

In the Matter of GENERAL CHEMICAL COMPANY and DISTRICT #50,  
UNITED MINE WORKERS OF AMERICA, CHEMICAL DIVISION

*Case No. C-387.—Decided July 13, 1938*

*Chemical Manufacturing Industry—Interference, Restraint, and Coercion:* charges of, not sustained; complaint dismissed—*Company-Dominated Union:* charges of, not sustained; complaint dismissed—*Discrimination:* charges of, not sustained; complaint dismissed.

*Mr. Reeves R. Hilton and Mr. Herbert O. Eby, for the Board.*

*Hunton, Williams, Anderson, Gay & Moore, by Mr. T. Justin Moore and Mr. Edmund M. Preston, of Richmond, Va., for the respondent.*

*Mr. Arnold R. Cutler, of counsel to the Board.*

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by District 50, United Mine Workers of America, Gas, By-Product Coke and Chemical Workers, Local No. 12031,<sup>1</sup> herein called the U. M. W. A., the National Labor Relations Board, herein called the Board, by Bennet F. Schaufler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated September 16, 1937, against General Chemical Company, Baltimore, Maryland, herein called the respondent. The complaint and notice of hearing were duly served upon the respondent and the U. M. W. A. 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), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices the complaint alleged, in substance, that the respondent dominated and interfered with the formation and administration of a labor organization at the Balti-

<sup>1</sup> From Board Exhibit No. 3 it appears that this is the correct name of the union, although it is otherwise designated in various pleadings and the record.

more plant known as Employees Union of Baltimore Works, General Chemical Company, and contributed support to it; and that the respondent discharged Francis Walters on or about June 25, 1937, Otto Joseph Suzowski on or about June 29, 1937, Leo Purnell on June 30, 1937, and George Wicklein on June 30, 1937, and has since refused to reinstate them because they, and each of them, joined and assisted the U. M. W. A. and engaged in concerted activities with other employees of the respondent at the Baltimore plant for the purpose of collective bargaining and other mutual aid and protection. The respondent filed an answer to the complaint in which it admitted the allegations concerning its business, but denied the allegations concerning the alleged unfair labor practices.

Pursuant to notice, a hearing was held at Baltimore, Maryland, from October 14 to 19, 1937, both inclusive, before W. P. Webb, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

Prior to the close of the Board's case, counsel for the Board moved that the complaint be dismissed in so far as it applied to Otto Joseph Suzowski and Leo Purnell, inasmuch as they did not appear at the hearing. At the close of the Board's case, counsel for the Board moved that the pleadings be conformed to the proof adduced at the hearing. Both motions were granted by the Trial Examiner. At the conclusion of the Board's case and again at the conclusion of the hearing, counsel for the respondent moved that the complaint be dismissed in so far as it applied to Francis Walters and George Wicklein, and that the entire complaint be dismissed, on the ground that no evidence had been adduced to sustain the allegations. The Trial Examiner reserved ruling on such motions and denied them in his Intermediate Report.

On November 1, 1937, counsel for the respondent filed a brief. On January 26, 1938, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act, and recommending that the Board issue a cease and desist order and require the respondent to take certain specified affirmative action. Exceptions to the Intermediate Report were thereafter filed by the respondent. Pursuant to notice, a hearing was held before the Board, for the purpose of oral argument, on March 8, 1938, at which time counsel for the respondent submitted a further brief.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission 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 briefs filed by counsel for the respondent. 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 respondent, a New York corporation, owns 16 plants throughout the United States. It produces, manufactures, and sells acids and other chemicals. This case is concerned only with its plant at Baltimore, Maryland. The respondent is a subsidiary of Allied Chemical & Dye Corporation, also a New York corporation.

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

The respondent, whose operations are seasonal, employs a greater number of employees during the first 6 months than during the remainder of the year. For the first 9 months during 1937 it employed from 103 to 243 production employees.

#### II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, Gas, By-Product Coke and Chemical Workers, Local No. 12031, is a labor organization, affiliated with the Committee for Industrial Organization, admitting to membership all production employees of the respondent at the Baltimore plant, exclusive of clerical and supervisory employees.

Employees Union of Baltimore Works, General Chemical Company, herein called the Employees Union, is an unaffiliated labor organization admitting to membership all hourly employees of the respondent at the Baltimore plant, except those who have the power to hire or discharge employees.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The alleged domination of and interference with the Employees Union*

###### 1. The organization of the U. M. W. A. at the Baltimore plant

Toward the latter part of March 1937, a group of the respondent's employees at the Baltimore plant asked Joseph Winge, an employee, to help form a union. Winge, who had previously belonged to a

union, testified that although he had been approached by the employees on numerous occasions, he had never wanted to engage in the formation of a union until March 31, 1937, when the respondent posted a notice at the plant to the effect that the respondent "would bargain with any union that we [the employees] chose to sign up with." In view of that notice, when Winge was again approached shortly thereafter, he decided to take an active part in the formation of a union. Thereupon, he and a group of employees formed the United Chemical Plant Workers Union of America, herein called the U. C. W.

Although the U. C. W. was not affiliated with any national or international organization, its members understood that it would eventually become affiliated with the Committee for Industrial Organization. Apparently, as a consequence of such understanding, and in order to secure the aid of a union organizer, Winge and Russell L. Kooser, another employee and member of the U. C. W., communicated with the Baltimore office of the Steel Workers Organizing Committee, a C. I. O. affiliate, through whom the services of an organizer, Edward R. Raymond, were obtained. By about April 10, 1937, when the U. C. W. held its first meeting, Winge testified that he had been successful in obtaining some 90 applications for membership in the U. C. W.<sup>2</sup> Raymond was present at the first meeting of the U. C. W. and later became its business manager.

On April 15, 1937, Raymond wrote a letter to the respondent requesting a conference for the purpose of discussing sole bargaining rights for the U. C. W. In compliance with this request, on April 21, 1937, Henry B. Landeau,<sup>3</sup> the director of operations of the respondent, and Tilley, the superintendent of the Baltimore plant, met with Raymond and his attorney. Landeau asked Raymond for his credentials to indicate whom he represented, but as Raymond did not have any the conference ended with the understanding that the respondent would meet with Raymond again in a week, at which time he would have his credentials. Accordingly on April 30, 1937, another conference was held, attended by the same persons as on April 21. Again Landeau asked Raymond for his credentials, but Raymond again did not have them. Although at this meeting Raymond contended that 60 per cent of the production employees<sup>4</sup> were members of the U. C. W., no understanding was reached, Landeau stating he would bargain with "them when they showed me whom they represented."

<sup>2</sup> At the hearing the application cards of the U. C. W. were introduced as Board Exhibit No. 2. There were 123 cards, of which 29 were not dated, only 9 were dated as of or prior to April 10, 1937, and the remainder were dated as of April 17 to 28, 1937.

<sup>3</sup> Also appears in the record as H. B. Landau.

<sup>4</sup> During the week of April 30, 1937, there were 218 production employees at the Baltimore plant. Respondent Exhibit 19 A.

On May 7, 1937, the U. C. W. received a charter from the United Mine Workers of America. Thereafter, the activities of the U. C. W. were carried on by its successor, the U. M. W. A.

## 2. The Employees Union

On or about April 3, 1937, Loren Wolfe, an employee of the respondent at that time, had a conversation with Melvin H. Wanegar, a foreman at the Baltimore plant, in which the question of unions was discussed. Wolfe testified, "[Wanegar] said, 'We are going to start one of our own [unions] here' . . . the way it looked to him, the ones that didn't join the employees' association, the others were termed as radicals, that it was going to be the company's policy to get rid of the radicals and have their own organization in the plant." Winge testified to an instance a few days before in which Wanegar had told Winge he was a fool for belonging to a union. Wanegar, who was transferred from the Baltimore plant to another plant of the respondent on April 16, 1937, admitted that he had discussed the question of unions with both men and expressed himself as opposed to unions, but denied the statements attributed to him and denied that he had mentioned any particular union. Wanegar testified that he had never heard of a company union or an Employees Union while he was at the Baltimore plant. Although there is little question that Wanegar spoke about unions on these two occasions, in view of the fact that the U. C. W. had hardly taken form by April 3, 1937, it is improbable that Wanegar could have known of and referred to it. We are, therefore, inclined to discount the testimony of Wolfe.

The first steps toward the formation of the Employees Union occurred during the middle of April 1937, about a week after the U. C. W. held its first meeting. Adolph E. Ingley, the head operator in the heavy-chemicals department,<sup>5</sup> had heard that the U. C. W. was going to demand a wage of \$22 a week for the women, whereas the men were only drawing \$18 to \$20 at that time, and that it was going to demand regular work throughout the year for the seasonal workers. Ingley testified that he knew these demands were impossible and would mean trouble, though on cross-examination he admitted that he had never checked the authenticity of these rumored demands. Nevertheless Ingley spoke to some of the employees to get their views on the U. C. W. When they also expressed their disfavor of it, Ingley went to his foreman, John M. Skelly, and "asked him if I would get in trouble if I started an independent Union in the plant. He told me, he says, 'No, the company couldn't

<sup>5</sup> There are four departments in the Baltimore plant; viz, heavy-chemicals, insecticide, maintenance, and yard departments.

have anything to do with it,' that I could join this one that was started or join the A. F. of L., or form one of my own, as long as I didn't do it on the company's time." As to this incident Skelly testified to the same effect as Ingley.

On April 17, 1937, Ingley started his first solicitation of members. Thereafter Ingley approached Thomas Myers, the head operator of the insecticide department, a position comparable to that of Ingley in the heavy-chemicals department. Although several employees of the respondent besides Ingley and Myers approached other employees during the working hours regarding the Employees Union, it appears that these two were the only ones continuously and actively to solicit employees in the plant while they were at work. Myers testified that between April 17 and June 10, 1937, both Ingley and he were active in soliciting members during the regular working hours, but that he did so "unbeknownst to any of the foremen." Ingley testified to the same effect, saying he would talk to the employees, during the working hours, "wherever I would happen to run into them." The testimony of witnesses for the Board corroborated their testimony. Thomas Caskey, an employee, testified, "In the morning, around about 10 o'clock; before dinner time, and in the afternoon, they [Ingley and Myers] would come around with a yellow pad . . . soliciting names." Of the activities of Ingley and Myers in soliciting members for the Employees Union there can be little question. The status of these employees, and their relationship to the respondent, we shall discuss below.

On April 22, 1937, the Employees Union held its first meeting in a hall, back of a barroom, near the plant. The cost of the hall, which was slight, was paid by the members attending the meeting. Prior to securing this hall, however, Ingley had asked Skelly for the use of the lunchroom at the plant. Skelly communicated with the superintendent about this matter, but was advised that "the company's property could not be used for anything other than company business." Skelly so advised Ingley. At a meeting held a week or two later the regular officers of the Employees Union were elected, Ingley being chosen president and Myers vice president. Thereafter, the Employees Union met on the first Wednesday of every month. No meetings were held on property of the respondent. A constitution and bylaws were adopted at the third or fourth meeting of the Employees Union and dues and initiation fees were fixed.

On June 10, 1937, a communication, signed by Ingley and the grievance committee, which previously had been discussed at a meeting of the Employees Union, was presented by Ingley to the respondent. This communication stated that at a recent meeting of the Employees Union a resolution was adopted that, inasmuch as the

Employees Union had 101 paid members with 13 signed applications,<sup>6</sup> the grievance committee present a request to the respondent for sole bargaining rights, as well as 4 enumerated concessions. The Employees Union asked for a reply by June 21. Ingley was advised that the respondent could not meet with the representatives of the Employees Union on June 21, but that it would do so a few days thereafter.

On June 21, 1937, Edward R. Raymond and J. Frank Bender, organization director for the Committee for Industrial Organization, State of Maryland, had a meeting with Tilley regarding a collective bargaining agreement with the U. M. W. A. Tilley stated that he had no authority to act in the matter but that Landeau would be in the following week at which time the matter could be taken up.

On June 24, 1937, pursuant to the Employees Union's request of June 10, 1937, Landeau and Tilley had a conference with the grievance committee of the Employees Union. At this conference the Employees Union presented a list of its members and the application cards, showing a membership of 113 production employees.<sup>7</sup> The list did not contain the original employee signatures although the cards did. Landeau did not count the cards or check them, but, "I looked through them. I think I asked one or two of them [members of the Employees Union present] to verify their own signatures, which they did." Landeau then gave the list to the respondent's chief clerk to check against the pay roll. It took the chief clerk 8 or 10 minutes to check the list against the pay roll, and in reliance on this check Landeau recognized the Employees Union as the sole bargaining agent of the employees at the Baltimore plant. Landeau then took up with the committee the four matters requested in the letter of June 10, consisting of (1) an increase in wages, which was compromised at an increase of about 5 cents an hour; (2) time and a half for overtime under certain conditions, which was granted for a trial period of 6 months; (3) a question as to vacations, which was postponed for consideration at a later date; and (4) the reinstatement of an employee who had already been reinstated, which required no further consideration. The meeting lasted from about 2 o'clock until some time after 4 o'clock in the afternoon. None of the terms or provisions were reduced to writing.<sup>8</sup>

On June 25, 1937, Raymond and Bender had a conference with Landeau and Tilley. On this occasion Landeau asked Raymond for his credentials and Raymond produced a blue card showing that he

<sup>6</sup>During the week of June 10, 1937, there were 221 production employees at the Baltimore plant, Respondent Exhibit No. 19 A.

<sup>7</sup>During the week of June 24, 1937, there were 200 production employees, Respondent Exhibit No. 19 A. See also Respondent Exhibit No. 22.

<sup>8</sup>No further grievances were presented by the Employees Union until August 17, 1937. See Respondent Exhibit Nos. 10, 11, and 12.

was a representative of the C. I. O. Raymond and Bender then requested sole bargaining rights for the U. M. W. A. as the representative of the respondent's employees at the Baltimore plant. Landeau informed them that he had already bargained with a group who claimed to represent the majority of the employees at the plant. Bender responded that if there were any question about the fact that the U. M. W. A. represented the employees, "the Government by law has an agency how this can be determined. The Government will come in . . . and we can have it jointly agreed to, and then they will come in here and hold an election." Bender testified that Landeau said, "No Government agency is coming into this plant and hold an election." Landeau denied making this statement, testifying that he said, "that was one of the conditions I could not stop, that whatever the Labor Board ruling was we had to follow." Nothing further occurred at this meeting. We credit Landeau's version of this conference.

On July 8, 1937, Landeau, Raymond, and Bender attended a meeting at the office of the Regional Director for the Fifth Region to attempt to compose their differences. This conference was unsuccessful and the U. M. W. A. filed its charges with the Regional Director on that day.

### 3. Alleged domination of and interference with the Employees Union

From the record it appears that the respondent attempted to maintain a neutral attitude toward labor matters. In conformity with this policy Landeau held a meeting of the foremen of the plant on the morning of April 21, 1937, at which meeting he told the foremen among other things to "keep their hands clean on labor." Other than the statements attributed to Wanegar by Wolfe, which we have discussed above, the acts complained of and attributed to the respondent are those of Ingley and Myers. Accordingly, to fix the measure of the respondent's responsibility, if any, for the acts of these two employees, it is necessary to determine their status and relationship to the respondent.

Both Ingley and Myers held the position of head operator in his respective department, the only such position in each such department. Each one received a wage of 11 cents more an hour than the other production employees. Ingley and Myers were referred to by some witnesses as assistant foremen or subforemen, for the reason that each frequently delivered orders of their respective foremen and assistant foremen to the other employees in the department. However, other employees also delivered orders, though less frequently than Ingley and Myers did. Both Ingley and Myers taught new em-

plooyees but other ordinary operators also taught them. In 1936 Ingley took the place of the foreman of the heavy-chemicals department for a period of 2 weeks during the latter's absence on vacation. Myers had acted as a subforeman for another similar short period, 2 or 3 years prior to the hearing. Caskey, without contradiction, testified that at that time he saw Myers' name "once on the list on the bulletin" as subforeman beneath the name of the foreman and that Myers always acted as a subforeman during the busy season.

It appears from the testimony of witnesses for the respondent that Ingley and Myers were paid more and each held the title of head operator because in their respective departments each one could operate any process or take over any job. From the record we do not find that the duties of Ingley or Myers were such as to classify them as supervisory employees. Neither originated orders, had any individuals working under him, or pursued other activities which might be considered supervisory in nature. Although on one occasion in the past they had acted in a supervisory capacity, it does not appear from the record that the employees at the present generally consider them to be in a close relationship to the management. In view of these circumstances, we do not find that their Employees Union activities are identified with or attributable to the management.

Ingley was caught engaging in union activities during the working hours on three occasions by foremen and admonished by them. These instances occurred shortly after Ingley began his activities in behalf of the Employees Union. The foremen were John M. Skelly, the foreman of the heavy-chemicals department, George L. Clipper, the foreman of the yard department, and John A. Maslin, the foreman of the maintenance department. Neither Skelly nor Clipper reported these incidents to Tilley. Clipper contended that this was unnecessary as he treated members of both unions in the same manner, relating an incident in which he admonished a member of the U. M. W. A. for union activity without reporting him. Maslin reported the matter to Tilley, and was advised to watch the situation and not permit any of the employees to gather together or solicit in any way during the working hours. Ingley was not caught thereafter, because as he stated, "I was careful after that." Although Myers was not caught by any supervisor, an incident of solicitation during working hours was reported by one of the employees in July or August to Myers' foreman, George M. Webb, who warned Myers against such further activities on Company time. Webb testified that at no time had he seen Myers engaged in union activities during working hours.

We find that the respondent has not dominated or interfered with the formation or administration of the Employees Union or con-

tributed financial or other support to it and has not interfered with, restrained, or coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

### B. *The discharges*<sup>9</sup>

1. *George Wicklein.* George Wicklein was first employed by the respondent at its Baltimore plant on April 6, 1937, and worked there until his discharge on June 30, 1937. Wicklein joined the U. M. W. A. in June 1937, but was not active in its affairs.

Wicklein testified that on June 8, 1937, he was approached by Ingley and informed, "if I did not swing in with his Union he would get something on me to get me fired." Wicklein stated he would "stick with [his] brother-in-law," who was a member of the U. M. W. A. Ingley denied making these statements and testified, "I asked him if he would join up with us [the Employees Union] . . . I told him he could get into a lot of trouble, being a new man, being the other operators on the dryers were all Employees Union men, and they could start out and carry him along and make up for what he might do." On the day following this conversation Wicklein was transferred from the heavy-chemicals department, where the number of workers varies but slightly, to the insecticide department, where the number of employees varies considerably due to seasonal variations.

Although we believe the testimony of Wicklein as to the statements made by Ingley, it does not appear from the evidence that Ingley caused his transfer and subsequent discharge. Wicklein was 18 years old, 5 feet 8 inches tall, and weighed 140 pounds. His work in the heavy-chemicals department consisted of trucking heavy barrels weighing 310 pounds and more. Apparently the work in the heavy-chemicals department was too heavy for a youth of Wicklein's stature. Skelly hired Wicklein as a favor to his brother-in-law, and although Wicklein seemed light for that work Skelly thought that he would give Wicklein a chance to see what he could do. He carried Wicklein along as a favor to the latter's brother-in-law until the point "that we just had to get somebody to do his work." Although there was lighter work in the heavy-chemicals department, the respondent claimed that by reason of Wicklein's

<sup>9</sup> During the hearing, in addition to the discharges alleged in the complaint, evidence was introduced as to the discharges of three witnesses for the Board, namely: Loren Wolfe, Joseph Winge, and Earl W. Honaker. At the close of the Board's case, counsel for the Board moved that the pleadings be conformed to the proof, but stated, "This is simply a formal motion to cure defects which may have occurred in the complaint and which was cured by the evidence that was offered. By no means do we intend to enlarge the complaint to include any discharges which may have occurred other than the discharges named in the complaint." In view of the limitation thereby placed upon the motion we make no findings as to the discharges not alleged in the complaint.

lack of experience he was not qualified for it. The respondent asserted that if Wicklein had not been transferred to lighter work in the insecticide department at that time it would have been necessary to discharge him.

It appears from the evidence that the plant applied its seniority rule on a departmental basis. Consequently when Wicklein was transferred from the heavy-chemicals to the insecticide department he lost his seniority in relation to the employees working in the insecticide department. At the end of the month of June, due to the drop in the seasonal demand, Wicklein was discharged as one of the newer employees in the insecticide department.<sup>10</sup>

Upon all the evidence, we find that Wicklein was not discharged because of his membership in the U. M. W. A.<sup>11</sup>

2. *Francis Walters.* Francis Walters was first employed by the respondent at its Baltimore plant on May 11, 1937, and worked there until his discharge on June 30, 1937, during which time he was employed in the insecticide department. Walters joined the U. M. W. A. a few days after he went to work but did not engage in any union activity.

Walters testified that on June 28, 1937, he was asked by Myers to join the Employees Union, but Walters said, "rather than join it I would rather starve"; that Myers said, "You can suit yourself," and walked away; that on the next day he was again approached by Myers and a similar conversation took place; and that on June 30, 1937, Myers handed Walters his discharge slip, saying, "Walters, I hate to do this, but if you had done the right thing you wouldn't have got it."

The discharge slip was signed by Webb, the foreman of the insecticide department. At the time Webb had been busy and had asked Myers to distribute three discharge slips, one of which was Walters' and another Wicklein's. This was the only occasion on which Myers handed out discharge slips.

Myers admitted having a conversation with Walters on June 28, 1937, and one about 8 or 9 days before, on which occasions he had asked Walters to join the Employees Union, but Myers denied ever threatening Walters. Myers also testified that, other than saying that he had been requested by Webb to deliver the notice, he had made no statements to Walters at the time of handing him his discharge slip. The day Walters had received his discharge slip, Gerald Thomas, Walters' cousin, asked Myers in the dressing room as to the reason for Walters' discharge. Thomas said that Walters had said

<sup>10</sup> During the month of June 1937, 25 employees were discharged at the Baltimore plant. Respondent Exhibit No. 19 A.

<sup>11</sup> At the oral argument before the Board counsel for the respondent stated that Wicklein had been reemployed by the respondent at the Baltimore plant. It appears such reemployment occurred in the busy season.

that he had been threatened by Myers and told that if he [Walters] did not join the Employees Union Myers would see to it that he was discharged. When Thomas informed Myers of Walters' statement, Myers brought Walters face to face with Thomas, and asked him to repeat what he had said, and Walters told Thomas that what he had said was a lie. Thomas turned and told him that he was foolish for making a statement like that, when he could go to jail for doing it. This evidence, which was unrebutted, in our opinion discredits Walters' testimony.

Webb, the foreman of the insecticide department, testified that, among the temporary or seasonal employees, Walters was one of the least efficient. The instances of his inefficiency which Webb related were minor. On two occasions, however, Walters was caught loafing and reprimanded. The respondent states that none of these acts were of such magnitude as to necessitate a discharge during the busy season, but that during the slack season, after the first 6 months of the year, lesser faults were taken into account in determining which of the seasonal employees would be laid off. The attitude of the respondent in this regard seems reasonable. Walters was one of the seasonal employees. In considering which of such employees were to be retained, Walters' minor faults and his two instances of loafing appear to be the actual grounds for his discharge in lieu of other seasonal employees with better records.

Upon all the evidence we find that Walters was not discharged because of his membership in the U. M. W. A.

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, General Chemical Company, occur in commerce, within the meaning of Section 2 (7) of the Act.

2. District 50, United Mine Workers of America, Gas, By-Product Coke and Chemical Workers, Local No. 12031, and Employees Union of Baltimore Works, General Chemical Company, are labor organizations within the meaning of Section 2 (5) of the Act.

3. The respondent has not dominated or interfered with the formation or administration of any labor organization or contributed financial or other support to it, within the meaning of Section 8 (2) of the Act.

4. The respondent has not discriminated in regard to the hire and tenure of employment of George Wicklein or Francis Walters because of their membership in a labor organization and thereby discouraged membership in a labor organization, within the meaning of Section 8 (3) of the Act.

5. The respondent has not interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) 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 General Chemical Company be, and it hereby is, dismissed.

MR. EDWIN S. SMITH, dissenting in part.

I am unable to concur in the decision in so far as it finds that the respondent has not dominated or interfered with the formation of the Employees Union or contributed financial or other support to it. As the majority opinion points out, the measure of the respondent's responsibility, if any, is dependent upon the status and relationship of Ingley and Myers to the respondent.

From the evidence it does not appear that Ingley and Myers were ordinary employees. Each was the head operator of his department, there being only one head operator in each of these departments. Apart from the foremen and assistant foremen, each held the most important position in his department. Each was paid higher wages than any of the ordinary employees. True, many of the ordinary employees delivered orders of the foremen and assistant foremen, yet these two employees carried orders more frequently than the ordinary employees. The fact that each of these men had at one time acted officially as a foreman or subforeman, even though for a short period, is an indication of their standing with the management. Such past service serves further to remove them from the ordinary employees. It is also significant that one witness testified that Myers always acted as subforeman during the busy season. As the Board has held in analogous cases,<sup>12</sup> the distinction between Ingley and Myers and the ordinary employees, based upon differences both past and present tending to identify them with the supervisory officials, supports the conclusion that their exclusive role as the initiators of the Employees Union would inevitably identify this organization as one enjoying special employer support.

Ingley and Myers, by their own testimony, were active in behalf of the Employees Union during working hours. The weight of the

<sup>12</sup> *Matter of T. W. Hepler and International Ladies' Garment Workers Union*, 7 N. L. R. B. 255; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company and Textile Workers' Organizing Committee*, C. I. O., 5 N. L. R. B. 443.

evidence is persuasive that they pursued these activities with the management's knowledge and acquiescence. Their acts are to be identified with and are attributable to the respondent.

The manner in which Landeau recognized the Employees Union is convincing as to its lack of independence of the respondent. The predecessor to the U. M. W. A. approached the respondent with regard to collective bargaining rights as early as April 15, 1937. On the other hand, the Employees Union did not communicate with the respondent until June 10. On June 21 the representatives of the U. M. W. A. again approached the respondent, but were told to come back the following week. It was following this appearance of the representatives of the U. M. W. A. at the plant, 14 days after the Employees Union had first communicated with the respondent, and at its first conference with the Employees Union, that Landeau, fully aware of the claims of the U. M. W. A., recognized forthwith the Employees Union as the collective bargaining agent. At this conference Landeau did not verify the signatures on the Employees Union membership cards, but relied on a check of the names on the Employees Union membership list against the pay roll. This check, which required but 8 to 10 minutes, was made by the respondent's chief clerk. No effort was made to ascertain whether there were duplications in the membership lists of the two organizations. Yet, it appears that the U. M. W. A. had more than a majority of the employees in the appropriate unit as far back as the latter part of April, 1937.<sup>13</sup> The contrast between the respondent's alacrity to accord recognition to the Employees Union and its stand-offish attitude toward the U. M. W. A. definitely clothes the former with the respondent's undisguised favor and support.

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<sup>13</sup> See footnote No. 2 of decision.