

In the Matter of THE FEDERAL BEARINGS Co., INC. and its affiliate or subsidiary, SCHATZ MANUFACTURING COMPANY and LOCAL 297, INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA

Case No. C-195.—Decided December 10, 1937

Ball Bearing Industry—Interference, Restraint, or Coercion: repeated threats and warnings to employees to refrain from activity on behalf of union; surveillance of union meetings—*Discrimination:* discharge—*Company-Dominated Union:* domination and interference with formation and administration of; sponsoring and fostering growth of; active solicitation permitted during working hours but denied to petitioning union—disestablished as agency for collective bargaining—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Lester M. Levin, for the Board.

Mr. John E. Mack and *Mr. Carl Ehlermann*, of Poughkeepsie, N. Y., for the respondents.

Mr. Frank H. Niessen, of Poughkeepsie, N. Y., for the Union.

Mr. Howard Lichtenstein, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by Local 297, International Union, United Automobile Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City), issued and duly served its complaint dated May 25, 1937, against The Federal Bearings Co., Inc.¹ and its affiliate or subsidiary, Schatz Manufacturing Company, of Poughkeepsie, New York, the respondents herein, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 31, 1937, the respondents filed their answer to the complaint in which they denied that they had engaged in or were engaging in the unfair labor practices alleged therein.

Pursuant to notice, a hearing was held in Poughkeepsie, New York, commencing on June 3, 1937, before James C. Batten, the Trial

¹ Incorrectly designated in the complaint as Federal Bearing Co., Inc.

Examiner duly designated by the Board. The Board and the respondents were represented by counsel, and the Union, by its financial secretary. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the conclusion of the Board's case, the Trial Examiner granted the motions of counsel for the Board to dismiss the complaint in so far as it alleged the discriminatory discharges of George Kaiser and Charles Zimmer and the refusal of the respondents to bargain collectively with the Union.

On July 3, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondents had engaged in and were engaging in the unfair practices alleged in the complaint, except in so far as it alleged that the respondents had engaged in unfair labor practices within the meaning of Section 8 (5) by refusing to bargain collectively with the Union.

On July 16, 1937, the respondents filed exceptions to the Intermediate Report and to various rulings of the Trial Examiner, and presented oral arguments thereon before the Board. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the exceptions to the Intermediate Report and finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The respondents, the Federal Bearings Co., Inc., and Schatz Manufacturing Company, are located in the Village of Fairview, Town of Poughkeepsie, New York, where they engage in the manufacture of ball bearings used in motors, automobiles, and other machines. The Federal Bearings Co., Inc., manufactures "precision" bearings as distinguished from the commercial bearings produced by Schatz Manufacturing Company.

Members of the Schatz family hold a controlling amount of the outstanding stock of both of the respondents, and each respondent holds some stock of the other. In addition, The Federal Bearings Co., Inc., through stock ownership, controls the Waterbury Steel Ball Company of Waterbury, Connecticut.²

The plants of the two respondents occupy adjoining plots of land and are jointly served by a siding of the Central Railroad of New England, a branch of the New Haven system. Both of the respond-

² The issues herein do not concern the Waterbury Steel Ball Company.

ents engage in the same type of productive operations and use the same types of labor, though production workers are not transferred between the plants. In all other respects, however, the respondents are jointly operated by single clerical, employment, sales, and receiving departments. Although each respondent is under the direction of its own superintendent, both superintendents are directly responsible to Herman Schatz, who actively participates in the management of both respondents as the president and treasurer of each.

Each plant is divided into functional departments where, through successive operations, bearings are manufactured, submitted to heat treatment, grinding, and assembling. The bearings are then inspected, packed and shipped. Production in both plants is scheduled on order, although reserve stock is sometimes built up in anticipation of future business.

Approximately 85 per cent of the steel balls used by the respondents are purchased and delivered in trucks from the Waterbury Steel Ball Company in Connecticut. In 1936 purchases of the respondent, The Federal Bearings Co., Inc., amounted to \$977,460, and consisted, in addition to the steel balls procured from the Waterbury Company, of high grade alloy steel shipped by rail from Ohio, Pennsylvania, Connecticut, and New Jersey. During the same year its total gross sales amounted to \$2,630,000, 96.65 per cent of which were shipped outside the State of New York, principally to Detroit, Michigan and Muncie, Indiana.

In 1936 the respondent, Schatz Manufacturing Company, purchased raw materials amounting to \$100,360 which, in addition to the steel balls shipped from the Waterbury Company, consisted for the most part of cold drawn steel shipped from Pennsylvania, Connecticut, and New Jersey. During the same year its total sales amounted to \$448,650, of which all except 15.5 per cent represented shipments to states other than New York.

During 1936 the respondent, The Federal Bearings Co., Inc., employed from 650 to 800 employees on an annual pay roll of \$1,000,000. In the same year the respondent, Schatz Manufacturing Company, employed approximately 70 employees, its annual pay roll amounting to \$125,000.

II. THE ORGANIZATIONS INVOLVED

Local 297, International Union, United Automobile Workers of America, is a labor organization, affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees of the respondents, except supervisory and clerical employees. Local 297 was organized in March 1937, and received its charter on April 20, 1937.

United Schatz Employees' Association, later known as Schatz United Employees Association, Inc., and herein called the Association, is likewise a labor organization but is not affiliated with any other organization. The Association was first organized early in April 1937, and was incorporated under the Membership Corporations Law of New York State in May of the same year. The Association admits to membership all employees of the respondents, except foremen.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion*

The conduct of the respondents designed to interfere with the formation of the Union and to discourage their employees from becoming members is clearly revealed in the history of union activity in the respondents' plants. Early in March 1937, Carroll Smith, an employee in the grinding department of the respondent, The Federal Bearings Co., Inc., broached the subject of union organization to two other employees, Frank Niessen and Carl Mulder. On March 14, 11 employees convened at Carroll Smith's home and agreed to act as an organizing committee for a union tentatively to be called the Dutchess County Council of Industrial Organization. On March 21 another meeting was called at Carroll Smith's home and attended by 16 employees including Carroll Smith, Gezi Czapp, James Keady, George W. Theil, Thomas Smith, John T. Owen, Frank Niessen, Edward Wilson, Martin Nicolek, Edward Odell, and Louis Volino,³ all named in the complaint as having been discriminatorily discharged. Carroll Smith was elected chairman, Niessen was elected secretary, and Thomas Smith and Theil were appointed chairman of the organization committee and treasurer, respectively. The meeting was addressed by the president of the Tarrytown local of the United Automobile Workers of America, and official application cards for membership in that union were distributed. During the week commencing on March 21 considerable union activity, including the solicitation of members, was carried on throughout the plants, in some instances during working hours. During the same week the organization decided to apply for a charter from the United Automobile Workers of America. On Sunday, March 28, the Union held a mass meeting attended by over 100 of the respondents' employees. Thereafter meetings were held regularly and the Union attempted to function as the collective bargaining agent for the employees of both respondents.

³ Gezi Czapp, George W. Theil, John T. Owen, Edward Wilson, and Louis Volino are incorrectly referred to in the complaint respectively as Gezi Zsapp, George Theil, John Owens, Ed Wilson, and Louis Bolino.

Between March 24, 1937 and April 9, 1937, 18 of the most active Union members, including 11 of the 18 charter members, were discharged by the respondents after repeated threats and warnings delivered by the respondents through supervisory and confidential employees failed to discourage union organization.⁴ Several instances of such threats and warnings clearly reveal the attitude of the respondents toward the Union activity. On March 25, Horlacher, superintendent of the respondent, The Federal Bearings Co., Inc., called Carroll Smith from his machine, told him that "the rumors about the organizing" were being traced, and added: "You know, if you get fired for anything like this you can't get on another job in town. You are blacklisted." On March 14, Evans, a foreman, told Theil, one of the active Union members who was later discharged, that he was foolish to try to organize a union. Several days later, Evans warned him: "You better be careful about starting a union in the shop or you are liable to lose your job." Ebling, another foreman, cautioning Edward Wilson, after his discharge and reinstatement, said: "Don't you boys know you are making a mistake?" During early organization activity by the Union, William A. Bennett, a foreman, advised Frank Niessen, Union secretary: "You know if we have any labor trouble in this shop we will all lose our jobs. . . . You know H. H. (Schatz) is a stubborn Dutchman and he can very easily close up the shop and take a nice vacation in Germany." On several occasions during the month of April, West, a foreman whose activities on behalf of the Association are hereinafter described, was observed by Union members watching the meeting hall of the Union during the evenings when members convened.

Although the respondents produced witnesses to deny that its supervisory employees had expressed any hostility toward union organization, in the light of the discharges and other activity directly initiated by the respondents, and described below, the denials merit little credence. The anti-union attitude displayed by supervisory employees proved to be but one element in the respondents' campaign to discourage union organization.

B. *The discharges*

1. *James Palatucci*⁵ had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of his discharge on March 24, 1937, was working in the turret department on piece work, averaging \$23.92 for a 45¼ hour week.⁶ When Palatucci,

⁴ The discharges are considered below

⁵ Referred to as James Finn in the complaint.

⁶ The wages and hours of the discharged employees are averages computed from Respondents' Exhibit No 12, the employment record of the individuals named in the complaint

who held seniority over some 20 other employees in the department, asked why he was discharged, his foreman, Terhune, said: "I don't know, I just got orders to let you go." Terhune testified that Palatucci had been an efficient worker, and the only reason assigned by the respondents for his discharge was that he talked too much. Palatucci had joined the Union on March 21, 1937.

2. *Frank Catanzaro*⁷ had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of his discharge on March 24, 1937, was working in the polishing department on piece work, averaging \$25.86 for a 43¾ hour week. Catanzaro also held seniority over other employees in the department, and was not given a reason for his discharge. He was reinstated on May 5, 1937. Catanzaro has been a member of the Union since March 21, 1937.

3. *George Avello*⁸ had been employed since 1929, and at the time of his discharge on March 24, 1937, was working in the receiving department operated jointly by the two respondents. Avello received 44 cents per hour for a 48¼ hour week. The reason assigned for his discharge by Parsons, his foreman, was that business was slack. Parsons, however, testified that Avello was not industrious, although he never warned Avello nor complained about his work. Shortly after Avello's discharge his place was taken by a new employee. Avello had been a member of the Union since March 22, 1937.

4. *George W. Theil* had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of his discharge on March 24, 1937, was working in the grinding department at 42 cents per hour for a 73 hour week. Theil, a Union member since March 21, and its treasurer, had previously been warned by Evans, his foreman, that his union activities were obnoxious to the respondent, although when he was discharged, Horlacher, the superintendent, stated that he did not know the reason for his discharge. Indeed, Evans, his foreman, testified that Theil was laid off, and not discharged, though it was not denied that he was replaced by an employee transferred from another department. No attempt was made by the respondents to show that Theil was not an efficient employee.

5. *Martin Nicolek*, a charter member of the Union, had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of his discharge on March 24, 1937, was working in the bore grinding department on piece work, averaging \$23.72 for a 48¼ hour week. A week before his discharge Nicolek had been laid off for several days by his foreman, Bennett, who said: "What are you trying to do? Organize or make trouble around here?" At

⁷ Referred to as Frank Catsanzaro in the complaint.

⁸ Referred to as John Avello in the complaint.

the time of his discharge Bennett told him: "We have to make a few changes around here and I have to let you go." At the hearing Bennett testified that Nicolek was an efficient piece worker but that he was not industrious when paid on an hourly basis. The specific reasons assigned for Nicolek's discharge were absences and tardiness.

6. *Edward Wilson*, a charter member of the Union, had been employed by the respondent, The Federal Bearings Co., Inc., since 1929, and at the time of his discharge on March 24, 1937, was working in the bore grinding department on piece work, averaging \$28.38 for a 48 $\frac{1}{4}$ hour week. As in the case of Nicolek, Bennett told him that "new arrangements" were being made and that he "would have to go." Bennett himself testified that Wilson was an efficient worker and that the order to discharge him came from Horlacher over his protest. Wilson was reinstated on May 11, 1937.

7. *Thomas Smith*, a member of the organizing committee of the Union since March 21, 1937, had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of his discharge on March 25, 1937, was working in the polishing department on piece work, averaging \$29.73 for a 48 hour week. Smith's foreman, Ebling, told him on March 25 that he did not know the reason for his discharge. One week later Smith applied for reinstatement to Horlacher, who said: "They haven't gotten at the bottom of things yet and they are checking it all over and they are hitting and missing." Ebling testified that Smith was a competent worker, although he had received complaints that Smith spent considerable time away from his machine. As in the case of Wilson's discharge, it is significant that the order to dismiss Smith originated in Horlacher's office.

8. *John T. Owen* had been employed by the respondent, The Federal Bearings Co., Inc., since July 1936, and at the time of his discharge on March 26, 1937, was working in the inspection department, receiving 42 cents per hour for an average of 38 hours per week. On March 26 he was told by Le Pan, his foreman, that he was being discharged because the department was overstaffed. Several days later Owen applied for reinstatement to Horlacher who advised him that changes were being made in the department and that after the "trouble" was settled, Horlacher might reconsider him. Le Pan testified that Owen was dismissed because he was inefficient. Owen had joined the Union on March 21, 1937. He was a charter member, and a member of the organizing committee of the Union.

9. *Frank Niessen* had been employed by the respondent, The Federal Bearings Co., Inc., since 1929, and at the time of his discharge on March 25, 1937, was working in the bore grinding department on piece work, averaging \$24 for a 43 hour week. Niessen had previously experienced the effects of the respondent's labor practices in

1935 when he was laid off for a week because, pursuant to a notice which had been placed on the bulletin boards by the respondent inviting suggestions for the improvement of labor conditions, he had had the temerity to propose a method for the presentation of grievances. Niessen had no illusions regarding the labor policies of the respondent, and during the week of March 21, 1937, fearing that his Union activities would jeopardize his employment, he reminded his foreman, Bennett, of the 1935 episode, and told him that he was not soliciting Union members during working hours. Niessen was one of the most active members of the Union, and as we have noted above, had been elected temporary secretary on March 21, 1937. The reason assigned for his discharge was his interference with the work of other men. Bennett testified that Niessen was not inefficient, but that he had been told by Horlacher to watch Niessen.

10. *Louis Volino*, a charter member of the Union, had been employed by the respondent, The Federal Bearings Co., Inc., since July 1936, and at the time of his discharge on March 24, 1937, was working in the grinding department on piece work, averaging \$15.70 for a 39 hour week. Evans, Volino's foreman, testified that he was laid off, and not discharged, although Volino's position was filled by an employee transferred from another department two days after Volino's dismissal. As in the cases of the other discharges, the respondent maintained that Volino visited with other men and talked during working hours. Evans admitted, however, that he had never received complaints of Volino's work from the operator to whom Volino had been assigned as a helper.

11. *Harold Auchmoody* had been employed by the respondent, The Federal Bearings Co., Inc., since 1929, and at the time of his discharge on March 30, 1937,⁹ was working in the bore grinding department, receiving 61 cents per hour for a 49 hour week. Auchmoody was notified of his dismissal by Brown, another employee, who was also a deputy sheriff. When Auchmoody asked his foreman, Bennett, for the reason, Bennett said that he did not know. Auchmoody was reinstated on May 8, 1937, by Schatz, who told him that the reason for his lay-off was "shop politics". Bennett testified that Auchmoody was an efficient employee and that he had protested against his dismissal. Although Auchmoody had not joined the Union until April 7, 1937, the evidence indicates that he had enthusiastically discussed Union affairs as early as March 20, 1937.

12. *Gezi Czapp* had been employed by the respondent, The Federal Bearings Co., Inc., since December 1936, and at the time of his discharge on March 30, 1937, was working in the race grinding department on piece work, averaging \$21.88 for a 46 hour week. Traver,

⁹ Auchmoody testified that he was discharged on April 6, 1937. According to the respondents' employment record, however, he was laid off on March 30, 1937.

his foreman, could not give Czapp a satisfactory explanation for his discharge, telling him that he was compelled to dismiss him. At the hearing Traver testified that Czapp had been discharged for inefficiency and lack of seniority. It is significant that three new employees were hired on the day of his discharge, and that the respondent made no effort to show by reference to production records that Czapp was less efficient than his fellow employees.¹⁰ Czapp had joined the Union on March 21, 1937, was a charter member, and on its organizing committee.

13. *Carroll Smith* had been employed by the respondent, The Federal Bearings Co., Inc., since 1933, and at the time of his discharge on March 30, 1937, was working in the grinding department on piece work, averaging \$28.84 for a 49 hour week. As we have indicated above, Smith had called the first Union meeting on March 14, 1937. He had also been elected Chairman of the meeting on March 21. Smith had been warned by Horlacher because of his union activities five days prior to his discharge. The reason assigned for his discharge was that he talked too much.

14. *Wilbur Robinson* had been employed by the respondent, The Federal Bearings Co., Inc., since July 1936, and at the time of his discharge on March 30, 1937, was working in the race grinding department on piece work, averaging \$25.45 for a 43 hour week. Traver, his foreman, testified that he had been laid off because he spent too much time away from his machine, and talked with other operators. Robinson was reinstated on April 28, 1937. He had been a member of the Union since March 22, 1937.

15. *Michael Bloomer* had been employed by the respondent, The Federal Bearings Co., Inc., since 1929, and at the time of his discharge on March 30, 1937, was working as a punch press operator on piece work, averaging \$22.81 for a 48 hour week. Bloomer joined the Union on March 23, 1937. He had been absent from work the week prior to his discharge because of a death in his family, and he was informed of his dismissal by Garner, a set-up man,¹¹ on April 2, 1937. When Garner told him he had been discharged, he also asked Bloomer whether he had joined the Union. McManus, Bloomer's foreman, testified that he was a "good worker" but that he "roamed." McManus further testified that Bloomer was laid off because he was the least dependable employee in the department. However, McManus admitted upon cross-examination that he had never warned Bloomer with respect to his work, nor did he compare Bloomer's

¹⁰ At the request of the Trial Examiner, Traver submitted production records of several employees, including Czapp, subsequent to the hearings. However, the records fail to reveal Czapp's relative efficiency since he did not produce the same types of parts produced by the others, to any great extent.

¹¹ The record discloses that set-up men have some supervisory duties, and are considered supervisory employees.

production records with those of other operators in the department.

16. *James Keady* had been employed by the respondent, The Federal Bearings Co., Inc., since 1929, and at the time of his discharge on March 30, 1937, was working in the inspection department, earning 42 cents an hour for an average 48 hour week. Keady was a charter member of the Union, having joined on March 21. Le Pan, his foreman, testified that Keady "loafed and talked," but he admitted saying to Keady when he discharged him: "I want you to know this is none of my doings."

17. *Edward Odell* had been employed by the respondent, The Federal Bearings Co., Inc., since December 1936, and at the time of his first discharge on March 30, 1937, was working in the inspection department, receiving 42 cents an hour for a 49 hour week. Odell was discharged at the same time that Keady was dismissed, Le Pan, his foreman, stating that he was sorry and that he was not responsible for the discharge. Odell had been active in the Union since March 21, 1937, when he had attended the meeting at Carroll Smith's house and had joined. Le Pan testified that Odell was a "fair worker" and that he had been dismissed only because he had been in the last group of employees to be hired. Le Pan admitted, however, that he had made no attempt to ascertain Odell's seniority status before discharging him. Odell was reinstated on May 7, 1937.

Following his reinstatement Odell succeeded in soliciting new members for the Union, although he confined his activities to periods outside of working hours. On May 14 the respondent, The Federal Bearings Co., Inc., posted the following notice on its bulletin boards throughout its plant:

"We again remind our employees that there must be no propaganda of any kind during working hours. This applies impartially to all labor organizations."¹²

The evidence with respect to Odell's second discharge on May 17, 1937, is undisputed. Before work commenced on that morning Odell was given a signed union application card by another employee, Frances Cavaretta. During working hours Miss Cavaretta came to Odell's bench and asked that the card be returned to her. Fearing to cause a disturbance by refusing, Odell told her to return to her work, and several minutes later, when he left his bench to get a drink, he passed Miss Cavaretta's bench and returned the card. Odell's actions were observed by Mabel Dunn, a timekeeper, and Paul Rozelle, another employee, who reported the incident to Le Pan. Odell was promptly discharged.

Shortly thereafter Odell explained the transaction to both Horlacher and Schatz, neither of whom rescinded the discharge order.

¹² Board's Exhibit No. 13.

That Odell had been discharged for his union activities on March 30 is clearly revealed in the record. Prior to his reinstatement on May 7, the respondent, itself, elicited the testimony that Schatz had specifically warned him not to solicit members during working hours after his reinstatement. The record is equally clear that Odell both heeded the warning and enjoyed considerable success recruiting new members for the Union outside of working hours. If the return of the union application card constituted "propaganda" within the meaning of the respondent's notice, it is obvious that the respondent, with full knowledge of the facts, eagerly seized upon a technical violation of its rule to dismiss Odell.

We do not believe, however, that Odell's actions on May 17 constituted a violation of the respondent's rule, and we conclude that the dismissal of Odell on May 17 constituted a discriminatory discharge within the meaning of the Act.

18. *Dorothy Keady*, the wife of James Keady whose discharge is described above, had been employed by the respondent, The Federal Bearings Co., Inc., since 1934, and at the time of her discharge on April 9, 1937, was working in the inspection department on piece work, averaging \$16.53 for a 43½ hour week.

Mrs. Keady had been a member of the Union since March 30, was a member of the organization committee, and active in Union affairs. The evidence shows that prior to April, the respondent was suspicious of her union activity and on several occasions she was questioned by Camburn, her foreman, with respect to her husband's affiliation with the Union. There is some evidence that she was the object of the ridicule of other employees in the department because of her Union membership, and she had asked Camburn to prevent the other girls from molesting her.

On April 7, 1937, Camburn, having heard that Mrs. Keady was spreading a false story that he was a member of the Union, called her from her work and asked her why she had spread the rumor. At the same time he said: "Why don't you get wise to yourself and take that damn (union) button off." Mrs. Keady denied that she had spread the rumor, and accused Charlotte Ean and Vera Merkle, two of her fellow workers, of reporting her. Camburn responded that he did not believe her, and told her that neither of the girls she had mentioned had carried the story to him. Mrs. Keady, overwrought, retired in tears to the ladies' room where, in the presence of several employees, and with a generous use of profanity, she expressed her opinion of Charlotte Ean and Vera Merkle. Mrs. Keady was discharged, allegedly for using profanity and for causing a disturbance in the ladies' room.¹⁸

¹⁸ The record discloses that Mrs. Keady had in fact initiated the false rumor regarding Camburn's Union membership. This conduct, however, is not assigned by the respondent as a reason for her discharge.

In the light of all the evidence we are satisfied that the respondent discharged Mrs. Keady solely because of her activity on behalf of the Union. For a period of over a week she had been subject to abuse by other employees because of her Union membership, which the respondent made no effort to stop. She had been questioned previously by Camburn about her husband's activities, and on March 30, after James Keady had been discharged, Camburn had told her that the respondent was dismissing the employees who were suspected of Union affiliation. We cannot take seriously the reasons that the respondent urges for her discharge. Neither Charlotte Ean nor Vera Merkle was present in the ladies' room at the time of the alleged disturbance, and it is not denied that the "disturbance" consisted only of Mrs. Keady's characterization of them in opprobrious terms. A factory wash room is not a place where decorum in the use of language is commonly observed, and from the obscenities used by other witnesses while testifying at the hearing, we are satisfied that the words attributed to Mrs. Keady did not create the furor which the respondent's witnesses, calmly repeating her words in open court, would have us believe.

C. Conclusions regarding the discharges

The respondents contend that, with the exception of Dorothy Keady, the other employees were laid off and not discharged, the object being to bolster efficiency and to improve discipline in the plants. Indeed, but with one or two exceptions, all of the respondents' foremen who appeared as witnesses testified that they were not aware that Union affairs were being discussed until March 29 and 30, after most of the discharges had occurred.

Horlacher, the superintendent of The Federal Bearings Co., Inc., testified that he noticed considerable unrest throughout the plant, that employees were congregating in the wash rooms, visiting in other departments, and otherwise failing to attend to their duties. Furthermore, his attention was called to a decrease in production which was not attended by a corresponding decrease in the pay roll. On March 22 he called a conference of the foremen and told them to lay off the employees responsible for the breakdown of efficiency and discipline. In the words of Schatz, such lay-offs would be "good medicine" and impress the remaining employees with their obligation to work. It was not contended that the employees who were laid off were inefficient. Rather, they were alleged to be the nucleus of the unrest and a disturbing influence upon other employees.

The respondents' contentions, however, fall in the face of the overwhelming evidence which conclusively establishes the true motives for the respondents' conduct. Even the respondents' primary justification for their actions is confused. From the record it is not clear

whether production was allegedly curtailed because of inefficiency or because orders had decreased. Schatz testified that in February he had instructed salesmen not to solicit new customers. In any event, at the time of the discharges in March, many of the departments were operating on both day and night shifts, and there is reliable evidence that the operations of the departments were at least normal. It is significant that the respondents, by their own admission, never consulted production records to determine which departments were operating inefficiently, or what was causing the unusual unrest among the employees. Horlacher testified that he was not even interested in determining the cause for the unrest, despite the alleged drop in production and widespread disintegration of discipline.

It is impossible to give credence to the respondents' protestations of ignorance regarding union activity in their plants, or to their contention that the lay-offs¹⁴ were not motivated by the desire to crush all attempts of their employees to organize into an independent union. It is significant that 17 of the 18 employees who were dismissed were the most active officers or members of the Union. It is also significant that all these active Union members were discharged within a very short period of time. With but few exceptions, which are to be expected in plants as large as the respondents', no other employees were shown to have been laid off or dismissed. It is undisputed that no rules or regulations of the respondents forbade employees from talking, and it is admitted that their duties required some amount of visiting from one department to another.

Most of the discharged employees were engaged on piece work for which accurate records are maintained. Certainly, if these employees were chiefly responsible for the breakdown of discipline and the drop in production, their inattentiveness to duty necessarily would have been reflected in their individual production records. However, no attempt was made by the respondents to produce such records, and it is reasonable assumption that the activities of these employees did not affect their work. It follows that their activities could not have affected the work of other employees, as alleged by the respondents.

On the other hand, the record is replete with evidence that the respondents were aware of union activity, and that their conduct,

¹⁴ Whether the 17 employees were discharged or, as alleged by the respondents, whether they were laid off, is immaterial to the issues except to illustrate the gross insincerity with which the respondents attempted to refute the charges. The evidence unquestionably revealed that when an employee was ordinarily laid off it was customary for him to retain his identification button, and, since employees were paid weekly for the previous week's employment, he would be compelled to return the week after his lay-off in order to obtain his final wages. In these cases, however, and without exception, the employees were ordered to turn in their buttons, and they received their wages in full to the date their employment terminated. In the face of this uncontradicted evidence of the respondents' practice, and the unrefuted evidence that this practice was not followed herein, we cannot take seriously their insistence that these employees were not discharged.

including the discharges, was designed to smother the Union campaign for membership. As we have stated above, many of the employees were warned by their superiors that the respondents did not favor the advent of the Union. These warnings were buttressed by a display of force which could only have the effect of instilling in their employees the fear that their organizational activities would meet with violent opposition. Both Horlacher and Schatz testified that 12 deputies were hired for "plant protection" some time between March 22 and March 29.¹⁵ Finally, on March 22, a general five per cent increase in wages was granted throughout the plants. In the face of the alleged unrest, decrease in production, and impaired discipline, we cannot believe that the respondents would have proffered a general wage increase unless they were desirous of counteracting union propaganda which they knew was attracting their employees.

We find that the respondents discharged James Palatucci, Frank Catanzaro, George Avello, George W. Theil, Martin Nicolek, Edward Wilson, Thomas Smith, John T. Owen, Frank Niessen, Louis Volino, Harold Auchmoody, Gezi Czapp, Carroll Smith, Wilbur Robinson, Michael Bloomer, James Keady, Edward Odell, and Dorothy Keady because they joined and assisted the Union. We further find that by the discharges and the threats and warnings circulated among their employees, the respondents have discriminated against their employees in regard to hire and tenure of employment, and have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. Since the above named employees, except Frank Catanzaro, Wilbur Robinson, Edward Wilson, and Harold Auchmoody, who have been reinstated, have not found substantially equivalent employment since their discharges, at all times thereafter, they retained their employee status with the respondents.

D. Interference with the formation and administration of Schatz United Employees Association

In contrast with their attitude toward Union organization and their treatment of Union members, the respondents encouraged the formation of the Association, fostered its growth, and left no doubt in the minds of their employees that the Association was the favored organization. The respondents adduced evidence to prove that several of the employees whom they had discharged had openly recruited Union members during working hours. Although such conduct

¹⁵ Schatz testified that he had learned on Sunday, March 28, that a sit-down strike would be called in the plants, and for this reason the deputies had been hired. Upon cross-examination, however, neither he nor Horlacher could recall whether the guards had been employed on March 22 or March 29. Schatz could give no reason for his fear of a strike except that he had heard a rumor when attending church.

should not ordinarily be condoned, the record is replete with evidence that the respondents afforded that privilege to members of the Association. Where privileges are granted to one organization and withheld from another, the resulting discrimination necessarily has the effect of encouraging membership in the organization upon which privileges have been conferred and discouraging membership in the organization from which the same privileges have been withheld. The respondents cannot, therefore, be heard to complain that Union members actively solicited other employees during working hours.

Following a conference with Schatz early in April 1937, Charlotte Ean, an employee in the inspection department of The Federal Bearings Co., Inc., drew up a petition with the intention of organizing an association which, she testified, would engage in social and welfare work among the employees of both respondents. Although Charlotte Ean denied that her conference with Schatz in any way influenced her desire to initiate the formation of the Association, she admitted that the Union had been discussed. In any event, her actions, following the conference, raise a reasonable inference that the Association was conceived, at least with the blessings of Schatz. Furthermore, from all the evidence, it is clear that the Association was conceived as a labor organization and not as the social and welfare organization described by Charlotte Ean. Thereafter a group of employees of the two respondents solicited members, in some instances during working hours, and with the active encouragement and support of assistant foremen, timekeepers, set-up men, and other employees in trusted positions. Applicants for membership signed petitions left on desks and benches throughout the plants, or signed their names on printed forms of the respondents, including time tickets, wash tickets, requisition slips, job tickets, inspection tickets, and memorandum slips. In an atmosphere of open hostility to the Union, and immediately following the discharges of union employees, it is not surprising that the membership campaign of the Association flourished.

John B. West, foreman of the stock department of The Federal Bearings Co., Inc., and an employee of the respondent for 18 years, actively participated in organization activities. As we have noted above, West had been discovered in a doorway across from the Union hall and on one occasion had been accused by Carroll Smith and Frank Niessen of spying. West testified that he resented the accusation, that he then determined to organize another union, primarily to feed his resentment. West thereupon assumed the obligation of financing the Association, advanced almost \$100, and ordered membership cards printed by Finkbinder, an employee who also undertook printing assignments from the respondents.

Early in May arrangements were made for the first meeting of the Association. As a final step in the campaign for recruits, on May 14 the respondents circulated the following notice among their departments:

Many of you have worked with me and my brothers for years, and all of you know I have always had your welfare in my mind and in my heart.

Wages are good. Hours are good. Plant conditions are good.

In response to inquiries, I wish to give full publicity to the following statement:

Organizers for an outside union I understand are now trying to enroll members in this plant. I shall scrupulously comply with any law which requires me to bargain collectively with representatives chosen to bargain collectively for our employees.

My information is that a vast majority of you would prefer in any collective bargaining to be represented not by some outside union but by some committee or organization of your own choosing selected by yourselves from among your own friends and neighbors who are now working in this plant with you. This is your right and your privilege, and if you choose to organize your own representatives for this purpose I shall be ready to bargain collectively with your representatives to the full extent required by law.¹⁶

On the same day the further notice forbidding union propaganda of any kind was also posted.¹⁷

The two notices, coming at this time, are particularly significant in revealing the attitude of the respondents toward the Association. The "information" that a "vast majority" of the employees would prefer to be represented "not by an outside union" could only have the desired effect of prodding those employees who had not yet expressed their preference for the Association. For a period of almost two months, during which the respondents knew that union activity was being carried on in their plants, no rule forbidding such activity had ever been circulated. Not until May 14, after the Association campaign for membership had been concluded with a final word of encouragement, did the respondents find it necessary to order the cessation of all propaganda.

Finally, on May 18, 1937, the first meeting of the Association was called. William Eckerline, an employee under the supervision of West, presided, and Robert Horlacher, a tool maker and brother of the superintendent of The Federal Bearings Co., Inc., addressed the meeting. Officers were elected, and it was decided to incorporate the

¹⁶ Board's Exhibit No. 12.

¹⁷ Board's Exhibit No. 13, referred to in the discussion of Odell's discharge, *supra*.

Association. A month later, at the time of the hearing, although printing and legal expenses had been incurred, no provision had been made for the collection of dues, the Association presumably relying upon the beneficence of West.

We find that the respondents dominated and interfered with the formation of the Association in April 1937, and at all times thereafter dominated and interfered with, and contributed support to it.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents 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.

CONCLUSIONS OF LAW

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

1. Local 297, International Union, United Automobile Workers of America, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Schatz United Employees Association, Inc., formerly known as United Schatz Employees' Association, is a labor organization, within the meaning of Section 2 (5) of the Act.

3. Frank Catanzaro, Wilbur Robinson, Edward Wilson, Harold Auchmoody, and Edward Odell were employees of the respondent, The Federal Bearings Co., Inc., at the time of their discharge and at all times thereafter continued to be employees of this respondent, within the meaning of Section 2 (3) of the Act; James Palatucci, George W. Theil, Martin Nicolek, Thomas Smith, John T. Owen, Frank Niessen, Louis Volino, Gezi Czapp, Carroll Smith, Michael Bloomer, James Keady and Dorothy Keady were at the time of their discharge, and at all times thereafter, employees of the respondent, The Federal Bearings Co., Inc., within the meaning of Section 2 (3) of the Act; Edward Odell was at the time of his discharge on May 17, 1937, and at all times thereafter, an employee of the respondent, The Federal Bearings Co., Inc., within the meaning of Section 2 (3) of the Act; George Avello was at the time of his discharge, and at all times thereafter, an employee of the respondents, within the meaning of Section 2 (3) of the Act.

4. The respondent, The Federal Bearings Co., Inc., by discriminating in regard to the hire and tenure of employment of Frank Ca-

tanzaro, Wilbur Robinson, Edward Wilson, Harold Auchmoody, Edward Odell, James Palatucci, George W. Theil, Martin Nicolek, Thomas Smith, John T. Owen, Frank Niessen, Louis Volino, Gezi Czapp, Carroll Smith, Michael Bloomer, James Keady, and Dorothy Keady, and thereby discouraging membership in a labor organization, and the respondents, The Federal Bearings Co., Inc., and Schatz Manufacturing Company, by discriminating in regard to the hire and tenure of employment of George Avello, and thereby discouraging membership in a labor organization, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. By their domination and interference with the formation and administration of United Schatz Employees' Association, now known as Schatz United Employees Association, Inc., and by contributing support thereto, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed by Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, The Federal Bearings Co., Inc., and its affiliate or subsidiary, Schatz Manufacturing Company, and their officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining, or coercing their 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 and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) From in any manner discouraging membership in Local 297, International Union, United Automobile Workers of America, or any other labor organization of their employees, by discharging, refusing to reinstate, or otherwise discriminating against their em-

ployees in regard to hire or tenure of employment or any term or condition of employment;

(c) From in any manner dominating or interfering with the administration of Schatz United Employees Association, Inc., or any other labor organization of their employees, and from contributing support to Schatz United Employees Association, Inc., or to any other labor organization of their employees.

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

(a) The respondent, The Federal Bearings Co., Inc., shall:

I. Offer to James Palatucci, George W. Theil, Martin Nicolek, Thomas Smith, John T. Owen, Frank Niessen, Louis Volino, Gezi Czapp, Carroll Smith, Michael Bloomer, James Keady, Edward Odell, and Dorothy Keady, immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary any employees at present holding such positions;

II. Make whole said Frank Catanzaro, Wilbur Robinson, Edward Wilson, Harold Auchmoody, James Palatucci, George W. Theil, Martin Nicolek, Thomas Smith, John T. Owen, Frank Niessen, Louis Volino, Gezi Czapp, Carroll Smith, Michael Bloomer, James Keady, Edward Odell, and Dorothy Keady for any losses of pay they have suffered by reason of their discharge, by payment to each of them of a sum of money equal to that which he or she would normally have earned as wages from the date of his discharge to the date of such offer of reinstatement, or in the cases of Frank Catanzaro, Wilbur Robinson, Edward Wilson, and Harold Auchmoody, to the date of their reinstatement; and in the case of Edward Odell, such payment shall, in addition, make him whole for any losses he has suffered, as aforesaid, between the date of his first discharge on March 30, 1937, and his reinstatement on May 7, 1937.

(b) The respondents, The Federal Bearings Co., Inc., and Schatz Manufacturing Company shall:

I. Offer to George Avello immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges, dismissing if necessary, any employee at present holding such position;

II. Make whole said George Avello for any losses of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of such offer of reinstatement;

III. Withdraw all recognition from Schatz United Employees Association, Inc., as representative of their employees for the purpose

of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Schatz United Employees Association, Inc., as such representative;

IV. Immediately post notices in conspicuous places throughout their plants and maintain such notices for a period of thirty (30) consecutive days, stating (1) that the respondents will cease and desist as aforesaid, and (2) that the respondents will withdraw all recognition from Schatz United Employees Association, Inc., as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that Schatz United Employees Association, Inc., is disestablished as such representative;

V. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this order what steps the respondents have taken to comply herewith.