

In the Matter of **BOHN ALUMINUM AND BRASS CORPORATION** and  
**FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 66**

*Case No. 7-C-1264.—Decided April 29, 1946*

DECISION

AND

ORDER

On July 12, 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.<sup>1</sup> Pursuant to notice and at the request of the respondent, on March 26, 1946, the Board heard oral argument at Washington, D. C. The respondent appeared and participated in the argument; the Association did not appear.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, the oral argument, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the exceptions and correction<sup>2</sup> noted below:

1. The complaint alleged that on December 18, 1943, the respondent discriminatorily discharged Claren Bates, Richard Glaser, George Jezierski, and Clarence Boone because of their membership in and activity on behalf of the Association. The Trial Examiner found no substantive evidence that the respondent had knowledge of the Asso-

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<sup>1</sup> On or about September 13, 1945, the respondent filed with the Board a written motion to reopen the record to adduce additional evidence in support of its contention with respect to the economic necessity for the reduction of its supervisory force on December 18, 1943. In view of our dismissal hereinafter of the complaint insofar as it alleges that Claren Bates, Richard Glaser, George Jezierski, and Clarence Boone were discriminatorily discharged on December 18, 1943, we find it unnecessary to pass on this motion.

<sup>2</sup> In the first paragraph of Section III, D, of the Intermediate Report, the Trial Examiner inadvertently fixed December 21, 1943, as the date of a conversation between Plant Manager Frost and Foreman Harvey Jackson, whereas the record shows that the conversation actually took place on December 18, 1943.

ciation membership of Bates and Glaser, and accordingly recommended that the complaint be dismissed as to them. There was no exception to this finding and recommendation and we agree with the Trial Examiner.

2. The Trial Examiner further found that the respondent knew of Jezierski's membership in the Association and concluded that his discharge was discriminatory. The Trial Examiner inferred such knowledge on the part of the respondent from his finding that Jezierski was closely associated with Boone, whom the respondent knew to be a leading proponent of the Association. The evidence relied upon by the Trial Examiner merely shows that on a number of occasions, prior to the advent of the Association in the plant, General Manager Fiems had observed Boone and Jezierski riding together on company property in a "jeep."<sup>3</sup> In our opinion, the evidence does not justify the Trial Examiner's inference, nor is there any other evidence from which the respondent's knowledge of Jezierski's Association activity may be reasonably inferred.

The organizational movement among the foremen at the respondent's Plant No. 24 began about mid-November 1943. The record shows that Jezierski did not join the Association until November 30<sup>4</sup> and that he was the eleventh foreman to sign an Association application for membership card. He did not hold an official position in the Association nor was he particularly active in its behalf. Jezierski testified that he "asked a few of the fellows to come in" but admitted that he solicited only 2 foremen to join the Association and that such solicitation took place outside the plant.

Under all the circumstances, we find, contrary to the Trial Examiner, that there is no substantial evidence that the respondent had knowledge of Jezierski's membership in the Association and his limited activities on its behalf, and accordingly, we shall dismiss the complaint as to him.

3. The Trial Examiner found that Clarence Boone was discharged because of his Association membership and activities. The respondent contends that Boone, as well as the other three employees named in the complaint and referred to above, was discharged in connection with an economic reduction of supervisory personnel at Plant No. 24 and that Boone was selected for discharge because he was one of the four least competent and efficient foremen in the plant's finishing department. The Trial Examiner rejected this contention and predicated his finding of discrimination principally on the uncorroborated and disputed testimony of Marion H. Chesney, the former superin-

<sup>3</sup> Fiems denied knowledge of Jezierski's Association membership and activity.

<sup>4</sup> The date Jezierski signed an application for membership card is erroneously recorded in the Intermediate Report as November 20.

tendent of the finishing department.<sup>5</sup> Chesney appeared as a Board witness and testified to the effect that Plant Manager A. W. Frost had instructed Chesney to investigate the organizational activity of the foremen and to "go find the organizer" because "We are going to get rid of him. We can't have that in here." Frost denied this testimony but the Trial Examiner believed Chesney, notwithstanding Chesney's later admission that Frost "didn't tell me to tell [the foremen] not to organize."

As we have indicated in other cases, a Trial Examiner's credibility findings are entitled to great weight because in resolving conflicting testimony he is in a position to observe the demeanor of the witnesses on the stand and for that reason we are reluctant to disturb such findings. This principle, however, does not mean that this Board will not review a Trial Examiner's faith in the credibility of a witness called by the Board when such witness deviates from an important aspect of his direct testimony upon cross-examination. Since the Trial Examiner's conclusion that Boone was not discharged for cause rested almost entirely on Chesney's testimony, his appraisal of the witness Chesney was therefore crucial, for he attaches great importance to portions of Chesney's testimony which were contradicted by other witnesses. After reviewing the incongruities evident in the testimony of Chesney himself coupled with the fact that Chesney's version of certain events was not only at variance with opposing witnesses but witnesses also called by the Board, we have concluded that Chesney's reliability cannot be supported. In reaching this view we have also taken into account certain circumstances which give rise to a suspicion of bias by Chesney in favor of Boone and against the respondent.<sup>6</sup>

On direct examination Chesney characterized Boone as an "excellent" foreman who worked "continually and faithfully." But Chesney's testimony on cross-examination was to the effect that Boone had been criticized frequently in fact "lots of times . . . probably more than [the other foremen]." We find it difficult to reconcile these almost diametrically opposite statements. Moreover, Chesney admitted that he had warned Boone about Boone's habitual use of the "jeep"<sup>7</sup> for purposes outside the scope of his duties. Boone, on the other hand, denied that he had ever been criticized by his superiors. Chesney's and Boone's testimony also conflicts as to whether, after Boone's discharge, Chesney had assigned Boone's activities on behalf of the Association as the reason for his discharge.

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<sup>5</sup> Shortly after Boone's discharge and prior to the hearing, the respondent discharged Chesney for cause.

<sup>6</sup> Chesney admitted that he was very friendly with Boone and as heretofore mentioned, Chesney himself was discharged by the respondent for cause.

<sup>7</sup> A motor driven vehicle with a side car attachment provided by the respondent for the use of the heads of the various departments in the plant.

In view of our doubts as to Chesney's general credibility, his admission as a Board witness that Boone "probably" had been criticized by Chesney's superior more than other foremen, the affirmative evidence indicating the economic feasibility of a reduction of supervisory personnel, and the fact that the three other discharged foremen were not known by the respondent to have been Association members, we find no substantial evidence that Boone's discharge was discriminatory. The Trial Examiner's finding to the contrary is hereby reversed and the complaint shall be dismissed as to Boone.

4. As we have previously held, there is no merit in the respondent's contention that the employees involved herein are not entitled to the protection afforded by the Act because they occupy supervisory positions and therefore are not employees within the meaning of the Act;<sup>8</sup> nor is there merit in the respondent's further contention that, because the strike of December 21, 1943, occurred without notice of a labor dispute first having been given as required by the War Labor Disputes Act, the strikers are not entitled to the protection of the Act.<sup>9</sup>

The strike in which the 19 supervisory employees named in the complaint participated on December 21, 1943, was a concerted activity for the purpose of their mutual aid and protection. The right to engage in such activity, whether or not it stems from an unfair labor practice or economic considerations, is guaranteed to employees in Section 7 of the Act.<sup>10</sup> We therefore find, as did the Trial Examiner, that by locking out and in effect discharging the strikers on December 22, and by refusing on January 4, 1944, to rehire them because of their strike activities the respondent interfered with, restrained, and coerced the employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby violated Section 8 (1). We also find that the respondent's conduct in thus discriminating in regard to the hire and tenure of employment of the strikers discouraged membership in the Association and hence also constituted a violation of Section 8 (3) of the Act. Whether the respondent's discriminatory conduct be viewed as a violation of Section 8 (1) or a violation of Section 8 (3), we find that the effectuation of the policies of the Act requires the remedy set forth in our Order.

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<sup>8</sup> *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348; *Matter of Republic Steel Corporation (98" Strip Mill)*, 62 N. L. R. B. 1008; *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4.

<sup>9</sup> *Matter of Kalamazoo Stationery Company, Division of Western Tablet and Stationery Corp.*, 66 N. L. R. B. 930, *Matter of Fairmont Creamery Company*, 64 N. L. R. B. 824; *Matter of Republic Steel Corporation (98" Strip Mill)*, 62 N. L. R. B. 1008. The nature of the strikers' conduct and the manner in which the strike was called neither remove the Act's protection from this type of concerted activity as a matter of law nor move us in the exercise of our discretion to deny such protection to the strikers.

<sup>10</sup> We do not find, as did the Trial Examiner, that the strike was the product of any unfair labor practice by the respondent.

## 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, Bohn Aluminum and Brass Corporation, Detroit, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Foreman's Association of America, Chapter 66, or in any other labor organization of its supervisory employees, by discharging or refusing to reinstate any of its supervisory 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 supervisory employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Foreman's Association of America, Chapter 66, or any other labor organization of its supervisory employees, 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.

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

(a) Offer to the employees listed in "Appendix A," attached hereto, who are not presently in the armed services of the United States, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in Section V of the Intermediate Report, entitled "The Remedy," placing those employees for whom no employment is presently available upon a preferential list and offering them employment as it becomes available, in the manner therein set forth;

(b) Make whole said employees for any loss of pay they 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 that he normally would have earned as wages from the date of the respondent's discrimination to the date of the respondent's offer of reinstatement or placement of his name upon the preferential list, less his net earnings during said period;

(c) Offer each of the employees listed in "Appendix A," attached hereto, who has entered the armed services of the United States, upon his timely application within ninety (90) days after discharge from the armed forces of the United States, reinstatement to his former or a substantially equivalent position, without prejudice to

his seniority or other rights and privileges, in the manner set forth in Section V of the Intermediate Report, entitled "The Remedy," placing those employees for whom no employment is then available upon a preferential list and offering them employment as it becomes available, in the manner therein set forth;

(d) Make whole each of these employees now in the armed forces of the United States for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the periods: (1) between December 22, 1943, and the date of his induction into military service,<sup>11</sup> and (2) between the date five (5) days after his timely application for reinstatement and the date of the respondent's offer of reinstatement or placement of his name upon the preferential list, less his net earnings during said periods;

(e) Post at its Plant No. 24 in Adrian, Michigan, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Seventh 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 any other material;

(f) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminated against Claren Bates, Richard Glaser, George Jezierski, and Clarence Boone, 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 in this decision, except with respect to the finding that the 19 supervisory employees named in the complaint who participated in the strike of December 21, 1943, are entitled to affirmative relief under the Act.

From the record in this case it appears that the strike of December 21, 1943, was spontaneous in origin. All the participants therefore assumed the role of leaders of the strike and it was their responsibility as representatives of employees engaging in a strike to comply with the requirement of the War Labor Disputes Act of filing a notice 30

<sup>11</sup> This sum shall be paid to each employee immediately, without awaiting a final determination of the full amount of his award.

days in advance of the proposed strike with this Board and two other designated Government agencies. For the reasons set forth in my dissenting opinion in *Matter of Republic Steel Corporation*, 62 N. L. R. B. 1008 (in which I discussed the legislative history of the War Labor Disputes Act), and the 19 supervisory employees named in the complaint who admittedly struck without giving the notice required by the War Labor Disputes Act, are not entitled to reinstatement and back pay.

I would dismiss the complaint in this respect.

MR. JOHN M. HOUSTON, concurring in part; dissenting in part:

I concur, in this decision, except with respect to the finding that the discharge and failure to reinstate Boone was not violative of the Act.

I do not believe, as found by my two colleagues, that Chesney was an unreliable witness. In my opinion Chesney's admission that Frost had criticized Boone to him "lots of times . . . probably more than the others" does not refute his earlier testimony to the effect that Boone was an efficient and competent foreman. At most, Chesney's testimony in this respect merely indicates that he and Frost differed in their respective opinions as to Boone's qualifications and ability as a foreman. Chesney, as Boone's immediate superior in the finishing department, certainly was in a better position to observe Boone's work and judge his capabilities than Frost who was manager of the entire plant which, from its description in the record, was quite large. Moreover, Frost admitted that "90 percent of the time the criticism of Boone to Chesney was that he was running up and down the main aisle in a jeep and he couldn't be attending to his job doing that." Thus, it is apparent that Frost based his opinion of Boone, in substantial part at least, upon his observance of Boone's use of a jeep in the plant. The record affirmatively shows that Boone used a jeep in his work with Chesney's permission and ceased using it at Chesney's suggestion. Furthermore, Frost admitted that he made no inquiry as to Boone's possible business in the jeep and that Boone "probably had some understanding with (Chesney) about using the jeep."

It is not disputed that Boone was one of the most active protagonists of the Association in the plant. Nor is there any question but that Frost had knowledge of his activities in behalf of the Association. According to Chesney's testimony, which I believe the Trial Examiner properly credited, Frost had told Chesney, "Go find the organizer. We are going to get rid of him." Frost admittedly assumed full responsibility for the selection of Boone for discharge. Under these circumstances it seems apparent to me that by discharging Boone, whom Frost had good reason to believe was the organizer,

Frost achieved his avowed objective of "get (ting) rid of" the "organizer."

For these reasons I agree with the Trial Examiner that, in discharging and failing to reinstate Boone, the respondent was discriminatorily motivated in violation of Section 8 (3) of the Act.

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

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 supervisory employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Foreman's Association of America, Chapter 66, or any other labor organization of our supervisory employees, 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, in the manner set forth in the Trial Examiner's Intermediate Report, 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:

Stanley Bauschka	Charles Keeling	Carl Spiegel
Julius Bruski	Caspar Lafata	Fred Summerfield
Joseph Butler	Earl B. Nichols	Charles Widmar
Franklin Fergus	Robert Orr	Warren Williams
Lee Higgins	Wilfred Price	Mearl Wilson
Harvey Jackson	Gerald Roberts	
John Mudri	Peter Rollins	

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

BOHN ALUMINUM AND BRASS CORPORATION

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 in conformance with the Trial Examiner's Intermediate Report 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

*Irene R. Shriber, Esq., and David Karasick, Esq., for the Board.*

*Messrs. Butzel, Eaman, Long, Gust & Kennedy, by Victor W. Klein, Esq., and Louis C. Baker, Esq., of Detroit, Mich., for the respondent.*

*Messrs. Walter M. Nelson and William Vallance, of Detroit, Mich., for the Association.*

#### STATEMENT OF THE CASE

Upon a charge duly filed on January 10, 1944, by the Foreman's Association of America, Chapter 66, herein called the Association, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint dated February 10, 1945, against Bohn Aluminum and Brass Corporation, 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) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notices of hearing thereon were duly served upon the respondent and the Association.

With respect to the unfair labor practices the complaint, as amended at the hearing, alleges in substance: (1) that since on or about November 15, 1943, the respondent, through its Plant Manager, A. W. Frost, and its Personnel Manager, L. G. Shull, by specified acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) that on or about December 18, 1943, discharged Claren Bates, Clarence Boone, Richard Glaser, and George Jezierski and has since refused to reinstate them to their former or substantially equivalent positions because they joined the Association and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection; (3) that the above-stated unfair labor practices caused a strike on December 21, 1943, participated in by 19 employees of supervisory rank;<sup>1</sup> (4) that on December 22, the respondent attempted to discharge the strikers and made known that it would not reemploy them, thereby locking them out of its plant; and (5) that on or about January 3, 1944, the Association made application in behalf of the strikers, followed on January 4 by personal application from each of the 19 strikers who were ready, able and willing to resume their employment, which application the respondent refused and has at all times since refused to reinstate the strikers, thereby discouraging membership in the Association and discriminating in regard to tenure and terms of employment in violation of Section 8 (3) of the Act.

<sup>1</sup> Stanley Bausechka, Julius Bruski, Joseph Butler, Franklin Fergus, Lee Higgins, Harvey Jackson, Charles Keeling, Caspar Lafata, John Mudri, Earl B. Nichols, Robert Orr, Wilfred Price, Gerald Roberts, Peter Rollins, Carl Spiegel, Fred Summerfield, Charles Widmar, Warren Williams, Mearl Wilson.

On or about March 10, 1945, the respondent filed an answer which admits the facts alleged as to its corporate organization, the character and extent of its business and that it discharged Bates, Boone, Glaser and Jezierski on December 18, 1943. The answer, however, denies that the Association is a labor organization within the meaning of Section 2 (5) of the Act and further denies the commission of any unfair labor practices. As affirmative defense the answer states that the discharge of Bates, Boone, Glaser and Jezierski resulted from the fact that it was unable to build up its labor force to the size anticipated; that preceding the date of the discharge it received certain cut backs in orders and that the installation of new mechanical equipment reduced its need for supervisors. The answer states further that in selecting supervisors for discharge it followed the rule of retaining "those who were the most competent and had shown the greatest industry and interest in their work." The answer states that the strike was staged without the required legal notice having been given and with intent to compel recognition of the Association. It contends that since supervisory employees are "an essential part of management" and the strikers had left their jobs it became impossible for the respondent to rehire them.

Pursuant to notice a hearing was held at Detroit, Michigan, on March 13, 14, 15, 16, 19, 20, 21, 22, and 26, 1945, before Charles E. Persons, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the beginning of the hearing the Board moved to transfer the hearing from Detroit, Michigan to Adrian, Michigan. This motion was denied. The respondent moved to adjourn the hearing for "at least three months." This motion was denied. The Board made several motions to amend paragraph 5 of the complaint, adding additional specifications as to offenses under paragraph 8 (1) of the Act and including Personnel Manager Shull as an agent of the respondent concerned in these acts. These motions were granted the proviso that the allegations added would be deemed to be denied by the respondent's answer as filed. The Board moved also to strike from the respondent's answer the second paragraph in Section 8 and second and third paragraph in Section 15. This motion was taken under advisement and is hereby denied. During the hearing the respondent moved to strike certain testimony relative to meetings of the Association. This motion was denied. At the conclusion of the Board's presentation in chief the respondent moved to dismiss the complaint for insufficiency of proof and on the grounds that supervisors are part of management. This motion was denied.<sup>2</sup> At the conclusion of the hearing the Board moved to conform the pleadings to the proof as to names, dates and similar minor matters. This motion was granted without objection. After the conclusion of the hearing the parties entered into a stipulation for corrections in the transcript of testimony. On April 14, 1945, the undersigned ordered that the transcript be corrected to conform to the list of corrections included in said stipulation and that the Board's agent enter such corrections in the transcript of testimony on the face thereof.<sup>3</sup>

<sup>2</sup> Through inadvertance this ruling was omitted on page 716 of the transcript of testimony. However, the transcript on page 730 indicates that a ruling was made and it is hereby ordered that the transcript be corrected to include a denial of this respondent's motion.

<sup>3</sup> Under date of April 18 the undersigned received a motion from the respondent asking that page 1652, line 4, of the transcript of testimony be corrected by substituting the word "Boone" for "Jackson". This motion is hereby granted. At the conclusion of the hearing exhibit number 19 was reserved for the receipt of certain data from the respondent. In

The parties were duly advised that they had the privilege of presenting oral argument before the undersigned and of presenting briefs for the consideration of the Trial Examiner. All parties waived oral argument. The Board, the Association, and the respondent have submitted briefs.

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<sup>4</sup>

Bohn Aluminum and Brass Corporation operates 14 plants located in Detroit, Adrian, Holland, and other cities in Michigan and in Los Angeles, California. It has its principal office and place of business at Detroit. This proceeding is primarily concerned with respondent's Plant No. 24 at Adrian, Michigan. This plant and Plant No. 26 at Los Angeles, are owned by the United States Defense Plant Corporation and are leased to the respondent for the production of war materials. Plant No. 24 produces aluminum extrusions used in the production of planes for the United States Army and Navy. Raw materials used at Plant No. 24 consist of aluminum and various alloys: copper, silicon, manganese and magnesium. The raw materials used cost in excess of \$2,000,000 annually. Total production at Plant No. 24 exceeds \$5,000,000 annually. More than 30 percent of this annual product is shipped in interstate commerce.

The respondent admits that its operations constitute interstate commerce within the meaning of the Act.

##### II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter 66, is a labor organization admitting to its membership supervisory employees of the respondent.

##### III. THE UNFAIR LABOR PRACTICE

###### A. *Background, the plant and its development, processes of manufacture, the supervisory force, the Association, sequence of events*

The respondent's Plant No. 24 was designed to produce aluminum extrusions used in building military planes and is one of the largest extrusion plants in the United States. Its over-all length exceeds 1297 feet while its width, exclusive of a bay 252 feet long and 160 feet wide, is 522 feet. The building has few interior partitions. Except for relatively small areas devoted to such uses as the office, foundry and the toolroom, the 692,000 feet of area is one open space. First ground was broken for the plant in mid-year 1942. By March 15, 1943, sufficient progress had been made on the building and the installation of equipment to permit the operation of the first two extrusion presses.

At that time only two of the 14 bays in the building were under roof and only 2 of the 14 presses were installed. The remaining presses were installed during 1943, at dates not stated in the record. The largest, or Richmond press,

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furnishing these data respondent went beyond the agreed upon limits which extended from October 1943 through the first two weeks of January 1944. The Board objected to the additional material submitted. This objection is sustained. It is hereby ordered that respondent's exhibit 19 be limited to the time period agreed upon; that the additional material be given respondent's exhibit number 29 and added to the rejected exhibit file. Through inadvertence the official reporter failed to note that respondent's exhibit number 1 was rejected. It is hereby ordered that this error in the record be corrected.

<sup>4</sup> Findings in this section are based on allegations in the complaint admitted by the respondent in its answer and at the hearing and on testimony which is uncontroverted.

rated at 5500 tons pressure capacity was installed late in 1943. It did not get into continuous production, however, until later. Its function was to produce wing spars for B-29 bombers. This type of plane did not get into full production until February 1944.

The work force was steadily expanded as the plant was built and equipment installed. The total number of supervisory and hourly employees in the employment of the respondent on the last week of the months stated follows:

1943	March	40
	April	138
	May	254
	June	458
	July	571
	August	691
	September	730
	October	788
	November	730
	December	702
1944	January	670

A single shift was operated until the first week in May 1943, when a second shift was put on in the foundry, extrusion, heat treat, finishing and maintenance departments. On October 1 the second shift was reduced to a skeleton crew and in February 1944 it was discontinued in the finishing department although it continued to operate in the foundry, extrusion, heat treat and maintenance departments. First operation of the plant was on a 40-hour week basis, working 5 days of 8 hours. The week was extended to 48 hours on April 5, 1943, by adding a sixth day; to 54 hours on May 3, and to 60 hours on June 14 by lengthening the day to 9, and again to 10 hours. On August 2, 1943, the hours were reduced to 9½ on 5 days and to 8 hours on the sixth day making a week of 55½ hours. On January 3, 1944, the weekly hours were further reduced to 48. The week then consisted of 6 eight-hour days.

The process of manufacturing the extrusions produced by the respondent begins in the foundry where pigs of pure aluminum are melted in reverberatory furnaces and combined with various alloys. Thereafter the aluminum alloys are cast in billets of a diameter suited to the containers of the extrusion presses. The alloys are of two general types. Billets made from one of these must be put through an annealing furnace to relieve the casting strains and eliminate internal cracks. After annealing and cutting to length the billets are taken to the storage space

There are 14 extrusion presses in Plant No. 24.<sup>5</sup> The billets are placed in the

<sup>5</sup> The number of presses of each classification and indicia of their varying capacities were recorded as follows:

	Number of presses	Maximum pressure (tons)	Diameter billets (inches)	Maximum length billet (inches)
F.....	2	1, 650	4½	20
B.....	1	2, 200		
G.....	3	2, 400	6	27
N.....	4	2, 750	8	30
L.....	5	3, 850	11	36
R.....	1	5, 500	14	44
	14			

The B press has an attachment by which the pressure can be run up to 2,400 tons. Through inadvertence the size of the billets for the B press was not entered on the record.

heating oven attached to the press, and the temperature run up to the required degree. This varies with the size of the part to be extruded. The smaller extrusions require a higher temperature. The larger sections are extruded at as low a temperature as may be used while maintaining the different physical properties desired in the metal. The temperature of the oven is under accurate thermostatic control. A 20-degree difference in the temperature of the billet will affect the push, general flow and finish of the extrusions. The billets enter the heated container of the press which also has accurate thermostatic temperature control. The ram of the press under intense hydraulic pressure then forces the metal through a die which gives it the desired cross section. Potential pressures on the presses installed in plant 24 vary from 1,650 to 5,500 tons. These pressures are built up by pumping water into storage bottles which are half filled with air. A valve mechanism then regulates the pressure applied to the ram. As the aluminum alloy is forced through the die, the portion first extruded is not of good structure and suffers a certain amount of distortion. About 15 percent of the billet also is not extruded since its impurities skim back as the metal is forced through the die. The extruded part passes out on the runout table. When the desired length has passed through the die the butt is cut off by a hydraulic shear attached to the press. The extruded portion is then pulled down to the hot saw where approximately 3 feet of the forward end is cut off. This portion together with the butt go back to the foundry to be remelted. The extrusions vary widely in the size of their cross sections. The smallest described in the record is an angle  $\frac{5}{8}$  inch by  $\frac{5}{8}$  inch and  $\frac{1}{16}$  inch in thickness. These are used as "lacings" to which the skin of the plane is attached. The largest extrusions produced were wing spars which might be 5 inches by 7 inches in cross section.<sup>6</sup> Measured by weight per lineal foot, the smallest extrusions here described weighed  $\frac{1}{10}$  pound per foot, largest  $6\frac{1}{2}$  pounds. Each of the 14 presses requires a crew of 5 men for its operation. It is estimated that, on the average, maintenance and repairs will keep 2 of the 14 presses out of operation at all times.

From the extrusion department the metal is moved on racks by lift trucks to the heat-treat department. Here the essential equipment consists of 8 Swindell electrically heated furnaces, 60 feet high, of which 4 are located at each end of the plant. Each has a quenching tank in conjunction which is about as deep as the furnace is high. The extrusions are handled in the heat-treat department by electric cranes. During the heating period in these furnaces the temperature again must be accurately controlled since a variance of 10 degrees either way might ruin the metal. The temperature may be as high at 930 degrees Fahrenheit. The period of heat treating depends on the cross section of the metal. Thinner extrusions come up to temperature faster than heavier pieces. After reaching the peak temperature the metal is held at that point from 20 to 30 minutes before quenching. The tanks contain water which is held at an even temperature of 86 degrees. The metal is plunged into the tank very rapidly. Immersion must be completed within 10 seconds lest electrolytic action within the extrusions adversely affect the crystalline structure of the metal by separating the aluminum from the alloy added. Each furnace requires a crew of 4 men.

In the process of extruding, the heated metal suffers bends, twists, and dis-

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<sup>6</sup> Pictorial exhibits introduced by the respondent must be used with some caution. They tend to display the finished plant and the heavier equipment and they emphasize operations on the largest extrusion to the exclusion of medium size and light parts. The spars shown in the finishing operations, for instance, were not produced until after the period material in this proceeding. These exhibits were offered and received "solely" as an illustrative showing. Fiems testified, "We have got in our plant small machines and they are scheduled by the War Production Board each month to how many pounds we can get off those machines. Those machines are kept just as busy as the larger type machines. Relatively speaking, in light or heavy weight, we have about the same average constant."

tortions. Quenching the metal from exceedingly high temperatures results in further bends and twists. Since heat is held longer in thick sections than in thin, these distortions depend in a measure on the characteristics of the cross-section of the extrusion and to that extent they are predictable. It is the function of the finishing department to straighten the pieces and remove twists within a tolerance of one-eighth inch in 6 lineal feet and to restore the extrusions in cross section to that imparted by the die through which the metal is forced at the extrusion press. In this department also the extrusions are stretched to the extent of one percent of their length. Stretching increases certain physical properties in the metal. In the first 4 months operation at Plant No. 24 most of the work in the finishing department was done by hand through the application of human effort. The extrusions were straightened on steel straightening tables of heavy construction, equipped with holes in which the parts could be fastened securely with wooden blocks. Two to six men then bent the metal back to straight. Twists were removed in similar fashion by clamping one end of the extrusion securely to the table and applying a babbitt metal die to the other end provided with levers to which the straightening table crew applied the degree of pressure required to remove the torque distortion. Plant No. 24 is equipped with about 25 straightening tables<sup>7</sup> on which a maximum of 60 men worked during 1943.

The essential function of the draw bench operation in the finishing department is to restore the proper cross section to distorted extrusions. Reduced to essentials the draw bench consists of a table equipped with a continuous moving chain which is motor driven. The draw bench operator makes a die suited to restore the extrusion to its correct shape when it is drawn through the die repeatedly by having its leading end gripped in a vise attached to the moving chain. During the process the parts are bathed in a soapy solution to reduce friction. There are 12 draw benches in the plant. Each draw bench requires an operator and a helper.

As Plant No. 24 was gradually equipped during 1943, it acquired intricate and heavy machines which progressively displaced hand methods in finishing the extrusions. This was particularly true of the more massive and larger parts produced. In finishing these with machines the first operation was rough straightening. The part was supported on wood blocks and pressed back to straight by hydraulic pressure skillfully applied at the point and with the power which the distortion required. The extrusion was next placed in the stretcher which exerts a pull up to 350 tons. Each end of the extrusion is clamped in a head of the stretcher. One head is movable and may rotate in either direction for the purpose of removing twists. Smaller parts may be stretched 2 or 3 at a time. The stretching operation removes sharp bends or kinks not readily corrected with the hydraulic press. Three men operate the press and one or two the stretcher. Further straightening is done by roll straighteners. These consist of adjustable horizontal and vertical rolls fixed in a massive frame work in straight lines. The rolls are adjusted to the cross section of the extrusion and when put through these machines any deviation from straightness is ironed out. Since the setting up of these roll straighteners for a particular extrusion is a considerable job it is the practice to retain the set-up and shift the operators as the production of different extrusions indicates. Plant No. 24 has a total of 12 roll straightening machines. Each is usually operated by two employees.

The final operation in the finishing department is finish sawing. This means simply that the extrusions are cut to designated lengths. At this time also

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<sup>7</sup> Frost so stated, but added: "That is just a rough guess, the tables are spread all over the total length of the plant from one end to the other."

sections may be cut to be used in testing the tensile strength, the elongation and other specified physical properties of the metal.

For convenience certain features of the set up of the plant, an understanding of which is desirable for interpretation of the record, are discussed at this point. As noted above the heat-treat furnaces are located at opposite ends of the plant. The extrusion presses are not grouped according to size but light, medium and heavy presses have been installed in each half of the line of presses. In operation then the metal produced in each half of the plant is routed to the nearest heat-treating furnaces. Similarly the finishing department equipment is not grouped according to the various types of equipment. The straightening tables, draw benches and finish saws are dispersed over the full length of the plant. This reduces the length of haul for the metal as these operations are put through but necessarily increases the difficulty involved in holding these operations under close supervision by the man in general charge.

After the finishing operations are completed the extrusions are turned over to the inspection department. This ordinarily does not involve transportation of the metal since the inspectors come to the assembled parts. Inspection is visual, through X-ray methods and through etching the parts with a caustic solution. In addition to the respondent's inspection force the United States Navy maintains an inspection force in Plant No. 24. They handle both materials destined to be used by the Navy and those to be incorporated in Army planes.

Other departments in the plant sufficiently identified by their names are shipping, toolroom, labor and maintenance. The last repairs and maintains the building, the machines, and other equipment. Installation of machines during 1943 was not in their charge but was done by a contracting firm. There is also a "production" department described as the "record end of our business." Certain "expeditors" whose duty it is to trace orders through the production processes are attached to this department.

Although the respondent's officials tended to speak of all supervisory employees below the rank of assistant superintendent as foremen, there were six supervisors in the finishing department and one each in the extrusion and in the shipping departments, classed as "instructors." There were also three supervisory employees in the finishing department listed as "set up men." Frost explained that instructors were "potential" foremen who "carried from that point on as a foreman" and were moved up without further notification. Frost further testified that it was his understanding that all instructors had become foremen before November 1943. Fiems also testified that instructors "were considered as our future foremen," and that they worked "as foremen and instructors of the new employees." Personnel Manager L. G. Shull's testimony plainly indicates that foremen were of higher rank than instructors or set-up men. He stated that pay of foremen ranged from \$65.00 to \$85.00 a week, while instructors and set-up men received from \$55.00 to \$65.00 a week. Certain foremen in the finishing department also were recognized as "leading foremen." They exercised supervision over an entire operation such as draw bench work or table straightening.

The original supervisory force in Plant No. 24 was for the most part transferred from respondent's Plant No. 8 in Detroit or Plant No. 13 in Adrian. The record shows that 10 foremen from Plant No. 8 and 2 from Plant No. 13, became superintendents or assistant superintendents at Plant No. 24 during 1943. Eleven production workers from Plant No. 8, none of whom had previous supervisory experience, became foremen, instructors, set-up men at Plant No. 24. None of the employees hired during 1943 as hourly production workers had previous experience in an extrusion plant and many had never before worked in any manufacturing plant. We are here concerned with a war plant manned by a recently

recruited force, under foremen without prior supervisory experience, who in turn were under superintendents who had never exercised general supervisory authority. It may be added that Plant Manager Frost, who had been employed for 20 years by the respondent in an engineering capacity, had little previous experience as a plant manager.<sup>8</sup> These supervisors and employees operated a plant constantly expanding, acquiring new and intricate machines with resultant progressive change from hand to machine methods. This called for continuous breaking in of inexperienced operators and teaching of new operations and methods. In addition the plant was harassed by a chronic shortage of manpower<sup>9</sup> which enforced a let down in medical standards.

The Foreman's Association of America admits to its membership<sup>10</sup> supervisors of as many as seven or eight ranks below the level of plant superintendent. All are combined in the same chapter.<sup>11</sup> Its first chapter was organized in August 1941. At the time of the hearing 196 chapters had been formed. The Association has contracts with the Ford Motor Company and the United Stove Company and an agreement with the Detroit Lubricator Company.<sup>12</sup> The organizational movement among foremen at Plant No. 24 began about mid-November 1943. Application cards had been procured from the Detroit headquarters of the Association. Signatures were secured during November and December and separate meetings for members from each shift were held on December 17, 1943. At that time no formal organization had been set up and no attempt had been made to establish relations with the respondent.

Foremen Boone and Jezierski and set-up men Bates and Glaser were discharged on December 18, 1943. A strike of supervisors occurred on December 21. On the following day the respondent excluded these employees from the plant. On January 3, 1944, the respondent was notified by the Association that the strikers would report for duty on the following day. When the strikers who were employed on the day shift appeared at the plant they were refused employment. Having been informed of this action the striking night shift employees did not report.

#### B. *The discriminatory discharge of George Jezierski and Clarence Boone*

*Jezierski*<sup>13</sup> had been employed by the respondent at its Plant No. 8 since 1938 as a production worker on hand straightening tables. In June or July

<sup>8</sup> Frost became manager of Plant No. 24 in February 1943. He had been manager of Plant No. 7 which manufactures plumbing supplies and decorative parts for automobiles, for an unspecified period. However, he came to Plant No. 24 from Plant No. 5.

<sup>9</sup> Shull stated in his testimony, "We always have been trying to hire more men." He further stated that the second shift would have been maintained had employees been available.

<sup>10</sup> The Association constitution in effect in December 1943 defines the qualifications for membership as follows:

Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to his filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

No supervisory employee or individual acting as negotiator in formulating employer-policy may become a member of the Foreman's Association of America.

<sup>11</sup> The parties so stipulated at the hearing.

<sup>12</sup> These findings are based on credible uncontradicted testimony by William Vallance, a vice president of the Association.

<sup>13</sup> Subsequent to his discharge on December 18, 1943, Jezierski was inducted into the United States Army on March 15, 1944. His testimony was taken by deposition on March 3, 1945.

1943 he was induced by Superintendent Perry Hill of Plant No. 8 to accept a transfer<sup>14</sup> to Plant No. 24 as a foreman in the finishing department at a salary of \$75.00 a week. He was assigned to the hand straightening operation and supervised 20 or more workmen. At Adrian he came under the supervision of the leading foreman over the straightening tables, Charles Widmar. The respondent paid Jezierski's moving expenses from Detroit to Adrian and assumed the cost of his subsistence until he "got settled." He testified that his work as a foreman was never criticized and that he was told by the superintendent of the finishing department, Marion Chesney,<sup>15</sup> that he was "doing a good job putting out a lot of weight."

Jezierski was one of the first foremen to sign an application for membership in the Association. This is dated November 20, 1943. He solicited the application of several other foremen and attended the Association meetings. The record indicates that he was closely associated with Boone whose activities in behalf of the Association and the respondent's knowledge thereof are set forth in detail below. Under these circumstances the undersigned infers and finds that the respondent was also apprised of Jezierski's Association membership and activity.

Jezierski was notified of his discharge by Marion H. Chesney, superintendent of the finishing department about 10 a. m. after reporting for work at 7 a. m. on December 18, 1943. Chesney acted under Plant Manager Frost's instructions. There had been no prior notice or warning. Jezierski testified that Chesney said: "They don't like the way you're doing your work out in front. You're fired. Here's your money." Chesney's testimony as to his statement to Jezierski reads, "George, you've got to quit today. Mr. Frost has fired you." Both Jezierski and Boone were given an additional week's pay in lieu of advance notice. This was the regular practice in Plant No. 24. They were also given a release which carried the notation, "Discharged, did not qualify as a foreman."<sup>16</sup>

Boone had been employed in Plant No. 8 at Detroit since October 1936 as a draw bench operator. In March 1943, he was induced by Plant Superintendent Hill and Chief Engineer Joseph Schwerak to accept a transfer to Plant No. 24 as a foreman. Hill and Schwerak presented the matter to Boone on the basis of his patriotic duty to give the largest service to the war effort of which he was capable. Boone agreed to transfer and withdrew his membership in UAW-CIO. The respondent placed him on a salary of \$75.00 a week and provided an expense account to cover the cost of board and room and also his family's moving expenses. Boone set up the first draw bench in Plant No. 24 and was responsible for the training of the inexperienced workers assigned to that operation. When the full complement of 12 draw benches was in use he had supervision of 25 or 30 production workers. His position was that of leading foreman on draw bench work. He instructed Supervisors Robert Orr, Warren Williams, Wilfred Price, and Willis Koster when they were assigned to draw bench work. Koster was a transferee from Plant No. 8, primarily fitted for work on the stretcher. However, Chesney had a foreman on that operation and requested Boone to break Koster in on the draw benches. Koster had previous experience in draw bench operation using wood blocks but was inexperienced in the use of babbitt dies. The other foremen named had no previous experience beyond that acquired as operator of draw benches under Boone's supervision in Plant No. 24.

<sup>14</sup> As a prerequisite to his transfer Jezierski withdrew from membership in the United Automobile, Aircraft & Agricultural Workers of America, CIO, herein called UAW-CIO.

<sup>15</sup> Chesney's nickname was "Curly" and he is frequently referred to in the record by that name.

<sup>16</sup> The parties entered into a stipulation at the hearing upon which this finding is based.

Price was called as a witness by the Board and corroborated Boone's testimony that he was leading foreman on the draw benches.<sup>17</sup> It was Price's testimony that he continued to take orders from Boone after his promotion to a position as set-up man on October 11, 1943.

Boone testified that in the early summer of 1943 Chesney requested Widmar, Eugene Gorecki, a foreman over rod finishing, and himself, as those best experienced among the foremen "to do anything we saw we could do" to keep things going. Chesney, a Board witness,<sup>18</sup> corroborated this testimony saying that Boone after attending to his draw benches "then, if he wasn't too busy he would help me with other things." It was Frost's testimony also that Chesney had excused Boone's use of the jeep,<sup>19</sup> of which Frost was critical, by explaining that, as Frost quoted Chesney, "Well, he has to cover my floor, he has been acting as my assistant, covering all these jobs."

Chesney and Frost agreed in testifying that Boone substituted for Chesney during Chesney's vacation in the first week in September 1943. It was Boone's testimony that before leaving for his vacation Chesney requested Boone, Widmar and Gorecki "because we had more experience than the other foremen \* \* \* that we should look out the best we could after the plant and assume his duties while he was gone."

Boone signed an application card for membership in the Association on November 26, 1943. He was associated with Mearl Wilson, an instructor in the finishing department, Extrusion Foreman Harvey Jackson, Jezierski, Finishing Instructor Robert Orr, and Inspection Foreman Casper Lafata, in the earliest moves to organize the Association. All the supervisors named signed application cards between November 18 and 30, 1943. Wilson secured a supply of literature and application cards from the national office of the Association and solicited Boone's membership. Boone was active in soliciting adherents and estimated he had asked a dozen supervisors to join. Late in November plans were made to hold an evening meeting at Boone's house in Adrian to discuss the Foreman's Association and an application for a charter. Boone testified, and the undersigned finds, that Chesney came to him on the afternoon before the scheduled evening meeting and advised that the meeting be called off warning him that "the house will be watched and whoever attends will be fired." It was Boone's further testimony that Chesney stated he had learned from Frost that the house would be watched and those attending discharged. Boone acted on Chesney's advice and notified the foremen that the meeting was called off. Jezierski's testimony taken by deposition 10 days before this hearing opened corroborated this testimony by Boone. Jezierski testified that a projected meeting at Boone's house had not been held because "they found out at the front office \* \* \* and \* \* \* they were supposed to have the place watched." Chesney was not directly questioned about this incident. However, he stated generally that he had warned Boone telling him "if they were organizing to keep his nose out of it, not to be

<sup>17</sup> Orr was stated to be in the armed forces. Williams was no longer in the employ of the respondent. While the respondent assailed this testimony of Boone on cross-examination they did not call Koster as a witness. The undersigned credits Boone's testimony.

<sup>18</sup> Inasmuch as Chesney had been discharged by the respondent on February 22, 1944, prior to his appearance as a witness, and since the respondent in its brief stresses his friendship to Boone, the undersigned has examined his testimony with particular care. Chesney was a willing and careful witness. He evidenced at times understandable uncertainty of memory but there was nothing in his testimony to suggest bias in favor of Boone or prejudice against his former employer, the respondent. The undersigned finds that Chesney was in every respect a worthy and credible witness.

<sup>19</sup> A motor-driven vehicle with a side car attachment used in moving men and materials about the plant.

one of them" because Frost "was going to get rid of the one that was the organizer." Chesney's further testified that about the same time he had warned Widmar. Chesney's testimony regarding the incident reads:

I said, "Charlie, I heard they was organizing a union Do you know anything about it?" And he said yes And I said, "Well, don't you get in it because they will probably get rid of the ones that is in the Union."

Although Frost denied that he had made such threats to anyone, the undersigned after considering the full record and the demeanor of these witnesses has accepted the detailed and mutually corroborative testimony of Boone, Jezierski and Chesney, none of whose testimony was shaken on material matters under lengthy cross-examination The denial of Frost is rejected.

Boone was responsible for making an application to the Association for a local charter. About December 13, 1943, he submitted to the Association the application cards for the required number of supervisors A charter was thereafter issued

Boone, with Jackson, also arranged for separate meetings on December 17, 1943, of Association members on the day shift and on the afternoon shift. At Boone's request Jackson notified members on the afternoon shift that a meeting would be held before their working hours. Jackson also arranged through his mother, who was a member of Local 268 of UAW-CIO,<sup>20</sup> that both groups of Association members used that local's hall No rent was paid but the Association members agreed to pay the janitor for cleaning after the meeting Boone asked about 15 supervisors to attend the meeting of day shift members at which he presided.

Testimony of respondent's witnesses establishes that it had early knowledge of Boone's Association activities. Extrusion Foreman Robert Ohlinger testified that Boone solicited his membership in the Association "around the first of December" 1943 during work time.<sup>21</sup> Ohlinger told Boone that he was not interested and thereafter reported the incident to L Winters, superintendent of the extrusion department. Ohlinger explained "I thought he should know about it and I figured it was my place to tell him" Ohlinger stated further, "I wanted to see where I would stand if the foremen organized in a union there" An excerpt from Ohlinger's testimony relative to his interview with Winters reads as follows:

I told him I was approached by Mr Boone to join the foremen's union and asked him what he thought about it and he told me not to worry about it and I went back to work and that's all that was said

Edwin F Holtz, a foreman in the extrusion department testified, as a witness for the respondent, that Jackson asked him to join the Association "sometime in November" during Holtz's working hours Holtz replied that he "didn't believe in any kind of a union." Thereafter Holtz reported the matter to Winters, saying he wanted to know how Winters felt about it. Holtz testified that Winters said "not to worry about it that the Company would take care of it."

<sup>20</sup> The record reflects that production employees in Plant No. 24 were members of UAW-CIO, Local No 444. This local and the respondent executed a contract on June 24, 1944.

<sup>21</sup> Several of respondent's witnesses testified that they had been solicited to join the Association during working hours Boone specifically denied that he had solicited Ohlinger in the plant during working time. Both Boone and Jezierski positively denied engaging in any Association activity in work time. Frost testified that before the strike he had knowledge only of Ohlinger's report of solicitation in work time. He stated further that if he had had any intention of discharging Boone at that time he would have called all those concerned together. Under these conditions the undersigned does not find it necessary to resolve this conflict of testimony.

It was Frost's testimony that he first heard of the Association's activities in Plant No. 24, "About the first of December" 1943. Frost explained that Winters came to him at a time when no one else was present and said:

One of my foremen, Mr. Ohlinger had just reported that he was approached for solicitation of membership in the Foreman's Association [of] America, and this was during working hours.

Frost further stated that Winters reported that the solicitation was done by Boone.<sup>22</sup>

Frost testified that he immediately reported the matter to Fiems and asked what was the respondent's policy. Fiems replied that he would call the Secretary and Treasurer, DenUyl, who was in charge of industrial relations in the respondent's 14 plants and thereafter call back. Within 15 minutes Fiems called Frost and said that he had the following ruling from DenUyl, "We don't have to recognize the Foreman's Association of America; they can organize but see that they don't organize during working hours." DenUyl also called Frost direct and "repeated almost the identical words that Fiems" had told him.<sup>23</sup>

Frost testified that he told Chesney of these conversations with Fiems and DenUyl. On an occasion thereafter when Frost saw Inspection Foreman Edward A. Kampke talking with another foreman on the floor Frost was suspicious that "they were not talking company business" and said to Kampke "are you talking about the Foreman's Union on the floor there" Kampke denied having any knowledge of the Association.

The respondent admits that Boone and Jezierski were discharged on December 18, 1943, but denies that this act was in violation of any provision of the Act. Respondent makes three contentions in justification of these discharges:

1. That Boone, and Jezierski with Bates and Glaser "were men whose performance at Plant 24 as supervisors or instructors had been the least competent or who had shown the least interest in the performance of their duties and in the carrying out of instructions and policies."

2. That the staff of supervisors and instructors had been planned on the basis of a total work force of 1,200 production employees working three shifts on six days a week; that inability to recruit the full work force rendered the supervisory staff over large and necessitated the discharge of Boone, Jezierski, Bates and Glaser from the supervisory staff in the finishing department.

3 That cut backs in orders effective in October 1943, made a reduction in the supervisory force necessary and that after discussion with the superintendents of the extrusion and finishing departments during October, November and December, Plant Manager Frost decided to dismiss these four supervisors.

The evidence placed in the record as to each of these contentions will be discussed seriatim.

1. The respondent placed much emphasis on three critical memoranda by Fiems addressed to Frost on July 1 and 21, and September 9, 1943, and on a letter from Frost to Chesney dated September 28, 1943. These memoranda and this letter are quoted *in extenso* below:

1. Fiems to Frost July 1, 1943.

In going through the plant I noticed so many men laying idle and doing absolutely nothing. This you can verify with Alex Vercellino.

In the course of one trip around the Finishing Department we picked up no fewer than 15 men that were just standing, loafing and smoking. These

<sup>22</sup> Winters was not called as a witness.

<sup>23</sup> This testimony by Frost was fully corroborated by Fiems and is credited by the undersigned.

men all work for Curly and gave various excuses, such as crane being broke, waiting for jobs, etc.

Please see that this is discontinued at once as it is apparent we definitely have too many men in the back end. I would suggest you make at least a trip in the morning and one in the afternoon and verify these remarks.

Having a large number of men but having this same number of men doing nothing is very detrimental.

2. Fiems to Frost, July 21, 1943.

During the past week I have spent considerable time in the plant with the idea of observing how efficient our supervision is and the conclusion that I have reached is this.

We have sufficient supervisors but they are lax in assuming the responsibility of supervisors.

The department that looks the most critical is the Finishing and where we know we have plenty of supervision but still you can go out at any time and see groups of employees standing around, absolutely doing nothing. If we had a shortage in this department of supervisors I could appreciate this condition but as mentioned above, we do have sufficient supervision.

I would appreciate it if you would spend practically all of your time in lining up your organization so that this very critical condition can be improved.

3. Fiems to Frost, September 9, 1943.

I would like to call your attention to the seemingly lack of cooperation between our 1st and 2nd shift supervisors.

Invariably you can go out into the shop any day, at the start of the 2nd shift, and find practically all of the employees standing around doing absolutely nothing.

Instructions from you should be given to these supervisors that the 1st shift supervisors remain with the 2nd shift supervisors to help them get the 2nd shift employees started correctly.

We should not have a 30 to 45 minute delay in allocating work to the workmen on any shift.

Please see that these instructions are carried out.

4. Frost to Chesney, September 28, 1943.

The subject under discussion is that the writer thought the matter should be discussed at an open meeting of the foremen on Wednesday evening but after giving this matter further consideration I believe that this matter should be put directly in your hands to be corrected.

The inefficiency of the Finishing Department is outstanding to a point where I have received comments from various department heads coming out of Detroit.

First there seems to be a general feeling that this particular department has some special privileges. The noon hour recess by this department is generally taken to be an hour. This is contrary to our set-up. I wish that you would take this matter up with your various foremen and that they will take the usual  $\frac{1}{2}$  hour noon hour which is being used by the Extrusion Department and is also the practice carried over from Plant 8.

There is a further lack of discipline among the foremen and apparent disregard of the duties of a foreman to set an example, diligently applying himself to his particular job.

Frequently you can go through the department and see several of the supervisors standing around talking and laughing with the employees under

their jurisdiction. With this condition existing you can very well see the lack of control of the foreman over his division

Numerous cases, in the past, have come to light with faulty workmanship which shows that it was directly responsible to the lack of competent supervision and a number of these boys have come up through the ranks in recent date and apparently are not familiar with the duties of the foremanship, others of them seem to lack interest in their particular job.

This criticism does not apply to your foremen as a whole as several of them show an aptitude for their work and a diligence to apply themselves to their job with the hope of advancement

In making this direct criticism to you I believe you have the ability to handle this matter and I am expecting, in the near future, to see a marked improvement in your division.

I am further making an investigation of the foremanship educational program to be put on by a government official which constitutes 10 hours of training at 5 different classes of 2 hours each. These classes will bring out the relationship between the foreman and the workman, emphasizing the conduct of the foreman towards the workman which will help to improve our public relations and to demonstrate to the foreman the method of getting the maximum work from his department

I am hoping to have this information for our Wednesday meeting.

The undersigned notes that the most recent of these exhibits which range in dates from July 1 to September 28, 1943, is over 2½ months earlier than the date of Boone's and Jezierski's termination. Without the support of evidence covering the intervening period it could furnish no fair basis for these discharges. Moreover the criticisms in these documents are general. They are not applied to Boone nor Jezierski nor indeed to any individual unless it be Chesney. Frost stated in his testimony with reference to the supervisors in the finishing department that "Fifty percent were doing a pretty good job They were applying themselves diligently to the work."

It was Fiems' testimony that Frost stated to him that the matters to which his attention were directed in Fiems' memoranda would be promptly taken care of and that Frost in each case later reported that appropriate action had been taken. Frost gave testimony which corroborated this statement. Similarly Chesney testified that Frost's letter to him of September 28, 1943, was "immediately taken care of." He had called a meeting of each shift and read the letter to them. It was Frost's testimony that Chesney had said he "would get into the matter and do what he could to correct the condition." No further communications of this character were issued in the 2½ months following Frost's letter to Chesney. It is, therefore, a fair inference, drawn by the undersigned, that the matters complained of had been corrected and that these incidents were closed.

Both Frost and Fiems admitted that supervision of the finishing department in Plant No. 24, was a matter of some difficulty. The extrusion department comprises only one operation. Once supervisors and production employees had learned the operation of a press, they could be, and were in practice, assigned to work on any press. Although the presses differed in size and capacity and turned out extrusions differing in size from the smallest lacings to the heaviest wing spars, the general technique of operating the presses did not vary. In the finishing department, on the contrary, there were several distinct operations requiring experience and skill of widely different types. An employee who had learned to operate a saw, was capable neither of operations on a straightening table, a draw bench nor a hydraulic press. Plant No. 24 in the period significant

here was progressively building up a work force from men and women newly hired. Its supervisors were handicapped by a heavy turn-over rate and by the fact that the employees were almost entirely "one operation men." They were not readily shifted from operation to operation as were the "all around workmen" in long established extrusion plants such as respondent's Plant No. 8 at Detroit and Plant No. 13 at Adrian. In the handling of extrusions after heat treating and in reducing the various distortions, twists and malformations resulting from that operation, as well as those ascribable to the handling of the hot parts by inexperienced extrusion department workmen, the supervisors of the finishing department had a problem of exceptional difficulty in achieving balanced production and full employment of all their workmen. The criticism by Fiems and Frost quoted above must be appraised in the light of the peculiar situation at Plant No. 24 with its inexperienced work force and its constantly expanding scale of operations. In addition it is fair to direct attention to the fact that nearly all the foremen and instructors had been recently promoted from the status of production workers and that all the superintendents and assistant superintendents had been advanced from the rank of foreman when they were transferred to Plant No. 24.

Frost recognized the difficulties of the assignment for the foremen in the finishing department. His testimony reads:

Q. Would you say it was a difficult assignment to be a foreman in Plant 24 in December of 1943?

A. Well I suppose that you might say it was in a way, starting any new plant with green men certainly would be a tougher job than a plant that was already organized and running smoothly. I found it so, sir.

Fiems also admitted that the foremen's assignment was one of exceptional difficulty. He agreed that shifts from operation to operation could be less readily made since the plant's work force consisted of inexperienced men and when asked the question, "Wouldn't you say [the foremen] had a difficult assignment?" replied, "I would say they had a difficult assignment, we all had."

Chesney's testimony in point here reads:

Well, the difference in the foreman's job in Detroit and there [Plant No. 24] was that you had men in Detroit that you could rely on. When you gave them a job you didn't have to stand right over them and go through it all the time and see that they were doing it right because they were more or less competent. But there [Plant No. 24] the people would do one thing and they didn't seem to think for themselves, you had to think for them. When some little thing went wrong like a change of saw or when the saw was dull, they didn't seem to know the difference and the other men would. You had to watch those things.

Q. Would it be correct to say that being a foreman in Plant 24 in the period before December '43 was much more difficult than being a foreman in Plant 8 in that same period?

A. I would think so, yes.

After consideration of these critical memoranda and letter in their setting in the entire record and with reference to the character of the work force with "one operation" personnel and the continual installation of equipment and expansion of production, the undersigned finds these documents little persuasive as indications that the foremen in the finishing department generally were failing in application or lacking in ability. The undersigned concludes and finds that these documents are no more than normal expressions by officials of a corporation en-

gaged in building up and integrating an inexperienced supervisory force in a newly organized plant.

Specific criticisms of Jezierski were neither numerous nor severe. Fiems testified that in conference with Frost he had criticized foremen Boone, Jezierski, Julius Bruski, and John Mudri, with a possibility of others whom he did not recall. Fiems' criticism of Jezierski was that he had seen him in the jeep, together with Boone, 6 to 10 times and asserted that Jezierski was, in effect, acting as Boone's chauffeur. Fiems testified that he had never indicated any supervisor to Frost as desirable for dismissal. He regarded such decisions as within Frost's functions. Frost's criticism of Jezierki, referring to a conference immediately preceding the discharges, reads as follows:

I had an opinion about him because I had criticized Jezierski so many times to Mr. Chesney and this was a repetition of the same thing. The boy had been playing around there and not taking care of his duties as supervisor. He was horseplaying with the men and that had been brought up repeatedly by Mr. Chesney, and I reported that and said, "I think Jezierski is the man we should pick out of there."

As noted above, Jezierski testified that he had received no criticism while employed as a foreman and that Chesney "said I was doing a good job putting out a lot of weight." Jezierski said of his capacity as a foreman, "I knew what I was doing. I knew what I was going into very well." Jezierski further testified that only a few of the supervisors were more competent than he and that he thought he was "among the tops" in the plant.

Chesney corroborated Jezierski, saying of his ability and performance: "Jezierski was a good person for the job we had him on, he was a good worker on that job." Chesney testified that Jezierski was criticized "about the average, as the rest of them," and stated further,

Well, Mr. Jezierski was a good fellow, but he was a young fellow<sup>24</sup> \* \* \* you know how youngsters are \* \* \* play around and talk and laugh, but he always got his production out, but he had the most men. He had that job we were talking about with all those extra men down there with the twisters, where you had four men sometimes it would take only two men doing it, and there were two men not doing anything, but we couldn't put them on another job because maybe in ten minutes we would need them again on another piece and that looked bad, it looked bad for the foreman when they weren't working. \* \* \* they would talk to George and it looked bad, but they were getting production. In fact, it was going up all the time. One thing that George [Jezierski] was good on, he was a good press man \* \* \* He was about the best I had on that outside of Charlie Widmar himself. In fact, he surprised me. I didn't know he was as good as he was. He was a good man for the job he was on, but between the two Boone was the better equipped for the job

Chesney stated that the idleness of some of the men under Jezierski's supervision could not be avoided but resulted from the variance in the work necessary to correct distortions resulting from the heat-treating process.

Both Fiems and Frost testified that Boone had been acting as assistant superintendent of the finishing department in September 1943. It is agreed that no formal appointment to such a position was ever made<sup>25</sup> and that Boone's

<sup>24</sup> On March 3, 1945, Jezierski gave his age as 24 years.

<sup>25</sup> Frost testified, "I never officially recognized Mr. Boone as assistant superintendent, otherwise I would appoint him and put him on our list."

rate of pay was never adjusted as a result of his alleged promotion to, or demotion from, such a post. Both Boone and Chesney testified that Boone had never exercised the authority pertaining to such a post but that in common with other leading foremen he had given general assistance to Chesney when his other duties permitted.

Frost testified that "early in October" he had found the finishing department "in a very disorganized condition" and had informed Chesney that he had decided to take a hand therein and wanted Foreman Eugene Gorecki appointed assistant superintendent "to do the work that Mr. Boone had been doing." This appointment, as Frost testified, was dated October 4, 1943, on which date Gorecki's salary was raised from \$75.00 weekly to \$80.00. Gorecki had been transferred from Plant No 8 in May 1943 and made foreman of aluminum rod finishing. He had supervised about 15 men and women on that operation. Fiems described the operation in the following terms:

The easiest extrusion made and what we tried to break our men in on was the extrusion of aluminum rods and that is not much work to it, not much finishing at all. You put it through roll straighteners and after the heat treating you cut it to length and you are ready to ship.

Gorecki testified that after he became assistant superintendent he continued to supervise the work on the rolling machines and in addition handled "all the workers in the finishing department." In so doing he first attempted to give instructions to the foremen but found they could not take his orders. Gorecki testified that he told Jezierski "to stay on the job and \* \* \* what they would do if he didn't" but Jezierski paid no attention to this admonition. Gorecki testified further that he gave some unspecified instruction to Glaser who was a set-up man on the night shift. Glaser stated that he was under Foreman Keeling and that if Gorecki wanted anything he should see Keeling who would transmit his instruction to Glaser. Gorecki thereafter reported on the matter to Keeling who "listened." Gorecki admitted that his authority did not extend to the night shift. It was Gorecki's further testimony that he gave instructions to Bates relative to work on the saws. Bates replied that he would continue to do the work according to Chesney's instructions. Although, as Gorecki testified, he thereafter carried the matter to Chesney, Bates continued as before. Gorecki also proffered his advice to Foreman Bruski relative to the proper work to be done on his hand forming operations. In Gorecki's opinion Bruski was as good a foreman as the respondent had at the time. Nevertheless Bruski did not follow Gorecki's instruction. After repeated complaints to Fiems, Frost and Chesney, it was Gorecki's testimony that he adopted the policy of going to the employees direct without reference to the foremen. He stated, "I went to the people, I couldn't go to the foreman, I went to the employees." Gorecki testified that this situation continued until December 21, 1943, and that the foremen "were never told I was an assistant superintendent."

Fiems testified under direct examination very positively that Gorecki had never had any conversation with him, nor with Frost in his presence, regarding a failure of Boone to carry out Gorecki's instruction. On redirect examination, after an overnight adjournment, Fiems testified that Gorecki came to him in the latter part of October and complained that he was running into difficulties since the foremen were "reluctant to take orders" from him. Fiems testified that he advised Gorecki to take the matter up with Frost since "if he was going to be assistant superintendent they will definitely have to take orders from you."

Boone denied that he had ever acted as assistant superintendent and that he

had ever told that Gorecki had been appointed to that position.<sup>26</sup> Chesney's testimony was to the same effect. He declared that he had no remembrance that Frost had ever stated that Gorecki was to be assistant superintendent. His testimony reads:

I know we had Gene [Gorecki] on the aluminum rods and there weren't any aluminum rods and the question was what is Gene doing now Well, he was running around with whatever I needed most

Q. He was assisting you?

A. Well, they were all assisting me

Q. Didn't Mr. Frost also say that he would have the responsibility over some of the other foremen in the Finishing Room, but under your supervision?

A. I don't ever remember that anyone would be over another one only me<sup>27</sup>

\* \* \* \* \*  
Q. And don't you remember that Mr. Frost told you that he wanted Gene Gorecki to take your place whenever you weren't there, instead of "Red" Boone?

A. No, I don't think that he said that. He said that I ought to give him more to do to relieve me to get into the more particular jobs that needed my attention more than the others did.

Boone's testimony as to the relationship existing between himself, Chesney and Gorecki was specific and convincing. It reads:

Well, after the plant was organized and got running at what we thought was good production, Mr. Chesney said the work was too much for him and he wanted the fellows with the most experience to help him, regardless of what type of work it was, and he asked Charlie Widmar and Gene Gorecki and myself to keep our eyes open and to do anything we saw we could do, regardless of what department it was in, to help him with it

Boone testified that when requested by Chesney he would perform such task as checking metal for the heat treat to see if it should be formed or sent directly to the heat treat; helping get metal from the finishing department to the shipping room; and transferring metal from the straightening tables to the agug furnaces.

The sole reason for dealing with these matters of internal administration in the plant in this report arises from the necessity of appraising the respondent's contention that on October 4, 1943, Boone suffered a demotion. This allegation, if true, would have a material bearing on the respondent's justification for Boone's discharge December 18, 1943. It is clear from the record that Boone was never given the title, duties or compensation of assistant superintendent by official action. The respondent's contention goes no further than to assert that Chesney had informally elevated him to that position. Shull testified that the salary range for set-up men was from \$55 to \$65 a week. Boone continued to receive \$75 weekly from October 1 to December 18, 1943.

The undersigned notes that both Fiems and Frost are in error in stating that Gorecki's work on aluminum rods ceased about October 4, 1943.<sup>28</sup> As shown in

<sup>26</sup> Price, who became a setup man on October 11, 1943, and thereafter supervised work on the draw benches in the finishing department, also testified that he had no knowledge that Gorecki was made assistant superintendent. Price further testified that he went only to Boone and Chesney for his instructions.

<sup>27</sup> Subsequently Chesney testified: "I don't remember anytime me instructing any foremen that they had to take orders from anyone only me, only the times when I wasn't there."

<sup>28</sup> Fiems testified that Gorecki supervised the mill department "until we were not allowed to make any more rods in the plant," and stated further that Gorecki was given new duties in the finishing department "possibly three or four weeks" before October 4, 1943.

detail below the heaviest output of rods for any month was in October. Further, Gorecki's increase in salary to \$80 did not raise him above the foreman's rate which was \$85 as a maximum. Gorecki's service in Plant No. 24 did not begin until May 1943 and he supervised relatively few employees who were engaged in one of the simplest operations in the finishing department. It is clear from the record that announcement of his promotion was not effectively made in the plant.<sup>29</sup> His own description of his performance as assistant superintendent shows that he disregarded all established lines of authority and violated the principles of administration which Fiems and Frost delineated in their testimony and testified they applied in practice.<sup>30</sup> The undersigned finds it incredible that they allowed the condition of maladministration which Gorecki's testimony outlined to continue in the finishing department from October 4 to December 21, 1943. The credible testimony of Boone and Chesney as well as other witnesses indicates that no such situation existed.

After considering the conflicts in this testimony, and the demeanor of the witnesses concerned, the undersigned concludes and finds that Boone was never made assistant superintendent in the sense that he was elevated above other leading foremen. It is further found that he never suffered a demotion before December 18, 1943. The testimony of Boone and Chesney is credited as presenting a substantially accurate account of Boone's status in that period. Testimony of other witnesses which controverted their testimony is rejected.

Fiems testified that he approved Frost's discharge of the four foremen and told him, "Al, it is about time." "I think you're taking the least competent men out of there." Fiems' specific criticisms of Boone, however, were not extensive. He testified that the basis for his characterization of Boone as among the least competent foremen in the plant was that he "had seen [Boone] repeatedly either in the scooter or doing other things unbecoming of a foreman." Fiems explained, "I do not mean anything personal but I mean not on the job."

Frost testified that he had criticized Boone "on at least a couple of occasions direct" and that Fiems had commented to him unfavorably on "Boone's work on several occasions." Frost's statement regarding Boone made just prior to the discharge was that "he [Frost] was convinced from \* \* \* observations he wasn't fulfilling his duties as a foreman." Frost said further that he had talked to Boone personally on an occasion in early September when he found him sitting in a jeep. Frost's testimony as to this incident reads:

I said to Boone, "If you're going to do this foreman's job right you better get out of that jeep. I have cautioned Mr. Chesney about you running up and down this floor continuously. \* \* \* Let's get on the job." I don't think Boone passed any remarks in reply to that.

<sup>29</sup> When Chesney was discharged on February 22, 1944, the respondent passed over Gorecki in selecting a successor, making J. Hartung superintendent of the finishing department. Hartung at the time was assistant superintendent in the extrusion department. Moreover, the respondent at this time transferred another extrusion supervisor, Foreman E. Isley, from the extrusion to the finishing department and promoted him to the rank of assistant superintendent.

<sup>30</sup> The respondent presented an organization chart carrying the date November 15, 1943. Fiems explained that "the chart purported to show the key executives reading from the top down, the importance of their jobs." Under the finishing department are listed in order: M. Chesney, C. Lonski, J. Gorecki, and W. Koster. It is the respondent's contention that this listing indicates that Gorecki was of superintendent's rank. However, Koster's position on the chart is susceptible of no such interpretation. He came to Plant No. 24 on June 17, 1943, as a foreman, experienced in stretcher operation. Chesney directed Boone to instruct him in draw bench operation and he was still receiving such instruction from Boone on December 18, 1943. Koster joined the strike on December 21. Nothing in the record identifies him as a "key executive." Under these circumstances the undersigned finds no significance in Gorecki's position on this organization chart.

Frost admitted that he made no inquiry as to Boone's possible business in the jeep and that Boone "probably had some understanding with [Chesney] about using the jeep."

Boone, testifying in the Board's rebuttal, stated that it was customary under Chesney's instructions for foremen to use the jeep for business purposes. He pointed out that the babbitt dies used in his draw bench work were heavy, often weighing 35 or 40 pounds, and that he was accustomed to transport them in the side car of the jeep. It will be remembered that the draw benches were dispersed over the full length of the plant. Both Boone and Chesney testified, and the undersigned finds, that Chesney transmitted to Boone, Frost's complaint that Boone was using the jeep over much and that thereafter Boone ceased to use it.<sup>31</sup> With such compliance the incident was closed. It cannot now be advanced as a justification for Boone's discharge at a later date.

Frost gave further testimony as to a conversation with Boone "later in October" reading as follows:

Boone was sitting on a box . . . close to the center of the aisle and I went up to him and asked him pertaining to some stretcher job, or something like that, I forget just what, and Mr. Boone said, "You'll have to see the foreman looking after those jobs; I am just a draw bench set-up man now."

Testifying as the Board's first witness, obviously with no knowledge of Frost's later testimony, Boone stated, "I don't understand what set up means at the draw bench," and that there were no set-up men during his period of employment with the respondent. He stated that he had discussed his work with Frost on only one occasion at which time he had unsuccessfully applied for a promised raise. During the Board's rebuttal presentation Boone specifically denied having made the statement quoted above as ascribed to him by Frost. After considering the conflict of testimony and the demeanor of these witnesses in the light of the entire record the undersigned credits Boone's denial.

Although Lonski, Gabriel and Chesney testified that they were present at a conference with Frost at which the qualifications of each of the foremen were discussed, their examination did not produce any specific criticisms of the work performance of either Jezierski or Boone which were brought out on that occasion. It is a reasonable inference that no criticisms of serious import were there expressed. Lonski testified that "at various times" between September and November, he had overheard Frost criticize Boone to Chesney saying, "Well, that man isn't doing the job right Better jack him up." However, Lonski admitted that Frost "criticized the whole finishing department" and "took us all into consideration." Lonski lived in Boone's house for about 6 months and was on very friendly terms with him. However he did not regard these matters as of sufficient importance to justify reporting them to Boone. Lonski testified that it did not occur to him that Frost's criticisms might lead to Boone's discharge.

Chesney, Boone's immediate superior, in his testimony said of his capacity as a foreman:

Well, as far as I can see, he was a good foreman. The people liked him, got along with him. He knew his job and knew how to teach. He was a teacher and a good teacher. He could show them the short cuts and so on. He could even do it, I thought, better than I could. He could show them a more simple way, because I had been used to using a certain kind of dies,

<sup>31</sup> Boone's testimony was that he could not "recall ever using it after that." Chesney testified that when Frost called the matter to his attention, "It was stopped then, there wasn't any second time."

and he would take a piece of wood here and there and make it more simple than I ever made it, so I thought he was extra good myself.

\* \* \* \* \*

Q He worked continuously and faithfully?

A. He did. He never refused to do anything that I asked him to do and he was always on the job. When I wanted him I could always find him. He was always there, so far as I could see.<sup>32</sup>

The undersigned finds no justification in the record for the respondent's contention that Jezierski and Boone were discharged for inefficiency and inattention to their duties.

2. The respondent relied on estimates of its future employment needs submitted by Fiems to the United States Employment Service on April 9, 1943, to substantiate its contention that its plans originally contemplated a work force of 1,200 employees, working 3 shifts. Fiems supported his estimate by stating that it was "based on confirmed contracts and potential capacity of the plant." In March the plant had 40 employees. Fiems' estimate for succeeding months with the actual numbers employed in the last week of each month is shown below. The comparison is faulty in that Fiems' estimate covered production employees only while the employment figures include supervisors below the rank of plant officials, clerical and technical workers. The number of supervisors during October to December 18, 1943, rose from 52 to 63. Since the estimates are for the first of each month while the figures of actual employment are for the last week of the month the comparison is made between the estimate for the first of the month and the actual employment in the last week of the preceding month.<sup>33</sup>

<i>Employment last week of month 1943</i>	<i>Estimated needs</i>
March ----- 40	
April ----- 138	
May ----- 254	May 1 ----- 150
June ----- 458	
July ----- 571	July 1 ----- 400
August ----- 691	
September ----- 730	
October ----- 788	October 1 ----- 900
November ----- 730	
December ----- 702	
1944	
January ----- 670	
February ----- 569	
March ----- 549	April 1 ----- 1,200

<sup>32</sup> Elsewhere Chesney testified as to Boone's qualifications for his job, "He was excellent. I don't think we could have picked anyone better for the job he was doing. If we could have, I'd have done it, or tried to."

<sup>33</sup> These figures on actual employment were introduced during Fiems' testimony. He stated, "I run my production and my efficiency largely by chart." It was his testimony that the monthly employment figures were a general average for the month, "a pretty true average." Both his testimony and that of Frost relative to fluctuation in employment were based on this understanding of the data. It was not until Shull, who compiled the figures, testified as the last witness called by the respondent, that the correction was made. Obviously Fiems' error was misleading and resulted in antedating employment changes by 2 weeks or more.

It will be noted that neither of the memoranda nor the letter, quoted above, states that the number of supervisors in the finishing department was excessive. Statements therein go no further than to say the number is sufficient. Fiems testified that no similar written criticisms of later date were made. Respondent's witnesses stated that discussions between Frost and the superintendents and assistant superintendents relative to the problem of selecting supervisors for dismissal took place in October and November. Thus Chester Lonski, night superintendent in the finishing department, testified that he attended meetings in those months at which Frost said there was "too much supervision at the time." Lonski testified further that Frost then ran through the list of supervisors and discussed their qualifications. James Gabriel, night superintendent in the extrusion department, also testified that Frost called the superintendents to his office "and said we had too much supervision for the amount of work we had." Gabriel, when asked when this happened replied, "It was either October or November, I don't know exactly when it was." It was Fiems' testimony that in October 1943, "We naturally had more supervision that we could use and than was required." Fiems stated that he discussed with Frost the problem of picking out the most efficient supervisors to run that department. He further testified that in October he "had informed Frost that we had too much supervision and to eliminate them, discharge the most incompetent men \* \* \*" and "at other times" had criticized Mr. Frost for not letting these foremen go fast enough.

The record shows that four supervisors were appointed on August 30,<sup>34</sup> 1943, another on September 6.<sup>35</sup> In the week ending October 3, 1943, the total number of supervisors was 52, 4 were added during the following week, 2 in each of the 2 weeks following, and 1 in the week ending October 31. The number rose from 61 to 62 in the week ending November 28, and reached its maximum of 63 in the week ending December 5. When attention is confined to the 4 production departments, the foundry, extrusion, finishing, and heat-treat departments, the data shows 32 supervisors in the week ending October 3, 1943. Two were added in the following week, an unidentified supervisor in the foundry and Bates as a set-up man in the finishing department. In the week of October 17, Price was appointed a set-up man in the finishing department. Thereafter the number of supervisors in these 4 departments remained at 35 until a fourth supervisor was added in heat treat in the week of November 21. The number rose to its maximum of 37 in the week of November 29, when Warren Williams became an instructor in the finishing department. Manifestly this record is not consistent with the testimony of Lonski, Gabriel, Frost and Fiems to the effect that in October and November active planning was being carried on with intent to reduce the supervisory force. Chesney, who Lonski, Gabriel and Frost testified attended these conferences, gave credited testimony pertinent here, an excerpt from which reads:

Q. Now do you remember, Mr. Chesney, that \* \* \* in these foremen's meetings \* \* \* Mr. Frost told you and the foremen that there were too many supervisors around?

A. No, I don't think that was ever discussed only in a way that, oh, maybe, "What's he doing?" or "Why have you got that man? I don't see him busy," or something like that. But as far as being too many, I don't think that was ever told to me.

<sup>34</sup> Wilson, Butler, Summerfield and Fergus

<sup>35</sup> Higgins

Data furnished by the respondent show that the number of production employees in the finishing department increased rather than declined during October. The data for successive weeks in October, November and December were:

October 2.....	146	November 6.....	165	December 4.....	147
9.....	154	13.....	174	11.....	158
16.....	151	20.....	156	18.....	162
23.....	162	27.....	140		
30.....	168				
Average .....	156		159		156

These data lend no support to the respondent's contention that declining employment furnished the reason for discharges on December 18, 1943, which reduced the supervisory staff in the finishing department from 19 to 15. On the average, employment in that department was somewhat higher in November than in October and as high in the first 3 weeks of December as it had been in October.<sup>30</sup>

Nor do the figures of total employment in the nine leading departments during these 3 months support this contention of the respondent. These totals are:

October 2.....	595	November 6.....	633	December 4.....	575
9.....	592	13.....	643	11.....	585
16.....	567	20.....	591	18.....	584
23.....	618	27.....	561		
30.....	649				
Average for month..	604		607		581

Total employment of production employees on the average was slightly higher in November than it had been in October. During the first 3 weeks of December it rose below the low point reached in the last week of November and on the average was but 4 percent below the average of October figures.<sup>31</sup>

<sup>30</sup> Data for the extrusion department from which, as Frost stated, discharges were anticipated gave a somewhat similar result:

October 2.....	151	November 6.....	168	December 4.....	135
9.....	146	13.....	171	11.....	139
16.....	124	20.....	143	18.....	136
23.....	150	27.....	129		
30.....	150				
Average .....	144		153		137

<sup>31</sup> The detailed figures as furnished by the respondent are: Production Employees—by weeks—less all supervisors, laboratory, clerical and plant-protection employees.

Week ending	Ext	Heat treat	Finishing	Insp	Ship. & rec	Fdry.	Tool room	Labor	Maunt.	Total
10/2/43.....	151	23	146	29	42	45	21	88	50	595
10/9.....	146	23	154	24	35	51	21	72	66	592
10/16.....	124	22	151	20	47	45	21	69	68	567
10/23.....	150	25	162	22	48	45	21	77	68	618
10/30.....	150	24	168	22	53	55	21	83	73	649
11/6.....	168	22	165	19	41	53	23	67	75	633
11/13.....	171	24	174	21	33	58	23	72	67	643
11/20.....	143	25	156	24	42	48	22	70	61	591
11/27.....	129	25	140	23	43	48	21	73	59	561
12/3.....	132	24	147	22	43	45	22	70	57	562
12/10.....	135	26	147	22	47	45	22	75	56	575
12/17.....	139	25	158	20	43	39	21	85	55	585
12/24.....	136	29	162	19	39	37	20	87	55	584
12/31.....	153	29	153	25	34	40	20	86	55	575
1/7.....	128	30	158	24	29	45	18	86	52	570
1/14.....	133	29	167	25	36	46	19	102	55	612
1/21.....	132	26	167	25	34	52	19	97	54	606

(The totals have been computed )

Moreover, the undersigned is impressed by the fact that in this war plant with a force of workmen, none of whom had previous experience in extrusion work, and with a chronic shortage of employees, the respondent in making reduction in an allegedly overlarge supervisory force selected for discharge a leading foreman on the draw bench, and a foreman on hand straightening—two operations of exceptional difficulty. Among the 19 supervisors were 6 instructors and 3 set-up men, with a materially lower salary range, of less experience and less valuable to production, only 2 of whom were discharged.

After consideration of the record and the discrepancies between respondent's verbal testimony and the facts as established by data drawn from its records, the undersigned finds no merit in this contention of the respondent.

3. The respondent contends that cut-backs in orders received in October and thereafter justified the four discharges made in the finishing department and further discharges which were to be made later in that and in other departments. The testimony presented by respondent's witnesses as to actual cut-backs was indefinite and not mutually corroborative. Frost testified that he had discussions with Fiems in October relative to cut-backs and that at this time Fiems told him if the down trend continued it would be necessary to reduce supervision. Frost specified that orders for the production of spars for Grumann aircraft which were scheduled for production during several months were cut off in October. He also stated that other unspecified orders were postponed. However, Frost admitted that cancelled and postponed orders were balanced to an extent by the receipt of new orders for production. He stated also that the respondent had promises from the War Production Board, herein called W. P. B., that orders would continue coming in. Elsewhere he stated that Plant No. 24 always had an outlet "for all the metal which could be produced." Fiems' testimony specified cut-backs, including the Grumann aircraft, parts for the Curtis ships and the production of aluminum rods. Fiems explained that the production of aluminum rods in extrusion plants was ordered stopped by W. P. B. because the extrusion capacity was required for the production of shapes. Fiems dated this order as being effective for the fourth quarter of 1943, and stated that it might have been received in September. In such case all production would necessarily cease by October 15, 1943, under W. P. B. regulations.<sup>88</sup> Frost testified, when data on aluminum rod production was requested, "It was very low in August and September." Data furnished by the respondent at the request of the undersigned do not sustain this testimony. They show the following production of rods at Plant No. 24 from April through December 1943. Since rods produced for Plant No. 5 do not require any finishing operation they were separately reported.

	Total rods produced in pounds	Rods produced for Plant No. 5 in pounds	Rods requiring finishing
April.....	133,409	113,304	20,105
May.....	87,477	2,324	85,153
June.....	190,593	21,962	168,631
July.....	269,425	15,265	254,160
August.....	291,356	54,795	236,561
September.....	298,396	45,989	252,407
October.....	313,240	105,981	207,259
November.....	154,168	58,859	95,309
December.....	68,304	28,792	39,512

(The third column has been computed.)

<sup>88</sup> Elsewhere Fiems testified, "Well, the rod is out and has been out for 15, 16 months." He testified in March 1945, hence this indicates rod production did not close until December 1943 or January 1944.

Correlation of these figures with those of general production is necessary. The general figures show:

	Total monthly production	Increase + or decrease -	Rods not finished	Total finished
April.....	153,882		113,304	40,578
May.....	214,875	+60,993	2,324	212,551
June.....	444,392	+229,517	21,962	422,430
July.....	686,470	+242,078	15,265	671,205
August.....	851,880	+165,410	54,795	797,085
September.....	1,173,294	+321,414	45,989	1,127,305
October.....	1,273,808	+100,514	105,981	1,167,827
November.....	1,198,562	-75,246	58,859	1,139,703
December.....	1,155,074	-43,488	28,792	1,126,282

(All figures represent pounds)

In correlating the monthly increase or decrease in total production with similar figures for rod production, Fiems' testimony must be remembered to the effect that rods are the "easiest extrusion made" and require the least work in the finishing department. The general figures on pounds produced show maximum production in October, when 1,274,000 pounds of extrusion were produced in round figures an increase of more than 100,000 over September.

The respondent as shown above divided the rod production in two classifications. Rods produced for its Plant No. 5 required no finishing. To disclose the effect of a decline in volume of rod finishing, the simplest finishing operation, on the volume of work in the finishing department, during the closing months of 1943, the following table is computed and included:

	Total finished	Rods	Shapes	Increase in shapes
September.....	1,127,305	252,407	874,898	
October.....	1,167,827	207,209	960,568	85,670
November.....	1,139,703	95,309	1,044,394	83,826
December.....	1,126,252	39,512	1,087,740	43,346

(All figures represent pounds)

This table shows that over 85,000 more pounds of shapes were finished in October than were handled in September. There is an increase of nearly 10 percent. A comparable increase in the volume of shapes handled occurred in November. The rise continued in December, although the volume was cut in half.

The undersigned is well aware of the infirmities of these statistical data. For a scientific result there should be further analysis of the inclusions of light, medium and heavy extrusions in the total poundage and of the effect of the progressive installation of machinery on the transfer of finishing operations from hand to machine processes. An exact account of the development of the plant, its equipment and the work force would have been helpful in resolving certain material issues in this proceeding. Unfortunately the record has only approximations to such a statement. A. W. Frost, the plant manager, stated generally that 50 percent, measured by value, of the machinery had been installed by July 1943; that further equipment came in rapidly and continuously thereafter and that by the end of December 1943, 95 percent of the machinery and equipment had been installed. Frost's testimony as to the installation of specific types of equipment, for the most part, was given from memory and not

checked by reference to records. He stated that of a total of six hydraulic presses, three had been installed by July 1943 and the remainder by the end of the year.<sup>39</sup> Similarly half of 12 draw benches were in use by July and the total number by the end of the year. Of heavier equipment Frost testified that one of two torque machines or "untwisters" was installed within the period April to June 1943 and a second by "the late fall of 1943." Of the full equipment of 12 roll straighteners Frost testified that he thought 4 had been put in operation by July 1943, and that by October, 6 or 7 additional had been installed. The twelfth was not set up until after the end of the year.<sup>40</sup> The saving in labor and supervision by these machines is large. Frost testified that the quota set up under the respondent's pay system under hand methods was two spars per man an hour or an output of 8 pieces an hour for a crew of 4 men at the straightening tables. On the roll straightening machine the corresponding quota was 16 per man an hour or 32 per hour for the 2-man crew.<sup>41</sup> Supervision on the hand operation must be close and continuous whereas on the machines the 2-man crew simply feed the spars into the rolls and pile the straightened extrusions on racks for removal. The need for supervision is negligible. Frost further testified that under hand methods a maximum of 60 production workers had been used in straightening operations. As roll straightening machines were introduced the number of employees on straightening tables fell to 35 by the end of 1943 and to a maximum of 10 by March 1944.<sup>42</sup>

Respondent's failure to furnish exact information on the installation of labor saving machinery, which it must be understood to have had in its possession, is persuasive that such data would have been unfavorable to its contention. As stated by the United States Supreme Court, "The production of weak evidence when strong is available can only lead to the conclusion that the strong would have been adverse. Silence then becomes evidence of the most convincing character."<sup>43</sup>

The undersigned on the basis of the presentation just made concludes and finds that there was no decrease in the volume of work performed in the respondent's finishing department in the closing months of 1943. Cut-backs in orders do not furnish a basis for reduction in the number of supervisors there. The data presented by the respondent indicate a rise in the volume of finishing work in October measured by pounds produced. The analysis proves that the

<sup>39</sup> Chesney testified that the six hydraulic presses comprised one press of 100 tons, two of 75 tons, two of 50 and one of 25. Of these Chesney stated that the first press was installed in April 1943, 3 more by December and the remaining two before his discharge late in February 1944.

<sup>40</sup> The uncertain character of Frost's testimony is shown by the fact that later, under cross-examination, he stated that 2 roll straightening machines were installed when the plant began operations, that about 6 had been installed by July, that a half dozen were in operation in October and that the last of 12, came in after the first of the year 1944. It should be noted that the respondent relies on the labor saving resulting from increased use of roll straighteners as a justification for the discharges on December 18, 1943. Edwin Fiems, general manager of 4 of respondent's plants, testified that a total of "either 10 or 12" rolling machines "approximately 4 or 5" had been received by October 1943. Fiems stated that the remaining machines "were coming in right along" but that he did not know how many had been installed by the end of December 1943.

<sup>41</sup> Testimony by Superintendent Chesney makes it doubtful that the major part of these gains had been attained during the period with which this proceeding is concerned. Chesney stated, "Well, when I left there they hadn't started rolling heavy spars." Chesney was discharged on February 22, 1944.

<sup>42</sup> Frost first stated that the number was reduced to 10 by the end of 1943. Continuing his testimony next day, after consulting the records, he corrected his testimony as set forth above.

<sup>43</sup> *Interstate Circuit, Inc. v. U. S.*, 306 U. S. 208, 226

pounds of shapes, involving difficult finishing operations, increased as the volume of rods, the "easiest extrusion made" declined.

The Board contends that the underlying reason for the discharge of Boone and Jezierski was their Association activity. Certain passages in Chesney's testimony directly support this contention. Chesney testified, and the undersigned finds, that at a time which "must have been in November" Frost came to him and asked that he find out whether the Association was being organized in the plant. Chesney replied that he had no way to acquire the information except to make direct inquiry of the foremen.<sup>44</sup> Chesney further testified that in the same week at a change of shift, when himself, Frost, Winters "and probably Jimmy Gabriel" were present, Winters stated "that some fellow came to him, he didn't call his name, and said that Boone asked him to join the Union, and he [Winters] said it must be Boone that is organizing." At this time Chesney warned Boone as to the danger involved in pro-Association activity, telling him, "if they were organizing to keep out of it, not to be one of them" and that Frost "was going to get rid of the organizer." Chesney's further testimony was that Frost had said, "Go find the organizer. We are going to get rid of him. We can't have that in here." Chesney also gave a detailed statement of a meeting of Winters, Hartung, Lonski, Gabriel and himself with Frost which he "thought" occurred the night before the discharge took place, i. e., December 17, between 4 and 7 p. m.<sup>45</sup> This testimony was recorded as follows:

Q. What was said?

A. And they understood that the foremen was having a meeting that night to organize.

Q. Who said that?

A. Mr. Frost, that they was having their meeting to organize their union, and they would probably be in the next day or in a few days with their grievance committees, and so on, and that we would have to get rid of some of these fellows now or we wouldn't have a chance later on, we would be stuck with them, if they wasn't any good we would have them, if they wasn't any good we would have to keep them there just the same.

As noted above Winters did not appear as a witness, nor did Hartung. Lonski and Gabriel both testified that they had never heard Frost make statements like in character to those quoted from Chesney's testimony just above. However, neither of these witnesses admitted any remembrance of a meeting with Frost just prior to the discharges. Each testified that the latest meeting of which they had any recollection occurred 2 weeks earlier.<sup>46</sup> Lonski was specifically asked whether he participated in any conference with Frost, discussing the discharges in the 2 weeks before December 18. He answered, "No, I didn't," and stated further that in this period he had not said anything to Frost about the qualifications of men under his supervision.<sup>47</sup> Under these circumstances the undersigned credits the testimony of Chesney.

<sup>44</sup> Testimony by Frost corroborates Chesney's account.

<sup>45</sup> Chesney wavered somewhat in fixing this date. He also stated it might have been "a day or two" before the discharge.

<sup>46</sup> Gabriel was asked, under direct examination as respondent's witness, "Was there a meeting the night or two before [the discharges] that you attended?" He answered, "Well, we had meetings all along, I can't pick out any certain meeting, there were—we had meetings all the time, but how—to find out how things were going."

<sup>47</sup> Both Lonski and Gabriel also testified that at no time when they were present in conference with Frost had Winters reported that he had been told Boone had solicited the membership of one of his foremen in the Association. In their statements there is conflict with Chesney's testimony since as stated above, he testified that he had been told of this incident by Winters when Gabriel "probably" was present. It will be remembered that,

Fiems testified that Frost reported the decision to discharge Bates, Glaser, Boone, and Jezierski to him on December 17, 1943. It was Frost's testimony that he discussed with his superintendents Chesney, Lonski, Gabriel, and Winters the matter of a down trend in production and the necessity of reducing the supervisory staff "at the end of November." He further testified that at a second meeting "early in December" with the same supervisors they "went down the list of foremen" and discussed "each man, and his qualifications." However, they "did not definitely decide on any man at this particular time." A final meeting was held, according to Frost's testimony, "either on the Tuesday or Thursday previous to the 18th, Saturday." At this time, as he positively stated, Chesney, Lonski, Winters, and Gabriel were present. It will be noted that the date given and the supervisors attending are substantially as stated by Chesney. Frost's testimony as to what he then said reads:

I said we have finally decided that we would lay off the four men previously mentioned and they will be paid off on Saturday of this week, and that was almost the end of the meeting. \* \* \* I remember distinctly saying that there will be further cut-backs of supervision if this thing continues to go down.

Frost assumed full responsibility for the selection of the four supervisors discharged, stating in his testimony, "I made the final decision." Frost further stated that he did not recall receiving "any definite recommendations" from any body that affected his decision to discharge either of the four supervisors.

#### Concluding findings

The undersigned finds the explanation given by the respondent for the discharge of Boone and Jezierski unconvincing. Each held a responsible position as supervisor of one of the most difficult operations in the finishing department. Each received the full endorsement of Superintendent Chesney, who testified that he had never complained about the way they did their work to anyone.<sup>48</sup> Warning was given to Boone by Chesney on the occasion in November of the first planned meeting of the Association adherents. Chesney further warned Boone that the leaders would be discharged. Although Frost denied requesting Chesney to discover who was leading the movement, he testified that he had asked Chesney whether the Association was organizing in work time and admitted that Winters found him in a receptive mood when Winters reported that Boone had solicited Ohlinger's membership. The respondent contends that its interest was only in the fact that this solicitation was made during work time, yet no warning was given Boone nor the supervisors generally to cease this practice. Moreover a similar act of solicitation by Jackson was also reported to Winters. No warning or disciplining occurred in Jackson's case.

The first Association meetings were held on the afternoon of December 17, 1943; at 10 a. m. of December 18 the discharges were made. All four of the supervisors discharged were from the finishing department where the Association adherents were most numerous. Boone was one of the most prominent Association leaders and Jezierski, also an active adherent, was closely associated with him. This discharge was in exact fulfillment of Frost's statement to Chesney at the meeting of superintendents occurring just preceding the Association meeting. Chesney's

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as set forth in detail above, Frost's testimony as to Winters reporting this incident to him is in substantial accord with Chesney's testimony regarding the matter. The undersigned credits Chesney's testimony.

<sup>48</sup> Chesney was also asked, "Did you ever report that [Boone and Jezierski] were not doing their work well," and answered in the negative.

account of occurrences there is vivid, specific and persuasive. It is credited by the undersigned and Frost's denial is rejected. After considering the full record and the demeanor of the witnesses concerned the undersigned attaches no significance to the testimony of Lonski and Gabriel in this connection since they professed to have no recollection of events at this meeting at which both Chesney and Frost testified Lonski and Gabriel were present.

On all the evidence the undersigned concludes and finds that Clarence Boone and George Jezierski were discharged by the respondent on December 18, 1943, because of their membership and activity in the Association. By their discharge the respondent has discriminated in regard to their hire and tenure of employment and has discouraged membership in the Foreman's Association of America, Chapter 66. It is further found that by the discharge of Boone and Jezierski the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

*C. The alleged discriminatory discharge of Claren Bates and Richard Glaser*

*Bates* was hired by the respondent on April 28, 1943, as an hourly worker on the saws in the finishing department. His initial wage was 70 cents an hour. On May 17 and on July 9, he received increases of 5 cents an hour. He was made a set-up man at a weekly salary of \$6.00 on October 4, 1943.<sup>49</sup> The only criticism in the record of *Bates*' performance as a foreman is contained in testimony by Plant Manager A. W. Frost. He testified that after watching *Bates* in his work, he "had arrived at the conclusion that *Bates* would never make a good foreman if he was there a million years." Frost further testified that he had never spoken to *Bates* directly about his work and had only mentioned the matter to Chesney, in the course of general discussions of the foremen under Chesney's supervision held in November and December of 1943. Frost could give no specific criticism of *Bates*' work performance. *Bates* and *Glaser* were discharged under Frost's instructions shortly after reporting for work on December 18, 1943. Each of them was given an additional week's pay in lieu of advance notice of discharge and a release on which was stated the reason, "Discharged—did not qualify as a foreman."<sup>50</sup>

*Bates* did not join the Association until December 17, 1943, i. e., the day before he was discharged. He did not appear as a witness. Nothing in the record indicates that he was outstanding in Association activities nor that the respondent had knowledge of his membership and was influenced in its decision to discharge him by such knowledge.

*Glaser* was hired on April 12, 1943, as an hourly worker in the finishing department and received 70 cents an hour. He was advanced to 75 cents an hour on May 11 and to 85 cents on June 7. On July 19 he became a set-up man and received a salary of \$65 a week. In his capacity he had charge of the stretcher on the night shift working under Lonski. Frost assumed responsibility both for *Glaser*'s promotion and for his discharge, testifying that he was influenced in promoting *Glaser* by the fact that he had a college education and might be expected to "have a little bit above the average intelligence of the men we were getting in here." Frost further testified that *Glaser* "lacked the ability to organize his work and his men." Frost did not discuss this matter with *Glaser* prior to his termination, but testified that *Glaser* came to him on the night of his termination to inquire why he had been discharged and that he had

<sup>49</sup> These findings are based on credited testimony by Personnel Manager L. G. Shull given from the respondent's official records.

<sup>50</sup> The parties joined in a stipulation to this effect.

then told Glaser, "Well, Dick, I been watching your work \* \* \* you just haven't panned out and my advice to you is that you go out and get some line of work in accordance with your training." Lonski testified, and the undersigned finds, that on December 18 Chesney told him that one of his supervisors must be laid off and that he had a list including Glaser. Lonski then said that Glaser was the least competent of the five supervisors who worked on the night shift under his direction and "was the one to go" if someone must be laid off.

Glaser signed an Association application card on December 7. He did not appear as a witness and there is no other evidence to indicate that he was an active Association protagonist. Frost's denial that he had knowledge of Glaser's Association membership was not directly controverted and is credited by the undersigned.

Under this state of the record the undersigned finds that the Board's proof is defective in that it does not establish knowledge on the part of the respondent of the Association membership of either Bates or Glaser. Bates had been a member but one day, Glaser less than 2 weeks. There is no direct evidence to show that their membership was known to the respondent and nothing in the record to indicate that they were prominently active in Association affairs. Under these circumstances the undersigned will recommend that so much of the complaint as alleges the discriminatory discharge of Claren Bates and Richard Glaser be dismissed.

*D. The strike and respondent's refusal to reinstate the strikers*

The discharges were immediately known to the other supervisors. About 5 p. m., December 21, 1943, after the second shift assembled, Frost asked Shull to call Jackson to the office stating that it had been reported to him that Jackson was instigating a strike. When Jackson accompanied by Shull reported to Frost he was challenged as to his attitude toward the respondent. Jackson asserted that his attitude was explained by Boone's discharge for Association activity. Frost then stated that Boone's discharge was due to his inefficiency and that more discharges were in contemplation. Frost inquired whether Jackson was a member of the Association and received an affirmative reply. Jackson also named Keeling and Orr as members of the Association. He felt some trepidation at being the only Association member present at the interview and asked Frost's permission to bring in Keeling and Orr to hear the statements Frost had made. Frost assented to his request. When they came in the assertion was renewed that Boone was discharged for his Association activities. Frost repeated in substance the remarks made to Jackson and stated "that there was going to be more cuts in supervision in the finishing department and possibly some from the extrusion department."<sup>51</sup> The Association members made a claim of majority membership whereupon Frost asked that a letter be sent him from the Association stating the grievances and demands of the Association and naming the officers. Such a letter he promised to transmit at once to officials of the respondent and got for the Association an authoritative reply.<sup>52</sup>

After this interview Jackson telephoned Vallance at Detroit and told him of the discharges and of Frost's desire for a letter. He also stated that the Association would hold a meeting on Sunday. Vallance advised Jackson that the

<sup>51</sup> This quotation is from testimony by Shull.

<sup>52</sup> This account has been drawn from testimony by Jackson, Frost, and Shull. For the most part their testimony substantially agrees on material matters. Keeling was stated to be in Cleveland, Ohio, and Orr with the United States Navy. Neither appeared as a witness.

Association should get "a committee and the officers set up for the chapter so that they would go in and meet with the management" An Association meeting attended by adherents from both shifts was held Sunday, December 19 in the hall of UAW-CIO Local 268. Officers were elected, Keeling became president, and a bargaining committee of which Jackson was made chairman was set up.<sup>53</sup> There was discussion of the discharges and the committee was instructed to present the Association's protest to Frost.

On Monday about 4 p m the committee went to Frost's office. After introductions, Lafata asked why the four foremen had been discharged. Frost said they had been found inefficient and stated that more would be discharged. Jackson made some reference to the production record in answer to the charge that the foremen were inefficient. Frost then closed the interview by demanding the letter from the Association previously adverted to. Frost testified that he then said, "I have nothing to discuss with you until such time as I get that letter." The Committee thereupon left the office.<sup>54</sup>

When the Association members learned that further discharges were contemplated considerable unrest developed. Jackson received a telephone call from Lafata on Tuesday morning stating that matters were getting so bad that the foremen proposed to strike. Jackson instructed Lafata to hold matters in abeyance until he reached the plant. Jackson's recorded testimony as to Lafata's statement to him reads:

Caspar Lafata said due to the fact that the foremen were fired and the statement that Mr. Frost had made about more being fired, that they were worked up to such a tension \* \* \* that they thought one of them would be next, and \* \* \* that particular morning that the foremen had additional duties placed upon them. \* \* \*

Jackson thereafter went from foreman to foreman and found, as he testified, that their reaction was the same as Lafata's, "that they were afraid they would be fired after the statement was made that more would be fired." Testimony of similar import was given by Rollins who stated that both Lafata and Instructor Mearl Wilson expressed apprehension that they would be the next men discharged since they had been especially prominent in Association activities.<sup>55</sup>

On leaving the plant Jackson promised to telephone Lafata at 10 a. m. When he did so he was told by the telephone operator, "the foremen are just walking out." Jackson then went to Frost's office but beyond receiving a new demand for a letter from the Association had no conversation with him. Jackson called Vallance and told him that the foremen had struck because of the discharges and resulting tension. Jackson also asked Vallance to aid him with the letter requested by Frost. Vallance complied and dictated what he described as a "form letter." The Association held a meeting that afternoon in the hall of CIO Local 268. At the meeting the committee was instructed to attempt negotiations

<sup>53</sup> The members of the Bargaining Committee were Harvey Jackson, Chairman, Caspar [Cappy] Lafata, Wilford Price, Robert Orr and Joe Butler.

<sup>54</sup> Frost, Jackson, and Price testified relative to this conference. Their testimony was in substantial agreement. Frost stated positively that no assertion was made at the time that the four supervisors had been discharged for "union activities." Labor Foreman Peter P. Rollins who met the committee as they left the office gave testimony which corroborates the account above.

<sup>55</sup> Inspector Gerald Roberts gave the following corroborative testimony.

Well, Wilson said that he felt we ought to get together immediately for the simple reason that he had been very active and thought that probably he'd be one of the next to be let go.

with the respondent about going back to their positions and having the discharged men reinstated. A motion was passed which declared that none of the strikers would return until the discharged men had been reinstated.<sup>56</sup>

The letter requested by Frost in the form dictated by Vallance was dated December 21, 1943, and was signed by Jackson as Chairman of the Bargaining Committee. It carried Jackson's telephone number and mailing address. The significant paragraphs read:

A vast majority of the foremen employees of the Bohn Aluminum & Brass Corp. Plant 24 are members of the Chapter No. 66 Foreman's Association of America.

An answer to this letter is requested at once stating a time and place that our committee may meet with you to discuss wages, hours and conditions of the employment of the foremen.

The respondent made no reply to this letter. Vallance came to Adrian on Tuesday. On Wednesday, December 23 he sent a telegram to Frost which reads "Please arrange meeting. You can contact me Room 314, Lenawee Hotel." The respondent did not answer this communication.

Fiems came to Adrian on December 21, immediately on being notified that the foremen were on strike. He instructed Frost, as Fiems testified and the undersigned finds, "Al anybody that comes back today, it is perfectly all right, but if they don't come tomorrow morning they have definitely quit their jobs." Frost also assented to the proposition that by going on strike the foreman "quit the employment of the Company and thereby severed their employment relationship."

Frost admitted that on the first day of the strike he had visited the home of Alex Vercellino, superintendent of the shipping department, and asked that he return to the plant. Frost understood that Vercellino was on strike but both Vercellino and his wife assured Frost that he had been absent from the plant attending to some freight bills. Vercellino returned and is not listed as a striker.<sup>57</sup> Shull admitted that on December 21, he solicited Willis Koster, a foreman in the finishing department, to return to work. Koster was on strike and came back that day.

The complainants are 19 in number. Eleven of them were employed in the finishing department; two each in the extrusion, inspection and shipping departments and one each in the heat-treat and the labor departments. The tool-room which employed two foremen, the foundry with four, and the maintenance department with five were not affected by the strike. Two of the strikers, Gerald Roberts a "salaried inspector" and Fred Summerfield a "receiving clerk" were of doubtful supervisory rank. Shull did not regard them as supervisory. However, both were salaried employees; both were strikers and the respondent agreed at the hearing to their inclusion as supervisors. The strikers, classified by departments, with their ranks are set forth below. To this showing has been added for convenience the date when each signed an Association application card.<sup>58</sup>

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<sup>56</sup> Rollins, Price and Roberts gave credited testimony about events at the meeting on which these findings are based.

<sup>57</sup> Gorecki testified that he was closely associated with Vercellino who lived "just around the corner" from him and that Vercellino "walked out" with the strikers.

<sup>58</sup> The cards were submitted for examination in the hearing room and the parties stipulated that if a witness were called for the Board he would certify as to the names and dates listed. The cards of Bruski, Lafata, Jezierski and Orr had requests for withdrawal attached which stated that these men were in the armed forces.

Department	Supervisor	Rank	Date joined association
Extrusion.....	Harvey Jackson.....	Foreman.....	Nov. 29
Finishing.....	Earl B. Nichols <sup>1</sup> .....	Instructor.....	
	Charles Keeling.....	Foreman.....	Dec 2
	Carl Spiegel.....	do.....	Dec 20
	Charles Widmar.....	do.....	Nov 20
	Julius Bruski.....	do.....	Nov 26
	Warren Williams.....	Instructor.....	Dec 7
	Robert Orr.....	do.....	Nov. 29
	John Mudri.....	do.....	Dec 7
	Mearl Wilson.....	do.....	Nov. 18
	Joseph Butler.....	do.....	Nov 29
	Stanley Bauschka.....	do.....	Nov. 20
	Willfred Price.....	Set up man.....	Nov. 29
Heat treat.....	Lee Higgins.....	Foreman.....	Dec. 20
Inspection.....	Caspar Lafata.....	do.....	Nov. 29
	Gerald Roberts.....	Salaried inspector.....	Dec 20
Shipping.....	Fred Summerfield.....	Receiving clerk.....	Dec 17
	Frankln Fergus.....	Instructor.....	Dec 20
Labor.....	Peter P. Rollins.....	Foreman.....	Dec. 17

<sup>1</sup> Nichols was erroneously listed in the complaint under his brother's name "Don". No card was presented for Nichols and the Board's counsel stated that the Association had no proof of his membership. It was agreed, however, and the undersigned finds, that Nichols participated in the strike.

The parties stipulated at the hearing, and the undersigned finds, that each of the 19 supervisors listed above was in the employ of the respondent on December 20, 1943, and

Went on strike on December 21, 1943: that those \* \* \* working as the first shift left their work and walked out of the plant at about ten o'clock in the morning \* \* \* and those working on the second shift, failed to report for work \* \* \*;

That no notice of the strike or walkout was given to Respondent Bohn or to any Federal or other governmental agency; That the names or identification badge numbers of all [these] foremen or supervisory employees . . . were put on a list compiled by the respondent Bohn;

That said list was posted in the guard house of the respondent's Plant 24 at Adrian, Michigan, on December 22, 1943, after said supervisors or foremen . . . who were on the first shift failed to report for work on December 22, 1943, the second day of the strike, and instructions were given to the guards by Respondent Bohn not to admit those named on the list into the plant;

That each of the persons named . . . who worked on the day shift asked to be admitted into the plant for work in their previous capacity on January 4, 1944, and were denied admittance into the plant by the plant guards;

It was further stipulated as to the members of the second shift that if witnesses were called by the Board they would testify that on being advised by members of the first shift of the respondent's refusal to admit them the members of the second shift did not thereafter apply for admittance

The parties also stipulated that each of the strikers was given a release or termination slip dated December 24, 1943, which stated the reason for termination, "Quit voluntarily without good cause." The undersigned finds these stipulations to be correct.

Jackson testified, and his uncontroverted testimony is credited by the undersigned, that President Keys of the Association acting under instructions from the War Labor Board telephoned him and dictated a telegram to be sent to Frost over Keeling's name as president of Local 66. This telegram dated January 3, 1944, reads as follows:

Notice of certification of the dispute between the Bohn Aluminum & Brass Corporation and the Foreman's Association of America Chapter 66 has been received from Washington, D. C. All of the foremen who participated in the walkout are returning to work, Tuesday, January 4, 1944, pending the decision of the National War Labor Board.

Frost admitted that the respondent refused to rehire the strikers and explained as follows:

Well, the foremen that went out on strike are a part of management Foremen cannot strike against management, being a part thereof, and I could not see why we should take a man that deliberately quit his job and walked out of the door without any notice—any notification or cause, to come back into the plant again, and they would have to come back . . . if they did take them back, as common laborers, they would not be rehired by me as foremen. These men coming back could never discipline the workers, as the things that we had impressed on them most in our foremen's meetings to have amicable relations with workers, to see that they kept them working, that they impressed on these workers that there should be no strike or work stoppage; that anyway the workers themselves would have no respect for these foremen in that respect, after these men had done the very thing that management had preached to these foremen to tell the men not to do.

No general replacement of the 4 discharged and the 19 striking supervisors was made. The remaining supervisors took on additional duties. When the night shift was reduced, night supervisors were transferred to the day shift. Two new foremen, Richard Hill and Barnard Crittenden were appointed in the finishing department on December 27, 1943 and January 1, 1944, respectively. Each had been previously employed in the production office as an expediter. Shull testified that it was found necessary to replace but one of them since the force of expediters had become more efficient. Four leaders were also appointed on dates between December 27, 1943 and January 3, 1944. They remained on hourly pay but were given increases of 5 or 10 cents an hour. They served as leaders for various periods ending between February 14 and April 24, 1944.<sup>69</sup> Data submitted by the respondent shows further that the number of supervisors in the shipping department, which had been reduced from six to four by the strike, was increased to five in the week of January 23, 1944. Since Hartung and Isley were transferred from the extrusion to the finishing department on February 23, 1944, while the number of supervisors reported in extrusion only dropped from nine to eight, it follows that a new hiring was made in the extrusion department at that time.<sup>69</sup>

#### Concluding findings

Respondent contends that a foremen's union is not a "proper union" and that the Foremen's Association of America, Chapter 66, is not a union within the

<sup>69</sup> There is an unexplained discrepancy in the date entered by the respondent in that Shull testified that these four leaders for the period stated were all the leaders appointed through January 1944. Shull's testimony was given with the file cards before him. Respondent's Exhibit No. 20, note C, however, states that McKelvey was appointed foreman on April 3, 1944, having been "promoted from leader in the Finishing Department since 5/24/43."

<sup>70</sup> There is error also in the exhibit in that the number of supervisors in the finishing department during February 1944 remained at six despite Isley's transfer on February 23, 1944. The exhibit further does not reflect the transfer of Foreman W. Becker from heat treat to the foundry on January 17, 1944.

meaning of the Act. This matter has recently been authoritatively settled.<sup>61</sup> The Board said:

We conclude that supervisors are "employees" and that supervisors status does not by its own force remove an employee from the protection of Section 8 (1) and (3) of the Labor Relations Act.

\* \* \* \* \*

In the cases now before us we are concerned solely with the question of the rights of employers to discriminate against foremen because of their membership and activities in an independent labor organization whose membership is confined to supervisory employees. Adherence of supervisory officials to such an organization cannot normally have any impact upon the rights of ordinary employees nor can it normally affect an employer's position of neutrality.

The undersigned finds that this proceeding is comprehended within this pronouncement of the Board. Hence he finds no merit in this contention of the respondent.

The respondent also contends that the strike was illegal in that the Association did not give notice to governmental authorities as required by a statute of the State of Michigan and by the provision of the War Labor Disputes Act. The Act provides that the Board is empowered to prevent any person from engaging in unfair labor practices and that "this power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement code, law or otherwise."<sup>62</sup> "Assuming the existence of a State statute in support of the respondent's position, it is established beyond question that any such State law must yield before the paramount authority of Congress expressed in a valid and applicable Federal law."<sup>63</sup>

The respondent further contends that since the supervisors ceased work without notice of a labor dispute having been given to governmental authorities as required by the War Labor Disputes Act the supervisors should not be accorded relief under the provision of the Act. In support of this contention the respondent relies, *inter alia*, upon the Board's decision in *Matter of American News Company, Inc.*<sup>64</sup> The present proceeding is distinguishable from the *American News* case. The Board there decided that the Union had struck for an unlawful purpose in that it was endeavoring to force its employer to grant an immediate wage increase without waiting for the approval of the National War Labor Board. A joint application for such approval was pending when the strike was called. Under war time wage controls, to grant the increase prior to favorable action by NWLB was illegal. We are here concerned with a strike for a lawful

<sup>61</sup> *Matter of Soss Manufacturing Company, et al.*, 56 N. L. R. B. 348. The matter was re-examined and the Board's holding reaffirmed in *Matter of Republic Steel Corporation (98" Strip Mill)*, 62 N. L. R. B. 1008.

<sup>62</sup> See the Act, Section 10 (a)

<sup>63</sup> See *Hines v. Davidowitz*, 312 U. S. 52, 66-8, where the Supreme Court of the United States held that State law was "subordinate to supreme national law" and must yield where "inconsistent" with the exercise of Congressional power. (The quoted sentence above and this footnote are from *Matter of Eppinger & Russell Company*, 56 N. L. R. B. 1259.) See also *Hull v. Watson, State of Florida Ex Rel.*, where the Supreme Court of the United States said with reference to *Eppinger and Russell*—

The Board properly rejected the employer's contention, holding that Congress did not intend to subject the "full freedom" of employees to the eroding process of "various and perhaps conflicting provisions of state enactments." 16 L. R. B. 539, 540 June 11, 1945.

<sup>64</sup> 55 N. L. R. B. 1302.

purpose. The record clearly shows that the strikers had two purposes in mind; the reinstatement of the four supervisors whom they believed had been discharged because of their Association activities; and the prevention of further discharges as repeatedly threatened by Frost. The apprehensions of the supervisors as expressed on December 21, 1943, prior to the strike had foundation not only in the statements by Frost to Jackson and the Association bargaining committee but in their knowledge that the first meeting planned for the Association had been called off because of Chesney's statement to Boone that the meeting place would be watched and those attending would be discharged.<sup>65</sup> As found above the discharges of Boone and Jezierski constituted unfair labor practices. A strike against such practices is manifestly legal and it is especially entitled to the protection of the Act.

The strike was conducted in orderly fashion and there is no allegation that any striker was guilty of violence or other misconduct.<sup>66</sup> Under advice of the War Labor Board the strike was quickly abandoned and the strikers on January 3, 1944, made an unconditional offer to return to their duties. Under the provisions of the Act employees who go on strike remain employees within the purview of Section 2 (3). It is then clear that on abandoning the strike and asking for reinstatement the strikers should have been reinstated unless as a matter of law they had forfeited that right because as employees in a war plant they walked out without giving the notice provided by the War Labor Disputes Act.

The Board recently has decided a case involving conditions so closely analogous as to be controlling here. In *Matter of Republic Steel Corporation (98" Strip Mill)*<sup>67</sup> the Board had under consideration a strike of foremen. It states, "There is no contention or showing that the purpose of the strike was illegal, nor is there any assertion of illegality in connection with the strike, except with respect to the failure of compliance with the provision of the War Labor Disputes Act." After examination of the provision of that statute in the light of its legislative history the Board says:

We conclude that the Congress did not intend specifically, or generally as part of its legislative policy, that the rights of employees, whether they be rank and file or representatives under the [Act] be affected by the War Labor Disputes Act. Although we do not condone the conduct of the strikers here involved, we are of the opinion and find that the policies of this Act and our war time labor policy as a whole will best be effectuated by according to them the protection of this Act.<sup>68</sup>

<sup>65</sup> The undersigned finds no merit in the respondent's contention that the basis of the strike was a desire to enforce recognition of the Association and collective bargaining. This contention has no other basis than the letter dictated by Vallance and mailed by Jackson after the walkout had occurred. It is a form letter and its phrases palpably were not in the minds of the supervisors who organized the spontaneous movement at 10 a. m. December 21, 1943. Admitting *arguendo* that this contention of respondent is correct that fact would not alter the ruling made above. Supervisors, like other employees, may strike to enforce recognition of their claims to represent employees in collective bargaining. See *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4

<sup>66</sup> Under these conditions the undersigned finds that *Southern Steamship Company v. N. L. R. B.*, 316 U. S. 31, and *N. L. R. B. v. Fansteel Metallurgical Corporation*, 306 U. S. 240, cited by the respondent's brief, have no application to this proceeding.

<sup>67</sup> 62 N. L. R. B. 1008 (June 30, 1945)

<sup>68</sup> The Board adds the following footnote:

In arriving at this conclusion we have fully considered the *Fansteel Metallurgical Corp.* and *Southern Steamship Co.* cases, \* \* \* and find nothing therein which requires us as a matter of law, or impels us in the exercise of our discretion, to reach a contrary conclusion.

On the basis of the entire record the undersigned concludes and finds that the supervisors struck on December 21, 1943, for the purpose of securing the reinstatement of Boone, Jezierski, Bates, and Glaser and in order to prevent further discharges for Association activity. They walked out after conferring mutually without any formal strike vote and without receiving advice or direction from the organization of which they had very recently become a part. Thereafter, they made efforts to negotiate their grievances with the respondent but were repulsed. It is found that this walkout constituted a legitimate strike against unfair labor practices. On the following day, December 22, 1943, the respondent closed its gates against the strikers, thus, in effect, discharging them. This action by the respondent is found to have constituted a lockout. On January 3, 1944, the strikers made an unconditional offer to return to their duties. The respondent admittedly excluded them from the plant. This action is found to constitute a refusal to rehire each of the 19 supervisors who joined the strike.

The undersigned finds that on December 22, 1943, the respondent locked out and, in effect, discharged Stanley Bauschka, Julius Bruski, Joseph Butler, Franklin Fergus, Lee Higgins, Harvey Jackson, Charles Keeling, Caspar Lafata, John Mudri, Earl B. Nichols, Robert Orr, Wilfred Price, Gerald Roberts, Peter Rollins, Carl Spiegel, Fred Summerfield, Charles Widmar, Warren Williams, and Mearl Wilson, and on January 4, 1944, refused to rehire them, because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection. By this action the respondent discriminated in regard to the hire and tenure of employment of each supervisor named and discouraged membership in the Association. It is further found that by such discharges and refusals to rehire, by the action of Plant Superintendent Frost and Personnel Manager Shull in soliciting the return of strikers, and by further acts and utterances detailed in this report the respondent has interfered with, restrained, and coerced 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

It is found that 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 have led 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 unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative actions found necessary in order to effectuate the policies of the Act.

It has been found that the respondent discharged Clarence Boone and George Jezierski and thereafter refused to reinstate them for the reason that they joined and assisted a labor organization and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection. It will be recommended that the respondent offer Boone immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges he may have. It will be further recommended that the respondent make him whole for any loss of pay he may have suffered by reason of the respondent's discriminatory acts by payment to him of a sum of money equal to the amount he normally would have earned as wages

from the date of his discriminatory discharge to the date of the respondent's offer of reinstatement, less his net earnings<sup>69</sup> during said period.

Jezierski was inducted into the United States Army on March 15, 1944. It will be recommended that the respondent, upon application by him within ninety (90) days after his discharge from the Armed Forces of the United States, offer him reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges and make him whole for any loss he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount he would normally have earned as wages during the periods: (1) between December 18, 1943, and the date of his induction, March 15, 1944, and (2) between a date five (5) days after his timely application for reinstatement and the date of the respondent's offer of reinstatement to him less his net earnings<sup>70</sup> during these periods.

Since it has been found that the respondent's unfair labor practices induced a strike participated in by 19 supervisory employees on December 21, 1943, and that the respondent on December 22 locked out and in effect discharged these employees and thereafter has refused them reinstatement to their positions, it will be recommended that the respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges. Inasmuch as, at the time of the hearing, employment for supervisory employees had declined and the future of employment in Plant No. 24 as a war plant is uncertain, it will be recommended that the following formula be applied to the reinstatement to the employees listed on Appendix A in the event there is insufficient work for all of them: all persons hired for supervisory work after December 21, 1943, the date of the commencement of the strike, shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If there is then not sufficient work available for all the strikers, all available positions shall be distributed among them without discrimination against any employee because of his Association affiliation or activity, following the system of seniority or other non-discriminatory practices heretofore applied in the conduct of the respondent's business. Those complainants, if any, remaining after such distribution for whom no employment is immediately available shall be placed upon a preferential list and thereafter offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work, in the order determined among them by said system of seniority or other non-discriminatory practice.

An uncertain number<sup>71</sup> of the strikers are shown by the record to have entered military service of the United States since December 21, 1943. As to each of these it will be recommended that the respondent, upon his application within ninety (90) days after his discharge from the Armed Forces of the United States, offer him reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges he may have. If under

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<sup>69</sup> 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.

<sup>70</sup> See footnote 69, *supra*.

<sup>71</sup> The record reflects that Julius Bruski, Casper Lafata, Robert Orr, Gerald Roberts, and Mearl Wilson have entered the armed forces of the United States.

the conditions then existing no position is available for the applicant the respondent shall place his name on the preferential list as set forth above. The respondent shall further make each of the strikers named on Appendix A, List No. 2, who are in the armed services whole for any loss he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount he normally would have earned as wages during the periods: (1) between December 22, 1943 and the date of his induction, and (2) between a date five (5) days after his timely application for reinstatement and the date of the respondent's offer of reinstatement to him less his net earnings<sup>72</sup> during these periods.

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

#### CONCLUSIONS OF LAW

1. Foreman's Association of America, Chapter 66, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Clarence Boone and George Jezierski and the 19 supervisory employees named in "Appendix A", List No. 2, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

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

5. The respondent has not discriminatorily discharged Claren Bates and Richard Glaser as alleged in the complaint.

#### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Bohn Aluminum and Brass Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Foreman's Association of America, Chapter 66, or any other labor organization, by discriminating in regard to hire and tenure of employment or any terms or conditions of employment of its employees.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join or assist Foreman's Association of America, Chapter 66, 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) Offer to Clarence Boone immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges he may have;

<sup>72</sup> See footnote 69, *supra*.

(b) Make whole said Boone for any loss he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discriminatory discharge, December 18, 1943, to the date of the respondent's offer of reinstatement, less than net earnings<sup>73</sup> during said period;

(c) Upon application by George Jezierski, within ninety (90) days after his discharge from the armed forces of the United States, offer him reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges he may have;

(d) Offer such of the employees listed in "Appendix A", List No. 2, attached hereto, as are not presently in the armed services of the United States, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth hereinabove in the section entitled "The Remedy" and place those employees for whom employment is not immediately available upon a preferential list in the manner hereinabove set forth and thereafter, in said manner, offer them employment as it becomes available;

(e) Make whole said employees for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in "The remedy";

(f) Offer each of the supervisory employees listed in "Appendix A", List No. 2, who has entered the Armed Services of the United States, upon his timely application within ninety (90) days after his discharge from the armed forces of the United States, reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges in the manner set forth hereinabove in the section in this Intermediate Report entitled "The remedy" and place those employees for whom employment is not immediately available upon a preferential list in the manner hereinabove set forth and thereafter in said manner offer them employment as it becomes available;

(g) Make whole each of these men (including Jezierski) now in the Armed Forces of the United States for any loss of pay he may have suffered by reason of the respondent's discrimination against him 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 periods: (1) between December 18, in the case of Jezierski, and December 22, in the case of each of the others named, and the date of their respective inductions into military service;<sup>74</sup> and (2) between five (5) days after his timely application for reinstatement and the date of the respondent's offer of reinstatement, less his net earnings<sup>75</sup> during these periods;

(h) Post at its plant in Adrian, Michigan, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Seventh 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 any other material;

<sup>73</sup> See footnote 69, *supra*.

<sup>74</sup> The sum here provided to be paid shall be paid to each immediately without waiting a final determination of the full amount he is awarded.

<sup>75</sup> See footnote 69, *supra*.

(i) File with the Regional Director for the Seventh Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is recommended that so much of the complaint as alleges that Claren Bates and Richard Glaser were discriminatorily discharged, be dismissed.

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.

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, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

CHARLES E. PERSONS,  
*Trial Examiner.*

Dated July 12, 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 Foreman's Association of America, Chapter No. 66, 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.

*List No. 1*

Clarence Boone  
George Jezierski

*List No. 2*

Stanley Bauschka  
Julius Bruski  
Joseph Butler  
Franklin Fergus  
Lee Higgins  
Harvey Jackson  
Charles Keeling  
Caspar Lafata  
John Mudri  
Earl B Nichols

Robert Orr  
Wilfred Price  
Gerald Roberts  
Peter Rollins  
Carl Spiegel  
Fred Summerfield  
Charles Widmar  
Warren Williams  
Mearl Wilson

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.

BOHN ALUMINUM AND BRASS CORPORATION,  
*Employer.*

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.