the Director of Public Works notified Humphreys by letter that at a meeting of the said Board held on the preceding day it had been voted to approve the respondent's request that "Willow Street from its point of beginning at Main Street to where Willow Street intersects Mercer Avenue and that Mercer Avenue be formerly (sic) closed from the point where it intersects Willow Street to a point just beyond the property line of the United Aircraft Corporation where Mercer Avenue is joined by Whitney Street," and to allow the use of portable barricades to accomplish the closing of those streets.

The respondent contended at the hearing, as well as in its brief, that the legality of the closing of Willow Street, although challenged, has never been judicially determined. However, Personnel Director Burke testified that, following one of Field Examiner Knowlton's visits in which Knowlton indicated that in his opinion Willow Street had not been legally closed, Burke ascertained from the respondent's "legal department" that Willow Street had not been legally closed inasmuch as the Board of Street Commissioners did not have authority to close the street.

In about May or June 1944, the anti-aircraft unit was withdrawn from the respondent's premises, and the respondent's guard and plant protection employees were demilitarized. Inspection was considerably relaxed thereafter and the respondent was instructed by the Navy Department that it might "assume calculated risks."¹³ Following the advice from its legal department respecting the closing of Willow Street, instructions were issued by the respondent that union organizers and other persons be permitted to enter upon Willow Street without interference.

In sum, the respondent contends that the union organizers were excluded from Willow Street between January and April 1944, as part of the general public, in the interest of plant security, and that it was fortified in this purpose by the military authorities as well as by the ostensibly valid vote of the municipality purporting to authorize the closing of Willow Street. Consequently, it is con-

¹³ The complement of the respondent's guard was reduced from 420 as of January 1, 1944 to 315 as of the date of the hearing.

tended, such exclusion was not intended to interfere with the employees in their right to self-organization. Moreover, the respondent urges that, following its investigation into the authority for the closing of Willow Street, it permitted representatives of the Union, as well as its employees, to distribute union literature upon Willow Street and has since permitted such distribution without interference.

The record is too inconclusive to afford a basis for determining whether or not Willow Street was legally closed, or to warrant a finding that the respondent was not acting in good faith when it maintained that Willow Street had been legally closed at the time it undertook to exclude the union organizers. In view of the findings, hereinafter made, regarding the disparity of treatment between union representatives and others who were permitted the use of the street, the undersigned deems it unnecessary to make a finding respecting either the legality of the closing of the street, or the respondent's good faith or lack of it, in maintaining that the way had been legally closed. Finally, the respondent argues that the matter of the exclusion of the union organizers from Willow Street has become moot and that no order should be entered requiring it to cease and desist from a course of conduct which it has since abandoned.

The credible evidence establishes that various tradesmen, vendors and other persons who, the respondent contended, had business with persons residing upon Willow Street, as well as persons soliciting the custom of the respondent's employees in connection with the sale of wares, were permitted to enter upon Willow Street, either by virtue of written permits or permission granted by Chief Guard Meehan, Director of Plant Protection Humphreys or Personnel Director Burke. The respondent's contention, that it declined to grant permission to union representatives on the ground that it would have been impossible to "grant permission to certain individuals and refuse to grant it to others," and that it was concerned about "outsiders coming in from outside the State [whom] we knew nothing about," an ostensible attempt to put its denial to the union organizers of access to Willow Street on the ground of plant security, is patently specious.¹⁴

It is clear, therefore, and the undersigned finds, that by the foregoing conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act. Respecting the respondent's contention that it has voluntarily abandoned this unfair labor practice and that no cease and desist order should enter as to this phase of the case, it is sufficient to say that the abandonment by the respondent of the unlawful conduct does not deprive the Board of the power to enter such an order.¹⁵ Moreover, as will appear hereinafter, the respondent's conduct in excluding the union organizers from the public highway was an integral part of its conduct in interfering with the organizational activities of its employees in other respects, and the undersigned finds that the purposes of the Act will be best effectuated by requiring the respondent to cease and desist from the acts of interference which it claims to have abandoned.

2. South Parking Lot

South Parking Lot is situated in the southeasterly portion of the respondent's plant premises. Access to this parking lot may be had from two directions;

¹⁴ It will be recalled that Clydesdale exhibited his identification as Grand Lodge Representative to Chief Guard Meehan on the occasion of his encounter with him. Moreover, it would have been feasible for the respondent to investigate the citizenship and other vital statistics concerning the union representatives if the respondent had been motivated, in excluding the union organizers, solely by its concern for the security of the plant.

¹⁵ See *N. L. R. B. v. Burke Machine Tool Co.*, 133 F. (2d) 618 (C. C. A. 6).

from the north by driving along Mercer Avenue or Whitney Street past guards stationed at the entrance to a "ramp" located on the respondent's property, thence continuing southerly along the ramp to an entrance situated at the northerly end of the parking lot adjacent to the respondent's airfield. The south entrance to this parking lot is approached by driving from Brewer Street, which runs east from Main Street, to a private roadway approximately 100 yards in length leading to the south entrance. Plant guards, whose duties generally involved checking the identification of employees and inspecting automobiles entering the plant premises, were stationed at each of the gates or entrances to the South Parking Lot.

The respondent admits that prior to April 1944 it prohibited its employees from distributing union literature in the South Parking Lot. Sometime in March or April 1944, during the conference between Personnel Director Burke and Field Examiner Knowlton, when the latter informed Burke that in Knowlton's opinion Willow Street had been illegally closed, and the respondent finally agreed to permit the distribution of union literature on Willow Street, Knowlton furnished Burke with a copy of the Board's decision in the *LeTourneau* case.¹⁸ Thereafter, from April 1944 until July 11, 1944, the respondent permitted employees to distribute union literature at the gates leading from South Parking Lot to the plant buildings¹⁷ on days on which they were working, although not on their days off. Following the decision of the United States Circuit Court of Appeals in the *LeTourneau* case,¹⁸ however, and commencing on July 11, 1944, the respondent revoked the permission theretofore granted to its employees, and prohibited the distribution of literature in the South Parking Lot. The respondent has since continued to prevent the distribution of literature in the South Parking Lot.

The respondent relies, in part, on its right to exclude employees from the parking lots, except when arriving at or leaving work, and to prohibit distribution of literature, upon a set of rules and regulations promulgated on July 20, 1937.¹⁹ In addition, the practice of excluding employees from the parking lots, except as already indicated, was adopted, according to the respondent, as a consequence of complaints of thefts of articles, tires and accessories from parked automobiles. Furthermore, the respondent contends that regulation of the use by employees of the parking lots, and prohibition of the unauthorized distribution of literature were necessary and reasonable to prevent littering. Similar contentions, considered by the Board in the *LeTourneau* case, have been rejected, and the Board's decision and rationale have since received the judicial imprimatur of the Supreme Court.²⁰

¹⁸ *Matter of LeTourneau Company of Georgia*, 54 N. L. R. B. 1253, decided February 12, 1944.

¹⁷ There is some indication in the record that distribution was also accomplished by placing literature in parked automobiles or in the door handles of parked automobiles.

¹⁹ *LeTourneau Company of Georgia v. N. L. R. B.*, 143 F. (2d) 67 (C. C. A. 5) (decided June 23, 1944), setting aside 54 N. L. R. B. 1253.

²⁰ The following are the pertinent provisions of the rules:

(22) GENERAL SHOP RULES

A factory employee shall not—

1. Gamble in any form, sell tickets, take orders, or solicit subscriptions, or engage in any activity on the company's premises except company business without express permission

2. Distribute or post unauthorized pictures or literature

* * * * *

6. Enter the shop after his regular working hours, except by authorized pass

* * * * *

16. Loiter on the premises before or after regular working hours

²⁰ *Republic Aviation Corporation v. N. L. R. B.*; *N. L. R. B. v. LeTourneau Company of Georgia*, Nos. 226, 452 (decided April 23, 1945) 324 U. S. 793.

Except for the fact that the plant premises, in the instant case, abut the public highways on several sides and are situated in a town only several miles distant from Hartford, a metropolitan city, in contrast to the plant involved in the *LeTourneau* case which was located in a relatively isolated community, the basic conditions which prevailed with respect to the South Parking Lot are substantially similar. Thus, of the approximately 24,000 employees of the plant, a very small proportion arrive on foot or by buses which discharge passengers at the intersection of Main and Willow Streets. These employees enter the plant from the gates on Willow Street and may be served by persons distributing literature at the corner of Main and Willow Streets, or by persons stationed at the plant gates on Willow Street. A somewhat larger group arrives by bus and automobile at the North Parking Lot, stopping only long enough at the plant gates for a perfunctory identification. These employees, after leaving the parking lot through the gate on the north side of Willow Street, cross to the gates on the south side of Willow Street, through which they enter the plant. They, too, may receive literature at the gates on either side of Willow Street before entering the plant. Approximately 50 percent, however, of the some 24,000 employees,²¹ according to the respondent's estimate, use the South Parking Lot. Access to these employees, either upon arrival at or departure from the plant, can only be effectively accomplished at the gate entrances from the parking lot to the plant. Denied the right to distribute union literature at these points, the Union was obliged to resort to distribution at the Brewer Street entrance to the driveway. In view of the fact that the employees utilizing South Parking Lot enter their automobiles after passing through the gates from the plant to the parking lot, drive from the parking lot some 100 yards down the driveway to Brewer Street, thence east and west homeward without stopping except for the requirements of traffic conditions, and proceed over the same route in arriving at the plant, distribution to these employees is virtually impossible.²² It will thus be seen that effective means of communication have been denied to a large segment of the respondent's employees and that self-organization has consequently been seriously impeded. On this aspect of the case it is clear, therefore, that the Supreme Court Decision in the *LeTourneau* case is controlling.

Moreover, the record in the instant case establishes that the rules prohibiting solicitation and the unauthorized distribution of literature were discriminatorily enforced with respect to the Union. Thus, in addition to evidence that Company's publications known as the "Power Plant," its predecessor, the "Aircraft Journal," and the "Bee Hive" which were formerly distributed by foremen's clerks to employees at the close of their shifts in their departments, are now deposited in

²¹ This number includes approximately 5,000 office employees, who park their automobiles in various areas, including South Parking Lot. A small group consisting of several hundred employees, arriving on foot, enter at the power house from Main Street.

²² Following the exclusion of union representatives and employees from Willow Street and the South Parking Lot, the Union continued with its distribution of literature at the corner of Main and Willow Streets to employees arriving on foot or in buses. In about March, employees were permitted to resume distribution at the gates on Willow Street. Among other means, resorted to for the distribution of literature, were attempts to distribute to persons boarding buses at a terminal in Hartford and at 3 housing projects, 2 of which were located in E. Hartford and one in Manchester, Conn., at which a small proportion of the respondent's employees resided and where "distribution centers" were maintained by several members of the organizing committee. In addition, the Union compiled a mailing list of employees by making an alphabetical survey of the Hartford City Directory for names of persons shown to be employed by the respondent, to whom it mailed some 7,000 membership application cards, as a result of which it obtained about 200 signed applications. The record discloses, however, that less than half of the total of the respondent's employees were reached by these media. In any event, as the Board pointed out in its decision in the *LeTourneau* case, "It is no answer to suggest that other means of disseminating union literature are not foreclosed."

wooden receptacles located near the plant gates for distribution to its employees, the record discloses a number of examples of the discriminatory application of the rules. For example, with respect to Willow Street, the respondent permitted vendors and tradesmen to solicit the patronage of employees in connection with the sale of various articles²³ while denying the Union the right to distribute union literature. It was further established that until shortly before the hearing the respondent had permitted to be erected and maintained on the South Parking Lot a booth for the servicing and repair of employees' cars. This enterprise was privately operated; circulars were distributed in the parked cars, and notices posted on the respondent's bulletin board informing employees of the availability of this service. Cards, outlining the types of services available, with appropriate means for checking the service desired, were placed in parked automobiles.²⁴ The respondent also permitted to be maintained on its parking lots from time to time an automobile trailer, bearing appropriate signs and advertising matter, from which employees might purchase various types of safety and "dress" shoes, and afforded the facilities of its bulletin boards for the posting of notices indicating when and where, i.e., at which parking lot, the trailer would be available, and granted employees time off to enable them to avail themselves of the service.²⁵ In view of the respondent's position that it afforded the facilities of its parking lots to private individuals for the purposes indicated, as an accommodation to its employees, it is significant that the respondent was not disposed to regard the distribution of essential information in connection with the organizational rights of its employees by adequate means as a matter for the accommodation of its employees.²⁶

It is therefore, clear, and the undersigned finds, upon the basis of the foregoing and the entire record, that the promulgation of the rules against solicitation, and against the distribution of literature insofar as they prohibit solicitation of union membership at the plant upon employees' own time, and prohibit the distribution of union literature outside the gates of the plant and in its parking lots, imposed an unreasonable impediment upon the freedom of communication essential to the exercise of the employees' right to self-organization; that, by pro-

²³ Chief Guard Meehan admitted that, prior to the attack on Pearl Harbor, various vendors sold their wares on Willow Street particularly on the third shift; that 400-500 copies of "The Boston Daily Record", a newspaper, were sold daily; that there was a lunch wagon from which sandwiches and beverages were dispensed. However, he testified that after the attack on Pearl Harbor he issued orders excluding vendors from Willow Street. Although it is not improbable that this activity was curtailed at about that time, the preponderance of the credible evidence indicates that it continued thereafter in somewhat lesser degree without interference by the respondent.

²⁴ This service was discontinued shortly before the hearing due to the manpower shortage.

²⁵ This service was discontinued with the advent of shoe rationing.

²⁶ The instances of discriminatory application of the rules against solicitation and distribution cited are illustrative rather than comprehensive. Thus, there was undisputed evidence that various types of solicitations for subscriptions or contributions for War Loan drives, Community Chest, Red Cross, Hartford Hospital, Hartford Fighter Plane, Christmas gifts for minor supervisory employees, and gifts for the personnel of the Anti-Aircraft Battery stationed at the respondent's plant, and the like were conducted at the plant, many of which were sponsored by the respondent. Solicitations for membership in the Aircraft Club, an employee's organization sponsored by the respondent and housed in one of the respondent's buildings, were made openly in various departments of the plant, and membership applications were distributed to employees by foremen's clerks. Solicitations of funds for gifts for minor supervisory employees although discouraged by the respondent, were in fact openly conducted within the plant on company time. Displays of sample tools for sale at which salesmen were in attendance at various times, were also maintained both within the plant as well as on the sidewalk adjacent to the plant premises at Willow Street.

hibiting and preventing its employees from soliciting union membership, as aforesaid and from distributing union literature outside the gates of the plant and in the said parking lots; and by the discriminatory application and enforcement of the said rules, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3 The Bassich incident

William F. Bassich, employed in Department 30 on the third shift, became interested in the Union in August 1943,²⁷ and had participated actively in the organizing campaign by distributing union literature at the plant gates on Willow Street, in the South Parking Lot and at the bus terminal in Hartford. On October 11, 1943, at about 11 : 45 o'clock p. m. he entered the plant at Gate 6 to go on duty. He had with him in a small paper bag 500 or 600 handbills which he intended to distribute to employees at the cafeteria on the plant premises²⁸ during his lunch period between 3 : 00 and 3 : 30 o'clock a. m. These handbills announced that union meetings for each of the three shifts would be held on October 12. As he entered the gate, he opened the bag, exhibited the contents to the guard, and proceeded toward the stairs leading to the locker room. When he was about half way down the stairs, the guard called after him and inquired what he had in the bag. Bassich stated that he had already shown him, but the guard asked to see the contents again. Bassich returned and gave him a handbill. The guard informed him that he was not permitted to carry literature into the plant and that he would have to take him to guard headquarters. Bassich asserted that he had a right under the Act to carry the handbills into the plant and to distribute them in the cafeteria on his own time. The guard escorted Bassich to the guard headquarters on Willow Street where he was instructed by a lieutenant of the guards to remain outside. Within a few minutes he was called to the plant protection office where he was questioned by one Wallace who was on duty at the time. Wallace asked him if he was aware of the rules prohibiting the carrying of circulars or papers into the plant. Bassich admitted that he was familiar with the rule involved but asserted his right to distribute circulars on his own time under the Act. In response to a request by Wallace, Bassich gave him a quantity of the circulars. Wallace then telephoned Foreman Bergstrom, Bassich's supervisor, who appeared shortly thereafter, discussed the matter in another office with Wallace and then questioned Bassich. Bassich repeated what he had told Wallace. Wallace retained the bag and its contents, although he informed Bassich that he was not confiscating the handbills. Bassich informed Wallace that he considered the handbills his property and warned him that if he withheld them, in view of the fact that they contained an announcement of union meetings for the following day, he would be doing so on his own responsibility. Wallace retained the handbills and Bergstrom directed Bassich to return to his department.

About 1 : 00 o'clock on the morning of October 12, Bassich reported to his group leader and worked through his shift. At about 6 : 30 a. m. Foreman Bergstrom sent for Bassich and informed him that he would have to remain after work to see Superintendent Levaek and Willgoose, his assistant. Bassich remained until Levaek appeared, when he was summoned to his office in the presence of Bergstrom and informed that Levaek had received a communication from the plant

²⁷ This was prior to Clydesdale's arrival in Hartford while Organizer Hubbell, his predecessor, was in charge of the organizing campaign.

²⁸ Apparently the cafeteria was operated under a concession from the respondent.

protection department regarding the incident of the previous night. Levack asked Bassich whether he had a rule book and was familiar with the rules of the respondent, handing him a copy with the request that he refresh his recollection respecting soliciting and bringing literature into the plant. Levack informed Bassich that he had violated the rules, and warned him that if he continued to bring literature into the plant, his services would be terminated. However, he advised Bassich that if he would refrain from doing so, the respondent would consider retaining him in its employ. Although Bassich replied that his right to do so was protected under the Act, and that the respondent had no right to interfere with the employees' right to self-organization, he agreed that he would comply with Levack's injunction.

On the morning of October 13, Foreman Bergstrom informed Bassich that the handbills had been returned from the plant protection department and that he had been instructed to deliver them to Bassich upon the execution of a receipt. Bassich signed duplicate receipts, one of which he retained, and Bergstrom returned the circulars to Bassich.²⁹ Following this episode, Bassich refrained from bringing any union literature into the plant and continued in the respondent's employ.

The respondent does not dispute in any material respects the events just related. However, it relies for its conduct upon its rules both for its right to inspect parcels brought into the plant³⁰ and to prohibit the unauthorized distribution of literature, already discussed. Although inspection of parcels carried into the plant may be, as contended by the respondent, both necessary and reasonable in the interest of protection and security of a plant engaged in important war production,³¹ the rule on its face merely requires employees to submit their parcels to inspection, and does not undertake to deny employees the right to carry parcels into the plant. Assuming that the right to inspect carries with it, by reasonable implication, the right to determine what may be carried into the plant, it does not follow that, in the absence of any special circumstances, the respondent may deny its employees the right to carry into the plant union literature intended for distribution in a privately operated cafeteria upon the employee's own time, under the circumstances disclosed. No special circumstances were shown justifying such conduct on the part of the respondent.

The undersigned, therefore, concludes and finds that, by preventing Bassich from carrying the union handbills into the plant; by withholding the said handbills and preventing him from distributing them at the cafeteria on his own time; and by threatening him with discharge in the event he attempted to bring union literature into the plant thereafter, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act.

²⁹ It will be noted that the handbills were not returned to Bassich until the day following the date of the scheduled meetings. Thus, it is probable that a considerable number of the respondent's employees were prevented from being notified of the scheduled union meetings on October 12.

³⁰ (22) GENERAL SHOP RULES

A factory employee shall not —

1. . . . solicit subscriptions or engage in any activity on the company's premises except company business without express permission
2. Distribute or post unauthorized pictures or literature.

13 Remove packages or parcels from the shop without presenting a pass to the watchman which has been duly signed by foreman or department head. Packages and parcels are subject to inspection

³¹ It may be noted that the rule providing for inspection of parcels was contained in the rule book revised as of July 20, 1937, and presently in force.

C. The discriminatory discharges

Andrew G. Gaura was employed by the respondent at the East Hartford plant on December 17, 1940, as an internal grinder at a base rate of 65 cents per hour. At the time of his discharge on December 23, 1943, he was receiving the maximum rate of \$1.16 for grinders in his department, and had acquired a familiarity with the operation of a variety of external and internal grinding machines. In September 1942, he was transferred at his request from the third shift in Department 165 to the first shift in Department 164, under Foreman Ray Collins, in which he continued until the date of his discharge. Gaura worked under the general supervision of General Group Leader Arthur Lockwood, who had charge of 2 or 3 supervisors and about 70 production employees.³²

In September 1943, Gaura joined the Union and thereafter became active in its organizational campaign, being designated shop chairman of the organizing committee in his department on the day shift. Late in October or early in November, his home in the Mill Brook Park housing project, in which about 90 percent of the residents were employees of the respondent, was used as a center for the distribution of union literature for that project and vicinity. Gaura succeeded in obtaining approximately 150 signatures to union authorization cards. His activity in behalf of the Union was well known among his fellow-employees in his own as well as nearby departments, and to his immediate supervisors.

Early in November, 1943, on his way to the plant cafeteria during the lunch period, Gaura handed an authorization card to employee Rancour. Later Gaura observed Rancour seated at a table with Group Leader Lockwood. Rancour and Lockwood left the cafeteria together. When Gaura later asked Rancour for the card, Rancour told him he did not have it with him.

A week or two after this incident and several weeks before Gaura's discharge, Gaura encountered Lockwood near the tool crib. Lockwood told him that he was giving him a "friendly tip" to "Lay off of union activities," that Gaura could "take it or leave it," but that if he "didn't [take the tip]," he would find himself in trouble. Milton S. Bennett, an employee in the department who overheard the remark, and corroborated Gaura's testimony concerning this encounter, subsequently discussed the incident with Lockwood and asked him "what it was all about." Lockwood told Bennett that there had been "two other unions he had seen come and go" and that Gaura "would get himself into trouble [as a result of his union activity]."³³

On the morning of December 23, 1943, shortly after Gaura clocked in on his regular shift, Foreman Collins informed him that he was being transferred from the Browne & Sharpe Universal grinder on which he had been working to a Norton grinder. Gaura refused to accept the transfer, stating to Collins that he was afraid of the machine. Although Collins reminded him that he had oper-

³² It was stipulated at the hearing, and the undersigned finds, that group leaders are supervisors.

³³ The above findings are based upon the credible testimony of Gaura, corroborated by Bennett. Bennett was not a member of the Union and was in the employ of the respondent at the time of the hearing. His testimony was not entirely favorable to Gaura, and in those respects in which it corroborated Gaura, it impressed the undersigned as credible and trustworthy. Although Lockwood denied the statements attributed to him by Gaura and Bennett, he admitted that he had a conversation with Gaura sometime in November, in the aisle of the department, in which he told Gaura to "keep his nose clean." However, he testified that the remark was occasioned by complaints from Foreman Collins that Gaura was not staying at his machine. The undersigned does not credit Lockwood's explanation of this remark or his denial that he knew of Gaura's membership or activity in the Union.

ated a Norton grinder on previous occasions, Gaura still declined to operate the Norton machine. Collins told Gaura to wait at the foreman's desk until Superintendent Campbell arrived, explaining to him meanwhile that he needed Gaura on the Norton machine. He further stated that he wanted him to operate a machine near his desk so that he could watch him where no one would bother him, and thus enable him to improve his production. When Collins and Gaura later conferred with Campbell in his office, Campbell urged Gaura to accept the transfer to the Norton. Gaura was firm in his refusal, reiterating that he was afraid of the machine, that he did not like it, and that he had not "hired out" as a Norton grinder. Although Campbell attempted to persuade Gaura to accept the transfer, he agreed that he would support Collins in his decision. Returning from Superintendent Campbell's office, Collins asked Gaura to reconsider but he refused. Collins thereupon told him to get his tools, stating that his refusal to accept the transfer to the Norton left him with the alternative of resigning or being discharged. Gaura informed him that he would resign. Collins instructed his clerk to make out Gaura's termination slip to indicate that he was resigning. The clerk complied with these instructions, and when the slip was delivered to Collins, there was a check mark in the space opposite the word "resigned." However, when Gaura brought his tool box to the foreman's desk, he informed Collins that he was not resigning, inasmuch as he understood that he would be unable to obtain a certificate of availability in the event he resigned. Collins directed his clerk to erase the check mark indicating that Gaura had resigned, and himself checked the space opposite the words "dismissed" and "insubordination," and inserted the remarks "REFUSED TO DO THE JOB HE WAS ASSIGNED." Gaura was escorted by the clerk to the personnel office where he received his termination slip and unemployment compensation slip. On the latter slip the reason for his termination was stated as "Not suited to this type of work."

On January 11, 1944, Gaura returned to the respondent's employment office and showed his certificate of availability to a personnel interviewer. He was informed that the respondent had "nothing in his line," although, according to Gaura, other applicants for positions as grinders were hired at the time. That night Gaura telephoned Collins at his home in an attempt to regain his job. Collins informed him that he had work for him and would like to hire him, but that Gaura should have thought of his family before behaving as he had.³¹

Respondent's contentions regarding Gaura's discharge, conclusions

The respondent contends that Gaura was discharged for insubordination in that he refused to accept the transfer to the Norton grinder.³² Although considerable testimony was adduced at the hearing tending to show that Gaura had threatened to leave the plant because of dissatisfaction with the bonus and the refusal of his supervisors to transfer him to another department, and although some contention was made that Gaura's production had decreased thereafter, the respondent apparently does not rely upon these as grounds for his discharge. According to Foreman Collins, his reason for transferring Gaura to the Norton machine near his desk was to enable him to observe him and to prevent employees from interfering with him, in an effort to improve his production.

³¹ The above findings, unless otherwise indicated, are based upon a reconciliation of the testimony of Gaura and Collins.

³² Among the Rules and Regulations of the respondent appears the following:

An employee refusing to perform his assigned work shall be considered as having quit his employment with this company and, if in the shop, shall immediately clear his tool checks and leave the shop.

Although Gaura testified that he refused the transfer to the Norton because he considered this machine dangerous, expert testimony adduced by the respondent indicated that the machine itself was no more inherently dangerous than machines operated by Gaura and others including female employees. Such few accidents as had occurred had been caused chiefly by negligent operation rather than the inherent danger from the machine. Gaura himself had operated a Norton when he first went to work on the day shift because it was the only type of operation available on that shift at the time.

Ordinarily, a refusal to accept a transfer, under the circumstances disclosed, would have justified the respondent in discharging the refractory employee. However, the record affords a number of instances of employees who had refused to accept transfers or to perform work assigned to them, who were not discharged or even disciplined. Although the respondent offered evidence of what it deemed extenuating circumstances justifying its failure to discipline these recalcitrant employees, the evidence failed to convince the undersigned that the circumstances relied upon by the respondent justified the disparity of treatment between them and Gaura.

While it is true that no reduction in rate for the operation of the Norton was involved, the record indicates that a transfer from a Browne & Sharpe Universal grinder to a Norton was considered a demotion among the employees in the department.³⁰

Moreover, the record indicates that, although Collins contended that he required Gaura's services on the Norton grinder, Group Leader Lockwood, according to Gaura's credible testimony, stated in the presence of Collins and Gaura at the time of the contemplated transfer, that he had no work for Gaura on the Norton. Furthermore, although, according to Lockwood's testimony, there was a very urgent need for operators on the Norton grinders at the time, Gaura was the only employee whom Collins sought to transfer.

It is conceded that the respondent's primary purpose in transferring Gaura from the Browne & Sharpe Universal to the Norton machine was to bring him under the observation of his foreman. Nevertheless, it seems singular that, although Lockwood had authority to transfer operators from Browne & Sharpe to Norton machines and was usually consulted by Collins before transfers were made, Gaura's attempted transfer was the only one which Collins undertook without conferring with Lockwood. It is also significant that the employee who replaced Gaura on the Brown & Sharpe machine had been previously operating a Norton.

The respondent further contends that it sought to transfer Gaura in order to prevent employees from congregating near his machine thereby interfering with his production; that, in fact, Gaura himself at one time had requested the respondent to aid in preventing such interference. The record, however, indicates that Gaura, by reason of his proficiency in his work, was frequently called upon for advice by other employees in his department. Gaura was one of two or three employees in the department who maintained a "little black book" containing miscellaneous information in connection with the work performed in his department. Although employees had been instructed to obtain information of this nature from the group leader or other supervisor, they frequently went to Gaura for advice, in connection with their work. Group Leader Lockwood, who also maintained a record similar to Gaura's, admitted that he had himself on occasion sought information of this character from Gaura.

³⁰ The record discloses that longer experience and greater skill are required in the operation of a Browne & Sharpe Universal than a Norton, and that the former machine is used for greater precision work.

Assuming, without finding, that employees were making unreasonable demands upon Gaura's time which interfered with his production, it would seem that the more obvious method of dealing with this situation would have been to prohibit the employees from consulting Gaura in connection with their work and preventing them from interfering with his production. Instead, the respondent undertook to transfer Gaura from his regular machine to a station under the continual surveillance of the foreman. It is reasonable to conclude, upon the basis of the foregoing, and the undersigned finds, that the respondent was aware of the extent of Gaura's union activity; that it suspected that Gaura was utilizing the opportunity afforded him by his contact with the employees in his department as a means of proselyting them to the union cause; and that it sought to transfer him as a means of discouraging this opportunity for communication.³⁷ Although both Collins and Lockwood denied that they were aware of Gaura's union activity on the date of his attempted transfer, it has been found that Lockwood gave Gaura the "friendly tip" to "lay off union activities" or, in effect, be prepared for the consequences. Notwithstanding Lockwood's denial of this warning, he admitted that he had cautioned Gaura at about the time he was alleged to have made the statements, to "keep his nose clean."³⁸ It is obvious, therefore, that Lockwood was aware of Gaura's union activity. Lockwood was the general group leader under Foreman Collins, working in close collaboration with him, and undoubtedly communicated the information regarding Gaura's union activities to Collins. The undersigned so finds.

Upon the basis of the foregoing, and upon the entire record, the undersigned concludes and finds that the respondent discriminatorily transferred Gaura from the Browne & Sharpe Universal grinder to the Norton grinder because of his union membership and activity, and thereafter discharged him because of his refusal to accept the discriminatory transfer, and that the respondent has thereby discouraged membership in the Union.

Richard W. Leroux was employed at the Pratt & Whitney Aircraft Division at East Hartford in March 1942 as a "bench hand", and remained there for a period of about 3 weeks when he was transferred to the respondent's Packard plant in Hartford.³⁹ He continued as a bench hand for a short time thereafter

³⁷ This view is supported by the testimony, which the undersigned credits, of Lucien Mercier, who was employed in the same department as Gaura and who worked on a special assignment with him for a period. Mercier testified that at a New Year's Eve party attended by Acting General Group Leader Gerald Dorey, Mercier and their wives at the home of Foreman Collins, Gaura's recent discharge was discussed, and Collins remarked that he had "tried to get Gaura transferred to a machine nearer to his desk so he could watch him, because he believed he was too active in the union," adding that he was "glad to get rid of him" and "now he could breathe easier". Although Collins was supported by Dorey in his denials both with respect to the statement attributed to Collins and that there was any conversation on that occasion regarding Gaura, the undersigned does not credit their denials. Dorey's testimony respecting this episode was equivocal and unconvincing. With respect to Collins, the statement attributed to him appears to be consistent with his admitted purpose in transferring Gaura.

³⁸ Lockwood testified that in February, 1944, when Gaura, Field Examiner Knowlton and Peresluba called at his home, in response to an inquiry from Gaura whether Lockwood recalled telling him to "keep his nose clean" and "lay off union activities," Lockwood admitted that he had made the remark about Gaura's keeping his nose clean, but denied the rest of the statement. Thereupon, according to Lockwood, Gaura said that he would be obliged to "bring up the statement" of another employee [obviously Bennett] who had overheard the statement. According to the credible testimony of Lucien Mercier, Lockwood remarked to him, following Gaura's discharge, "I warned Andy; I told him to keep his nose clean." Lockwood also admitted that on the day of Gaura's discharge, Nelson Hudson, the latter's father-in-law and an employee at the plant, asked him what had happened to Gaura, and Lockwood informed him that Gaura had "talked himself out of a job."

³⁹ The allegations of the complaint were amended in this respect to conform to the evidence.

and was then assigned to operate a drill press. Leroux was desirous of increasing his earnings and as he was then receiving the maximum rate under his job classification, his supervisors suggested that he undergo training for a job which would carry a higher rate of pay. Early in January 1944, he was sent to a training school located in a building a short distance from the Packard plant, where he remained for about 4 or 5 weeks.⁴⁰ While he was at the school he received the same rate of pay that he had been receiving at the plant, but was paid no bonus inasmuch as he was not engaged in production work. He returned to the Packard plant early in February and, although he had been trained as a Warner & Swasey machine operator, continued to perform drill press operations principally.

Late in February 1944, Leroux signed an authorization card with the Union and solicited the membership of other employees. In the latter part of May, Leroux approached Howard Merrill, his group leader, in a restaurant and solicited him to sign a union authorization card. Merrill declined and told him, "If I were you, I would leave [the Union] alone." Merrill continued, "You can take it from me, you can take it from my last experience," and advised Leroux not to sign a card. Merrill then related his "last experience" to Leroux in connection with a union which had attempted to organize the respondent's employees on a previous occasion, following which employees were discharged and later returned and "begged" for their jobs.⁴¹

Prior to Leroux's enrollment in the training school, his attendance record had been admittedly poor. Following his return to the plant, at the conclusion of his course, his attendance record improved. However, on May 6, 7 and 8, 1944, Leroux was absent from the plant without leave. When he returned to the plant on May 9, claiming that he had been ill and had been too far from a telephone to notify the respondent, he was given a "first warning" by his foreman, and his record of absences was endorsed accordingly. On May 18 he left the plant at 10 o'clock in the morning on personal business, with his foreman's permission, but remained absent from the plant all of the following day without notifying the respondent. Upon his return to the plant on May 20, at the direction of his foreman, Anthony Ference, he signed an "ABSENTEE'S WARNING" card, acknowledging that if he were "A. W. O. L."⁴² again before November 6, 1944, his termination would become mandatory and automatic without the right of appeal. Leroux was not absent from that date until the date of his discharge.

On June 19, 1944, toward the close of his shift, Leroux was told to report to Foreman Ference and was informed that he was being discharged for excessive absenteeism. Later that day, Leroux went to the home of John Ohanesian, divisional superintendent of the Packard plant, to discuss the matter of his dis-

⁴⁰ Leroux testified that he was sent to the training school to correct his absenteeism. The record discloses, however, and the undersigned finds, that the respondent sent him to school to afford him an opportunity to prepare for a higher paying job and to increase his usefulness to the respondent.

⁴¹ Although Merrill denied the encounter, as well as the conversation with Leroux, and specifically denied that Leroux ever asked him to sign a card, the undersigned does not credit Merrill's denials. Merrill admitted that he and Leroux drove to and from work together and that they were in the habit of having their meals together in a lunch room in East Hartford. He further admitted that he had been a member of a union which had attempted to organize the respondent's employees in about 1936; that the employees went out on strike; that the organizational drive failed, and that all the employees who went out on strike were discharged. Furthermore, he testified that after the strike was defeated the employees who were discharged were rehired through the employment office and required the approval of their foremen before being rehired.

⁴² These initials, as used by the respondent, indicate absences without permission or notification to the respondent. The system of requiring employees who were absent without leave to sign an Absentee Warning card was inaugurated by the respondent in March 1944 in an attempt to combat absenteeism.

charge. Ohanesian told him that the respondent was "catching up with production" at the Packard plant, that the respondent had started laying off employees and that, although Ohanesian was reluctant to see Leroux leave, he would have to let him go.

The respondent does not contend that Leroux was discharged for violation of the ABSENTEE'S WARNING, but that it became necessary to resort to lay-offs by reason of the fact that production schedules had been completed; and that Leroux was discharged after an unsuccessful attempt by Superintendent Ohanesian to transfer him to the respondent's plants at either East Hartford or Southington.

Superintendent Ohanesian testified, and the undersigned finds, that reduction in force in Department 68, in which Leroux had been employed, was occasioned by the fact that the department had consistently been 2 to 3 months ahead of its production schedules; that during the early part of 1944, production schedules had been reduced; and that the respondent, following the necessity for lay-offs occasioned by these factors, transferred such employees as were acceptable to the Personnel Department to the East Hartford plant.⁴³ Ohanesian notified the Personnel Department at the East Hartford plant of the number of employees he had available for transfer, and in about April 1944 commenced transmitting their employment records. Some of these employees were accepted for transfer by the East Hartford division, others, including Leroux, were rejected. Ohanesian admitted that he had anticipated that Leroux would be rejected for transfer due to his over-all poor attendance record. However, when Leroux's employment file was returned from the East Hartford division, Ohanesian submitted his file to the Southington plant notwithstanding Leroux's unsatisfactory attendance record, because of the urgent need for manpower at the Southington plant. Leroux's transfer was also refused there because of his poor attendance record.⁴⁴

Leroux admitted that his attendance record, prior to his enrollment in the school, had been poor and that he had promised Superintendent Ohanesian that it would improve. He also acknowledged that he had heard that employees at the Packard plant were being laid off because of excessive absenteeism during May 1944. In view of the foregoing, especially the undisputed necessity for curtailment of employment occasioned by the completion of respondent's production schedules; the attempts by the respondent's supervisor to transfer Leroux to other plants of the respondent where personnel was urgently needed; and the refusal of officials at those plants to accept Leroux for transfer due to his over-all record of excessive absenteeism, the undersigned concludes and finds that Leroux was not discriminatorily discharged. Beyond the fact that he wore his union button in the plant and solicited membership among the respondent's employees at the Packard plant, Leroux's activity on behalf of the Union was not conspicuous. Although both Ohanesian and Ference denied that they knew of Leroux's union membership and activity, and that they had ever observed him wearing a union button in the plant, it is apparent from what has already been found with respect to the incident involving Group Leader Merrill, admittedly a supervisory employee at the time, that Leroux's interest in and activity on

⁴³ According to Ohanesian total employment at the Packard plant was reduced from about 1,000 in the early part of 1944 to about 305 as of the time of the hearing. In Department 68 the total employment was reduced, for the corresponding period, from about 260 to 37, and the third shift discontinued in June 1944. Between May 1944 and October 1944, employment dropped from 79 to 29 on the first shift and from 58 to 8 on the second shift.

⁴⁴ According to Leroux's testimony, Foreman Ference inquired, several weeks prior to his discharge, whether he would be interested in a transfer to the Southington plant, but he refused to consider such a transfer.

behalf of the Union was known to him.⁴⁶ However, the undersigned is not convinced on the basis of the entire record respecting Leroux's alleged discriminatory discharge, that he was discharged because of his membership in or activity on behalf of the Union, and will therefore recommend that these allegations in the complaint be dismissed. The undersigned does find that by the statements of Group Leader Merrill to Leroux in May 1944, the respondent has interfered with, restrained and coerced its employees within the meaning of the Act.

Vernon S. Brown was employed by the respondent as a turret lathe operator on the first shift in Department 264 from April 1943 to June 23, 1944. Late in October or early in November 1943, he signed a union authorization card and immediately evinced an active interest in the Union. He became shop chairman on the day shift for the entire East Hartford plant covering about 80 departments, in about 25 or 30 of which he was active, and supervised the activities of 90 to 100 committeemen. He solicited and enlisted several hundred members and distributed literature on Willow Street as well as in South Parking Lot. He was also among a group of employees who were intercepted by the plant guards on April 5, 1944, while attempting to distribute literature at the gates to the South Parking Lot, and asked for their names and clock numbers.⁴⁶ He distributed union buttons to members, conducted meetings, appointed committeemen and generally distinguished himself in the Union's campaign. His home in Charter Oak Terrace, a housing project in which several hundred employees out of a total of about 1000 families resided, was used as a distribution center and meeting place. He also distributed union literature to residents at the housing project, arranged for meetings to be held in the Community Building located at the project, and publicized union meetings in the community.

Brown also conducted a regular weekly column in the "Aircraft Bulletin" under the title "Big Mike sez," and frequently contributed editorials to that publication. He was well-known among the employees not only for the extent of his activity in the Union, but as the author of the column, and was addressed by both employees and some of his immediate supervisors in the department as "Big Mike."⁴⁷ His identity under this pseudonym was also known to Group Leader Brass and Assistant Group Leaders Leone and Formica.⁴⁸ As early as April 1944, supervisors in the department had been observed reading the issues of the Aircraft Bulletin which were placed on their desks.

Late in 1943 or early in 1944, Brown was summoned to the plant protection office and instructed to bring his tool box. When he arrived there he was asked to open it and an examination of its contents was made. No reason was given by the respondent for this action and after the search, Brown was permitted to return to his department. It was known to Leone, Brass and Formica that Brown kept union authorization cards and other literature in his tool box. These supervisors as well as Group Leader Rizoekes commented on Brown's union

⁴⁶ The record is silent as to the extent of union organizational activity at the Packard plant in Hartford, except for the evidence relating to union activity of Leroux.

⁴⁶ Brown was informed by the guard after telephoning guard headquarters from the post that he could not go into South Parking Lot because it was Brown's day off.

⁴⁷ At a union meeting held at Manchester, Connecticut, on the night of June 21, 1944, two days before Brown's discharge, Grand Lodge Representative Peresluha introduced Brown to the several hundred employees present as the author of "Big Mike."

⁴⁸ Group Leader Brass admitted that he not only knew Brown's identity as "Big Mike", in April 1944, but that he was aware of his union activities. He denied, however, that he had divulged this information to either Foreman Graef or General Foreman Didier "because he figured it was none of their business", but testified that he told Didier that Brown was "Big Mike" after his discharge. The undersigned does not credit his denial, and finds that he informed Graef and Didier of Brown's identity as "Big Mike" and of his union activities at or about the time he learned of them.

activities. At one time Brass told Brown that he had been "spotted" as a union organizer from the time he came into the plant⁴⁹ On another occasion when Brown failed to receive an increase which Brass had recommended to both his foreman and general foreman, Brass remarked that Brown's union activities were not doing him any good so far as getting a raise was concerned. Rizzoekes informed Brown that it would be impossible to get a union into the Pratt & Whitney plant. Assistant Group Leader Leone, during one of many conversations with Brown, informed him that the respondent was familiar with the fact that Brown had been active in union organization at "Colt's" and that this information had been communicated to the respondent by the Manufacturers' Association.

On June 23, 1944, Brown reported for work on his shift as usual. He had been absent for several days prior to that date, and was informed by Group Leader Brass that he would have to see General Foreman Didier,—that something was going to happen to him⁵⁰ Later that morning, while waiting to see Didier, Brown went to the personnel office, where he learned that he was "leaving" and was told to see Didier. Didier confirmed his termination and informed him that he was being terminated for "staying out too much." Brown continued working after he learned that he was to be discharged and completed his production for that day. When Brown requested permission to see Superintendent Campbell, pursuant to Rule 17 of the respondent's rules prescribing the levels at which grievances might be presented, Didier telephoned Campbell and then informed Brown that Campbell did not wish to see him. On the day of Brown's discharge Leone remarked to Brown, "I am surprised you lasted this long," later remarking, "What does 'Big Mike' say now?"⁵¹

Respondent's contentions; conclusions

The respondent contends that Brown was discharged solely for his record of excessive absenteeism. According to the respondent's records, which the undersigned accepts, Brown was absent a total of 42 days during the course of his employment from April 1943 to June 23, 1944. Of the total number of absences, 23 were due to personal illness,⁵² and 3 to illness in his family. Brown admitted that, during the month of June 1944, Foreman Graef had called his attention to the list of absences, and that Brass had spoken to him several times about his difficulty in procuring raises for him because of his absences. However, the respondent apparently made no claim that his absences alleged to be due to illness were not genuine. In any event he was at no time warned that he risked discharge because of his absences. On June 14, 1944, Brown was absent, and upon his return Foreman William C. Graef entered a notation on his absentee

⁴⁹ Francis A. Montville, an employee in the same department, testified credibly that he overheard Brass remark, in April or May 1944 after Brown had been distributing union literature in South Parking Lot, that Brown had been "spotted" as a union organizer.

⁵⁰ During June 1944, Brass remarked in the presence of Brown and other employees, "When Brownie [Brown] gets fired the union will take care of him;—the National Labor Relations Board will put him back to work."

⁵¹ The above findings are based upon the credible testimony of Brown Leone, who, according to the respondent, was in the Armed Services and unavailable, Rizzoekes and Formica did not testify. Although Brass denied the statements attributed to him, the undersigned does not credit his denials.

⁵² In August 1943, following an injury sustained while he was operating a machine, it was discovered that Brown was suffering from a non-occupational lung condition, for which he received treatment. In October and December 1943, he was absent on account of illness for 5 consecutive days on each occasion. Although his record further disclosed that he had been marked AWOL on May 6, 1943, January 1, 1944, and March 31, 1944, he apparently was not required to sign an Absentee's Warning card.

record, "Personal Business. Warned."⁵³ On June 21, Brown was again absent but, according to General Foreman Didier, the notation, "sick", opposite the date on his absence record, indicates that Brown had notified the respondent of his illness. Graef testified that after he had "warned" Brown he informed Didier that he had done so and that Didier told him to advise him the next time Brown was absent. However, Graef said nothing to Brown about his instructions from Didier. At the time Graef had "warned" Brown, the latter pointed out to Graef that most of the absences were due to illness, and Graef agreed with him.

June 22 was Brown's day off. Nevertheless, on that day Didier instructed his clerk to prepare Brown's termination papers without awaiting Brown's return or affording him an opportunity to explain or justify his absence.⁵⁴

Whatever the nature of his absentee record, Brown, in his testimony, cited instances, which were undenied, of a number of employees, whose absentee record was as bad or worse than his, who were not disciplined or discharged. Brown did, however, admit that he had heard rumors in the plant, at or about that time, of lay-offs or discharges for excessive absenteeism. Although Brown's record of absences was introduced in evidence, no criterion was offered which would afford a basis for determining whether the respondent's contention that Brown's absenteeism was excessive was justified.

In view of the fact, therefore, that no standard was offered as a basis for determining whether Brown's absences were excessive in comparison with the average for employees generally, and the further fact that Brown generally notified the respondent of his absences, a great many of which resulted from illness; in view of Didier's precipitate action in terminating his employment under the circumstances disclosed above, while Brown was on his day off; in view of Brown's summary discharge by the respondent without affording him an opportunity to resort to the established grievance machinery and to confer with Superintendent Campbell; and in view of the extensive and pervasive nature of his organizational activities in behalf of the Union, which were well known to the respondent, and the statements and threats of his supervisors, related above, the undersigned concludes and finds that the respondent would not have discharged Brown for his allegedly excessive absenteeism in the absence of his militancy in espousing the Union's cause. It follows that by discharging Brown because of his union activity, the respondent has discriminated against him in regard to the hire and tenure or terms and conditions of his employment, and thereby discouraged membership in the Union.

Leona C Rocheleau was employed by the respondent on January 4, 1944, doing assembly work in Department 31 on the third shift, and was discharged on July 15, 1944. In the latter part of February, she signed a union authorization card, distributed union literature at the gates of the plant on Willow Street and in the parking lots, and successfully solicited union membership among the employees. She became "chairman" of the union organization committee in her department on her shift. During the latter part of March, while she was distributing union literature at the Willow Street gates, she handed a circular to Assistant Group Leader Harold Pfaefflin. Several weeks later, after Pfaefflin had observed

⁵³ The record does not disclose the nature of this warning, and the undersigned finds that this warning probably consisted of a reprimand, but that Brown was not informed that he risked discharge.

⁵⁴ Didier's explanation for having Brown's termination papers prepared on that day was that his clerk was not expected at work the following day. Be that as it may, it does not explain Didier's precipitate conduct in terminating Brown's employment, *in absentia*, without giving him an opportunity to explain.

her distributing literature, he approached her in the department before work commenced on her shift and told her that she would "get fired for that."

In May or June, shortly after she began wearing her union and committee buttons in her department, Pfaefflin remarked to her, "You will get fired for that," pointing to her union buttons. Rocheleau persisted in wearing them thereafter.

During the same period, Group Leader Arthur Maddock approached Rocheleau at her machine and, in the presence of a group of employees, remarked that, although he was not in favor of unions, he would not "fight it"; that he had "seen plants in Vermont where there was a union, and there had been trouble; that some old people and little children had been injured by tear gas; families suffered and gained very little in the end."

In June 1944, while a War Bond Drive was in progress, Group Leader Maddock asked Rocheleau to increase her war bond subscription. Several days later, Assistant Group Leader Pfaefflin remarked to her, in the presence of other employees, that with the money she was earning at the plant and the salary she was probably receiving from the Union for her union activities, she should be able to increase her purchases of war bonds, even though she was the sole support of her family by reason of her husband's illness. Rocheleau denied at the hearing that she had been receiving any compensation from the Union for her activities.⁵⁵

On the morning of July 15, 1944, according to Foreman William Bergstrom's testimony, while he was in the aisle of the department with Assistant Foreman Bidwell, and about 20 feet from Rocheleau's bench, he observed her sitting asleep at her bench, an artist's brush used for painting studs in one hand and a stud in the other. Bergstrom testified that he observed her for about 10 minutes while she was asleep. At about that time his attention was directed by Maddock to a crankcase which had been damaged at a bench a few feet away from Rocheleau's bench. Bergstrom examined the crankcase and discovered that it had been damaged as a result of the improper insertion of a dowel stud which had been driven into the crankcase. It was ascertained that the stud had been improperly inserted by Rocheleau and she was sent for.⁵⁶ Bergstrom stated to her that she had been asleep, that he had observed her asleep and asked her if she had been asleep on previous occasions. When she denied it, he questioned Maddock in her presence. He informed Bergstrom that "she had been in a sleepy condition for the past 3 weeks of her employment, and that he had warned her on two occasions and apparently it had done no good."

Bergstrom instructed Maddock to send the crank case to "salvage," and Rocheleau returned to her bench. Later that morning Bergstrom summoned her to his office. Bergstrom admitted that she was wearing her union button when

⁵⁵ The above findings are based upon the credited testimony of Rocheleau. Maddock did not deny the statements attributed to him. Pfaefflin did not testify, although it was stipulated at the hearing that his testimony, as well as that of Bidwell, hereinafter referred to, would generally corroborate Bergstrom's. Consequently, the statements attributed by Rocheleau to Maddock and Pfaefflin stand uncontradicted in the record.

⁵⁶ A dowel stud which is about $2\frac{1}{8}$ inches long, and tapers from about $\frac{3}{16}$ " to about $\frac{5}{16}$ " in diameter, is solid on one end hollow on the other. The stud is divided by a shoulder and is threaded on both ends, the threads being coarser on one end than on the other. In the normal operation the hollow end is inserted by hand into the crankcase by one operator and the stud is later driven in by a stud-driving machine by another operator. In this case the stud had been inserted the opposite way with the result that when it was driven in by machine the crankcase cracked. According to Rocheleau's testimony, corroborated in this respect by Maddock, an experienced stud machine operator would ordinarily have checked the stud to make certain that it had been inserted properly by hand before driving it into the crankcase. The record indicates that on this occasion the stud machine was being operated by a novice who had neglected to take the proper precaution.

she appeared. He discussed with her the fact that he had observed her asleep the night before, that she had been warned, mentioned "this crank case being scrapped," and informed her that he was terminating her employment. According to Bergstrom, Rocheleau remarked that that was not the reason for her termination but that it was "because of the union button," to which she pointed. Bergstrom replied that he was not interested "in that" and declined to discuss the matter. Rocheleau admitted in her conversation with Bergstrom, at the time the damaged crank case had been called to her attention, that she had improperly inserted the stud. However, when he accused her of having been sleeping she remarked that it would not have been possible for her to have inserted studs while she was sleeping. She further denied that she was asleep on the job on the night of her discharge or on any previous occasion and that she had been warned about being asleep at any time. Rocheleau admitted that she had been asked by either Bergstrom or Maddock on the morning of July 15, following the discovery of the damaged crank case, whether she had been warned about sleeping on the job.

Later in the morning of July 15, Rocheleau was summoned to the personnel office where she was interviewed by Personnel Adviser Francis Larkin. Rocheleau related the incident in connection with the crank case, denied that it was necessary to scrap the case and remarked, "that is not the real reason I am being terminated." Larkin quoted Rocheleau as saying, "I was tired when I came to work tonight, and I will admit I was nodding on the job." According to Larkin, Rocheleau informed him that Bergstrom had called her into the office and terminated her employment, after learning of the damage to the crank case. Larkin further testified that, following a telephone conversation with Foreman Bergstrom, he stated to Rocheleau that Bergstrom had informed him that she had been warned twice in connection with sleeping on the job, and that Rocheleau acknowledged that she had been so warned, but that she asked for another chance. Larkin informed her that she would have to take that matter up with Bergstrom. According to Rocheleau, she did not recall telling Larkin that she had been tired when she arrived at work on the night in question or that she had asked for another chance. She did, however, testify that Larkin told her that if she went back to Bergstrom and asked for her job she would be retained, but that she replied that she would not "beg for [her] job." Upon the basis of the foregoing, the undersigned finds that Rocheleau admitted to Larkin that she was tired when she arrived at work on the night in question and that she was "nodding on the job," but that she did not admit that she had been previously warned.

When Rocheleau returned to Bergstrom's office she observed a termination slip lying on his clerk's desk. The slip bore her name, and gave as a reason for her termination "Not suited to the work" and "Poor attendance."⁵⁷ Rocheleau surrendered her employee's badge at the gate and left the plant. Several days later, when she received her unemployment compensation slip in the mail, no mention was made thereon of "poor attendance," and the only reason given for her discharge was "Not suited to this type of work."

⁵⁷ Although the respondent offered, for identification only, Rocheleau's record of absences, the respondent's counsel announced, toward the close of the hearing, that he was not offering it as an exhibit. An AWOL absentee's warning, signed by Rocheleau on June 20, 1944, was, however, received in evidence. The respondent did not contend that she violated this warning or that she was discharged for poor attendance, but relied upon her sleeping on the job as the sole ground for discharge. In view of this, the undersigned has not considered her attendance record or the absentee's warning in arriving at a conclusion respecting her alleged discriminatory discharge.

Maddock, who, although he was classified by the respondent as a utility man, acted as a group leader and had supervision over 10 or 12 employees, testified that, of the three occasions on which he claimed to have observed Rocheleau asleep, the first occurred about the middle of June 1944, the second on July 11 or 12, and the last, on the day of her discharge. On the first two occasions, according to Maddock's testimony, as he walked toward her, he observed that she was "nodding at the bench . . . just really nodding," and in each instance she awakened before he reached her. Although Maddock acknowledged that it was his duty to notify the foreman of any improper conduct on the part of employees, he admitted that he did not report either incident to Foreman Bergstrom because, contrary to Bergstrom's testimony, he did not consider these lapses serious enough to report. It is, moreover, significant that Maddock did not mention, while testifying with respect to these two instances, that he had warned her, although he later testified that he had informed Bergstrom that he had warned her. Furthermore, Maddock testified that on each of the first two occasions, while Rocheleau was alleged to have been "nodding" with her eyes closed, she "would be installing studs in the cases." On the last of these occasions, according to Maddock, she was applying a composition paint to the studs with a brush in one hand and a stud in the other. It is thus apparent from Maddock's testimony, respecting the occasions when he claims to have observed Rocheleau asleep, that, although she was "nodding" involuntarily and intermittently for brief intervals, she was not asleep in the sense which Bergstrom intended to convey, and that she was not actually asleep for a period of at least 10 minutes while he observed her as he testified.⁶⁸

Although considerable evidence was adduced at the hearing regarding the damage to the crank case, resulting from Rocheleau's carelessness in improperly inserting the dowel stud, counsel for the respondent conceded, during oral argument, that Rocheleau was not discharged for causing the crank case to be "scrapped,"—that a certain amount of "scrap" was expected in connection with production—but that she was discharged for sleeping. Thus, the respondent obviously takes the position that Rocheleau would not have been discharged for carelessness resulting in the damage to the crank case, and, conversely, that the respondent would have discharged her for merely "sleeping on the job" even if no damage to the crank case had been involved. It will be recalled, however, that Bergstrom admitted in his testimony that, at the time of the termination conference at his office, he specifically mentioned the "case being scrapped" in discussing the reason for her termination. This is indicative of the fact that Bergstrom, at least, considered the scrapping of the crank case a factor in his decision to discharge her. The record, however, discloses that the respondent had failed to discharge or even discipline another female employee whose carelessness in a similar respect had necessitated the scrapping of a crank case, which was afterward displayed in the plant cafeteria with a sign indicating that this was an example of the result of carelessness.

The undersigned is of the opinion, and concludes, that it was for this reason that the respondent relied solely upon "sleeping on the job" as a ground for the discharge of Rocheleau rather than her carelessness resulting in the scrapping of the crank case, a matter which normally would be considered a more serious ground for discipline. It should be noted, moreover, that there was no evidence adduced by the respondent which established that Rocheleau was actually asleep or even nodding or dozing at the time that the stud was improperly inserted in

⁶⁸ According to Bergstrom, Rocheleau was working between two other girls at the same bench, and it is unlikely they would have permitted her to remain asleep while she was being observed by her foreman.

the crank case, and that Bergstrom obviously arrived at the conclusion that she "must have been asleep" at the time the stud was inserted for the reason that he observed her at a considerably later time "asleep" at her bench.

Although the respondent contends that other employees were discharged for sleeping on the job both before and after Rocheleau's discharge, the circumstances surrounding all of these discharges were not shown beyond a statement that "some" of the employees were discharged under similar circumstances. However, Bergstrom did testify that some of the employees were discharged for sleeping in the men's room or upon or underneath benches, indicating that this type of "sleeping on the job" was voluntary and deliberate, as distinguished from the type of "nodding" or "dozing" attributed by Maddock to Rocheleau.

Upon the basis of the foregoing, and upon the entire record, the undersigned finds that Rocheleau was not actually "asleep on the job" on July 15, 1944, at or about the time Bergstrom claimed to have observed her, in the sense which he intended to convey, but that she was, as testified to by Maddock with respect to the earlier occasions, "just really nodding" intermittently for brief intervals; that the two previous occasions on which the respondent claimed she had been asleep were of a similar nature and so trivial and insignificant as to merit no reprimand, as indicated by Maddock's testimony that he did not consider the incidents serious enough to report to his foreman; and that, in fact, Maddock did not reprimand or warn Rocheleau on either of those occasions of the consequences of any similar lapses in the future. Lastly, that the respondent would not have discharged her for nodding or dozing on the night in question, in the absence of her conspicuous union activity, and that the respondent utilized the occurrence on the night of July 15 as a means of eliminating a militant union adherent as it had threatened to do through its supervisory employees on several occasions. The undersigned further finds that, by the discriminatory discharge of Rocheleau and by the statements and conduct of her supervisors, as related above, the respondent has discouraged membership in the Union and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under the Act.

Conclusions

Upon the entire record, the undersigned concludes and finds that, by the exclusion of the union organizers from Willow Street, and preventing them from distributing literature thereon; by the promulgation and enforcement of the rules against solicitation and distribution of literature upon company property upon employees' own time, and by preventing and interfering with the distribution of union literature upon Willow Street and upon South Parking Lot by its employees; by interfering with and preventing employee William F. Bassich from carrying union literature into the plant under the circumstances disclosed above, and by preventing the distribution of said literature in the plant cafeteria on his own time on October 11, 1944; by the anti-union statements of its supervisors and representatives to its employees as related above;⁵⁰ and by the foregoing

⁵⁰ Although the respondent contends that Assistant Group Leaders Leone and Pfaefflin and Group Leader Maddock were not supervisors, or were at best, as alleged in its brief, minor supervisors, and although the respondent introduced in evidence job evaluation records in support of its contention, these records are inconclusive. The record discloses that the assistant group leaders instructed employees and substituted for group leaders. The undersigned is satisfied and finds upon the entire record that these employees were clothed with ostensible authority of supervisors, were so held out by management, and so reasonably regarded by the employees, and that their conduct reflected the attitude of management. See *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514.

conduct and by discharging Andrew G. Gaura, Vernon S. Brown and Leona C. Rocheleau, the respondent has discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

It has been found that the respondent discriminated against Andrew G. Gaura, Vernon S. Brown, and Leona C. Rocheleau in regard to the hire and tenure of their employment. It will therefore be recommended that the respondent offer to each of them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of money equal to the amount each normally would have earned as wages during the period from the date of the respondent's discrimination against each of them to the date of the respondent's offer of reinstatement, less their net earnings⁶⁰ during such period.

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

CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By promulgating and enforcing its rules against solicitation and distribution of literature insofar as they apply to the distribution of union literature on Willow Street and on its parking lots, and insofar as they apply to union activity and solicitation of union membership at the plant upon the employees' own time, the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Andrew G. Gaura, Vernon S. Brown, and Leona C. Rocheleau the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act

⁶⁰ 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 discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 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.

4 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 and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 8 (6) and (7) of the Act.

6. The respondent has not discriminated in regard to the hire and tenure of employment of Richard W. Leroux within the meaning of Section 8 (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, United Aircraft Corporation, Pratt & Whitney Aircraft Division, of East Hartford, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with American Federation of Labor, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to the hire and tenure of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection 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) Rescind immediately the rules against solicitation and distribution of literature insofar as they prohibit union activity and solicitation of union membership on employees' own time, and prohibit distribution of union literature by employees outside the gates of the plant and in the parking lots.

(b) Offer Andrew G Gaura, Vernon S Brown, and Leona C Rocheleau full and immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(c) Make whole Andrew G Gaura, Vernon S Brown, and Leona C Rocheleau for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of money equal to the amount each normally would have earned as wages during the period from the date of the respondent's discrimination against each of them to the date of the respondent's offer of reinstatement, less their net earnings⁶¹ during said period;

(d) Post at its plant at East Hartford, Connecticut, copies of the notice attached hereto, marked "Appendix A" Copies of said notice, to be furnished by the Regional Director of the First Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

⁶¹ See footnote 60, *supra*.

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

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

It is further recommended that the allegations in the complaint relating to the discriminatory discharge of Richard W. Leroux be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, 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 25, 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 a 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

IRVING ROGOSIN,
Trial Examiner.

Dated June 20, 1945.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Andrew G. Gaura
Vernon S. Brown
Leona C. Rocheleau

General Shop Rules (22), rules 1 and 2 of Rules and Regulations revised as of July 20, 1937, insofar as they prohibit union activity and solicitation of union membership on employees' own time, and prohibit distribution

of union literature by employees outside the gates of the plant and in the parking lots are hereby rescinded.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

UNITED AIRCRAFT CORPORATION, PRATT & WHITNEY
AIRCRAFT DIVISION

By-----
(Representative) (Title)

Dated-----

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.