In the Matter of BIRD MACHINE COMPANY *and* UNITED STEELWORKERS OF AMERICA (C. I. O.)

Case No. 1-C-2443.—Decided January 9, 1946

DECISION

AND

ORDER

On May 23, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also recommended that the complaint be dismissed insofar as it alleged a violation of Section 8 (5) of the Act. Thereafter, the Union and counsel for the Board filed exceptions to the Intermediate Report and supporting briefs, and the respondent filed a "Brief in Support of Respondent's Contentions" which the Board has accepted as exceptions and supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications and additions noted below:

1. The respondent contends that it is not responsible for the anti-union activities of its supervisory employees, more fully set forth in the Intermediate Report, because such activities violated instructions of neutrality issued to the supervisory employees by President Dennett at the beginning of the Union's organizing campaign. The respondent admits that such instructions were not posted or otherwise publicized to the employees as a body. Inasmuch as the respondent failed to communicate its alleged neutrality to its employees, we find that the employees were justified in believing that the supervisory employees were

acting as the respondent's representatives, and that the respondent is responsible for their activities.[1]

2. We find, as did the Trial Examiner, that on April 28, 1944, when the Union requested recognition, the Union did not represent a majority of the respondent's employees in an appropriate unit.[2] Thereafter, on June 3, 1944, when the Board held a conference between the respondent and the Union, the Union had deposited with the Board 129 authorization cards.[3] At the hearing, the respondent checked the original cards against admittedly authentic signatures of employees and made the following objections to 33 of the 129 cards: namely, that 8 were unsigned, 4 bore printed signatures, and 21 bore questionable handwritten signatures. As to the 129 cards, the Trial Examiner found that 6 were signed by persons who terminated employment with the respondent before June 3, 1944, 6 bore signatures "not proved genuine," and 117 were valid designations. He further found that inasmuch as there were 233 employees in an appropriate unit on June 3, 1944, the Union on that date represented a bare majority of the respondent's employees in such unit.[4] A comparison of the disputed signatures with the admittedly authentic signatures reveals that the Trial Examiner was justified in rejecting as "not proved genuine" at least 6, if not more, of the cards submitted to the Board by the Union. We reject, in addition thereto, the 8 unsigned cards, which were among those submitted, inasmuch as the record does not establish that the employees named in the unsigned cards intended by such cards to authorize the Union to represent them.[5] Accordingly, we find that, on June 3, 1944, the Union represented at most 109 employees, and that, on July 14, 1944, the date of the hearing in the representation proceeding referred to in the margin, and thereafter, so far as appears, the Union represented at most 111 employees of the respondent.[6] Conse-

[1] See, for example, *H G Heinz & Co* v. *N L R B*, 110 F (2d) 843, 847 (C C A 6), affirmed 311 U. S 514 Employee LoDico testified that, in the presence of four or five shop employees and several high ranking supervisors, President Dennett assured LoDico that his activity in the Union was "perfectly all right" and that Dennett "couldn't stop [him] or interfere with [him] in any way." LoDico further testified that Assistant Superintendent Lindsay, on another occasion, told LoDico that Lindsay had no right to interfere with LoDico's union activities in any way. Contrary to the respondent's argument, we find that such limited declarations of neutrality did not effectively notify the employees as a body that the supervisors' activity in discouraging union membership did not reflect the respondent's policy.

[2] To establish such majority, the Union relied in substantial part on oral promises by employees to vote for the Union in an election. Such a promise does not constitute a designation of a representative within the meaning of Section 9 (a) of the Act.

[3] The Trial Examiner's statement in the Intermediate Report, preceding his tabulation of the cards, that the Union had submitted 124 cards is erroneous. His tabulation agrees with the figure above.

[4] The unit referred to was found to be appropriate by the Board in a prior representation proceeding *Matter of Bird Machine Company*, 57 N L R B 1112.

[5] Cf *Matter of Kiddie Kover Manufacturing Company*, 6 N. L R B. 355

[6] Between June 3 and July 14, the Union had obtained 2 additional authorization cards: On July 30, 1944, the closest pay-roll date, the respondent had 240 employees in the unit which the Board found to be appropriate in the representation proceeding

quently, we find that the Union, at no time pertinent to this case, represented a majority of the respondent's employees in an appropriate unit. On the basis of this finding, we shall dismiss the complaint insofar as it alleges a violation of Section 8 (5) of the Act. In view of such determination, we deem it unnecessary to pass upon the validity of the ground relied upon by the Trial Examiner in recommending dismissal of such allegation of the complaint.

THE REMEDY

Having found that the respondent independently violated Section 8 (1) and 8 (3) of the Act, we must order the respondent, pursuant to the mandate of Section 10 (c), to cease and desist therefrom. We also predicate our cease and desist order upon the following findings: The respondent's whole course of conduct discloses a purpose to defeat self-organization among its employees. As we have found, since the inception of the Union in the respondent's plant, the respondent interfered with, restrained, and coerced its employees by various acts and statements. Moreover, the discriminatory discharge of Favor "goes to the very heart of the Act."[7] Because of the respondent's unlawful conduct and its underlying purpose, we are convinced that the unfair labor practices found are persuasively related to the other unfair labor practices hereinafter proscribed and that danger of their commission in the future is to be anticipated from the respondent's conduct in the past.[8] The preventive purpose of the Act will be thwarted unless our order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce and thus effectuate the policies of the Act, we shall order the respondent to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Bird Machine Company, Walpole, Massachusetts, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Steelworkers of America, affiliated with the Congress of Industrial Organizations, or any

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[7] *N. L. R. B.* v. *Entwistle Manufacturing Company*, 120 F. (2d) 352, 356 (C. C A 4); see also, *N. L. R. B.* v. *Automotive Maintenance Machinery Company*, 116 F. (2d) 350 (C. C. A. 7), where the Circuit Court of Appeals for the Seventh Circuit observed: "No more effective form of intimidation nor one more violative of the N L. R. Act can be conceived than discharge of an employee because he joined a union. . . ."

[8] See *N. L. R. B.* v *Express Publishing Company*, 312 U. S. 426.

other labor organization, by discharging or refusing to reinstate any employee, or by discriminating in any other manner in regard to their hire, tenure, or any term or condition of their employment;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist United Steelworkers of America (C. I. O.), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

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

(a) Offer Gilbert I. Favor immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Gilbert I. Favor for any loss of pay that he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to the amount that he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post at its plant at Walpole, Massachusetts, copies of the notice attached hereto, marked "Exhibit A." Copies of said notice, to be furnished by the Regional Director of the First Region, after being signed by the respondent's representative, shall be posted by the respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material. Also, publish a copy of said notice in the next issue of the plant paper, the "Bird's Eye-View," and distribute such issue through the usual channels of circulation;

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

And it is further ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent refused to bargain with the Union within the meaning of Section 8 (5) of the Act.

Mr. Gerard D. Reilly took no part in the consideration of the above Decision and Order.

EXHIBIT A

NOTICE TO ALL EMPLOYEES

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

> We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America (C. I. O.) or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.
>
> We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.
>
> Gilbert I. Favor

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

BIRD MACHINE COMPANY,
Employer.

Dated _____ By _____
(*Representative*) (*Title*)

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

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

INTERMEDIATE REPORT

Mr. Leo J Halloran, for the Board.

Mr. Allan Sesserman, of Boston, Mass, and *Warren, Stackpole, Stetson, and Bradlee, Attorneys*, of Boston, Mass., for the Respondent.

Mr Harold B Rottman, in behalf of the firm of *Grant and Angoff, Attorneys*, of Boston, Mass, for the Union.

STATEMENT OF THE CASE

The National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated January 13, 1945, against Bird Machine Company, herein called the Respondent. The complaint alleges that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Sections 8 (1), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act; and that it was issued on charges made by United Steelworkers of America (C. I. O.), herein called the Union Copies of the complaint and notice of hearing thereon were duly served upon Respondent and the Union.

With respect to the unfair labor practices the complaint in substance alleges that the Respondent: (1) refused to bargain collectively with the Union on May 2, 1944, and at all times thereafter, including particularly June 3rd and July 14th, during all of which time the Union represented a majority of the Respondent's employees in an appropriate unit described in the complaint; (2) discouraged membership in the Union by the discriminatory discharge of Gilbert I. Favor on September 11, 1944; (3) interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, from about May 1, 1944, until the date of the complaint, (a) by the aforesaid refusal to bargain collectively with the Union, (b) by the aforesaid discriminatory discharge of Favor to discourage union membership, (c) by discouraging union membership in stating the Respondent was not in favor of the Union, (d) by disparaging and ridiculing the Union and its purposes, (e) by threatening economic reprisals to employees who engaged in union activities, (f) by interrogating employees relative to their union membership and activities, (g) by publishing in its paper circulated among employees a verse which disparaged the Union, the authorship of which was falsely attributed to a union adherent, (h) by threatening that less favorable working conditions would exist in the plant if the Union represented the employees, (i) by making obscene and derogatory remarks relative to the Union and its members, (j) by sending to each employee before an election conducted to determine the collective bargaining representative, a coercive letter which in effect urged each employee to vote against the Union, (k) by notifying employees the Respondent was opposed to the Union in its plant, (l) by threatening employees with the loss of established privileges if the Union became their representative, (m) by marking, or allowing to be marked, an official notice of election posted before the election date, to indicate Respondent's opposition to the Union, and (n) by accusing union adherents of being trouble makers, because of their organizational efforts in the plant.

The Respondent filed an answer to the complaint dated January 18, 1944, denying generally and specifically the commission of any of the alleged unfair labor practices. Pursuant to notice, a hearing was held at Boston, Massachusetts, for 16 session days between January 29 and February 17, 1945, before Melton Boyd, the undersigned Trial Examiner designated by the Chief Trial Examiner. The Board, the Respondent, and the Union were each represented by counsel All parties participated in the hearing, and each was afforded full opportunity to introduce evidence, to examine and cross-examine witnesses, and to be heard on matters in issue.

At the opening of the hearing the Respondent moved to dismiss parts of the complaint which alleged matters not contained in the copy of the second amended charge attached thereto. This motion was denied then, and again was denied later in effect when the Respondent moved to exclude testimony relating to such allegations.[1] At the conclusion of the presentation of evidence by the Board, and again at the conclusion of the entire case, the Respondent moved to dismiss the complaint in its allegation of a violation of Section 8 (5) of the Act. The Trial Examiner reserved his ruling on this motion; his ruling is made herein. The Respondent then moved to strike from the record the evidence relating to matters alleged in a protest to an election conducted by the Board on August 25, 1944,[2] filed by the Union but later withdrawn by it when it filed its charge in the instant case. The Trial Examiner denied this motion. The Respondent then moved to strike from the record the evidence on all matters not specifically put

[1] See *National Licorice Company* v. *N. L. R. B.*, 309 U. S. 350, at 368–369; also, *Consumers Power Company* v. *N. L. R. B.*, 113 F (2d) 38, at 42–43 (C. C. A. 6).

[2] In the *Matter of Bird Machine Company* and *United Steelworkers of America* (*C. I. O.*), 1–R–1896, in which a direction of election issued August 5, 1944, 57 N. L. R. B. 1112.

in issue by the allegations of the complaint. The Trial Examiner denied this motion. The Respondent then moved to dismiss the complaint with respect to allegations in paragraphs which it specified, which motion was made in the alternative, and on which the Trial Examiner reserved his ruling and makes his ruling herein. At the conclusion of the case, the Board's counsel moved to conform the pleadings to the proof with respect to formal matters, and without objection this motion was granted.

Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:[3]

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Bird Machine Company is a Massachusetts corporation, and has its plant and principal place of business in Walpole, Massachusetts. It is engaged there in the business of manufacturing centrifugal machines and machine assembly parts, valued in excess of $2,800,000 in 1944, almost all of which was used in the war effort and about 90 percent of which was shipped outside the State of Massachusetts. In these operations it used iron, steel, copper alloy and other raw materials, costing approximately $1,000,000 in 1944, about 25 percent of which was purchased outside the State of Massachusetts

The Company concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

1. Background; the job evaulation plan

On April 20, 1944, the Respondent announced to its employees by letter the inauguration of a practice that would govern wage increases thereafter. The announcement stated that a plan had been adopted, which was referred to in the testimony as the "job evaluation plan", by which all jobs were classified and given a comparative rating with relation to other jobs, with a wage range established for each scaled job. The plan had been prepared by the National Metal Trades Association, of which the Respondent was a member, following a survey made by the Association's staff engineers which began in November 1943; and the wage structure set up under it was approved subsequently by the National War Labor Board, with some modifications. The announcement stated further the Respondent would follow a practice of adjusting wages according to a "merit rating" procedure; and those whose rating had entitled them to an increase when the plan went into effect, would receive the increase in their wage rate retroactively to January 1, 1944.[4]

During the period of the survey and preparation of the plan, employees' wages had remained unchanged. When put into effect, the wages of some were unchanged and of others were increased. Those denied an increase were disappointed and those who thought their increase insufficient were dissatisfied.

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[3] All dates given are in 1944, unless otherwise specified. Except where otherwise noted or where conflicts in testimony are discussed, the following findings of fact are made on evidence that was undisputed or that was at variance only in immaterial details, and the next following sections, I and II, are based on admissions in Respondent's answer and on stipulations of the parties.

[4] The complaint does not allege that either the inauguration or administration of the plan was an unfair labor practice; the alleged unfair labor practices began "about May 1, 1944."

2. Inception of the Union; its demand for recognition

Immediately after the announcement of the plan, a number of employees sought representation by the Union in dealing with the Respondent An organizer for a textile union affiliated with the C. I O, Joseph Drummey, then in contact with the employees, distributed among them membership-application cards of the Union which he had secured from Daniel F Murray, the union organizer. On April 25th, Murray held a meeting which was attended by about 75 employees. At this meeting he distributed additional cards for signature, and he testified that he received approximately 80 to 85 cards of employees then present and of others who had signed cards distributed by Drummey At this meeting it was reported to Murray, according to his testimony, that 30 or 40 other employees "secretly promised the ones who were soliciting membership of them that they would vote for the Union if they had a chance to do so on a secret ballot." A couple of days after this meeting, according to Murray, he again saw Drummey and received from him an additional 26 or 27 cards. Murray conducted another meeting on Sunday, April 30th. There was put in evidence a total of 92 cards bearing dates in April,[5] and 6 additional undated cards received by Murray in April

Under date of April 28th, the Union directed to the Respondent a letter, in its material parts as follows:

> This is to advise you that a majority of the production, maintenance, and shipping employees of the Company have designated the United Steelworkers of America to act for them as a collective bargaining agency on all matters relating to wages, rates in pay, hours, and other conditions of employment.
>
> Will you please set a date at your earliest convenience at which time collective bargaining negotiations may get under way

Sent in the course of registered mail, the letter was noted as received by the Respondent on April 29th. On May 2nd, the Respondent responded as follows:

> This will acknowledge receipt of your letter of April 28th.
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> We are not in a position to set a date for collective bargaining negotiations because of the fact that we are neither sure nor able to determine that you represent a majority of our employees.

When questioned concerning the basis of the Union's claim that it had, at this time, been designated by a majority of the employees, Murray testified it was "by the number of cards that were signed, plus the assurance of active people who were active in signing up workers in the shop that additional cards were going to be signed, and by an estimate about the investigation [sic] to determine about how many employees in the shop approximately would be in the bargaining unit."[6]

3. Representation proceeding

On May 4th, the Union executed a Petition for Investigation and Certification of Representative, pursuant to Section 9 (c) of the Act, naming the Respondent as

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[5] Of the 92 cards, 3 bear names of employees who left Respondent's employ before April 30th, to-wit Dennis McCarthy and Clarence J. Budroe on April 27th, and Manuel O Souza on April 29th

[6] Above the signature, date, and information identifying the employee and his job, the card provided

> I hereby accept and request membership in the UNITED STEELWORKERS OF AMERICA, C I O, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment.

employer, describing the unit which it then claimed appropriate as "production, maintenance and shipping room employees", and alleging it represented "a majority" of the employees in such unit which contained approximately 230 out of a total of 260 or 270 employees in the plant The Union cited the exchange of correspondence as giving rise to a question concerning representation. This petition was received and filed in the Regional Office of the Board in Boston, on May 5th, and docketed as Case No. 1-R-1896, and herein is referred to as the "R" case.

On May 5th, by handbill, the Union announced to the employees the substance of its letter of April 28th and of the Respondent's response on May 2nd, stated that on the preceding day it had petitioned for certification, and referred to its prediction, made at its meeting, of this action by the Respondent. In conclusion the handbill stated:

> The Labor Relations Board will soon call a conference of both groups for the purpose of finding a way to determine whether that [sic] Union represents a majority. We will keep you informed of developments as soon as they occur.

The contemplated conference was held on June 3rd in the Regional Office of the Board. The Board's agent inquired whether the participants would enter into an agreement providing for an election by consent The Respondent questioned the appropriateness of the bargaining unit described in the petition, and in particular requested that certain "fringe" classifications of employees be included and excluded The Union, desiring a consent election, offered to accept the Respondent's proposals; but the Respondent desired the case to proceed to a Board determination Following the conference, the Union filed an amended petition wherein it amended its definition of the proposed unit, describing it as follows:

> All employees of the Company except for executives, office and clerical employees, employees of the Experimental and Test Laboratory, draftsmen, nurses, foremen and assistant foremen.

On July 14th, a formal hearing was conducted by the Board[7] During the course of the hearing the Respondent and the Union agreed upon a statement of fact that, by reason of the exchange of correspondence in which the Respondent questioned whether the Union represented a majority of the employees and by reason of the disagreement at the June 3rd conference concerning what was an appropriate unit, a question of representation then existed. They further stipulated, after an off-the-record conference and a renewed proposal by the Union that they agree to a consent election, that in the proceeding before the Board it might find an appropriate bargaining unit to be composed substantially as follows:

> All production and maintenance employees of the Company including shop clerks, shipping room clerks, truck drivers, and the watchmen, but excluding office and clerical employees, technical employees of the Experimental and Test Laboratory, pattern makers, draftsmen, nurses, guards, executives, foremen, assistant foremen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action[8]

[7] All parties in the present case entered into a stipulation, accepted by the Trial Examiner, to incorporate in the evidence all the formal documents, including the transcript of the formal proceedings, in the "R" case.

[8] This is the definition of the appropriate unit as found by the Board in its Decision and Direction of Election, which issued August 5, 1944 *Bird Machine Company*, 1-R-1896, 57 N. L. R B. 1112. In the present case, the complaint alleges the Respondent's refusal

Prior to the June 3rd conference, the Union had submitted to the Board's agent a total of 124 cards, in the form described above, to substantiate its claim made in its petition in the "R" case that it had been designated by a majority of the employees in the unit described therein as appropriate. Following this conference, it submitted 9 additional cards. At no time did the Union offer to submit this evidence of its authority to the Respondent; and at no time did the Respondent make any request of the Union that it submit for the Respondent's examination proof of the Union's authorization as bargaining agent.

Evidence was submitted to the Trial Examiner, including the cards which had been submitted to the Board's agent, upon which he finds the Union held authorizations as bargaining agent for Respondent's employees, according to the following tabulation:

Execution date of card authorizations [1]	Number of authorizations submitted [2]	Number of genuine authorizations	Number voided by cessation of employment	Cumulative total of authorizations
April 22 to April 28	[3] 91	86	2	84
April 29 to April 30	7	7	1	90
May 1 to May 2	7	7	1	96
May 2 to May 4	0	0	0	96
May 4 to June 3	[4] 24	23	2	117
June 4 to July 14	3	3	1	119
	132	126	7	119

[1] As noted above, the Union request for recognition as bargaining agent was dated April 28th, it was acknowledged on May 2nd, the Union again alleged its majority representation status in its petition executed May 4th The complaint alleged a refusal to bargain "on or about May 2, 1944, and at all times thereafter, including June 3, 1944 and July 14, 1944"

[2] Written and printed signatures on Union cards were compared with signatures and other writing on employees' records in the possession of the Respondent, both of which were received in evidence. The Respondent conceded the apparent genuineness of all but 34 of the signatures

[3] Included are 6 undated cards all of which were turned in to the Union before April 28th. Also included in this column, but excluded from the next, are 5 cards the signatures of which were not proven genuine.

[4] One card of a person who executed an earlier card, counted above, is omitted here

The list of shop pay-roll employees for the week ending April 30th contained 253 names, excluding employees whom the Company conceded to be supervisory. This list, however, contained an undetermined number of employees in classifications other than "production, maintenance, and shipping employees" as referred to in the Union's letter of April 28th, and other than "production, maintenance, and shipping room employees" as referred to in the Union's petition filed May 5th. Another list of employees on the pay roll for the week ending May 28th, prepared after June 3rd and presumably in conformity with the unit definition in the Union's amended petition, contained a total of 233 names. The eligibility list used in the election conducted on August 25th, taken from the pay roll of July 30th and presumably prepared in conformity with the unit approved by the Board in its Direction of Election, contained 240 names.

Incidents relating to the conduct of the election on August 25th will be recounted in connection with the sequence of events which occurred in the plant, leading up to that date.

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to bargain with reference to this unit. The Board's trial counsel did not desire to amend the complaint to allege the Respondent's refusal to bargain with the Union with respect to the unit as defined either in its April 28th letter, its petition filed May 5th, or its amended petition filed June 3rd. The Trial Examiner would find, if it were a material issue herein, that the unit proposed at each of these stages was appropriate for purposes of collective bargaining, and does find, as did the Board in the "R" case, that the foregoing unit likewise is appropriate.

4. Union discussions in the plant

The union meetings held on April 25th and 30th, together with a series of handbills issued by it, gave impetus to discussions at the plant of union affairs. After the Union began its campaign Phillips Dennett, the Respondent's president, called a meeting of the supervisory personnel and, according to his testimony, he instructed them "not to interfere in any way with the right of the employees to choose a bargaining agent of their own selection, and that the privilege of the men was to have the right to choose their bargaining agent." The testimony of several shop foremen was mutually corroborative that Dennett impressed upon them to "keep [your] mind on [your] work and not to interfere with the gentlemen who work for us," "not to interfere with the men in their efforts to establish a union of any kind," "not to interfere in any way, to give the boys a free hand," "to keep away from the Union." There had been no plant rules governing employees' discussions while at work; and plant practices permitted them to leave their places of work occasionally to brew and drink coffee, make purchases at various vending machines, and attend to other personal matters that did not interfere substantially with their work.

Among the employees, an assemblyman in Department 14, Gilbert I. Favor, distinguished himself by his zeal and advocacy for the Union, and was the recognized leader of the union movement in the plant[9] In his activity Favor was joined by James LoDico, delivery clerk in the storeroom department, whose work required him to go to various departments throughout the plant. Favor and LoDico comprised the informal campaign committee in the plant. Other employees also assisted them, talking for the Union and distributing union cards. Several employees testified credibly that the widespread dissatisfaction with the job evaluation plan prompted many workmen to sign union cards.

On the day following one of the first meetings of the Union, Julius Yankee, the plant superintendent, approached Favor at his job and asked him about the union meeting on the preceding evening, then engaged him in a conversation lasting 20 or 30 minutes concerning the Respondent's beneficent labor policy and, with reference to union representation of employees, asked Favor "What do you folks expect to accomplish?" Responding to this, Favor pointed out the general dissatisfaction with the job evaluation plan. Yankee answered by saying there was no dissatisfaction, and added, "You don't need the Union. You don't need anything. We are good to you." This conversation turned into an argument over the merits of the plan, which commanded the attention of nearby employees and reached a conclusion in opprobrious remarks of both participants.[10]

AfterLoDico became active in the union campaign, and on occasions when he was delivering materials to department 10, Foreman Swanson frequently addressed him as "Mr. C. I. O ", told him the Union was "no good", and offered to bet that the Union would not "come in". On one occasion, Swanson told LoDico that he did not want the latter to come into his department and talk about the Union to his employees, although before the union campaign he had not commented on LoDico's discussions with them. In one instance he told LoDico that the assistant superintendent, Lindsay, wanted to see him and had criticized

[9] Favor's termination on September 11th is hereinafter recounted.

[10] Yankee, admitting he inquired about the union meeting, denied most of this incident, and testified there was an earlier conversation when Favor asked Yankee whether he should join the Union Favor was corroborated by a witness who overheard the opprobrious remarks, by Yankee's testimony that he talked with Favor about union affairs on two occasions and by Yankee's admission of discussing with Favor in July a rumored charge of coercion growing out of this conversation The Trial Examiner credits Favor's version of this incident as substantially correct.

LoDico's "talking Union"; which Lindsay denied when LoDico asked him if he had made such remark. In talking with LoDico and other employees, Swanson said that if the plant were to be unionized, they would lose certain privileges and benefits such as the bonuses paid by the Respondent, and the permission to take time off for drinking coffee and to make purchases at the vending machines. He frequently engaged LoDico and other employees in arguments pertaining to the Union. Swanson testified he had ordered LoDico out of his department "two or three times, when he was passing around cards," and stated he did not permit cards to be passed out during working hours. He testified, when he received a union handbill handed out at the plant gate, he "tore it up in front of them"[11]

There was considerable evidence of general talk among employees that the unionization of the plant would result in the Respondent discontinuing its policy of paying bonuses, as well as withdrawing privileges which had been accorded them. The evidence does not disclose the origin of such talk, but does disclose that various foremen gave currency to it by questioning employees under them whether such benefits and privileges would be at risk if the plant were unionized. In department 1, according to employee John King, assistant foreman Leon Fisher frequently participated in workers' conversations concerning the Union and the benefits it might bring them, and stated that their coffee privilege would be taken away, they would lose their bonus and their paid vacation, they would be limited to specific operations in their work and denied the opportunity of lightening their work by using labor-saving tools, they would be kept at their job until the whistle blew at quitting time, and they would lose money by paying it out to the Union without gaining anything In department 3, according to employee James Griffen, when he had appealed his "merit rating", foreman Ulderico Santoro said, "Do you think, if you get an organization in this plant, you would be allowed to have those privileges and the bonus?" In department 14, according to employee Ralph Welch, either foreman Albert Forsyth or his assistant, Francis Cosgrove,[12] on the day preceding the election, "kidded" with him and Favor about the Union coming into the plant, saying the workmen might lose their privileges and bonus, and would be limited to a single operation in their work Welch testified that both Forsyth and Cosgrove made similar statements several times before, and added: "In fact, the bonus talk was something that went all over the shop and people would say, 'Gee, if I vote for the Union, I will lose my bonus', and the fear went throughout the shop that they would lose it if they got the Union in."

[11] Except for ordering LoDico out of his department Swanson denied the other incidents testified to by LoDico Weighed in relation to Swanson's admitted anti-union animus, his sheer denials are discredited by the forthright testimony of LoDico, whom the Trial Examiner found credible As later recounted, Swanson's flat denial of another incident is discredited by the mutually corroborative testimony of two employees

[12] Evidence disclosed that Cosgrove was classified as a leadman at times material to the issues, and the Respondent contends his conduct is not chargeable to management Welch testified credibly that the assembly department originally was under foreman Frederick Gould, but was divided, with one division under Albert Forsyth as foreman and Francis Cosgrove as his assistant. Forsyth confirmed this in part when he testified he formerly had been a service engineer, but was put in charge of this assembly section (later designated as department 14) when the Respondent began work under a war contract on what was called a Cramp mechanism used on submarines Forsyth was specially trained to supervise this assembly, and after the contract was cancelled and the department disbanded he resumed his position as service engineer Favor testified that Forsyth once told him that Cosgrove was his assistant, in distinguishing his authority from that of leadman Bonney in the same department Although not denying this statement, Forsyth testified he did not recall it Forsyth testified his work, while foreman, required him to be out of the department about half of the time Evidence disclosed that several employees in this department were inexperienced production workers Employees were mutually corroborative in testifying that Cosgrove acted in the place of Forsyth in his absence, and the Trial Examiner finds he was an assistant foreman in fact while employed as a working leadman.

The discussion with Favor of like import by Albert Hammond, laboratory technician, is recounted below

According to Favor, whose testimony corroborated that of Welch above, Cosgrove told women employees that their work in department 14 was slackening, that they might be laid off, and that they would gain nothing by joining the Union. Favor also testified that Forsyth, when asked by employee Frank Spelman whether he should join the Union, said to Spelman, "Right now the Union cannot do anybody any good They are under the same restrictions of the War Labor Board . . as we are . . You are an old man . . The Union can't do you any good anyhow"

Foremen Fisher, Santoro, Forsyth, and Cosgrove, as well as Superintendent Yankee and Foreman Swanson, flatly denied making remarks of this character. The Trial Examiner found LoDico, Griffen, Welch, and Favor to be honest and credible witnesses whose testimony stood the test of extended and careful cross-examination, and believes and finds on the totality of the evidence that such remarks were made by foremen to their employees in the course of daily discussions of the union campaign.

5. Publications in Bird's Eye-View

The Respondent printed each month a four page paper entitled "Bird's Eye-View," which it distributed by mail to each employee. Material printed therein was contributed by the Company and by the employees The paper carried a masthead which listed a purchasing department clerk as editor, and various supervisory and non-supervisory employees as associate editors. The so-called associate editors served to report news items in their respective departments, and to transmit employees' contributions. The selection of material to be printed, the arrangement of it in the format of the paper, and the supervision of printing, was done by an advertising agency which attended to the Respondent's publicity.

Norman Viele, assistant maintenance foreman, who served as an assistant editor, in May showed to Anna Marie Latchie and another employee while at work a long hand copy of a verse which later he admitted having prepared The acrostic of the verse spelled out TO HELL WITH THE CIO [13] The verse was printed in the June issue of the Bird's Eye-View in a regular column captioned "Nuts and Bolts" It appeared with a leading paragraph which read:

> In closing, here is a little verse, or what have you, submitted by J. LoDico, our genial casting shed operator:

When the paper was distributed, the acrostic was observed by several employees, some of whom speculated upon the Respondent's responsibility for its publication.

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[13] As printed, it read as follows

Three years ago this Summer
On a vacation I planned
Happy and carefree but not careless
Enthused by the road maps I scanned
Little thinking about the future
Looking ahead with delight
Wishing that I might leave at once
Instead of waiting till it got light
The places we planned to visit
Hoping to see them soon
Thinking of old friends and relatives
Hoping they'll have a spare room
Early the next morning, we started
Cheered by the clear morning air
Inspired by the things we saw
Only a fond recollection as we sit in our favorite chair!

Some spoke derisively of LoDico for having written the verse LoDico, when he learned of it, immediately protested to the editor the unfairness both of publishing the verse and of attributing it to him saying "I felt that it hurt the Union and myself by that appearing in the paper." Editor Bussey denied any knowledge concerning the contribution or who sent it in, but offered to investigate the matter. In the July issue of the paper appeared a paragraph introductory to a joke in prose previously submitted by LoDico, under a caption "Correction," which read as follows:

> The poem attributed by Jim LoDico in the NUTS AND BOLTS column last month was not written by Jim or by the NUTS AND BOLTS editor (we don't know who did write it). The Eye-View's make-up man mixed it up, unintentionally, with Jim's contribution which appears below. Accept our apologies, Jim. Our intentions were good.[14]

The Company contends the attribution of this verse to LoDico was inadvertant. The Trial Examiner believes and finds it was intended and deliberate, absent any testimony of Assistant Foreman Viele who composed the verse that he had not attributed it to LoDico.

6. Specimen ballot

About a week before the election scheduled for August 25, the Regional office of the Board sent to the Respondent a number of election notices, each bearing a facsimile copy of the ballot to be used in the election. In keeping with previous arrangements, copies of the notice were posted on the bulletin boards in the plant 3 or 4 days before the election. One was posted in the glassed-in board opposite the time clock in the entrance way. It was put there by a timekeeping clerk at about 7:30 in the morning, on orders from the Respondent's president transmitted through the personnel manager. When seen by employees as they entered the plant at 8 o'clock, the specimen ballot was marked in the place indicating a "No" vote on the issue "Do you wish to be represented for purposes of collective bargaining by UNITED STEELWORKERS OF AMERICA (C. I. O.)?" The timekeeping clerk testified the door had no lock, that he used no key, and that he posted a notice with no mark on it. The Respondent offered no other testimony as to the condition of the board at that time, although it called as witnesses the persons who had authority over the use of the board. Various employees testified that in practice the door was kept locked, although differing on the type and the place of the lock thereon, and was opened only by persons authorized by management. Employee King testified "I am pretty sure I tried [the door of the board to determine] if it was locked" on that particular day, and he recalled that it was locked.

When Favor discovered the mark on the notice, he protested to his foreman, Forsyth, bringing to his attention the instructions on the notice against marking or defacement. Forsyth ignored this protest.[15] The notice remained posted, and marked, until the following day when Favor reported the matter to the Regional Office, and the Respondent was requested to correct the situation and it did so. The Trial Examiner believes and finds, in view of the testimony on this and other incidents, that someone possessing the prerogative of management had gained access to the board and had made the mark on the specimen ballot.

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[14] This "Correction" was composed by the advertising agent of the Respondent. The Union points out that no apology was extended to it.

[15] Forsyth's denial that Favor made such protest is rejected.

7. Discussions on eve of election

On the day preceding the election when Forsyth and Cosgrove, his assistant, were engaging employees Favor and Welch in the discussion concerning the risk to their privileges if the plant were unionized, as related above, Cosgrove stated if they could show him one good reason for voting for the Union he would vote for it Favor then told him his vote would be challenged, if he appeared to vote. Foreman Gould, of department 16, passed by them Without any statement being directed to him and without stopping to participate in their discussion, Gould denounced the Union in a bawdy, jesting remark, accompanied by a suggestive gesture. A few minutes later, when he returned and passed them again, he again made the remark. Foreman Forsyth, who found amusement in it, in turn repeated the remark as a jest in his discussion with Favor and Welch.[16]

The Respondent endeavored to prove that such remarks as made by Foreman Gould, and the discussion of the possible loss of benefits and privileges described above, were casual and were conducted generally in the shop in a bantering and jesting manner. The evidence clearly established that bantering and jesting did occur frequently in the shop, but it disclosed that the employees did not talk about the Union derisively, but viewed the issue of selecting a union with seriousness, and resented the jesting attitude of their supervisors with reference to it The Trial Examiner believes and finds that the supervisory personnel, in this incident and in the instances related above, attempted to engender among the employees contempt for the Union, apprehension concerning their privileges if it were selected, and skepticism concerning benefits which it might afford.

8. President Dennett's letter

On the evening before the election, each employee received at his home in the mail a letter from the Respondent's president, Phillips Dennett. The letter reads as follows:

August 23, 1944

> This letter goes to you, as to all the people of the Bird Machine Company, for the purpose of telling you the Company's position and my personal views on the important question that will be decided next Friday. It has always been our practice, as you know, to tell you where we stand on matters which concern us all and my job as well as privilege to make such statements. In the present case I shall do so as frankly and simply as I can.
>
> On Friday there will be an election to determine whether you want the United Steel Workers of America C I. O to have the right to represent you on such matters as wages, hours, and working conditions, or prefer to continue dealing between ourselves as we have always done. The choice is wholly one for you to make. The Company recognizes your right to join this or any Union of your choosing and to select a Union as your bargaining agent if you so desire. Membership in any Union will not affect your position or your prospects in the Company.
>
> On the other hand I feel it my duty to make it just as clear to you that it is not necessary to join any Union if you do not want to. In spite of anything that may be said or implied to the contrary no Union can compel you to join it nor is there any law which would compel you to join. Your

[16] Foreman Gould, Forsyth, and Cosgrove each deny that Gould made this remark In view of the testimony of Favor and Welch, both of whom the Trial Examiner credits in relating this incident, these denials are rejected.

position and prospects in the Company are likewise not affected if you do not join a Union.

The election on Friday will be by secret ballot and as nearly as possible will be conducted like our town and city elections. There will be voting booths and printed ballots. An official of the United States Government will be in charge. No one can possibly know how you vote.

If you wonder if you have to vote in accordance with some preference expressed in the past, as, for instance, if you have signed some card or paper distributed by the Union, the answer is that you do not You have the right to vote in accordance with your own desire at the time you vote regardless of anything else. No one but you will know how you vote and no one has the right ever to question it.

The outcome of the election will be determined by a majority of those who vote, not by a majority of those eligible to vote, so the most important thing for you, as for all, is to vote The question of whether or not you have a Union is of such importance that you and everyone should arrange to be here during the voting hours. 4 to 7 P M on Friday, August 25th, and vote, even if you are off duty or on vacation If you do not vote you are letting others decide the question for you and perhaps make a choice you do not want.

I do not know what is claimed for and expected of a Union if you choose one as your bargaining agent but I do know that for the thirty years I have been employed by the Company we as a group of people have succeeded in getting along together pretty well. As human beings we have had our minor differences but we have always been willing and able to adjust these and I have never heard anyone seriously question the intention of the Company to be honest and fair. I know also, because I exchange facts and views with other Companies, that we have usually been ahead of others rather than behind in our policies and our methods.

We have always had a liberal wage policy and under this we have consistently paid the highest possible wages which business and competitive conditions would allow. Usually our rates have exceeded those paid by other shops in the vicinity and by our competitors. Today our rates are job for job higher than the average for the Boston area and as high as we are allowed to pay by the War Labor Board under the Wage Stabilization Law Also it has always been a definite part of our wage policy to advance wages voluntarily as conditions permitted.

Among other matters with which a Company and its people are concerned are working conditions, human relations, rules for promotions, privileges, and lay-offs, and benefits beyond the scope of usual requirements. We have always tried and always will try to make this as clean and safe and attractive a place to work as the kind of work we have to do permits. In dealing with our people we have always been willing to listen and to adjust our differences whenever possible. The door of my office has always been open to everyone.

For long years we have recognized and liberally applied a rule of seniority. Always we make a promotion from among our people if we can and usually we have. When our work had dropped off, either temporarily or through long periods of depression like that of ten to twelve years ago, we have consistently and of our own volition been guided in making necessary layoffs by as broad a rule of seniority as we think anyone could ask Seniority has also been applied wherever possible in the case of such privileges as choice of shifts.

We have been pioneers in two fields of benefit and importance to you both of which came to you unsolicited because of the Company's interest in the

welfare of its people and its policy of sharing with them the results of our mutual effort. Many years ago we established VACATIONS WITH PAY which have given you needed rest and recreation and the money to pay for them. We likewise established SERVICE COMPENSATION and in addition the Company has frequently paid EXTRA COMPENSATION when in the judgment of its Directors business conditions warranted. This has materially increased the income of each and everyone.

These things I mention here because I think that this is the time for you to think about them and to talk about them with your fellow-workers and your family. It seems to me that they are proper matters for you to consider before you vote on Friday. A fair question is whether you think you need a Union as your bargaining agent in order to get along fairly and successfully in this Company.

The decision is yours to make.

On the following morning considerable discussion among employees took place in the plant concerning this letter. Some questioned the Company's purpose in sending out the letter; others remarked that the emphasis on paid vacations and bonuses, capitalized in the letter, along with the statement that they had been provided by the Company without solicitation, was a reminder that the employees' interests had been provided for by the Company without any bargaining representatives; and others remarked that it was possible that these benefits would be withdrawn if the Union were voted in, as the foremen's comments had indicated, and expressed uncertainty how they would vote where previously they had been outspoken for the Union Some employees were unaffected by the letter, although recognizing it as an effort to influence their decision in the forthcoming election.

9 The election

During the afternoon of August 25, the election was conducted at the plant pursuant to the Board order, and in keeping with arrangements made by the Regional Office. It resulted in 100 votes cast for the Union, 108 against it, with 6 additional ballots challenged These challenges were made by Favor, serving as a union observer at the election, on the ground that the voters were supervisory employees Cosgrove was one of the six whose vote Favor challenged.

On August 29, the Union filed with the Regional Office of the Board a protest on the election, with a request for a new election. The protest stated: (1) the letter of President Dennett to the employees prevented their free choice in the election by influencing them against the Union, (2) prior to and on election day supervisors advised employees to vote against the Union, because such was the wishes of the management, (3) the polling place was situated so as to permit employees to be observed while voting, and (4) there were irregularities in the handling of challenged ballots.

On September 8, the Union withdrew its protest on the election, and simultaneously filed in the present case a charge of unfair labor practices in violation of Section 8 (1) of the Act.[17] This charge reiterated the substance of the first and second points in the protest on the election, and further specified that the Respondent endeavored to discourage membership in the Union by having published the verse in the June issue of Bird's Eye-View This last incident was brought to the attention of the union officials for the first time after the election. Later, on September 12 the Union amended its charge to add the alleged discharge of Favor on September 11, and again on December 26 to add the alleged

[17] Upon the record in the "R" case, after the protest was withdrawn, the Board dismissed the Union's petition on September 12, 1944.

refusal to bargain with it "on or about June 3, 1944, and at all times thereafter."

10. Termination of Gilbert I. Favor

Favor was notified on September 11 that he was laid off On that day the Respondent began a planned lay-off of a number of employees, concededly for economic reasons, hereinafter discussed Against the Respondent's claim that Favor was included in this lay-off without regard for his union activity, the Union claimed that Favor's employment was terminated to discourage union membership.

Favor began his employment with the Respondent in December 1942 Prior to that, he had been employed elsewhere as a milling machine operator for a period of 5 months, and previous to that he had worked as a clerk in a law office.

When he entered the Respondent's employ, he was assigned to an assembly department, later known as department 14, under the general supervision of Foreman Forsyth. It was divided in two sections, under leadmen Cosgrove and Bonney.[18] Favor was assigned to work with Bonney from whom he received instructions. Throughout the period of his employment he usually worked with Bonney, although at times he worked with Cosgrove. At times, too, he was assigned to assembly work temporarily in departments 15 and 16, and to a variety of unskilled jobs in other departments.

Department 14 was engaged principally in the assembly of "Cramp" mechanisms used in operating submarine hatch covers. In addition to putting the machinery together, this assembly work required the integral pieces to be drilled, threaded, dressed, and adjusted in other ways, for fitting with allowable tolerance, although not requiring fine clearance. At times other types of machines and parts were assembled in this department When first employed there, Favor worked on the Cramp mechanism in the assembly of cylinders This involved dressing the interior of the cylinder, by filing off burrs in the bottom and by honing the walls to accommodate the piston, inserting and fitting the piston, then fitting and fastening a cap with studs. This unit was then attached to another part of the mechanism, which sometimes required additional dressing of the joining surfaces. In beginning this work, Favor had little skill or mechanical aptitude. Later, however, his skill improved in doing both the assembly work and the incidental finishing work, to the extent that he was an acceptable mechanic. During 1943, in March, July, and September, he was granted three increases of 5 cents each in his wage rate. When the job evaluation plan went into effect on April 20, 1944, he was receiving the next to the top rate within the range for his labor grade, as a class B assembler.[19] Also indicative of his improving aptitude, prior to March 1 of 1944, five changes in shop facilities which he had suggested had been adopted by the Respondent. In all, Favor had nine such suggestions accepted before his termination.[20]

[18] Cosgrove was the most experienced employee in the department, and received a higher pay rate than Bonney. When department 14, as such, was disbanded Bonney was reduced to an assembler's position, and Cosgrove continued as leadman in the reorganized department His status as an assistant to Foreman Forsyth is noted above

[19] Assemblers below that of leadman in all assembly departments appeared to be graded with diminishing skill in labor grades 6, 8, and 9 Class A assemblers were in labor grade 6 The wage rate range for labor grade 6 was from 82 cents to 95 cents per hour, that for labor grade 8 was from 72 cents to 83 cents per hour, and that for labor grade 9 from 67 cents to 78 cents per hour

[20] The Respondent encouraged employees' suggestions by rewarding them, if accepted, with an award of $2 or $5 according to the Respondent s estimate of their merit. Favor received two $5 awards and seven $2 awards, in addition to a $10 bonus paid when a total of five awards had been earned by an employee.

In midsummer of 1943, an organizer for the International Association of Machinists, affiliated with the A. F. of L., endeavored to unionize the Respondent's employees and announced a mass meeting for that purpose. Gauthier, foreman of department 15, sent to Forsyth, foreman in department 14, a paper which the former had circulated among employees for signatures in his department. The paper was headed with the statement, "We, the undersigned, do not want a union in this shop." Rumors of its circulation reached Favor before the paper was delivered to his foreman. When Forsyth received it, he took it to where Favor and others were working and asked them to sign it. Favor immediately took exception to the paper, told his fellow workers not to sign it, saying it was an infringement of employees' rights and telling Forsyth that by circulating it he had violated the Wagner Act. Forsyth then went to the plant office concerning the matter, and upon his return destroyed the paper. This incident inspired considerable talk among employees in the plant, and a deference to Favor's courage in the championing of employees' rights [21]

Favor was not a member of the A. F. of L., nor did he join this union. He attended the meeting, and spoke there to urge employees to withhold in unionizing for a while to see if shop conditions would improve.

Favor, among others, was disappointed with his rating under the job evaluation plan As recounted above, on the day following one of the Union's first meetings, he vehemently criticized the plan in his argument with Plant Superintendent Yankee. He became the leader of the union campaign in the plant, advocating its purposes, defending its reputation, speaking at its meetings, circulating its handbills, and soliciting membership. He was the principal employee with whom the union officials consulted on the progress of the campaign, and admittedly was known to be engaging in all these activities.

On one occasion Foreman Forsyth told him he went "around the shop talking too much" and "to stay in [his] department," although Forsyth made no reference to the activity in which Favor was engaged. This remark was made when Favor inquired why he did not get a raise, and prompted Favor to respond, "If you would get me a raise I certainly would stay in my department." Forsyth then discussed with Favor his merit rating, elicited a pledge from him that he would be more diligent in his work and "stay on the job," then submitted a revised merit rating sheet on Favor and secured an increase in his wage rate to the top for his labor grade.[22] Forsyth testified, and Favor admitted, that he resumed his discussions with employees in the plant after the raise went into effect

On an occasion in midsummer, when Favor had gone to the toilet, upon his return Forsyth told him he had been gone over a half hour, and accused him of wasting time in talking with other employees Favor protested Forsyth's action in timing him, and contended he did not treat other employees that way. At that moment Assistant Superintendent Lindsay passed, and Favor asked Lindsay to transfer him to another department, saying he felt that Forsyth was prejudiced against him and would hold him back from advancement. Lindsay told Favor that he was assigned to that department, and he wanted him to remain there. Forsyth admitted having timed Favor, but testified he timed other employees as well. He testified that Favor was the only one he ever had to

[21] This incident predates the period alleged in the complaint, and no inference of any unfair labor practice is drawn therefrom.

[22] Tabulations put in evidence by the Respondent disclose Favor was receiving this top rate of 83 cents on July 1. Forsyth testified the revised rating of Favor reflected the improved diligence which Favor promised to make in his work, and was made without being referring to the rating appeals committee. The increase became effective about 2 weeks after the revision of Favor's merit rating.

speak to, and that Favor once made the accusation of "picking on him . . . watching him all the time" He testified that other employees usually would leave the department only once during the morning and once during the afternoon, taking only about five minutes, whereas Favor left two or three times and stayed much longer. He testified he frequently saw Favor talking with other employees at various places in the shop, and repeatedly told him to return to his job, but added he did not hear Favor engaging in any union discussions although he knew Favor was for the Union. He testified that it was common practice for employees to talk on the job, to leave their department for coffee or to make purchases at the vending machines, and that there was no company rule against such conduct.[23] Other foremen also testified to incidents when they saw Favor in conversations with their employees. Except for one incident which occurred near a buffing machine after Favor's work hours, and another that occurred in Swanson's department on the day before the election when Favor was discussing arrangements with the election observer who was employed there, the evidence did not establish definitely that his conversations retarded the work either of himself or of other employees to any measurable extent.

During July, Favor was assigned to work in the testing laboratory on four occasions, but on the last was called away on personal business before completing the work The laboratory was in the basement of the plant, and the work was done there and in back of the plant Favor's work was unskilled labor, in handling testing materials, taking apart and cleaning the testing machinery and utensils, and cleaning the testing room The period of each assignment was for 2 or 3 days. A laborer, who regularly worked there, was off sick when he was first assigned there This assignment was in the testing of an analine sludge, which was somewhat poisonous to the skin and required care in handling and frequent washing of himself and the testing equipment. Favor suspected he was assigned to this task, in an out-of-the-way part of the plant, to restrain if not prevent his activities in behalf of the Union Other production workers had been assigned there at times and one man regularly employed in department 15, Duguay, frequently had been assigned and had a locker there in which he kept the clothing required for that job[24] On being notified of his second, third, and last assignments, Favor protested his selection to Assistant Superintendent Lindsay, and pointed out in one instance that Duguay could be assigned to the job. Lindsay replied that Duguay was needed on the job he was doing, and told Favor that his assignment was only temporary.

In the latter part of July or about the first of August, when returning to the shop floor from the laboratory, Favor encountered Superintendent Yankee and asked him if he was to be kept on this laboratory assignment. Yankee told him he would not be kept there, but told him to do the work when it was assigned to him. Observing that Favor was wearing a union button, Yankee asked him for what purpose he was wearing it in the shop, and whether he had paid his dues as stated on the button. Yankee said that the management did not approve of such union insignia being brought into the shop, and that permission to do so should have been requested Favor told him that he was the one who had distributed the buttons to the employees and did not think he had to have permission to do so. He then explained to Yankee the "psychology" of having buttons worn by union adherents, both in encouraging other workmen to join and in inducing the management to recognize the Union. Yankee then said to Favor

[23] Forsyth was one of the foremen who attended the meeting with President Dennett about May 1.

[24] Duguay was an assembler in labor grade 6, rated next to the top in his wage range.

that as a result of their earlier conversation, he had received a report that Favor had accused him of "coercion." Favor immediately took exception to this report, and asked Yankee who had made such report, and denied he had made such accusation. Yankee, in his testimony, admitted some discussion with Favor about his laboratory assignment, about the union buttons and the "psychology" of wearing them, and about the reported "coercion." He testified, "I asked him if he had assumed the responsibilities of the Union, and was paying his union dues," but denied he had said that the company disapproved of the buttons being worn. He testified that Favor was the only employee with whom he had any discussion about union buttons, and with whom he had discussed the advent of the Union.[25]

On one of Favor's assignments in the laboratory, the work was suspended for a short time while repairs were being made by a plant electrician. On this occasion, Albert Hammond, the technician in charge of conducting the tests,[26] discussed with Favor and the electrician his own experience in working for the Respondent, relating how he was provided with work there during the depression years, telling them they were foolish in trying to get a union in the plant and that the employees would lose their bonus and their shop privileges if the Union got in. He said that the employees did not foresee what they were doing, would gain nothing, and would realize their mistake too late. Hammond, admitting his conversation concerning the good treatment he had received, denied having said the employees would lose their benefits and were making a mistake.

Following his last assignment, when Favor went down to the laboratory to get the job number on the test on which he had begun to work on the preceeding day, his inquiry precipitated an argument with Hammond, who ordered him out of the laboratory with the remark, "You are nothing but a troublemaker; you and your union caused more trouble around this shop than you'll ever know." Hammond, admitting having ordered him out of the laboratory after the dispute about the test number, denied he made the statement that Favor was a "troublemaker" and his union activity was causing trouble.[27]

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[25] Yankee testified as follows, on cross-examination.

Q. Did you have any conversation with any other employees about the union?
A No, sir
Q Are you sure of that?
A. Yes, sir
Q So Favor is the only man you discussed the union with?
A Yes, sir.

* * * * * * *

Q Now, who was it that accused you of coercion in connection with the union?
A I don t know, sir
Q How did you know you had been accused of coercion?
A Because someone told me.
Q Who told you that?
A Mr Dennett.
Q Mr. Dennett told you?
A He understood that I had been accused of coercion

From his entire testimony, it appears that the incident which followed the early union meeting involved the reported "coercion" with which Yankee accusingly confronted Favor on this last occasion Dennett testified, "I said to [Yankee] in a joking way that I understood he was going to be accused of coercion," although denying positively that he had received any such report

[26] Hammond directed the work of the helpers, and was solely in charge in the absence of Foreman Beach who travelled for the Respondent in servicing equipment leased to its customers. The Trial Examiner finds Hammond was a supervisory employee

[27] Hammond s testimony on the number of days which Favor worked there on each assignment, on the sequence of tests made, and the dates when they were conducted being in May and June, was not supported by records which the Respondent had and could have

In July, Favor went to the Personnel Manager, Roland Sager, to apply for a loan from a lending organization which was a subsidiary of the Respondent. Previously, Favor had secured a loan in this manner, and had repaid it. Sager told him he would not recommend the loan, telling him that working conditions were such as to make a loan ill-advised. Favor had heard rumors in the plant that foremen were preparing lists of employees to be laid off. He then asked Sager if this was going to be done, and what factors were to be considered in selecting the ones to be laid off Sager said the selections would be made according to seniority, ability and merit. Favor asked if he was to be included in the lay-off, and Sager said he did not know, and that he had not seen the lists. Sager told him, however, that he should not worry because there were plenty of jobs to be had, and offered to place a call at that moment to a related company, Bird & Sons, saying, "Favor, if you want a job I can get you a job right now." Favor refused this offer, preferring to remain with the Respondent, and telling Sager if he was to be considered for a lay-off he would try "to pull strings" and stay in the shop. During the conversation, Favor asked whether it was possible to get an increase in wages above the range for his labor grade, and Sager replied the only limit to where a person could go with the Company was measured by his ability to perform his work. Sager testified that he had substantially this discussion with Favor, although fixing it in two conversations in June and July The Trial Examiner does not find the variance material to the issues.

Favor's action in protesting the marked specimen ballot to his foreman without success, and on the following day to the Regional Office, is recounted above. On election day he helped distribute leaflets before working hours, then served as an observer for the Union during the election.

On the day following the election, Foreman Forsyth told Favor that he understood how he felt over the election, that he should keep "on the ball" in his work and not go out of the department unless he really had to do so, and remarked that the bosses had their eyes on him Forsyth admitted these remarks, except for the last. A few days later, Favor and Griffen were working together temporarily in department 4, when Foreman Swanson passed them. Addressing himself to Griffen, Swanson asked him if he was then working with Favor, and said if he was he "would become a Jew and belong to the C I O with him." Swanson's denial of this incident is rejected, in view of the credible testimony of Favor and Griffen and the obvious antagonism of Swanson against the Union.

On Monday, September 11, Foreman Forsyth notified Favor he had to "let him go" at the end of the day. Forsyth told him that he and two women were listed for release, referring to a list given him by Assistant Superintendent Lindsay. Favor immediately endeavored to see Yankee and Sager, but both were absent from the plant. He then talked with Lindsay, protesting his discharge. In response to Favor's persistent questioning whether Lindsay had recommended his release, Lindsay admitted he made such recommendation and told him that his attitude had been wrong all the time he was in the company's employ. Favor packed his tools and left on that morning. Several days later Favor returned to the Company's office to get a check due him, and then asked to talk with Sager. In a conversation with Sager, marked by asperity on the part of Favor, Sager said to him, "You were never happy working here . . . You were a rabid union follower." Favor took exception to the lask remark, pointing out he never belonged to any union until he joined the C. I. O. in the shop, and

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produced and was at variance with the more credible testimony of Favor and with other incidents that confirm Favor's testimony. The Trial Examiner believes Hammond endeavored to confuse the sequence of events and discredits that part of his testimony which conflicts with Favor s The latter's account of Hammond's conduct is credited as substantially accurate.

did that along with the other employees. Lindsay gave no testimony concerning Favor's protest to him, and Sager's testimony supported Favor's account of their discussion except that Sager denied having told Favor, "You were a rabid union follower."

Favor sought employment elsewhere. He found an opening at another plant in a nearby town, and was given encouraging consideration by its employment agent who asked for his references. Following a satisfactory preliminary interview, and within the course of an hour to permit the investigation of one of his references, Favor was told in effect that the job was not open to him. He then asked with whom his interviewer had talked at Bird Machine Company, and was told to "never mind" Favor then telephoned the Respondent's plant, stated to the telephone operator he was the person who had called about Favor a short time before, and asked to be connected again with the person with whom he had talked. Favor was then connected with a clerk by the name of Daley, whom the Respondent disclosed was regularly employed in its purchasing department. Having ascertained the source of the report made on him, Favor made no further inquiry. The substance of the report was not disclosed, and no attempt was made to secure the testimony of Daley or of the prospective employer's employment agent.

In addition to Favor, on September 11th the Respondent permanently laid off 2 other employees in Department 14, both women; and altogether 17 other employees in 11 departments. Including all these, during that week a total of 22 employees were laid off; and including these, during the 4 weeks following September 11th, a total of 47 employees were laid off. This number did not include 7 who quit and 1 who was discharged. Of the total of 47, 18 were women, being all the women employed in production work in the shop Eleven of these women and seven of the men had signed cards with the Union; and all who quit or were discharged had signed cards

In May and June the work on Cramp mechanisms began to slacken. At about this time, the contract for their manufacture was cancelled, and the Respondent did not have sufficient work to warrant the continued employment of all its production workers In July President Dennett issued instructions to the departmental foremen to list those workers who were least needed for efficient operations, and directed that all women workers be listed for lay-off. In the latter part of July, the foremen prepared and transmitted their lists, which were examined by Dennett, Yankee, Lindsay, and the production manager, Laird. Dennett had had prepared for his use a seniority list of all male employees working on June 30th. He ascertained that the foremen's lists had been prepared without regard for the relative seniority of the men, and directed that they be returned to the department heads for reconsideration "to have any man out of turn [in seniority] compared with all the men who were junior to him, as to their ability." The lists were returned to the foremen with this instruction, although there is no evidence that the foremen were provided with the seniority list. Subsequently, after the middle of August, the lists were submitted again with a revision as to one or two men employed in the machine shop. They were examined again by Dennett and the supervisors, and again Dennett requested that those listed be reconsidered as compared with junior men. No change was made in those listed this time, and the lists were returned to Dennett. He took no action in the lay-off, pending the election and during the period while the protest on the election was pending. When notified on Saturday, September 9th, that the Union had withdrawn its protest, he issued instructions that the listed employees be laid off. Lindsay received the list on September 11th, and as related above, gave notice to some of the listed employees on that day.

The Respondent offered proof that Favor was included in the lay-off because of his relative seniority, and because in ability he did not compare with other employees who were retained. According to the list used by Dennett, showing the relative seniority of men employed on June 30th, corrected to omit all separations prior to September 11th, Favor was 54th from the last, out of approximately 215 non-supervisory male employees in all production, maintenance, and shop storeroom departments[28] Thirty-five of less seniority were retained, and 8 of greater seniority were laid off. In departments in which the character of work done was comparable to that done by Favor, 17 with less seniority were retained and none with greater seniority were laid off[29] Twelve of the 17 had been in labor grade 6 on July 1st, and the remainder were in labor grade 8[30]

Foreman Forsyth and Assistant Superintendent Lindsay testified that when the work in department 14 began to slacken, the men in that department were transferred from it. According to Lindsay, these transfers began in May and June, and "most of them were transferred by the end of July." The Respondent's employment data disclosed that there were 13 men employed in that department on July 1st, 2 of whom were learners and subsequently were released. Except for the 2 leadmen, and except for Favor and Leicester Willis, both of whom were in labor grade 8, the remaining 7 were in labor grade 6 Following July 1st, Willis, who had been employed 5 months before Favor, was upgraded to labor grade 6 and transferred to department 16. One of the remaining 7 was discharged, and another quit; 4 were transferred to department 16, and 1 was transferred to department 6. Favor had greater seniority than 4 of these 7 After the transfers, as reflected by records of January 1, 1945, all non-supervisory employees in department 15 and 16 (the latter having been consolidated with department 14) were in labor grade 6, except for the painter-sprayer in department 16 who was in labor grade 8 The two leadmen and Favor, and Welch who quit, were the last to work in department 14. Thereafter, Cosgrove was made the leadman in department 16, and Bonney was reduced in grade and wages to the status of a non-supervisory employee and assigned to that department.

Before department 14 as such was disbanded, but following the transfers of the other workmen, Favor was employed there on "snagging" work from other departments, and in frame assembly for department 16. In addition, a peacetime product of the Respondent, referred to as a Johnson screen, on which production was being resumed, was being assembled in that department by Cosgrove, Welch, and Favor. This same assembly work was done later in department 16, after its consolidation with department 14. There was no specific criticism of Favor's work in these operations.

The Respondent's evidence disclosed that the work of department 15 and 16 was maintained at a fairly constant production level during the summer months of 1944 Foreman Gauthier testified that he had work to be done in department 15 at about September 11th on which he could have used Favor, "as a green man . . . unfamiliar with my department . . . I couldn't use him as another man in the department." He testified there was always rough work there for

[28] Data prepared by the Respondent under a caption "Employment Dates of Shop Employees" includes the names of six who were laid off or quit before September 11 (Charles Simmons, Jr, Manly Spear, Anthony Russetti, Ralph Welch, John Seba, James Lindsay, Jr), but omits the names of others who quit or were discharged between July 1 and September 11 (Earl Warner, George Webb, Allan Ayer, Robert (Charles L.) Groome, Carl McKay).

[29] These were in assembly departments 6. 14, 15, and 16, and in the "snagging" or grinding operations of department 10 (welding and boilershop) A substantial part of Favor's work was in removing burrs and ridges on castings and pieces, called "snagging"

[30] These last mentioned were Leicester Willis in department 14, and the "snaggers" or rough and finish grinders in department 10

unskilled men, referred to as "snagging" work, and that he kept two or three new and inexperienced men assigned to this type of work. He named three, two of whom had less seniority than Favor. Previously, Favor had been sent to his department for short intervals, and employed on what Gauthier described as helper's assignments. In doing this, Gauthier had no criticism of his work. On another occasion Favor was assigned to drilling and threading holes in armor plate, in work which Gauthier described as being on the "production line." He broke several threading taps when tried on this job, and used more time in removing them than was required by the other experienced workers. Finding that he was holding up the production line, and that he was inept in this operation, Gauthier returned him to his own department.

Forsyth, who admittedly listed Favor to be laid off, testified that in his opinion Favor was not a competent workman for general work in the shop. Both Forsyth and Cosgrove testified concerning instances when Favor's work was unsatisfactory, and had provoked critical comments. As an example, Forsyth described how Favor drilled cotter-holes out of line, and Cosgrove testified to his breaking more drills than other workmen. However, Cosgrove admitted he was kept on drilling operations and Gauthier testified he saw Favor engaged in this work in department 14 several times. Forsyth and Cosgrove, in testifying with reference to Favor's work in elementary assembly operations, which consumed two-thirds of his working time, stated that he was satisfactory. Bonney, who was the leadman under whom Favor worked most of the time, was not called as a witness. Favor testified he never received any criticisms on his work, although he did describe his experience when he broke taps in threading armor plate when working for Gauthier.

In Forsyth's testimony relative to Favor's request for a wage increase before July 1, when his merit rating was discussed, no mention was made of Favor then being retarded because of incompetent work; instead, the factor on which Forsyth expected improvement was that he "get on the ball and stay on the job and try to work a little faster." The Respondent did not rely upon its merit rating system, nor offer in evidence its ratings of Favor and other comparable employees, to support its contention of his incompetence, or his comparative ability. The Trial Examiner believes the cited instances when Favor's work was below standard, were instances when he first was assigned to a new operation or to work with unfamiliar tools and materials, and that the criticisms concerning his work are to be appraised in that respect The Trial Examiner finds that the Respondent considered Favor to be a satisfactory worker in his labor grade and group.

12 Findings in conclusion

A. *Interference, restraint, and coercion*

Notwithstanding the instructions of President Dennett, that there be no interference in any way with the employees' rights to choose a bargaining agent, the supervisory employees engaged in a course of conduct which served to discredit and defeat the employees' purpose to engage in concerted action through unionization.[31] The superintendent, and various foremen and assistant foremen, badgered the employees in arguments concerning the benefits of unionization. They showed hostility toward the Union and the employees who were leaders in its campaign; they charged the leaders with making trouble and abusing accustomed privileges; they belittled Favor by expressions intended for insult,

[31] The propensity of Foreman Gauthier and Forsyth to intermeddle in the matter of self-organization among employees, was indicated by their circulation of the anti-union petition in 1943.

and discredited LoDico by falsely attributing authorship of the verse, the publication of which deprecated the Union. They attempted to inspire contempt for the Union, and skepticism relating to its effective representation of the employees' interests They told various employees they had nothing to gain by joining the Union; they denounced it in bawdy language; and through the marked election notice, they publicized the Respondent's opposition to it

They engendered apprehension among the employees concerning the shop privileges and benefits which had been gained through employer concessions. In repeated questions and assertions made while participating in discussions with their employees, they posed the possible loss of these advantages. The employees, having no bargaining agent and peculiarly dependent upon the discretion of the employer, perceived in these persistent references a threat of economic reprisal. Having suggested this insecurity, the Respondent impaired the independence in judgment which employees have the right to exercise in making a choice concerning a bargaining agent. President Dennett's letter became enmeshed in this state of affairs by reminding the employees of these same considerations. In it he asserted he had the duty and privilege of presenting his views, and clearly disclosed his preference for no union representation. He posed the election issue as a choice between union representation and "dealing between ourselves as we always have done" He pointed out that wages could not be increased, and that by unilateral action the Respondent had promulgated and applied with liberality a rule of seniority. He described the impartiality of the election procedure, and gave assurance that no employee would be penalized for voting as he chose. He cautioned each employee to give careful consideration to the benefits of paid vacations and bonus payments, gained through "our mutual efforts," before voting. The timing, wording, and emphasis of his letter did not allay the apprehension which the employees felt concerning their accustomed privileges and compensation; but instead decided many of them to take no risk with the Respondent's favor. Those employees who were sensitive to employer guidance considered the letter to be the Respondent's imprimatur sanctioning the supervisors' conduct. Hence, the letter drew significance from their conduct, and became a part of and the culmination of their campaign to defeat the Union. Integrated in this campaign, the letter ceased to be "an argument temperate in form" within the bounds of the employer's immunity under the free speech doctrine[32] but instead it implemented the "pressure exerted vocally" by the supervisors who inspired among the employees the fear that their benefits and privileges would be forfeited by selecting the Union.[33] It came as a last minute caution, and became an added hindrance to a free determination by the employees, as to whether they should select a bargaining agent to represent them

By this conduct of its officers and supervisors, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

B. *Discrimination to discourage union membership*

The Respondent's anti-union animus, although cautioned by the speech of Dennett to the supervisors, manifested itself immediately in their treatment of Gilbert I. Favor. Prior to the advent of the Union, he received no different treatment from that of his fellow workers, found to be satisfactory in their regularly assigned work. When the Union began to organize the employees, and

[32] See *N L R B* v *American Tube Bending Co*, 134 F (2d) 993 (C C A 2).

[33] See *N L R B* v *Virginia Electric & Power Co*, 319 U S 533, and compare *Matter of Virginia Electric & Power Co*, 44 N. L R B 404, also see *Matter of Van Raalte Company, Inc*, 55 N. L R B 146, at pp 150–151.

Favor became prominent in this activity, he became the focal point of the management's attention Superintendent Yankee first gave him warning that he was under observation, when Yankee questioned him about a union meeting on the preceding evening and contended with him that the Union would be of no benefit. Although there was no plant rule that restrained union discussions during working time, and President Dennett's instructions cautioned the supervisors against any interference, Foreman Forsyth kept Favor under surveillance when he talked with other employees in the plant and attempted to confine Favor to his department. Being dissatisfied with his wage rate, Favor told Forsyth that he would refrain from discussions outside his department if he got a wage increase. Forsyth, without resort to the procedure of appeal set out in the job evaluation plan, immediately utilized the superior economic power of the employer to secure Favor's abstention from further union activity However, Favor's activities were within the ambit of his rights and did not infringe upon the employer's rules The awarded increase in his pay rate did not obligate Favor to forego his activities, when granted as in this situation, to procure a forfeiture of rights which the Act protects in the interest of public policy. When Favor resumed his activities after the pay increase went into effect, Forsyth continued his surveillance of Favor, and timed him while away from his department. Assistant Superintendent Lindsay and Foreman Forsyth thereafter assigned Favor to work in the laboratory, an unprecedented assignment for him, which segregated him from his fellow-workers When in July he inquired of Superintendent Yankee whether he was to be kept there, Yankee assured him that he would not be, and took that opportunity to question Favor's right to wear a union button. Yankee told him he was remiss in not having the management's permission before distributing the buttons in the plant, and confronted him accusingly with a distortion of Dennett's jest that he had charged Yankee with coercion. Yankee admitted with singular significance that he discussed union matters only with Favor. When in July Favor applied to Personnel Manager Sager for a loan, Sager refused it, although he had authorized a previous loan which Favor had repaid. When Favor inquired whether he would be retained in the Respondent's employ, disclosing his expectation that he would be retained, Sager forthwith volunteered to find employment for him elsewhere When in July the "Cramp" assembly work was diminishing, other employees were transferred from Forsyth's department to work on other operations that were to continue; Favor was retained in that department, soon to be disbanded, and was listed by Forsyth for lay-off, although there were operations comparable to his own in other departments which Favor could capably perform. The Respondent defined a policy to govern the lay-off which gave insignificant weight to seniority. It accorded the supervisory personnel the power to select the employees who were to be laid off; and with respect to Favor, it adopted the decision of Forsyth, Lindsay, and Yankee, to be rid of him through a lay-off, after failing through a raise in pay to procure his abstention from union activity, to restrict him in such activity through segregation, and to preclude his continued activity by getting him employment elsewhere. The last remarks of Lindsay and Sager to Favor, concerning his attitude in the plant, clearly revealed the Respondent's antagonism toward his pro-union attitude This antagonism appeared as a common denominator, both in the episodes of his treatment and in the treatment of other union adherents in the plant, constituting the interference recounted. Favor's persistence in supporting the Union placed him in opposition to the Respondent's efforts to frustrate the unionization of its employees. He was added to the list for lay-off to effect his discharge. This achieved directly the Respondent's purpose to remove him as an

agitating factor. The disbanding of his department provided the occasion for it, with an appearance of economic necessity.

By discharging Favor on September 11th,[34] the Respondent discriminated in regard to the tenure of his employment to discourage membership in the Union, and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act

C. *Refusal to bargain*

The Union demanded recognition as the exclusive bargaining representative on April 28th, and sought to bargain with the Respondent, when in fact it did not represent a majority of the employees in the proposed appropriate unit. The Respondent refused to bargain with the Union until its claimed right was established. The Union chose to invoke the Board's procedure to determine its representative status, and to avail itself of the consequent delay to solicit additional authorizations. On June 3rd the Union had secured authorizations from a bare majority of the employees in the unit which it then proposed, which also was appropriate; but it did not then offer to, nor seek to establish its representation status in direct dealings with the Respondent; nor did it then claim the right to, nor endeavor to bargain forthwith with the Respondent. Instead, by pursuing the "R" case procedure which its petition had instituted, it demonstrated its intention not to insist upon bargaining until after the question of representation was determined by the Board. The Trial Examiner does not agree with the postulate of the Board's trial counsel, that the Respondent was then confronted with the Union's continuing demand for immediate recognition and bargaining, stemming from the letter of April 28 and implied in the pending "R" case procedure. The Union's overt act of pursuing the "R" case procedure, deferred its implied request to bargain until after the election determined its status. The conduct of employers and employees alike are to be viewed realistically. The realities in this case are that the Union made no such demand upon the Respondent at any time when it held authorizations of a majority. The illegal conduct of the Respondent, found herein to have interfered with and restrained its employees in selecting their bargaining representative, did not constitute a circumstance which would make futile the Union's demand for recognition, nor operate to charge the Respondent with knowledge that the Union then had attained the status of an exclusive bargaining agent.

Absent an unconditional demand to bargain by the Union at the time when it held sufficient authorizations to accord it the status of exclusive bargaining agent, there was no refusal to bargain on the part of the Respondent. The alleged violation of Section 8 (5) of the Act contained in the complaint should be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

[34] The Trial Examiner finds that the evidence, relating to the report made to Favor's prospective employer, gives strong support to speculation but fails to support a conclusion that there was further discrimination against him in that respect after his discharge. Blacklisting was not alleged in the complaint.

V. THE REMEDY

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

With respect to the discriminatory discharge of Gilbert L. Favor, it will be recommended that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and that the Respondent make him whole for any loss of pay he may have suffered by reason of his discriminatory discharge by payment to him of a sum of money equal to the amount he would have earned as wages from September 11, 1944, the date of his discharge, to the date of the Respondent's offer of reinstatement, less his net earnings during such period.[35]

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the follwing:

CONCLUSIONS OF LAW

1. United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

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

3. By discriminating in regard to the tenure of employment of Gilbert I. Favor, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

5. The Respondent has not engaged in any unfair labor practice within the meaning of Section 8 (5) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that the Respondent, Bird Machine Company, and its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Steelworkers of America, affiliated with the Congress of Industrial Organization, or any other labor organization, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to hire, tenure, or any term or condition of their employment;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist United Steelworkers of America (C. I. O.), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in con-

[35] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the Respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Crossett Lumber Company*, 8 N. L. R. B 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v. *N. L. R. B.*, 311 U. S. 7.

certed activities for the purpose of collective bargaining or other mutual aid or protection.

2 Take the following affirmative action which the Trial Examiner finds will effectuate the policies of the Act:

(a) Offer Gilbert I. Favor immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Gilbert I Favor for any loss of pay he has suffered, or may suffer, by reason of the discrimination against him, by payment to him of a sum of money equal to the amount he would have earned as wages from the date of his discharge to the date the Respondent offers reinstatement, less his net earnings during such period;

(c) Post at its plant at Walpole, Massachusetts, copies of the notice attached hereto, marked "Exhibit A." Copies of said notice, to be furnished by the Regional Director of the First Region, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material Also, publish a copy of the notice in the next issue of the plant paper, the "Bird's Eye-View," and distribute the paper through the usual channels of circulation;

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

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

It is further recommended that the complaint against the Respondent be dismissed in the allegations relating to its refusal to bargain with the Union.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

MELTON BOYD,
Trial Examiner.

Dated May 23, 1945.

EXHIBIT A

NOTICE TO ALL EMPLOYEES

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

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

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

Gilbert I. Favor

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

BIRD MACHINE COMPANY,
Employer.

Dated_____ By _____
(*Representative*) (*Title*)

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

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