

In the Matter of THE SOLVAY PROCESS COMPANY and UNITED CHEMICAL WORKERS LOCAL INDUSTRIAL UNION No. 164

Case No. C-291.—Decided February 16, 1938

Chemical Manufacturing Industry—Company-Dominated Union: charges of not sustained, complaint dismissed.

Mr. Jacob Blum and Mr. Reeves R. Hilton, for the Board.

Hunton, Williams, Anderson, Gay and Moore, by Mr. T. Justin Moore and Mr. George D. Gibson, of Richmond, Va., Mr. David A. Harrison, Jr., of Hopewell, Va., and Mr. Harry S. Ferguson, of New York City, for the respondent.

Mr. Robert J. Francis, of Petersburg, Va., for the Council.

Mr. Hyman A. Schulson, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by The Federation of Architects, Engineers, Chemists and Technicians, herein called the Federation, the National Labor Relations Board, herein called the Board, by Bennet F. Schauffler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated July 28, 1937, against The Solvay Process Company, Hopewell, Virginia, herein called the respondent. The complaint and notice of hearing were duly served upon the parties. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, in that it had dominated and interfered with the formation and administration of a labor organization known as the Solvay Workers' Council, herein called the Council, and had contributed financial and other support to it.

On August 7, 1937, counsel for the respondent, appearing specially, filed with the Regional Director motions to dismiss the complaint and for a bill of particulars. On the same day counsel for the respondent filed an answer to the complaint in which it admitted the allegations concerning interstate commerce, but denied the allegations concerning the alleged unfair labor practices.

Pursuant to notice, a hearing was held in Hopewell, Virginia, on August 26, 27, 28, 30, and 31, 1937, before D. Lacy McBryde, the

Trial Examiner duly designated by the Board. The Board, the respondent, and the Council were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the parties.

A written motion to intervene in this proceeding was filed on August 8, 1937, with the Regional Director by counsel for the Council, and was resubmitted at the hearing; the Trial Examiner granted this motion. At the outset of the hearing the respondent resubmitted the motions to dismiss the complaint and for a bill of particulars which it had previously filed with the Regional Director. These motions were denied by the Trial Examiner. During the hearing, amendments to the pleadings changing the name of the Federation of Architects, Engineers, Chemists and Technicians to United Chemical Workers Local Industrial Union No. 164, herein called the United, were also allowed. At the close of the hearing, counsel for the respondent moved to dismiss the complaint on the ground that no evidence had been adduced to sustain the allegations. The Trial Examiner reserved ruling on the motion.

On November 13, 1937, the Trial Examiner filed an Intermediate Report finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. Thereafter the respondent and the Council filed exceptions to the Intermediate Report, taking exceptions to the ruling of the Trial Examiner during the course of the hearing, as well as to the findings and conclusions of the Intermediate Report, and requested an opportunity to argue the exceptions before the Board. The respondent filed with its exceptions a brief in support thereof.

Pursuant to notice, a hearing was held before the Board in Washington, D. C., on December 23, 1937, for the purpose of oral argument. The respondent and the United participated.

The Board has reviewed the rulings of the Trial Examiner on objections to the introduction of evidence made during the course of the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the Intermediate Report and the brief filed in support thereof. As indicated below, the exceptions to the conclusions and recommendations of the Trial Examiner are sustained.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Solvay Process Company, a subsidiary of the Allied Chemical & Dye Corporation, a New York corporation, owns and operates a

chemical plant at Hopewell, Virginia, where it is engaged in the manufacture of nitrogen derivatives and related products. Approximately 800 employees are engaged in the plant; about 100 of these constitute the supervisory staff.

The allegations of the complaint that the respondent causes both its raw materials and its products to move through States other than Virginia were admitted by the respondent in its answer.

II. THE ORGANIZATIONS INVOLVED

United Chemical Workers Local Industrial Union No. 164 is a labor organization admitting to membership all chemical employees of the respondent, exclusive of supervisory and clerical employees. It is a local affiliated with the Committee for Industrial Organization, herein called the C. I. O.

The Solvay Workers' Council is a labor organization limiting its membership to all employees of the respondent, exclusive of supervisory employees.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged domination of and interference with the Solvay Workers' Council*

Early in May 1937, some of the respondent's employees led by Russel Powell Eaves, a pipe bender, decided to form a labor organization and to that end called upon John W. Pollard, an organizer for the C. I. O., at his office in Richmond, Virginia. Shortly thereafter, Ray Broyhill, a co-owner of the Conoco Service Station in Hopewell, acting without authority, for five dollars rented the Hopewell Armory to the Eaves group for the purpose of holding its first meeting on May 12. When some of the respondent's employees came to the armory on the evening of May 12, they found it locked. On the same night, J. L. Bazemore, a member of the Eaves group, received the following letter from Ray Broyhill:

Mr. BAZEMORE. Due to the action of the City Council, the right to rent the armory has revoked and placed in the hands of the City Manager only. I don't know why this took place so sudden as I didn't know anything about it until a few min. ago so I suggest you call Mr. Ancell about your meeting tonight.

Sorry I cant come down myself but Red has gone to supper.

RAY R. BROYHILL.

P. S. I am returning the rental paid me. It will have to be paid the city.

In his testimony Eaves stated that control of the Armory was vested in Dr. Elder, the mayor of Hopewell and the respondent's

physician. H. Budge, an employee in the mechanical division of the respondent's plant, told the same story with the additional statement that the City Council said, "There wasn't going to be no C. I. O. meetings held in Hopewell." These statements were conclusively shown to be without foundation. The mayor had no jurisdiction over the use of the Armory, but the matter was vested by unanimous resolutions of the City Council at a regular meeting on December 12, 1933, solely in W. G. Ancell, the city manager of Hopewell.¹ Ancell entered into an agreement dated January 10, 1936, with Thomas Broyhill and Ray Broyhill, co-owners of the Conoco Service Station in Hopewell, giving them certain privileges for the use of the armory for a one-year period expiring January 10, 1937.² After the expiration of said agreement Thomas Broyhill requested a renewal. The city manager refused the renewal but gave him the privilege of renting the armory for Saturday night dances and special dances on other nights when convenient to the city, but only for dances. This arrangement was embodied in a letter dated April 27, 1937, prior to the beginning of the first union activity.³ Due to the absence of Thomas Broyhill from town, Eaves applied to Ray Broyhill, who knew nothing whatever of the terms of the agreement and was mistaken in supposing that he had authority to let the Eaves group use the armory. When this action was brought to the attention of the city manager by the caretaker of the armory, he promptly refused to allow such use to be made of the armory, not only because Broyhill was without authority in the premises, but also because the armory had been cleaned and decorated and the floor polished for a hospital dance on the following evening. The mayor knew nothing of the occurrence. The prejudice against the C. I. O. which members of the United attempted to show was therefore solely a matter of ignorance on the part of Ray Broyhill. The mayor and the city manager subsequently allowed the United to use the Hopewell Municipal Building for meeting purposes.

After failing to meet at the armory on May 12, the Eaves group held a meeting at Budge's farm on the same night.

A few days prior to this meeting and thereafter, membership applications and cards were circulated throughout the respondent's plant.⁴ One of these was handed to J. J. O'Leary, the respondent's manager of production, on May 8, 1937, by one of the respondent's supervisory employees. O'Leary, upon the receipt of the membership card, promptly issued instructions to all the foremen, assistant foremen, and other supervisory employees of the respondent that they "must so

¹ Respondent Exhibit No. 21.

² Respondent Exhibit No. 22

³ Respondent Exhibit No. 23

⁴ Respondent Exhibit No. 1.

conduct themselves as not to interfere in any manner with any group that might wish to organize.”

A few days after May 8, rumors became prevalent around the plant that the gas plant would be seized or shut down. Accordingly, on May 12 some additional men were transferred to the gas plant from the ammonia plant. The management took proper precautions, and nothing untoward occurred. Shortly after May 15, the rumors of seizure declined, and the extra men in the gas plant were transferred back to the ammonia plant.

On May 17, O’Leary received a letter from Eaves as chairman, and four other men as members, of the Committee for the Hopewell Chemical Workers Union, requesting a conference on the following day, primarily “to discuss with you some misunderstanding as to our purpose in organizing.” Essentially the letter announced three things: (1) contrary to the general rumor, the Committee intended no violence; (2) the Committee had “no authority to negotiate any agreements” but was only in an incipient stage; (3) the union men had not affiliated with any national organization and the “Committee sees no reason why they and the respondent cannot arrange a meeting with a permanent committee from the plant, which will truly represent the men in the plant as a whole, without any outside advice.”

Such conference was held on May 18, Eaves then stated that his group had no idea of calling a strike but was merely organizing “for job security”. O’Leary made no objection to this course but pointed to the Act and said that the management would not take a stand one way or the other and would so conduct itself as to retain the friendship of all the employees. He cautioned them against permitting persons unfamiliar with the operation of the plant to cause some improvident action which would endanger the plant. Aside from that, O’Leary told the Committee he had no interest in whom it placed its direction under, and did not intend to take any part in relation to any organization of the employees one way or the other. He made it clear that he would not take sides, object or interfere in any way, however the men organized. This testimony was corroborated by Eaves. At the end of the conference O’Leary “asked them to come back whenever they wished”. To use his own words, “I invited Mr. Eaves to bring his own committee (which I considered C. I. O) back to meet me any time at all. I told him I was not hard to reach and they did not have to give me advance notice, that they could get me any time they wished and, on top of that, any of them as individuals could come in any time they wanted to.”

During cross-examination Eaves developed the idea that O’Leary had limited his willingness for a further conference to a conference with a local committee unaffiliated with any national organization and had declined to meet with any committee having such affiliation.

We cannot give credence to Eaves' testimony. O'Leary directly and unequivocally denied Eaves' testimony. W. H. Langewisch, assistant manager of production, who was present at the conference confirms O'Leary's testimony. None of the other four men on the committee, two of whom testified, corroborated Eaves' testimony. In fact, on the following day, May 19, Eaves, presiding over a meeting of the United in the Hopewell Municipal Building, announced that he "hoped to present the Union's working agreement to the Company within a few days" and that "the plant superintendent had talked favorably about the Union".⁵ Neither Eaves nor his Committee, nor any representative of the United, ever had any further interview with O'Leary and never made any effort for collective bargaining or negotiation after May 18.

At the May 18th conference Eaves likewise requested O'Leary to see that Walter George, the supervisor of safety, was instructed to discontinue making efforts to obtain signatures of employees on a petition that was being circulated through the plant. George is an employee with no subordinates or supervisory authority of any kind, and is engaged solely in inspecting and improving safety conditions in the plant. O'Leary replied that it was always his practice, on hearing a charge made against another man, to call in the other man and give him an opportunity to tell his side of the story; he accordingly offered to summon George and thresh the matter out in the Committee's presence. Eaves, however, refused to allow this to be done. As soon as the conference was over, O'Leary called George to his office and asked him whether Eaves' charge was correct. George replied that there was no truth whatever in the charge. O'Leary then pointed out to George that the successful discharge of George's duties relative to safety in the plant required the cooperation of all employees and that for that reason he should not permit himself to become involved or affiliated in any faction or movement of any kind that might exist among the employees. George had previously received identical instructions from Duffy, his superior, and testified that he faithfully obeyed them at all times.

On May 13, the morning after the meeting of the Eaves group at Budge's farm, H. L. Reichardt, an employee working on the scales, came into the machine shop and met R. F. Whitehurst, an employee, who had a short time before the hearing resigned his position to take a new position with another company in Brazil. Whitehurst began a conversation on the subject of unions. It is significant to point out that Whitehurst had worked for the Tubize-Chatillon Company at its Hopewell plant for about 12 years prior to 1934. In 1934, a union was organized in the Tubize-Chatillon plant under the auspices

⁵ Respondent Exhibit Nos 10 and 19

of the American Federation of Labor and a strike was called. As a result of this strike the machinery was injured and the plant was closed down and never reopened. As a result Whitehurst lost his job and was unemployed for about a year. He finally obtained a job with the respondent. Whitehurst was very much disturbed by the current rumors of union organization for fear that trouble might develop at the plant similar to that which he had previously experienced. Whitehurst asked Reichardt if they could draw up some kind of petition in order to see how many men were opposed to an outside labor organization. Reichardt agreed that this would be desirable and the two men composed forthwith the text for such a petition. This was the product of their joint labor, and was, so far as the evidence shows, conceived and executed by them without suggestion or assistance from any other source and without the knowledge of any other person. Reichardt took the longhand draft home with him that night to type, but his typewriter was out of order. He came to the plant early the next morning and typed it in the oxidation laboratory prior to his working hours. Nobody else was present in the laboratory at that time and he had no permission to use the typewriter or the paper which he found in the typewriter desk.

The petition so prepared was a declaration of sentiment on the part of the subscribers to the effect that they did not want the United or any other similar organization.

Whitehurst and Reichardt had heard of an independent union in the neighboring plant of the Dupont Company at Amptill, Virginia. Both men thought that some such organization would be desirable at the plant if the men approved. Copies of the petition were distributed to hourly employees in various parts of the plant for circularization. In the ensuing three or four days about 150 men subscribed to the petition. This was done without aid or support from any of the management groups.

When these signatures had been obtained, Reichardt thinking it proper that the management should be advised that there was a division of feeling among the men on the question of unionization, wrote a letter to O'Leary on May 18, 1937, and submitted that letter, together with the originals of the petition, to O'Leary on the morning of May 19. O'Leary did not encourage or discourage Reichardt in his views or converse with him on the matter whatever.

J. V. Daniel, an employee in the mechanical department, shortly after the advent of Pollard, the C. I. O. organizer, prepared a letter to O'Leary^a stating that the subscribers desired to lay before him their plan to combat any outside labor organization whatever and to hear from him any advice which he might see fit to give on that

^a Respondent Exhibit No. 3.

subject, their plan being to form an employees' works council. Daniel then knew nothing about the Whitehurst-Reichardt petition, but shortly after he had written this letter, he discovered that Whitehurst and Reichardt were working along similar lines to his, and so he invited them to join him.

Daniel delivered his letter to O'Leary on May 26. O'Leary had a conference with Daniel, Whitehurst, Reichardt, and others on the afternoon of the same day. Daniel and the other subscribers to his letter stated that they were opposed to having a C. I. O. organization in the plant and requested advice as to what they could do in furtherance of that purpose. O'Leary replied that he would "give them no advice whatsoever", that under the Act the management could not participate or advise or assist in any labor movement or organization, that he could not have any part or parcel therein, and that he would not interfere with any labor organization going on, either in word or in spirit. Daniel and his associates stated to O'Leary at the conclusion of the conference that it was their intention to form a workers' council. O'Leary replied that he would not tell them or suggest to them that they form an organization or not, but that it was his instruction that no effort of any kind in that direction be made on company time. This testimony of O'Leary was not contradicted or questioned. In fact, it was confirmed in all points by every witness who referred to it.

On the evening of May 28 a meeting was called by the Daniel-Whitehurst-Reichardt group to organize an independent union. Membership cards had been printed in advance. Carter, an employee, had drawn up a tentative draft of bylaws. F. C. Maloney, a chemist, acted as temporary chairman of the meeting. He explained that "the purpose of the meeting was to organize the hourly employees of the plant into a group independent of any foreign or any outstanding labor organization and with absolutely no connection with the company." A discussion of the tentative draft of the bylaws ensued. The question of the amount of dues to be charged was also discussed. A number of employees signed membership cards at the conclusion of the meeting.

Maloney had been informed on May 21, seven days prior to the Council's meeting, that he was to be transferred to the salaried roll on June 1. This change did not affect the nature of his duties in any way and did not give him any supervisory authority or bring him into the ranks of the management, but was merely a provision to enable the respondent to call for his services more than 40 hours a week, and was made without any connection or reference whatever to any possible labor activities or sympathies on Maloney's part. Maloney had been asked to preside by Carter because his experience

in presiding at meetings of his church qualified him for the task. When Maloney learned that membership in the Council was restricted to hourly employees, he at first refused to preside. When the Committee, however, pressed him to preside, he did so with the reservation that he would only act as chairman for the first meeting as he was still an hourly employee when the first meeting of the Council was held. In his uncertainty as to whether his declared but not yet effective change in pay-roll classification made it improper for him to preside at a meeting in regard to the formation of an organization of hourly employees, he asked O'Leary for advice on this question, but O'Leary flatly declined to give him any advice or counsel of any kind. Maloney took no active part in the Council after June 1, the day he was put on the salaried list.

At the invitation of Daniel's nephew, an employee at the plant, Lowry, the head of the workers' council in the neighboring Dupont plant, addressed a second meeting of the Council on June 3. Lowry explained the organization of the Dupont Council and answered questions in regard thereto. At the end of the meeting a voluntary offering was taken up to defray the expenses of the Council, and some \$33 was collected. From that collection all expenses of the Council up to that time were paid; an itemized list was given in the record. It was clearly shown that the respondent contributed no financial support toward the Council. The only other revenue of the Council was money subsequently received from membership dues.

On the evening of June 3 the United had a meeting in Petersburg, at which it voted to affiliate with the C. I. O., and elected permanent officers.

At this time there had developed two distinct factions among the men at the plant, the United and the Council. Both groups actively solicited members. O'Leary had given instructions that there should be no solicitation of membership in any organization of any kind on company time, but it was impossible to enforce compliance with these instructions, and they were in fact disregarded by both groups.

At a conference with O'Leary on June 9, Reichardt at a Council committee produced Council membership cards signed by 374 hourly employees of the plant and requested O'Leary to recognize the Council as the exclusive bargaining representative of the respondent's hourly employees. O'Leary refused to recognize the Council as the exclusive bargaining representative, but said that he would recognize the Council as the sole bargaining agency for its members only. O'Leary stated that the Board was the final judge as to who would be the exclusive bargaining agent. He refused to recognize the Council in order to protect himself against the possibility of both the Council and the United claiming a majority in good faith.

On June 18, O'Leary had another conference with the Council committee, pursuant to its request. At this time the Council claimed to represent 390 hourly employees. The committee again asked for recognition as exclusive bargaining agent, which O'Leary again refused for reasons previously stated. The committee asked him to begin negotiations looking toward an agreement. O'Leary took this under advisement and gave no definite reply. The committee also laid before O'Leary Articles IX and X of the tentative draft of the Council's bylaws, specifying certain procedure for the handling of grievances. O'Leary took this proposal under advisement. The committee also listed certain grievances, principally a request for a more liberal vacation allowance and a request for a revision of rate structure in the mechanical and electrical forces. O'Leary promised to give this matter his studied consideration. O'Leary refused the committee's request for permission to use the respondent's bulletin boards and issued instructions that the bulletin boards could be used only for company purposes.

At this point we digress to consider Eaves' testimony that the Council's bylaws were "hanging on every (bulletin) board in the plant for eight or ten days". On cross-examination it appeared that Eaves never went in any other part of the plant except the machine shop and knew only about the machine shop bulletin board. Eaves cut down his general statement to a charge that a copy of the bylaws was on the machine shop bulletin board for a period of three or four days. He was, however, definitely able to say that this occurred between May 5th and 10th. It was shown by other witnesses, however, that it was not until May 28, when the first meeting of the Council was held, that a preliminary draft of the bylaws was made. The final form of the bylaws was completed in time for the Council meeting on June 14, at which time they were approved. The bylaws were not mimeographed until the last week in June.

W. A. Waldron, an employee, testified that a particular copy of the bylaws⁷ was posted on the bulletin board of the compressor building from July 15 to August 4, but it was shown by the Board's counsel that that particular copy had been in the Regional Director's possession since June 21.

E. M. Reed, a welder, testified that he had seen a particular copy of the bylaws⁸ on the bulletin board in the machine shop, but he was unable to recall whether it was in January, April, May, June, July, or August. It was clearly shown that the instructions of the management forbade any notice to be posted on company bulletin boards by either group. No violations of these instructions had been reported or came to the knowledge of the management, except a notice of a

⁷ Board Exhibit No. 11.

⁸ Board Exhibit No. 14.

meeting of the Eaves group which O'Leary ordered taken down after speaking to Eaves about it.

On June 23 the Council committee again conferred with O'Leary to receive his reply to their requests of June 18. O'Leary agreed to recognize the Council as the bargaining representative for its members and granted a vacation with pay to all employees continuously on the pay roll since January 1, 1935.

On June 21, Eaves filed with the Regional Director charges of the alleged violation by the respondent of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act.

The next meeting of O'Leary with the Council committee was on July 27. The committee presented to O'Leary a draft of an agreement.⁹ Certain changes were recommended by O'Leary and the matter was continued for further discussion and consideration. On July 29, O'Leary received an amended draft of the proposed agreement from the Council. On the same day the respondent was served with the complaint of the Board in this proceeding. O'Leary concluded that it would be best for all parties concerned to defer any action in regard to the proposed working agreement until the question presented in this proceeding had been determined. O'Leary wrote to the Council on August 5 advising it of the respondent's decision.

There are certain episodes related by members of the United tending to show the respondent's support of the Council, which deserve some comment. Aderholt, a section operator of the respondent and treasurer of the United, testified that on May 14, George, supervisor of safety, gave him a letter in a buff envelope addressed to Thad Stevens, an employee. According to Aderholt's story, George directed him to open the letter, explaining that "it is company business". Aderholt did so and saw inside a copy of the petition. Aderholt further testified that George told him to "go up and start circulating on the four to twelve shift". In fact, Aderholt took the communication home with him, "snatched" another copy of the petition "out of the purification building", put that in the envelope and gave that to Stevens. On cross-examination Aderholt added that George initially said to return the letter to the police station and then "caught himself and said 'return it to Whitehurst at the machine shop'". On direct examination Aderholt said that the letter was sealed when it was given to him; on cross-examination he said that the letter at that time was open.

George absolutely denied Aderholt's story. George testified that in the course of his duties, which require him to go throughout the plant, he frequently takes letters left at the patrol office to their addresses throughout the plant, including personal messages be-

⁹ Respondent Exhibit No. 13.

tween the men as well as company business. On this occasion he found at the patrol office an envelope, left there in his absence, addressed to Stevens. He took the envelope and on his rounds came to the compression building. He there saw Aderholt and asked him to deliver the letter to Stevens. Aderholt demanded to know what was in the letter. George replied that he had no idea, and thereupon departed. Aderholt did not open the letter in George's presence.

We cannot give credence to Aderholt's testimony. It is difficult to believe that George would have tried to promote a petition by the Reichardt-Daniel group by giving it to Aderholt who by general knowledge was a leader of the Eaves faction. It will be recalled that George, shortly after May 8, was specifically instructed not to align himself with any faction among the men or to take any part by work or deed or gesture in any labor organization activity. Those instructions were repeated to him by O'Leary after the latter's meeting with the Eaves group on May 18. George testified that he at all times faithfully carried out those instructions.

Subsequently Aderholt tried to dispel rumors around the plant that he was connected with the C. I. O. by voluntarily denying these reports to Houser, the superintendent of the power subdivision, and Reeves, his foreman. Houser told him that he was not interested and replied, "You use your own judgment about that". Reeves replied that he was not interested and that anything Aderholt did about union organization was all right. When Aderholt told Reeves he did not want to jeopardize his job, Reeves replied, "Well, Aderholt, as long as you do your work here with us, that is all I personally expect of you." This testimony was not denied by Aderholt.

Another episode was recounted by Everingham, who testified that Daniel brought to him, in the tool room, which was ordinarily locked, a copy of the petition and asked his signature, which he declined to give. Daniel left and returned in a short time with W. F. Ashton, the general foreman, who allegedly said, "What is the matter with you, why won't you sign this petition?" Everingham replied, "Mr. Ashton, first I don't believe it; I have seen too many of these so-called unions; they don't go." After some delay, according to Everingham, Ashton said that if Everingham did not sign the petition he was going to make E. K. Lund, the master mechanic, "mad", adding that Everingham "was the one man that the old man Lund wanted to sign the card", and that he knew what would happen if he did make the old man mad.

Daniel and Ashton explained their version of what took place. Daniel at that time was proceeding to obtain signatures to the letter of May 26, requesting an interview with O'Leary.¹⁰ Daniel asked his

¹⁰ Respondent Exhibit No. 3.

foreman, Ashton, if he could assemble a committee to call on O'Leary, without explaining to Ashton the purpose of the committee. Ashton said that that was all right. In the course of a business visit to the machine shop, Daniel asked Everingham if he would sign the letter as representative of the machine shop. Everingham replied that he was in favor of the letter, but that he could not sign because of the men in the machine shop who were with the C. I. O. Daniel departed. Later as Daniel was passing through the machine shop with Ashton, Everingham, being in the tool room which is merely an enclosure of netted wire, saw them and beckoned them to approach, which they did. Everingham asked Daniel for the letter and turned to talk to Ashton about it. Everingham said that he could not sign the petition. Ashton replied that he knew nothing of any petition, that as far as he knew "they were looking for a committee to wait on O'Leary." Ashton made no suggestion whatever that Everingham sign any paper and made no effort to induce him to do so, but told him that that was a matter for his own choice. When Everingham subsequently spoke to Lund about the matter, Lund replied, "That will be entirely up to you. It is immaterial to me whatever you do. Whatever they want you to sign, if you want to sign, go ahead."

Having considered the conflicting evidence concerning the above episodes and the respondent's neutral attitude toward its employees' organizational activities, we give credence to the testimony of the respondent's witnesses. The testimony of Everingham and Aderholt concerning the above-described episodes was in a large measure discredited on cross-examination and contradicted by other witnesses. In the whole record there is little or no evidence of any antiunion activity by the respondent in its plant.

The record discloses that Reichardt, who helped to form the Council was promoted from an hourly employee to a foreman in the respondent's transportation department on July 28. We are unable to agree with the Trial Examiner's finding that Reichardt's promotion was in reward for his activities in helping to organize the Council. Reichardt had been negotiating for a better paying position with the Merrick Scale Manufacturing Company of Passaic, New Jersey, since March 1937. A better position was offered to him by that company in July.¹¹ In order to retain Reichardt in its employ the respondent promoted him to a supervisory position. In this connection we point out that Bazemore, a former officer of the United, also was promoted on July 1 and thereafter resigned from the United.

We find that the respondent has not dominated or interfered with the formation or administration of the Solvay Workers' Council or contributed financial or other support to it.

¹¹ Respondent Exhibit No. 20

We find that the respondent had not interfered with, restrained, or coerced its employees in the exercise of the right of self-organization to form, join, or assist, labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining and other mutual aid and protection.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, The Solvay Process Company, occur in commerce, within the meaning of Section 2 (6) of the Act.
2. United Chemical Workers Local Industrial Union No. 164 and Solvay Workers' Council are labor organizations within the meaning of Section 2 (5) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint against The Solvay Process Company be, and it hereby is, dismissed.