

In the Matter of INTERNATIONAL HARVESTER COMPANY and LOCAL
UNION No. 57, INTERNATIONAL UNION, UNITED AUTOMOBILE
WORKERS OF AMERICA

Case No. C-41.—Decided November 12, 1936

Automobile Industry—Employee Representation Plan: form and operation—*Company-Dominated Union:* domination of administration; financial and other support; sponsorship and participation in affairs; discrimination in favor of, in—credit for wage increase and other beneficial terms or conditions of employment, endorsement, pension and other benefits and privileges, recognition as representative of employees; qualification as collective bargaining agency; disestablished as agency for collective bargaining.

Mr. G. L. Patterson for the Board.

Mr. Ernest S. Ballard and *Mr. Edward W. Ford*, of Chicago, Ill., for respondent. *Mr. William S. Elliott*, *Mr. Forest D. Siefkin*, and *Butler, Pope, Ballard & Elting*, all of Chicago, Ill., of counsel.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

In December, 1935, Local Union No. 57, International Union, United Automobile Workers of America, hereinafter called the Union, filed a charge with the Regional Director for the Eleventh Region against the International Harvester Company, Fort Wayne, Indiana, charging that Company with violation of Section 8, subdivisions (1), (2) and (3) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. By order of the Board, dated January 20, 1936, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1. On March 26, 1936, the Board issued a complaint against the International Harvester Company, hereinafter referred to as the respondent, alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (2), and Section 2, subdivisions (6) and (7) of the Act, in that the respondent had dominated and interfered with the administration of a labor organization known as the "Harvester Industrial Council" and had contributed financial and other support to it, the acts of domination, interference and

support being separably stated. The complaint and accompanying notice of hearing were duly served upon the parties.

The respondent filed a "Special Appearance, Objections to Jurisdiction of Board and Motion to Dismiss", in which it claimed that the Act was unconstitutional for stated reasons, and further, that the Board had no jurisdiction over the respondent. Without waiving any rights under the special appearance, the respondent also filed an answer to the complaint in which it denied the allegations that it had committed unfair labor practices, although admitting some of the specific acts alleged in the complaint.

Pursuant to the notice of hearing accompanying the complaint, a hearing was held by the Board at Washington, D. C., from May 5, 1936, through May 16, 1936, and testimony taken. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. During the course of the hearing the respondent made various motions to dismiss the complaint, such motions being based on constitutional invalidity, lack of jurisdiction, failure of proof and claimed procedural defects. All of such motions are hereby denied. After the hearing the respondent filed briefs with the Board and orally argued the case before the Board on October 16, 1936.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing and the documentary and other evidence received at the hearing and thereafter, pursuant to an order of the Board, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT

The International Harvester Company is a New Jersey corporation with its principal executive offices in Chicago, Illinois. In its application for registration filed with the Securities and Exchange Commission it describes its business as follows: "The International Harvester Company and its subsidiaries are engaged in the manufacture and sale of agricultural implements, motor trucks, tractors, stationary engines and kindred lines, and repairs for all such articles" (Bd. Ex. 3, p. 3). In the manufacture and distribution of such products, the respondent has developed a huge, closely-integrated organization extending to nearly every portion of the world. The respondent in 1935, through subsidiary and affiliated companies, operated 13 manufacturing plants in the United States, two in Canada and four in Europe. The United States plants are: McCor-

mick Works, Chicago, Illinois—agricultural implements; Milwaukee Works, Milwaukee, Wisconsin—tractors, engines, dairy machines; Tractor Works, Chicago Illinois—tractors; Farmall Works, Rock Island, Illinois—tractors; Fort Wayne Works, Fort Wayne, Indiana—motor trucks; Springfield Works, Springfield, Ohio—motor trucks; West Pullman Works, Chicago, Illinois—magnetos, carburetors, bearings, gears, milk coolers; Auburn Works, Auburn, New York—agricultural implements; Canton Works, Canton, Illinois—agricultural implements; Chattanooga Works, Chattanooga, Tennessee—agricultural implements; East Moline Works, East Moline, Illinois—agricultural implements; Richmond Works, Richmond, Indiana—seeding machines, corn and cotton planters; Rock Falls Works, Rock Falls, Illinois—agricultural implements. The Canadian plants are: Chatham Works, Chatham, Ontario—motor trucks, wagons, sleighs; Hamilton Works, Hamilton, Ontario—agricultural implements. The European plants, located in France (two plants), Germany and Sweden, manufacture agricultural implements.¹ Twine mills are located at Chicago, Illinois; New Orleans, Louisiana; Hamilton, Ontario, Canada, and in France, Germany and Sweden. Over 152 branch houses and transfer houses, sales and service stations are maintained in the United States, there being at least one in each of 42 states and the District of Columbia. There are 21 distributing points in Canada, four in Mexico, five in Central America, 17 in South America, one in Cuba, and over 100 in other portions of the world. The respondent owns extensive properties and mills from which it receives many of the basic raw materials used in its manufacturing operations: iron ore mines at Hibbing, Chisholm, Nashwauk and Keewatin; Minnesota; coal mines in Benham and Harlan County, Kentucky; furnaces, steel mills and coke plants in Chicago, Illinois; a sisal plantation in Cuba.

The distribution of the respondent's products is handled by a number of wholly-owned subsidiaries of the respondent: the International Harvester Company of America distributes the products in the United States and, together with the respondent, owns stock in a number of local retail companies selling International Harvester products; the International Harvester Export Company sells the respondent's products to foreign jobbers and to its foreign subsidiaries; the International Harvester Company Argentina sells the respondent's products in the Argentine Republic; there are 19 foreign

¹ The term "agricultural implements" covers a wide range of products—harvesting machines, seeding machines, tillage implements, plows, threshers, cream separators, rakes, tedders, corn shellers, harrows, hay loaders, corn pickers, cane mills, fertilizer distributors, listers, beet pullers, cultivators, corn, cotton and beet planters, soil pulverizers, hay presses, grain binders, mowers, ensilage cutters, feed grinders, hammer mills. All of the above agricultural implements are not manufactured in each plant described above as manufacturing "agricultural implements."

subsidiaries selling the respondent's products in all parts of the world. The respondent owns two railroad companies, Illinois Northern Railway and Chicago, West Pullman & Southern Railroad Company, which are common carrier industrial railroads serving the respondent's plants in Chicago and other industries along their lines. The products of the respondent are distributed and sold under registered trade marks.

The sales of the respondent in 1935 reflected its huge size. In the United States they were as follows: tractors (including repair parts)—\$51,078,000; farm implements (including repair parts)—\$50,277,000; motor trucks (including repair parts)—\$48,291,000; steel, binder, twine, etc.—\$19,082,000; a total of \$168,728,000. The total sales of products sold in foreign countries were \$48,885,000. Moreover, the respondent is extending its business; sales in 1935 were 57 per cent more than in 1934; capital expenditures in 1935 were \$8,662,000 as compared with \$4,338,000 in 1934; the number of employees increased from 32,900 in 1934 to 45,700 in 1935, an increase of 39 per cent.

We are principally concerned in this case with that portion of the respondent's operations involving the manufacture and sale of motor trucks and motor truck parts and accessories. As indicated above, sales of such items in the United States totalled \$48,291,000 in 1935. In that year the respondent spent \$725,976 to advertise such products in periodicals, and for the first five months of 1936 it spent \$293,838. While the manufacture of motor trucks and repair parts occurs principally in three of its plants—Fort Wayne Works, Fort Wayne, Indiana; Springfield Works, Springfield, Ohio; and Chatham Works, Chatham, Ontario—other plants are involved in the process. Control over production, allocation of orders and requirements, distribution of raw materials, parts and accessories, and purchases of materials and parts are centralized in the respondent's Chicago office. An example will indicate the extent of this control and the manner of operation. On March 4, 1936, the Chicago office issued "Motor Truck Works Decision No. 1333", relating to Truck No. C-15. The decision stated that it affected the Fort Wayne, Springfield, Farmall and Chatham Works, and that a new design chassis to be known as Model C-15 will be furnished when specified in sales orders. It then described in detail, the description covering three pages, the various units of the chassis, such as engine, axles, clutch, transmission, generator, carburetor, tires, etc., and the special equipment available. The plants affected then commenced manufacture of that model.

Generally, assembly of a particular model is centralized in one plant, the various models being divided among the plants at which

motor trucks are manufactured. Thus, Models C-40, C-50 and C-60 are assembled at the Fort Wayne Works; Models C-1, C-15, C-20 and C-30 at the Springfield Works. But while the assembly of a model takes place principally in one plant, many other plants of the respondent are involved in the production of the model. In addition, a great number of outside manufacturers play a part in that operation. We may use the Model C-1 truck, assembled at the Springfield Works, as an example. This is the respondent's popularized model. The engine for this truck is manufactured at the Rock Island plant; the front and rear axles are manufactured and assembled at the Fort Wayne Works from steel produced at the respondent's mill in Chicago; the transmission is manufactured at the Fort Wayne Works; the housing for the gear box is made at the McCormick Works; the sheet metal forms for the fenders, running boards, etc., are stamped at the Springfield Works from steel sheet made elsewhere; the frame is made by A. O. Smith Co. of Milwaukee, Wisconsin, arriving at the Springfield Works in a "knocked down" form and there riveted together; the radiator core is manufactured in Racine, Wisconsin, and assembled with the shell and grill at the Springfield Works; the carburetor is made by Toledo and Detroit manufacturers; the generator is a Delco-Remy product made in Anderson, Indiana; the bearings are made by the Cleveland Graphite & Bronze Co., Cleveland, Ohio; and so on.

While the respondent in its various plants produces a great many of the parts necessary in the manufacture of motor trucks at the Fort Wayne Works and elsewhere, especially the basic items, it relies upon other concerns for a large number of parts, mainly of a specialized nature. The full list is too long for enumeration but a partial summary will suffice: cast iron wheels from the Clark Equipment Company, Buchanan, Michigan; tires from various concerns in Akron, Ohio; engines from Waukesha, Wisconsin (produced according to blue prints and with tools owned by respondent); bearings from Cleveland Graphite & Bronze Company, Cleveland, Ohio; fuel pumps from D. C. Fuel Company, Michigan, and Stewart-Warner Corporation, Chicago, Illinois; steering wheels from the Ross Gear concern, Lafayette, Indiana; speedometers from the Stewart-Warner Corporation, Chicago, Illinois; three-men sleeper cabs from Bennett Body Company, Dayton, Ohio; brakes from the Bendix concern, South Bend, Indiana; windshields from Troy Sunshade concern, Troy, Ohio; batteries from Prest-O-Lite Company, Indianapolis, Indiana; brass fittings from Imperial Brass Company, Chicago, Illinois; "six wheel drive" from Hendrickson Motor Company, Chicago, Illinois (a chassis is sent from the Fort Wayne

Works to that concern and the drive unit there attached); clutch facings from United States Raybestos Company, Manheim, Pennsylvania.

Of the respondent's motor truck plants, the Fort Wayne Works is the one directly involved in this case. Three principal operations are conducted at this plant—the assembly of certain motor truck models produced by the respondent, the manufacture of parts for use in other plants of the respondent, and the conduct of the central operations involved in the distribution of repair parts for all of the motor trucks produced by the respondent. Among the motor trucks assembled at this plant are the Models C-40, C-50 and C-60 trucks, all larger than the popular C-1 Model, Models A-7 and A-8, which are heavy duty trucks, and Models C-35 and C-70, sleeper cabs. As is the case of the C-1 Model assembled at Springfield, a great number of the parts used in the above Models come from other plants and manufacturers. This process of assembly and coordination is the same and need not be repeated here. Many of the trucks assembled at the Fort Wayne Works have accessories and parts specially used to meet specifications of the customer. Thus, the color and type of paint are often specified, a speedometer graduated in kilometers may be demanded for trucks to be used in certain foreign countries, the gas tank may be desired in a different part of the truck than where it is normally placed, a radiator with a larger capacity may be ordered, etc. As indicated above, a wide variety of parts are manufactured at Fort Wayne for use in other plants of the respondent. For example, in addition to those mentioned in connection with the C-1 Model, engines are made for tractors assembled at other plants, dies for the FAB engine manufactured at the Harvey, Illinois plant, engines, axles and transmissions for the Chatham plant.

Besides the assembly of completed motor trucks and the manufacture of parts for trucks and tractors assembled in other Harvester plants, the Fort Wayne Works acts as the central distribution point for repair parts for all motor trucks manufactured by the respondent. Shipments of repair parts are made regularly, by rail, truck and express, to the respondent's branch houses and distributing points located in all parts of the United States and in many foreign countries. Shipments are also made to individual customers on order by the customer. Those parts manufactured by the respondent itself are produced either at the Fort Wayne Works or at other plants of the respondent and shipped to the Fort Wayne Works. They are held at the Fort Wayne Works in storage until shipment to the branch houses. Many of the parts so distributed are manufactured

by other concerns, shipped to the Fort Wayne Works and then reshipped to the branch houses. About two-fifths of the repair parts distributed are received from other plants and manufacturers and not processed in any way in the Fort Wayne Works. In many instances such parts are reshipped in the same package. For example, spark plugs are manufactured by the Champion Spark Plug Co., Toledo, Ohio; Edison-Splitdorf Corporation, West Orange, New Jersey and A. C. Spark Plug Company, Flint, Michigan (the products of the first two being packed in boxes bearing the words "manufactured expressly for International Harvester Co."), shipped to the Fort Wayne Works and in the same cartons sent to the branch houses. Catalogues issued by the respondent often contain both the respondent's number and the manufacturer's number of the various parts to facilitate ordering of the parts. For example, the "Ball and Roller Bearings Price List" contains the manufacturers' numbers of the Tinken, Hyatt, Bower, SRB, SKF, Wire, Gurney and New Departure bearings as well as the respondent's numbers for those bearings.

The activities of the Fort Wayne Works are thus primarily the receipt of incoming materials, the assembly of such materials into finished trucks and parts and the storage of those parts not requiring processing, and the shipment of the finished articles and other materials to all parts of the world. Little manufacturing in the usual sense of the term takes place at this plant. The operations are in the main assembly operations. The numerous parts obtained from other Harvester plants and from independent manufacturers are received, assembled into completed trucks and parts and shipped in accordance with a detailed schedule, so arranged that the entire procedure is one continuous process. From the above description of the general operations of the Fort Wayne Works it is readily seen that large shipments of motor trucks and parts are made daily to and from the plant. From November 1, 1934, to October 31, 1935, 12,902 complete motor trucks weighing 60,950,000 pounds were assembled at the Fort Wayne Works and distributed in the United States. Over 17,000² of these trucks were shipped to the respondent's branch houses in the United States; some were called for at Fort Wayne by the purchasers and driven away. About 500,000 pounds a week of motor truck repair and service parts are shipped from the Fort Wayne Works to International Harvester branch houses located in all portions of the United States and throughout the world. Twenty-five million, nine hundred and thirteen thousand, eight hundred and twenty-three (25,913,823) pounds of parts and

² This figure includes some Model C-35 trucks assembled at the Springfield Works early in the 1935 season.

accessories manufactured at the Fort Wayne Works were shipped to the Springfield plant in the 1935 season, October 1, 1934, to September 30, 1935; 2,150,730 to the Chatham plant and 3,730,479 to other plants of the respondent (East Moline, Farmall, McCormick, Milwaukee, Richmond, Tractor and West Pullman), the shipments being made by truck and rail. These shipments by value amounted to \$4,542,014.98. During the same period 17,681,645 pounds of parts and accessories were shipped from the Springfield plant to the Fort Wayne Works, 10,211,000 from the Farmall plant, 8,602,000 from the McCormick plant, 4,175,600 from the Milwaukee plant, 3,644,513 from the West Pullman plant, and 1,935,273 from the Auburn, Richmond and Tractor plants (the shipments from all but the Springfield plant were of castings). Thirty-two million, two hundred and sixty-nine thousand, nine hundred and sixty-three (32,269,963) pounds of steel were shipped to the Fort Wayne Works from the Wisconsin Steel Co., South Chicago, Illinois; Republic Steel Company, Massillon, Ohio; Pittsburgh Crucible Steel Co., Midland, Pennsylvania, and American Rolling Mill Co., Middleton, Ohio; 12,000,000 pounds of lumber were shipped from the Goodyear Yellow Pine Co. Motor truck parts made by other manufacturers and used at the Fort Wayne Works amounted to \$10,200,000.

As of August 12, 1936, there were 4,150 employees at the Fort Wayne Works. Of these, 514 were clerical, supervisory and administrative employees, 3,638 were hourly employees. Certain of these hourly-paid employees are engaged in occupations directly concerned with the receipt and shipment of materials. Thus, there were, in August, 1936, in the Stores Department (No. 5), 71 laborers engaged in unloading and storing incoming materials and seven employees engaged in the recording of such materials. In the Repairs Department (No. 13) there were 42 order fillers whose task is to collect repair parts pursuant to specific orders and prepare them for the employees engaged in packing outgoing shipments; 38 employees engaged in such packing and four laborers who deliver packed service parts to the loading platform and who occasionally load railroad cars. In the Packing Department (No. 40) there were 22 employees engaged in disassembling complete trucks, packing the component parts in boxes, weighing, measuring and stencilling them, and finally loading them; 21 employees engaged in packing, checking and loading of materials manufactured at Fort Wayne for other plants; five employees engaged in loading trucks in railroad cars.³

³ From December, 1935, to August, 1936, some employees were engaged in the transportation by respondent's trucks of parts shipped between the Fort Wayne Works and the Springfield Works. At the end of that period, the respondent ceased to use its own trucks and employees for such transportation, and engaged an independent trucker in their place. While the respondent was using its own trucks they carried about 10 per cent of the shipments of parts made between the two plants.

We conclude that the operations of the respondent at its Fort Wayne Works constitute a continuous flow of trade, traffic and commerce among the several States and with foreign countries.

II. THE UNION

In September, 1933, a Federal Labor Union was organized in the respondent's Fort Wayne Works. This Union, a labor organization, was chartered by the American Federation of Labor. Charles R. Shrock was elected its President. The membership rapidly increased, reaching a peak of approximately 800 in March, 1935. At that time there were about 2,200 employees in the plant, of which 410 were machinists and 53 drop forgers, both classes not being eligible for membership in the Union. In October, 1935, the Union was granted a charter as a Local of the newly formed International Union of Automobile Workers of America. Shrock continued as President of the successor organization. Employees engaged in the production and assembly of automobiles and automobile parts and accessories, excluding supervisory employees, are eligible for membership.⁴ The present membership in the Union is about 100.

III. THE HARVESTER INDUSTRIAL COUNCIL PLAN

A. *Adoption of the Plan at the Fort Wayne Works*

Commencing in 1919 the respondent prepared and introduced a system of employee representation in its various plants. This system, known as the "Harvester Industrial Council Plan", was offered to the employees in the plants for their acceptance or rejection by secret vote. A letter from the President of the respondent to its employees introduced the Plan:

"The directors and officers of the Company have for some time been working out a plan to establish closer relations between the employes and the management. To this end they now offer the following Harvester Industrial Council Plan for the consideration of the employes, hoping that it may meet with their approval.

"The plan provides for a 'Works Council' in which representatives elected by the employes shall have equal voice and vote with the management in the consideration of matters of mutual interest.

"It guarantees to every employe the right to present any suggestion, request, or complaint and to have it promptly considered

⁴ Employees in such departments at the Fort Wayne Works as Stores, Repairs and Packing, described above, are included among those eligible for membership.

and fairly decided. Provision is also made for impartial arbitration.

“Should this plan be adopted by vote of the employes, the officers pledge their best efforts to carry it out in letter and spirit.

“It is my hope and belief that the plan, if adopted, will materially strengthen our relations in the work we have in common, and will make for the greater contentment and well-being of us all.

“HAROLD F. McCORMICK,
President.”

The Plan was voted on by the employees in each plant and in nearly every case adopted by majorities varying from 51 to 97 per cent of the workers. In several plants it was at first rejected by the workers, but after the lapse of several years accepted when reintroduced and voted upon for the second time. The Plan is now in effect in all of the plants and works of the respondent in the United States and Canada.

The Plan was presented to the Fort Wayne employees in 1927. Manufacturing operations at the Fort Wayne Works had commenced in 1925 and by 1927 there were about 2,000 employees on the pay roll, most of them with at least one year of service. At that time the Plan was in effect in all but one of the respondent's plants, the respondent for reasons of its own not having introduced the Plan in that plant. The Plan was introduced at Fort Wayne in the following manner: George J. Kelday, Manager of Industrial Relations for the respondent, visited the plant in May, 1927, and discussed the Plan with the foremen, assembled for that purpose. They were told that the respondent desired to have the Plan in effect at the plant so as to secure closer cooperation between management and employees. The foremen then selected employees from the various departments and they were given similar talks. Booklets describing the Plan, accompanied by a letter from the Superintendent, were then distributed by the foremen to each of the employees. The letter, dated May 26, 1927, read as follows (Resp. Ex. 4):

“With this letter your foreman will hand you a booklet describing the Harvester Industrial Council Plan.

“In line with the policy of our Company, the officers are now extending to us additional advantages already enjoyed by the employes of other Works. Since 1919 twenty-five Works Councils, made up equally of employe and management representatives, have been operating at the other plants of the Harvester Company to the mutual satisfaction of the employes and the management.

"Before the plan can be introduced here, it is necessary to take a vote of the employes. This will be done in a few days by a committee of employes and every one will be given an opportunity to say whether or not he favors the adoption of a Works Council Plan at the Fort Wayne Works.

"If, after reading the attached booklet very carefully, there are any points not perfectly clear, discuss them fully with your foreman, Mr. C. J. Dillon, Employment Manager, Mr. G. J. Kelday, Manager Industrial Relations Department, and the writer will also be glad to answer any question you may ask.

"If the plan is adopted I am firmly convinced it will result in uniting us closer together in mutual understanding and confidence and the Fort Wayne Works will then take its rightful place in the Harvester Group second to no other Works.

"J. J. RODGERS, Supt.,

FORT WAYNE WORKS."

This was followed by a letter, written by the First Vice-President and posted on the bulletin boards in the plant, stating that on June 3 the employees would have an opportunity to vote on the proposal to adopt the Plan, and containing the following statements (Resp. Ex. 5):

"This Plan had already been accepted by the employes of twenty-five (25) of the International Harvester plants since 1919, and is offered to you in the belief that it will be of mutual advantage to the Employes and to the Company at Fort Wayne as it has been at the other Works . . .

"The ballot will be secret, and I hope you will all feel absolutely free to express your opinions. I assure each one of you that your attitude regarding this matter will in no way affect your standing with the Company.

"Our hope is that the Plan will be adopted at the Fort Wayne Works as it has been in all the Company's Works where it has been offered, and that it will bring us together in a new and lasting relation which will mean increased and insured happiness for all of us."

The election was held on June 3, 1927, the ballot providing a choice between "For adoption" and "Against adoption". Out of the total employed, 1,060 employees were eligible to vote. One thousand and fifty employees voted and 96 per cent of this number, or 1,013, voted in favor of the adoption of the Plan. Employee representatives were then elected and on June 15, 1927, the Fort Wayne Works Council held its first meeting. It was honored by a personal visit from Cyrus McCormick, Jr., the respondent's Vice-President.

The Plan thus adopted at Fort Wayne in 1927 was outlined in various Articles printed in booklet form. While modifications have been made in the years following its adoption, a brief description of the Plan as there outlined will aid in an understanding of the later changes. The Plan provided for a "Works Council" composed of representatives of the employees and representatives of the management. The employee representatives are elected by the employees, the plant being divided into voting divisions, each entitled to one representative. Nomination of candidates and election of representatives are by secret ballot. All employees, except foreman, assistant foreman and salaried employees, are eligible to vote. Employee representatives must be citizens of the United States, at least 21 years of age, and must have been employed at the plant for at least one year immediately prior to nomination. The management representatives, not to exceed in number the employee representatives, are appointed by the management. Provision is made for filling vacancies in the Works Council and for the recall of employee representatives. The Works Council holds regular monthly meetings. The Manager of the respondent's Industrial Relations Department, or his designee, acts as Chairman of the Works Council; the Secretary is appointed by the plant Superintendent. Chairman and Secretary have no vote. When a vote is necessary the management representatives vote as a unit and the employee representatives as a unit, the majority determining the vote of the unit. The vote shall be secret unless otherwise ordered by the Council. If the Council reaches an agreement on any matter, its recommendation is referred to the plant Superintendent for his approval or disapproval. The Superintendent, if he deems the matter of such importance as to require the attention of the general officers, shall refer it to the respondent's President. The latter may either approve the recommendation or utilize the same procedure as in the case of a tie vote. In case of a tie vote not resolved by further discussion, the matter may be referred to the President, who may either propose a settlement or refer the matter to a General Council. If a proposed settlement is not satisfactory to the employee representatives, the President may likewise refer the matter to a General Council. If the President does not so refer the matter, or if the vote of the General Council is a tie, the President and a majority of the employee representatives may mutually agree to submit the matter to arbitration. The General Council is composed of employee representatives chosen by the employee representatives in the various plants designated by the President as being interested in the matter, and of appointed management representatives.

The Works Council may investigate, consider and make recommendations on all questions relating to working conditions, protec-

tion of health, safety, wages, hours of labor, recreation, education and similar matters of mutual interest to employer and employees. It may appoint sub-committees, with employee representatives and management representatives having equal voting power, whenever such committees are deemed necessary. Provision is made for the manner in which an employee may have a matter brought before the Works Council. The respondent is to provide a meeting place for the Council. Employee representatives shall receive their regular pay from the respondent while on Works Council business. The Plan may be amended by a majority vote of the employee representatives and a majority vote of the management representatives. The adoption or rejection of an amendment shall not be the subject of arbitration. The Plan may be terminated, after six months' notice, by a majority vote of the employees or by the Board of Directors of the respondent.

B. *Present functioning of the Plan*

I

The formal outlines of the Plan were contained in the Articles drawn up by the management and presented to the employees in booklet form as described above. These Articles were the core of the Plan; they set its basic structure and charted the organizational lines. But, as was to be expected, in actual practice unwritten modifications of these Articles developed and are today as much a part of the Plan as the Articles themselves. A description of the present functioning of the Plan will reveal these developments.

1. Election of employee representatives

Prior to 1936 the semi-annual elections for employee representatives were conducted by the Works Council. These elections were thus jointly supervised by employee and management representatives and both employees and management officials participated in their conduct. In 1936 this was altered by the management's turning over to the then employee representatives full responsibility for all matters relating to elections.⁵ A Notice of Election, signed by the employee representatives, was posted containing the dates of election, eligibility requirements for voters and representatives, and a few of the rules governing the election. The number of employee representatives was increased from six to eleven, the plant being divided into eleven divisions in order to reduce the number of employees represented by each employee representative. All employees, except fore-

⁵The manner in which this change took place and its significance in relation to the Plan will be considered later.

men, assistant foremen and salaried employees, were entitled to vote. Rule 2 of the Notice stated that "All employees on the pay roll shall be eligible for nomination as Employee Representatives". Rule 4 stated that "A blank ballot will be offered to each employe present at work on Monday, March 16, 1936, the date of nomination. On this ballot the employe will write the name of the person who he desired to nominate". Witnesses for the respondent, including the employee representative who drafted the Notice, testified that the second sentence in Rule 4 was designed to make eligible for nomination persons outside the respondent's employ. In previous years only employees of the respondent were eligible for nomination.⁶ The testimony on the construction of Rule 4 was conflicting. By itself the Notice is clearly not susceptible of the interpretation urged by the respondent, for Rule 4 simply states the mechanics of nomination under the limitations of Rule 2. We therefore feel that the 1936 elections did not alter the previous eligibility requirement of employment by the respondent. Nominating elections were held on March 16, carrying over to the next day, and the final election between those two nominees in each division who received the highest number of votes, on March 20. The personnel for the election—tellers and watchers—consisted of employees selected by the employee representatives. The voting was done in the plant while it was operating, the tellers going from employee to employee. There were no voting booths. The ballots were supplied by the management and were of the form used in previous elections. The final ballot was headed, "Ballot for Election of Employee Representative in Works Council" and contained the names of the two nominees. All of the personnel involved in the conduct of the election were paid by the respondent for the time spent on election tasks, at their usual rate of pay. Notices of various sorts—rules of election, results, etc.—were posted on Company bulletin boards. In the final election, out of 2,935 eligibles, 2,801 or 95.40 per cent voted.

Although the employee representatives themselves, instead of the Works Council, conducted the 1936 elections, they followed the procedure developed in prior elections, so that the 1936 elections differed in no significant manner from those held in previous years.

2. Preliminary meetings

At this point in the description of the functioning of the Plan it is desirable to consider the steps preliminary to the actual meetings of the Works Council. The meetings of the Council are held

⁶ In the election conducted in 1935 by the Automobile Labor Board, discussed *infra*, representatives were not required to be employees of the respondent.

monthly. About one week prior to each meeting the employee representatives meet informally with the Superintendent of the plant. This meeting is scheduled by the Superintendent at a time convenient to him and the representatives and notices of the meeting are sent by the management to the employee representatives. The employee representatives meet alone for about an hour or so prior to this informal meeting with the Superintendent to discuss matters to be presented to him. At this meeting with the Superintendent matters involving routine complaints or suggestions concerning working conditions in the plant are presented to him. The following examples are typical: slippery wash rack floor in Departments 37 and 50; location of lockers; mats for shower rooms; shortage of rags in tool crib; parking space problems; unsafe method of lifting frames to conveyor in Department 15; dangerous position of hooks attached to light cords in Department 28 aisles, etc. Often the Superintendent is able then and there to act upon the matter. If not, he takes the matter under advisement and reports later, either at such a preliminary meeting or at a Works Council meeting. Those matters which are taken under advisement are noted by the Secretary of the employee representatives and reported to the next Council meeting under the heading of "Communications". That is the only written record made of the meeting. Practically all of the matters the employee representatives present to the Council have previously been presented and to some extent considered at such preliminary meetings. In addition to the consideration of such routine matters, the Superintendent sometimes talks rather briefly on the general business outlook for the respondent, such as orders on hand, etc. He also often stresses the benefit of the Plan both to the management and to the employees.

These preliminary meetings, both of the employee representatives alone and with the Superintendent, occur in the plant during working hours. The employee representatives are compensated by the respondent for time so spent at their regular rate of pay.

3. Works Council meetings—Committees—1936-1937 Council

The employee representatives elected in 1936 commenced their term of office on April 8, 1936, at the 107th regular meeting of the Fort Wayne Works Council. It had been decided by these employee representatives that their term of office should be for a year, instead of six months, staggered, as before.⁷ They had also at a meeting held by themselves selected their officers, Chairman, Vice-Chairman and Secretary, and their representatives to the various committees func-

⁷ The circumstances that gave rise to this decision are considered later.

tioning under the control of the Works Council.⁸ These selections were announced at the first meeting of the new Council on April 8, 1936. At the same meeting the Superintendent of the plant announced the management representatives, six in number,⁹ for the coming year, and the personnel of the management representatives on the various committees. He also reappointed the Employment Manager of the plant as the Secretary of the Council. The Works Council for 1936-1937 was then organized and commenced to function.

The meetings of the Works Council occur regularly each month. Notices of meetings are sent by shop letter to representatives by the Secretary of the Council. The Chairman at these meetings is usually a representative of the Industrial Relations Department of the respondent, generally George J. Kelday, head of that Department. The Chairman, who has no vote, is the presiding officer. He participates in discussions, expresses his opinion, imparts needed information and advice. The Vice-Chairman, who acts in the absence of the Chairman, is elected each year by the members of the Council. The person who is Superintendent of the plant at the particular time has invariably been chosen Vice-Chairman, although employee representatives are eligible for that position. He designates the Secretary for the Council, likewise invariably a management official.

The meetings are conducted in an orderly but informal fashion. Employee and management representatives sit around a table in an order marked by convenience rather than separation based upon the class of representatives. Each member receives a printed copy of the agenda, including the various committee reports. The meeting generally commences with reports from the committees. All of these committees have both management and employee representatives and, briefly, are as follows:

a. *Committee on Committees.*—This committee, which meets once a month, examines the Minutes of the Council meetings prepared by the Secretary to the Council and approves them for substance. It thus exercises a form of control over the Minutes. Apparently that is its only function.

⁸ The Plan provides for the appointment of deputy representatives by the employee representatives when such appointment is deemed to be necessary. In practice any employee representative who believes it advisable appoints a deputy for his division, and reports the appointment to the Secretary of the employee representatives. Approval of the Works Council is not necessary. The deputy acts as a substitute when the elected representative cannot attend and assists the elected representative when the volume of work requires such aid. Deputies are paid by the respondent for time spent on Works Council matters. Some deputies have been appointed by the present employee representatives.

⁹ For 1936-7 the following are management representatives: superintendent, assistant superintendent, auditor, general foreman, chief time inspector, supervisor of experimental work.

b. *Safety, Health and Sanitation Committee.*—The title of this committee is descriptive of its duties. The committee meets once a month. One of its functions is a regular monthly safety inspection tour of all departments in the plant, participated in by the other representatives as well. Foremen and assistant foremen are present when these inspections are made and, on the basis of the observations made on such tours, suggestions are continually offered regarding improvements in safety devices, cleanliness and other working conditions. This committee also supervises safety contests in the plant which are designed to promote safety through competition among departments. It reviews reports of accidents to determine their causes and means of preventing them in the future. In general, it cooperates with the Safety Department and the foremen in the correction of unsafe conditions and draws the attention of employees to the importance of safety precautions. Summarizing the duties of the Safety Committee, the Manager of Industrial Relations stated that the safety activities are “one of the finest jobs elected men do”.

c. *Employes' Service Committee.*—This committee handles a wide variety of matters of interest to the employees. Predominant among these are reports on the numerous athletic activities—basket ball, volley ball, track, bowling, rifle shooting, soft ball, etc.—of the employees at the plant, involving both inter- and intra-plant competition, and participation of Fort Wayne Harvester teams in local athletic leagues. The committee is also concerned with such matters as parking facilities for employees, music programs, parties, drinking water facilities, street car service, shower facilities, individual employee problems under the vacation plan, pension plan, seniority rules, etc.

After the committee reports the Secretary of the employee representatives then reads the various matters presented to the Superintendent at the preliminary meeting and which have been taken under advisement by him, and reports on those items which have been completed. The Secretary of the Council then reads a report of the Credit Union¹⁰ at the plant, in which its financial condition is outlined. Whatever old business may be pending is next considered.

New business is then in order. Items of various degrees of importance are discussed in a manner that will be considered later in detail. After the discussion of these items is concluded, the Council members receive a short talk from a person invited to address them, generally a management official. These talks are on such topics as accounting methods, annual report of the respondent, metallurgy, Social Security Act, the Employes' Benefit Association, etc. The meeting is then adjourned.

¹⁰ This will be discussed later

While the Plan provided that the employee representatives and the management representatives should vote separately, by the method of unit voting, this provision has not been followed in practice. No unit vote has been taken since the inception of the Plan. Instead, voting is conducted by open "ayes" and "nays" in an informal fashion, both types of representatives participating at the same time in the voting. Even such a vote is rare and most of the matters decided by the Council are not even put to a vote.

4. Employee representative contacts with foremen and assistant foremen

Many matters handled by the employee representatives are settled without the necessity of their taking them to the Superintendent or to the Works Council. The majority of individual grievances presented by employees to their representatives are generally adjusted by the latter through contact with the appropriate foreman or assistant foreman. These grievances involve such matters as individual rates of pay, working conditions, shifts, transfers, etc.

II

In addition to the above description of the framework of the Plan, a more detailed analysis of certain aspects of the Plan in its everyday setting and its integration with other activities at the plant is necessary to a complete understanding of its place in the employees' working life.

1. Employee representatives

An employee representative once chosen is generally reelected time after time by his constituents. Of the six elected representatives who were on the Council in 1935 and who were reelected in 1936, one has been a representative since 1928, one since 1930, one since 1932, one since 1933 (and also for one and a half years when the Plan was inaugurated), one at least since 1933 and one since 1935.¹¹ The presence of such regular reelection and long stay in office in an organization of the type under consideration is not without significance. It is not unreasonable to believe that many of these representatives, through constant association with management officials, always on a most cordial basis, come to regard themselves as a part of the man-

¹¹The present Council thus consists of five representatives of long standing, one selected first in 1935 and the four new representatives chosen in 1936 as a consequence of the addition of new divisions. One of the first group had been chosen in two divisions.

agement and its machinery¹² and, consequently, tend to forget that they are representatives of employees ostensibly selected for the purpose of bargaining with management. Many of the employees feel that the representatives are management-minded and that they place their own personal interests and the interests of the management above those of the employees whom they represent.

The almost complete indifference of some of the employee representatives to their duties is another important factor. In one case especially the circumstances surrounding the nomination and election of the representative, and the representative himself, were such as to indicate that the office of representative and the particular employee elected were not regarded highly by the employees, the election of the particular employee being looked upon as a "joke". In this regard it is significant that many of the employees take very little interest in the Plan. For example, one employee testified as follows:

"Q. What has Mr. Conroy (his employee representative) done in the department that you know about . . . what has he done for any of the workers in the department?"

"A. Well, I wouldn't know. To be sure, I haven't paid a whole lot of attention."

Another, who was elected as a representative in 1936, stated in regard to the Council that prior to his election "I never paid much attention to it". Another employee, who was offered by the respondent as a "rank and file" witness, testified as follows:

"Q. Do you know of anything that he (his employee representative) has done as a representative during the time that he has been representing you?"

"A. I just can't recall right now."

The representative in question had been on the Council at least since 1933. Such attitudes on the part of employee representatives and employees are to some extent indicative of the efficacy of the Plan as a method of collective bargaining.

The employees who seek election as representatives do not have any platforms on which to base their candidacy. The elections consequently do not involve policy decisions on the part of the voting employees. The choice between rival candidates is made on much the same bases as are present in social or fraternal elections. And yet the making of that choice constitutes the sum total of the employees' participation in the Plan.

¹² It is the custom of the employee representatives to gather each morning for a few minutes in the employment office to see if anything should be discussed and to ascertain whether the employment manager has anything to tell them.

2. Contact of employee representatives with constituents

A significant feature of the Plan is the total absence of contact of the employee representatives with their constituents as a group. The Plan has no provision for meetings of employees and its operation has not produced a system of mass meetings or any similar procedure. Instead, the employee representative ascertains the wishes of his constituents entirely through individual contact during working hours. It is not surprising, therefore, to find that most of the time of a representative is taken up with the adjustment of individual grievances and problems and that the Plan is mainly concerned with such matters. Individual employees do not sponsor general wage increases, changes in working hours, vacation plans and other matters of interest to the entire group of employees. Whatever may be the effectiveness of such a system of individual contact to bring to the surface individual complaints, it cannot be regarded as a desirable method of making known to the representatives or to each other the collective interests and problems of the employees.

3. Management support of the Plan

The aspect of management support of the Plan is difficult to describe in a manner which will adequately convey the extent to which the Plan has been interwoven into the daily life, both of work and of social and athletic activities, of the Fort Wayne employees. Through the years of operation of the Plan, the management, convinced of its soundness, has carefully supplied prop after prop for its support so that today the average employee at the plant accepts the Plan as an institution without any realization of the careful structure that has thus been built to keep the Plan alive and functioning. The following discussion relates to the important props; the cumulative effect will be considered later.

a. *Linking of Plan with other activities and benefits obviously desirable to employees.*—Wherever possible the Plan has been linked with activities and working conditions that are obviously beneficial to the employees and desired by them, so that the Plan may both receive credit for the benefits resulting from the other activities and be regarded by the employees as an integral part of the plant life. Some of these activities and working conditions are:

(1) *The Credit Union.*—A Credit Union, of the type authorized by the federal statute on the subject,¹³ was organized at the Fort Wayne Works in February, 1935. The management, after the es-

¹³ Federal Credit Union Act, 12 U. S. C. A., Sec. 1751, *et seq.*

establishment of Credit Unions in other plants, had recommended their value to the Fort Wayne Works Council. The elected representatives then imparted information concerning the proposed Credit Union to their constituents. The incorporators, six of whom were elected employee representatives under the Plan, next selected a group of 50 to discuss the Credit Union. With the aid of a federal official the Credit Union was then organized.¹⁴

The Credit Union proved to be very successful and its membership grew rapidly. At the time of the hearing there were 1,744 members; total loans to that time amounted to \$103,537.11. The reason for its popularity is apparent in its function, for it is designed to enable employees to borrow money at low rates of interest and without security.

Employee representatives were prominent in its organization and initial activities. Six representatives were among the eight incorporators who signed the certificate of application. Two are on the Board of Directors (seven in number), having been elected to that office by the charter members. Two are at present on the Credit Committee. This prominence of the employee representatives in the Credit Union, and the consequent linking of the Plan with the Credit Union, has been heightened in various ways. The Minutes of the Works Council repeatedly contain statements advising employees to see their employee representatives for information concerning the Credit Union: "If interested, keep in touch with your council representative" (Bd. Ex. 41, p. 18); "If by chance you did not get your (pass) book, please advise your councilman or the secretary-treasurer and you will be furnished one immediately" (Bd. Ex. 46, p. 12); "employees desiring membership in the Credit Union should see their council representative" (Bd. Ex. 47, p. 17); "For Additional Information, See Your Council Representatives" (Bd. Ex. 61, p. 2). At one meeting the Superintendent, after praising the Credit Union, stated that "frequent articles in the Works Council Minutes might serve the purpose of explaining the various savings and loan features of the Credit Union" (Bd. Ex. 45, p. 12). Employee representatives were supplied with membership applications which they could distribute to their constituents, and they also received such applications for membership from employees. Finan-

¹⁴The officers of the Credit Union, president, vice-president and secretary-treasurer, are employees. Most of their activities are conducted outside of working hours, but the respondent does permit some activities during working hours without loss of pay. The officers are appointed by the Board of Directors from their members. This Board is elected at an annual meeting of the membership. A Credit Committee of five members is also elected at the annual meeting. Its function is to investigate and pass on applications for loans. The management provides office space for the Credit Union, makes payroll deductions whereby loans are repaid, and in general provides its cooperation whenever necessary.

cial reports on the status of the Credit Union are regularly made to the Works Council and are included in its Minutes.

It is true that the Credit Union was not directly established by the management, is an agency organized pursuant to statute, and is not operated by the management. Nevertheless, through the activities of employee representatives and the medium of the Works Council Minutes, the Credit Union, held in high regard by the employees, has been linked with the Plan so that the latter may share in that regard.

(2) *The Athletic Association.*—Like the Credit Union, the Athletic Association is an organization highly regarded by employees at the plant. All employees may be members of the organization and it has no dues. It conducts the numerous athletic activities carried on among the employees, stages banquets, distributes candy at Christmas, operates a commissary that sells candy, etc., and engages in similar activities. From its funds it contributes cash prizes for various athletic contests.

Here also an organization desired by employees has been linked to the Plan. The various athletic contests are reported on in detail to the Council by the Employees' Service Committee and full information concerning them is published in the Council Minutes. Management officials acting as Chairmen at annual banquets of the Association call upon prominent employee representatives for speeches, appoint them to Association committees. Printed notices advising of Athletic Association banquets state that tickets should be obtained from "your foreman or your councilman" (Bd. Ex. 59). Passes for certain athletic contests may be obtained from council representatives.

(3) *Vacation Plan; pension plan.*—The International Harvester Company system, as described above, embraces many plants. It is but natural that many Company policies, such as those pertaining to vacations, pensions, etc., must have a uniform application. Hence, while a request for such a plan may possibly originate in the Works Council of one of the plants, it is obvious that the matter is one for the central office to decide. But once such a policy has been determined by the respondent, it is careful to announce its adoption through the mechanism of the Works Council in each of the plants and to give credit to the Plan for the adoption of the policy. The employees are thus led to feel that Works Councils directly bring about reforms of such a nature and favor for the Plan is thus stimulated. For example, the letter of the President to the employees accompanying the printed announcement of the vacation plan began with the following: "After long and careful consideration, in which the Works Councils have been of great assistance, the directors and officers of the Company have worked out and herewith submit a plan for annual vacations" (Bd. Exs. 36, 37). Similarly, when the

vacation plan was modified in 1936 to permit more employees to obtain its advantages, the management's statement of the announcement, printed in the Council Minutes, contained the following: "At the request of the elected representatives of several works councils, the management has given consideration to the date on which an employee becomes eligible for a vacation" (Bd. Ex. 52, p. 14). Although no discussion of the change had taken place in the Fort Wayne Works Council, the statement itself, and its ambiguous wording, permitted the Fort Wayne Council to share credit for the change.

That the result desired by this integration of the Plan with such beneficial activities has been achieved is indicated by campaign literature distributed by Works Council candidates in March, 1935, preliminary to an election conducted by the Automobile Labor Board between those candidates and Union candidates.¹⁵ This literature stated:

"WHAT YOUR WORKS COUNCIL HAS SECURED FOR YOU.

"Vacations with pay—No other truck or automobile plant has a vacation plan.

"Forty hour pay for 36 hours work—No other plant in the industry adjusted wages on this basis.

"Seniority and service rights for vacation, E. B. A. and pension are more liberal than in any other industry.

"Lockers and showers.

"Parking space for cars.

"Daily contact with and the right to deal with management in all matters affecting your welfare.

"We believe you want this kind of relationship to continue—If you do Vote for the Works Council Candidates" (Bd. Ex. 40).

The claims are obvious exaggerations—if not deliberate misstatements. The Fort Wayne Works Council had nothing to do with the vacation plan or the seniority and service rights under the other enumerated plans. The "daily contact" was not secured by the Works Council—it was given to the employees by the management when the management decided that the Plan should be established. And clearly, lockers, showers and parking space would have been provided in any event. On this point, an employee offered by the respondent as a "rank and file" witness testified as follows:

"Q. Now, as an old Harvester man, don't you really think that you would be treated as well as you are treated now, if you didn't have any representation plan there at all?

"A. Well, I imagine that it would be pretty good."

¹⁵ This election is described later.

Yet, the linking of the Plan with all such matters has made it possible for the adherents to the Plan to advance in its behalf the claims stated above.

b. *Minutes of the Council.*—The Minutes of each Council meeting are regularly published by the respondent. They are contained in a little booklet of pocket size and printed with paper and type of the sort that makes for easy reading. The Minutes have been distributed by various methods in the past, and today the practice differs in the various departments. Employee representatives, foremen, watchmen, employees, all play some part in their distribution. The method, however, is immaterial; the important thing is that the respondent endeavors to have each employee supplied with a copy, in a form convenient to take home with him, the object being a widespread distribution of the Minutes among employees and their families.

The Minutes contain a full account of the Council meetings, including all committee reports. As indicated above, this means that reports of athletic events, Credit Union activities and finances, and similar matters are carried in the Minutes. Complete reports of the standings of the terms in the various athletic leagues are given, so that a part of the Minutes resembles columns in the sporting pages of a newspaper. Reports of elections are carried at appropriate times. The Minutes also contain summaries of the talks made before the Council, the provisions of legislation affecting employees, such as the Social Security Act, the National Labor Relations Act, etc., copies of the Declaration of Independence and the Constitution, and reprints of short articles dealing with safety devices and measures, hot weather hints, the work of the various departments in the plant, etc.¹⁸ Safety hints, often in pictorial form, reports on inter-works and plant safety contests, analysis of accidents and means of prevention, pictures of plant equipment, pictures of Fort Wayne Works teams, are liberally sprinkled throughout the Minutes. It is clear that practically all of the matter contained in these Minutes is desired by the employees in the plant and their families. One employee offered by the respondent as a "rank and file" witness testified as follows:

"Q. Have you ever read through completely any of the minutes of the Council meetings?

"A. I don't believe I ever have.

"Q. Have you ever read much, or several pages in any of the minutes?

¹⁸ In the Minutes for the May, 1934, meeting there is the following: "the secretary was instructed to have members of the plant organization write a series of brief articles outlining some of the activities of their departments, these reports to be published in the works council minutes" (Bd. Ex. 66, p. 1).

"A. Well, when it would tell about golf or bowling or something like that.

"Q. You were more interested in the athletic activities and (than) in the other activities of the Council, is that correct?

"A. Yes."

The Minutes are really used as plant papers by the respondent. The Manager of Industrial Relations testified on this point as follows:

"We find that these minutes are appreciated by the representatives and it contains valuable information not only of the activities of the bargaining agency but these other things, these folks at home are concerned in the pension plan and the vacation plan and it is a medium through which the company has of reaching all employees on these matters of general concern, in which the employees are interested, and I believe that if we should endeavor to discontinue the printing of these minutes we would get a pretty big growl from our employees, because they are getting information currently that they want and they have asked for it and it is their right to have it."

The inclusion of such matter in the Minutes of the Works Council is thus significant, for it has the effect of inducing the belief in the employees that they are getting all of this because of the Plan and hence the Plan is a good thing for them. They do not stop to consider that, Plan or no Plan, they would still receive the information, for it is of the sort that practically any large concern, if intelligently managed, finds it desirable to provide to its employees.

c. *Information and advice given to newly-hired employees.*—The respondent in its advice and information given to newly-hired employees seems to regard the Plan as a fixed institution in its plant. Hence, such employees are given the booklet describing the Plan along with booklets on the Pension Plan, the Vacation Plan, and the Employees' Benefit Association.¹⁷ The management generally goes on to explain that the Works Council representatives will act as their representatives in bargaining or in consideration of grievances. In this regard the answer of the respondent states that:

"The Company admits that newly hired employees are advised of the existence of the Harvester Industrial Council plan and that the representatives duly elected by their fellow employees and currently serving will be available to bargain for them if they so desire."

¹⁷ The Employees' Benefit Association, established in 1908, is a company-wide organization, contributed to by both the respondent and employees, and paying sick, accident and death benefits. It is controlled by a Board of Trustees having employee and management representatives. The Pension Plan was also established in 1908.

Foremen often discuss the Plan with newly-hired employees and point out its merits. One foreman testified as follows:

“Q. Are you instructed as a foreman to tell him (a new employee) about the Works Council, and how it works, and about his representation?

“A. Yes, we are asked to sit down and get the confidence of the man and make him feel at home, to give him a talk of the organization, and how it operated, and how we handle our tools in different ways, and the safety-first, and inspection trips, that are made through the shop.”

He later indicated that the instructions did not specify that he go into the details of the Plan, but that he spoke about the Plan as part of the procedure of becoming acquainted with the employee and getting him oriented. Employee representatives in many cases are introduced to a new employee by the foreman. Employees are generally not informed of the existence of the Union.

The practice of giving such information and advice to new employees can have but one result. While specific adherence to the Plan is not demanded by the personnel office and the supervisory force in so many words, nevertheless, the effect upon the normal employee not too curious about the bargaining agencies that may exist in the plant is that the Plan is a thing to be accepted without question and that, or even because, the management is wholly in favor of it. When it is realized that since April, 1935, about 600 or 700 new employees have been engaged, the significance of the practice is apparent.

d. *The respondent's recommendation of the Plan.*—The respondent quite openly indicates that it favors the Plan and desires its continuance in the plant. No opportunity is lost to inform employees of its attitude. At the council meetings, in preliminary meetings, in open letters, high management officials repeatedly praise the Plan. Such words of praise are generally included in the Minutes, so that the management approbation of the Plan circulates to every employee and his family.

The Manager of Industrial Relations, who acts as Chairman at many of the Works Council meetings in the various plants, testified as follows:

“Q. On that last matter, Mr. Kelday, you do think that the plan is an excellent plan, do you not?

“A. I am convinced that it has worked very satisfactorily over a long period of years, Mr. Chairman, yes.

“Q. If an employee asked you what you thought of the plan, would you tell him that you thought it was a good plan?

"A. If an employee asked me, I wouldn't hesitate to say, in my opinion, it was a good plan, and it worked to mutual advantage of the employee. . . .

"A. I believe that management do(es) favor this plan because it works.

"Q. . . . you don't deny that consistently and repeatedly, the representatives from your department and the superintendents of the various plants, and particularly Fort Wayne, made remarks commending the Harvester Council plan?

"A. I believe that the minutes so indicate . . ."

And in its answer, the respondent stated:

"The Company admits that the superintendent of its Fort Wayne Works and its industrial relations manager commend the advantages of collective bargaining through an employees' representation plan" and refer "in meetings of the Works Council to advantages and accomplishments of the Harvester Industrial Council plan."

At the meeting on August 14, 1935, in which the Manager of Industrial Relations discussed the National Labor Relations Act, he concluded his remarks by stating:

"The President of the International Harvester Company, in a letter addressed to the employes dated March 10, 1919, when the plan of employe representation was submitted to the employes for approval, said:

"It is my hope and belief that the plan, if adopted, will materially strengthen our relations in the work we have in common, and will make for the greater contentment and well-being of us all."

"It is to be hoped that the National Labor Relations Act will bring to American Industry generally, the same degree of satisfaction that the Harvester Industrial Council plan of employe representation has brought to the employes and to the management of the International Harvester Company." (Bd. Ex. 46, p. 22.)

At the meeting of May 17, 1935, the Superintendent of the Fort Wayne Works said that "throughout his entire experience in the manufacturing industry, he had never come in contact with a plan of collective bargaining that could surpass or equal the Harvester council plan, which he believed was one of the finest bargaining agencies ever developed". (Bd. Ex. 42, p. 7.) In a letter to the Superintendent of the plant, written with reference to the 1936 elec-

tions and published in the Minutes, A. A. Jones, Vice-President of the respondent, stated:

“We believe that Harvester employes generally recognize the unusual value of the Works Council Plan and the Company stands ready to cooperate with its employes in continuing the plan in such manner as they desire it.” (Bd. Ex. 53, p. 12.)

The Superintendent does not hesitate to endorse the Plan at the preliminary meetings he holds with the employee representatives. One of the representatives who attended these meetings in 1935-36 testified as follows:

“Q. Did you ever hear him (the superintendent) recommend the Harvester Industrial Council plan as a plan that employes should follow?

“A. He recommended that over the period of time, the years of existence of the Industrial Council plan and the Harvester system, that it had worked to the mutual benefit of the employes and the company, and that he believed that this plan was the best plan for harmony and one big happy family, rather than an outside or independent organization . . .

“Q. Well, at these meetings that you attended, how often were these speeches made advocating the Harvester Plan?

“A. Nearly each one of them. I won't say all of them, but practically a large majority.”

While the management states that it desires its foremen to maintain strict neutrality on the question of the manner of employee representation, it is obvious that such neutrality simply cannot exist in an atmosphere so heavily charged with open management approval of the Plan. Deliberately, or habitually in the sense that they are merely performing a routine function, many foremen speak in favor of the Plan and in derogation of an outside labor organization. For example, one foreman stated to some employees in 1935 that the respondent would not tolerate a union in the plant and advised them not to join a union. The Superintendent admonished that particular foreman when the matter was called to his attention. But the significant fact is that the foreman thought along such lines and openly expressed those views, for an employee's contacts are with foremen and not superintendents. Again, a foreman questioned employees as to their presence at a Union meeting. Another foreman, commenting on the fact an employee had just joined the Union, stated that “Hank just threw away \$5.00, and that he should have kept that money”. Union application cards distributed in one department were brought by some of the employees in that

department to the foreman because they believed he would be sympathetic with their disapproval of such a practice.¹⁸

e. *The respondent's financial support of the Plan.*—The Plan since its inception has been entirely supported by the respondent. No doubt is present on this score, for the respondent readily admits its financial support. It maintains in Chicago a Department of Industrial Relations which is charged, among other things, with the duty of keeping the Plan alive and functioning at all of the respondent's plants. The original announcement of the Plan stated, in Article III, that "to aid in carrying out this plan the Company has established a Department of Industrial Relations which is charged with the duty of giving special attention to all matters pertaining to labor policies and the well-being of the employees". Representatives of that Department sit regularly as Chairmen of the Works Councils in the various plants. The whole complex organization is watched and guarded with extreme care. The money that goes to maintain the Department of Industrial Relations is thus in large part money used for the support of the Plan and can be regarded in no other light.

In the plant itself the financial support consists of two types:

(1) *Money paid to employee representatives.*—Every employee representative is compensated for the time lost from his regular job because of any activity in connection with the Plan, the compensation being based upon the rate of pay for the regular job of the representative. These activities in the main are: preliminary meetings of employee representatives alone, and with the Superintendent, Works Council meetings, committee meetings and committee work, such as safety inspection tours, contacting of constituents, contacting of foremen, etc., in an effort to adjust grievances.¹⁹ Most of the time so spent as an employee representative is in the handling of grievances, that is, both contact with the employee involved and with the foreman or assistant foreman. The monthly inspection tours usually take a full day. The preliminary meeting with the Superintendent, including the meeting of the employee representatives alone, takes about three hours. The monthly Council meetings take about the same length of time. All of these activities of the employee representatives take place during working hours and on company property. Representatives are for all practical purposes free to determine just how much time need be spent

¹⁸ It is only natural that outside labor organizations are handicapped in various ways. Use of the bulletin boards has been denied to the Union, on the ground that the boards are only for information of a plant nature. Notices of athletic activities, Credit Union matters (including elections), parties, etc., are found on the bulletin boards.

¹⁹ Up to a month prior to the hearing, the employee representatives who were on the Credit Committee of the Credit Union were paid for their work during plant hours in connection with that Committee.

on Works Council business—there is no attempt to restrict their activities.²⁰ The activities enumerated above and described elsewhere clearly extend beyond conferences with the management. The respondent so admits, but offers a legal defense for such support, which will be considered later.

(2) *Management payment of all expenses of the Plan.*—All of the expenses involved in the conduct of the Plan are defrayed by the respondent. Election paraphernalia, such as ballots, notices, printing, and even tellers and watchers, meeting places, Minutes, etc., are paid for or provided by the respondent. The Minutes of the Works Council are printed by the respondent. Notices of meetings, such as Works Council meetings, preliminary meetings with the Superintendent, committee meetings, are prepared by the management. The employees do not contribute one cent to the upkeep of the Plan. There are no dues. This also the respondent admits—“The Company admits that all expenses incidental to the operation of the Harvester Industrial Council plan have been borne by the Company . . . The Company admits that it had paid the small expense incidental to the elections conducted by employees for the purpose of choosing their representatives at the Fort Wayne Works.”²¹

C. *Recent changes in the Plan*

As far as possible, the discussion above relates to the functioning of the Plan at the time of the hearing before the Board. A comparison with the original statement of the Plan indicates that it has not been appreciably altered since its inception at the Fort Wayne Works in 1927. However, there are two rather recent situations that require comment.

1. Automobile Labor Board period—1935-36

In 1935, pursuant to an agreement between employers and employee organizations in the automobile industry, the Automobile Labor Board was established under the Code for the Automobile Industry under the National Industrial Recovery Act. This Board attempted to establish bargaining agencies in the various concerns in the industry, in which employee organizations were represented in proportion to votes received in elections held by the Board so as to insure minority representation. The respondent acquiesced

²⁰ Originally, in 1927, they have been told that they were spending too much time on Works Council matters and that they should try to limit such time to about two hours a day. The limitation has been removed and employee representatives are the judges of the amount of time to be spent.

²¹ Answer, pp. 13, 15. See discussion, *infra*.

in the Automobile Labor Board's establishment of such an agency in its Fort Wayne Works. Accordingly, that Board conducted nominating and final elections in 1935 for employee representatives. As a result of the nominating elections, two tickets were entered, one representing the Works Council, which had received 1,172 nominating votes, and one the Union (or American Federation of Labor ticket), which had received 782 votes. In the final election all of the six Works Council candidates were elected, each having run against a Union candidate. The Automobile Labor Board then ruled that the bargaining group for the employees in the plant should consist of the six employee representatives who were elected and five additional employee representatives designated by that Board. Of these, four were designated as affiliated with the American Federation of Labor and one as unaffiliated, inasmuch as 240 unaffiliated votes were cast in the nominating election. Designated representatives were not permitted to handle grievances directly with the supervisory force but were required to refer them to the proper elected representative.

There were thus 11 employee representatives instead of six as before, and whose term of office was to be for the year 1935-1936. But aside from this change and a few minor changes required by the rules of the Automobile Labor Board, the Works Council for 1935-1936 functioned as did previous Works Councils under the Plan in the past. The Minutes of the new Council indicate that no fundamental change in the Plan took place. The effect of the Automobile Labor Board rules upon the Plan was considered at a special meeting held on May 7, 1935. The employee representatives received a written welcome from the President of the respondent, addressed to the Superintendent of the plant, stating:

"Will you please convey to the newly-elected and appointed representatives of the Fort Wayne Works Council a hearty welcome from the directors and officers of the International Harvester Company." (Bd. Ex. 42, p. 5.)

The Superintendent then gave a brief talk in which he stated "that the plan laid down by the Automobile Labor Board compares very closely with the Works Council plan, which has been in effect at this plant for many years . . . Our Council plan, which has been in effect for many years, provides a satisfactory means for men to contact their council representatives and state their grievances, . . . the Works Council plan was the ideal method of bringing to the attention of the management any conditions that might need correction" (Bd. Ex. 42, p. 7). He urged the "new representatives to become better acquainted with council procedure" (*Ibid.*, p. 9). The Chairman, the Manager of Industrial Relations, then

discussed the rules of the Automobile Labor Board, pointing out the few cases in which they differed from the Plan. These differences were: there were designated as well as elected representatives; the term of office was one year instead of six months; the recall procedure (never used at Fort Wayne) was slightly different; representatives need not be employees of the respondent. He concluded that "it was interesting to note that the rules and instructions of the Automobile Labor Board conform very closely to the practices that have been followed by the Harvester Company. In fact . . . the council plan gives the employees a wider latitude in exercising collective bargaining" (*Ibid.*, p. 16). He then explained the Council procedure—designation of officers, function of committees, order of business at Council meetings, etc. (*Ibid.*, pp. 18, 20). He concluded by stating that "the Harvester Company has had a Works Council plan for sixteen years, which has proved to be a satisfactory medium for collective bargaining", and he "suggested that the members continue to function under the Council plan and the bargaining agency, with the exception that where the rules as followed in the past, conflict with the rules and instructions of the Automobile Labor Board, the Board's rulings would be followed" (*Ibid.*, p. 20). The suggestion was followed. As a result, the organization and activities of the Works Council remained the same for 1935-6 as they had been in previous years, with the exception that there were in that period 11 instead of six employee representatives. The bargaining agency continued to be known as the "Fort Wayne Works Council, Harvester Industrial Council", the term used prior to the Automobile Labor Board elections.

The respondent contends that in 1935 the Plan passed out of existence because of the acts of the Automobile Labor Board. However, as shown above, the evidence indicates the contrary. Instead of being superseded by the Automobile Labor Board rules, the Plan simply altered very slightly to conform to those rules and continued as altered, thereby illustrating the extent to which the respondent had established the Plan in the plant. Far from disrupting the Plan, the injection of the Automobile Labor Board served really to show the strength of the Plan set up by the respondent.

2. 1936 elections for employee representatives

The Automobile Labor Board ended with the Supreme Court's ruling that the National Industrial Recovery Act was unconstitutional.²² The terms of the employee representatives elected and designated in 1935 expired in April, 1936. These two factors naturally

²² *A. L. A. Schechter Corp. v. United States*, 295 U S 495 (1935).

gave rise to doubt concerning the 1936 elections. At the meeting of the Works Council for March 11, 1936, the elected employee representatives raised this question and stated that they had agreed that an election should be held. In reply, the Superintendent read the following letter, dated March 5, 1936, from the Vice-President of the respondent:

"About nine years ago the employees at Fort Wayne Works requested and by a 96% favorable vote adopted a Works Council Plan similar to plans which had been operating since 1919 in other Harvester plants. Continually, since that date employees' representatives have been elected from time to time.

"A year ago with the consent and approval of both employees and Company, the Automobile Labor Board appointed by President Roosevelt, supervised the election of employee representatives to serve for one year and certified those duly elected and also designated representatives of minority groups.

"As last year's procedure was somewhat different from that followed in prior years and the time for a new election is approaching, the question has been raised as to how elections should be held this year.

"In order that Harvester employees at Fort Wayne Works may fully understand the Company's policies and attitude with respect to elections of employee representatives, we request that you present this letter at the next meeting of the Works Council.

"The management now wishes to record its desire that all matters relating to new elections should be determined by the employee representatives in consultation with their constituents. This applies to the time and manner of holding elections, number of voting divisions, qualifications, number of representatives, terms of office, supervision of election, etc. The Company does not wish to take part in any of these proceedings but to leave to its employees the fullest freedom as to the manner of choosing representatives.

"The substance of the Works Council Plan has been to provide a means for recognition by the Company of duly elected representatives of its employees with whom representatives of the Company could meet to discuss matters of mutual interest, exchange ideas, get each other's viewpoint and develop ways and means for adjusting all problems.

"It is the substance of this plan which is important and the spirit in which it has been carried on, not the details of the procedure. We believe that Harvester employees generally recognize the unusual value of the Works Council Plan and the Company stands ready to cooperate with its employees in continuing the plan in such manner as they desire it."

Pursuant to such letter, the employee representatives then conducted the 1936 elections, as described above. The representatives designated by the Automobile Labor Board as affiliated with the Union refused to participate in the plans for the election, since they thought that the election should be held away from the plant under Government supervision, and because they felt that the Works Council was controlled by the management.

There is much in the record which suggests that the employee representatives elected in 1935, in other words those employee representatives who were in favor of the Plan, were informed by the management sometime prior to the Council meeting on March 11, 1936, of the scheme made public at the later date in the Jones letter quoted above, and that this information was withheld from the designated, or Union, representatives.²³ Many of the acts of the elected representatives prior to the Council meeting on March 11—their confident preparation for an election under their supervision, whereas in the past the Council had supervised the elections, the redistricting of the plant, etc.—seem explicable only on such a basis. But it is unnecessary here to find that the management secretly participated with the employee representatives in such maneuvers. It is necessary to go no further than the Jones letter to demonstrate how completely the management controlled the Plan and with what assurance it considered it as its creature. The letter states: "*The management now wishes to record its desire that all matters relating to new elections should be determined by the employee representatives in consultation with their constituents*" (italics ours).²⁴ Its tone indicates that a favor is being bestowed upon the employees for reasons best known to the respondent. Nowhere is there any indication that the employees have a sufficient interest in the Plan to warrant consulting them on the change. The letter is really an affirmation of the

²³ For example, the Secretary of the employee representatives, himself one of the elected representatives, testified that on February 29, 1936, he talked about the forthcoming election with a representative of the Industrial Relations Department in the latter's private railroad car, then at the station in Fort Wayne. The following is from his testimony:

"Q. And then did he say that they were going to turn over the election procedure to the employee representatives?"

"A. He said, 'I imagine that is what will happen, that it will be turned over to you men the same as it was to the other employees in other plants.'

"Q. What did he say was going to be turned over?"

"A. The work of taking the election."

²⁴ Compare the following testimony of the Secretary of the employee representatives regarding a conversation with a representative of the Industrial Relations Department in which the latter stated that the conduct of elections would be turned over to the employees:

"Q. What do you think was the necessity of discussing an election with a representative of the company if the employees were going to have complete control of it?"

"A. I didn't know that we were going to have, until he told us."

fact that the Plan given to the employees in 1927 is still the respondent's property, to be altered when its interests so dictate.

The respondent contends that the Plan as it was constituted in the past ceased to exist with this letter—that it was turned over to the employees. The contention is without merit. The letter itself indicates that the only aspect of the Plan from which the management claimed to withdraw was the election procedure. The fifth paragraph is unequivocal on this point:

“The management now wishes to record its desire that all matters relating to new elections should be determined by the employee representatives in consultation with their constituents. This applies to the time and manner of holding elections, number of voting divisions, qualifications, number of representatives, terms of office, supervision of election, etc. The Company does not wish to take any part in any of these proceedings but to leave to its employees the fullest freedom as to the manner of choosing representatives.”

And even as regards this aspect of the Plan, as shown above the election procedure was so well established that in substance the 1936 election did not differ from those conducted prior to 1935.

The rest of the letter and the events since the election show conclusively that the Plan is still in effect. The bargaining group is still called the “Fort Wayne Works Council”—its 107th regular meeting was held on April 8, 1936. Its Minutes are headed “Harvester Industrial Council, Fort Wayne Works”—the Plan announced in 1919 and instituted at Fort Wayne in 1927 was called the “Harvester Industrial Council”. The organization of the Council remains the same, its procedure and activities have not changed, the format of the Minutes is identical.

D. The “collective bargaining” that has resulted under the Plan

The scope of the Plan has been described and its mechanism detailed. The picture may be completed by a description of the collective bargaining that has resulted and an evaluation of the Plan.

A study of the Council Minutes for the last year shows that, nearly exclusively, the matters dealt with by the Council and the employee representatives concern minor aspects of working conditions in and around the plant. While examples have already been given above, an analysis of each meeting will be helpful. In each of the 12 meetings commencing with April, 1935, there was a lengthy discussion of safety factors in the plant, a report on athletic activities and a report on the Credit Union. The communications relating to the preliminary meetings dealt nearly entirely with working conditions in and about the plant, of the nature already described. These four

items—safety, Credit Union, athletic activities, communications—are the routine matters dealt with in each Council meeting and they are handled in routine fashion. The “New Business” consisted of the following: April—the employment manager in answer to a question clarified a minor detail in the vacation plan; May (regular meeting ²⁵)—the employee representative on the Board of Trustees of the Employees’ Benefit Association reviewed the recent meeting of that Board; the demand for a wage increase initiated by one of the designated (Union) representatives was discussed; ²⁶ June—no new business; July—the management answered a question concerning solicitation in the plant for the Community Chest; August—a brief discussion on the tact required in handling grievances with foremen; the Chairman explained the National Labor Relations Act, which was also printed in the Minutes; September—a few items of the type discussed at preliminary meetings with the Superintendent were considered; October—about the same as September; traffic conditions on a road running by the plant being specially considered; November—election of a new Vice-Chairman; discussion of the Social Security Act by the Chairman; December—an address by the Chief Inspector on the functions of the inspection department, including the reading of a poem by Edgar A. Guest; January—a member of the Planning Department spoke on planning in industry; further discussion by the Chairman on the Social Security Act; February—announcement by the Chairman of a change in the vacation plan; an address by the chief metallurgist on the manufacture of steel; March—discussion on parking problems and the holding of the 1936 election; an address by the plant auditor on accounting.

On the matter of wages alone there has been in a real sense little or no collective bargaining. The history of wage changes in the plant is as follows: In November, 1931, and again in October, 1932, wages were reduced by the respondent in the Fort Wayne Works. While the Manager of Industrial Relations stated that these reductions were “reluctantly agreed” to by the employee representatives, it should be noted that the reductions, which were caused by the depression and were Company-wide, were not the result of any bargaining concerning them. There were the same discussions in the Works Councils in the other plants—and in each, reductions were the outcome. After the passage of the National Industrial Recovery Act wages were raised 10 per cent through the restoration of one of these reductions. This restoration was not restricted to the Fort Wayne Works. After the Automobile Code went into effect changes were made in wages and hours and these changes were “discussed”

²⁵ A special meeting dealt with the problems raised by the Automobile Labor Board in the organization of the Council.

²⁶ See discussion, *infra*.

in the Works Council. In March, 1934, the employee representatives requested a 15 per cent wage increase. The respondent, after some discussion in the Works Council, offered a five per cent increase, which was accepted. Shortly thereafter the Automobile Chamber of Commerce recommended that hours be reduced from 40 to 36. The respondent, treating the reduction as an accomplished fact, discussed in the Works Council the manner of putting it into effect. A further adjustment was made in February, 1935, after the Automobile Code was extended, the management presenting its proposal, which was accepted. While all of these changes were discussed in the Fort Wayne Works Council, it is significant that comparable changes were made each time in the Springfield plant of the respondent, which also operated under the Automobile Code. There is thus much in this history to indicate that the Works Council discussion had little effect upon the course of wage and hour changes in this period and that the actual changes made were in most cases the result of plans formulated by the respondent and motivated in large part by the Code for the industry, but carried into effect through the medium of the Works Council.

In May, 1935, one of the designated representatives affiliated with the Union, without consultation with the elected representatives, requested a 15 per cent increase at the preliminary meeting with the Superintendent. The latter advised him to discuss the matter with the elected representatives. He did so and a demand for a 10 per cent increase was decided upon, the elected representatives agreeing to support the designated representative in such a demand. The demand was made at the May 15, 1935, meeting and was based upon an increase in the cost of living. The Superintendent said that while it would take several weeks to consider the matter, he could see no justification for the increase. The Chairman, a representative from the Industrial Relations Department, stated that he would notify the management in Chicago of the demand for an increase and that, "If after all the facts have been secured, the management decides that an increase cannot be granted at this time, the representatives and employees can feel assured that the decision was made only after a thorough study and complete investigation of every phase of the matter" (Bd. Ex. 43, p. 21). At the next meeting he reported that the management felt an increase was not justified at the present time, especially in view of the various individual adjustments that had recently taken place. The elected representatives gave no support to the demand in the discussion that ensued and the proposal was dropped. The Chairman then stated that "he had thoroughly enjoyed attending the past two council meetings, at Fort Wayne Works. In his opinion it was evident that a great deal of progress could be made with the continued cooperation and understanding

between management and employes, as had already been shown in the spirit manifested in the Fort Wayne Works council". (Bd. Ex. 44, p. 15.)

Thus, since 1927, the elected representatives made only one request for a beneficial change in wages and hours. Throughout the entire period of the depression and the introduction of the Codes under the National Industrial Recovery Act, this was the only attempt of the elected employee representatives to the Works Council to bargain with respect to wages and hours in general. The 1935 request was made by a designated representative, representing the Union, and admittedly hostile to the Plan. No agreement concerning wages, hours or even working conditions has been entered into since the Plan has been in operation at the plant.

The following testimony is a revealing commentary on the matters "bargained" about. The Secretary of the employee representatives, who has been on the Council since 1932, stated in answer to a question as to what was the most important demand he had presented, "I asked the management to change the paint grates in the paint booths every week." The most important thing that the Council had obtained for the employees that the management did not in his opinion wish to grant was the five per cent increase in 1934. The demand that took the longest period of time after its presentation before it was granted was a request for a method of eliminating steam from the pickling room. The most important thing that another employee representative, on the Council at least since 1933, secured for his constituents was ice water coolers.

IV. CONCLUSION

I

Before considering the legality of the Plan under the provisions of the National Labor Relations Act, it may be profitable to analyze it for the purpose of determining its value as a method of employee representation. The Plan is intended to provide a medium whereby "representatives elected by the employees shall have equal voice and vote with the management in the consideration of matters of mutual interest". It is therefore a "labor organization" within the meaning of the Act, which, in Section 2, subdivision (5), for the purpose of statutory construction, defines the term "labor organization" to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work". But, in any real sense, can the

Harvester Industrial Council Plan be considered as an effective method of employee representation and collective bargaining? Or, on the contrary, is it anything more than an elaborate structure designed to create in the minds of the employees the belief that they possess something of substance and value that enables them to deal with their employer on an equal footing, so that they will be sufficiently content to resist the appeal of an outside labor union? The skillful and painstaking efforts which the respondent exerted to secure the establishment of the Plan in its various works, and the extreme care with which it nourishes and guards the Plan today, would cause it, at the very least, to be open to careful scrutiny to a person familiar with the history of labor's struggles to organize in this country.

As seen above, the employees as a group come in direct contact with the Plan when they elect their representatives. But when such yearly elections are concluded, the employees as a body cease to have any direct concern with the Plan until the next year. They do not meet in a group to instruct their chosen representatives, to in turn secure information from them, or to consider as a group problems that affect them as a group. Since the adoption of the Plan, no election has ever been held on substantive questions or on the advisability of changes in the Plan—each election has been merely for the purpose of choosing representatives under the Plan. And even at such an election the vote concerns personalities and not issues—the candidates have no platform. The role of the employees as a group in the workings of the Plan is thus negligible.

The major role in the Plan is occupied by the Works Council. As stated in the Plan, it is designed to provide the representatives of the employees "an equal voice and vote with the management in the consideration of matters of mutual interest." On paper it is admirably adapted to that purpose. Representatives of management and employees sit in solemn council, discuss and debate matters of mutual concern, and decide such matters by a vote in which the strength of each is equal, one vote to each side. But obviously, the management representatives do not exercise a judgment independent of that of their superior, the Superintendent. His decision is their decision, so that a conception of the Works Council as a deliberative body possessing power is false. It is no more than a meeting of employee representatives with the Superintendent. If he agrees to a request it is carried out. If he disagrees, for all practical purposes that is the end of the matter. The elaborate machinery of appeal to the President, convocation of a General Council, resort to arbitration upon the acquiescence of the management serves only further to create the illusion of equality.²⁷ At every step it is merely

²⁷ The General Council and arbitration devices have never been utilized.

a question of whether management, subject only to self-restraint and the dictates of its conscience, says "yes" or "no". Moreover, the whole philosophy of the Plan is based upon free discussion between employer and employees as a method of handling disputes, instead of a resort to direct employee action as a group. It presupposes well-informed employee representatives and intelligent discussion between them and management. Yet it is clear that even the sincerest employee representatives are at a hopeless disadvantage. On one side are management representatives possessing complete information, statistical and factual, relating to the business and able to command the resources of a huge and efficient organization. On the other are employee representatives with no information other than that which their working experience has given them. Intelligent discussion of the complex problems involved in the fixing of wages, hours and general working conditions in an organization of the respondent's size is impossible under such conditions. The only possible weapon of the employee representatives—the assistance of outside experts—is effectively denied to them, since the management controls the purse strings. The employee representatives at the Fort Wayne Works have never had the aid of experts. Finally, when a deadlock is reached on any matter, the employee representatives can do nothing. They possess no funds, no organization to fall back upon, no mass support.²⁸

The manner in which fundamental changes in working conditions are made indicates that the Plan does not provide genuine collective bargaining. Such changes are nearly uniformly "announced" to the Works Council as accomplished acts; their formulation is for the management, not the Council. For example, at the meeting of August 14, 1935, the employee representatives are advised of a change in the pension plan made by the Board of Directors; at the meeting of March 30, 1934, the employee representatives are advised that the 36-hour week will be adopted; at the meeting of November 13, 1935, the employee representatives are advised that the passage of the Social Security Act makes it "necessary for the Company to modify its (pension) plan. When the modifications are finally decided upon, the Works Councils will be promptly notified" (Bd. Ex. 49, p. 16); allowances based upon time studies are prepared by the management and then explained to the employee representatives, but only after they requested a copy of the allowances. In some

²⁸ Compare the following testimony.

"Q. As I understand your answer to the Chairman, Mr Shrock (President of the Union), you don't think that the employee representatives could call a strike.

"A. Well, you can't do it very well if you haven't a mass meeting, if you haven't had one in nine or ten years, it is not possible.

"Q. If they did call one, who would be bound by their strike order?

"A. It would be positively nobody, because there is no organization."

instances the employee representatives point out defects in certain management policies and thereby "focus attention" on these aspects. But instead of the Council making a change, the management then considers the problem alone and announces its solution to the Council. In furtherance of such policies, no agreement relating to hours, wages or conditions of employment has ever been entered into by the management with its employees. By keeping itself free from any binding commitments in these fields, so that it may at will make any changes that it desires, the management has at the same time denied to its employees the advantages of collective labor agreements. As a result, its employees possess only the shadow, not the substance, of collective bargaining.

Other acts of the management indicate that the Plan cannot be regarded as productive of genuine collective bargaining. The die sinkers employed by the respondent belong to an outside labor union. These die sinkers have representation under the Plan and participate in the selection of employee representatives. Yet the respondent has at various times met with representatives of the die sinkers in the union and discussed working conditions affecting them. The respondent states that such a procedure is in accord with its policy of standing ready to meet and bargain freely and willingly on any matters with any group of its employees. Yet if the Plan must be taken as seriously designed to provide an effective bargaining agency for the Fort Wayne employees, it is clear that such conduct is at variance with that purpose, for the policies underlying the Plan are directly opposed to such conduct. Again, after a designated representative had brought up at a preliminary meeting the fact that one of the foremen had been openly uttering anti-Union statements and the assistant Superintendent had stated he would investigate and correct the foreman's attitude, the assistant Superintendent subsequently, in a personal conference with the designated representative, requested him not to bring such matters before the Council and thus put him "on the spot", but instead to bring them to him personally and he would attend to them. Such a request obviously is contrary to the basic policy on which the Plan is said to rest.

Finally, the Plan has no means of independent financial support. No dues are payable by the employees who participate by voting. All of its expenses and requirements are met by the respondent. The employee representatives are reimbursed by the respondent. Such complete management support of the Plan has two immediate consequences. Considering the Plan as a functioning method of collective bargaining, the result of such support is that the management pays the agent who is supposed to bargain with it on behalf of the employees. The respondent would not tolerate a

comparable situation in its dealings with other concerns—the Manager of Industrial Relations testified he could not conceive of the respondent permitting a situation to exist whereby one of its purchasing agents was receiving a commission on materials purchased by the respondent, even though the commission was openly acknowledged. One need not seek far for the reason why such financial support is incompatible with independent employee representation and genuine collective bargaining—an employee representative testified as follows:

“Q. You do think that you owe some loyalty to the man who pays you to do the job?

“A. I try to do a good job for him.”

Moreover, such management support, in conjunction with the other aspects of the Plan, is a subtle device to make difficult a fair consideration of the advantages of an outside labor organization through the persuasion of the “something for nothing” argument. During the Automobile Labor Board election the Works Council candidates circulated campaign literature which, after an enumeration of the things they wanted—good living wages, steady work, best working conditions and “an open door at all times to deal with management”, stated that, “What We Don’t Want (is) to have to pay for these privileges” (Bd. Ex. 40). An employee representative explained the statement as follows:

“Well, we have had collective bargaining there, and getting it for nothing, if you want to term it that way, and I feel that the average workman in that plant, a large percentage of them, are above the average intelligence.”

The philosophy of the respondent is thus the same as that of the foreman who believed that “Hank just throwed away \$5.00” when he joined the Union.

The second consequence is just as important. Such complete support of the Plan makes its existence entirely subject to the will of the respondent. If it chooses to withdraw its support, the Plan collapses at once. If it chooses to continue its support, the Plan continues. The choice as to whether representation of employees for collective bargaining shall continue is thus a choice that rests with the respondent and not with the employees.

Throughout we have spoken of the system of employee representation and collective bargaining at the respondent’s Fort Wayne Works as the “Harvester Industrial Council Plan” or, simply, the “Plan”. That Plan was originally embodied, as shown above, in a booklet distributed to its employees. With the passage of time and the development of the Plan through experience, both changes in the

original scheme and new procedures and aspects having the sanction of custom were added to those contained in the booklet. Some changes were more deliberate, such as the change in 1936 in some aspects of the election procedure.²⁹ But all together—booklet,³⁰ customs and deliberate innovations—constitute a plan of employee representation which exists for the purpose of dealing with the management. The fact that all aspects of the Plan are not stated in print has no bearing upon the case. Both the employees and management know what is meant by the Plan. The Jones letter of 1936 contained the following words: "We believe that Harvester employees generally recognize the unusual value of the Works Council Plan", and it must be assumed that the Vice-President considered such language to be intelligible to the average employee. The Minutes of the Works Council, the notices for the 1936 elections, use the term "Harvester Industrial Council"—the term used to describe the Plan when it was introduced. The Board's use of the term "Harvester Industrial Council Plan" to describe the procedure of employee representation and bargaining with the management in existence at the Fort Wayne Works at the time of the hearing thus accords with the understanding and practice of both the management and the employees.

II

We may now turn to a consideration of the legality of the Plan under the National Labor Relations Act in the light of the facts found above. Section 8, subdivision (2) declares that it shall be an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it".

At the outset it must be remembered that the respondent conceived of the Plan, formulated it and caused it to be put into operation. It started out as the respondent's Plan—not the employees'. It has continued to be the respondent's Plan. Its entire upkeep, all its expenses, are defrayed by the respondent. The persons who are charged with the task of representing employees are reimbursed by the respondent for the work they perform in such capacity. The respondent admitted such financial support but contended it was not contrary to the Act for the following reasons: (1) The proviso of Section 8, subdivision (2), properly construed, permits the practice of allowing employee representatives to perform all of their duties without loss of pay. Consequently, they may be compensated at

²⁹ The year 1935-1936 saw some temporary changes occasioned by the activities of the Automobile Labor Board.

³⁰ The booklet was still being distributed to new employees in 1936. A copy was given to one of the designated representatives in 1935.

their regular rate of pay for time spent in activities in connection with the Plan, such as contacting constituents, meeting among themselves, etc., even though such activities do not involve at the time conferences with management, since such activities enable the representatives later to confer intelligently with management. But the clear words of the proviso negate any such construction—"an employer shall not be prohibited from permitting employees *to confer with him* during working hours without loss of time or pay" (italics ours). The Senate Committee Report speaks of the "right to receive normal pay *while conferring*",³¹ and it is manifest that the proviso goes no further than permitting such conferences directly with management to occur without loss of pay to the employee representatives; (2) The respondent further contended that Section 8, subdivision (2) does not prohibit the respondent from giving financial support to the Plan and bearing the expenses incidental to its operation since the Plan is not a labor organization and the Section only prohibits the contribution of financial support to a "labor organization". The Plan is said not to be a labor organization in that it is not a membership society capable of acting as a legal entity—it has no members, no existence of any kind as an artificial person but is merely an aggregate of practices. In relation to the efficacy of the Plan as a collective bargaining mechanism, this admission is significant. As an argument, however, it borders on the frivolous in view of the language of Section 2, subdivision (5) defining the term "labor organization" as used in the Act to include "*any agency or employee representative committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers*" (italics ours). It is obvious that the term "labor organization" is not used in its ordinary meaning but in a special and technical sense solely for the purpose of statutory draftsmanship and to make the prohibition of Section 8, subdivision (2) all inclusive.³² That prohibition was intended to apply to any device which would tend to displace, or masquerade as, a genuine labor organization, whether it was itself such a genuine organization or not. In short, the term "labor organization" was so defined to avoid the very contention that the respondent now urges upon us.³³

The respondent's contributions are not limited to financial support. Its President, Vice-Presidents, Manager of Industrial Relations,

³¹ 74th Congress, 1st Session, Senate Committee on Education and Labor, Report No. 573, p. 10. (Italics ours)

³² See *In the Matter of Atlanta Woolen Mills*, Supplementary Decision and Modification of Order, June 10, 1936 (1 N L R B 328).

³³ 74th Congress, 1st Session, Senate Committee on Education and Labor, Report No. 573, p. 7

Superintendents—in fact its whole executive and supervisory force—unceasingly extoll the virtues of the Plan. The employee whose economic life is at the mercy of those who sing such praises will not fail to comprehend their significance. And, such economic considerations aside, the praises of such business leaders at the very least are certain to commend the Plan to many an employee and his family—“Approbation from Sir Hubert Stanley is praise indeed.” In another field, by careful manipulation and scrupulous adherence to the outward forms of collective bargaining, the respondent has so interwoven the Plan into the numerous beneficial activities designed to improve the welfare and morale of the employees and thus increase their efficiency—vacation plan, Credit Union, Athletic Association, pension plan, safety measures, etc.—that the Plan receives credit for many of these benefits in the eyes of the employees. This association of things intrinsically beneficial to the employees with a system of collective bargaining which in reality has played little or no part in their creation or functioning constitutes “restraint” upon the employees to adhere to the Plan and “support” for the Plan. The impropriety would hardly be more obvious if the respondent were to inaugurate the practice of Christmas bonuses and allot them to the employee representatives for distribution.

With equal skill and subtlety the respondent controls the procedure of the Plan. Its Industrial Relations Department sits at the controls, keeping constant watch. The normal operations of the Plan can be steered in any direction by means of the many checks carefully established—preliminary meetings, management officials as Chairman and Secretary, appeals to higher executives, etc. Now this change will be made, now that change, if the management so “wishes to record its desire”.

The Plan is thus entirely the creature of the management. The respondent in its relation to the employees may be conceived as a holding company—the Athletic Association, pension plan, vacation plan are the subsidiary operating companies. The Harvester Industrial Council Plan is merely one of these subsidiary concerns controlled by the respondent. In so controlling it the respondent is beyond question acting contrary to Section 8, subdivision (2), and interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

We find that the aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The respondent has controlled the Plan at its Fort Wayne Works ever since its inception in 1927, and such control today is a violation of the Act. To terminate that violation and to insure to the em-

ployees at the Fort Wayne Works the right to self-organization and the free choice of representatives for collective bargaining guaranteed to them by the Act, the Board will order that the respondent shall withdraw all recognition from the Plan as an agency for collective bargaining at the plant and completely disestablish it as a representative of its employees. Such disestablishment is the only effective remedy in the case. *In the Matter of Pennsylvania Greyhound Lines, Inc.*, decided December 7, 1935 (1 N. L. R. B. 1); *In the Matter of Clinton Cotton Mills*, decided December 31, 1935 (1 N. L. R. B. 97); *In the Matter of Wheeling Steel Corporation*, decided May 12, 1936 (1 N. L. R. B. 699); *In the Matter of Ansin Shoe Manufacturing Company*, decided June 12, 1936 (1 N. L. R. B. 929).

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. The plan of employee representation and collective bargaining at the Fort Wayne Works known as the "Harvester Industrial Council Plan" is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its domination and interference with the administration of such "Harvester Industrial Council Plan", and by its contribution of financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

3. By the conduct set forth above, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, International Harvester Company, and its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to

engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection ;

2. Cease and desist from dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto.

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

(a) Withdraw all recognition from the "Harvester Industrial Council Plan" as representative of its employees at the Fort Wayne Works for the purpose of dealing with respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work ; and completely disestablish the "Harvester Industrial Council Plan" as such representative ;

(b) Post notices in conspicuous places throughout all departments of the Fort Wayne Works stating (1) that the "Harvester Industrial Council Plan" is so disestablished, and that respondent will refrain from any recognition thereof, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.