

In the Matter of UNITED AIRCRAFT MANUFACTURING CORPORATION and  
INDUSTRIAL AIRCRAFT LODGE No. 119, MACHINE, TOOL AND FOUNDRY  
WORKERS UNION

*Case No. C-31.—Decided February 21, 1936*

*Aircraft and Parts Industry—Strike: stoppage of work—Discrimination: discharge—Reinstatement Ordered—Back Pay: awarded.*

*Mr. Malcolm F. Halliday and Mr. Ralph H. Cahouet for the Board.*

*Shipman & Goodwin, by Mr. George H. Day and Mr. Walfrid G. Lundborg, of Hartford, Conn., for respondent.*

*Mr. Julius W. Schatz and Mr. Arthur D. Weinstein, of Hartford, Conn., for the Union.*

*Mr. Fred. G. Krivonos, of counsel to the Board.*

DECISION

STATEMENT OF CASE

Charges and amended charges having been duly filed by Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union (hereinafter termed the union), the National Labor Relations Board, by its agent, the Regional Director for the First Region, issued and duly served its complaint, dated November 6, 1935, against the United Aircraft Manufacturing Corporation, the respondent herein.

The complaint, as duly amended by the Trial Examiner, alleges, in substance, as follows:

That the respondent, a corporation organized under the laws of Delaware, with its principal office and place of business in East Hartford, Connecticut, is engaged and has since June 29, 1935, continuously been engaged at its Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions in East Hartford, Connecticut, in the production, sale and distribution of airplane motors, propellers and parts, and causes and has continuously caused materials used in its production to be purchased and transported in interstate commerce, and causes and has continuously caused the airplane motors, propellers and parts produced by it to be sold and transported in interstate and foreign commerce, all constituting a continuous flow of trade,

traffic and commerce among the several states and with foreign nations;

That the respondent on September 16, 1935, discharged or laid off for an indefinite period or severed the employment of, and at all times since that date has refused to reinstate, 28 of its employees, namely, Raymond Joanis, Peter Hopwood, Lawrence Foley, (Joseph) Ovilla Champaigne, John Carlson, Axel G. Benson, Carl L. Brett, Frank Hertel, Henry J. Descy, William L. Litscher, Frank Wendt, James Fitzpatrick, Basil La Breche, Francis Welch, Guy Williams, George Peters, John Dajda, Herbert A. Wheelock, John H. Cronin, Lawrence Lang, Francis Doucette, Harold Wilson, Joseph King, Pio Abattee, George Demers, Frank W. Treybal, John Mylek and William M. Hamilton, for the reason that they joined and assisted a labor organization known as the Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection, thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the National Labor Relations Act;

That the unfair labor practices of the respondent have led and tend to lead to labor disputes affecting commerce as defined by the Act.

In its answer, in substance, the respondent admits that it is a corporation organized under the laws of the State of Delaware, having its principal office and place of business in East Hartford, Connecticut, and that it is now and has since June 29, 1935, continuously been engaged at its Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions in East Hartford, Connecticut, in the production, sale and distribution of airplane motors, propellers and parts. But the respondent denies that in the purchase and transportation of materials used in its production and in the sale and distribution of its products it is engaged in interstate commerce as alleged in the complaint.

The respondent admits that on September 16, 1935, it discharged or that it laid off or severed the employment of, and at all times since that date has refused to reinstate, the 28 employees named above. But the respondent denies that it discharged or laid off or severed the employment of or refused to reinstate the above-named individuals for the reason that they joined and assisted a labor organization and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of

the National Labor Relations Act. The respondent also denies that the acts alleged in the complaint constitute unfair labor practices which have led and tend to lead to labor disputes affecting commerce as defined in the Act.

Pursuant to notice of hearing, the Trial Examiner, as agent of the National Labor Relations Board, conducted a hearing commencing on November 20, 1935, at the Federal Building, Hartford, Connecticut. The respondent and the union appeared by counsel and participated in this hearing. The Board was also represented by counsel.

During the course of the hearing, the respondent moved to dismiss the complaint on the grounds that the National Labor Relations Act is unconstitutional. The motion was denied. A further motion was made during the hearing by counsel for the union, that eight names be stricken from the complaint, whereupon, pursuant to Article II, Section 14, of the Rules and Regulations—Series 1, the complaint was dismissed as to Peter Hopwood, Lawrence Foley, John Carlson, Herbert A. Wheelock, John H. Cronin, Pio Abattee, John Mylek and James Fitzpatrick.

As considered by the Trial Examiner and presented before this Board, pertinent allegations of the aforesaid complaint involve 20 of the respondent's employees, as follows:

*Employment severed and reinstatement refused*, Axel G. Benson, Carl L. Brett, Frank W. Hertel, Henry S. Descy, William L. Litscher, Frank Wendt, Guy Williams, George Peters, John Dajda, Basil La Breche, Francis Welch, all employed at the Pratt and Whitney Division, and Lawrence Lang, Harold K. Wilson, Francis Doucette, William M. Hamilton, Frank W. Treybal, Joseph King, George Demers, all employed at the Hamilton Standard Propeller Division; *discharged or laid off and reinstatement refused*, Raymond Joanis and (Joseph) Ovilla Champaigne, both employed at the latter Division.

Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded all parties. Upon the record thus made, the stenographic report of the hearing and all evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on December 20, 1935, filed an intermediate report, finding and concluding in substance that the respondent, in the course and conduct of its business, caused and is causing a considerable and substantial portion of its raw materials and its finished products to be purchased, sold and transported in interstate and foreign commerce; that the respondent had committed unfair labor practices in violation of Section 8, subdivisions (1) and (3) of the Act in severing the employ-

ment of and refusing to reinstate 18 of its employees, other than Joanis and Champaigne, named above; and that such unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended the reinstatement of these 18 employees to their former positions with back pay. He also found the evidence insufficient to support the allegations in the complaint concerning Joanis and Champaigne, named above, and recommended the dismissal of the complaint in respect to them.

On exceptions to the intermediate report, duly filed by the respondent, an oral argument on the record was held before this Board in Washington, D. C., on January 22, 1936, pursuant to Article II, Section 34 of said Rules and Regulations.

We find that the evidence supports the Trial Examiner's rulings, findings and conclusions. We find nothing in the respondent's exceptions to the intermediate report, which are discussed below, or in the respondent's argument at the hearing before this Board, requiring any material alteration of such findings and conclusions. Upon the entire record in the case, we make the following:

#### FINDINGS OF FACT

##### A. THE RESPONDENT AND ITS BUSINESS

I. (a) The respondent, United Aircraft Manufacturing Corporation, is and has been since June 29, 1935, a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal office and place of business in East Hartford, Connecticut. The respondent is a subsidiary of the United Aircraft Corporation and owns and operates five Divisions known as Pratt and Whitney Aircraft, Hamilton Standard Propeller, Chance-Vought, Sikorsky Aircraft, and United Airports of Connecticut. These five Divisions prior to June 29, 1935, were corporations and subsidiaries of United Aircraft Corporation, but on that date consolidated and became Divisions of the respondent.

(b) The United Aircraft Corporation was created in June, 1934, one of three corporations set up on the dissolution of the United Aircraft and Transport Corporation, organized in 1928. The latter owned a large number of subsidiaries spanning the United States and Canada, operating manufacturing and equipment plants and commercial transportation airlines. The other two corporations created upon the dissolution are the United Airlines Transport Corporation and the Boeing Airplane Company. The United Airlines Transport Corporation has its main office in Chicago, Illinois, and is a commer-

cial transportation company, carrying passengers, mail and express between the east coast to the west coast of the United States. It acquired the stock of various subsidiaries of the old United Aircraft and Transport Corporation when that corporation was dissolved. The Boeing Airplane Company is located in Seattle, Washington, and is engaged in the manufacture of airplanes. The United Aircraft Corporation acquired the stock of various of the subsidiaries of the old United Aircraft and Transport Corporation, which subsidiaries are located in the eastern sections of the United States, including the Divisions of respondent which were at that time separate corporations. When the United Aircraft and Transport Corporation was dissolved and the three new corporations set up in its stead, the stockholders of the old corporation received stock in each of the three corporations, and the assets of the old corporation were to be divided among the three new corporations. The work of the old United Aircraft and Transport Corporation, with its various subsidiaries, is now carried on by the three new corporations and their subsidiaries; as specified above, the respondent is a subsidiary of one of these three new corporations, the United Aircraft Corporation.

II. (a) The respondent leads the world in the production of airplanes, airplane engines, airplane propellers, and parts. Its Pratt and Whitney Division is one of the largest manufacturers of airplane engines and engine parts in the world, and is the largest earner and has the largest number of employees of all the Divisions. The propellers manufactured by the respondent at its Hamilton Standard Propeller Division are used more than those of any other propeller manufacturer. The aircraft engines and parts and propellers manufactured by the respondent at its Pratt and Whitney and Hamilton Standard Propeller Divisions are purchased and used extensively by the United States Army and Navy, and by practically all of the domestic commercial airlines. Foreign governments and foreign commercial airlines likewise purchase and use Pratt and Whitney engines and parts and Hamilton Standard propellers. A considerable proportion of the materials and finished and unfinished parts used in the production of the respondent's airplane engines, parts and propellers at its Pratt and Whitney and Hamilton Standard Propeller Divisions is purchased, sold and transported in interstate commerce from and through states of the United States other than the State of Connecticut, to the Divisions in East Hartford, Connecticut, where the materials and unfinished parts are finished and together with the completed parts are assembled into airplane motors and parts and airplane propellers, and a substantial portion of these is then transported in interstate and foreign commerce from East Hartford, Connecticut, to, into and through states of the United States other than

the State of Connecticut, and to, into and through foreign nations to its various customers described above.<sup>1</sup>

(b) The respondent, after assembling its airplane engines, propellers and parts at its Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions, makes shipment of motors, parts and propellers to the Boeing Airplane Company at Seattle, Washington, which motors, parts and propellers are installed in airplanes manufactured by the Boeing Airplane Company, and are used by the United Airlines and Transport Company for the transportation of passengers, mail and express.

(c) The engines and parts manufactured at the Pratt and Whitney Division of the respondent are manufactured, generally, after orders have been received from the respondent's various customers, governmental and private. Propellers and propeller parts manufactured at the respondent's Hamilton Standard Propeller Division are manufactured and assembled as ordered by the United States Government. Propeller parts, blades and hubs, other than for government orders, are manufactured for stock, the manufacturing schedule and inventory being based on a sales forecast dependent upon orders on hand and prospective orders, based on experience; the propellers are assembled to supply orders from customers. Motors, propellers and parts manufactured by respondent are inspected at its plants by government officials and are packed and labelled by the respondent's employees for shipment, mainly to Army and Navy depots and other destinations outside of the State of Connecticut.

<sup>1</sup> According to testimony and exhibits in the record, the respondent's business in its Pratt and Whitney and Hamilton Standard Propeller Divisions, from July 1, to October 31, 1935, was as follows:

	Pratt and Whitney	Hamilton Standard Propeller
Purchases:		
In Connecticut.....	\$717, 826	\$136, 434
In other states.....	<sup>1</sup> 1, 099, 493	<sup>2</sup> 230, 767
Sales:		
In Connecticut <sup>3</sup> .....	1, 006, 286	198, 018
In other states <sup>4</sup> .....	1, 810, 655	513, 293
Foreign <sup>5</sup> .....	<sup>6</sup> 250, 000	<sup>6</sup> 169, 000

<sup>1</sup> 16 states.

<sup>2</sup> 13 states; 1 foreign country.

<sup>3</sup> These records of sales in *Connecticut* include motors, propellers and parts delivered on order to respondent's Chance-Vought, Sikorsky and other divisions and wholly owned subsidiaries, located in Connecticut, for assembly into airplanes which are transported in interstate and foreign commerce on completion. These transactions amount to approximately \$475,000 in motors and parts so delivered on order by the Pratt and Whitney Division and \$150,000 in propellers and parts so delivered by the Hamilton Standard Propeller Division.

<sup>4</sup> For both divisions. sales in 26 states; Canal Zone; Canada; and "various" for Army and Navy.

<sup>5</sup> Sales from July 15, to September 15, 1935, in name of United Aircraft Export Corporation, a wholly owned subsidiary of respondent.

<sup>6</sup> Approximate.

(d) The respondent's Chance-Vought Division is adjacent to the Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions in East Hartford, Connecticut. At the Chance-Vought Division, the respondent manufactures observation airplanes which are primarily purchased and used by the United States and foreign governments. The respondent's Sikorsky Aircraft Division is located at Bridgeport, Connecticut, at which Division respondent manufactures multi-motored amphibian airplanes and flying boats, generally purchased and used by commercial airlines. The Chance-Vought and Sikorsky airplanes are equipped with motors and propellers manufactured and transported from the Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions, respectively. The respondent's United Airport of Connecticut Division operates Rentschler Field adjacent to the Pratt and Whitney Aircraft and Hamilton Standards Propeller Divisions at East Hartford, Connecticut. The field is used by the respondent as an experimental ground to test its various products and is also used by the American Airlines, a commercial transportation company, as a landing field for depositing and taking on passengers, mail and express, and for servicing purposes. The respondent at its United Airport of Connecticut Division, as well as at its Pratt and Whitney Aircraft and Hamilton Standard Propeller Divisions, does reconditioning and repair work for various of its customers described above.<sup>2</sup>

III. All of the aforesaid operations of the respondent, set forth in findings I and II, constitute a continuous flow of trade, traffic, commerce and transportation among the several states and foreign countries.

#### B. THE UNION

IV. The Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, originally affiliated with the American Federation of Labor, is now an affiliate of the Federation of Metal and Allied Unions, is a labor organization, and has been in existence since April, 1934.

#### C. UNION MEMBERSHIP, LEADERSHIP AND ACTIVITY OF COMPLAINING WITNESSES

V. Until September 16, 1935, the 20 workers whose names remain in the complaint, as specified above, were employed by the respondent, 11 of them at its Pratt and Whitney Aircraft Division and the other nine at its Hamilton Standard Propeller Division, in the City of East Hartford, Connecticut. Each and all of them were at that time members of the Industrial Aircraft Lodge No. 119, Machine,

<sup>2</sup> According to Exhibit B-16, the respondent's reconditioning business ("service sales") for the months of July, August, September and October, 1935, amounted to \$12,480.

Tool and Foundry Workers Union, actively engaged in the union's affairs, and all but one were at that time active union officials. A table showing the names of the complaining witnesses, their union positions, occupations, and length of service, follows:

## EMPLOYED AT PRATT AND WHITNEY AIRCRAFT DIVISION

Name	Union Position and Activity	Occupation	Length of Service
Axel G Benson.....	President of Union Executive Committee, Chairman, Shop Committee	Grinder, Gear Dept.....	3½ years
Frank W. Hertel.....	Treasurer of Union Executive Committee, Dept Grievance Committee	Grinder, Gear Dept.....	2½ years.
Frank Wendt.....	Trustee of Union Executive Committee	Bench Worker, Gear Dept	3¾ years.
William L Litscher....	Executive Committee, Shop Committee, Steward, Dept Grievance Committee	Grinder, Cylinder Dept.	7½ years
Henry J. Descy.....	Executive Committee, Shop Committee, Steward, Dept Grievance Committee	Grinder, Miscell Dept..	4½ years.
Carl L. Brett.....	Executive Committee, Steward, Dept Grievance Committee	Machinist, Experimental Dept	7 years
Guy Williams.....	Chairman, Sick Committee.....	Machine set-up man Crank Case Dept	9½ years
John Dajda.....	Steward, Dept Grievance Committee.	Boring Machine Operator, Crank Case Dept	4 months.
George Peters.....	Steward, Dept Grievance Committee.	Machine set-up man Miscellaneous Dept	4¾ years.
Basil La Breche.....	Steward, Dept. Grievance Committee.	Lathe hand, Cylinder Dept	8½ years
Francis Welch.....	Steward, Dept. Grievance Committee.	Machinist Crank Case Dept.	7½ years

## EMPLOYED AT HAMILTON STANDARD PROPELLER DIVISION

Name	Union position and activity	Occupation	Length of service
Raymond Joanis.....	Vice-Pres of Union Executive Committee, Shop Committee, Dept Grievance Committee	Machinist, Hub Dept Annex	1½ years.
Lawrence Lang.....	Trustee, Executive Committee, Dept Grievance Committee.	Machinist, Hub Dept.	7¾ years.
Harold K. Wilson.....	Executive Committee.....	Process Inspector, Hub Dept.	8 years.
Francis Doucette.....	Executive Committee.....	Machinist, Drill Press Operator, Hub Dept	1¾ years.
William M Hamilton.....	Steward, Dept Grievance Committee	Machinist, Lathe Operator, Hub Dept Annex	2 years (employed, P & W Aircraft, 1928-33).
Frank W. Treybal.....	Steward, Dept Grievance Committee.	Machinist, Lathe Operator, Hub Dept.	7 months (transferred from P & W Aircraft, where employed since May, 1933)
Joseph King.....	Steward, Dept. Grievance Committee.	Lathe Hand, Hub Dept..	15 months
George Demers.....	Dept Grievance Committee	Machinist, Hub Dept Annex.	21 months.
(Joseph) Ovilla Champagne.	Union Member.....	Machinist, Blade Dept....	11 months (at P & W Aircraft, 3 months before).

VI. With the exception of (Joseph) Ovilla Champagne (the sole member of the union on the list of complaining witnesses who was not an official), the union membership, official union position and union activities of the respondent's employees listed in the preceding

finding were well known to their fellow workers, and to the respondent through its officers, superintendents, foremen and supervisory staff. The members of the shop committee and the executive committee and the stewards and members of departmental grievance committees, specified in the preceding finding, repeatedly represented the union in conferences with the respondent's officials and members of its supervisory staff concerning grievances, wages, hours and conditions of labor. The activities of the chairman of the sick committee were also known to the respondent.

D. PROCEDURE IN THE RESPONDENT'S PLANT FOR DISCUSSION OF PROBLEMS WITH THE UNION

VII. The settlement of a 15 minute stoppage in the plant early in May, 1935, resulted in the adoption of a definite procedure by the respondent and the union for the discussion of mutual problems. Witnesses for both union and respondent are agreed that the respondent's letter of May 10, 1935 (Exhibit R-A) was mutually understood to outline the procedure as follows: grievances were first to be taken up by employees, through the department grievance committees, with their respective foremen; then, in the event they were not settled, the union shop committee was to discuss them with a committee of the respondent's superintendents. Matters not settled between the latter committees were to be taken to the respondent's president, Donald R. Brown, the conference to be arranged for the union's shop committee by the superintendents.

VIII. After the stoppage early in May, 1935, the respondent's superintendents and other supervisory officials were instructed, under the orders of Brown, the respondent's president, that should its employees again engage in a concerted stoppage of work, they were to be ordered to resume work in 15 minutes or to consider their employment terminated. Although this was decided upon by Brown as the respondent's policy towards its employees and was made known to the superintendents and supervisory staff, no notice of this intention was communicated to respondent's employees before September 16, 1935.

E. THE UNION'S RESOLUTIONS OF SEPTEMBER 6 AND 7, 1935

IX. The union's executive committee, at two meetings of the union's membership on September 6th and 7th, was authorized to take whatever action was necessary, including a stoppage of work, to protect members against discrimination. The reasons for the action, according to testimony by Benson, union president, were rumors that "the company was going to crack down on the union very shortly";

Benson testified that, "since the complete smashing of the Colt's union, the Manufacturers Association, in circulars and otherwise, had indicated that such a glorious victory should be followed up . . . and the atmosphere was such that the members of the union felt that it was necessary to protect the union from attack."

F. THE LAY-OFFS ON SEPTEMBER 11, 1935, AND THE SUBSEQUENT  
NEGOTIATIONS

X. On September 11, 1935, eight employees in the respondent's Hamilton Standard Propeller Division were notified that they were to be laid off on September 13, 1935. Five were union members; two of them, Champaigne and Joanis, are among the remaining complaining witnesses listed above.

XI. The union shop committee was notified of the lay-offs at noon on September 11th, and protested to Neilson, factory manager, that day, and again on September 12th and 13th. The reason given the committee for the lay-offs was a reduction in the amount of work available. The committee requested that the respondent reduce its hours from 40 to 35 so that available work be shared by all employees and the lay-off be avoided, and told Neilson that it was prepared to back up its protest. Neilson then postponed the lay-offs until the expected return, on September 16th, of Brown, the respondent's president. Champaigne and Joanis were told to report for work on September 16th.

XII. On the morning of September 16, 1935, Neilson conferred with Brown. It is significant of the seriousness with which the respondent regarded the current labor dispute that Gilpin, factory manager, and probably Borrup, general superintendent, of the respondent's Pratt and Whitney Aircraft Division, were present at the conference, although the lay-offs concerned only employees in the Hamilton Standard Propeller Division. Brown upheld the lay-offs. The union's shop committee was informed of the decision about 12:30 P. M. that day, and the men involved were told finally that they were laid off. Benson, president of the union, testified that Neilson was asked to arrange a conference between the shop committee and Brown, and that he replied that it would do no good. Witnesses for the respondent deny that the shop committee made such a request. Brown's evidence on this point is contradictory. He testified that Neilson had told him the committee did not care to see him; and he also testified that Neilson never told him the committee wanted to see him. The evidence is clear that under the procedure for discussion of problems between the respondent and the union, arrangements to take problems to the respondent's higher officials,

like Brown, were to be made through respondent's superintendents; that the shop committee had never before gone to Brown directly; and that in this case, although Brown was informed that the committee had stated it was prepared to back up its protest, and the situation was obviously serious, the respondent's superintendents did nothing to arrange a meeting between Brown and the shop committee.

XIII. The failure of the respondent's superintendents to arrange a conference with the respondent's president, the latter's failure to require them to do so, although it was known and admitted that the situation was serious, and although it was part of the accepted procedure for negotiation of disputes between the union and the respondent for such conferences to be arranged through the superintendents, coupled with the admission by the respondent's president and superintendents, that as early as May, 1935, it had been determined to disemploy those participating in a stoppage who did not resume work within about 15 minutes upon notice to do so, which policy had not been communicated to the respondent's employees, leads persuasively to the conclusion that the respondent, on September 16, 1935, was not disposed to settle the question of the lay-offs by means of the procedure for negotiation established in May. The ultimate power to arrange a conference between Brown and the shop committee lay with the superintendents and Brown. They did not avail themselves of this power, although they were not unaware that the union was prepared to back up its protest.

Such conduct by the respondent points to a determination to discourage or prohibit action by the union in the interests of its employees.

G. THE STOPPAGE ON SEPTEMBER 16, 1935, AND THE RESPONDENT'S  
SUBSEQUENT PROCESS OF REHIRING

XIV. At 2 P. M. on September 16, 1935, a concerted stoppage of work occurred in the respondent's Hamilton Standard Propeller and Pratt and Whitney Aircraft Divisions. The stoppage was about 80% to 90% effective. Immediately upon its occurrence, the respondent's foremen, under instructions from respondent's superintendents and other officials, and in pursuance of the respondent's policy specified in finding VIII above, informed employees who had stopped work to resume in 15 minutes. Brown and the superintendents testified that the foremen were instructed to inform the men that if they did not resume work they would be considered as having quit. According to the union's witnesses, the foremen told the men to resume work in 15 minutes or "they were fired". The foremen testified that they variously told the men to resume work or they were

"off the payroll", or "were through", or that the foreman "had no further use for them". The stoppage, however, continued until 3:30 P. M., the end of the day shift.

XV. The executive committee's action in calling the stoppage was confirmed by the union's members at meetings held on September 16th to 20th. Letters from the union, dated September 17th and 19th, to the respondent requesting a conference for the settlement of the dispute resulted in a conference in Gilpin's office on September 20th; but the union's request to have employees return to work in a body was refused by the respondent on the ground that it was rehiring all of its employees individually upon application.

XVI. When complaining witnesses called for their pay at the respondent's plant later in the week, after the stoppage, they were generally required to get clearance slips before being paid. A clearance slip was usually required by the respondent upon severance of employment, to indicate that company property had been returned by the worker and that he had removed his own tools. The use of a clearance slip before being paid, in the parlance of the respondent's employees, meant that the employee was "through". Many of the complaining witnesses testified that they made individual requests for reemployment at the time they were paid and thereafter.

XVII. During the period between September 17th and 25th the respondent did in fact rehire most of the workers employed on September 16th. According to testimony for the respondent, all were given new clock cards and the employment card of each was marked to the effect that he was reemployed. Those rehired were interviewed either at the gate or the employment office by their foremen, and were sent in to work after having been approved by the foremen. The men who reported before or about starting time on September 17th, the day after the stoppage, apparently were sent right in to work, and were registered as reemployed later. But it is clear that those rehired were all, one way or another, selected or approved by the respondent's foremen. According to testimony for the respondent, the men were selected from those who appeared at the gate of the plant or at the employment office as needed to balance its disrupted production schedule; in a few instances, particular men were requested by the foremen. The respondent's foremen testified that they also made their selections for rehiring according to the workers' loyalty, attitude and ability. The respondent keeps no records of employees' efficiency or seniority. It relies entirely upon the judgment of its foremen in that respect. The results of the exercise of that judgment in the course of the respondent's admittedly selective process of reemployment was the exclusion from employment of the union's leaders—its president, treasurer, most of the executive

and shop committee members, shop stewards and members of department grievance committees—as unmistakably shown by the tabulation in finding V above. The evidence is convincing that the selection for reemployment was not entirely based on the foremen's concern for the respondent's production schedule or their interest in the employees' efficiency.

H. CONCLUSIONS RESPECTING THE RESPONDENT'S CONDUCT ON SEPTEMBER 16, 1935, AND ITS PROCESS OF REHIRING

XVIII. The stoppage of work in the respondent's plants, as specified above, in protest of the lay-offs specified above was based on a reasonable conviction by the respondent's employees that such lay-offs were in fact discriminatory and on a reasonable fear of discrimination by respondent. The stoppage was finally brought about by the respondent's conduct in failing to arrange a meeting between the shop committee and Brown, its president, as set forth in finding XIII above. The stoppage was, on the part of its employees, a concerted action for mutual aid and protection, an exercise of the right expressly guaranteed employees in Section 7 of the National Labor Relations Act.

XIX. The respondent's conduct in treating the stoppage as a reason for severing the employment of those who participated therein concertedly, whether the severance be considered as a general demand for resignations, a forced quitting or a discharge, it is immaterial which, was discriminatory in regard to hire or tenure of employment, in that it was an act directed at concerted conduct by its employees acting through a labor organization and, necessarily, discouraging membership therein, as well as a direct interference with, restraint and coercion of the right of its employees to engage in concerted activities for mutual aid and protection. This conclusion is emphasized by the respondent's conduct in not making full use of the procedure for settlement of labor disputes accepted by the respondent and the union, as set out in finding XIII above.

XX. By reemploying the great bulk of its employees so disemployed in the course of the stoppage on September 16th, the respondent has, as to them, complied with its duty under the Act. Excepting Raymond Joanis and (Joseph) Ovilla Champaigne, who were laid off before the stoppage, the respondent has failed and refused to reinstate the men listed in finding V above, although these employees, through the union, on and before September 20, 1935, offered to return to work in a body, and individually thereafter. That this list is composed of the union's officers, members of the executive and shop committees, the chairman of the sick committee and department stewards and members of department grievance committees, is persuasive that the respondent's selective process of

rehiring, specified in finding XVII above, was directed at exclusion of the union's leaders from employment.

XXI. In this view of the respondent's conduct on September 16th and thereafter, the meagre testimony by members of the respondent's supervisory force as to the efficiency, attitude or loyalty of complaining witnesses, other than Joanis or Champaigne, becomes unimportant. As findings XIV, XVIII and XIX above indicate, the respondent severed the employment of these 18 complaining witnesses on September 16th while they were engaged in concerted activity for mutual aid and protection without thought of their efficiency, attitude or loyalty. Findings V, XVII and XX show unmistakably that the respondent's selective process of rehiring excluded from employment a practically complete roster of the union's active leaders, comprising these 18 complaining witnesses. No reason for the respondent's failure to rehire them, other than their union membership, leadership and activity, can be deduced from the evidence. All of the foremen under whom those employees worked were witnesses. Their testimony either fails to mention the efficiency of these men at all or is confined to isolated instances, in some cases several months past, of minor misunderstandings which were admittedly adjusted when they occurred. If anything, the testimony of Azinger, department foreman in the Hamilton Standard Propeller Division, and Muzzulin, foreman in the Pratt and Whitney Aircraft gear department, that they chose their men for re-employment on the basis of loyalty and cooperation, the testimony of other foremen to the same effect, and especially the evidence of Muzzulin that, in his opinion, before the stoppage, employees in his department restricted their efforts by prearrangement with some of the union leaders, but that he had never taken disciplinary action on that account, lends support to the conviction that union leadership, membership and activity were chief considerations in the respondent's failure and refusal to reinstate complaining witnesses, other than Joanis and Champaigne, listed in finding V above.

#### I. CONCLUSIONS RESPECTING JOANIS AND CHAMPAIGNE

XXII. The evidence is not sufficient to support the allegations in the complaint that the discharge of Raymond Joanis and the lay-off of (Joseph) Ovilla Champaigne were due to their union membership and activity.

#### J. CONCLUSIONS RESPECTING OTHER 18 COMPLAINING WITNESSES

XXIII. (a) Said Axel G. Benson, Carl L. Brett, Frank Hertel, Henry J. Descy, William L. Litscher, Frank Wendt, Basil La Breche, Francis Welch, Guy Williams, George Peters, John Dajda, Lawrence Lang, Francis Doucette, Harold Wilson, Joseph King, George

Demers, Frank W. Treybal, and William M. Hamilton, and each of them, were disemployed and severed from their employment either by being forced to quit or by being discharged on September 16, 1935, all and each of them by the respondent's superintendents, foremen and supervisory employees, agents of the respondent, and have since been refused reinstatement in employment, for the reason that the aforementioned employees, and each of them, joined and assisted a labor organization known as Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, and engaged in concerted activities, for the purpose of collective bargaining, and other mutual aid and protection.

(b) By said disemployment, severance of the employment of, and refusal to reinstate the employees specified in paragraph (a) of this finding, and each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

(c) By said disemployment, severance of the employment of, and refusal to reinstate the employees specified in paragraph (a) of this finding, and each of them, the respondent has discriminated and is discriminating in regard to the hire and tenure of said employees, and each of them, and has thus discouraged and is discouraging membership in the labor organization known as Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union.

#### K. THE RESPONDENT'S CONDUCT AS AFFECTING COMMERCE

XXIV. The respondent's severance of the employment and disemployment of employees participating in the stoppage of work on September 16, 1935, as specified above, as well as its refusal to reinstate employees as specified above, disrupted the respondent's production schedule and affected its business of manufacture and distribution of airplane engines, propellers and parts in interstate commerce, thus burdening and obstructing commerce and the free flow of commerce.

XXV. The respondent's severance of the employment of and disemployment of employees participating in the stoppage of work on September 16, 1935, as specified above, as well as its refusal to reinstate employees as specified above, has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE RESPONDENT'S EXCEPTIONS

The respondent's exceptions to the Trial Examiner's intermediate report are based on the respondent's apparent theory of the case, that the respondent, in its business, is not engaged in interstate commerce, and that the respondent's conduct in severing the employ-

ment of and refusing to reinstate the 18 men found by the Trial Examiner to have been discriminated against was justified. The respondent also excepts to the Trial Examiner's denial of the respondent's motion to dismiss the complaint on the ground that the National Labor Relations Act is unconstitutional.

At the hearing before this Board, the respondent withdrew its exception to the Trial Examiner's findings that a considerable proportion of its raw materials and a substantial proportion of its finished products are purchased and transported by the respondent from and to states outside of the State of Connecticut. See findings II and III.

The respondent's exceptions are directed to a claim that the procedure set up on May 10, 1935 for settlement of labor disputes in the plant required, technically, a *request* by the union for a conference with Brown, the respondent's president, in the event the union shop committee and the superintendents failed to reach a settlement. The evidence does not sustain this position. The evidence rather indicates that such a conference was to be arranged, and that the final power to arrange it was in the superintendents. The employees had no access to Brown except through superintendents or other company officials and had never arranged conferences with him except through such officials. See findings VII, XII and XIII.

The exceptions also stress the fact that 60% of the respondent's employees had been rehired at the time the union made a demand for a collective return to work, on September 20th. The union began its efforts for such a conference by letter on September 17th and again on the 19th. Benson, union president, also testified he asked Gilpin, manager of the Pratt and Whitney Division, for a conference early on the morning of September 17th; he was told to apply at Gilpin's office; when he telephoned later in the morning, he was told that Gilpin would see the committee at his convenience. There was no conference until September 20th, when the company refused to reinstate the men in a body, but stated its policy to reemploy them individually. See finding XV.

The exceptions also point out that five of the complaining witnesses did not apply for reemployment and that the others did not do so until October 9th or thereafter, as shown by the respondent's records. In view of the admitted collective request for reinstatement made on September 20th, on the first opportunity offered by the respondent, this is not material. In fact, testimony by these men indicates requests for reemployment by all but four of the complaining witnesses, some of them within a week after the stoppage. The respondent, in a few cases, recalled certain employees. It could easily have recalled any or all of the complaining witnesses. They were at the plant for their pay on September 19th or 20th,

and at the gates or in the employment office that week and thereafter. The respondent also had their addresses on its records. See findings XV, XVI and XVII.

The exceptions also advance the theory, entirely novel to the issues raised by the pleadings and to the record, that in participating in the stoppage on September 16th, the conduct of complaining witnesses amounted to "acts of insubordination and unlawful and a criminal trespass in violation of the General Statutes of the State of Connecticut of which this Board takes judicial notice, and was a concerted effort to do collectively that which was illegal for them to do individually." Therefore, the exceptions conclude the respondent was justified in refusing to resume the relation of employer and employee with these employees.

The respondent's counsel, at the hearing, identified the statute referred to in the exceptions as Connecticut General Statutes, Section 6119, which provides:

"Any person who shall, without right, enter or remain upon the premises of another after having been forbidden to do so by the owner of such premises or his authorized agent, either directly or by clear and legible signs posted thereon, shall be fined not more than fifty dollars."

Though the Board may take judicial notice of state statutes, it is difficult to perceive under what authority either the Board or its Trial Examiner may determine, upon evidence heard in one of its own proceedings, that a state criminal statute has been violated, whether the issue be raised directly in such a proceeding or indirectly on exceptions to the Trial Examiner's intermediate report.

Further, the respondent can make no claim under the evidence that its agents directly forbade its employees to remain on the premises when the stoppage began. Whatever direction there was to do so came after the stoppage was in effect, and applied only after the 15 minute grace period had expired. The stoppage itself was clearly a concerted activity for mutual aid or protection, a strike, the right to which is guaranteed by Sections 7 and 13 of the Act. The respondent's severance of the employment of complaining witnesses and all others who participated in the stoppage came before any orders were given for employees to leave the premises. Certainly at the commencement of the stoppage and during the grace period the respondent's employees were exercising a right granted them by an Act of Congress. That some employees, after the grace period, refused to leave the respondent's premises, and that such conduct may have amounted to a violation of a local statute, in no way affect the legal consequences of the respondent's conduct under the provisions of the Act. The respondent's conduct in that respect

had been completed by its severance of the employment of those who took part in the stoppage before the time some of these employees were ordered off the premises.

Still the respondent urges that the claimed violation justifies respondent's refusal to reinstate 18 of the complaining witnesses. Although 80% to 90% of the respondent's employees in the two Divisions affected participated in the stoppage under the same circumstances, the respondent has reemployed practically all of them, apparently without prejudice. Finding V shows that these 18 complaining witnesses were the leaders of the union, its president, trustees, executive and shop committee members and shop stewards. No reason appears for respondent's selection of complaining witnesses for what is obviously special treatment because of the alleged trespass save that set out in the findings; union leadership and activity. See findings XVII and XXI.

The respondent's final exception is to the Trial Examiner's denial of the respondent's motion to dismiss the complaint on the basis of the respondent's contention that the National Labor Relations Act is unconstitutional. At this stage of the proceedings, the exception does not merit discussion by this Board. The Trial Examiner's ruling on the motion is affirmed.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. The Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, affiliated with the Federation of Metal and Allied Unions, as set forth in the above findings of fact, is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The respondent by severing the employment of and disemploying and refusing to reinstate Axel G. Benson, Carl L. Brett, Frank Hertel, Henry J. Descy, William L. Litscher, Frank Wendt, Basil La Breche, Francis Welch, Guy Williams, George Peters, John Dajda, Lawrence Lang, Francis Doucette, Harold Wilson, Joseph King, George Demers, Frank W. Treybal and William M. Hamilton, and each of them, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of the National Labor Relations Act.

3. The respondent by discriminating in regard to the hire and tenure of the employees specified in the preceding paragraph, and

each of them, by severing the employment of and disemploying and refusing to reinstate these employees, and each of them, said conduct discouraging membership in the labor organization known as Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (3) of the National Labor Relations Act.

4. The unfair labor practices in which the respondent has engaged and is engaging as set forth in paragraphs 1 and 2 above constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

### ORDER

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

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Cease and desist from in any manner discouraging membership in Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

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

(a) Offer to Axel G. Benson, Carl L. Brett, Frank Hertel, Henry J. Descy, William L. Litscher, Frank Wendt, Basil La Breche, Francis Welch, Guy Williams, George Peters, John Dajda, Lawrence Lang, Francis Doucette, Harold Wilson, Joseph King, George Demers, Frank W. Treybal, and William M. Hamilton, and each of them, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole the said Axel G. Benson, Carl L. Brett, Frank Hertel, Henry J. Descy, William L. Litscher, Frank Wendt, Basil La Breche, Francis Welch, Guy Williams, George Peters, John Dajda, Lawrence Lang, Francis Doucette, Harold Wilson, Joseph King, George Demers, Frank W. Treybal and William M. Hamilton,

and each of them, for any losses of pay they have suffered by reason of the severance of their employment, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of the severance of his employment to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of such severance, less any amount, if any, which each earned subsequent to such severance until the date of such offer for reinstatement; and in the event of any dispute as to the amount of such back pay due, the dispute shall be laid before this Board, for determination of the amount of such wages properly due each such employee within the terms set forth in this Order;

And it is further ordered that—

4. The complaint be, and it hereby is, dismissed with respect to Raymond Joanis and (Joseph) Ovilla Champaigne.

EDWIN S. SMITH, member of the Board, acted as Trial Examiner in the original hearing of the case and did not take part in the hearing before the Board or in this decision.